

PART II
DEFINITIONS

K. CHRONIC DISEASE OR RESPIRATORY IMPAIRMENT

The Board has defined a "chronic" disease for purposes of the presumptions contained in Section 411(c)(2) and (c)(4) of the Act, 30 U.S.C. §921(c)(2), (4), as one that persists "over a long period of time." A "long period" is deemed to be twelve months or more. *Pyle v. Allegheny River Mining Co.*, 2 BLR 1-1143, 1-1149 (1981); see also 20 C.F.R. §410.412(a)(2); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 2 BLR 2-38, 2-42 n.3 (4th Cir. 1980).

In *Pyle, supra*, the Board held that lung cancer is a chronic lung disease. *Pyle, supra* at 1-1147, 1-1149. The Board has since overruled *Pyle* to the extent it held that lung cancer always constitutes a "chronic" disease. *Hunter v. Director, OWCP*, 8 BLR 1-120, 1-122 (1985), *aff'd*, 803 F.2d 800, 9 BLR 2-140 (4th Cir. 1986). The Board and the Fourth Circuit in *Hunter* stated that the determination of whether lung cancer is a "chronic" disease is a question of fact to be decided on a case-by-case basis, and that here claimant had failed to meet this burden. 9 BLR at 2-149, 8 BLR at 1-122. The Sixth Circuit also followed the Board's holding in *Hunter* noting that it is claimant's burden to establish that his lung cancer is a chronic lung disease under 20 C.F.R. §410.462, implementing 30 U.S.C. §921(c)(2). *Tackett v. Benefits Review Board*, 806 F.2d 640, 10 BLR 2-93, 2-95 (6th Cir. 1986).

CASE LISTINGS

DIGESTS

The Board affirmed the administrative law judge's finding under 20 C.F.R. §718.303(a) that the Director had established rebuttal through a medical report diagnosing "no evidence of disability due to a respiratory impairment or that a chronic respiratory impairment such as pneumoconiosis either caused or was [a] contributing factor to the miner's death." *Bury v. Director, OWCP*, 9 BLR 1-79, 1-80 (1986).

While claimant's burden under 20 C.F.R. §718.303 differs from his burden under 20 C.F.R. §410.462 in that under Section 718.303 claimant must establish ten years coal

mine employment and that the miner died from a respirable disease, the Board affirmed the administrative law judge's finding that invocation was not established under Section 718.303(a). ***Beard v. Director, OWCP***, 10 BLR 1-82 (1987), *aff'd*, 856 F.2d 192 (6th Cir. 1988)(table); see also ***Smith v. Camco Mining, Inc.***, 13 BLR 1-17 (1989).

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