BRB No. 11-0404 BLA

GEORGE MESSER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DOMINION COAL CORPORATION	)	DATE ISSUED: 03/29/2012
	)	
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 on Second Remand Awarding Benefits of Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals the Decision and Order on Second Remand – Awarding Benefits (2005-BLA-00070) of Administrative Law Judge Stephen L. Purcell, with respect to a request for modification of the denial of a duplicate claim filed on August 25, 1999, 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).[1] This case is before the Board for the fourth

[1] The amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), and reinstated Section 422(l) of the Act, 30 U.S.C. §932(*l*). The amendments do not apply to this claim, as it was filed before January 1, 2005.

time. The relevant procedural history is as follows. Claimant filed an initial claim for benefits on March 2, 1982, which was finally denied by Administrative Law Judge Nicodemo De Gregorio on June 26, 1995, on the ground that while claimant proved he was totally disabled, he failed to establish that that his disability was due to pneumoconiosis. Director's Exhibit 1a. Claimant took no action with regard to the denial until filing his current duplicate claim on August 25, 1999. Director's Exhibit 1. In a Decision and Order issued on July 9, 2001, Administrative Law Judge Mollie W. Neal denied benefits, based on her determination that the newly submitted evidence was insufficient to establish either the existence of complicated pneumoconiosis, or that claimant's respiratory disability was due to pneumoconiosis. Director's Exhibit 43. The denial was later affirmed by the Board. *Messer v. Dominion Coal Corp.*, BRB No. 01-0849 BLA (June 28, 2002)(unpub.).

On June 5, 2003, claimant filed a request for modification. Director's Exhibit 54. The case was assigned to Judge Purcell (the administrative law judge), who awarded benefits in a Decision and Order issued on December 8, 2006. The administrative law judge specifically found, based on his review of the evidence submitted since the previous denial of the duplicate claim, that claimant suffered from complicated pneumoconiosis and invoked the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. Employer appealed and the Board agreed that the administrative law judge did not consider all of the relevant evidence and failed to adequately explain his findings and, thus, vacated the award and remanded the case for further consideration pursuant to 20 C.F.R. §§718.304, 725.309(d)(2000) and 725.310(2000). *G.M.* [*Messer*] *v. Dominion Coal Corp.*, BRB No. 07-0333 BLA (Jan. 17, 2008)(unpub.).

On June, 24, 2009, the administrative law judge issued a Decision and Order on Remand – Awarding Benefits, wherein he again found that claimant established the existence of complicated pneumoconiosis. However, pursuant to employer's appeal, the Board vacated the award of benefits because the administrative law judge did not, as required by 20 C.F.R. §725.310(a)(2000),[2] determine whether granting claimant's

[2] The Department of Labor revised the regulations implementing the Black Lung Benefits Act (the 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 substantive revisions made to 20 C.F.R. §§725.309, 725.310 apply only to claims filed after January 19, 2001. Where a former version of the regulations remains applicable, we will cite to the 2000 edition of the Code of Federal Regulations. The miner's current claim is a "duplicate claim" as defined by 20 C.F.R. §725.309(d) (2000), as it was filed one year after the denial of his initial claim and prior to January 19, 2001, the effective date of the amended regulations.

petition for modification would render justice under the Act. *Messer v. Dominion Coal Corp.*, BRB No. 09-0743 BLA (Aug. 31, 2010)(unpub.). The Board also vacated the administrative law judge's finding that claimant invoked the irrebuttable presumption at 20 C.F.R. §718.304 and, therefore, established a change in conditions under 20 C.F.R. §725.310(2000), and his determination that claimant established a totally disabling respiratory impairment due to pneumoconiosis at 20 C.F.R. §718.204(c). *Id*. Additionally, the Board provided guidance concerning the identification of the date for the commencement of benefits in the event that the administrative law judge again awarded benefits on remand. *Id*.

In his Decision and Order on Second Remand Awarding Benefits, which is the subject of this appeal, the administrative law judge initially determined that adjudication of claimant's request for modification would render justice under the Act. The administrative law judge reweighed the evidence and found that claimant established the existence of complicated pneumoconiosis arising from coal mine employment at 20 C.F.R. §§718.304, 718.203, and, therefore, invoked the irrebuttable presumption that he is totally disabled due to pneumoconiosis. The administrative law judge further observed that the Board previously affirmed his findings that claimant has simple pneumoconiosis at 20 C.F.R. §718.202(a) and a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2). The administrative law judge determined that the newly submitted evidence was sufficient to establish that claimant's disabling respiratory impairment is due to pneumoconiosis at 20 C.F.R. §718.204(c) and, thus, found that claimant established a material change in condition under 20 C.F.R. §725.309(d)(2000). Based upon a *de novo* review of the record, the administrative law judge also concluded, pursuant to 20 C.F.R. §725.310(2000), that the evidence supported a finding that Judge Neal made a mistake in a determination of fact. Thus, the administrative law judge awarded benefits, commencing August 1999, the month in which claimant filed his second claim for benefits.

On appeal, employer argues that the administrative law judge erred in finding that claimant established the existence of complicated pneumoconiosis and that his disabling respiratory impairment is due to pneumoconiosis. Employer asserts that, even if the Board affirms the award of benefits, the administrative law judge's finding with regard to the date that benefits should commence is erroneous. Claimant and the Director, Office of Workers' Compensation Programs, have not filed response briefs in this appeal.[3]

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that granting claimant's request for modification would render justice under the Act. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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.[4] 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).

I. 20 C.F.R. §718.304

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), 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 or autopsy, 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). 30 U.S.C. §921(c)(3); 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 which 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). The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption found at 20 C.F.R. §718.304. The administrative law judge must examine all the evidence on this issue, i.e., evidence of simple and complicated pneumoconiosis, as well as evidence that pneumoconiosis is not present, resolve any conflict, and make a finding of fact. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (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).

[4] The record indicates that the miner's last coal mine employment was in Virginia. Director's Exhibits 2, 4. Accordingly, 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).

A. The Administrative Law Judge's Findings

The administrative law judge noted that while he previously determined that the evidence, when considered independently at 20 C.F.R. §718.304(a)-(c), was insufficient to satisfy claimant's burden to establish that he has complicated pneumoconiosis, the Board also specifically instructed that he weigh the record "as a whole" to determine whether the existence of complicated pneumoconiosis is established. Decision and Order on Second Remand at 20. In accordance with the Board's instruction, the administrative law judge noted that Dr. Iosif reported negative results from histoplasma antibody titers and a tuberculosis test. *Id*. at 21. The administrative law judge also noted that Dr. Iosif obtained a CT-guided needle biopsy of one of the masses in claimant's lungs, which the doctor described as negative for malignancy and supportive of a diagnosis of coal workers' pneumoconiosis, but not the complicated form, due to the limited sample size. *Id*. With respect to Dr. Robinette's opinion, the administrative law judge further noted that he runs tuberculosis clinics in two Virginia counties and testified that he did not see any gross evidence of tuberculosis. *Id*.

The administrative law judge gave little weight to Dr. Wheeler's opinion, that the x-ray and CT scan evidence is negative for complicated pneumoconiosis, to the extent that it was premised on his finding that claimant does not have simple pneumoconiosis, which is contrary to the administrative law judge's finding, as affirmed by the Board. Decision and Order on Second Remand at 21. Additionally, the administrative law judge determined that Dr. Wheeler's opinion, that pneumoconiosis cannot progress in the absence of further coal dust exposure, was contrary to the regulations and less probative as a result. *Id*. Concerning the speculation of asbestos exposure by Drs. Scott and Wheeler, the administrative law judge concluded that there was no evidence in the record to support this assertion. *Id*. The administrative law judge also determined that the opinions of Drs. Scott, Wheeler, Castle, and Templeton, attributing the masses in claimant's lungs to other possible disease processes or exposures, are not probative, based on the testing and observations of Drs. Iosif and Robinette. *Id*. at 22-23, *citing Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 24 BLR 2-269 (4th Cir. 2010). Accordingly, the administrative law judge gave less weight to the negative x-ray and CT scan interpretations of Drs. Scott, Wheeler, Castle, and Templeton. *Id*. at 23.

Regarding the opinions of Drs. Castle and Fino, the administrative law judge found that they reviewed "significant" medical evidence in rendering their opinions that claimant does not have complicated pneumoconiosis. Decision and Order on Second Remand at 23. However, the administrative law judge found that Dr. Fino's opinion was "compromised" because he asserted that the masses in claimant's lungs were "too far lateral and not up high enough in the chest" to be complicated pneumoconiosis – a view that the Board has held is unsupported by the regulations. *Id*., *quoting* Employer's Exhibit 2 at 24 and *citing M.A.S.* [*Sharpe*] *v. Westmoreland Coal Co.*, BRB No. 08-0563

BLA (June 17, 2009)(unpub.). The administrative law judge also determined that the opinions of Drs. Fino and Castle were insufficiently reasoned and documented, as they found that if complicated pneumoconiosis were present, they would have expected claimant to have a restrictive impairment. *Id*. The administrative law judge stated that Drs. Iosif and Robinette concluded that the pulmonary function study evidence showed that claimant, in fact, has an obstructive and restrictive impairment. *Id*. at 23-24. The administrative law judge acknowledged that Drs. Fino and Castle reviewed this evidence, but concluded that they did not address it with the same specificity as Dr. Robinette. *Id*. Accordingly, the administrative law judge determined that, as a whole, the more recent medical evidence was sufficient to establish that claimant has complicated pneumoconiosis. *Id*. at 24.

Based on the fact that claimant established more than ten years of qualifying coal mine employment, the administrative law judge also found that he invoked the rebuttable presumption at 20 C.F.R. §718.203, that his complicated pneumoconiosis arose from his coal mine employment. Decision and Order on Second Remand at 24. The administrative law judge found that employer's experts did not rebut that presumption because they denied "the existence of complicated pneumoconiosis such that their opinions regarding causation of the disease are not probative." *Id*. The administrative law judge therefore found that claimant invoked the irrebuttable presumption at 20 C.F.R. §718.304 and awarded benefits.

B. Arguments on Appeal

Employer asserts that the administrative law judge erred in "summarily dismiss[ing]" the earlier evidence in the record because "it bears on the true nature of the abnormality in [] claimant's lungs." Employer's Brief at 28. Employer also argues that the administrative law judge incorrectly credited the medical opinions of Drs. Iosif and Robinette and did not provide valid reasons for discrediting the opinions of Drs. Scott, Wheeler, Fino, Castle and Templeton. Employer further contends that the administrative law judge erred in concluding that claimant's complicated pneumoconiosis arose out of his coal mine employment. Employer maintains that, because the administrative law judge repeated the errors committed in his prior decisions, the Board should reverse the award of benefits. In the alternative, employer requests that this case be remanded for assignment to a new administrative law judge.

Employer's allegations of error are without merit. Contrary to employer's contention, it was not error for the administrative law judge, in weighing the evidence as a whole, to accord little or no weight to the evidence submitted in conjunction with claimant's first claim, as this is consistent with the principle that pneumoconiosis is a latent and progressive disease. *See Thorn v. Itmann Coal Co.*, 3 F.3d 713 (4th Cir. 1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); *Casella v. Kaiser Steel*

Corp., 9 BLR 1-131 (1986). In addition, in arguing that the administrative law judge's ultimate conclusion, that claimant established the existence of complicated pneumoconiosis, is contradicted by his findings at the individual subsections of 20 C.F.R. §718.304, employer has mischaracterized the administrative law judge's findings. Contrary to employer's assertion, the administrative law judge did not render, and the Board did not affirm, a finding that the evidence relevant to 20 C.F.R. §718.304(a)-(c) demonstrated that claimant does not have complicated pneumoconiosis.[5] Rather, the administrative law judge acted within his discretion in finding, based upon the opinions of Drs. Iosif and Robinette, that the masses observed in claimant's lungs on x-ray and CT scan were caused by complicated pneumoconiosis, as indicated by the clinical tests ruling out histoplasmosis, tuberculosis, and malignancy as possible alternative causes. *See Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096, 17 BLR 2-123, 2-127 (4th Cir. 1993). In doing so, the administrative law judge rationally determined that his decision to accord less weight to the opinions of Drs. Scott, Wheeler, Castle and Templeton was consistent with the Fourth Circuit's decision in *Cox*, in light of the physicians' unanimous identification of the large masses, the absence of evidence of the alternative disease processes, and the failure of these physicians to opine as to whether an alternative disease process could occur in conjunction with complicated pneumoconiosis.[6] *Cox*, 602 F.3d at

[5] In his Decision and Order on Remand, the administrative law judge found that the x-ray evidence at 20 C.F.R. §718.304(a) was "neither preponderantly positive nor negative for the presence of complicated pneumoconiosis." Decision and Order on Remand at 11. As to the biopsy evidence at 20 C.F.R. §718.304(b), the administrative law judge stated that "[b]ecause the biopsy report notes that no parenchymal lung tissue was obtained as a result of the procedure, I found that the December 11, 2003 biopsy could not establish the presence of complicated coal workers' pneumoconiosis." *Id*. at 12. Similarly, when considering the CT scan evidence at 20 C.F.R. §718.304(c), the administrative law judge found that, "when analyzed in isolation, [it did] not support the presence or absence of complicated pneumoconiosis" but that all of the CT scan reports noted masses or opacities in the lungs. *Id.*

[6] We reject employer's assertion that the holding of the Fourth Circuit in *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285, 24 BLR 2-269, 2-284 (4th Cir. 2010) is not binding in this case, based on factual differences, namely that in *Cox* all relevant evidence supported a finding that the miner had radiographic opacities greater than three centimeters. We are not persuaded that *Cox* is distinguishable on this ground. The Fourth Circuit's holding is broader and recognizes the discretionary authority of an administrative law judge to reject those expert opinions that attribute findings of large opacities or lesions to other disease processes unrelated to coal dust exposure, but fail to identify specific evidence in the record to show that the miner actually suffers from one of the alternative diseases. *Id*. We consider the administrative law judge's reliance on *Cox* to reassess the credibility of the medical opinions on remand to be proper. *Id*.

285, 24 BLR at 2-284; *see also Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997).

Regarding Dr. Fino's opinion, the administrative law judge also had discretion to find that Dr. Fino's conclusion, that the location of the masses in claimant's lungs precluded a diagnosis of complicated pneumoconiosis, was entitled to less weight. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-175 (4th Cir. 2000). The administrative law judge rationally relied upon the fact that 20 C.F.R. §718.304(a) does not include a requirement that the opacities appear in a particular location and the absence of evidence in the record supporting Dr. Fino's statement. *Id*. Additionally, contrary to employer's contention, the administrative law judge explained why he gave more weight to the opinions of Drs. Iosif and Robinette concerning the significance of the pulmonary function study evidence. The administrative law judge rationally found Dr. Iosif's opinion, that claimant has a mixed restrictive and obstructive impairment, to be reasoned and documented and determined that Dr. Robinette's analysis of the pulmonary function study evidence was more detailed, as he separately analyzed the tracings and flow volume loops of the 1999 study. *See Underwood*, 105 F.3d at 949, 21 BLR at 2-28; Decision and Order on Second Remand at 4-8, 24. Because the administrative law judge provided valid reasons for his credibility determinations at 20 C.F.R. §718.304, we affirm his finding that the newly submitted evidence, and the evidence as a whole, was sufficient to establish the existence of complicated pneumoconiosis and invocation of the irrebuttable presumption of total disability due to pneumoconiosis. *See Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983). We further affirm, therefore, the administrative law judge's determination that claimant established a basis for modification of the prior denial of his claim pursuant to 20 C.F.R. §725.310(2000).

We also affirm the administrative law judge's determination that claimant's complicated pneumoconiosis arose from his coal mine employment, as claimant invoked the rebuttable presumption at 20 C.F.R. §718.203 and employer did not rebut it. The administrative law judge acted within his discretion in giving less weight to the physicians who did not diagnose complicated pneumoconiosis, as that was contrary to his finding concerning the evidence as a whole. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997). Therefore, the administrative law judge rationally gave more weight to the opinions of Drs. Alexander, Barrett, Navani, and Ranakrishnan, as they were more consistent with the administrative law judge's conclusions, and the opinions of Drs. Iosif and Perper, which he found were well-reasoned and well-documented. *See Grizzle*, 994 F.2d at 1096, 17 BLR at 2-127. Accordingly, we affirm the administrative law judge's determination that claimant's complicated pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R.

§718.203(b) and the award of benefits.[7] In light of our decision to affirm the administrative law judge's award of benefits, we need not address employer's request for reassignment.

II. Commencement of Benefits

A. The Administrative Law Judge's Findings

Reviewing the evidence as a whole, the administrative law judge stated that, because the physicians offering opinions in the current claim agree that claimant's disability has worsened in recent years, the more recent evidence is more probative of the miner's current physical condition and accorded it greater weight. Decision and Order on Second Remand at 31. Examining the June 28, 2001 denial of benefits, the administrative law judge found that the opinions of Drs. Fino, Castle Wheeler, and Scott, considered by Judge Neal, were essentially similar to the opinions they offered on modification. *Id*. at 31-32. However, the administrative law judge noted that Judge Neal did not have the opportunity to consider: Dr. Iosif's newly submitted opinion, that claimant did not have tuberculosis, a fungal infection, or cancer; Dr. Perper's review of the medical evidence including Dr. Iosif's testing and biopsy data; and the 2003 pulmonary function studies, which produced qualifying values before and after the administration of bronchodilators. *Id*. at 32. The administrative law judge concluded, therefore, that the newly submitted evidence "reveal[ed] a mistake in a determination of fact in Judge Neal's denial of benefits." *Id*.

The administrative law judge noted that when a petition for modification is granted, based on a mistake in a determination of fact, the regulation at 20 C.F.R. §725.503 provides that benefits are payable beginning with the month of onset of total disability due to pneumoconiosis. Decision and Order on Second Remand at 32; *see* 20 C.F.R. §725.503. In cases where benefits are awarded based on a finding of complicated pneumoconiosis, the administrative law judge noted that the Board has held that if the evidence does not establish when simple pneumoconiosis became complicated pneumoconiosis, the onset date is the month in which the claim was filed, unless the evidence establishes otherwise. Decision and Order on Second Remand at 33, *citing Williams v. Director, OWCP*, 13 BLR 1-28 (1989); *Truitt v. North American Coal Corp*., 2 BLR 1-199 (1979). The administrative law judge acknowledged that claimant filed his

[7] Based on this holding, we need not address employer's arguments concerning the administrative law judge's finding that claimant established that he is totally disabled due to simple pneumoconiosis at 20 C.F.R. §718.204(c).

duplicate claim on August 25, 1999, and the earliest x-ray evidence of complicated pneumoconiosis was on October 14, 1999, with no record evidence between those dates. Decision and Order on Second Remand at 33. Therefore, the administrative law judge determined that claimant is entitled to benefits, beginning in August 1999, the month in which he filed his duplicate claim. *Id*.

B. Arguments on Appeal

Employer alleges that the administrative law judge erred in "mechanically discount[ing] the prior evidence as being less recent." Employer's Brief at 50. Employer asserts that the opinions of Drs. Iosif and Perper do not provide the basis for a finding of a mistake of fact by Judge Neal, as they do not rule out the presence of an old inflammatory or healed granulomatous disease and are not supported by the record as a whole. Employer also indicates that the administrative law judge did not explain why the pulmonary function study evidence established a mistake of fact.

Employer also asserts that, contrary to the administrative law judge's finding, there is sufficient evidence in the record to establish that claimant had only simple pneumoconiosis subsequent to 1999. Employer argues that Dr. Iosif's opinion cannot provide the basis for awarding benefits from the filing date of the duplicate claim, as it was properly rejected by Judge Neal. Therefore, employer contends that the administrative law judge cannot award benefits commencing any earlier than June 2003, when claimant most recently requested modification.

We reject employer's allegations. As we held *supra*, the administrative law judge rationally accorded little or no weight to the evidence submitted in conjunction with claimant's first claim, based upon the principle that pneumoconiosis is a latent and progressive disease. *See slip op.* at 6-7. In addition, we have affirmed the administrative law judge's finding that the newly submitted opinion of Dr. Iosif, that the lesions observed in claimant's lungs are attributable to complicated pneumoconiosis, rather than another disease process, was sufficient to establish a mistake in a determination of fact in Judge Neal's denial of benefits. *Id*. at 12-13.

Furthermore, the administrative law judge rationally determined that, because the evidence in the present case does not reflect the onset date for complicated pneumoconiosis, the date for commencement of benefits is the month in which the claim was filed, as there is no record evidence affirmatively establishing that claimant had only simple pneumoconiosis for any period subsequent to the date of filing. *See Williams*, 13 BLR at 1-30. Thus, we affirm the administrative law judge's determination that benefits should commence, beginning in August 1999, the month in which claimant filed his duplicate claim.

Accordingly, the administrative law judge's Decision and Order on Second Remand – Awarding 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