U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0374 BLA

WOODROW WILLIAMS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WHITAKER COAL COMPANY	)	DATE ISSUED: 06/30/2017
	)	
and	)	
	)	
SUN COAL COMPANY, INCORPORATED	)	
	)	
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 Awarding Benefits of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Ronald E. Gilbertson (Gilbertson Law, LLC), Columbia, Maryland, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2012-BLA-05911) of Administrative Law Judge Christopher Larsen, rendered on a subsequent miner's claim filed on August 25, 2011, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] The administrative law judge found that claimant established twenty-four years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2). Based on these determinations, and the filing date of the claim, the administrative law judge found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] Additionally, the administrative law judge determined that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.[3] The administrative law judge further found that employer failed to rebut the presumption and awarded benefits accordingly.

[1] Claimant filed his initial claim for benefits on December 29, 1995, which was denied by Administrative Law Judge Thomas F. Phalen, Jr., on February 26, 1998, because claimant did not establish the existence of pneumoconiosis or a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1. The Board affirmed the denial of benefits and claimant did not take any further action until he filed the current subsequent claim. *See Williams v. Whitaker Coal Corp*., BRB No. 98-0802 BLA, slip op. at 4 (Mar. 9, 1999) (unpub.); Director's Exhibit 1.

[2] Under Section 411(c)(4) of the Act, claimant is presumed to be totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305(b).

[3] When 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 at least "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). The applicable conditions of entitlement are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). In this case, as claimant's prior claim was denied for failure to establish any element of entitlement, the administrative law judge concluded that claimant satisfied the requirements of 20 C.F.R. §725.309 because the evidence submitted with the subsequent claim established that claimant is totally disabled. *See White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004); Decision and Order at 21; Director's Exhibit 2.

On appeal, employer argues that the administrative law judge erred in finding that claimant has a totally disabling respiratory impairment based solely on the most recent pulmonary function studies and erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also contends that the administrative law judge did not properly weigh the evidence relevant to rebuttal of the presumption, and erred in determining the commencement date for benefits. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.[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 rational, supported by substantial evidence, and 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, 362 (1965).

I. Invocation of the Presumption – Total Disability

A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable and gainful work. 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner's disability is established by: 1) pulmonary function studies showing values equal to or less than those listed in Appendix B of 20 C.F.R Part 718; 2) arterial blood gas studies showing values equal to or less than those listed in Appendix C of 20 C.F.R. Part 718; 3) the miner has pneumoconiosis and suffers from cor pulmonale with right-sided congestive heart failure; or 4) a physician exercising reasoned medical judgment concludes that the miner's respiratory or pulmonary condition is totally disabling. 20 C.F.R. §718.204(b)(2)(i)-(iv).

A. Pulmonary Function Studies

[4] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established twenty-four years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[5] The record reflects that claimant's coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered newly submitted pulmonary function studies dated September 23, 2011, February 18, 2013, March 19, 2013, and July 24, 2014. Decision and Order at 8-9, 17; Director's Exhibit 15; Claimant's Exhibits 2, 3; Employer's Exhibit 4. Only the March 19, 2013 and July 24, 2014 studies, both performed without the administration of bronchodilators, produced qualifying values. Claimant's Exhibits 2, 3. The administrative law judge found:

> The much-worsened March 2013 [pulmonary function test (PFT)] was taken only shortly after Dr. Rosenberg's [February 2013] evaluation. However, the July 2014 PFT shows similarly low values and was taken over a year later, suggesting that the findings are chronic and not transient. In addition, both of the PFTs from St. Charles [Respiratory Clinic] were validated by Dr. Abdul Latief-Almatari, a board-certified internist. The July 2014 PFT was noted to meet American Thoracic Society criteria for reproducibility and repeatability. As this PFT is considerably more recent than the three earlier ones and has been properly validated, I find that it best represents [claimant's] current lung condition, bearing in mind that pneumoconiosis is a progressive and irreversible disease.

Decision and Order at 17 (internal citations omitted). Therefore, the administrative law judge determined that claimant established total disability at 20 C.F.R. §718.204(b)(2)(i). *Id*.

Employer contends that the administrative law judge erred in failing to consider the non-qualifying pulmonary function study obtained by Dr. Dahhan during his examination of claimant on January 26, 2012. Employer also argues that the administrative law judge erred in according greatest weight to the most recent pulmonary function studies, particularly when only one month separated the non-qualifying results on the February 18, 2013 study and the qualifying results on the March 19, 2013 study. Employer states that neither of the most recent qualifying studies has an accompanying medical opinion addressing the significance of the studies or includes post-bronchodilator results that could refute the non-qualifying post-bronchodilator values obtained by Drs. Baker, Dahhan, and Rosenberg.

Employer's contentions have merit, in part. Employer is correct in alleging that the administrative law judge did not consider the non-qualifying pulmonary function study conducted by Dr. Dahhan on January 26, 2012. Although employer withdrew Dr.

Dahhan's medical report,[6] employer designated the pulmonary function study that Dr. Dahhan performed as affirmative-case evidence under 20 C.F.R. §725.414(a)(3)(i). Employer's Evidence Summary Form dated September 2, 2015; Director's Exhibit 16. Thus, the administrative law judge should have considered Dr. Dahhan's pulmonary function study pursuant to 20 C.F.R. §718.204(b)(2)(i). *See Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-62 (2004) (en banc).

When an administrative law judge fails to consider relevant evidence, which conflicts with credited evidence, the proper course for the Board is to remand the case rather than assume that consideration of the evidence would not alter the administrative law judge's findings. 30 U.S.C. §923(b); *see Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Therefore, we vacate the administrative law judge's finding that the pulmonary function study evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). Because the administrative law judge's findings regarding the pulmonary function study evidence impacted his weighing of the medical opinion evidence, we also vacate his credibility determinations regarding the opinions of Drs. Baker, Rosenberg, and Castle under 20 C.F.R. §718.204(b)(2)(iv).[7]

[6] The administrative law judge noted that "[e]mployer has withdrawn the medical report by Dr. Abdul Dahhan ([Director's Exhibit] 16) in favor of two medical reports by Dr. David Rosenberg ([Employer's Exhibit] 4) and Dr. James Castle ([Employer's Exhibit 6]). Dr. Dahhan's report remains in the record but will not be considered in this decision." Decision and Order at 5. There is no documentation in the record of employer's withdrawal of Dr. Dahhan's report, but employer does not challenge the administrative law judge's exclusion of the report, which is consistent with employer's Evidence Summary Form dated September 2, 2015 and the exhibits employer designated at the hearing. Hearing Transcript at 10-12.

[7] In light of his finding that claimant does not have complicated pneumoconiosis, the administrative law judge rationally discredited Dr. Baker's "presumption that claimant is disabled from further work in the coal mining industry" due to "the presence of progressive massive fibrosis." Decision and Order at 13; Director's Exhibit 15; [citation for ALJ discretion/credibility findings]. However, Dr. Baker also opined that claimant has a "total pulmonary impairment" for reasons other than his diagnosis of progressive massive fibrosis, e.g., the "mild restrictive defect" reflected on claimant's September 23, 2011 pulmonary function test. Director's Exhibit 15. To the extent the two most recent pulmonary function tests are qualifying, and thus not inconsistent with Dr. Baker's diagnosis of a totally disabling pulmonary impairment, the administrative law judge has not explained how Dr. Baker's failure to review those tests renders his diagnosis unreliable. Decision and Order at 17; *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

We further vacate the administrative law judge's conclusion that claimant established total disability by a preponderance of all relevant evidence pursuant to 20 C.F.R. §718.204(b)(2). Because we have vacated the administrative law judge's finding that claimant established total respiratory or pulmonary disability, we must also vacate the administrative law judge's determination that claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1)(iii).

On remand, the administrative law judge is instructed to reconsider whether claimant has established total respiratory or pulmonary disability under 20 C.F.R. §718.204(b)(2) in light of his consideration of all pulmonary function studies of record and evaluation of the medical opinion evidence. If the administrative law judge determines that claimant has established total disability under 20 C.F.R. §718.204(b)(2)(i), (iv), he must weigh all the relevant evidence together, like and unlike, to determine whether claimant has established the existence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b).[8] *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc).

II. Rebuttal of the Presumption

In the interest of judicial economy, in the event the administrative law judge again finds the Section 411(c)(4) presumption invoked, we will also address employer's contention that the administrative law judge erred in finding that employer failed to rebut the presumption. Once invoked, the burden shifts to employer to rebut the presumption by establishing that claimant has neither legal nor clinical pneumoconiosis,[9] or by establishing that "no part of [claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii);

[8] If claimant fails to establish total disability, an essential element of entitlement, benefits are precluded. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

[9] Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). "This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." *Id.* Clinical pneumoconiosis is defined as "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

see Morrison v. Tenn. Consol. Coal Co., 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137, 25 BLR 2-689, 2-699 (4th Cir. 2015); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting). The administrative law judge found that employer rebutted the existence of legal pneumoconiosis but failed to rebut the existence of clinical pneumoconiosis or that claimant is totally disabled due to pneumoconiosis.

A. Existence of Pneumoconiosis

In evaluating whether employer disproved the existence of clinical pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(B), the administrative law judge weighed the x-ray evidence, the medical opinions of Drs. Baker, Rosenberg, and Castle, and treatment records submitted in conjunction with the current claim.[10] Decision and Order at 22-23. The administrative law judge initially considered x-rays dated May 23, 2011, September 23, 2011, January 26, 2012, and February 18, 2013.

He determined that the May 23, 2011 x-ray is in equipoise because it was interpreted as positive for simple and complicated pneumoconiosis by Dr. Alexander, dually-qualified as a B reader and Board-certified radiologist, and as negative for both forms of pneumoconiosis by Dr. Scott, who is also dually-qualified. Decision and Order at 20-21; Claimant's Exhibit 1; Employer's Exhibit 3. With respect to the September 23, 2011 x-ray, the administrative law judge found that it is also in equipoise because it was read as positive for simple and complicated pneumoconiosis by Dr. Miller, a dually-qualified radiologist, and as negative for simple and complicated pneumoconiosis by Dr. Wheeler, who is also dually-qualified.[11] Decision and Order at 20; Director's Exhibits 17, 19.

[10] The administrative law judge relied on the evidence submitted in conjunction with the subsequent claim because it is "more than [fifteen] years more recent" than the prior claim evidence and reflects "significant changes that have occurred in [claimant's] respiratory condition since 1999, including his lung tumor and radiation therapy." Decision and Order at 26.

[11] Dr. Baker, a B-reader, also read the September 23, 2011 film as positive for simple pneumoconiosis, 1/1, with "? B opacity versus lung lesion." Director's Exhibit 15. The administrative law judge accorded greatest weight to readings performed by physicians who were dually-qualified as B readers and Board-certified radiologists. Decision and Order at 20. Dr. Barrett, a dually-qualified radiologist, read the September 23, 2011 x-ray for quality purposes only. Director's Exhibit 15.

The administrative law judge found that the January 26, 2012 x-ray interpreted by Dr. Alexander is positive for simple and complicated pneumoconiosis based on his uncontradicted positive reading. Decision and Order at 21; Director's Exhibit 18. Finally, the administrative law judge determined that the February 18, 2013 x-ray interpreted by Dr. Poulos, a dually-qualified radiologist, is negative for simple and complicated pneumoconiosis based on his uncontradicted negative reading. Decision and Order at 21; Employer's Exhibit 2. Considering the x-ray evidence as a whole, the administrative law judge determined that it is in equipoise as to the existence of both simple and complicated pneumoconiosis. Decision and Order at 21.

Concerning the treatment record evidence, the administrative law judge noted that it details the radiation treatment claimant received for cancer in his right upper lung and his spine, and included CT scan readings and x-ray readings. Decision and Order at 21-22. The administrative law judge found that the evidence in the treatment records establishes that claimant does not have complicated pneumoconiosis,[12] but is insufficient to rebut the existence of simple clinical pneumoconiosis. *Id*. at 22-23.

With respect to the medical opinion evidence, the administrative law judge gave less weight to the opinions of Drs. Rosenberg and Castle that claimant does not have clinical pneumoconiosis because they determined that the chest x-rays and CT scans are negative, which conflicts with the administrative law judge's findings that the x-ray evidence does not rebut the existence of clinical pneumoconiosis. Decision and Order at 22. The administrative law judge also gave reduced weight to Dr. Baker's opinion that claimant has simple and complicated pneumoconiosis because it is unclear whether Dr. Baker was aware of claimant's lung radiation therapy. *Id*.

Employer contends that the administrative law judge erred in crediting the positive x-ray readings for simple pneumoconiosis rendered by Drs. Baker, Miller, and Alexander, despite his determination that they misread the x-rays as being positive for complicated pneumoconiosis. Employer also maintains that the administrative law judge erred in failing to give more weight to the uncontradicted negative reading of the most recent x-ray, particularly in light of his decision to accord greater weight to the most recent pulmonary function studies. Employer further challenges the administrative law judge's discrediting of the opinions of Drs. Rosenberg and Castle that claimant does not

[12] The administrative law judge concluded that employer established, by a preponderance of the evidence, that the changes seen in the right upper lobe of claimant's lungs were caused by the radiation treatment claimant received for a plasmacytoma in his lumbar vertebrae and right upper lung, rather than complicated pneumoconiosis. Decision and Order at 23.

have simple pneumoconiosis, when he credited their opinions that claimant does not have complicated pneumoconiosis.

We reject employer's assertion that the administrative law judge is required to discredit the positive x-ray readings for simple pneumoconiosis offered by Drs. Baker, Miller, and Alexander because he discredited their positive readings for complicated pneumoconiosis. Whether the radiological changes in the right upper lobe of claimant's lungs represent complicated pneumoconiosis rather than the effects of radiation treatment for cancer, and whether the x-rays show small opacities consistent with simple pneumoconiosis, are separate issues. 20 C.F.R. §§718.202(a)(1), 718.304(a); *see Gray v. SLC Coal Co.*, 176 F.3d 382, 387, 21 BLR 2-616, 2-624 (6th Cir. 1999); *Staton v. Norfolk & W. Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995). Moreover, rather than discrediting the positive x-ray readings for complicated pneumoconiosis by Drs. Baker, Miller, and Alexander, the administrative law judge accorded greatest weight to the readings by dually-qualified radiologists and found that the positive readings by Drs. Miller and Alexander are in equipoise with the negative readings by physicians who are also dually-qualified radiologists. Decision and Order at 20-21.

We also reject employer's contention that the administrative law judge should have given determinative weight to the most recent x-ray, which was read as negative for pneumoconiosis by Dr. Poulos. In *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993), the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, held that "in light of the known progressive nature of pneumoconiosis," the application of the "later evidence" rule is improper when, as in this case, the recent x-ray evidence is negative for the existence of pneumoconiosis, while the prior x-ray evidence is positive for the disease. *Woodward*, 991 F.2d at 320, 17 BLR at 2-85-86. In such cases, "[t]he reliability of irreconcilable items of evidence must therefore be evaluated without reference to their chronological relationship." *Id.*

Finally, the administrative law judge's discrediting of the medical opinions of Drs. Rosenberg and Castle on the issue of the existence of simple pneumoconiosis is rational and supported by substantial evidence. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Tennessee Consolidated Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989). The administrative law judge correctly determined that both physicians relied on their view that the x-ray and CT scan evidence is not consistent with a diagnosis of clinical pneumoconiosis in any form. Decision and Order at 23; Employer's Exhibits 4, 5 (at 12-13), 6. The administrative law judge permissibly found that their opinions do not satisfy employer's burden to rebut the existence of simple clinical pneumoconiosis because their views conflict with his determinations that the x-ray evidence is in equipoise and that the CT scans "are not

necessarily probative" of the existence of simple clinical pneumoconiosis, as they "were performed for other diagnostic purposes."[13] Decision and Order at 21, 23; *see Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002). The administrative law judge therefore permissibly found that employer failed to rebut the existence of simple clinical pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i)(B).[14] *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9. Accordingly, if the administrative law judge determines that claimant invoked the Section 411(c)(4) presumption on remand, he may reinstate his finding that employer did not rebut the presumed existence of clinical pneumoconiosis.

[13] Employer also asserts that the administrative law judge should have credited the opinions of Drs. Rosenberg and Castle that simple pneumoconiosis is not present for the same reason he credited their opinions that claimant does not have complicated pneumoconiosis, i.e., they convincingly attributed the changes on x-ray and CT scan to the radiation treatment claimant received for carcinoma. Employer's Brief at 23-24. Employer's argument is misplaced because Drs. Rosenberg and Castle did not explicitly link their opinion that claimant does not have simple clinical pneumoconiosis to their conclusion that radiation treatment caused the mass in the right upper lobe of claimant's lungs. Employer's Exhibits 4, 5 (at 11-13), 6.

[14] Despite his recognition that "[e]mployer has the burden to rebut the presence of legal pneumoconiosis[,]" the administrative law judge appears to have placed the burden on claimant to prove the existence of the disease. Decision and Order at 23-24. Specifically, in finding that employer rebutted the presumption, the primary reason offered by the administrative law judge was that Dr. Baker, in diagnosing legal pneumoconiosis, "is entitled to reduced weight because he did not consider the effects, if any, of [claimant's] radiation therapy on his lung function[.]" *Id*.

Although employer's failure to disprove the existence of clinical pneumoconiosis prevents it from rebutting the presumption that claimant has pneumoconiosis, *see* 20 C.F.R. §718.305(d)(1)(i), the administrative law judge's findings with respect to legal pneumoconiosis may impact his determination as to whether employer rebutted disability causation at 20 C.F.R. §718.305(d)(1)(ii). Thus, if the issue is reached on remand, we instruct the administrative law judge to reweigh the evidence at 20 C.F.R. §718.305(d)(1)(i)(A), with the burden on employer to affirmatively establish that claimant does not have legal pneumoconiosis. *See Morrison v. Tenn. Consol. Coal Co*., 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting).

B. Causal Relationship between Total Disability and Clinical Pneumoconiosis

Pursuant to 20 C.F.R. §718.305(d)(1)(ii), the administrative law judge determined that employer failed to establish that claimant's disability was not caused by his pneumoconiosis because its experts, Drs. Rosenberg and Castle, based their opinions on the premise that claimant does not have a totally disabling respiratory or pulmonary impairment. Decision and Order at 25. Because the administrative law judge based his findings at 20 C.F.R. §718.305(d)(1)(ii) on his determination that claimant established total disability at 20 C.F.R. §718.204(b)(2), which we have vacated, the administrative law judge must reconsider rebuttal under 20 C.F.R. §718.305(d)(1)(ii) if the issue is reached on remand.

III. Commencement of Benefits

The administrative law judge stated, "[claimant] was first said to have totally disabling legal pneumoconiosis . . . at the time of Dr. Baker's Department of Labor examination in September 2011, which indicated [claimant] was at least totally disabled due to pneumoconiosis on this date." Decision and Order at 26. Accordingly, the administrative law judge awarded benefits effective August 1, 2011, the first day of the month in which claimant filed the current claim. *Id.* Because we have vacated the administrative law judge's finding that claimant established total disability under 20 C.F.R. §718.204(b)(2), including his weighing of the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv), we must also vacate his finding that Dr. Baker's opinion establishes that claimant "was at least totally disabled due to pneumoconiosis" as of September 2011. On remand, should the administrative law judge again award benefits, he must reconsider the date for the commencement of benefits consistent with 20 C.F.R. §725.503(b).[15]

[15] We also note that if the administrative law judge again finds that employer rebutted the existence of legal pneumoconiosis, it would be improper to conclude that claimant was totally disabled due to *legal* pneumoconiosis for purposes of the commencement of benefits, as the two findings cannot be reconciled.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge