



BRB No. 23-0433 BLA

RAYMOND SIMPSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BLUESTONE INDUSTRIES	)	
	)	DATE ISSUED: 07/17/2024
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Granting Benefits of Dierdra M. Howard, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Dierdra M. Howard's Decision and Order Granting Benefits (2022-BLA-05336) rendered on a claim filed on February 25, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Bluestone Industries is the responsible operator and Brickstreet Mutual Insurance Company, Inc., is the liable carrier. On the merits of entitlement, the

ALJ accepted the parties' stipulation that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3).<sup>1</sup> She thus awarded benefits.

On appeal, Claimant argues the ALJ erred in determining the commencement date for benefits. Neither Employer nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The Benefits Review 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.<sup>2</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

The date for the commencement of benefits is the month in which the miner 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 the date is not ascertainable, benefits commence the month the claim was filed, unless evidence the ALJ credits establishes the miner was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65, 1-68-69 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-51 (1990). When a miner suffers from complicated pneumoconiosis, the ALJ must consider whether the evidence establishes the onset date of the disease. *See Williams v. Director, OWCP*, 13 BLR 1-28, 1-30 (1989); *Truitt v. North American Coal Corp.*, 2 BLR 1-199, 1-204 (1979); 20 C.F.R. §718.304.

The ALJ found the record does not establish when Claimant first became disabled due to pneumoconiosis and there is no evidence Claimant was not totally disabled at any

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<sup>1</sup> Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more large 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; or (c) when diagnosed by other means is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

<sup>2</sup> The Board will apply the law of the United States Court of Appeals for the Third Circuit because Claimant performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Tr. at 20-21, 34.

time after he filed his claim. Decision and Order at 8. Thus she found benefits commence the month the claim was filed, February 2020. *Id.*

Claimant argues benefits should commence in October 2011 because the October 26, 2011 biopsy is the earliest credible evidence he has complicated pneumoconiosis. Claimant's Brief at 5-7. We agree.

The record contains six readings of six x-rays, six readings of five computed tomography (CT) readings, one biopsy report, and one medical opinion. Director's Exhibits 12; 19; 20. Two-rays and a CT-guided biopsy were conducted on October 26, 2011, and a follow-up x-ray was conducted October 27, 2011. Director's Exhibit 20 at 289-92. All three x-rays and the biopsy identified complicated pneumoconiosis. *Id.* The remaining three x-rays dated September 14, 2016, October 1, 2018, and September 9, 2020 were also read as positive for complicated pneumoconiosis. Director's Exhibits 12 at 19; 20 at 12, 28. All the interpretations of the five CT scans dated January 8, 2013, July 8, 2013, July 30, 2014, February 4, 2015, and October 13, 2018 were positive for complicated pneumoconiosis. Director's Exhibits 19 at 2; 20 at 14, 90, 97, 103, 206. Finally, Dr. Holt opined Claimant has pneumoconiosis consistent with his history, exam, and diagnostics. Director's Exhibit 12 at 6.

Before the district director, Employer argued the October 26, 2011 biopsy report is the earliest diagnosis of complicated pneumoconiosis. Director's Exhibit 56 at 1. It then stipulated to complicated pneumoconiosis before the ALJ, and the ALJ accepted that stipulation. Decision and Order at 4; Hearing Tr. at 10-12.

The ALJ's analysis in this case constitutes error, as she failed to determine whether Claimant established the onset date of complicated pneumoconiosis and thus an earlier benefits commencement date. *See Williams*, 13 BLR at 1-30; *Truitt*, 2 BLR at 1-204; 20 C.F.R. §718.304; Decision and Order at 8. Notwithstanding the ALJ's error, the facts of this case do not mandate a remand for further consideration of this issue because the ALJ rendered the necessary findings. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 187 (4th Cir. 2014); *Youghioghney & Ohio Coal Co. v. Webb*, 49 F.3d 244, 249 (6th Cir. 1995) ("If the outcome of a remand is foreordained, we need not order one."); *Sahara Coal Co. v. Director, OWCP [McNew]*, 946 F.2d 554, 558 (7th Cir. 1991). As discussed above, both parties agree the October 26, 2011 biopsy report is the earliest credible diagnosis of complicated pneumoconiosis, there is no contrary evidence of record, and the ALJ accepted the parties' stipulation that Claimant has complicated pneumoconiosis. Decision and Order at 8; Claimant's Brief at 5-7; Director's Exhibit 56. Thus we conclude October 2011 is the correct commencement date for benefits and modify the ALJ's commencement date determination accordingly. *Williams*, 13 BLR at 1-30; 20 C.F.R. §725.503(b).

Accordingly, the Decision and Order Granting Benefits is affirmed, as modified to reflect a commencement date of October 2011 for the payment of benefits.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge