W.D.	)	BRB No. 07-0257
	)	
Claimant	)	
	)	
v.	)	
	)	
BATH IRON WORKS CORPORATION	)	
	)	
and	)	
	)	
ONE BEACON INSURANCE	)	DATE ISSUED: OCT 30, 2007
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Petitioner	)	
	)	
D.A.	)	BRB No. 07-0335
	)	
Claimant	)	
	)	
v.	)	
	)	
BATH IRON WORKS CORPORATION	)	
	)	
and	)	
	)	
ONE BEACON INSURANCE	)	
	)	
Employer/Carrier-Respondents	)	

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Petitioner	)	DECISION and ORDER

Appeals of the Decisions and Orders Awarding Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Richard F. van Antwerp and Cara A. Lovejoy (Robinson, Kriger & McCallum), Portland, Maine, for employer/carrier.

Kathleen Kim (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decisions and Orders Awarding Benefits (2006-LHC-00620, 2005-LHC-02107) of Administrative Law Judge Colleen A. Geraghty rendered on claims filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). By Order dated April 12, 2007, the Board granted the Director's motion to consolidate these cases for decision. The facts of each are set forth below.

W.D.

Claimant D worked for employer from August 5, 1943, through February 26, 1944, as a pipe fitter and helper, working on ships where he was exposed to asbestos. He returned to work for employer as a pipe fitter from January 2, 1968, through January 9, 1970, and again from February 23, 1981, until January 26, 1987, when he retired. *W.D.* Decision and Order at 3-5. Claimant D has a history of smoking one to two packs of cigarettes per day for 40 or 50 years, ceasing in 1985. *Id.* at 6. He has emphysema

caused by smoking, a cardiac condition, and work-related asbestosis. His asbestosis was diagnosed in March 2005, and he filed a claim for benefits under the Act.

The administrative law judge found that Claimant D has a 50 percent impairment of the whole person due to his pulmonary condition and awarded him permanent partial disability benefits under Section 8(c)(23), 33 U.S.C. §908(c)(23). *Id.* at 10. She found that Claimant D's last exposure to asbestos occurred between January 2, 1968, and January 9, 1970. With regard to employer's request for Section 8(f), 33 U.S.C. §908(f), relief, the administrative law judge found that Claimant D had "an obstructive respiratory deficit which pre-existed the work-related asbestosis." *W.D.* Decision and Order at 13. She based this finding on a pre-employment pulmonary function test (PFT) dated February 19, 1981, wherein Claimant D was found to have demonstrated an FEV_1 lung capacity of 74 percent of predicted, as well as the reports of Drs. Mette and Paradis post-dating the asbestosis diagnosis who stated that Claimant D had a pre-existing lung disability related to his smoking habit. As the asbestosis was diagnosed in 2005, the administrative law judge found that the pre-existing permanent partial disability was manifest to employer prior thereto and that it contributed to a materially and substantially greater disability than that caused by the work injury alone. Therefore, she awarded employer Section 8(f) relief. *Id.* at 13-14.

D.A.

Claimant A worked for employer for two weeks in 1958 as a painter and cleaner. He returned on December 12, 1967, to work for employer as a ship fitter until June 14, 1968, and he stated he was exposed to asbestos. In August 1982, Claimant A again began working for employer on decking projects. He retained this position only for a short period and then he was transferred to the non-covered Hardings facility until he left the shipyard in 1992 for medical reasons unrelated to asbestos exposure. *D.A.* Decision and Order at 3. Claimant A smoked one and one-half packs of cigarettes per day for approximately 30 years, ceasing in 1991. He began having breathing difficulties in 2002, and Dr. Farrington diagnosed chronic obstructive pulmonary disease (COPD) with work-related asbestosis. *Id.* at 4, 6. Claimant A filed a claim for benefits under the Act.

The administrative law judge found that Claimant A was last exposed to asbestos between 1967 and 1968 and that he has a permanent respiratory impairment of 77.5 percent. *Id.* at 13-14. She awarded him permanent partial disability benefits pursuant to Section 8(c)(23). With regard to employer's request for Section 8(f) relief, the administrative law judge found that Claimant A had manifest pre-existing COPD that combined with his work-related asbestosis and resulted in a materially and substantially greater disability than he would have had from the asbestosis alone. She based this finding on a 1982 pre-employment chest x-ray and PFT, as the raw data demonstrated that Claimant A had some lung obstruction due to his cigarette smoking. As the COPD

pre-existed the asbestosis, which was diagnosed in 2002, the administrative law judge awarded employer Section 8(f) relief. *Id.* at 15.

The Director challenges the administrative law judge's award of Section 8(f) relief in each case. He contends the administrative law judge erred in finding that employer satisfied the manifest requirement. Specifically, he argues that Section 8(f) refers to a second "injury" that increases disability and, as the pre-existing disability must be manifest prior to the second injury, the critical inquiry is when the work injury is deemed to have occurred. The Director asserts that the general rule for defining the time of the injury in an occupational disease case is the date the claimants were last exposed to harmful stimuli. As the claimants' pre-existing obstructive lung diseases were not manifest to employer prior to their last exposures to asbestos, the Director contends employer failed to satisfy the manifest requirement. Alternatively, the Director argues that the pre-existing disabilities were not manifest before the second injuries occurred because there were no actual diagnoses of the obstructing lung disabilities prior to the diagnoses of asbestosis. That is, he argues that uninterpreted PFT data cannot satisfy the manifest requirement. Employer responds, contending the Director incorrectly asserts that claimants sustained their "injuries" merely upon exposure to injurious stimuli. Employer contends that the manifest element is met in these cases because the pre-existing disabilities were diagnosed during claimants' periods of employment with employer and before their work-related occupational diseases were diagnosed. Thus, employer argues that the purpose of the manifest element, that of discouraging discrimination against disabled employees, was met. Employer also asserts that, despite the lack of specific diagnoses, the medical records are sufficient to satisfy the "objectively determinable" manifest standard.

Section 8(f) shifts the liability to pay compensation for permanent disability after 104 weeks from an employer to the Special Fund established in Section 44 of the Act. 33 U.S. C. §§908(f), 944. An employer may be granted Special Fund relief, in a case where a claimant is permanently partially disabled, as here, if it establishes that: 1) the claimant had a pre-existing permanent partial disability; 2) the pre-existing disability was manifest to the employer prior to the work-related injury; and 3) the ultimate permanent partial disability is not due solely to the work injury and is materially and substantially greater than the disability that would have resulted from the work-related injury alone. 33 U.S.C. §908(f)(1); *Director, OWCP v. General Dynamics Corp. [Lockhart]*, 980 F.2d 74, 26 BRBS 116(CRT) (1st Cir. 1992). The manifest requirement is not in the statute. Rather, it is a judicially-created doctrine which serves the purpose of preventing discriminatory practices against employees with pre-existing disabilities.[1] *Bath Iron Works Corp. v.*

[1]The United States Court of Appeals for the Fourth Circuit has eliminated the manifest requirement in post-retirement occupational disease cases. *Newport News*

Director, OWCP [Reno], 136 F.3d 34, 32 BRBS 19(CRT) (1st Cir. 1998); *Lockhart*, 980 F.2d 74, 26 BRBS 116(CRT); *General Dynamics Corp. v. Sacchetti*, 681 F.2d 37, 14 BRBS 862 (1st Cir. 1982). In order to establish the manifest requirement for Section 8(f) relief, an employer must show that it was actually aware of the claimant's pre-existing permanent partial disability or that the condition was objectively determinable from medical records existing before the worker suffered the work-related second injury. *Reno*, 136 F.3d 34, 32 BRBS 19(CRT); *Lockhart*, 980 F.2d 74, 26 BRBS 116(CRT); *Lambert's Point Docks, Inc. v. Harris*, 718 F.2d 644, 16 BRBS 1(CRT) (4th Cir. 1983); *Wiggins v. Newport News Shipbuilding & Dry Dock Co.*, 31 BRBS 142 (1997).

The Director contends the second "injury" occurs when the claimant was last exposed to the harmful stimuli; he contends the "time of injury" should be the same as that in ascertaining the employer or carrier responsible for a claimant's occupational disease.[2] *See, e.g., Liberty Mutual Ins. Co. v. Commercial Union Ins. Co.*, 978 F.2d 750, 26 BRBS 85(CRT) (1st Cir. 1992) (responsible carrier). The Director avers that this rule provides the "definition" of the "time of injury" and that the Act deviates from this rule only in certain circumstances to ameliorate any harsh results to the claimant because the rule does not account for periods of latency, *e.g.*, 33 U.S.C. §§912, 913. Thus, the Director argues that, to be entitled to Section 8(f) relief, the time by which the claimant's pre-existing disability must be manifest to the employer is the date of the last exposure to harmful stimuli.

We reject the Director's contention that the pre-existing disability must be manifest prior to the dates claimants were last exposed to asbestos. The Director relies on the rule for determining the employer or carrier liable for the payment of benefits, which was enunciated in *Travelers Ins. Co. v. Cardillo*, 225 F.2d 137 (2d Cir.), *cert. denied*, 350 U.S. 913 (1955), and provides that the liable employer or party is that during the claimant's employment when he was last exposed to injurious stimuli prior to his awareness that he suffered from an occupational disease. The Director's reliance on this rule to define a time of "injury" under the Act is misplaced. In establishing the responsible employer rule, the court did not purport to define a time of injury but to determine the best means of allocating liability between successive employers and carriers in cases involving occupational diseases. At the heart of the problem addressed by the court was the recognition that these diseases do not cause harm until years after

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Shipbuilding & Dry Dock Co. v. Harris, 934 F.2d 548, 24 BRBS 190(CRT) (4th Cir. 1991).

[2]In these cases, the administrative law judge found that One Beacon Insurance, carrier, was on the risk for employer when claimants were last exposed to asbestos in 1970 and 1968.

exposure has ended. The court determined that the last employer or carrier to expose carrier was the one best suited to bear liability, but did not hold that the injury occurs at that time. In the years since *Cardillo*, the courts have not adopted a general rule equating the "injury" caused by an occupational disease to exposure to injurious stimuli. In *Bath Iron Works Corp. v. Director, OWCP*, 506 U.S. 153, 26 BRBS 151(CRT) (1993), the Supreme Court distinguished hearing loss, which results in an immediate injury following exposure to noise, from occupational diseases with long latency periods, such as asbestosis. Pertinent to the present issue, the Court stated:

> Whereas a worker who has been exposed to harmful levels of asbestos suffers no *injury* until the disease manifests itself years later, a worker who is exposed to excessive noise suffers the injury of loss of hearing…simultaneously with that exposure.

Id., 506 U.S. at 163, 26 BRBS at 154 (CRT) (emphasis added). Thus, the Court has explicitly recognized that an "injury" in an occupational disease case based on asbestos exposure does not occur at the time of exposure. *See Todd Shipyards Corp. v. Black*, 717 F.2d 1280, 16 BRBS 13(CRT) (9th Cir. 1983), *cert. denied*, 466 U.S. 937 (1984) (prior to 1984 Amendments, court held that the date of the manifestation of an asbestos-related disease is the "time of injury").

The Director, however, relies on language in the decision of the United States Court of Appeals for the First Circuit, within whose jurisdiction the present case arises, in *Reno*, 136 F.3d 34, 32 BRBS 19(CRT), asserting that it establishes that the time of "injury" as the date of "exposure." The Director has taken this language out of context, and *Reno* does not mandate the rule he seeks. In *Reno*, the court rejected the employer's argument, relying on *Newport News Shipbuilding & Dry Dock Co. v. Harris*, 934 F.2d 548, 24 BRBS 190(CRT) (4th Cir. 1991), that the manifest requirement should not be applied in a post-retirement occupational disease case. In rejecting this argument, the First Circuit held that in order to effectuate the anti-discriminatory purpose of Section 8(f), the manifest requirement must remain in effect. The "exposure" language cited by the Director was included in a section of the opinion rejecting employer's argument that elimination of the manifest requirement in retiree cases was consistent with the intent of Congress in enacting the 1984 Amendments.[3] In context, the court did not purport to

[3]After discussing the "core purpose" of Section 8(f) to encourage the employment of handicapped workers, the purpose which the manifest requirement was adopted to serve, the court rejected employer's argument that the 1984 Amendments required elimination of that requirement in retiree cases. The court discussed the amendments for occupational diseases in Sections 12 and 13, 33 U.S.C. §§912, 913, which expanded the filing periods and added the element of awareness of disability, and comments about these changes from the legislative history to the 1984 Amendments, H.R. Rep. No. 98-

hold that a pre-existing permanent partial disability must be manifest at the time of the last exposure in order to form a basis for Section 8(f) relief. Rather, the court's focus was on the fact that potential discrimination due to a prior disability can only occur during employment.[4] Thus, the First Circuit reasoned that unless the pre-existing disability was manifest prior to the date of retirement, the employer could not have discriminated against the retired claimant, who would have necessarily had to have been injured upon exposure to harmful stimuli during his employment, regardless of when he became aware of the second injury. Therefore, where both the pre-existing disability and the work injury became manifest after the claimant retired from employment, the court held that the employer was not entitled to Section 8(f) relief. *Reno*, 136 F.3d at 44, 32 BRBS at 28(CRT). Thus, contrary to the Director's argument, *Reno* does not require the conclusion that a pre-existing disability must be manifest prior to the date of last exposure.[5] Rather, *Reno* requires a retiree's pre-existing disability to have been manifest to the employer prior to the date he left his employment.

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570 at 10-11, which stated that triggering the limitations periods on the date of "injury" makes little sense in the context of an occupational disease in view of the long latency period before a compensable claim arises. The First Circuit then stated:

> What is important here is that in crafting this particular amendment concerning occupational disease, Congress conceptualized the "injury" as occurring at the time of exposure to the causative agent, which would necessarily have to occur during employment. At the very least, this Report language precludes the argument that Congress was removing the manifestation requirement in instances involving the new occupational disease claims. Because the "injury" was conceived as occurring during employment, §8(f) retained its regular meaning – applying when "an employee having an existing permanent partial disability suffers injury." 33 U.S.C.A. §8(f)(1) (*sic*).

Reno, 136 F.3d at 43, 32 BRBS at 27(CRT).

[4]Contrary to the Director's allegation, it is the pre-existing disability, and not the work injury, which is the basis for any potential discrimination against claimant. Section 8(f) is designed to encourage the employment of those employees with prior disabilities.

[5]The Director does not adequately explain how fixing the date of the work-related "second injury" at the time of the last exposure, which for claimants here occurred in 1970 and 1968, respectively, serves the "core purpose" discussed in *Reno* of discouraging discrimination. Claimants here continued to work for employer after their exposures, and were rehired by employer following voluntary job changes, yet employer would be precluded from seeking Section 8(f) relief for any non work-related disabilities which

This holding is consistent with the First Circuit's earlier decision in *Director, OWCP v. Bath Iron Works Corp. [Johnson]*, 129 F.3d 45, 31 BRBS 155(CRT) (1st Cir. 1997), a decision not discussed by the Director. In *Johnson*, the First Circuit reversed the administrative law judge's award of Section 8(f) relief because the record lacked evidence supporting a finding of contribution in a retiree case. In that case, the claimant had a manifest pre-existing permanent partial disability of COPD and other pulmonary problems prior to his compensable second injury which occurred two years after retirement when he was diagnosed with a 25 percent permanent disability due to asbestosis. Although the case was resolved based on the contribution element, in a footnote, the court stated:

> In long-latency disease cases, such as asbestosis, *using the date of last exposure as the relevant time of injury is inappropriate because the injury arises years later when the disease manifests itself. See Bath Iron Works Co.*, 506 U.S. at 163. Therefore, while not determinative of our finding, we note here the applicable date for time of injury is the date that claimant was diagnosed with -- and thus became aware that he suffered from -- a twenty-five percent permanent partial disability resulting from asbestosis. *See Harris*, 934 F.2d at 553 (stating that "the time of injury is deemed to be the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability," citing 33 U.S.C. 910(i) and noting, "[s]ince the issue before the court is how long the employer is going to have to pay the amount determined to be due under [Section 910], it necessarily follows that the definition of time of injury found therein would be used for the purposes of Section 8(f).").

Johnson, 129 F.3d at 53 n.10, 31 BRBS at 160-161 n.10(CRT) (emphasis added). Thus, the work-related second injury, the occupational disease, occurs when the claimant becomes aware of his injury and not when he was last exposed to injurious stimuli during his employment. *Id.*; *see also Bath Iron Works*, 506 U.S. 153, 26 BRBS 151(CRT). Taken together, *Reno* and *Johnson* establish that, in the First Circuit in order for employer to satisfy the manifest requirement and be eligible for Section 8(f) relief in a case where its employee becomes aware of his work-related occupational disease after he has retired from employment, the pre-existing permanent partial disability must have

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arose during this time and combined with the harm ultimately resulting from the earlier asbestos exposure to result in claimants' compensable disabilities. Section 8(f) is intended to apply in such cases, giving employer the incentive to hire or retain such employees by providing aid in paying for the increased disability.

been manifest to the employer prior to the date the employee left that employment. As the evidence relied upon by employer in the instant cases pre-dated claimants' retirements, it may satisfy the manifest requirement if it is sufficient to demonstrate employer's actual or constructive knowledge of a serious lasting condition.

The Director argues that the medical records upon which employer relies are insufficient to meet this standard and establish a manifest pre-existing disability in each of these cases. While medical records need not indicate the severity or the precise nature of the pre-existing condition, they must "contain sufficient, unambiguous and obvious information regarding the existence of a serious lasting physical problem." *Esposito v. Bay Container Repair Co.*, 30 BRBS 67, 69 (1996) (where doctor's medical records no longer exist, his financial records showing claimant under his care and his recollection are sufficient to make back condition "constructively manifest"); *see Lockhart*, 980 F.2d 74, 26 BRBS 116(CRT) (records need not indicate "permanency" *per se*). The Board has held that x-rays without relevant diagnoses or interpretations concerning the pre-existing condition are insufficient to meet the manifest requirement. *Armstrong v. General Dynamics Corp.*, 22 BRBS 276 (1989) (where series of x-rays had conflicting results, undiagnosed abnormality in right lung x-ray insufficient); *Villasenor v. Marine Maintenance Industries, Inc.*, 17 BRBS 99 (Ramsey, J., dissenting in pertinent part), *aff'd on recon.*, 17 BRBS 160 (1985) (Ramsey, J., dissenting in pertinent part) (x-rays absent any relevant diagnoses are insufficient and do not amount to constructive notice). It is not sufficient if the disabilities would have been "discoverable" by means of further testing. *White v. Bath Iron Works Corp.*, 812 F.2d 33, 19 BRBS 70(CRT) (1st Cir. 1987). Also insufficient are *post hoc* interpretations of pre-existing medical records, *Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993), and the mere presence of certain risk factors such as a smoking history. *Transbay Container Terminal v. U.S. Dep't of Labor, Benefits Review Board*, 141 F.3d 907, 32 BRBS 35(CRT) (9th Cir. 1998). However, an interpreted PFT can be sufficient to show an existing lung impairment. *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988).

In *W.D.*, the record contains a pre-employment PFT dated February 19, 1981, which shows Claimant D's FEV_1 at 74 percent of his predicted lung capacity with notations by the examiner that Claimant D was wheezing and that he "smokes all he can." Emp. Ex. 9(A). Concurrent with the diagnosis of asbestosis in March 2005, Dr. Paradis stated that Claimant D had emphysema from his previous smoking habit. Cl. Ex. 7 (D, E); Emp. Ex. 8 at 377. In 2006, Dr. Mette reviewed all the medical records and concluded that Claimant D has severe chronic obstructive pulmonary disease, asbestosis, and cardiac disease. Emp. Ex. 1. However, in general, Dr. Mette explained that an FEV_1 value shows whether there is an obstructive lung deficit. *W.D.* Decision and Order at 13; Emp. Ex. 1. Because the 1981 PFT revealed that Claimant D's FEV_1 result was at 74 percent of the predicted value, the administrative law judge found that this demonstrated

the existence of obstructive lung disease well before the 2005 diagnosis of asbestosis. *W.D.* Decision and Order at 13.

In *D.A.*, the record contains a 1982 pre-employment physical including a chest x-ray and a PFT. The April 29, 1982, x-ray report states: "Heart, mediastinum, lung fields, and visualized bony thorax are normal." In a hand-written notation on the x-ray report, the doctor noted: "previous employment 1958. PFT decreased. Smokes 1-2 ppd x 30 years." Cl. Ex. 7(A) at 107. The PFT graph is plotted but no comments or percentages are identified.[6] *Id.* at 108. A right lung biopsy revealed large pleural effusion asbestosis in 2002. OBX 8(B) at 61. The administrative law judge found that the PFT results identified Claimant A's COPD before his asbestosis was diagnosed in 2002. *D.A.* Decision and Order at 15.

While the Director concedes that both claimants have permanent pre-existing lung conditions and work-related asbestos-related lung diseases, he contends that claimants' smoking-related disabilities were not manifest to employer because the PFT results from the 1980's are insufficient, alone, to establish serious lasting physical conditions. The Director contends that uninterpreted PFTs are not unambiguous evidence of pre-existing lung diseases. The PFT from 1981 revealed that Claimant D's FEV_1 reading was 74 percent of his predicted lung capacity, and there are notations thereon stating that he was "wheezing" at the time of the test and that he "smokes all he can since 7 years old."[7] Although there is no specific diagnosis of "emphysema" or "COPD" on the report, there is sufficient information of a lung condition that causes wheezing and decreased capacity. It is reasonable that such information might motivate a cautious employer to consider terminating Claimant D because of the risk of compensation liability. *Lockhart*, 980 F.2d 74, 26 BRBS 116(CRT); *see also Director, OWCP v. General Dynamics Corp. [Fantucchio]*, 787 F.2d 723, 18 BRBS 88(CRT) (1st Cir. 1986). In light of this evidence, the administrative law judge rationally found that Claimant D had a lung condition that was objectively determinable from the 1981 PFT results.[8] Therefore, we affirm the

[6]Although not valid for satisfying the manifest element, Dr. Mette retrospectively analyzed the graph to determine that Claimant A had a decreased FEV_1 value and, thus, obstructive lung impairment in 1982. OBX 9 at 194. *See* discussion *infra*.

[7]The risk factor of smoking alone would not meet the manifest element. *Transbay*, 141 F.3d 907, 32 BRBS 35(CRT); *see also Sacchetti*, 681 F.2d 37, 14 BRBS 862.

[8]The administrative law judge erred in relying on Dr. Mette's opinion regarding Claimant D's pre-existing lung condition, as post-injury opinions interpreting pre-injury reports are insufficient to meet the manifest requirement. *Caudill*, 25 BRBS 92; *see also*

administrative law judge's finding that employer satisfied the manifest requirement, as it is supported by substantial evidence, and we affirm the award of Section 8(f) relief in the case of *W.D.* *See Blake*, 21 BRBS at 55.

In *D.A.*, the administrative law judge relied on a line-graph of PFT results from 1982 and an x-ray with hand-written comments to support her finding that Claimant A also had a manifest pre-existing lung condition prior to sustaining the work-related lung disease. The PFT, however, was not interpreted until after Claimant A was diagnosed with asbestosis, and, despite the hand-written comments with the x-ray results, the x-ray itself was found to be "normal." The *post-hoc* interpretation of the 1982 test, as well as the "normal" x-ray cannot satisfy the manifest requirement. *Caudill*, 25 BRBS 92; *see also Blake*, 21 BRBS at 55 n.4; *Hitt v. Newport News Shipbuilding & Dry Dock Co.*, 16 BRBS 353 (1984) (*post-hoc* opinions do not establish that condition was "objectively determinable" from x-rays absent relevant diagnoses and x-ray with "normal" findings does not alert an employer). Moreover, unlike the PFT in *W.D.* which indicated a specific percentage in Claimant D's decreased lung capacity, the PFT in *D.A.* was merely a plotted line on a graph with no comments or key to explain it. The mere notation on the accompanying "normal" x-ray that Claimant A's "PFT decreased" is not sufficient to satisfy the manifest requirement as it does not provide obvious and unambiguous evidence of a serious lasting condition that would motivate a cautious employer to terminate an employee because of the risk of compensation liability. *See Armstrong*, 22 BRBS 276; *Villasenor*, 17 BRBS 99. Consequently, we hold that the evidence in *D.A.* does not establish a decrease in Claimant A's lung capacity and is insufficient to satisfy the manifest requirement. *Caudill*, 25 BRBS 92; *Hitt*, 16 BRBS 353. Therefore, we reverse the administrative law judge's award of Section 8(f) relief to employer in *D.A.*

Blake, 21 BRBS at 55 n.4; *Hitt v. Newport News Shipbuilding & Dry Dock Co.*, 16 BRBS 353 (1984).

Accordingly, the administrative law judge's Decision and Order in *W.D.*, including the award of Section 8(f) relief to employer, is affirmed. The administrative law judge's award of Section 8(f) relief in *D.A.* is reversed. In all other respects, the administrative law judge's Decision and Order in *D.A.* 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