PART IV

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

D. EVALUATION AND WEIGHING OF EVIDENCE

4. MEDICAL REPORTS

d. Opinions in Conflict with the Spirit of the Act

The administrative law judge may reject the opinion of a physician whose basic medical assumptions are contrary to or in conflict with the spirit and purposes of the Act. ***Wetherill v. Green Construction Co.***, 5 BLR 1-248, 1-252 (1982); ***Smaroff v. Bethlehem Mines Corp.***, 2 BLR 1-33, 1-38 (1979). A medical report is deemed contrary to the spirit of the Act if the doctor forecloses all possibility that simple pneumoconiosis can be totally disabling. ***Searls v. Southern Ohio Coal Co.***, 11 BLR 1-161 (1988); ***Butela v. United States Steel Corp.***, 8 BLR 1-48 (1985). Where a physician's opinion is in conflict with the Act, the Board will consider the opinion invalid only with respect to issues involving cause of disability. Such opinions are generally not invalid when they address the extent of respiratory disability or the presence of pneumoconiosis. *See e.g.*, ***Aimone v. Morrison Knudson Co.***, 8 BLR 1-32 (1985); ***Capers v. The Youghiogheny and Ohio Coal Co.***, 6 BLR 1-1234 (1984).

CASE LISTINGS

[physician's statement that reading of pneumoconiosis 1/0q by itself would not indicate disability or impairment due to breathing problem not contrary to spirit of Act as simply indicates x-rays not diagnostic of impairment] ***Sherry v. Tesone Coal Co.***, 4 BLR 1-377, 1-383 (1982) *aff'd mem*. 696 F.2d 985 (3d Cir. 1982).

[opinion based in part on qualifying test used to establish rebuttal not contrary to spirit of Act] ***Kozele v. Rochester and Pittsburgh Coal Co.***, 6 BLR 1-378 (1983).

[doctor's statement that "non-smoking miners rarely develop significant obstructive lung disease" not necessarily contrary to spirit of Act for subsection (b)(2) rebuttal] ***Chach v. Harmar Coal Co.***, 6 BLR 1-493 (1983).

[doctor's opinion concluding that x-ray evidence alone is poor measure of pulmonary

function abnormality not in conflict with Act] ***Grayson v. North American Coal Corp.***, 6 BLR 1-851 (1984).

[supposed conflict with Act does not invalidate doctor's opinion on extent of respiratory insufficiency] ***Capers v. The Youghiogheny and Ohio Coal Co.***, 6 BLR 1-1234 (1984).

[medical opinion that simple pneumoconiosis rarely disabling but accepting possibility of total disability not in conflict with Act] ***Cunningham v. Pittsburg and Midway Coal Co.***, 7 BLR 1-93 (1984).

[Director's contention that physicians' opinions conflicted with Act inconsistent with regular employment of these physicians to examine miners] ***Burton v. Drummond Coal Co.***, 7 BLR 1-194 (1984).

[doctor's refusal to presume disability solely on basis of miner's ten years of coal mine employment and positive x-ray does not conflict with spirit of Act] ***Brown v. Director, 0WCP***, 7 BLR 1-730 (1985); ***Hvizdzak v. North American Coal Corp.***, 7 BLR 1-469 (1984).

[Eleventh Circuit held that medical opinion can be discounted if inconsistent with Act where doctor stated that would not diagnose pneumoconiosis absent positive x-ray evidence] ***Black Diamond Coal Mining Co. v. Benefits Review Board [Raines]***, 758 F.2d 1532, 7 BLR 2-209 (11th Cir. 1985).

[Eleventh Circuit held that opinion that simple pneumoconiosis is usually not disabling not contrary to spirit of the Act; however, adjudicator could properly reject opinion because physician's disagreement with subsection (a)(2) ventilatory standards and view that simple pneumoconiosis virtually always related to non-occupational disease evidence of bias] ***Guy v. United States Steel Corp.***, No. 83-7691 (11th Cir. Sep. 12, 1985)(unpublished), *rev'g* 6 BLR 1-556 (1983).

[adjudicator properly credited medical opinion despite physician's belief simple pneumoconiosis, by itself, not disabling where it established that decedent's pneumoconiosis was not disabling] ***Ham v. Bethlehem Mines Corp.***, 8 BLR 1-3 (1985).

[adjudicator's crediting of medical opinion implicitly finds it not in conflict with spirit of Act] ***Endrizzi v. Bethlehem Mines Corp.***, 8 BLR 1-11 (1985).

[adjudicator erred finding physician in conflict with spirit of Act with mere recognition of rebuttable nature of Section 727.203 presumptions, not stating simple pneumoconiosis never disabling] ***Wheaton v. North American Coal Corp.***, 8 BLR 1-21 (1985).

[doctor's opinion pneumoconiosis does not *cause* disability does not necessarily preclude consideration of his opinion that miner does not have pneumoconiosis] ***Morgan v. Bethlehem Steel Corp.***, 7 BLR 1-226 (1984); ***Aimone v. Morrison Knudson Co.***, 8 BLR 1-32 (1985).

[statement that respiratory conditions unrelated to coal mine employment as they did not exhibit category 3/3 or greater by x-ray or progressive massive fibrosis appears inconsistent with spirit of Act; cannot, without explanation, support no pneumoconiosis finding, although may be probative regarding existence of breathing impairment] ***Hoffman v. B & G Construction Co.***, 8 BLR 1-65 (1985).

[adjudicator erred finding medical opinion that existence of impairment cannot be diagnosed from negative x-ray contrary to spirit of Act] ***Walker v. Brown Badgett, Inc.***, 8 BLR 1-220 (1985) [following ***Butela v. United States Steel Corp.***, 8 BLR 1-48 (1985)].

[medical opinion not in conflict with Act simply because it requires positive x-ray and other tests to affirmatively diagnose pneumoconiosis] ***Jones v. Kaiser Steel Corp.***, 8 BLR 1-339 (1985).

[adjudicator must explain how physician's bias undercuts opinion on rebuttal bearing in mind that s/he can validly assess existence and/or extent of respiratory impairment, work capability, and presence of pneumoconiosis despite belief that pneumoconiosis is never disabling, unless exhibiting predisposed belief that forms primary basis for conclusion that miner's pneumoconiosis is not totally disabling or that any respiratory impairment present not due to pneumoconiosis; only then may opinion be discredited due to improper bias] ***Stephens v. Bethlehem Mines Corp.***, 8 BLR 1-350 (1985).

DIGESTS

Claimant's assertion that a physician's opinion is in conflict with the purpose of the Act must be raised at the trial level before the Board will consider it on appeal. ***Perry v. Director, OWCP***, 9 BLR 1-1 (1986); ***Lyon v. Pittsburg & Midway Coal Co.***, 7 BLR 1-199 (1984).

The Seventh Circuit held that notwithstanding that a physician stated that certain lung function standards prescribed by the Act were too liberal, it did not mean that the diagnosis as to claimant's medical condition was necessarily not credible. ***Knudson v. Benefits Review Board***, 782 F.2d 97, 8 BLR 2-102 (7th Cir. 1986).

The Seventh Circuit held that the "hostility to the Act" rule only applies when a physician's diagnosis is affected by his subjective opinions about pneumoconiosis that

are contrary to congressional determinations implicit in the provisions of the Act. The proper test for determining if the rule is applicable is whether and to what extent hostile opinions affected the diagnosis. ***Wetherill v. Director, OWCP***, 812 F.2d 376, 9 BLR 2-239 (7th Cir. 1987).

The Third Circuit, adopting the Board's holdings in ***Stephens v. Bethlehem Mines Corp.***, 8 BLR 1-350, 1-352 (1985) and ***Hoffman v. B & G Construction Co.***, 8 BLR 1-65 (1985), held that a physician's belief that simple pneumoconiosis is never disabling may constitute grounds for rejecting the medical opinion as inconsistent with congressional intent and the spirit of the Act. ***Penn Allegheny Coal Co. v. Mercatell***, 878 F.2d 106, 12 BLR 2-305 (3d Cir. 1989); *see also* ***Adams v. Peabody Coal Co.***, 816 F.2d 1116, 10 BLR 2-69 (6th Cir. 1987); ***Wetherill v. Director, OWCP***, 812 F.2d 376, 9 BLR 2-239 (7th Cir. 1987); ***Black Diamond Coal Mining Co. v. Benefits Review Board***, 758 F.2d 1532, 7 BLR 2-209, *reh'g denied* 768 F.2d 1353 (11th Cir. 1985); ***Kaiser Steel Corp. v. Director, OWCP***, 748 F.2d 1426 (10th Cir. 1984).

The Seventh Circuit, on the merits of the claim, held that the administrative law judge did not err in relying of the weight of the medical opinion evidence at 20 C.F.R. §718.202(a)(4) to find the existence of pneumoconiosis established, where the weight of the x-ray evidence at 20 C.F.R. §718.202(a)(1) was negative. The Seventh Circuit also held, at 20 C.F.R. §718.202(a)(4), that the administrative law judge permissibly gave less weight to Dr. Selby's opinion, that claimant's worsening lung function could not be due to coal dust exposure because he was no longer working in or around coal mines, based on the court's holding that it conflicted with the regulatory provision at 20 C.F.R. §718.201(c) that pneumoconiosis can be latent and progressive. The Seventh Circuit also determined that Dr. Selby's statements, that coal mine employment "helped preserve [claimant's] lung function" and had a "positive effect on his health," were "contrary to the congressional findings and purpose central to the [Act]." ***Roberts & Schaefer Co. v. Director, OWCP [Williams]***, 400 F.3d 992, BLR (7th Cir. 2005).

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