BRB No. 11-0743 BLA

HERBERT E. NEWBERRY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
J & L COAL, INCORPORATED	)	DATE ISSUED: 07/30/2012
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Award of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

Richard A. Seid (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order - Award of Benefits (09-BLA-5796) of Administrative Law Judge Richard T. Stansell-Gamm rendered on a miner's claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act).

This case involves a request for modification of a subsequent claim. The pertinent procedural history of this case is as follows: Claimant filed his first claim on February 21, 1995.[1] Director's Exhibit 2. On June 30, 1997, Administrative Law Judge Pamela Lakes Wood issued a Decision and Order denying benefits. *Id*. Judge Wood found that claimant established the existence of pneumoconiosis and total respiratory disability, but failed to establish that his total disability was due to pneumoconiosis. *Id*. The Board affirmed Judge Wood's denial of benefits. *Newberry v. J&L Coal, Inc*., BRB No. 97-1461 BLA (May 26, 1998)(unpub). Claimant filed a request for modification on April 19, 1999. Director's Exhibit 2. It was denied by the district director on June 17, 1999 for failure to establish a change in condition or a mistake in a determination of fact at 20 C.F.R. §725.310 (2000). *Id*.

Claimant filed his second claim (a duplicate claim) on July 6, 2000. Director's Exhibit 3. On November 19, 2003, Administrative Law Judge Linda S. Chapman issued a Decision and Order denying benefits. *Id*. Judge Chapman's denial of benefits was based on claimant's failure to establish total disability due to pneumoconiosis and, thus, claimant's failure to establish a material change in conditions at 20 C.F.R. §725.309 (2000). *Id*.

Claimant filed this claim (a subsequent claim) on February 7, 2005. Director's Exhibit 5. On May 31, 2007, Administrative Law Judge Larry W. Price issued a Decision and Order denying benefits because claimant failed to establish that his total disability was due to pneumoconiosis. Director's Exhibit 57. Claimant filed a request for modification on July 28, 2007. Director's Exhibit 58. It was granted by the district director on March 27, 2009, based on a change in condition at 20 C.F.R. §725.310.[2]

[1] Claimant filed a claim on March 18, 1993. By Order dated February 17, 1994, however, Administrative Law Judge Fletcher E. Campbell, Jr., granted claimant's motion to withdraw his claim.

[2] The district director found that the x-ray evidence established the presence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a), thereby establishing invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. Director's Exhibit 74.

Director's Exhibit 74. Employer filed a request for a hearing on April 6, 2009, Director's Exhibit 75, which was held by Administrative Law Judge Richard T. Stansell-Gamm (the administrative law judge) on February 24, 2010.

In a Decision and Order dated June 29, 2011, the administrative law judge credited claimant with twenty-four years of underground coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence did not establish the presence of complicated pneumoconiosis pursuant to Section 718.304(b) and, thus, that claimant did not establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. However, the administrative law judge found that the evidence established total respiratory disability pursuant to 20 C.F.R §718.204(b)(2)(i), (ii) and (iv) and, therefore, he determined that claimant invoked the rebuttable presumption that his total disability was due to pneumoconiosis pursuant to amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). The administrative law judge also found that employer did not rebut the presumption. Consequently, the administrative law judge found that claimant established a mistake in a determination of fact in Judge Price's May 31, 2007 denial of benefits, pursuant to 20 C.F.R. §725.310. Furthermore, the administrative law judge found that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309 since Judge Chapman's November 19, 2003 denial of benefits. On the merits, the administrative law judge found that the evidence established the existence of clinical and legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). The administrative law judge also found that claimant invoked the amended Section 411(c)(4) presumption, thereby establishing total disability due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits to commence as of February 1, 2005, the beginning of the month in which the present claim was filed.

On appeal, employer challenges the applicability of Section 1556 of the Patient Protection and Affordable Care Act (the PPACA) to this case.[3] Employer also challenges the administrative law judge's finding that it failed to establish rebuttal of the amended Section 411(c)(4) presumption by showing the absence of legal pneumoconiosis and

[3] Employer argues that because the Patient Protection and Affordable Care Act (PPACA) is being litigated in the United States Supreme Court, adjudication of this claim should be held in abeyance pending resolution of the constitutionality of the PPACA, and the severability of non-health care provisions by the Court. Subsequent to the filing of employer's Brief in Support of Petition for Review, the Court upheld the constitutionality of the PPACA. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. , 2012 WL 2427810 (June 28, 2012). Thus, employer's argument that this claim should be held in abeyance pending resolution of the constitutionality of the PPACA is moot.

disability causation. Lastly, employer challenges the administrative law judge's determination that February 1, 2005 was the date of onset of total disability. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject employer's constitutional and procedural arguments regarding the applicability of Section 1556. The Director also urges affirmance of the administrative law judge's finding that benefits commence as of February 1, 2005. Employer filed a brief in reply to the response briefs of claimant and the Director, reiterating its prior contentions.[4]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111 (1989).

Under Section 22 of the Longshore and Harbor Workers' Compensation Act (Longshore Act), 33 U.S.C. §922, as incorporated into the Black Lung Benefits Act by 30 U.S.C. §932(a), the fact-finder may, on the ground of a change in conditions or because of a mistake in a determination of fact, reconsider the terms of an award or denial of

[4] Because the administrative law judge's finding that the evidence did not establish the presence of complicated pneumoconiosis and, thus, that claimant did not invoke the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304 is not challenged on appeal, it is affirmed. *Skrack v. Island Creek Coal Co*., 6 BLR 1-710 (1983). Further, because the administrative law judge's findings that claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), and that employer failed to rebut the presumption by showing the absence of clinical pneumoconiosis are not challenged on appeal, they are affirmed. *See Skrack*, 6 BLR at 1-711.

[5] The record indicates that claimant was employed in the coal mining industry in Virginia. Director's Exhibits 2, 3, 6. Accordingly, the law of the United States Court of Appeals for the Fourth Circuit is applicable. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(en banc).

benefits. *See* 20 C.F.R. §725.310. The intended purpose of modification based on a mistake in a determination of fact is to vest the fact-finder "with broad discretion to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971); *see Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 22 BLR 2-429 (7th Cir. 2002); *Director, OWCP v. Drummond Coal Co.* [*Cornelius*], 831 F.2d 240, 10 BLR 2-322 (11th Cir. 1987).

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2); *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(en banc), *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995)(holding under former provision that claimant must establish at least one element of entitlement previously adjudicated against him).

On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. The amendments, in pertinent part, reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption that the miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled due to pneumoconiosis, if 15 or more years of qualifying coal mine employment and a totally disabling respiratory impairment, *see* 20 C.F.R. §718.204(b), are established. If the presumption is invoked, the burden of proof shifts to employer to disprove the existence of pneumoconiosis, or to establish that the miner's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4); *see Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 2 BLR 2-38 (4th Cir. 1980); *accord Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 479, 25 BLR 2-1, 2-8 (6th Cir. 2011).

Because claimant filed a request for modification of Judge Price's May 31, 2007 denial of benefits in the subsequent claim, the issue properly before the administrative law judge was whether the medical evidence developed since the denial of benefits in the prior claim (*i.e.*, the evidence developed since Judge Chapman's November 19, 2003 denial of benefits) established a change in an applicable condition of entitlement at 20 C.F.R. §725.309 and, thereby, established a basis for modification at 20 C.F.R. §725.310. *See also Hess v. Director, OWCP*, 21 BLR 1-141 (1998).

Initially, we will address employer's contention that amended Section 411(c)(4) may not be applied to modification requests, as modification is not available based on a

change in law.[6] The Director submits that the administrative law judge "simply applied a valid statutory presumption" and "did not err by using the revived Section 411(c)(4) presumption to correct a previous adjudicator's erroneous 'ultimate fact' findings." Director's Response Brief at 5. Employer's argument lacks merit. Given the breadth of modification based on a mistake in fact, claimant is entitled to seek modification of the ultimate fact of entitlement. *V.M.* [*Matney*] *v. Clinchfield Coal Co.*, 24 BLR 1-65, 1-70-71 (2008). Thus, we reject employer's assertion that amended Section 411(c)(4) may not be applied to modification requests.

Next, we address employer's contention that the administrative law judge erred in finding that it failed to establish rebuttal of the amended Section 411(c)(4) presumption by showing the absence of legal pneumoconiosis.[7] In considering rebuttal of the amended Section 411(c)(4) presumption, the administrative law judge considered the opinions of Drs. Rasmussen, Robinette, Piriz, Rosenberg and Naeye.[8] The administrative

[6] Employer asserts that the absence of a negative x-ray interpretation from the record of this claim precludes application of the Section 411(c)(4) presumption. Employer relies on the portion of Section 411(c)(4) providing that the rebuttable presumption is available "if there is a chest [x-ray] submitted in connection with such miner's … claim … and it is interpreted as negative with respect to the requirements of [the Section 411(c)(3) presumption]," *i.e.*, as negative for complicated pneumoconiosis. 30 U.S.C. §921(c)(4). Contrary to employer's assertion, the language that employer relies on means that claimant is entitled to the Section 411(c)(4) presumption, despite the absence of clinical evidence of complicated pneumoconiosis, if he is able to demonstrate a totally disabling respiratory or pulmonary impairment. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 11, 3 BLR 2-36, 2-41 (1975). Thus, we reject employer's assertion that the lack of a negative x-ray reading in the record for complicated pneumoconiosis precludes the application of amended Section 411(c)(4).

[7] Because employer failed to establish the absence of clinical pneumoconiosis, it cannot establish rebuttal of the amended Section 411(c)(4) presumption by showing the absence of legal pneumoconiosis. Nevertheless, we address employer's assertion that the administrative law judge erred in finding that it failed to establish the absence of legal pneumoconiosis because it affects his finding that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption by showing the absence of disability causation.

[8] Dr. Rasmussen diagnosed both clinical and legal pneumoconiosis, and attributed claimant's disabling lung disease to his history of smoking "combined with his long term exposure to coal mine dust." He opined that coal mine dust was a major contributing factor in claimant's respiratory impairment. Director's Exhibits 14, 52.

law judge found that Dr. Rasmussen's opinion was well-documented and reasoned. By contrast, the administrative law judge found that the opinions of Drs. Rosenberg and Naeye have diminished probative value due to documentation and reasoning issues. Further, the administrative law judge discounted Dr. Piriz's opinion because "Dr. Piriz did not address the nature and extent of [claimant's] pulmonary problems." Decision and Order at 29. Additionally, the administrative law judge stated that "while Dr. Robinette diagnosed emphysema and considered [claimant] totally disabled, he likewise did not discuss the cause or causes of [claimant's] disabling pulmonary obstruction." *Id*. Hence, the administrative law judge found that Dr. Rasmussen's opinion established the existence of legal pneumoconiosis.

Employer argues that the administrative law judge erred in relying on an impermissible rationale for discrediting Dr. Rosenberg's opinion. Specifically, employer asserts that the administrative law judge substituted his opinion for that of the medical expert. Contrary to employer's assertion, the administrative law judge permissibly gave less weight to Dr. Rosenberg's opinion because it was not sufficiently documented.[9] *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). In addition, the administrative law judge permissibly gave less weight to Dr. Rosenberg's opinion because it was not

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Dr. Robinette diagnosed coal workers' pneumoconiosis and emphysema. Director's Exhibits 52, 69. The administrative law judge stated that "while Dr. Robinette diagnosed emphysema and considered [claimant] totally disabled, he likewise did not discuss the cause or causes of [claimant's] disabling pulmonary obstruction." Decision and Order at 29.

Dr. Piriz diagnosed chronic obstructive pulmonary disease. Claimant's Exhibit 1.

Dr. Rosenberg diagnosed clinical pneumoconiosis, and opined that claimant's obstructive lung disease was due solely to cigarette smoking. Employer's Exhibits 1, 4.

Dr. Naeye diagnosed clinical pneumoconiosis, and stated that it did not occupy enough lung tissue to have any measurable effect on claimant's respiratory or pulmonary function. Director's Exhibit 52.

[9] The administrative law judge noted that Dr. Rosenberg relied on the absence of CT scan evidence with a background of micronodularity. The administrative law judge also stated, "[h]owever, I have determined that in addition to the preponderance of the probative chest x-ray evidence establishing the presence of pneumoconiosis, the probative September 1, 2005 CT scan shows extensive pneumoconiosis." Decision and Order at 30.

sufficiently reasoned.[10] *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc). Thus, we reject employer's assertion that the administrative law judge erred in relying on an impermissible rationale for discrediting Dr. Rosenberg's opinion.

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption by showing the absence of legal pneumoconiosis.

Additionally, employer contends that the administrative law judge erred in finding that it failed to establish rebuttal of the amended Section 411(c)(4) presumption by showing the absence of disability causation. Specifically, employer argues that the administrative law judge applied an incorrect standard of proof on rebuttal of the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). Contrary to employer's assertion, the administrative law judge properly found that employer must establish that claimant's pneumoconiosis did not contribute to his total respiratory disability. S*ee* 30 U.S.C. §921(c)(4); *Morrison*, 644 F.3d at 479, 25 BLR at 2-8; Decision and Order at 31. Thus, we reject employer's assertion that the administrative law judge applied an incorrect standard of proof on rebuttal.

Employer also argues that the administrative law judge erred by applying a greater level of scrutiny to the opinions of Drs. Rosenberg and Naeye than to that of Dr. Rasmussen. Employer maintains that "[the administrative law judge] discredited the opinions of Drs. Rosenberg and Naeye because they disagreed with his conclusion that [claimant] had legal pneumoconiosis, but declared that Dr. Rasmussen's diagnosis of complicated pneumoconiosis, a finding that was not supported by the preponderance of the evidence or [the administrative law judge's] finding, did not affect the credibility of his opinion." Employer's Brief at 20-21. In considering rebuttal of the amended Section 411(c)(4) presumption, the administrative law judge noted that employer presented the disability causation opinions of Drs. Rosenberg and Naeye. The administrative law judge permissibly discounted the opinions of Drs. Rosenberg and Naeye because they did not

[10] The administrative law judge noted that Dr. Rosenberg emphasized that claimant's response to bronchodilator therapy was inconsistent with the presence of a fixed pulmonary obstruction related to coal mine dust. However, the administrative law judge noted that claimant's pulmonary function did not return to normal in three pulmonary function tests that were reviewed by Dr. Rosenberg. After noting that claimant had a significant residual obstructive impairment that was totally disabling, the administrative law judge stated, "Yet, during his analysis, Dr. Rosenberg did not discuss how he determined that none of the seemingly fixed, residual totally disabling obstructive impairment was related to [claimant's] coal mine dust exposure, either through partial causation or aggravation." Decision and Order at 30-31.

diagnose legal pneumoconiosis, contrary to his own finding. *See Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 224, 23 BLR 2-393, 2-412 (4th Cir. 2006); *Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-384 (4th Cir. 2002); *V.M.* [*Matney*], 24 BLR at 1-76; Decision and Order at 31. Contrary to employer's assertion, the administrative law judge did not consider Dr. Rasmussen's opinion in weighing the disability causation evidence. Nevertheless, in considering the issue of legal pneumoconiosis, the administrative law judge reasonably found that, even though Dr. Rasmussen's belief that claimant has complicated pneumoconiosis is not supported by the record, the doctor's opinion that claimant has legal pneumoconiosis "remains viable given his clear reliance on [claimant's] clinical presentation and the distinct relationship between the unique results of his pulmonary function tests and arterial blood gas studies." Decision and Order at 30. Thus, we reject employer's assertion that the administrative law judge erred by applying a greater level of scrutiny to the opinions of Drs. Rosenberg and Naeye than to that of Dr. Rasmussen.

Employer further argues that the administrative law judge erred by failing to consider Dr. Castle's May 9, 2003 report, Dr. Fino's December 5, 2000 report, and Dr. Michos's February 22, 2001 report. The reports of Drs. Castle, Fino, and Michos were submitted into the record as part of claimant's second claim. Director's Exhibit 3. In his Decision and Order, the administrative law judge stated:

> While I have reviewed and considered all the medical evidence in the earlier two claims, the recent medical record clearly demonstrates that [claimant] has experienced a significant worsening of his pulmonary health since 2004. Consequently, I find the medical evidence developed since Judge Chapman's 2003 denial is more probative in evaluating [claimant's] present pulmonary condition and determining whether he has pneumoconiosis.

Decision and Order at 34. We, therefore, reject employer's assertion that the administrative law judge erred by failing to consider the opinions of Drs. Castle, Fino, and Michos.[11]

[11] Employer asserts that the administrative law judge erred "to the extent that [he] decided that Dr. Rasmussen's opinion could carry the day even without the fifteen year presumption." Employer's Brief at 22. In light of our disposition of the case under the amended presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), we need not address employer's assertion that Dr. Rasmussen's opinion is insufficient to establish that claimant's disability arose from pneumoconiosis.

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption by showing the absence of disability causation. *See Rose*, 614 F.2d at 936, 2 BLR at 2-38; *accord Morrison*, 644 F.2d at 479-480.

Furthermore, because we affirm the administrative law judge's finding that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption by establishing either that claimant does not have pneumoconiosis or that claimant's total disability was not due to pneumoconiosis, we affirm the administrative law judge's finding that claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309.[12] Consequently, we affirm the administrative law judge's finding that claimant established a mistake in a determination of fact at 20 C.F.R. §725.310.

Finally, employer challenges the administrative law judge's finding that February 1, 2005 is the date from which benefits commence. Specifically, employer argues that benefits should commence from March 2010, the date that the PPACA was enacted, because the "change in law set the date on which claimant has established the conditions of entitlement." Employer's Brief at 24. We disagree. The basis for granting modification, whether mistake in fact or change in conditions, affects the date from which benefits commence. If modification is based on a change in conditions, claimant is entitled to benefits as of the month of onset of total disability due to pneumoconiosis, or if that date is not ascertainable, as of the date he requested modification. 20 C.F.R. §725.503(d)(2). If modification is based on the correction of a mistake in fact, claimant is entitled to benefits from the date he first became totally disabled due to pneumoconiosis or, if that date is not ascertainable, from the date he filed his claim, unless credited evidence establishes that he was not disabled at any subsequent time. 20 C.F.R. §725.503(d)(1); *see Eifler v. Peabody Coal Co.*, 926 F.3d 663, 666, 15 BLR 2-1, 2-4 (7th Cir. 1991); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990). Here, the administrative law judge found that claimant established a mistake in a determination of fact. The medical evidence credited by the administrative law judge establishes only that claimant became totally disabled due to pneumoconiosis at some time prior to the date of that evidence. *See Merashoff v. Consolidation Coal Co.*, 8 BLR 1-105, 1-109 (1985). Further, the administrative law judge did not credit any evidence that claimant was not totally disabled due to pneumoconiosis at any time subsequent to the filing date

[12] We reject employer's assertion that this claim is barred by the principle of res judicata. Contrary to employer's assertion, the principle of res judicata generally has no application in the context of subsequent claims, as such claims relate to the miner's condition and related issues at a different point in time. *See* 20 C.F.R. §725.309(d)(4); *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(en banc), *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

of his subsequent claim. Thus, the administrative law judge properly awarded benefits to commence as of February 2005, the month in which this claim was filed.

Accordingly, the administrative law judge's Decision and Order - Award of Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge