U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB Nos. 17-0390 BLA
and 17-0390 BLA-A

STERLING M. HALL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WHITE FLAME ENERGY, INCORPORATED, c/o WELLS FARGO	)	
	)	
Employer-Petitioner	)	
	)	
BRICKSTREET MUTUAL INSURANCE COMPANY, INCORPORATED	)	DATE ISSUED: 05/22/2018
	)	
Carrier	)	
Cross-Petitioner	)	
	)	
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 Larry A. Temin, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for carrier.

Emily Goldberg-Kraft (Kate S. O'Scannlain, Solicitor of Labor; Maia S. Fisher, 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: HALL, Chief Administrative Appeals Judge, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals, and carrier cross-appeals, the Decision and Order (2014-BLA-05561) of Administrative Law Judge Larry A. Temin awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited claimant with 34.68 years of coal mine employment,[1] and found that the evidence establishes that claimant has complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. The administrative law judge therefore found that claimant invoked the irrebuttable presumption that he is totally disabled due to pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). The administrative law judge further found that claimant's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b), and awarded benefits accordingly.

Additionally, after noting that employer did not contest its designation as the responsible operator, the administrative law judge found that carrier was properly named as the responsible insurance carrier. Although carrier submitted evidence for the purpose of establishing that claimant developed complicated pneumoconiosis before the date carrier insured employer, the administrative law judge declined to admit the evidence into the record. Specifically, he found that the evidence was untimely submitted and carrier did not establish that extraordinary circumstances justified its failure to submit the evidence to the district director in the first instance.

On appeal, employer argues that the administrative law judge erred in finding that claimant has complicated pneumoconiosis. Claimant responds in support of the award of

[1] The record reflects that claimant's most recent coal mine employment was in West Virginia. Director's Exhibit 3; Hearing Transcript at 26. 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).

benefits. Neither carrier nor the Director, Office of Workers' Compensation Programs (the Director), has filed a response to employer's appeal. In its cross-appeal, carrier asserts that the administrative law judge erred in finding that it is the responsible insurance carrier liable for the payment of benefits on behalf of employer. The Director responds, urging affirmance of that finding. Neither employer nor claimant has filed a response to carrier's cross-appeal.

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).

I. COMPLICATED PNEUMOCONIOSIS

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 he has a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities 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;[2] or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The administrative law judge must determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis, and then must weigh together the evidence at subsections (a), (b), and (c) before determining whether claimant has invoked the irrebuttable presumption. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283, 24 BLR 2-269, 2-280-81 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56, 22 BLR 2-93, 2-100-01 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

Pursuant to 20 C.F.R. §718.304(a), the administrative law judge considered eight interpretations of three x-rays taken on June 3, 2013, May 28, 2015, and April 18, 2016. Decision and Order at 11-12. Drs. Willis and Miller, both dually-qualified as Board-certified radiologists and B readers, interpreted the June 3, 2013 x-ray as positive for complicated pneumoconiosis, Category A. Director's Exhibits 11, 12. Dr. Basheda, a B reader, interpreted this x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 6. Drs. DePonte and Smith, both dually-qualified radiologists, interpreted the May 28, 2015 x-ray as positive for complicated pneumoconiosis, Category A. Claimant's Exhibits 1, 2. Dr. Basheda interpreted the same x-ray as negative for complicated

[2] The record contains no biopsy evidence under 20 C.F.R. §718.304(b).

pneumoconiosis. Employer's Exhibit 1 at 11. Finally, Dr. Alexander, a dually-qualified radiologist, interpreted the April 18, 2016 x-ray as positive for complicated pneumoconiosis, Category B, while Dr. Dahhan, an A reader, interpreted the same x-ray as negative for complicated pneumoconiosis. Claimant's Exhibit 3; Employer's Exhibit 3.

The administrative law judge accorded greater weight to the readings by the physicians who were dually-qualified. Decision and Order at 19-20. Because the administrative law judge thus accorded greater weight to the positive readings of the dually-qualified physicians – Drs. Willis, Miller, DePonte, Smith, and Alexander – than to the negative readings of Drs. Basheda and Dahhan, he found that all three x-rays are positive for complicated pneumoconiosis. *Id*.

Employer argues that the administrative law judge erred in crediting the x-ray readings of Drs. Willis, Miller, DePonte, Smith, and Alexander over those of Drs. Basheda and Dahhan. Employer's Brief at 12-14. Employer contends that Drs. Basheda and Dahhan are more highly qualified than the dually-qualified radiologists who interpreted the x-rays as positive for complicated pneumoconiosis. *Id*. Contrary to employer's argument, the administrative law judge permissibly accorded greater weight to the readings by physicians with superior radiological qualifications as Board-certified radiologists and B readers and, therefore, permissibly assigned greater weight to the positive readings of Drs. Willis, Miller, DePonte, Smith, and Alexander. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52, 16 BLR 2-61, 2-66 (4th Cir. 1992); *see also Zeigler Coal Co. v. Director, OWCP* [*Hawker*], 326 F.3d 894, 899 (7th Cir. 2003); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995). Because the administrative law judge performed both a quantitative and qualitative analysis of the x-ray evidence and explained how he resolved the conflicts in the evidence, we affirm his finding that the x-ray evidence is positive for complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a).

Pursuant to 20 C.F.R. §718.304(c), the administrative law judge considered Dr. Meyer's reading of a February 13, 2012 CT scan. Decision and Order at 20-21; Claimant's Exhibit 5. Dr. Meyer identified "coalescent large opacities" in the lungs, with the largest opacity located in the right upper lung and measuring 2.7 x 3.4 centimeters. Claimant's Exhibit 5. He opined that the CT scan findings were consistent with complicated coal workers' pneumoconiosis. *Id*. The administrative law judge found Dr. Meyer's CT scan reading to be credible and probative on the issue of complicated pneumoconiosis. Decision and Order at 21. Because there was no contrary CT scan evidence, the administrative law judge found that the February 13, 2012 CT scan is positive for complicated

pneumoconiosis.[3] *Id*. As employer does not challenge this finding, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The administrative law judge also considered the medical opinions of Drs. Cohen and Rasmussen, who diagnosed claimant with complicated pneumoconiosis, and of Drs. Basheda and Dahhan, who opined that claimant does not have complicated pneumoconiosis. Decision and Order at 21-23; Director's Exhibit 11; Claimant's Exhibit 4; Employer's Exhibits 1, 3, 4-5. The administrative law judge found that the opinions of Drs. Cohen and Rasmussen were well-reasoned and documented, and accorded them substantial weight. Decision and Order at 21-22. The administrative law judge discounted the contrary opinions of Drs. Basheda and Dahhan because he found that they were not supported by the weight of the x-ray evidence. Decision and Order at 22. Further, the administrative law judge found that Dr. Dahhan's opinion was not well-reasoned. *Id*. at 22-23. Therefore, based on the opinions of Drs. Cohen and Rasmussen, the administrative law judge found that the medical opinion evidence "supports a finding that . . . [c]laimant has complicated pneumoconiosis." *Id*. at 23.

Employer argues that the administrative law judge impermissibly discredited the opinions of Drs. Basheda and Dahhan based on whether they were consistent with the weight of the x-ray evidence. Employer's Brief at 11-12. We disagree. Dr. Basheda opined that claimant does not have complicated pneumoconiosis because, in Dr. Basheda's view, the June 3, 2013 and May 28, 2015 x-rays did not reveal the presence of a large opacity measuring one centimeter. Employer's Exhibits 1, 6. Similarly, Dr. Dahhan excluded a diagnosis of complicated pneumoconiosis because he interpreted the April 18, 2016 x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 3. Contrary to employer's argument, the administrative law judge permissibly discredited the opinions of Drs. Basheda and Dahhan because they based their opinions on their negative readings of x-rays that the administrative law judge found to be positive for large opacities of complicated pneumoconiosis, based on the readings of more highly-qualified physicians. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997).

Further, Dr. Dahhan indicated that, because claimant's pulmonary function studies and blood gas studies are normal, he disagreed with the dually-qualified radiologists that

[3] In so finding, the administrative law judge explained that he interpreted Dr. Meyer's statement that the 2.7 x 3.4 centimeter opacity was consistent with complicated pneumoconiosis "to mean that the opacity he identified would appear as greater than one centimeter if seen on an x-ray . . . ." Decision and Order at 21.

claimant's x-rays are positive for complicated pneumoconiosis. Employer's Exhibit 5 at 12-13. The administrative law judge, however, accurately noted that claimant need not establish that he has a respiratory impairment to invoke the irrebuttable presumption at Section 411(c)(3). *See Scarbro*, 220 F.3d at 257, 22 BLR at 2-103 (holding that the Act "betrays no intent to incorporate a purely medical definition" of complicated pneumoconiosis); *Blankenship*, 177 F.3d at 244, 22 BLR at 2-562 ("The statute does not mandate use of the medical definition of complicated pneumoconiosis."); *see also* 65 Fed. Reg. 79,920, 79,932 (Dec. 20, 2000) (explaining that the "lack of a pulmonary function study does not affect the probative value of the x-ray reading(s) as evidence of complicated pneumoconiosis under 30 U.S.C. 921(c)(3)(A), because a pulmonary function study is not relevant to that means of invoking the irrebuttable presumption"). Therefore, the administrative law judge permissibly found that Dr. Dahhan's opinion is not well-reasoned.[4] *See Scarbro*, 220 F.3d at 257, 22 BLR at 2-103.

With respect to Dr. Cohen's opinion, the administrative law judge noted that Dr. Cohen based his diagnosis of complicated pneumoconiosis on claimant's years of coal mine dust exposure, claimant's x-rays and CT scans, and "[claimant's] symptomatology and personal medical history." Decision and Order at 21. Contrary to employer's argument, the administrative law judge permissibly found that Dr. Cohen's opinion was entitled to substantial weight because it was consistent with the administrative law judge's "determination that the weight of the x-ray and CT scan evidence supports" a finding of complicated pneumoconiosis, and was well-reasoned and documented. *Id*. at 21-22; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274. In addition, as it is unchallenged on appeal, we affirm the administrative law judge's finding that Dr. Rasmussen's opinion diagnosing complicated pneumoconiosis was well-documented and reasoned, and entitled to substantial weight. *See Skrack*, 6 BLR at 1-711. Therefore, we affirm the administrative law judge's determination that the medical opinion evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(c). Decision and Order at 23.

Weighing all of the medical evidence together, the administrative law judge found that "the chest x-ray, CT scan[,] and medical opinion evidence establishes the presence of a large opacity in . . . [c]laimant's lungs" that was "caused by [claimant's] claimant's coal mine employment." Decision and Order at 23-24. He therefore determined that claimant "met his burden to establish that he has complicated pneumoconiosis." *Id*. at 23. As we

[4] Because the administrative law judge provided valid reasons for discrediting Dr. Dahhan's opinion, we need not address employer's remaining challenges to the weight accorded this opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983).

have affirmed the administrative law judge's findings that the evidence established complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a),(c),[5] we affirm his determination that, when all the evidence is weighed together, claimant established that he has complicated pneumoconiosis and invoked the irrebuttable presumption of total disability due to pneumoconiosis.[6] Therefore, we affirm the award of benefits.

II. RESPONSIBLE INSURANCE CARRIER

In a case involving complicated pneumoconiosis, the insurance carrier on the risk at the time that the presence of complicated pneumoconiosis is established is responsible for the payment of benefits. *See Swanson v. R.G. Johnson Co.*, 15 BLR 1-49, 1-51 (1991). Because the identification of the responsible operator or carrier must be finally resolved by the district director before a case is referred to the Office of Administrative Law Judges (OALJ), the regulations require that, absent extraordinary circumstances, all liability evidence must be submitted to the district director. 20 C.F.R. §§725.407(d), 725.414(d), 725.456(b)(1); 65 Fed. Reg. 79,920, 79,989 (Dec. 20, 2000). Thus, "no documentary evidence pertaining to liability may be admitted in any further proceeding conducted with respect to a claim unless it is submitted to the district director . . . ." 20 C.F.R. §725.414(d). If documentary evidence pertaining to the identification of a responsible operator or carrier is not submitted to the district director, it "shall not be admitted into the hearing record in the absence of extraordinary circumstances." 20 C.F.R. §725.456(b)(1).

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[5] Employer argues that the administrative law judge erred in failing to address the fact that the radiologists who interpreted claimant's x-rays as positive for complicated pneumoconiosis identified large opacities of different sizes, or that Dr. Alexander was the only radiologist to identify a Category B opacity. Employer's Brief at 16-18. Employer asserts that these x-ray readings were also in conflict with the size of the opacity identified by Dr. Meyer on claimant's CT scan. *Id*. Contrary to employer's argument, the regulations do not require claimant to establish a consistent size or type of complicated pneumoconiosis in order to establish that he suffers from the disease. 20 C.F.R. §718.304(a)-(c). Rather, claimant need only establish that he has a chronic dust disease of the lung that yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C. *Id*.

[6] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 23.

Carrier argues that the administrative law judge erred in declining to consider medical evidence it submitted for the first time at the hearing. Carrier's Brief at 5-19. Carrier asserts that this evidence establishes that claimant had complicated pneumoconiosis before carrier's insurance coverage of employer commenced. In order to address carrier's arguments, we first summarize the relevant procedural history.

The district director issued a Notice of Claim on May 20, 2013, to employer and carrier, identifying employer as a potentially liable operator and carrier as employer's insurer. Director's Exhibit 19. The Notice of Claim informed employer and carrier that they had thirty days from receipt of the Notice of Claim to accept or contest employer's identification as a potentially liable operator. *Id*. If they contested that issue, they had ninety days from receipt of the Notice of Claim to submit documentary evidence relevant to the issue. *Id*. Alternatively, they could request an extension of time to submit documentary evidence based on a showing of good cause. *Id*. Although employer disputed that it was a potentially liable operator, neither employer nor carrier submitted documentary evidence in response to the Notice of Claim or sought an extension of time to submit documentary evidence. Director's Exhibit 23.

Subsequently, the district director issued a Schedule for the Submission of Additional Evidence (SSAE) on September 3, 2013, preliminarily designating employer as the responsible operator. Director's Exhibit 28. The district director sent the SSAE to both employer and carrier and notified them that they could no longer submit evidence contesting liability on the grounds that employer is not a potentially liable operator. *Id*. The SSAE further notified the parties that they had until November 2, 2013 to submit any additional documentary evidence relevant to liability, and until December 2, 2013 to submit documents responsive to evidence submitted by another party. *Id*. The SSAE explained the consequences of failing to submit a timely response, stating that "[a]bsent a showing of extraordinary circumstances, no documentary evidence relevant to liability . . . may be admitted into the record once a case is referred to the [OALJ]." *Id*.

The district director further informed the parties that they could request an extension of time to submit documentary evidence based on a showing of good cause. Director's Exhibit 28. Additionally, the district director indicated in the SSAE that a June 6, 2013 x-ray was read by Dr. Willis as positive for complicated pneumoconiosis, and that Dr. Rasmussen diagnosed complicated pneumoconiosis based on his June 3, 2013 examination of claimant. *Id*.

Carrier did not submit documentary evidence relevant to liability or request an extension of time by November 2, 2013. Although employer disputed that claimant suffered from complicated pneumoconiosis, employer conceded that it is the responsible operator. Director's Exhibit 29. Employer requested an extension of time to develop and

submit x-ray and CT scan evidence relevant to the issue of complicated pneumoconiosis. Director's Exhibits 34, 37. The district director granted employer's request and extended the time to submit affirmative medical evidence to December 2, 2013, and the time to submit evidence that rebutted claimant's evidence to December 15, 2013. Director's Exhibits 34, 35, 37.

On November 12, 2013, carrier informed the district director that it had retained counsel to represent its own interests. Director's Exhibit 16. On the same day, carrier sent a letter to claimant requesting that he complete and return a form summarizing his medical history and that he sign a medical authorization. Director's Exhibit 36. Carrier made a second request for this information on December 11, 2013. Director's Exhibit 41. Although clamant initially argued that he should not be required to respond to requests for medical information from both employer and carrier, claimant ultimately provided his medical history and a signed authorization to carrier on January 31, 2014. Director's Exhibits 39, 41, 42; Carrier's Brief at 3.

On February 14, 2014, the district director issued a Proposed Decision and Order finding that employer, as insured by carrier, is the responsible operator. Director's Exhibit 46. The district director also found that claimant has complicated pneumoconiosis and is, therefore, entitled to benefits based upon the irrebuttable presumption at 20 C.F.R. §718.304. *Id.*

Both employer and carrier requested a hearing, which was held before the administrative law judge on June 29, 2016. Director's Exhibits 48, 54. At the hearing, carrier sought to admit evidence that it argued was relevant to whether it is the responsible insurance carrier. Hearing Transcript at 7-9; Carrier's Post-Hearing Brief. Specifically, carrier proffered Dr. Tarver's and Dr. Meyer's May 2014 readings of a February 1, 2012 x-ray and Dr. Tarver's May 2014 reading of a February 13, 2012 CT scan, which it asserted established that claimant had complicated pneumoconiosis as of February 2012. Carrier's Post-Hearing Brief at 4. Carrier noted that its policy of insurance with employer was not effective until December 13, 2012. *Id*. at 6. Carrier argued that, because claimant developed complicated pneumoconiosis before its policy took effect, carrier could not be liable for the payment of benefits on employer's behalf and should be dismissed as the responsible insurance carrier. *Id*.

In an Order issued on September 23, 2016, the administrative law judge denied carrier's request to admit the documentary evidence. Order Denying Submission of Evidence by Carrier (Order) at 3-7. The administrative law judge found that carrier did not meet its burden to establish extraordinary circumstances to justify its failure to submit this evidence when the case was before the district director. *Id*. Specifically, the administrative law judge found that carrier failed to submit the relevant documents even

though it had sufficient notice that it may have a defense to being identified as the responsible carrier:

> The parties were informed in the [September 3, 2013] SSAE that [c]laimant may have complicated pneumoconiosis. On November 12, 2013, the [c]arrier obtained representation separate from the [e]mployer's, indicating that they anticipated a liability issue. In letters to the [district] [d]irector, both the [c]arrier and the [e]mployer stated [that] they anticipated that the onset of the [c]laimant's complicated pneumoconiosis would create a liability issue. The parties had until December 15, 2013 to submit evidence in support of their position, including evidence pertaining to liability. Despite having over three months to develop and present evidence, the [c]arrier failed to submit *any* documentary evidence in support of its position in the time frame allotted.

Id. at 6-7 (citations omitted). The administrative law judge also rejected carrier's argument that claimant's initial reluctance to complete a medical history form and medical authorization justified carrier's failure to submit evidence to the district director. *Id*. at 7. The administrative law judge explained that "the [c]arrier failed to request an extension of time to submit evidence once it became obvious that [c]laimant would be slow in responding to the [c]arrier's requests for medical information." *Id*.

Moreover, the administrative law judge rejected carrier's argument that the district director was on notice that carrier would dispute its liability, and that the district director therefore should have delayed issuing the Proposed Decision and Order:

> [T]he regulations . . . require a time limit within which the [district] [d]irector must issue a [P]roposed [D]ecision and [O]rder. Despite the [c]arrier's assertions, the [d]istrict [d]irector is not free to hold off issuing a [P]roposed [D]ecision and [O]rder until it feels all the applicable evidence has been received. Rather, the burden is on the parties to submit evidence within the allotted time frame, or alternatively, to request an extension in time to do so. Again, despite having adequate notice that a potential liability issue existed, the [c]arrier failed to request an extension in time to develop additional evidence. There is no indication in the record that the [c]arrier was relying on fraudulent information that no prior medical evidence existed or that the medical information was hidden or could not have been located. I find that this [c]arrier's failure to request an extension to submit evidence . . . cannot be cured through use of the 'extraordinary circumstances' exception in the regulations.

Order at 7 (footnote omitted). The administrative law judge further found that carrier "has not provided any evidence to establish the date that its coverage began" and, therefore, stated that he was "unable to determine whether . . . [c]laimant's complicated pneumoconiosis actually did predate the [c]arrier's coverage." Decision and Order at 25.

Carrier argues that the administrative law judge abused his discretion in finding that it failed to establish extraordinary circumstances to admit untimely evidence relevant to its status as the responsible insurance carrier. Carrier's Brief at 5-14. Carrier further asserts that the administrative law judge's ruling violated its due process rights. *Id*. at 16-18. We disagree.

An administrative law judge exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp*., 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Thus, a party seeking to overturn an administrative law judge's disposition of a procedural or evidentiary issue must establish that the administrative law judge's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co*., 24 BLR 1-109, 1-113 (2009).

Carrier has not established an abuse of discretion by the administrative law judge. The administrative law judge reasonably found that carrier failed to establish that it could not have timely developed its readings of the February 1, 2012 x-ray and the February 13, 2012 CT scan, or could not have requested an extension of time from the district director. *See Smith v. Ingalls Shipbuilding Div., Litton Sys., Inc.*, 22 BRBS 46, 50 (1989) (holding that the party seeking to admit evidence must exercise due diligence in developing its claim prior to hearing); *Sam v. Loffland Bros.*, 19 BRBS 229, 230 (1987) (same). The record indicates that carrier was aware of its potential liability when it received the district director's May 20, 2013 notice of claim. Director's Exhibit 19. Carrier did not begin its own investigation of this claim and the issue of complicated pneumoconiosis until November 2013, a month after it received the SSAE. Order at 3-7; Director's Exhibit 36. Although carrier asserts that it had only a limited time frame to investigate the liability issue, as the administrative law judge found, that limited time frame was a situation of carrier's own making. Carrier did not demonstrate that it could not have developed the relevant evidence if it had initiated investigation of the liability issue at an earlier stage.

Further, carrier does not dispute that it failed to request an extension of time while this claim was before the district director. Carrier argues only that it believes an extension request would have been futile because it did not yet know what was in claimant's medical records and thus could not be certain it had a liability defense warranting an extension request. Carrier's Brief at 6-9. The administrative law judge reasonably rejected that argument, finding that it was carrier's responsibility to take action by requesting an extension to develop and submit relevant evidence to the district director. Order at 7.

Therefore, the administrative law judge rationally determined that extraordinary circumstances did not exist to allow for the untimely submission of the readings of the February 1, 2012 x-ray and February 13, 2012 CT scan.[7] *See Weis v. Marfork Coal Co.*, 23 BLR 1-182, 1-191-92 (2006) (en banc) (McGranery & Boggs, JJ., dissenting), *aff'd*, 251 F. App'x 229, 236 (4th Cir. 2007).

We also reject carrier's argument that its due process rights were violated. Due process requires that a party be allowed to exercise its rights at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Roberts & Schaefer Co. v. Director, OWCP* [*Williams*], 400 F.3d 992, 997, 23 BLR 2-302, 2-315 (7th Cir. 2005). Because carrier was given the opportunity to submit its evidence before the district director and also argue that extraordinary circumstances exist for its untimely admission before the administrative law judge, its due process rights were not violated. We therefore affirm the administrative law judge's designation of carrier as the responsible carrier.

[7] Carrier notes the administrative law judge's finding that the onset date of claimant's complicated pneumoconiosis was February 2012, and argues that substantial evidence does not support the administrative law judge's additional finding that there was no evidence in the record establishing when carrier's coverage of employer began. Carrier's Brief at 19-22. Carrier argues that "[l]etters and an on-the-record statement[] from counsel for [carrier] discussed the beginning date of [its] coverage" of employer. Carrier's Brief at 22. Specifically, carrier notes that, in employer's February 4, 2014 letter to the district director, employer stated that the onset of claimant's complicated pneumoconiosis may have predated employer's insurance coverage with carrier. *Id*. at 21-22, *citing* Director's Exhibit 45. Carrier further notes that in August 27, 2015 and June 8, 2016 letters to the administrative law judge, and at the June 29, 2016 hearing, carrier's counsel stated that carrier's coverage of employer did not begin until December 13, 2012. *Id*. at 22, *citing* Hearing Tr. at 17-22 and cover letters of excluded exhibits. Without deciding whether such statements constitute evidence of the effective date of an insurance policy, we note that these letters and statements were submitted after the time limit for submitting liability evidence to the district director had ended and, therefore, could not be considered by the administrative law judge, absent a finding of extraordinary circumstances. 20 C.F.R. §§725.407(d), 725.414(d), 725.456(b)(1); 65 Fed. Reg. 79,920, 79,989 (Dec. 20, 2000).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge