U.S. Department of Labor

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

BRB No. 21-0304 BLA

JEFFREY LYNN PUGH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DAGS BRANCH COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS MUTUAL INSURANCE	)	DATE ISSUED: 02/16/2023
	)	
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 Awarding Benefits of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

H. Brett Stonecipher and Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.[1]

[1] Employer was previously represented by Paul E. Jones and Denise Hall Scarberry (Jones & Jones Law Office, PLLC), who filed Employer's Petition for Review and Supporting Brief. After briefing, but prior to decision in the case, Jones & Jones moved to withdraw as Employer's counsel. Reminger Co. moved to be substituted and requested an extension of any pending deadlines while new counsel reviewed the case file. The Board

Steven Winkelman (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

BUZZARD AND JONES, Administrative Appeals Judges:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2013-BLA-06125) rendered on a subsequent claim pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

A summary of the procedural history is necessary to understand the issues raised on appeal. Claimant filed this subsequent claim on November 21, 2012,[2] and the district director issued a Proposed Decision and Order awarding benefits on August 6, 2013. Director's Exhibits 3, 53. At Employer's request, the case was forwarded to the Office of Administrative Law Judges (the OALJ) for a hearing. Director's Exhibits 54, 59. Prior to the hearing, ALJ Steven D. Bell found that Dr. Gallai, the doctor who examined Claimant for his Department of Labor (DOL)-sponsored evaluation concluded Claimant was totally disabled, but failed to address the cause of Claimant's disability.[3] Director's Exhibit 62 at 10-12. ALJ Bell therefore found Dr. Gallai's report insufficient to satisfy the DOL's burden to provide a complete pulmonary evaluation under 20 C.F.R. §725.406. *Id.* Thus, ALJ Bell remanded the case to the district director with instructions for Dr. Gallai to supplement his report. *Id.* After remand, Dr. Gallai provided a supplemental report[4] and

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grants Jones & Jones's request to withdraw and Reminger Co.'s motion for substitution as counsel, but denies the extension request as moot.

[2] This is Claimant's second claim for benefits. Director's Exhibits 1, 3. The district director denied his first claim, filed on April 30, 2010, for failure to establish total disability. Decision and Order at 3; Director's Exhibit 1 at 5. A claim filed on March 30, 2007 was later withdrawn and is considered to have never been filed. 20 C.F.R. §725.306(b); Decision and Order at 3 n.7.

[3] This report is identified as Director's Exhibit 14, but was not admitted by the ALJ. Decision and Order at 2 n.2.

[4] This report is located in Director's Exhibit 62, but was not admitted. 2020 Order on Employer's Evidentiary Objections and Notice of Telephone Conference (2020 Evidentiary Order).

the district director returned the claim to the OALJ on November 20, 2017. Director's Exhibit 63. The case was reassigned to ALJ Joseph E. Kane. Director's Exhibit 66 at 633.

On January 24, 2018, Employer filed a motion to again remand the claim, asserting that Dr. Gallai's supplemental report still did not meet the requirements to be considered a complete pulmonary evaluation and a new DOL-sponsored evaluation should be performed. Director's Exhibit 66 at 650-51. Subsequently, Employer deposed Dr. Gallai. Employer's Exhibit 5. On June 6, 2018, ALJ Kane held a hearing, at which Employer withdrew its motion to remand[5] and ALJ Kane determined Dr. Gallai's supplemental report and deposition testimony did not cure the deficiencies in his opinion regarding disability causation; thus, ALJ Kane again remanded the claim to the district director. 2018 Hearing Transcript at 12-13, 25-28; Director's Exhibit 66 at 235-237. He instructed the district director to obtain a new DOL-sponsored evaluation by a different doctor. Director's Exhibit 66 at 237.

On remand, Dr. Green evaluated Claimant at the request of the district director and the case was again returned to the OALJ. Director's Exhibit 66 at 17-18, 37-68; Director's Exhibit 67. The case was reassigned to ALJ Golden (the ALJ). 2019 Notice of Assignment, Notice of Hearing, and Pre-Hearing Order.

Over Employer's objections, the ALJ concluded that Dr. Green's 2018 report would be considered the DOL-sponsored evaluation and excluded Dr. Gallai's evaluation from the record, ruling that ALJ Kane was within his discretion to find Dr. Gallai's opinions did not constitute a complete pulmonary evaluation. 2020 Order on Employer's Evidentiary Objections and Notice of Telephone Conference at 3-6 (2020 Evidentiary Order). Additionally, the ALJ overruled Employer's objections and admitted a medical report from Dr. Raj that Claimant submitted and determined that Employer was not entitled to require Claimant to undergo a third physical examination by a physician of its choosing. *Id.* at 6-8.

In his Decision and Order Awarding Benefits, the ALJ accepted the parties' stipulation that Claimant had twenty-nine years of coal mine employment, all of which he found qualifying. He further found Claimant established a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2); therefore, he found Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), and invoked the rebuttable presumption of total disability due to pneumoconiosis at Section

[5] In withdrawing its earlier motion to remand, Employer argued the record was sufficient to make a ruling. 2018 Hearing Transcript at 25. The Director similarly argued that Dr. Gallai's report, considered together with his supplemental report, adequately addressed all elements of entitlement. Director's Exhibit 66 at 639.

411(c)(4) of the Act.[6] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer contends that Dr. Gallai's opinion was sufficient to fulfill the DOL's obligation to provide a complete pulmonary evaluation. Thus, it argues the case should have been considered based on the original DOL evaluation, and Dr. Green's report should have been excluded. Employer further argues the ALJ erred in admitting Dr. Raj's medical report and in not allowing Employer to obtain a third physical examination of Claimant. Regarding the merits, Employer contends that without the ALJ's allegedly erroneous evidentiary rulings, Claimant would not have established total disability and invoked the Section 411(c)(4) presumption. It also argues those rulings affected the ALJ's findings that it failed to rebut the presumption. Finally, it contends the ALJ erred in finding benefits should commence as of November 2012.[7] Claimant responded, urging affirmance of the award.[8] The Director, Office of Workers' Compensation Programs (the Director), filed a response brief, urging the Benefits Review Board to reject Employer's contentions regarding the complete pulmonary evaluation. The Director further argues any error by the ALJ in admitting Dr. Raj's report is harmless.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[9] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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[6] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[7] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-nine years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-6.

[8] Claimant filed a Motion to File Out of Time with his Response Brief. The Board granted the motion and accepted his response as part of the record. *Pugh v. Dags Branch Coal Co.*, BRB No. 21-0304 BLA (July 12, 2022) (Order) (unpub.).

[9] We will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); May 2020 Hearing Transcript at 24.

Evidentiary Ruling- Dr. Raj's Report

Because the ALJ is given broad discretion in resolving procedural matters, including evidentiary issues, *see Dempsey v. Sewell Coal Corp*., 23 BLR 1-47 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(en banc); *Morgan v. Director, OWCP*, 8 BLR 1-491 (1986), a party seeking to overturn an ALJ's evidentiary ruling must establish that the ALJ's action represented an abuse of discretion. 20 C.F.R. §725.455(c); *see Clark*, 12 BLR at 1-153.

Employer argues the ALJ erred in admitting Dr. Raj's report, as its admission was in excess of the evidentiary limits, and the ruling is contrary to ALJ Kane's previous exclusion of the report as untimely submitted. Employer's Brief at 7-9 (unpaginated). We disagree.

First, noting that Claimant previously submitted affirmative medical reports from Drs. Trice and Cordasco, Employer argues Dr. Raj's opinion provides Claimant with three affirmative medical reports although the regulations permit only two. Employer's Brief at 7-8 (unpaginated); Claimant's Exhibits 1-2, 5; *see* 20 C.F.R. §§725.414(a)(2)(i), 725.456(b)(1) (requiring "good cause" to exceed the limitations). Contrary to Employer's contention, Dr. Raj's opinion was admitted in lieu of Dr. Cordasco's opinion, which the ALJ did not consider. Decision and Order 3; 2020 Evidentiary Order at 6-7; Feb. 2020 Hearing Transcript at 17-18; May 2020 Hearing Transcript at 20. Thus, the admission of Dr. Raj's report did not result in Claimant's medical evidence exceeding the evidentiary limitations. *See* 20 C.F.R. §725.414(a)(2)(i); *Dempsey*, 23 BLR at 1-47.

Employer next contends the ALJ's admission of Dr. Raj's report is contrary to ALJ Kane's previous ruling excluding it as untimely submitted. Employer's Brief at 8 (unpaginated). The ALJ acknowledged that ALJ Kane excluded Dr. Raj's report as not timely submitted within the twenty-day timeline for ALJ Kane's 2018 hearing, but found ALJ Kane's ruling did not preclude admission of the report, or otherwise affect whether it was timely submitted, in the current hearing. 2020 Evidentiary Order; 2018 Hearing Transcript at 23-26. The ALJ indicated that Dr. Raj's report was not untimely according to the Notice of Hearing he issued; thus, he concluded the basis for ALJ Kane's ruling no longer applied, and requiring the parties to adhere to a superseded case schedule would undermine his own schedule and "does nothing to further judicial economy." 2020 Evidentiary Order at 6.

Employer further argues that if Dr. Raj's report were admitted, then good cause exists to allow Employer the opportunity to obtain another examination of Claimant. Employer's Brief at 8 (unpaginated). The ALJ found Employer had already obtained two examinations of Claimant and did not find good cause to require Claimant to undergo a third physical examination for Employer. 2020 Evidentiary Order at 8; *see McClanahan*

v. Brem Coal Co., 25 BLR 1-171, 1-176-77 (2016) (holding that, absent a showing of good cause, 20 C.F.R. §725.414(a)(3)(i) limits an employer to obtaining two pulmonary evaluations, and the assertion that additional, updated evidence is needed goes to relevance and is insufficient to establish good cause). Further, the ALJ allowed Employer to submit supplemental evidence addressing Dr. Raj's report. 2020 Evidentiary Order at 8. Based on the foregoing, we find no abuse of discretion in admitting Dr. Raj's report, excluding Dr. Cordasco's report, and not requiring Claimant to undergo a third examination by Employer's chosen physician; thus, these evidentiary rulings are affirmed.[10] 20 C.F.R. §725.455(c); *see Clark*, 12 BLR at 1-153; Decision and Order at 2-3; 2020 Evidentiary Order.

Complete Pulmonary Evaluation

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406; *see R.G.B.* [*Blackburn*] *v. S. Ohio Coal Co*., 24 BLR 1-129, 1-146 (2009) (en banc); *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994). The DOL's duty to supply a "complete pulmonary evaluation" does not amount to a duty to meet the claimant's burden of proof for him; the DOL meets its statutory obligation under 30 U.S.C. §923(b) "when it pays for an examining physician who (1) performs all of the [required] medical tests . . . and (2) specifically links each conclusion in his or her medical opinion to those medical tests." *Green v. King James Coal Mining, Inc.*, 575 F.3d 628, 642 (6th Cir. 2009). The regulations require further examination and testing if the first evaluation is incomplete or otherwise deficient. *See* 20 C.F.R. §725.406(c). Finally, 20 C.F.R. §725.456(e) states:

> [I]f the ALJ determines that the complete pulmonary evaluation . . .or any part thereof, fails to comply with the applicable quality standards, or fails to address the relevant conditions of entitlement . . . in a manner which permits resolution of the claim, the [ALJ] shall, in his or her discretion, remand the claim to the district director with instructions to develop only such additional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence, before the termination of the hearing.

[10] Even assuming the ALJ erred in admitting Dr. Raj's report, any such error would be harmless, as he accorded Dr. Raj's report and testing "little weight" on the issue of total disability and further indicated his finding of total disability would remain the same even had he given Dr. Raj's opinion no weight. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 16; Director's Brief at 5 n.2.

20 C.F.R. §725.456(e).

Employer argues that Dr. Gallai's opinion, when considered in totality, addressed disability causation and was sufficient to fulfill the DOL's obligation to provide Claimant with a complete pulmonary evaluation and, therefore, that Claimant should not have received a new pulmonary evaluation by Dr. Green. Employer's Brief at 5-7 (unpaginated). We need not resolve this issue.

Even assuming Employer is correct that Dr. Gallai's opinion, after supplementation, addressed disability causation and was therefore sufficient to meet the DOL's obligations, it has not explained how the admission and consideration of Dr. Gallai's opinion, as opposed to Dr. Green's opinion,[11] would change the outcome of this case. It simply asserts that "when this error is corrected, the preponderance of the pulmonary function study and well-reasoned medical evidence demonstrates that the Claimant is not totally disabled." Employer's Brief at 7 (unpaginated). Based on the ALJ's findings regarding the medical evidence, we disagree.

The ALJ found total disability established by the pulmonary function studies, medical opinions, and when weighing the evidence together as a whole.[12] Decision and Order at 10, 16-17. Subtracting Dr. Green's report and testing and substituting Dr. Gallai's would not alter the ALJ's determination. While Dr. Gallai's pulmonary function study

[11] We reject Employer's argument that the admission of Dr. Green's report exceeded the limitations on the evidence the district director can submit when there is a responsible operator. Employer's Brief at 7 (unpaginated); 20 C.F.R. §725.414(a)(3)(iii). The ALJ clearly indicated that the admission of Dr. Green's evaluation was in lieu of Dr. Gallai's evaluation, so as not to violate the evidentiary limitations. 2020 Evidentiary Order at 4; Decision and Order at 2.

[12] The ALJ found the arterial blood gas studies did not establish total disability and there was no evidence of cor pulmonale with right-sided congestive heart failure. C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 6, 11. He also found Claimant did not establish complicated pneumoconiosis and thus could not invoke the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 26. The parties have not challenged these findings; thus, they are affirmed. *See Skrack*, 6 BLR at 1-711.

values were non-qualifying,[13] the three remaining, subsequent, reliable[14] studies yielded qualifying pre-bronchodilator values and the ALJ accorded greater weight to those values;[15] thus the evidence as the ALJ weighed it would still support a finding that the preponderance of the pulmonary function studies establish total disability. 20 C.F.R. §718.204(b)(2)(i); Director's Exhibits 16, 18; Claimant's Exhibits 1, 5; Decision and Order at 7-10.

As for the medical opinions, Dr. Gallai, like Dr. Green, found Claimant has a totally disabling respiratory impairment. Director's Exhibits 14 (excluded), 62 (portion excluded), 66. Employer does not challenge the ALJ's credibility findings regarding the remaining medical opinion evidence,[16] arguing only that Dr. Raj's opinion should not have

[13] A "qualifying" pulmonary function study yields results equal to or less than the applicable values contained in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i).

[14] The ALJ found Dr. Raj's May 3, 2018 pulmonary function study, which produced qualifying values both before and after bronchodilators, to be not sufficiently reliable to determine whether Claimant is totally disabled. Decision and Order at 9; Claimant's Exhibit 5.

[15] Employer does not challenge the ALJ's finding that the qualifying pre-bronchodilator pulmonary function study values warrant more weight than those taken after bronchodilators; thus, it is affirmed. *See Skrack*, 6 BLR at 1-711; 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980) (The Department of Labor has cautioned against reliance on post-bronchodilator results in determining total disability, stating "the use of a bronchodilator does not provide an adequate assessment of the miner's disability, [although] it may aid in determining the presence or absence of pneumoconiosis."); Decision and Order at 10.

[16] Dr. Rosenberg ultimately found Claimant totally disabled, a conclusion the ALJ found consistent with the weight of the pulmonary function study evidence, but the ALJ gave his opinion "little weight" due to his reliance on Dr. Raj's 2018 pulmonary function study that the ALJ found unreliable. Employer's Exhibits 16, 17; Decision and Order at 12-13. Similarly, Dr. Raj also found total disability, which the ALJ found was consistent with the pulmonary function study evidence, but the ALJ accorded his opinion "little weight" given he relied on an unreliable pulmonary function study and misunderstood the exertional requirements of Claimant's usual coal mine employment. Claimant's Exhibit 5; Director's Exhibit 66 at 188-89; Decision and Order at 14. Dr. Trice stated he did not find total disability, but also indicated that Claimant could not perform his usual coal mine employment. Claimant's Exhibit 1; Employer's Exhibit 6. The ALJ found his opinion undermined as equivocal and gave it "no weight." Decision and Order at 13. Dr. Dahhan originally opined Claimant is not totally disabled, based on post-bronchodilator pulmonary

been considered, an argument we rejected above. As such, regardless of whether Dr. Gallai's opinion or Dr. Green's opinion was admitted, there is no credited, contrary medical opinion evidence to undermine the disabling pulmonary function studies the ALJ credited. Decision and Order at 12-17. Therefore, assuming *arguendo* that Dr. Gallai's opinion rather than Dr. Green's opinion was admitted as the DOL-sponsored evaluation, the outcome regarding total disability would remain unchanged and would still permit invocation of the Section 411(c)(4) presumption. *Id.* at 17-18. Employer has provided no argument explaining how the evidence could be weighed to find otherwise. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

Moreover, once the Section 411(c)(4) presumption is invoked, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[17] or "no part of [his] respiratory or pulmonary disability was caused by pneumoconiosis as defined in [20] C.F.R. §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer did not rebut the presumption under either method. Decision and Order at 25, 30.

Again, even assuming, *arguendo*, that Dr. Gallai's opinion was considered rather than Dr. Green's opinion, both doctors opined that Claimant has legal pneumoconiosis and thus do not support Employer's rebuttal burden. Director's Exhibits 14 (excluded), 62 (portion excluded), 66; Employer's Exhibit 5. Employer relied on the opinions of Drs. Dahhan and Rosenberg to disprove legal pneumoconiosis. Director's Exhibits 16, 18; Employer's Exhibits 4, 9, 14-17, 19. However, the ALJ found their opinions inadequate to rebut the presumption, as neither offered a credible explanation as to why coal mine dust exposure did not contribute to or aggravate Claimant's disabling impairment. Decision

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function study values. Director's Exhibit 16; Employer's Exhibit 2, 9. After reviewing additional evidence, he noted Claimant's condition "deteriorated" but did not specify if that rendered him totally disabled. Employer's Exhibits 14, 19; Decision and Order at 16. Thus, the ALJ provided Dr. Dahhan's opinion "no weight" as equivocal. Decision and Order at 16.

[17] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

and Order at 27-29. Employer does not contest these credibility findings; thus, they are affirmed.[18] *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Similarly, Employer does not argue that either Dr. Gallai's or Dr. Green's opinion would support its burden to rebut disability causation, contest the ALJ's discrediting of its experts' opinions on the issue, or explain how substituting Dr. Green's opinion with Dr. Gallai's opinion would result in a different outcome. Thus, we also affirm the ALJ's findings that the evidence is insufficient to rebut disability causation. *See Shinseki*, 556 U.S. at 413; *Skrack*, 6 BLR at 1-711.

Based on the foregoing, we find error, if any, in the ALJ's finding that Dr. Green's report should be considered the DOL-sponsored examination rather than Dr. Gallai's opinion would be harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). As addressed above, Employer has not challenged the ALJ's findings on the merits other than generally arguing his evidentiary rulings undermine his findings; thus, we affirm the ALJ's award of benefits. 30 U.S.C. §921(c)(4); Decision and Order at 30.

Commencement Date for Benefits

Finally, Employer challenges the ALJ's determination that Claimant's benefits should commence in November 2012, arguing he is not entitled to benefits until at least May 2018. Employer's Brief at 10 (unpaginated).

The commencement date for benefits is the month in which Claimant became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503(b); *see Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182 (1989). If that date is not ascertainable, benefits commence the month the claim was filed, unless evidence the ALJ credits establishes Claimant was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *see Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990).

The ALJ found the record does not establish when Claimant became totally disabled due to pneumoconiosis and awarded benefits commencing November 2012, the month the claim was filed. Decision and Order at 31. He indicated that Claimant's May 10, 2013 pulmonary function study yielded qualifying values and there is no evidence that he was not disabled after filing his claim. *Id.*

[18] The failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Thus, we need not address any potential errors in the ALJ's findings regarding clinical pneumoconiosis.

Employer argues Claimant is not entitled to benefits prior to Dr. Dahhan's and Dr. Rosenberg's May 2013 evaluations, as neither found Claimant totally disabled. Employer's Brief at 10 (unpaginated). However, the ALJ did not credit these opinions, but found the pulmonary function studies the doctors obtained in their examinations supported total disability. Decision and Order at 7-17. The onset date is not established by the first medical evidence of record indicating total disability, as such medical evidence only shows Claimant became totally disabled at an earlier time. *See Owens*, 14 BLR at 1-50; *Merashoff v. Consolidation Coal Co.*, 8 BLR 1-105, 1-109 (1985).

Because the ALJ's finding that the medical evidence does not reflect the date Claimant became totally disabled due to pneumoconiosis is supported by substantial evidence, we affirm the ALJ's conclusion that benefits commence November 2012, the month in which Claimant filed his claim. 20 C.F.R. §725.503(b); *Owens*, 14 BLR at 1-49; Decision and Order at 31.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring:

I concur with my colleagues, for the reasons outlined in the majority, that any errors committed by the ALJ ultimately were harmless. Therefore, I concur in the result.

JUDITH S. BOGGS
Administrative Appeals Judge