PART V

BENEFITS REVIEW BOARD POLICIES AND PROCEDURES

A. SCOPE OF REVIEW

11. HARMLESS ERROR

It is well established that error which does not affect the disposition of a case is harmless. ***Larioni v. Director, OWCP***, 6 BLR 1-1276 (1984); *see generally* ***Morely Construction v. Maryland Casualty Co.***, 300 U.S. 185 (1936); 5 *Am. Jur. 2d Appeal and Error* §776 (1962). The Board has held that, to warrant reversal or remand on the basis of error, a petitioner must demonstrate that 1) error was committed and, 2) that the error was prejudicial. ***Matney v. J & L Coal Co.***, 3 BLR 1-332 (1981).

CASE LISTINGS

[where invocation properly invoked at subsection (a)(1), any error under alternative subsections harmless] ***Rasnake v. Beatrice Pocahontas Co.***, 4 BLR 1-586 (1982).

[misapplication of true doubt rule on rebuttal harmless where medical evidence equally probative concerning existence of pneumoconiosis thus precluding rebuttal] ***Meade v. The Pittston Co.***, 6 BLR 1-224 (1983).

[errors in crediting one medical opinion over another harmless since two valid, alternative reasons given to support decision] ***Kozele v. Rochester & Pittsburgh Coal Co.***, 6 BLR 1-378 (1983).

[any error on invocation harmless where fact-finder indicated that rebuttal established] ***Bray v. Director, OWCP***, 6 BLR 1-400 (1983).

[error in finding work repairing railroad tracks and removing spilled coal near them did not meet situs test harmless as Board held the 12 to 16 days per year of this work did not constitute significant portion of work time and thus claimant is not miner] ***Musick v. Norfolk and Western Railway Co.***, 6 BLR 1-862 (1984).

[where only medical opinion which could support party's burden of proof is properly discredited, its irrelevant how contrary opinions treated] ***Cregger v. United States Steel Corp.***, 6 BLR 1-1219 (1984).

[errors regarding non-compensable impairments harmless because crediting of one doctor's report over another's would yield same result under correct standard] ***Sampson v. Laurel Branch Coal Co.***, 6 BLR 1-1259 (1984).

[no prejudice in failing to cite Section 410.414(c) as appropriate findings were made under proper standards and other sections of 20 C.F.R. Part 410 to support ultimate holding] ***Kuchwara v. Director, OWCP***, 7 BLR 1-167 (1984).

[erroneous evaluation under 20 C.F.R. Part 718 rather than Part 410, Subpart D, *see* ***Muncy v. Wolfe Creek Collieries Coal Co.***, 3 BLR 1-6277 (1981), harmless error as factual findings can be applied to Part 410 criteria] ***Oggero v. Director, OWCP***, 7 BLR 1-860 (1985).

[failure to consider certain evidence harmless as evidence not probative on dispositive issue or in conflict with other relevant evidence] ***Amax Coal Co. v. Director, OWCP [Chavis]***, 772 F.2d 304, 8 BLR 2-46 (7th Cir. 1985).

DIGESTS

The Sixth Circuit rejected the Board's holding that the trier-of-fact's failure to consider rebuttal under Section 727.203(b)(2) was harmless error because the administrative law judge broadly rejected the only medical opinion that could establish rebuttal. The court stated that the fact finder could easily have rejected the opinion under subsection (b)(4) without rejecting it under subsection (b)(2). ***Kentland Elkhorn Coal Co. v. Bryant***, No. 85-3320 (6th Cir. Mar. 10, 1986) (unpub.).

The administrative law judge's failure to evaluate entitlement to benefits pursuant to Section 410.490 is harmless error because the administrative law judge's finding of rebuttal pursuant to Section 727.203(b)(2) precludes entitlement under Section 410.490(c)(2). ***Minnich v. Pagnotti Enterprises, Inc.***, 9 BLR 1-89 (1986).

In light of ***Caprini v. Director, OWCP***, 824 F.2d 283, 10 BLR 2-189 (3d Cir. 1987), the trier-of-fact erred by evaluating the evidence under 20 C.F.R. Part 410, rather than 20 C.F.R. Part 718. Because this claim was adjudicated after 3/31/80, the trier-of-fact should have considered it under the Part 718 rather than the Part 410 regulations. This was harmless error, however, because he properly found the evidence sufficient to establish rebuttal pursuant to 20 C.F.R. §410.490(c)(2), thus precluding entitlement under Part 718. ***Kiewlak v. Director, OWCP***, 11 BLR 1-34 (1988).

Any error that the administrative law judge may have committed in admitting an x-ray report into evidence in violation of the Section 413(b) re-reading prohibition is harmless as the weight of the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). ***Johnson v. Jeddo-Highland Coal***

Co., 12 BLR 1-53 (1988).

The Fourth Circuit held that, because the administrative law judge articulated multiple proper reasons for finding that the reports proffered by Drs. Renn and Rosenberg were unpersuasive, any error in the administrative law judge's application of an adverse inference of bias to their reports was harmless. ***Consolidation Coal Co. v. Williams***, 453 F.3d 609, BLR (4th Cir. 2006).

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