

PART III

PROCEDURAL ISSUES

H. COMMENCEMENT OF BENEFITS

2. THE EFFECT OF CONTINUED EMPLOYMENT

Claimant is not entitled to receive benefits during periods of coal mine employment or comparable and gainful work. 20 C.F.R. §725.503A; see **Owens v. Jewell Smokeless Coal Corporation**, 14 BLR 1-47 (1990)[where miner continues to work after filing a claim for benefits, but ceases to work prior to a finding of entitlement, the miner's benefits commence on the first day of the month he ceases working]; **Donadi v. Director, OWCP**, 12 BLR 1-166 (1989), *aff'd on recon.*, 13 BLR 1-24 (1989); **Williams v. Director, OWCP**, 13 BLR 1-28 (1989); **Hall v. Director, OWCP**, 7 BLR 1-696 (1985); see also **Green v. Director, OWCP**, 790 F.2d 1118, 9 BLR 2-32 (4th Cir. 1986)[Court held that the administrative law judge must determine whether claimant's continued part-time employment constituted comparable and gainful work which would preclude his entitlement to benefits during the duration of that employment]; **McFarland v. Peabody Coal Co.**, 8 BLR 1-163 (1985)[continued coal mine employment precluded entitlement to benefits until the miner's retirement]; **Remo v. Director, OWCP**, 6 BLR 1-856 (1984)[commencement of benefits would be determined by the date of claimant's retirement from coal mine employment rather than the filing date where conflicting evidence does not establish the onset date]; **Lewis v. Pittsburg & Midway Coal Co.**, 6 BLR 1-643 (1983)[remand for adjudicator to consider whether claimant's sawmill work was comparable and gainful work].

CASE LISTINGS

[where miner out of work on sick leave, still employed in coal mine work until retirement, and benefits could not commence until month of retirement] **Shaw v. Bradford Coal Co.**, 7 BLR 1-462 (1984); **Gray v. Barnes and Tucker Co.**, 4 BLR 1-635 (1982).

DIGESTS

Continued employment does not preclude the commencement of benefits where claimant has shown the existence of complicated pneumoconiosis pursuant to Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); **Williams v. Director, OWCP**, 13 BLR 1-28 (1989); **Ball v. Jewell Coal & Coke Co.**, 6 BLR 1-693, 1-696 (1983).

The Seventh Circuit affirmed the administrative law judge's award of benefits under 20 C.F.R. Part 727. The Seventh Circuit held that the administrative law judge, in finding invocation under 20 C.F.R. §727.203(a)(1), permissibly accorded greater weight to the x-ray readings rendered by physicians with superior radiological credentials. The Seventh Circuit also held that the administrative law judge, in finding that employer failed to establish rebuttal under 20 C.F.R. §727.203(b)(3), permissibly discounted Dr. Tuteur's opinion on disability causation because Dr. Tuteur did not believe that the miner had pneumoconiosis, and permissibly found Dr. Myers' opinion to be too equivocal to carry employer's burden. The Seventh Circuit reversed the administrative law judge's onset determination based on the date of filing pursuant to 20 C.F.R. §725.503, and held that where, as in the instant case, the miner temporarily returns to work subsequent to the date of filing, the proper course is to award benefits suspended during the period of coal mine employment pursuant to 20 C.F.R. §725.503A (now codified at 20 C.F.R. §725.504). The Seventh Circuit rejected employer's argument that the sixteen-year delay in adjudicating this claim deprived employer of its right to due process. The court noted that employer received notice of, and participated in, all proceedings since the 1978 filing of the claim. Further, the court detected no prejudice to employer despite this delay. ***Amax Coal Co. v. Director, OWCP [Chubb]***, F.3d , 2002 WL 31730841 (7th Cir., Dec. 6, 2002).

01/03