PART IV

ADMINISTRATIVE PROCESSING OF CLAIMS, POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE

D. EVALUATION AND WEIGHING OF EVIDENCE

2. ELEMENTS OF ENTITLEMENT

e. Cause of Disability and Pneumoconiosis

In determining the etiology of a miner's respiratory impairment or pneumoconiosis, the administrative law judge must consider and weigh all relevant evidence. Medical opinions that fail to establish whether the total disability was due to respiratory or non-respiratory causes or some combination of both may be held insufficient to establish total disability due to pneumoconiosis. ***Centak v. Director, OWCP***, 6 BLR 1-1072 (1984). An opinion on the etiology of a miner's emphysema that is based on general medical studies rather than the particular circumstances of the miner's condition may also be rejected. *See generally* ***Sainz v. Kaiser Steel Corp.***, 5 BLR 1-758, 1-762 (1983), *aff'd sub nom.* ***Kaiser Steel Corp. v. Director, OWCP***, 748 F.2d 1426, 7 BLR 2-84 (10th Cir. 1984).

The administrative law judge may properly consider the total picture of the miner's circumstances when evaluating the probative value of medical opinions. S/he may discredit reports that fail to account for, or adequately consider the significance of, a lengthy smoking history while attributing respiratory impairment to coal mine employment. ***Bobick v. Saginaw Mining Co.***, 13 BLR 1-52 (1988); ***Stark v. Director, OWCP***, 9 BLR 1-36 (1986); ***Maypray v. Island Creek Coal Co.***, 7 BLR 1-683 (1985). The adjudicator may also reject an opinion on causation where the physician failed to account for significant non-coal mine work under dusty conditions. *See*, *e.g.*, ***Tucker v. Director, OWCP***, 10 BLR 1-35 (1987); ***Long v. Director, OWCP***, 7 BLR 1-254 (1984); ***Collura v. Director, OWCP***, 6 BLR 1-100 (1983). Similarly, a physician's unfamiliarity with the miner's employment duties, or other medical conditions may provide reason for giving the physician's opinion as to cause of disability less weight. *See* ***Clark v. Karst-Robbins Coal Co.***, 12 BLR 1-149 (1989)(en banc); ***Cooper v. United States Steel Corp.***, 7 BLR 1-842 (1985); ***Markatan v. Jones & Laughlin Steel Corp.***, 6 BLR 1-940 (1984).

A physician's conclusion based on an erroneous assumption regarding length of coal mine employment may properly be accorded less weight. ***Long v. Director, OWCP***, 7 BLR 1-254 (1984); ***Hunt v. Director, OWCP***, 7 BLR 1-709 (1985); ***Crosson***

v. Director OWCP, 6 BLR 1-809 (1984); ***Maggard v. Director, OWCP***, 6 BLR 1-285 (1983); *cf*. ***McMath v. Director, OWCP***, 12 BLR 1-6 (1988); ***Smith v. Director, OWCP***, 12 BLR 1-156 (1989); ***Hucker v. Consolidation Coal Co.***, 9 BLR 1-137 (1986); ***Rickey v. Director, OWCP***, 7 BLR 1-106 (1984); ***Baker v. Director, OWCP***, 6 BLR 1-976 (1984). Likewise, an opinion based upon an incorrect or inaccurate knowledge of the miner's overall work history may also be discounted. *See* ***Piniansky v. Director, OWCP***, 7 BLR 1-171 (1984).

An opinion as to the etiology of respiratory impairment must be expressed in a sufficiently clear and definite manner in order to be persuasive evidence of causation. Where an opinion on causation is qualified and uncertain, it may rationally be discredited. ***Justice v. Island Creek Coal Co.***, 11 BLR 1-91 (1988); ***Campbell v. Director, OWCP***, 11 BLR 1-16 (1987); ***Carpeta v. Mathies Coal Co.***, 7 BLR 1-145 (1984).

An administrative law judge has the discretion to reject a causation opinion expressed only by check mark. *See*, *e.g.*, ***Perry v. Director, OWCP***, 9 BLR 1-1 (1986); ***Bray v. Director, OWCP***, 6 BLR 1-400 (1983); ***Crosson v. Director, OWCP***, 6 BLR 1-809 (1984); *cf.* ***Hall v. Director, OWCP***, 12 BLR 1-133 (1989), *modified on recon.*, 14 BLR 1-1 (1989); ***Crytser v. Christopher Coal Co.***, 6 BLR 1-518 (1983).

Finally, the issue of whether claimant's disability arose from coal mine employment is primarily a medical determination, and accordingly, must be supported by medical evidence. ***Salyers v. Director, OWCP***, 12 BLR 1-193 (1989); ***Cooper v. United States Steel Corp.***, 7 BLR 1-842 (1985).

CASE LISTINGS

[lay testimony not enough to prove causation where only medical evidence of record does not link pulmonary impairment to coal mine employment] ***Robinson v. Director, OWCP***, 3 BLR 1-798.5 (1981).

[adjudicator's speculation that respiratory impairment could have been caused by post coal-mine work rejected as not supported by medical evidence] ***Tollis v. Director, OWCP***, 5 BLR 1-320 (1982).

[proper to consider employment history regarding causality where record contains evidence of occupational exposure in non-coal mine employment that could account for respiratory problems] ***Howell v. Director, OWCP***, 6 BLR 1-504 (1983).

[adjudicator properly rejected medical finding that pulmonary disease arose out of coal mine employment in view of the miner's smoking history, brief period of coal mine employment and interval between onset of chest disease and that employment]

Mullins v. Director, OWCP, 6 BLR 1-508 (1983).

[equivocal medical opinion on causation may properly be accorded no weight by adjudicator] ***Spradlin v. Island Creek Coal Co.***, 6 BLR 1-716 (1984); *see* ***Justice v. Island Creek Coal Co.***, 11 BLR 1-91 (1988); ***Campbell v. Director, OWCP***, 11 BLR 1-16 (1987); ***Carpeta v. Mathies Coal Co.***, 7 BLR 1-145 (1984).

[adjudicator properly discredited medical opinions of causation where based on incorrect length of coal mine employment and missing critical information as to medical and work history] ***Crosson v. Director, OWCP***, 6 BLR 1-809 (1984).

[fact-finder reasonably found that doctor unfamiliar with miner's employment duties could not render reliable opinion relating pathological findings and work duties to determine causation] ***Markatan v. Jones and Laughlin Steel Corp.***, 6 BLR 1-940 (1984).

[adjudicator erroneously refused to credit a medical opinion regarding the cause of claimant's pneumoconiosis where the opinion was based on an employer's letter that claimant's non-coal mine formica work entailed no harmful exposure] ***Hall v. Director, OWCP***, 6 BLR 1-952 (1984)(Clark, J., dissenting).

[adjudicator may properly find doctor's incorrect assumption of length of coal mine employment does not detract from credibility in linking pneumoconiosis and emphysema to this employment, especially in absence of contrary evidence] ***Baker v. Director, OWCP***, 6 BLR 1-976 (1984).

[adjudicator properly found medical report that did not establish whether total disability due to respiratory or non-respiratory causes was insufficient to prove causation] ***Centak v. Director, OWCP***, 6 BLR 1-1072 (1984).

[adjudicator properly credited causality opinion despite discrepancy between doctor's assumption of ten years of coal mine employment and finding of six years as it was only "small difference"] ***O'Neal v. Director, OWCP***, 6 BLR 1-1132 (1984).

[evidence that mine accident, resulting in 75 percent workers' compensation award, may have caused disability insufficient for subsection (b)(2) rebuttal as it only demonstrates possibility of multiple causes, and does not exclude pulmonary or respiratory impairment] ***Inman v. Peabody Coal Co.***, 6 BLR 1-1249 (1984).

[where medical diagnoses contained in record, fact-finder may not speculate regarding causation based on claimant's testimony concerning breathing problems] ***Foster v. National Mines Corp.***, 6 BLR 1-1255 (1984).

[work history valuable tool in determining etiology of impairment; fact-finder, believing in

"synergistic" relationship between smoking and coal dust exposure, erred in rejecting medical opinion that smoking caused impairment where record contained no evidence of synergistic relationship] ***Hall v. Consolidation Coal Co.***, 6 BLR 1-1306 (1984).

[adjudicator erroneously concluded "disability of the miner and the cause of death arose from a combination of coronary and cerebralvascular [sic] problems" because determination of causation not supported by medical evidence] ***Stritz v. Director, OWCP***, 7 BLR 1-9 (1984).

[discrepancy between six or seven years of coal mine employment as found by adjudicator and eleven years assumed by doctor not so significant that it would clearly affect the weight given that causality opinion] ***Rickey v. Director, OWCP***, 7 BLR 1-106 (1984).

[adjudicator properly rejected opinions regarding causation based on inaccurate work histories where doctor failed to mention 28 years exposure to freon gas and acetylene torch fumes] ***Piniansky v. Director, OWCP***, 7 BLR 1-171 (1984).

[adjudicator properly found causality where one doctor unsure but two other doctors unequivocally found coal mine employment was the cause] ***Saunders v. Director, OWCP***, 7 BLR 1-186 (1984).

[adjudicator's inference that post-mining exposure to industrial pollutants is exclusive and intervening source of his disability is improper where doctor diagnoses pneumoconiosis and also indicates afflictions with numerous respiratory diseases arising from several sources] ***Burt v. Director, OWCP***, 7 BLR 1-197 (1984).

[adjudicator properly found no causation where medical reports attributed disability to other sources, stated disability was not related to coal mine employment, or were silent on issue of causation] ***Chancey v. Consolidation Coal Co.***, 7 BLR 1-240 (1984).

[potential causative factors of respiratory impairment other than coal mine employment or discrepancy between doctor's assumption of length of covered employment and adjudicator's finding may affect weight to be given regarding causality in assessing credibility of medical opinion] ***Long v. Director, OWCP***, 7 BLR 1-254 (1984).

[claimant's testimony cannot support causality finding where it could have arisen from other sources of irritants] ***Jones v. Director, OWCP***, 7 BLR 1-279 (1984); ***Long v. Director, OWCP***, 7 BLR 1-254 (1984); ***Collura v. Director, OWCP***, 6 BLR 1-100 (1983).

[adjudicator properly discredited reports of examining physicians who failed to consider significance of thirty-year history of cigarette smoking in attributing impairment to coal mine employment] ***Maypray v. Island Creek Coal Co.***, 7 BLR 1-683 (1985).

[may properly reject opinion relevant to causality where based on incorrect assumption of length of coal mine employment] ***Hunt v. Director, OWCP***, 7 BLR 1-709 (1985); ***Maggard v. Director, OWCP***, 6 BLR 1-285 (1983).

[determination whether disability arose from coal mine employment primarily medical determination that must be supported by medical evidence] ***Cooper v. United States Steel Corp.***, 7 BLR 1-842 (1985).

[adjudicator properly discredited medical opinion of totally disabling coal workers' pneumoconiosis based on eighteen year period of hauling coal for which claimant received no credit] ***Oggero v. Director, OWCP***, 7 BLR 1-860 (1985); *see also* ***Long v. Director, OWCP***, 7 BLR 1-254 (1984).

[adjudicator must consider non-covered coal dust exposure when determining causality] ***Hutchens v. Director, OWCP***, 8 BLR 1-16 (1985).

[adjudicator may rationally conclude that pneumoconiosis did not arise out of coal mine employment where twelve years of a total of seventeen years, five months, of coal dust exposure took place in non-coal mine employment] ***Foster v. Director, OWCP***, 8 BLR 1-188 (1985).

[fact-finder cannot reject medical opinions concerning etiology of respiratory impairment merely because based in part on negative x-ray when x-ray evidence is not overwhelmingly positive] ***Moore v. Dixie Pine Coal Co.***, 8 BLR 1-334 (1985).

DIGESTS

The Board held that where the administrative law judge had properly credited a physician's diagnosis of pneumoconiosis, the administrative law judge did not err in rejecting another physician's opinion on causation because its underlying premise, that the miner did not have pneumoconiosis, was inaccurate. ***Trujillo v. Kaiser Steel Corp.***, 8 BLR 1-472 (1986).

The Board affirmed the administrative law judge's finding that claimant, with fewer than ten years coal mine employment, failed to prove by competent evidence that his pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(c). The administrative law judge rationally gave little weight to claimant's testimony because he believed claimant exaggerated the amount of dust exposure in his coal mine employment and minimized it in his twenty years construction work. The administrative law judge also rationally credited the better reasoned and documented medical opinion which diagnosed conditions unrelated to coal mine employment. ***Stark***

v. Director, OWCP, 9 BLR 1-36 (1986).

Administrative law judge improperly substituted her opinion for that of a physician when the administrative law judge rejected doctor's report because it was based in part on doctor's view that claimant's 7.5 years of exposure to coal dust was short and she did not believe that 7.5 years was short. ***Hucker v. Consolidation Coal Co.***, 9 BLR 1-137 (1986).

Administrative law judge improperly rejected doctor's opinion based on discrepancy in length of coal mine employment as there was no significant difference between either the 7.5 years, or the 7 years, 5 months, found by the administrative law judge and the 7 years relied upon by the doctor. ***Hucker v. Consolidation Coal Co.***, 9 BLR 1-137 (1986).

Administrative law judge erred in concluding that claimant proved that his pneumoconiosis arose out of coal mine employment as the record contains no medical evidence relating claimant's pneumoconiosis to dust exposure during coal mine employment and the administrative law judge could not reasonably infer a relationship based merely upon claimant's employment history. ***Baumgartner v. Director, OWCP***, 9 BLR 1-65 (1986).

Administrative law judge erred in finding that claimant established totally disabling pneumoconiosis since the only medical report of record attributes claimant's disability to heart disease. ***Baumgartner v. Director, OWCP***, 9 BLR 1-65 (1986).

Administrative law judge incorrectly held that single medical report diagnosing total disability was insufficient to establish total disability because of the existence in the record of contrary probative evidence. Rather, all evidence relevant to the question of total disability due to pneumoconiosis is to be weighed, with claimant bearing the burden of establishing this element by a preponderance of the evidence. ***Mazgaj v. Valley Camp Coal Co.***, 9 BLR 1-201 (1986).

The Sixth Circuit held that, in a survivor's case, lay evidence alone may be sufficient to support a finding of a totally disabling respiratory impairment. ***Rapier v. Secretary of Health and Human Services***, 808 F.2d 456, 9 BLR 2-191 (6th Cir. 1986); *see also* ***Dobbins v. Schweiker***, 641 F.2d 1354, 3 BLR 2-9 (9th Cir. 1981).

Remand was required where administrative law judge failed to discuss medical opinion, which if fully credited, could constitute competent evidence to establish causal nexus pursuant to Section 718.203(c). ***Tucker v. Director, OWCP***, 10 BLR 1-35 (1987).

Administrative law judge acted within his discretion in rejecting doctor's reports as doubtful and insufficient to support a finding that claimant's pneumoconiosis arose out of coal mine employment. ***Campbell v. Director, OWCP***, 11 BLR 1-16 (1987).

Administrative law judge could properly discredit doctor's opinion regarding causation due to its equivocal nature. ***Justice v. Island Creek Coal Co.***, 11 BLR 1-91 (1988).

Disparity of 4 years in length of coal mine employment credited by administrative law judge and that relied upon by physician not so significant as to affect weight given to the physician's report. ***McMath v. Director, OWCP***, 12 BLR 1-6 (1988).

Administrative law judge's failure to note and discuss physician's assumption of 14 years of coal mine employment, as opposed to his own finding of 8.25 years, is harmless in this case, as there is no evidence in the record to suggest any causal factors other than coal dust exposure in the development of claimant's respiratory impairment. ***Smith v. Director, OWCP***, 12 BLR 1-156 (1989).

Administrative law judge did not err by finding that claimant had not established that pneumoconiosis caused his total respiratory disability under Section 718.204 based on one doctor's report which specifically stated that claimant's condition was not due to his coal mine employment and on the other doctor's report which did not attribute claimant's total respiratory disability solely to coal workers' pneumoconiosis in view of the additional diagnosis of status post-laryngectomy. ***Salyers v. Director, OWCP***, 12 BLR 1-193 (1989).

Administrative law judge did not err by failing to credit claimant's lay testimony since the administrative law judge properly discredited the only medical evidence of record which could have established claimant's burden of proving that pneumoconiosis caused his total respiratory disability under Section 718.204. The uncorroborated lay evidence therefore may not satisfy claimant's burden of proof on this issue. ***Salyers v. Director, OWCP***, 12 BLR 1-193 (1989).

Administrative law judge properly finds medical report less persuasive in view of a significant discrepancy between the smoking history relied upon in the medical report and that to which claimant testified at the hearing. ***Bobick v. Saginaw Mining Co.***, 13 BLR 1-52 (1988).

In an *en banc* decision, the majority held that the administrative law judge properly determined that the biopsy findings, which include diagnoses of “subpleural fibrosis with anthracosis” and “perivascular anthracosis,” with associated disease process, fall within the regulatory definition of “pneumoconiosis” provided at 20 C.F.R. §718.201, notwithstanding the fact that there is no medical evidence linking these diagnoses to claimant’s coal mine employment. The majority thereby adopted the Director’s position that the etiology of claimant’s conditions diagnosed on biopsy is properly considered not pursuant to the regulation at 20 C.F.R. §718.202(a), but pursuant to the regulation at 20 C.F.R. §718.203. The majority also held that the administrative law judge’s determination that the biopsy findings support a finding of the existence of

pneumoconiosis, is consistent with the decision of the United States Court of Appeals for the Fourth Circuit in ***Clinchfield Coal Co. v. Fuller***, 180 F.3d 622, 21 BLR 2-654 (4th Cir. 1999). ***Hapney v. Peabody Coal Co.****, 22* BLR 1-104 (2001)(*en banc*)(SMITH and DOLDER, Administrative Appeals Judges, dissenting in part and concurring in part).

Judges Smith and Dolder, for the minority, agreed with employer's contention that the administrative law judge committed reversible error in determining that the biopsy findings establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(2). In the absence of any medical evidence affirmatively linking the biopsy findings with claimant's coal mine employment, the diagnoses of "anthracosis" cannot constitute "pneumoconiosis" within the meaning of the Act and implementing regulations. 30 U.S.C. §902(b); 20 C.F.R. §§718.201, 718.202(a), (a)(1) and (b). The minority thus indicated that the Director's interpretation of the regulations, namely that the etiology of claimant's conditions diagnosed on biopsy is properly considered not pursuant to the regulation at 20 C.F.R. §718.202(a) but pursuant to the regulation at 20 C.F.R. §718.203, is not reasonable in this instance and does not merit the deference accorded it by the majority. The minority disagreed with the majority's conclusion that the administrative law judge's finding, that the diagnoses of "anthracosis" made on biopsy support a finding of the existence of pneumoconiosis, is supported by the Fourth Circuit's decision in ***Fuller***, as the court did not reach the issue *sub judice*. ***Hapney v. Peabody Coal Co.****, 22* BLR 1-104 (2001)(*en banc*)(SMITH and DOLDER, Administrative Appeals Judges, dissenting in part and concurring in part).

Where a physician explained that both pneumoconiosis and cigarette smoke are known to cause the type of airflow limitation detected in the miner's lungs, and stated that the miner's totally disabling respiratory impairment was due to both twenty-five years of coal dust exposure and twenty-nine years of smoking, substantial evidence supported the administrative law judge's finding that the physician gave a well-reasoned opinion that the miner was totally disabled due to pneumoconiosis pursuant to revised 20 C.F.R. §718.204(c). ***Gross v. Dominion Coal Corp.***, 23 BLR 1-8 (2003).

A physician's unequivocal opinion that pneumoconiosis was one of the two causes of the miner's totally disabling respiratory impairment was legally sufficient to establish that pneumoconiosis was a "substantially contributing cause" of the miner's total disability pursuant to revised 20 C.F.R. §718.204(c). ***Gross v. Dominion Coal Corp.***, 23 BLR 1-8 (2003).

The Seventh Circuit held that the administrative law judge properly determined claimant's testimony about his coal mine employment to be credible, finding that claimant was regularly exposed to coal mine dust for thirteen and one-quarter years and thus was entitled to the presumption provided at 20 C.F.R. §718.203(b) that his pneumoconiosis arose out of coal mine employment. The Seventh Circuit rejected employer's argument that claimant's testimony that he could distinguish between coal

and concrete dust, was incredible and unscientific, as employer cited to "no authority for the proposition that only scientific evidence is admissible to prove exposure to coal dust." ***Roberts & Schaefer Co. v. Director, OWCP* [*Williams*]**, 400 F.3d 992, 23 BLR 2-302 (7th Cir. 2005).

The Board held that the "differential diagnosis test," enunciated by the United States Court of Appeals for the Sixth Circuit in ***Best v. Lowe's Home Centers, Inc.***, 563 F.3d 171 (6th Cir. 2009), is neither applicable under the facts of this case, nor does it present a new standard for evaluating disability causation opinions in black lung cases. The Board noted that, in ***Best***, the court adopted the "differential diagnosis test" for evaluating the admissibility, reliability and probative value of medical expert testimony under Rule 702 of the Federal Rules of Evidence. However, the Federal Rules of Evidence do not apply to administrative proceedings, unless specifically provided by statute or regulation. ***Stover v. Peabody Coal Co.***, BLR (2010) (*en banc* Decision and Order on Recon.).

The United States Court of Appeals for the Tenth Circuit vacated a denial of benefits, holding that the administrative law judge's mere statement that the evidence was "evenly balanced and should receive equal weight" failed to discharge his duty under the Administrative Procedure Act to explain, on scientific grounds, why a conclusion could not be reached as to the existence of legal pneumoconiosis. The court noted that with regard to disputes concerning the existence of legal pneumoconiosis and causes of pneumoconiosis, the administrative law judge has the benefit of a substantial inquiry by the Department of Labor to help resolve the conflict in the evidence. ***Gunderson v. United States Department of Labor***, 601 F.3d 1013, BLR (10th Cir. 2010) (O'Brien, J., dissenting), *citing* ***Stalcup v. Peabody Coal Co.***, 477 F.3d 482, 24 BLR 2-33 (7th Cir. 2007).

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