BRB No. 09-0836 BLA

MAC ARTHUR YOUNCE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 09/30/2010
	)	
CROCKETT COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order – Award of Benefits of Thomas F. Phalen, Jr., 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.

Ann Marie Scarpino (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 – Award of Benefits (2007-BLA-5316) of Administrative Law Judge Thomas F. Phalen, Jr., with respect to a subsequent claim filed on January 20, 2006, 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] After crediting claimant with 13.11 years of coal mine employment, the administrative law judge adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718 and determined that employer was the appropriate responsible operator. The administrative law judge also determined, based on the newly submitted evidence, that claimant established total disability at 20 C.F.R. §718.204(b)(2), and, therefore, a change in an applicable condition of entitlement at 20 C.F.R. §725.309(d). On the merits, the administrative law judge concluded that claimant established the existence of legal pneumoconiosis arising out of his coal mine employment at 20 C.F.R. §§718.202(a)(4), 718.203, and a totally disabling respiratory impairment due to pneumoconiosis at 20 C.F.R. §718.204(b)(2)(i), (iv), (c). Accordingly, the administrative law judge awarded benefits.

Employer appeals, arguing that the administrative law judge erred in finding that it is the responsible operator. Further, employer asserts that, in considering the evidence on the merits, the administrative law judge did not properly weigh the evidence at 20 C.F.R. §§718.202(a)(4), 718.204(b)(2)(iv), (c). Claimant has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), filed a limited brief, stating that the administrative law judge erred in finding that employer was the responsible operator without considering all relevant testimony.[2]

[1] Claimant filed his initial claim for benefits on December 27, 1993, which was denied by the district director on May 26, 1994, because claimant did not establish any element of entitlement. Director's Exhibit 1. Final disposition of the claim was deferred, pending the outcome of claimant's state workers' compensation claim. *Id*. The district director ultimately denied benefits on October 30, 1995, on the same grounds. *Id*. No further action was taken until claimant filed his second claim for benefits on December 2, 2003, which was denied by the district director on August 31, 2004, because claimant did not establish that he was totally disabled due to pneumoconiosis. Director's Exhibit 2. On April 18, 2005, the district director sent claimant's counsel a letter confirming that claimant did not wish to pursue modification of the denial of his most recent claim and returning the information filed on April 4, 2005. *Id*. No further action was taken until claimant filed his current claim. Director's Exhibit 4.

[2] We affirm, as unchallenged on appeal, the administrative law judge's determination that claimant did not establish the existence of pneumoconiosis at 20

The Board's scope of review is defined by statute. The administrative law judge's findings must be affirmed if they are rational, supported by substantial evidence, and in accordance with applicable law.[3] 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 in a miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that he has 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; *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

I. Responsible Operator

A. The Administrative Law Judge's Findings

The administrative law judge considered claimant's testimony that he worked for employer for over a year. Decision and Order at 8. The administrative law judge determined that the information provided on claimant's employment history form, that claimant worked for employer from September 1989 until November 1990, was consistent with the other employment evidence submitted. *Id*.; *see* Director's Exhibits 5, 8, 18, 19. However, the administrative law judge found that the Social Security records and other employment evidence were more reliable because claimant had difficulty remembering dates and information during his depositions and at the hearing. Decision and Order at 8-9. Therefore, the administrative law judge concluded that claimant worked for employer for a cumulative period of not less than one year. *Id*. at 9.

The administrative law judge subsequently considered the evidence regarding the companies that claimant worked for after his tenure with employer ended, but found that it was insufficient to establish that claimant worked for any of those companies for combined periods totaling one calendar year. Decision and Order at 10. Relying on the

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C.F.R. §718.202(a)(2) or a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[3] The record reflects that the miner's coal mine employment was in Kentucky. Director's Exhibits 5, 19. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

formula set forth in 20 C.F.R. §725.101(a)(32)(iii), the administrative law judge, also found the evidence insufficient to establish that claimant worked for a subsequent employer for a combined 125 working days. *Id*. However, the administrative law judge determined that the evidence was sufficient to establish that claimant worked for employer for a cumulative period of not less than one year and for over 162 days of coal mine employment. *Id*. Therefore, the administrative law judge concluded that employer was properly designated as the responsible operator. *Id*. at 10-11.

B. Arguments on Appeal

Employer asserts that, in determining that it is the responsible operator, the administrative law judge substituted the Department of Labor's (DOL's) "Industry Average Wages for 125 days of [Coal Mine Employment]" for the evidence in the record. Based on claimant's testimony, that claimant was paid ten dollars an hour and worked eighty hours a week for employer, and claimant's reported earnings, employer calculated that, in the fourteen months that claimant was with employer, he worked 71.15 days in 1989 and 62.55 days in 1990. Employer then calculated that claimant worked 114.6 days in a twelve-month period, which employer stated is less than the 125 days required to prove regular coal mine employment. Employer argues that the administrative law judge's calculations resulted in a finding that claimant worked more days in the four months he worked for employer in 1989 than in the ten or eleven months he worked for employer in 1990, which, employer asserts, cannot be reconciled with claimant's testimony or common sense.

The Director responds, agreeing with employer that remand is required because the administrative law judge should have considered claimant's testimony concerning the number of days he worked within a twelve-month period. However, the Director does not concur in employer's assertion that claimant's testimony necessarily establishes that claimant worked for employer for fewer than 125 days within a twelve-month period. The Director notes that employer does not contest the administrative law judge's determination that the one-year employment relationship, required by 20 C.F.R. §725.494(c), is established. In addition, the Director indicates that, although the administrative law judge considered claimant's testimony concerning claimant's cumulative period of employment with employer, he did not consider claimant's testimony when determining the number of days claimant worked within that period.[4]

[4] The Director, Office of Workers' Compensation Programs (the Director), notes that, even if the administrative law judge finds claimant's testimony to be credible, he may still determine that the record evidence does not establish that the miner worked fewer than 125 days for employer. The Director indicates that claimant's testimony does not address "the crucial question" of how many days per week claimant worked. Director's Brief at 5. The Director states that, in providing calculations showing that

Therefore, the Director argues that the case should be remanded for the administrative law judge to address this testimony.

To be liable for benefits as the responsible operator, the operator must have employed the miner for at least one year. 20 C.F.R. §725.494(c). A "year" is defined as "a period of one calendar year . . . or partial periods totaling one year, during which the miner worked in or around a coal mine or mines for at least 125 'working days.'" 20 C.F.R. §725.101(a)(32). If claimant establishes that he worked for employer for one year, then there is a rebuttable presumption that the miner worked at least 125 days. 20 C.F.R. §725.101(a)(32)(ii). Since employer has not contested the one-year employment relationship, it must demonstrate that claimant worked for fewer than 125 days during a twelve-month period in order to be found not liable.

While the administrative law judge may apply any reasonable method for calculating the period of time that claimant worked for employer, he must consider all of the relevant evidence. *Dawson v. Old Ben Coal Co.*, 11 BLR 1-59 (1988). As the Director noted, although the administrative law judge considered claimant's testimony in determining the cumulative period of employment, he did not consider his testimony in determining the number of days claimant worked within that period. Therefore, we agree with employer and the Director that the administrative law judge's responsible operator finding must be vacated and the case remanded to the administrative law judge for further consideration. On remand, the administrative law judge must consider whether claimant's testimony was credible and may reject his testimony if he finds it to be inconsistent or unsubstantiated. *See Lafferty v. Cannelton Indus.*, 12 BLR 1-190 (1989). If the administrative law judge finds claimant's testimony to be credible, he must weigh it with the other evidence of record to determine whether employer has rebutted the presumption that it employed claimant for at least 125 days within a twelve-month period. 20 C.F.R. §§725.101(a)(32)(ii), 725.494(c).

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claimant only worked 114.6 days in a year, employer assumed that the miner worked only five days a week, which is unsupported by the record. The Director further states that, given claimant's testimony, that he worked eighty hours a week, it would be logical to conclude that claimant worked more than five days a week. Consequently, the Director indicates that if there is not clear evidence of the actual number of days claimant worked per week, the administrative law judge should determine that claimant worked for employer for the required year.

II. The Merits of Entitlement

A. 20 C.F.R. §§718.202(a)(4), 718.204(c)

1. The Administrative Law Judge's Findings

In determining whether claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) and disability causation at 20 C.F.R. §718.204(c), the administrative law judge considered the opinions of Drs. Baker, Potter, Rasmussen, Dahhan, and Rosenberg. The administrative law judge found that the opinion in which Dr. Baker diagnosed claimant with chronic obstructive pulmonary disease (COPD) and chronic bronchitis due to coal dust exposure and cigarette smoking, was insufficiently reasoned and entitled to less weight because Dr. Baker did not explain how the objective evidence, or claimant's subjective symptoms, confirmed his diagnoses. Decision and Order at 28; Director's Exhibit 2. Similarly, the administrative law judge accorded little weight to Dr. Potter's opinion, that claimant's moderate impairment was due to a combination of coal dust exposure and cigarette smoking, because he found it to be neither well-documented nor well-reasoned because Dr. Potter did not identify the objective evidence on which he relied or provide any rationale for his findings. Decision and Order at 28-29; Director's Exhibit 2. The administrative law judge acknowledged that Dr. Potter was claimant's treating physician, but declined to accord his opinion more weight on that basis, due to the lack of documentation and reasoning. *Id*. In contrast, the administrative law judge determined that Dr. Rasmussen's opinion, that claimant had legal pneumoconiosis, was entitled to probative weight as it was well-documented and well-reasoned, based on objective and subjective evidence, and Dr. Rasmussen clearly explained his findings. Decision and Order at 26; Director's Exhibits 28, 31; Claimant's Exhibit 1.

The administrative law judge found that Dr. Dahhan's opinion, that claimant's moderate, partially reversible, obstructive impairment was due solely to claimant's cigarette smoking history, was insufficiently reasoned and entitled to less weight. Decision and Order at 26-27; Director's Exhibit 32. The administrative law judge discounted Dr. Dahhan's opinion because he relied on a seventy plus pack-year smoking history, which was contrary to the administrative law judge's finding of a thirty-nine pack-year history. Decision and Order at 27. The administrative law judge noted Dr. Dahhan's statement that claimant's respiratory impairment could not be due to coal dust exposure because claimant had not had any such exposure since 1993. Decision and Order at 26; Director's Exhibit 32. The administrative law judge indicated that Dr. Dahhan's statement was contrary to the established principle that legal pneumoconiosis is a progressive condition that may only become detectable after coal dust exposure has ended. Decision and Order at 27. Further, the administrative law judge disagreed with Dr. Dahhan's comment, that claimant's treatment with bronchodilators was a sign that his

physicians believed that his impairment is responsive to such measures, which Dr. Dahhan stated is inconsistent with the permanent nature of an impairment caused by coal dust exposure. *Id*. The administrative law judge found that the use of bronchodilators did not mean that claimant's obstructive impairment is completely reversible and noted that the pulmonary function study results in the record showed that claimant's impairment exhibited little, or no, reversibility and that even after bronchodilator administration, claimant had a disabling impairment. *Id*. The administrative law judge also determined that Dr. Dahhan's finding, that because claimant lost more than 1900cc in his FEV1, his impairment could not be due to coal dust exposure, was in error because Dr. Dahhan's view suggested claimant's coal dust exposure would have to account for all of the loss. *Id*.

The administrative law judge also accorded less weight to Dr. Rosenberg's opinion, that claimant's severe airflow obstruction was due solely to smoking, because he found that it was not well-reasoned. Decision and Order at 28; Employer's Exhibits 1-3. The administrative law judge determined that Dr. Rosenberg's statement regarding claimant's reduction in "FEV1%" was inconsistent with the Act, which permits claimant to establish disability on the basis of a qualifying FEV1 along with a FEV1/FVC equal to, or less than, 55%.[5] Decision and Order at 27. Further, the administrative law judge noted that Dr. Rosenberg did not explain why claimant's "marked airtrapping" established that his impairment was not at least aggravated by his coal dust exposure. *Id*. at 28.

2. Arguments on Appeal

Employer asserts that the administrative law judge relied on impermissible reasons to discredit the opinions of Drs. Dahhan and Rosenberg and to credit Dr. Rasmussen's opinion at 20 C.F.R. §§718.202(a)(4), 718.204(c). Employer argues that the administrative law judge erred in discrediting Dr. Dahhan's opinion, in part, because he relied on a much lengthier cigarette smoking history than that found by the administrative law judge. In addition, employer contends that the administrative law judge erred in according less weight to Dr. Dahhan's opinion on the basis that it was contrary to the principle that legal pneumoconiosis is a latent and progressive disease.

[5] Dr. Rosenberg cited studies for the proposition that "while coal mine dust exposure causes a decrease in FEV1, the FEV1% . . . generally is preserved. In contrast, with smoking-related forms of chronic obstructive pulmonary disease, the FEV1% generally is reduced . . . [and] one sees airtrapping . . . ." Employer's Exhibit 1. Therefore, based on claimant's reduction in FEV1% to around 54% and airtrapping, Dr. Rosenberg attributed claimant's impairment to his cigarette smoking history. *Id*.

Further, employer states that the administrative law judge impermissibly discredited Dr. Dahhan's opinion because he relied on claimant's treatment with bronchodilators.

Contrary to employer's contention, the administrative law judge acted within his discretion in discrediting Dr. Dahhan's opinion, based on Dr. Dahhan's statement that any industrial bronchitis claimant may have had would have ceased, based on the duration of time since claimant was last exposed to coal dust. *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 12 BLR 2-121 (6th Cir. 1989); s*ee* Decision and Order at 26; Director's Exhibit 32. Such a statement is, as the administrative law judge noted, inconsistent with the comments to the amended definition of pneumoconiosis, in which the DOL stated, "it is clear that a miner who may be asymptomatic and without significant impairment at retirement can develop a significant pulmonary impairment after a latent period."[6] 65 Fed. Reg. 79,971 (Dec. 20, 2000).

Regarding Dr. Rosenberg's opinion, employer alleges that the administrative law judge did not understand the medical bases that Dr. Rosenberg relied on and, therefore, impermissibly discredited Dr. Rosenberg's opinion because he did not explain why claimant's impairment was not aggravated by coal dust exposure. We disagree. Although claimant bears the burden of proving, by a preponderance of the evidence, that he has pneumoconiosis, *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), when there is conflicting evidence, the administrative law judge must determine the weight to which each item of evidence is entitled. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). While Dr. Rosenberg discussed evidence related to COPD due to cigarette smoking, the administrative law judge noted that he "[did] not explain, in either his report or his deposition testimony, why the 'marked airtrapping' establishe[d] that [c]laimant's respiratory impairment was not aggravated by coal dust exposure." Decision and Order at 28; Employer's Exhibits 1, 2, 3 at 26-27. Therefore, we affirm the administrative law judge's discrediting of Dr. Rosenberg's opinion. *Anderson*, 12 BLR at 1-113.

Employer further contends that the administrative law judge accepted Dr. Rasmussen's opinion at face value, which employer argues constituted inconsistent treatment of the evidence. Employer contends that Dr. Rasmussen did not provide any support for his conclusion that any former miner who develops COPD will have legal pneumoconiosis. Further, employer asserts that Dr. Rasmussen's opinion was

[6] Because the administrative law judge gave a valid reason for finding Dr. Dahhan's opinion unpersuasive, we need not address employer's additional arguments, including its challenge of the smoking history determination, and we affirm the administrative law judge's discounting of this opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

insufficient to satisfy claimant's burden of proof because he was unable to determine the impact of each cause of claimant's impairment, as employer contends that the possibility that coal dust and smoking are additive does not mean that this is true in every case.

We hold that there is also no merit to employer's contention that Dr. Rasmussen's opinion is insufficient to establish that claimant had legal pneumoconiosis and a totally disabling respiratory impairment due, in part, to coal dust exposure. Contrary to employer's assertion, Dr. Rasmussen did not state that any former miner who develops COPD will have legal pneumoconiosis. Rather, Dr. Rasmussen stated that fourteen years of coal mine employment was a significantly sufficient period of time for claimant to have developed a respiratory impairment due to coal dust exposure. Director's Exhibit 31. In addition, Dr. Rasmussen explained that since COPD due to coal dust exposure and COPD due to cigarette smoking have effects that are indistinguishable by physical, physiologic, or radiographic means, he believed that coal dust exposure contributed to claimant's impairment. Director's Exhibits 28, 31; Claimant's Exhibit 1. Further, Dr. Rasmussen's inability to determine how much of claimant's impairment was due to coal dust and how much was due to cigarette smoke does not render his opinion legally insufficient. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that it is not necessary for a physician to apportion the causes of total disability as long as pneumoconiosis was a substantial cause of the miner's disability. *Crockett Collieries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007). Therefore, the administrative law judge permissibly credited Dr. Rasmussen's opinion at 20 C.F.R. §§718.202(a)(4), 718.204(c). *Crisp*, 866 F.2d at 185, 12 BLR at 2-129. Accordingly, we affirm the administrative law judge's findings that the evidence was sufficient to establish the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) and that legal pneumoconiosis was a contributing cause of claimant's disabling impairment at 20 C.F.R. §718.204(c).

B. 20 C.F.R. §718.204(b)(2)(iv)

1. The Administrative Law Judge's Findings

The administrative law judge noted that Dr. Rasmussen determined that claimant "does not retain the pulmonary capacity to perform heavy and very heavy manual labor" and is unable to perform his last regular coal mine employment or a similar position based on his respiratory capacity. Decision and Order at 31; Director's Exhibit 28; Claimant's Exhibit 1. In addition, the administrative law judge indicated that Dr. Dahhan stated that, from a respiratory standpoint, claimant is unable to perform his previous coal mine employment or a position of similar physical demand. Decision and Order at 31; *see* Director's Exhibit 32. Further, the administrative law judge determined that Dr. Rosenberg opined that claimant's severe obstructive impairment is disabling and would prevent him from performing his previous coal mine employment or a similar position.

Decision and Order at 31; *see* Employer's Exhibit 1. Because each of these physicians considered objective medical evidence and claimant's employment history, the administrative law judge found their opinions to be well-documented and well-reasoned, so he accorded them probative weight. Decision and Order at 31. Consequently, the administrative law judge concluded that the evidence established that claimant is totally disabled at 20 C.F.R. §718.204(b)(2)(iv). *Id*.

2. Arguments on Appeal

Employer asserts that, since the physicians' opinions do not identify the physical demands of claimant's previous coal mine job, or identify claimant's functional abilities, the administrative law judge could not make the required comparison at 20 C.F.R. §718.204(b)(2)(iv), between claimant's respiratory capacity and the exertional requirements of claimant's last coal mine employment. However, contrary to employer's contentions, and consistent with the administrative law judge's finding, Drs. Rasmussen, Dahhan, and Rosenberg took into consideration the exertional requirements of claimant's previous coal mine employment in comparison to claimant's respiratory impairment. Director's Exhibits 28, 32; Claimant's Exhibit 1; Employer's Exhibits 1-3. Dr. Rasmussen identified claimant's last job in the mines as an end load operator and stated that, intermittently, claimant was required to do mechanical work. Dr. Rasmussen was also familiar with claimant earlier employment as a truck driver, end loader operator, hand loader, shuttle car operator, roof bolter, and a continuous miner operator and observed that claimant had performed heavy and very heavy manual labor throughout his mining career. Director's Exhibit 28; Claimant's Exhibit 1. Dr. Rasmussen then concluded that claimant does not retain the respiratory capacity to perform heavy and very heavy manual labor so he is unable to perform his last regular coal mine employment. *Id*. In Dr. Dahhan's report, he indicated that claimant worked for fifteen years underground as a shuttle car operator and for eleven years outside, operating an end loader, in concluding that claimant's moderate, partially reversible, obstructive ventilatory impairment prevented him from performing his previous coal mine employment or a similar position. Director's Exhibit 32. In addition, Dr. Rosenberg provided a summary of claimant's work history in his July 6, 2007 report, including information about claimant's most recent coal mine employment and his previous job requirements, and concluded that claimant's severe airflow obstruction would disable him from performing his previous coal mine employment or a previous position. Employer's Exhibits 1-3. We hold, therefore, that there is no merit to employer's contention and affirm the administrative law judge's finding that claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv) and at 20 C.F.R. §718.204(b)(2) overall. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). Because we have affirmed the administrative law judge's determination that claimant

established the existence of pneumoconiosis arising out of coal mine employment and that he is totally disabled due to pneumoconiosis, we also affirm the award of benefits.[7]

Accordingly, we affirm the administrative law judge's award of benefits, but vacate his determination regarding the identity of the responsible operator, and remand the case to the administrative law judge for reconsideration of this issue.

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

[7] Because we have affirmed the award of benefits, we hold that application of the recent amendments to the Act, which became effective on March 23, 2010, would not alter the outcome of this case. See Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), amended by Publ. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l). In addition, we affirm, as unchallenged on appeal, the administrative law judge's determination regarding the date from which benefits commence. *Skrack*, 6 BLR at 1-711.