BRB No. 13-0451 BLA

ELSIE T. LESTER	)	
	)	
Claimant-Respondent	)	
	)	
	)	
v.	)	
	)	
HARD TIMES MINING, INCORPORATED	)	DATE ISSUED: 06/27/2014
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Second Decision and Order on Remand Awarding Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Ronald E. Gilbertson (Husch Blackwell LLP), Washington, D.C., for employer.

Before: HALL, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Second Decision and Order on Remand Awarding Benefits (2006-BLA-6036) of Administrative Law Judge Linda S. Chapman, rendered on a subsequent claim filed on August 30, 2004, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] This case is before

[1] The recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to this claim because it was filed before January 1, 2005.

the Board for a third time.[2] In *Lester v. Hard Times Mining, Inc.*, BRB Nos. 11-0542 BLA and 11-0542 BLA-A, slip. op. at 1-2 n.1 (May 29, 2012) (unpub.), the Board affirmed the administrative law judge's determination that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2). However, the Board vacated her denial of benefits because she failed to adequately explain the weight given each x-ray, relevant to whether claimant established complicated pneumoconiosis at 20 C.F.R. §718.304(a). *Id*. at 7-8. The Board also vacated the administrative law judge's finding that claimant did not establish complicated pneumoconiosis under 20 C.F.R. §718.304(c),[3] as the administrative law judge erred in finding the opinions of Drs. Fino and Forehand to be insufficient to support a finding of complicated pneumoconiosis. *Id*. at 9-11. Therefore, the Board vacated the denial of benefits and remanded the case for further consideration as to whether claimant established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.[4] *Id*. at 7-11. The administrative law judge was instructed to explain the bases for her findings of fact and conclusions of law, as required by the Administrative Procedure Act (APA),[5] and, if necessary, to reconsider the evidence relevant to the date for commencement of benefits, in accordance with 20

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[2] We incorporate the procedural histories set forth in *Lester v. Hard Times Mining, Inc.*, BRB No. 09-0368 BLA, slip op. at 2 n.1 (Dec. 2, 2009) (McGranery, J., concurring and dissenting) (unpub.), *recon. denied*, (July 20, 2010) (unpub. Order) and *Lester v. Hard Times Mining, Inc.*, BRB Nos. 11-0542 BLA and 11-0542 BLA-A, slip. op. at 2-3 (May 29, 2012) (unpub.). The Board has affirmed the administrative law judge's determination that claimant established twenty-seven years of coal mine employment. *Lester*, BRB No. 09-0368 BLA, slip op. at 3 n.3, 5-7.

[3] The Board affirmed the administrative law judge's determination that claimant was unable to establish the existence of complicated pneumoconiosis based on the biopsy evidence at 20 C.F.R. §718.304(b). *Lester v. Hard Times Mining, Inc.*, BRB Nos. 11-0542 BLA and 11-0542 BLA-A, slip. op. at 8-9 (May 29, 2012) (unpub.).

[4] The Department of Labor has revised the regulation at 20 C.F.R. §725.309, effective October 25, 2013. The applicable language previously set forth in 20 C.F.R. §725.309(d) is now set forth in 20 C.F.R. §725.309(c). 78 Fed. Reg. 59,102, 59,118 (Sept. 25, 2013).

[5] The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that an administrative law judge set forth the rationale underlying his or her findings of fact and conclusions of law. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

C.F.R. §725.503(b) and the Board's prior instructions in *Lester v. Hard Times Mining, Inc.*, BRB No. 09-0368 BLA, slip op. at 9 (Dec. 2, 2009) (McGranery, J., concurring and dissenting) (unpub.), *recon. denied*, (July 20, 2010) (unpub. Order). *See Lester*, BRB Nos. 11-0542 BLA and 11-0542 BLA-A, slip. op. at 11.

Employer filed a motion for reconsideration of the Board's Decision and Order, which was denied. *See Lester v. Hard Times Mining, Inc.*, BRB Nos. 11-0542 BLA and 11-0542 BLA-A (Dec. 21, 2012) (Order) (unpub.). In her Second Decision and Order on Remand, issued on June 17, 2013, the administrative law judge found that claimant established complicated pneumoconiosis based on a preponderance of the x-ray evidence at 20 C.F.R. §718.304(a) and the medical opinion of Dr. Fino pursuant to 20 C.F.R. §718.304(c). The administrative law judge concluded that claimant satisfied his burden to demonstrate a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, and that he invoked the irrebuttable presumption of total disability due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in her consideration of the x-ray and medical opinion evidence, relevant to whether claimant has complicated pneumoconiosis. In addition, employer alleges that the administrative law judge erred in determining the onset date of benefits in this claim. Claimant has not filed a brief in response to employer's appeal. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response, unless specifically requested to do so by the Board.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In this subsequent claim, claimant must establish 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(c);[7] *see White v. New White Coal Co.*,

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[6] Because claimant's last coal mine employment was in Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 1, 6.

[7] In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that he is totally disabled, and that his total disability is due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any

23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(4). As claimant's prior claim was denied because claimant failed to establish total disability, he was required to establish this element in order to obtain review of the merits of his claim.

I. Complicated Pneumoconiosis

Section 411(c)(3) of the Act, implemented by 20 C.F.R. §718.304 of the regulations, provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which, (a) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (b) when diagnosed by biopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition which would yield results equivalent to (a) or (b). *See* 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The introduction of legally sufficient evidence of complicated pneumoconiosis does not, however, automatically invoke the irrebuttable presumption found at 20 C.F.R. §718.304. Rather, the administrative law judge must examine all the evidence on this issue, i.e., evidence of simple and complicated pneumoconiosis, as well as evidence of no pneumoconiosis, resolve any conflicts, and make a finding of fact. *See Director, OWCP v. E. Coal Corp.* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc); *Truitt v. North American Coal Corp*., 2 BLR 1-199 (1979).

Pursuant to 20 C.F.R. §718.304(a), the administrative law judge weighed five readings of four x-rays dated June 8, 2004, October 18, 2004, February 1, 2006 and July 6, 2006. Decision and Order on Second Remand at 4. She found that the June 8, 2004 x-ray is equivocal as to the existence of complicated pneumoconiosis because its only reading, which was by Dr. Alexander, dually qualified as a Board-certified radiologist and B reader, was that the x-ray was positive for simple pneumoconiosis, but showed only "possible" Category A large opacities. *Id*. at 4; Director's Exhibit 15. She found that the October 18, 2004 x-ray is positive for complicated pneumoconiosis, based on the sole reading of that film by Dr. Forehand, a B reader, who interpreted it as positive for simple and complicated pneumoconiosis, Category A. Decision and Order on Second Remand at 4; Director's Exhibit 12. She found that the February 1, 2006 x-ray is negative for simple and complicated pneumoconiosis, based on the negative readings by Dr. Alexander and Dr. Hippensteel, a B reader. Decision and Order on Second Remand

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one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

at 4; Employer's Exhibit 1; Claimant's Exhibit 2. The administrative law judge also found that the July 6, 2006 x-ray is positive for simple and complicated pneumoconiosis (Category B), based on the sole reading by Dr. Miller, dually qualified as a Board-certified radiologist and B reader. Decision and Order on Second Remand at 4; Claimant's Exhibit 1.

The administrative law judge noted that the earliest x-ray is equivocal, all of the negative readings pertain to one x-ray, and that two of the four x-rays, "including the most recent x-ray were read as showing both simple and complicated pneumoconiosis with no contradictory readings." Decision and Order on Second Remand at 4. The administrative law judge concluded that claimant established the existence of complicated pneumoconiosis by the preponderance of the x-ray evidence at 20 C.F.R. §718.304(a).

Employer contends that the administrative law judge mechanically credited the most recent x-ray and did not explain, in accordance with the APA, why she rejected the negative readings of Drs. Hippensteel and Alexander of the February 1, 2006 x-ray "in favor of Dr. Miller's [positive] interpretation of the July 2006 x-ray film." Employer's Brief in Support of Petition for Review at 17. Employer's assertions of error, however, are rejected as without merit. The administrative law judge followed the Board's instruction on remand to explain the weight accorded each of the individual x-rays, and explained in accordance with the APA that she found one x-ray to be equivocal, two x-rays to be positive and one to be negative for complicated pneumoconiosis. Moreover, we see no error in the administrative law judge's observation that the most recent x-ray of record is uncontradicted as positive for both simple and complicated pneumoconiosis. *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); Employer's Brief in Support of Petition for Review at 11-12. Thus, because the administrative law judge performed both a qualitative and quantitative analysis of the x-ray evidence, we affirm, as supported by substantial evidence, the administrative law judge's finding that claimant established the existence of complicated pneumoconiosis, based on the two positive x-rays dated October 18, 2004 and July 6, 2006, pursuant to 20 C.F.R. §718.304(a). *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994); *Adkins*, 958 F.2d at 52, 16 BLR at 2-66.

Pursuant to 20 C.F.R. §718.304(c), the administrative law judge observed correctly that claimant "has a disease process in his lungs that shows on his x-rays as opacities greater than one centimeter in diameter. The dispute centers on the etiology of the masses."[8] Decision and Order on Second Remand at 4. As instructed by the Board,

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[8] Employer asserts that the administrative law judge did not properly consider that Dr. Fino, a B reader, read x-rays dated October 18, 2004 and October 26, 2006 as negative for complicated pneumoconiosis. The administrative law judge, however,

the administrative law judge reweighed the opinions of Drs. Fino and Forehand, that claimant suffers from complicated pneumoconiosis, along with the contrary opinion of Dr. Hippensteel.[9] The administrative law judge was not persuaded by Dr. Hippensteel's opinion, attributing the large masses to granulomatous disease. Decision and Order on Second Remand at 6. She found that Dr. Forehand's diagnosis of complicated pneumoconiosis was not credible because it was based solely on his reading of the October 18, 2004 x-ray. *Id.* However, the administrative law judge credited Dr. Fino's opinion that claimant has complicated pneumoconiosis because she determined that it was reasoned and supported by the objective evidence.

Employer contends that the administrative law judge's decision "does not reflect an adequate consideration of Dr. Hippensteel's medical opinion diagnosing only simple pneumoconiosis" and fails to take into account his "latest medical report and the findings and explanations offered therein."[10] Employer's Brief in Support of Petition for Review

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specifically noted that Dr. Fino read these x-rays as 2/2 and, while he did not designate a large opacity of pneumoconiosis on those films, he reported an abnormality in the upper left lung, and indicated that he "could not rule out a mass lesion [sic] or a rounded opacity greater than [one centimeter] in diameter." Decision and Order on Second Remand at 5 n.1. The administrative law judge also properly noted that Dr. Fino described large masses in the right and left lung field after reviewing claimant's CT scans. *Id.* Employer also argues that Dr. Patel did not find complicated pneumoconiosis. The administrative law judge correctly noted, however, that Dr. Patel "reported a vague linear opacification in the right mid lung zone on the December 19, 2003 x-ray, and an enlargement of the density in the right lobe on the December 13, 2004 x-ray, as well as large densities on . . . 2006 x-rays." *Id.* at 6 n. 3. Contrary to employer's contention, the administrative law judge rationally found that Dr. Patel's reading of x-rays dated December 13, 2003 and December 19, 2003, "supports the conclusion that there are large densities in [claimant's] lungs." *Id.*; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997).

[9] The administrative law judge found that claimant "did not establish the existence of complicated pneumoconiosis based on the totality of the hospital records and CT scans, because none of his physicians, or the radiologists who read the x-rays and CT scans, unequivocally attributed the large densities to pneumoconiosis or coal dust exposure." Decision and Order on Second Remand at 4.

[10] Contrary to employer's argument, the administrative law judge considered all of Dr. Hippensteel's reports, along with explanations set forth therein, including Dr. Hippensteel's opinion that the waxing and waning of the large opacities does not indicate

at 24, 26. Employer maintains that the administrative law judge mischaracterized Dr. Hippensteel's opinion, as supporting a finding of large opacities, in rendering her findings. *Id*. at 11. We disagree.

In his initial medical report, based on his February 1, 2006 examination of claimant, Dr. Hippensteel stated that he "saw no distinct large opacity in the apex of the left lung" on x-ray. Employer's Exhibit 1. However, Dr. Hippensteel reviewed additional medical records and issued supplemental reports dated November 7, 2007 and September 30, 2008. Employer's Exhibits 9, 11. In the November 7, 2007 report, Dr. Hippensteel indicated that the "new data on [claimant] shows that he has had significant abnormalities on his chest x-ray that had more rapid change than one would expect from coal workers' pneumoconiosis[.]" Employer's Exhibit 9. He opined that "granulomatous disease is the likely cause for these large opacities rather than progressive massive fibrosis." *Id*. In his September 30, 2008 report, Dr. Hippensteel reviewed even more medical records, and reiterated that claimant has "large opacities in his lungs referable to granulomatous disease rather than coal workers' pneumoconiosis." Employer's Exhibit 11. Therefore, contrary to employer's assertion, the administrative law judge characterized Dr. Hippensteel's opinion correctly when she stated that, "Dr. Hippensteel acknowledged that [claimant] had large opacities on x-ray, but he felt that they were more likely due to granulomatous disease." Decision and Order on Second Remand at 6.

There is also no merit to employer's assertion that the administrative law judge erred in rejecting Dr. Hippensteel's explanation that claimant has granulomatous disease, as opposed to complicated pneumoconiosis. This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit which held, in *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 24 BLR 2-269 (4th Cir. 2010), that an administrative law judge may reject, as speculative, the opinions of employer's experts, who exclude coal dust exposure as the cause for large opacities or masses identified by x-ray, and attribute the radiological findings to conditions, such as granulomatous disease or sarcoidosis, if they fail to point to evidence in the record indicating that the miner suffers or suffered from any of the alternative diseases. *See Cox*, 602 F.3d at 285, 24 BLR at 2-284. In this case, the administrative law judge observed correctly:

> [Claimant's] extensive treatment records consistently reflect that his treating physicians considered the masses in his lungs to be due either to pneumoconiosis, or malignancy. Repeated biopsies were negative for malignancy; none of these biopsies had findings of granulomatous disease.

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the presence of complicated pneumoconiosis. *See* January 22, 2009 Decision and Order Awarding Benefits at 5-7.

> Nor do [claimant's] extensive treatment records, x-rays, or CT scans reflect any diagnoses of granulomatous disease.

Decision and Order on Second Remand at 6. Based on these findings, we affirm the administrative law judge's decision to give no weight to Dr. Hippensteel's opinion, as the administrative law judge's credibility determination is proper and in accordance with law. *See Cox*, 602 F.3d at 285, 24 BLR at 2-284; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997).

Employer also challenges the administrative law judge's decision to credit Dr. Fino's opinion. Employer contends that Dr. Fino did not conclusively diagnose complicated pneumoconiosis, and that his opinion is equivocal. The Board previously rejected this argument and it is not meritorious in this appeal. The administrative law judge rationally determined that Dr. Fino "provided a definitive diagnosis, based on all of the information available to him, that [claimant] had both simple and complicated pneumoconiosis." Decision and Order on Second Remand at 5; *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274. Specifically, Dr. Fino made clear that if the records he reviewed "represent all of the information available, [he] must conclude that simple coal workers' pneumoconiosis and complicated coal workers' pneumoconiosis are present." Employer's Exhibit 4. As the Board previously explained, "[a]lthough Dr. Fino indicated it would be 'helpful to review old CT scans,' he did not permit the lack of such information to deter him from providing a definitive diagnosis[.]" *Lester*, BRB Nos. 11-0542 BLA and 11-0542 BLA-A, slip. op. at 10. Thus, we affirm the administrative law judge's determination that Dr. Fino's opinion is well reasoned and supports a finding that claimant has complicated pneumoconiosis. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order on Second Remand at 5.

Finally, there is no merit to employer's assertion that the administrative law judge shifted the burden of proof in this case. The administrative law judge properly assessed all of the relevant evidence submitted in conjunction with the subsequent claim in finding that he established the existence of complicated pneumoconiosis. *See Cox*, 602 F.3d at 285, 24 BLR at 2-284; *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101 (explaining that "all of the evidence must be considered and evaluated to determine whether the evidence as a whole indicates a condition of such severity that it would produce opacities greater than one centimeter in diameter on an x-ray"). Because it is based upon substantial evidence, we affirm the administrative law judge's finding that claimant established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, and a change in an

applicable condition of entitlement at 20 C.F.R. §725.309.[11] *See Lester*, 993 F.2d at 1145-46, 17 BLR at 2-117-18; *Melnick*, 16 BLR at 1-33-34; *White,* 23 BLR at 1-3.

We, therefore, affirm the award of benefits in this claim.

II. Date of Commencement of Benefits

Once entitlement to benefits is demonstrated, the date for the commencement of those benefits is determined by the month in which the miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503; *see Lykins v. Director*, OWCP, 12 BLR 1-181, 1-182-83 (1989). When benefits are awarded based on the application of the irrebuttable presumption, total disability is established by proof of complicated pneumoconiosis. *Williams v. Director, OWCP*, 13 BLR 1-28, 1-30 (1989). In determining whether the evidence establishes an onset date of total disability in such cases, the fact-finder should consider whether the evidence of record, *if credited*, establishes an onset date of the miner's complicated pneumoconiosis. *Id*. When the evidence does not establish the date that simple pneumoconiosis became complicated pneumoconiosis, the onset date for payment of benefits is the month in which the claim was filed, unless the administrative law judge credits evidence that claimant did not have complicated pneumoconiosis for any period subsequent to the date of filing, in which case benefits must commence following such period. *See* 20 C.F.R. §725.503(b).

In this case, the administrative law judge noted:

> In connection with [claimant's] previous claim, Dr. Lippman reported findings of complicated pneumoconiosis on [claimant's] November 5, 1999 x-ray. [Claimant's] previous claim was finally denied on January 3, 2000, and took effect thirty days later. 20 C.F.R. [§§] 725.309(d)(5), 725.503(b).

Decision and Order on Second Remand at 7 n.4. The administrative law judge awarded benefits as of February 2000, the month after the month in which the denial of claimant's initial claim became final. *Id*.

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[11] Contrary to employer's assertion, the administrative law judge did not rely on prior claim evidence, specifically Dr. Lippman's positive reading for complicated pneumoconiosis of the November 5, 1999 x-ray, to support her finding at 20 C.F.R §718.304. She noted that her finding of complicated pneumoconiosis was based solely on her consideration of the evidence submitted with the subsequent claim. The administrative law judge, however, discussed Dr. Lippman's reading in conjunction with the date she determined was proper for commencement of benefits. Decision and Order on Second Remand at 7 n.4

Employer challenges the administrative law judge's determination as to the date for commencement of benefits. Employer maintains the October 18, 2004 x-ray, which the administrative law judge credited as showing complicated pneumoconiosis, is the "first possible evidence of entitlement" and benefits should not be awarded prior to October 2004. Employer's Brief in Support of Petition for Review at 33.

We agree that the administrative law judge erred in determining the date for commencement of benefits. The Board held previously in this case that the administrative law judge erred in relying on Dr. Lippman's reading to determine the commencement date for benefits, as claimant did not establish the presence of complicated pneumoconiosis in his prior claim, based on Dr. Lippman's reading of the November 1999 x-ray. *Lester*, BRB No. 09-0368 BLA, slip op. at 8-9. Thus, we vacate the administrative law judge's finding that claimant is entitled to benefits commencing February 2000, the month after the month in which the denial of claimant's initial claim became final. However, contrary to employer's contention, October 2004 is not the first month in which benefits may commence. Because the administrative law judge has clearly determined in this case that "there is no evidence to affirmatively establish that claimant did not have complicated pneumoconiosis for any period after he filed his subsequent claim," we apply her finding and conclude that benefits should commence as of August 2004, the month in which claimant filed his subsequent claim. January 22, 2009 Decision and Order Awarding Benefits; *see* 20 C.F.R. §725.503(b).

Accordingly, the administrative law judge's Second Decision and Order on Remand Awarding Benefits is affirmed, but modified to reflect August 2004 as the date for commencement of benefits.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge