

## PART IV

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

#### D. EVALUATION AND WEIGHING OF EVIDENCE

##### 6. X-RAYS, READERS, QUALITY STANDARDS

###### a. Generally

The x-ray, or roentgenogram, is the principal diagnostic test for the detection of clinical pneumoconiosis. In order for x-rays to be admissible in claims arising under the Act, they must comply with the applicable quality standards set forth in the regulations. For claims adjudicated under 20 C.F.R. Part 410 and the 20 C.F.R. §727.203 interim presumption, the applicable quality standards are found at 20 C.F.R. §410.428. See 20 C.F.R. §§727.203(a)(1), 727.206(a). Under 20 C.F.R. Part 718, the quality standards are set forth at 20 C.F.R. §718.102.

Each set of quality standards provides for the classification of x-ray readings to indicate the stage to which the disease has progressed. Each states that a classification of 0/-, 0/0 or 0/1 is not acceptable as evidence of pneumoconiosis. The quality standards also describe the technical requirements that must be followed to assure that the x-ray film will be of a suitable quality for proper classification.

The Section 410.428(a) quality standards address the *existence* of pneumoconiosis. In this regard, Section 727.206(a) mandates that only x-rays satisfying the quality standards may be considered sufficient to invoke the Section 727.203 interim presumption. Section 727.206(a) does not specifically require that evidence used to rebut the presumption meet the quality standards. In contrast, Section 718.102 provides that, with a limited exception applying to deceased miners, "[n]o chest x-ray shall constitute evidence of the presence or *absence* of pneumoconiosis unless it is in substantial compliance with the requirements of [the quality standards]." 20 C.F.R. §718.102(e)(emphasis added).

After the adjudication officer determines which x-rays are admissible, he must then weigh them to determine if they establish the existence of pneumoconiosis. See Part IV.D.2.d. of the Desk Book. The weight to be accorded an x-ray interpretation depends in large part on the status of the reader. The requirements for reader certification, which are found in 42 C.F.R. §37.51 (1985), are established by the National Institute of Safety and Health.

To become a certified first or A reader, a physician (not necessarily a radiologist) must submit six sample x-rays from his or her own files to the Appalachian Laboratory for Occupational Safety and Health (ALOSH) consisting of two x-rays negative for pneumoconiosis, two x-rays showing simple pneumoconiosis, and two showing complicated pneumoconiosis. As an alternative, the physician seeking an A rating can take a course approved by ALOSH in the classification systems for diagnosing pneumoconiosis. See **Roberts v. Bethlehem Mines Corp.**, 8 BLR 1-211 (1985). A higher certification is final or B reader. The B reader is a physician who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successful completion of an examination conducted by the United States Public Health Service. 42 C.F.R. §37.51; **Roberts v. Bethlehem Mines Corp.**, 8 BLR 1-211 (1985); **York v. Jewell Ridge Coal Corp.**, 7 BLR 1-766 (1985); **Edwards v. Central Coal Co.**, 7 BLR 1-712, 1-717 (1985); **Goss v. Eastern Associated Coal Corp.**, 7 BLR 1-400 (1984). As with an A reader, there is no requirement that the physician be a radiologist. **Roberts, supra**. The regulation formerly provided for an even higher certification as a C reader, see **Alley v. Riley Hall Coal Co.**, 6 BLR 1-376 (1983), no longer exists, see 42 C.F.R. §37.51 (1985), and rarely has been encountered in Board cases.

### CASE LISTINGS

[adjudicator need not defer to B reader's x-ray interpretation] **Sharpless v. Califano**, 585 F.2d 664 (4th Cir. 1978); **Honaker v. Jewell Ridge Coal Corp.**, 2 BLR 1-947 (1980).

[Fourth Circuit noted that B readers are presumed equally qualified in x-ray interpretation] **Winfrey v. Califano**, 620 F.2d 37 (4th Cir. 1980); **Whitman v. Califano**, 617 F.2d 1055 (4th Cir. 1980).

[x-ray showing that only one of miner's lungs is clear and other lung covered with cancerous growth may be used to negate presence of pneumoconiosis] **McKinnon v. Amax Coal Co.**, 4 BLR 1-95 (1981).

[adjudicator not required to discuss x-ray readings failing to conform to 20 C.F.R. §410.428; these x-rays, however, may be considered as "other relevant evidence" pursuant to 20 C.F.R. §410.414(c)] **Watson v. Director, OWCP**, 4 BLR 1-186 (1981).

[adjudicator must resolve any conflict among x-ray interpretations] **Dees v. Peabody Coal Co.**, 5 BLR 1-117 (1982); **Stritzel v. Zeigler Coal Co.**, 4 BLR 1-35, 1-38 (1981); **Elkins v. Beth-Elkhorn Corp.**, 2 BLR 1-683 (1982).

[greater weight may be given x-ray based on credentials of reader; doctor need not

perform physical exam to provide credible opinion regarding x-ray] **Alley v. Riley Hall Coal Co.**, 6 BLR 1-376 (1983).

[as Section 725.456(c) requires adjudicator to discuss all medical evidence in accordance with applicable quality standards, Board will consider argument that requirements of Section 410.428(b) not satisfied, even though raised for first time on appeal] **Witt v. P & P Coal Co.**, 6 BLR 1-480 (1983).

[employer need not be bound by positive x-ray interpretation of its physician] **Horn v. Jewell Ridge Coal Corp.**, 6 BLR 1-933 (1984).

[adjudicator erred in assigning more weight to x-ray because "film quality of earlier x-rays was of a lower category": all films had notations of film quality, were not classified as unreadable, and conformed to 20 C.F.R. §410.428; appropriate date for determining weight of x-ray evidence based on recency is date taken, not rereading date] **Wheatley v. Peabody Coal Co.**, 6 BLR 1-1214 (1984).

[regulations only require that x-ray be of suitable quality for interpretation, 20 C.F.R. §410.428(b), not that it be of optimal quality] **Preston v. Director, OWCP**, 6 BLR 1-1229 (1984).

[adjudicator reasonably matched numbers of x-ray report with x-ray of record and considered it over employer contention that x-ray unreliable because failed to identify film as to date and facility] **Sheckler v. Clinchfield Coal Co.**, 7 BLR 1-128 (1984).

[B reader regarded with greater expertise than A reader] **Pavesi v. Director, OWCP**, 758 F.2d 956, 7 BLR 2-184, 2-187 (3d Cir. 1985).

[within discretion of adjudicator to credit x-rays based on readers' qualifications] **Goss v. Eastern Associated Coal Corp.**, 7 BLR 1-400 (1984).

[fact all negative readings of record by same reader may not detract from their credibility; adjudicator may accord less weight to positive x-rays that are barely qualifying at 20 C.F.R. §410.428] **York v. Jewell Ridge Coal Corp.**, 7 BLR 1-766 (1985).

[x-ray reading expressed as "stage two" pneumoconiosis conforms to quality standards at Section 410.428(a)(1) and must be weighed] **Casey v. Director, OWCP**, 7 BLR 1-873 (1985).

[x-ray sufficiently identified when part of medical report on physical exam of claimant; notation of film quality or distance from which x-ray taken not required to be on x-ray report] **Amorose v. Director, OWCP**, 7 BLR 1-899 (1985); **Witt v. P & P Coal Co.**, 6 BLR 1-480 (1983).

[reasonable for adjudicator to consider qualifications of x-ray readers at time of readings] ***Aimone v. Morrison Knudson Co.***, 8 BLR 1-32 (1985).

[fact-finder may assign more weight to x-ray interpretation of B reader] ***Aimone v. Morrison Knudson Co.***, 8 BLR 1-32 (1985); ***Vance v. Eastern Associated Coal Corp.***, 8 BLR 1-68 (1985).

[diagnostic quality of film does not have to be given as its assumed to be acceptable quality if read] ***Auxier v. Director, OWCP***, 8 BLR 1-109 (1985); ***Lambert v. Itmann Coal Co.***, 6 BLR 1-256 (1983).

[physician's mistaken assumption as to length of coal mine employment does not affect x-ray for pneumoconiosis nor, in absence of evidence to contrary, influence physician's reading of film]. ***Auxier v. Director, OWCP***, 8 BLR 1-109 (1985).

[B reader is physician who demonstrated proficiency in classifying x-rays by successful completion of examination conducted by the U.S. Public Health Service] ***Roberts v. Bethlehem Mines Corp.***, 8 BLR 1-211 (1985); ***York v. Jewell Ridge Coal Corp.***, 7 BLR 1-766 (1985); ***Edwards v. Central Coal Co.***, 7 BLR 1-712, 1-717 (1985); ***Goss v. Eastern Associated Coal Corp.***, 7 BLR 1-400 (1984).

[where x-ray evidence in conflict under Part 718, consideration shall be given to readers' qualifications in accordance with Section 718.202] ***Dixon v. North Camp Coal Co.***, 8 BLR 1-344 (1985).

## DIGESTS

Administrative law judge properly placed greater weight on the sole reading, by a B reader pursuant to Section 718.202(a)(1) to find pneumoconiosis not established by the x-ray evidence. Neither of the two most recent x-rays was read by a B reader and both were only five months more recent. ***Taylor v. Director, OWCP***, 9 BLR 1-22 (1986).

The Board held that an administrative law judge may not look beyond the record where doing so results in substantial prejudice. Claimant established that he was substantially prejudiced in this case where the administrative law judge took official notice of the B reader status of the physician who read the x-ray in question as negative and disregarded the B reader status of the physician who interpreted the same film as positive. ***Simpson v. Director, OWCP***, 9 BLR 1-99 (1986).

The administrative law judge may not prefer one B reader's negative interpretation over the positive interpretation of the same film by another B reader without adequate rationale. ***Simpson v. Director, OWCP***, 9 BLR 1-99 (1986); ***Isaacs v. Bailey Mining***

**Co.**, 7 BLR 1-62, 1-63 n.2 (1984).

An administrative law judge may properly assign more weight to the x-ray readings of a physician with superior qualifications. **Trent v. Director, OWCP**, 11 BLR 1-26 (1987); **Roberts v. Bethlehem Mines Corp.**, 8 BLR 1-211 (1985).

Positive x-ray readings must be properly classified in order to establish pneumoconiosis under Section 727.203(a)(1). **McMath v. Director, OWCP**, 12 BLR 1-6 (1988).

While the administrative law judge may give more weight to the most recent x-ray evidence or to physician with superior qualifications, he is not required to do so, even when it is positive. **McMath v. Director, OWCP**, 12 BLR 1-6 (1988); **Tokarcik v. Consolidation Coal Co.**, 6 BLR 1-666 (1983).

A radiologist's finding that an x-ray is of unreadable film quality requires no explanation inasmuch as such conclusion can only indicate that the physician found the film to be unclear and of such poor quality that it was not susceptible to expert interpretation. The administrative law judge therefore may not discredit a radiologist's reading for film quality as unreasoned on the basis that no explanation was provided by the physician. **Gober v. Reading Anthracite Co.**, 12 BLR 1-67 (1988).

In evaluating the x-ray evidence, an administrative law judge may accord greatest weight to the most recent x-ray evidence of record and s/he is not required to defer to the opinion of a physician with superior credentials. **Clark v. Karst-Robbins Coal Co.**, 12 BLR 1-149 (1989)(en banc).

An x-ray report in and of itself does not qualify as a medical report under Section 718.202(a)(4). **Petry v. Director, OWCP**, 14 BLR 1-98 (1990)(en banc); **Anderson v. Valley Camp of Utah, Inc.**, 12 BLR 1-111 (1989).

An administrative law judge is not required to defer to the "numerical superiority" of x-rays, see **Wilt v. Wolverine Mining Co.**, 14 BLR 1-70 (1990), although it is within his discretion to do so, see **Edmiston v. F & R Coal Co.**, 14 BLR 1-65 (1990).

Although the regulations provide no guidance for the evaluation of CT or CAT scans, Section 718.304(c) provides for new methods of diagnosis, and allows the consideration of any acceptable medical means of diagnosis. See 20 C.F.R. §718.304(c). Therefore, when initially weighing the evidence in each category pursuant to Section 718.204, CT scans are not to be considered x-rays but must be evaluated pursuant to subsection (c) together with any evidence or testimony which bears on the reliability and utility of CT scans and any other evidence not applicable to subsections (a) and (b). **Melnick v. Consolidation Coal Co.**, 16 BLR 1-31 (1991)(en banc).

The Board construed the prohibition in **Melnick v. Consolidation Coal Co.**, 16 BLR 1-31 (1991)(en banc), regarding reliance on a reader's professorial credentials, holding that **Melnick** does not bar the administrative law judge in the instant case, who had also considered the B-reader and Board-certified status of the readers as required by Section 718.202(a)(1), from relying on a reader's professorship in radiology as a basis for according greater weight to the readings rendered by the reader. **Worhach v. Director, OWCP**, 17 BLR 1-105 (1993).

The Board instructed the administrative law judge to consider on remand that two of employer's physicians are professors of radiology in addition to being Board-certified radiologists and B readers. The Board held that, while contrary to employer's suggestion, the additional qualifications of the two physicians do not mandate that their opinions be accorded greatest weight, the administrative law judge should consider these qualifications on remand, as they may bear on the quality of the various x-ray interpretations of record. **Chaffin v. Peter Cave Coal Co.**, 22 BLR 1-294 (2003).

Where an administrative law judge considered the conflicting x-ray readings in light of the physicians' radiological qualifications and deferred to the readings of those physicians who were dually-qualified as Board-certified radiologists and B-readers to find that a preponderance of the x-ray evidence established the existence of pneumoconiosis pursuant to Section 718.202(a)(1), and substantial evidence supported the administrative law judge's finding, the administrative law judge properly considered the x-ray evidence. Contrary to the responsible operator's contention, the administrative law judge was not required to defer to a particular physician's radiological experience or to his status as a professor of radiology. **Dempsey v. Sewell Coal Corp.**, 23 BLR 1-47 (2004)(en banc).

An administrative law judge is not required to defer to the x-ray readings by the physicians with dual qualifications. **Webber v. Peabody Coal Co.**, 23 BLR 1-123 (2006) (en banc) (Boggs, J., concurring), *aff'd on recon.*, BLR (2007)(en banc).

The revised regulations at 20 C.F.R. §§718.101(b), 718.102(a), (e) provide that no chest x-ray shall constitute evidence of the presence or absence of pneumoconiosis unless documented and reported in compliance with 20 C.F.R. §718.102 and Appendix A to Part 718, which set forth the standards for administering and interpreting chest x-rays, developed in consultation with the National Institute for Occupational Safety and Health (NIOSH). **Webber v. Peabody Coal Co.**, 23 BLR 1-123 (2006) (en banc) (Boggs, J., concurring), *aff'd on recon.*, BLR (2007)(en banc); **Harris v. Old Ben Coal Co.**, 23 BLR 1-98 (2006)(en banc)(McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, BLR (2007)(en banc)(McGranery & Hall, JJ., concurring and dissenting).

The Board held that a reading of the plain language of Appendix A to Part 718 makes clear that the x-ray standards described therein do not apply to digital x-rays, and that,

therefore, the admission of digital x-rays is properly considered under 20 C.F.R. §718.107, where the administrative law judge must determine, on a case-by-case basis, pursuant to 20 C.F.R. §718.107(b), whether the proponent of the digital x-ray evidence has established that it is medically acceptable and relevant to entitlement. **Webber v. Peabody Coal Co.**, 23 BLR 1-123 (2006) (*en banc*) (Boggs, J., concurring), *aff'd on recon.*, BLR (2007)(*en banc*); **Harris v. Old Ben Coal Co.**, 23 BLR 1-98 (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, BLR (2007)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting).

Although the administrative law judge may give greater weight to a physician's x-ray readings based upon his or her academic qualifications and involvement in the B reader program, the administrative law judge is not required to do so. **Harris v. Old Ben Coal Co.**, 23 BLR 1-98 (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, BLR (2007)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting), citing **Old Ben Coal Co. v. Battram**, 7 F.3d 1273, 18 BLR 2-42 (7th Cir. 1993).

The administrative law judge may not rely upon his own medical conclusions when characterizing the x-ray interpretations of record. In this case, the Board vacated the administrative law judge's determination that Dr. Wiot's findings of bullae and emphysematous changes in the upper lung fields, and his finding of interstitial fibrosis were consistent with the positive readings for pneumoconiosis. **Harris v. Old Ben Coal Co.**, 23 BLR 1-98 (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, BLR (2007)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting).

On reconsideration, the Board rejected claimant's argument that digital x-rays utilize film, and, therefore, digital x-rays should be considered at 20 C.F.R. 718.202(a)(1). Noting that while digital x-rays may be viewed on film, they are not captured on film, the Board reaffirmed its prior holding in **Webber v. Peabody Coal Co.**, 23 BLR 1-123 (2006)(*en banc*)(Boggs, J., concurring), that the quality standards for analog x-rays, set forth at Appendix A to Part 718, do not apply to digital x-rays. Therefore, the admission of digital x-rays is properly considered under 20 C.F.R. §718.107. The Board also reaffirmed its prior holding that pursuant to 20 C.F.R. §718.107(b), the administrative law judge must determine on a case-by-case basis whether the party proffering the digital x-ray, or "other medical evidence," has established its medical acceptability. **Webber v. Peabody Coal Co.**, BLR (2007)(*en banc*), *aff'g on recon.*, 23 BLR 1-123 (2006)(*en banc*)(Boggs, J., concurring).

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