BRB No. 10-0384 BLA

HAROLD M. GOSNELL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL CORPORATION	)	DATE ISSUED: 03/11/2011
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Joseph E. Wolfe (Wolfe, Williams, Rutherford & Reynolds), Norton, Virginia, for claimant.

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

Paul L. Edenfield (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.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (07-BLA-5525) of Administrative Law Judge Richard T. Stansell-Gamm awarding benefits on a 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 claim filed on December 27, 2005. After noting that employer stipulated that claimant had at least seventeen years of coal mine employment,[1] the administrative law judge found that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, thereby establishing invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. The administrative law judge also found that claimant was entitled to the presumption that his complicated pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), and that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Claimant and the Director, Office of Workers' Compensation Programs (the Director), respond in support of the administrative law judge's award of benefits. In a reply brief, employer reiterates its previous contentions.

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. 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 order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any 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*).

Impact of the Recent Amendments

Section 1556 of Public Law No. 111-148 amended the Act with respect to the entitlement criteria for certain claims. Claimant and the Director assert that, while Section 1556 is applicable to this claim because it was filed after January 1, 2005, the case need not be remanded to the administrative law judge for further consideration, unless the Board vacates the administrative law judge's award of benefits. Employer

[1] The record reflects that claimant's coal mine employment was in West Virginia. Director's Exhibits 4, 6. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

agrees that Section 1556 is applicable to this claim.[2]

As will be discussed below, we affirm the administrative law judge's award of benefits. Because claimant carried his burden to establish each element of entitlement by a preponderance of the evidence, there is no need to consider whether he could establish entitlement with the aid of the rebuttable presumption reinstated by Section 1556.

Complicated Pneumoconiosis

Employer argues that the administrative law judge erred in finding that claimant established the existence of complicated pneumoconiosis, and therefore, established invocation of the irrebuttable presumption of total disability due to pneumoconiosis set out at 20 C.F.R. §718.304. Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which (A) when diagnosed by x-ray, yields an opacity greater than one centimeter in diameter that would be classified as Category A, B, or C; (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (C) when diagnosed by other means, would be a condition that could reasonably be expected to reveal a result equivalent to (A) or (B). *See* 20 C.F.R. §718.304.

The United States Court of Appeals for the Fourth Circuit has held that, "[b]ecause prong (A) sets out an entirely objective scientific standard" for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition that is diagnosed by biopsy or autopsy under prong (B) or by other means under prong (C) would show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999). In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304, the administrative law judge must weigh together all of the evidence relevant to

[2] Relevant to this living miner's claim, Section 1556 of Public Law No. 111-148 reinstated the presumption of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that are pending on or after March 23, 2010. Under Section 411(c)(4), if a miner establishes at least fifteen years of qualifying coal mine employment, and that he or she has a totally disabling respiratory impairment, there will be a rebuttable presumption that he or she is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)).

the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-1143, 1145-46 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991)(*en banc*).

Section 718.304(a)

The administrative law judge considered sixteen interpretations of eight x-rays taken from 2006 to 2008, and considered the readers' radiological qualifications. Decision and Order at 7-10. While all of the physicians interpreting the x-rays identified a large mass in claimant's right upper lung, they disagreed as to whether the mass represented a Category A large opacity or another disease process, such as tuberculosis, histoplasmosis, pneumonia, or cancer.[3] In considering the x-ray evidence, the administrative law judge found that, because the interpretations among the physicians dually-qualified as Board-certified radiologists and B readers conflicted on whether the large mass in the right upper lung represented a Category A large opacity or another disease process, the x-ray evidence, standing alone, did not establish the existence of

[3] Dr. DePonte, a dually-qualified physician, interpreted the x-rays taken on May 23, 2006, July 8, 2006, March 12, 2007, and February 18, 2008 as revealing a Category A large opacity in the right upper lung. Director's Exhibit 13; Claimant's Exhibits 2, 10. Dr. Alexander, a dually-qualified physician, also interpreted the February 18, 2008 x-ray as revealing a Category A large opacity in the right upper lung. Claimant's Exhibit 8. Equally qualified physicians interpreted these x-rays as negative for complicated pneumoconiosis, opining that the large mass was not related to pneumoconiosis. Dr. Wiot indicated that the mass could represent an early malignancy. Director's Exhibit 14. Dr. Scatarige opined that the mass could be tuberculosis, histoplasmosis, or community-acquired pneumonia. Employer's Exhibit 5. In various x-ray interpretations, Dr. Scott identified the mass as possible cancer or tuberculosis. Employer's Exhibits 1, 3. Finally, Dr. Wheeler opined that the mass was compatible with inflammatory disease or cancer. Employer's Exhibit 4.

All of the interpretations by physicians without special radiological qualifications were inconclusive. Dr. Patel interpreted the July 22, 2006 x-ray as revealing an ill-defined density in the right upper lobe, which he indicated might represent an atypical infiltrate, pneumonia, or a mass. Employer's Exhibit 20. Dr. Peterson interpreted the October 18, 2006 x-ray as revealing an ill-defined density in the right upper lobe, but did not attribute it to any specific disease process. Claimant's Exhibit 5. Finally, Dr. Antoun interpreted the June 24, 2008 and December 8, 2008 x-rays as revealing a density in the right upper lobe, but did not reach a definite conclusion as to its etiology. Claimant's Exhibit 12.

complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). Decision and Order at 10.

Section 718.304(b)

The administrative law judge next considered the results of three biopsies. Dr. Imbing opined that the tissue from an April 1, 2005 biopsy was negative for malignancy. Employer's Exhibit 20.

On August 2, 2006, Dr. Robinette performed a right upper lobe biopsy. Dr. Hudgens subsequently reviewed the lung tissue from claimant's right upper lobe, diagnosing "benign bronchial tissue with focal fibrosis and anthracosis." Claimant's Exhibit 3. Dr. Hudgens, however, commented that "[t]his does not explain the clinical impression of a right upper lobe mass." *Id.*

Claimant underwent a final lung biopsy on April 26, 2007. Dr. DeAngelina opined that the lung tissue from the April 26, 2007 biopsy was likely related to progressive pulmonary fibrosis. Claimant's Exhibit 3. In a subsequent microscopic examination of the lung tissue, Dr. Frierson noted "abundant pigmented macrophages" with "no evidence of malignancy." *Id.*

The administrative law judge found that the April 1, 2005 and April 26, 2007 biopsies did not establish massive lesions, because Dr. Imbing focused solely on malignancy in his assessment of the April 1, 2005 lung tissue, and the April 26, 2007 biopsy produced only evidence of pigmented macrophages. Decision and Order at 12. In regard to the August 2, 2006 biopsy, the administrative law judge found that, although the biopsy suggested that the large mass in claimant's right upper lung was pneumoconiosis, that conclusion was less certain in light of a comment made by the reviewing pathologist:

> Dr. Hudgens noted that . . . [the] biopsy sample contained anthracosis and focal fibrosis which are consistent with the regulatory definition of clinical pneumoconiosis . . . . And, since Dr. Robinette's procedure report indicates the sample was obtained from the right upper lung mass, the August 2, 2006 lung biopsy appears to be sufficient to establish the right upper lung mass is associated with pneumoconiosis. However, Dr. Hudgens' additional comment that his pathology findings did not explain the *clinical* presentation of the right lung mass interjects sufficient ambiguity into his report such that absent any further clarification, the August 2, 2006 biopsy report is insufficient *standing alone* to establish that the large pulmonary mass in the right upper lung is associated with pneumoconiosis.

Decision and Order at 12. The administrative law judge, therefore, found that the biopsy evidence, standing alone, did not establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b).

Section 718.304(c)

The administrative law judge next considered a range of other diagnostic evidence under Section 718.304(c), including digital chest x-ray readings, CT and PET scan readings, and medical opinion evidence.

The record includes interpretations of two digital x-rays. Because the administrative law judge found that the August 2, 2006 digital x-ray was negative for complicated pneumoconiosis, and the August 26, 2007 digital x-ray was inconclusive,[4] he found that the digital x-ray evidence did not establish the existence of a large opacity consistent with pneumoconiosis. Decision and Order at 14.

The administrative law judge also considered interpretations of nine CT scans taken from 2005 through 2007.[5] Due to conflicting interpretations, the administrative law judge found that all but two of the CT scans were inconclusive for the existence of complicated pneumoconiosis. Decision and Order at 20. While the administrative law judge found that the February 26, 2007 CT scan was negative for a large opacity consistent with pneumoconiosis, he found that the June 29, 2007 CT scan was positive for the disease process. *Id.* Finding that those two CT scans offset each other, the administrative law judge determined that the CT scan evidence, standing alone, was inconclusive for the existence of complicated pneumoconiosis. *Id.*

The administrative law judge also considered interpretations of two PET scans taken on May 20, 2005 and November 6, 2006. Although Dr. DePonte interpreted the May 20, 2005 PET scan as consistent with pneumoconiosis, she stated that she could not exclude a lung malignancy on the basis of a single study. Claimant's Exhibit 6. Dr.

[4] Dr. Scott indicated that the August 2, 2006 digital x-ray revealed a three centimeter mass in the right upper lung. Dr. Scott's diagnoses were possible cancer and granulomatous disease. Employer's Exhibit 9. Although Dr. DePonte interpreted the August 26, 2007 digital x-ray as revealing a Category A large opacity, Claimant's Exhibit 11, Dr. Scott interpreted the x-ray as negative for pneumoconiosis, opining that the large mass in the right upper lung could be cancer or granulomatous disease. Employer's Exhibit 2.

[5] The CT scans were taken on March 30, 2005, May 9, 2005, September 27, 2005, October 18, 2006, February 26, 2007, March 26, 2007, April 26, 2007, June 29, 2007, and December 28, 2007.

Morel similarly interpreted the November 6, 2006 PET scan as compatible with either progressive massive fibrosis or a lung malignancy. Claimant's Exhibit 7. Due to the alternative diagnoses by the two physicians, the administrative law judge found that the PET scan evidence, standing alone, did not establish the existence of complicated pneumoconiosis. Decision and Order at 20.

The administrative law judge next considered the medical opinions of eight physicians. He provided the following summary of their opinions:

> Dr. Hassan noted an abnormal chest x-ray that showed either pneumoconiosis or a mass. Dr. Augustine diagnosed pneumoconiosis and noted the presence of a large pulmonary opacity. Dr. Rasmussen, Dr. Robinette, Dr. Koenig, Dr. Forehand, and Dr. Cohen diagnosed either progressive massive fibrosis associated with [claimant's] coal mine employment, or complicated pneumoconiosis. Dr. Crisalli disagreed and concluded [claimant] did not have complicated coal workers' pneumoconiosis.

Decision and Order at 32. Due to "various documentation and reasoning issues," the administrative law judge found that the opinions of Drs. Hassan, Augustine, Rasmussen, Koenig, Forehand, Cohen, and Crisalli were entitled to less weight. Decision and Order at 35. The administrative law judge, however, found that Dr. Robinette, based on his multiple examinations of claimant from July 2006 through June 2007, along with his review of a negative tuberculosis test, a lung biopsy, and x-ray evidence, was able to develop a "reasoned and probative diagnosis" of complicated pneumoconiosis. Decision and Order at 34. The administrative law judge, therefore, found that the medical opinion evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(c). *Id.* at 35.

Weighing Together of All of the Relevant Evidence

In evaluating all of the relevant medical evidence together, the administrative law judge found that several potential causes of the large mass in claimant's right lung were eliminated, such that the evidence that was inconclusive when viewed in isolation was no longer inconclusive, but rather, supported a finding of complicated pneumoconiosis. For example, the administrative law judge noted that Drs. Koenig, Crisalli, DePonte, and Scott, based on the relative stability of the lung mass over time, were able to eliminate cancer and neoplasm from their final pulmonary diagnoses. Decision and Order at 36-37. Moreover, the administrative law judge found that the elimination of cancer as a possible diagnosis had a "synergistic effect on the significance" of the May 20, 2005 and November 6, 2006 PET scan evidence. Decision and Order at 37. Specifically, with cancer eliminated as a possible diagnosis, the administrative law judge found that the

PET scan evidence provided "strong support" for a finding that the mass in the right upper lung was consistent with pneumoconiosis. *Id.*

With respect to the biopsy evidence, the administrative law judge further explained that, while he had found that Dr. Hudgens' pathological findings alone, absent further clarification, did not establish complicated pneumoconiosis, his pathological findings, when viewed in the context of Dr. Robinette's clinical findings, as well as the other evidence eliminating cancer as a possible diagnosis, supported a finding that the large pulmonary mass evaluated in the August 2, 2006 biopsy was consistent with pneumoconiosis.[6] Decision and Order at 37.

The administrative law judge also found that the evidence eliminated other possible causes of the mass in claimant's right upper lung that were raised by the physicians who read claimant's x-rays as negative for a large opacity. Specifically, the administrative law judge noted that both a bronchial washing and a skin test were negative for tuberculosis. Decision and Order at 37. In addition, the administrative law judge noted that a serology test was negative for a fungal infection. *Id.* The administrative law judge also found that the CT scan evidence did not reveal calcification associated with the large mass, a condition that Dr. Scott observed would indicate granulomatous disease. *Id.* The administrative law judge also relied upon Dr. DePonte's opinion that the September 27, 2005 CT scan did not reveal the fine, calcified nodular opacities associated with histoplasmosis. *Id.*

The administrative law judge found that the "contrary evidence" of complicated pneumoconiosis was outweighed by the more definitive findings of a positive-for-anthracosis lung biopsy report, and the evidence that effectively eliminated other likely etiologies of the large mass in claimant's right upper lung. Decision and Order at 38. Based upon an "integrated analysis of the diverse medical evidence," the administrative law judge found that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304.

Employer contends that the administrative law judge erred in his consideration of Dr. Robinette's opinion. Specifically, employer argues that the administrative law judge, after finding that the x-ray evidence, the biopsy evidence, the CT scan evidence, and the PET scan evidence did not establish complicated pneumoconiosis, improperly credited Dr. Robinette's medical opinion that "merely repeated" what the administrative law judge

[6] Based on the observations of Drs. Crisalli and Scott about the diminished value of negative biopsy findings, the administrative law judge reasonably found that the other two biopsy assessments did not diminish the significance of Dr. Hudgen's findings. *See* 20 C.F.R. §718.106(c); Decision and Order at 37.

found not to exist under the other prongs of evidence. Employer's Exhibit at 8. We disagree. In evaluating the conflicting medical evidence, the administrative law judge accurately noted that Dr. Robinette, as claimant's treating physician, did not rely on a single piece of evidence, but rather "developed a significant documentary foundation for his determination that the large pulmonary mass in [claimant's] right upper lung was complicated pneumoconiosis." Decision and Order at 34.

Dr. Robinette first saw claimant on July 20, 2006 in connection with a right upper lung opacity measuring approximately 4.5 to 5.0 centimeters. At that time, Dr. Robinette considered various differential diagnoses, including progressive massive fibrosis, an atypical fungi infection, and a neoplasm. Claimant's Exhibit 3. In order to determine the nature of the mass, Dr. Robinette performed a right upper lobe biopsy on August 2, 2006. *Id.* Dr. Hudgens reviewed the lung tissue from the biopsy, diagnosing "benign bronchial tissue with focal fibrosis and anthracosis." *Id.* As noted above, given Dr. Hudgens' comments regarding claimant's clinical presentation, the administrative law judge found that Dr. Hudgens' biopsy report, absent further clarification, was insufficient to establish complicated pneumoconiosis. However, the administrative law judge found that Dr. Robinette, as claimant's treating physician, was able to review Dr. Hudgens' pathological findings in the context of claimant's overall clinical presentation, and provide the necessary clarification. Thus, based on his familiarity with claimant's clinical condition, Dr. Robinette was able to confirm Dr. Hudgens' diagnosis of pneumoconiosis. Moreover, based upon his review of claimant's entire clinical presentation, Dr. Robinette was able to eliminate other possible etiologies of claimant's large pulmonary mass, including tuberculosis (based on negative bronchial washings and TB skin test), and a malignancy (negative bronchial washings and brushings). Claimant's Exhibit 3. Thus, contrary to employer's contention, the administrative law judge reasonably found that Dr. Robinette's diagnosis of complicated pneumoconiosis was not based upon any single test, but rather upon a comprehensive review of all of the evidence, viewed in the context of claimant's complete clinical presentation. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285, 24 BLR 2-269, 2-284 (4th Cir. 2010).

Employer contends that the administrative law judge failed to address evidence that undermines his finding of complicated pneumoconiosis. For example, employer notes that the administrative law judge did not address Dr. Robinette's statement, in a July 24, 2006 report, that it would be unusual for an opacity representing progressive massive fibrosis to increase in size when compared to prior diagnostic studies. Employer's Brief at 9; Claimant's Exhibit 3. While Dr. Robinette made this statement in his initial report, employer ignores Dr. Robinette subsequent findings. In a February 26, 2007 report, Dr. Robinette observed that a February 26, 2007 CT scan revealed that the

mass in claimant's right upper lung was "was unchanged from his prior CT scan."[7] Claimant's Exhibit 3. After claimant returned for a CT scan on June 29, 2007, Dr. Robinette again noted that the "mass density was similar to prior diagnostic studies and consistent with complicated pneumoconiosis." Claimant's Exhibit 3. Consequently, Dr. Robinette determined that, based on the evidence, the opacity in claimant's right upper lung was not increasing appreciably in size. *Id.* We, therefore, reject employer's contention that the administrative law judge failed to address relevant evidence.

Employer argues that the administrative law judge ignored evidence that, if the opacities in claimant's lungs constituted complicated pneumoconiosis, they would be present in a symmetrical distribution. Employer's Brief at 11. Employer's contention lacks merit. Although the administrative law judge recognized that Dr. Scott's elimination of complicated pneumoconiosis, as a diagnosis, was based on the asymmetrical presentation of the nodules, the administrative law judge found that this was "offset by Dr. DePonte's opinion that, although atypical, complicated pneumoconiosis may still have a unilateral presentation." Decision and Order at 38. Because employer does not challenge this finding, it is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

We also reject employer's contention that the administrative law judge ignored the pulmonary function and arterial blood gas study evidence, which, employer contends, demonstrates that claimant does not have complicated pneumoconiosis. Employer's Brief at 10. While the administrative law judge referenced the pulmonary function and arterial blood gas study evidence, he permissibly determined that this evidence was outweighed by the "more definitive findings" of the biopsy, x-ray, and PET scan evidence.[8] *See Cox*, 602 F.3d at 285, 24 BLR at 2-284; Decision and Order at 38.

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[7] Dr. Robinette observed that:

> A CT scan of the thorax was reviewed from 2/26/07. The chest CT scan demonstrated a 4.9 cm. x 2.7 cm. mass in the right upper lung which was unchanged from his prior CT scan. This was superimposed on the background of interstitial pulmonary fibrosis and is consistent with complicated coal workers' pneumoconiosis as a differential diagnosis. There has been no significant progression since his last x-ray.

Claimant's Exhibit 3.

[8] In a footnote in its reply brief, employer states that any reliance on the two PET scans to support a finding of complicated pneumoconiosis is "problematic" because their medical acceptability and relevance were not established under 20 C.F.R. §718.107(b).

Finally, employer contends that the administrative law judge failed to render the appropriate equivalency determination required by *Scarbro*. *See Scarbro*, 220 F.3d at 255, 22 BLR at 2-100. Employer specifically argues that, because Dr. Robinette did not state that the opacity in claimant's right upper lung would show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray, the administrative law judge erred in relying upon his opinion to support a finding of complicated pneumoconiosis.

The administrative law judge acknowledged that Dr. Robinette did not specifically address whether the large opacity that he diagnosed as complicated pneumoconiosis would appear as a greater-than-one-centimeter opacity on x-ray. The administrative law judge, however, found that there was no dispute among the physicians that the size of the mass, as it appeared on claimant's x-rays, was greater than one centimeter in diameter:

> [A]ll of the chest x-ray interpretations identified the presence of a mass or consolidation in [claimant's] right upper lung. Further, in addition to Dr. Rasmussen, Dr. DePonte, and Dr. Cohen, who classified the mass as a Category A opacity (greater than one cm), several other radiologists measured the mass with the following results: Dr. Petersen, 2 cm x 1 cm; Dr. Alexander, 30 mm x 12 mm (3 cm x 1.2 cm); and Dr. Wheeler, 4 cm. Consistent with these chest x-ray interpretations, Dr. Scott observed a 3 cm mass in the August 2, 2006 digital x-ray and Dr. DePonte characterized the size as Category A. Upon review of the April 26, 2007 digital chest x-ray, Dr. DePonte again characterized the mass as Category A and Dr. Scott believed the mass had become larger. Finally, all the physicians who evaluated the CT scans noted a mass or density in [claimant's] right upper lung and three physicians measured its dimensions as follows: Dr. DePonte, 5.5 cm x 2.2 cm and 5.3 cm x 2.2 cm; Dr. Robinette, 4.9 cm x 2.7 cm; and Dr. Scott, 3 cm x 4 cm, and 4 cm.
>
> In light of these specific radiographic findings, including actual chest x-ray assessments of the mass being not less than 2 cm in one dimension and other measurements showing the mass is not less than 4 cm in CT scan images, I conclude that [claimant's] right upper lung mass is sufficiently large that it is self-evident the mass would appear on a chest x-ray as a pulmonary opacity greater than 1 cm. Accordingly, [claimant] has satisfied

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Employer's Reply Brief at 2 n.1. We conclude that any error in this regard was harmless, because substantial evidence in the x-ray, biopsy, and medical opinion evidence, considered together, supports the administrative law judge's finding of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285, 24 BLR 2-269, 2-284 (4th Cir. 2010); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

> the court-mandated chest x-ray equivalency requirement and established the presence of a large pulmonary mass consistent with pneumoconiosis . . . .

Decision and Order at 36.

As the administrative law judge found, the central issue in this case is whether the 2 cm. x 4 cm. opacity in claimant's right upper lung constituted a mass of complicated pneumoconiosis, as opposed to whether it measured over one centimeter in diameter on an x-ray. As the administrative law judge noted, numerous physicians who interpreted claimant's x-rays indicated that the mass in question was greater than one centimeter. Employer does not challenge the accuracy of these measurements. We, therefore, hold that the administrative law judge's equivalency finding satisfies the standard set forth in *Scarbro*.

In sum, the administrative law judge's finding of complicated pneumoconiosis was based upon a thorough, integrated consideration of all of the available medical evidence, an approach that was legally proper under *Scarbro*. *See Scarbro*, 220 F.3d at 256, 22 BLR 2-93, 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"); *see also Cox*, 602 F.3d at 285, 24 BLR at 2-284. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that all of the relevant evidence, when considered together, established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, thereby enabling claimant to establish entitlement based on the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304.

Because it is unchallenged on appeal, we also affirm the administrative law judge's finding that employer did not rebut the presumption that claimant's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). *Skrack*, 6 BLR at 1-711; Decision and Order at 38-39.

Onset Date of Benefits

Employer contends that the administrative law judge erred in finding that claimant is entitled to benefits as of December 2005, the month in which he filed his claim. In a case where a miner is found entitled to the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304, the fact-finder must consider whether the evidence of record establishes an onset date of claimant's complicated pneumoconiosis. *Williams v. Director, OWCP*, 13 BLR 1-28 (1989). If the evidence does not reflect the onset date of claimant's complicated pneumoconiosis, the onset date for the payment of benefits is the month during which the claim was filed, unless the evidence affirmatively establishes that claimant had only simple pneumoconiosis for any period subsequent to

the date of filing, in which case benefits must commence following the period of simple pneumoconiosis. 20 C.F.R. §725.503(b); *Williams*, 13 BLR at 1-30.

In this case, the administrative law judge reviewed the record, and found that the first definitive evidence of complicated pneumoconiosis was Dr. Robinette's diagnosis in August of 2006. Decision and Order at 40. The administrative law judge further found, however, that the evidence between December 2005 and August 2006 was inconclusive as to the existence of complicated pneumoconiosis and, thus, was insufficient to establish that claimant was not totally disabled due to pneumoconiosis prior to August of 2006. In light of this finding, we affirm the administrative law judge's determination that claimant is entitled to benefits as of December 2005, the month in which he filed his claim for benefits. 20 C.F.R. §725.503.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge