

## PART VI

### ESTABLISHING ENTITLEMENT UNDER 20 C.F.R. PART 410

#### E. SECTION 410.414(c)

Where there is insufficient evidence to establish pneumoconiosis by x-ray, autopsy, or biopsy, 20 C.F.R. §410.414(a), and where the claimant has failed to establish presumptive pneumoconiosis under Section 410.414(b), a claimant may still establish pneumoconiosis if other relevant evidence establishes: (1) the existence of a totally disabling respiratory impairment; (2) which arose out of coal mine work. 20 C.F.R. §410.414(c); see also *Harrell v. Pittsburg & Midway Coal Co.*, 6 BLR 1-961 (1984).

The Board has held that "other relevant evidence" is not limited to the items in the regulation. The administrative law judge may consider the miner's description of symptoms, a sporadic work record, testimony of lay witnesses, medical reports of general physical examinations, and spirometric studies that do not qualify under 20 C.F.R. §410.430, in addition to those items listed in the regulation. *Codeluppi v. Mathies Coal Co.*, 2 BLR 1-938, 1-943 (1981); *Van Scyoc v. Director, OWCP*, 2 BLR 1-875 (1980); *Cuppett v. U. S. Steel Corp.*, 1 BLR 1-945, 1-948 (1978); *Shrewsbury v. Jewell Ridge Coal Corp.*, 1 BLR 1-868, 1-873 (1978); *Fletcher v. Central Appalachian Coal Co.*, 1 BLR 1-785, 1-789 (1978); *Grove v. U. S. Steel Corp.*, 1 BLR 1-382, 1-385 (1978); *Bridges v. U. S. Steel Corp.*, 1 BLR 1-372, 1-376 (1978); *Cox v. Clinchfield Coal Co.*, 1 BLR 1-269, 1-271 (1977). See Part VI.C.4. of the Desk Book.

In recognition of the difficulties encountered in adjudication under this regulation, the Board has stated that the administrative law judge has discretion in considering "other relevant evidence." It is precisely this type of case in which the adjudication officer must rely on his or her judgment and experience in determining whether such evidence establishes entitlement. *Codeluppi*, 2 BLR at 1-944; *McCarty v. Clinchfield Coal Co.*, 1 BLR 1-914, 1-918 (1977).

Regarding the "causal relationship" portion of Section 410.414(c), the claimant must also establish that his totally disabling *respiratory impairment* arose out of coal mine employment, see *Powell v. Director, OWCP*, 7 BLR 1-364 (1984); *Migalich v. Director, OWCP*, 2 BLR 1-27 (1979), whereas under Section 410.416(b), the claimant must establish the causal relationship between his *pneumoconiosis* and coal mine employment.

## CASE LISTINGS

[totally disabling chronic respiratory impairment under Section 410.414(c) must be shown to arise out of coal mine employment] **Parker v. Director, OWCP**, 1 BLR 1-889 (1978), *rev'd on other grounds*, 590 F.2d 748, 1 BLR 2-175 (8th Cir. 1979); **Menzie v. Director, OWCP**, 1 BLR 1-728, 1-730 (1978); **Fly v. Peabody Coal Co.**, 1 BLR 1-713 (1978).

[alveolar-arterial oxygen gradient (A-aO<sub>2</sub>) portion of blood gas test may be considered other evidence under Section 410.414(c)] **Young v. Harper Valley Coal Co.**, 2 BLR 1-167 (1979); **Lauderback v. Director, OWCP**, 1 BLR 1-1033 (1978).

[if adjudicator's finding regarding total disability is proper, failure to specifically state consideration of Section 410.414(c) constitutes harmless error] **Matney v. J & L Coal Co.**, 3 BLR 1-332 (1981); **Fletcher v. Director, OWCP**, 2 BLR 1-911 (1980).

[claimant's testimony regarding cause of disability properly found outweighed by medical evidence refuting causal connection] **Robinson v. Director, OWCP**, 3 BLR 1-798.5 (1982).

[unclassified x-ray may be part of properly documented medical report for purposes of Section 410.414(c)] **Isbell v. Director, OWCP**, 4 BLR 1-180 (1981).

[adjudicator failed to make specific finding as to whether claimant had *totally* disabling chronic respiratory or pulmonary impairment as required by Section 410.414(c), requiring remand] **Watson v. Director, OWCP**, 4 BLR 1-186 (1981).

[x-rays not classified under Section 410.428, for consideration under Section 410.414(a), may be considered as "other relevant evidence" pursuant to Section 410.414(c)] **Watson v. Director, OWCP**, 4 BLR 1-186 (1981).

[claimant failed to show that his impairment, established through qualifying pulmonary function study, arose out of coal mine employment as required by Section 410.414(c)] **Spisok v. Director, OWCP**, 4 BLR 1-225 (1981).

[adjudicator's finding claimant failed to establish total disability due to a respiratory impairment at the time of miner's death precluded finding pneumoconiosis under Sections 410.454(c) or 410.414(c)] **Yendall v. Director, OWCP**, 4 BLR 1-467 (1982).

[Fourth Circuit held claimant did not establish by other relevant evidence existence of a totally disabling chronic respiratory impairment pursuant to Sections 410.414(c) and

410.426(d) where two medical opinions diagnosing total disability not supported by any objective evidence and relied primarily on claimant's subjective symptoms] **Massie v. Secretary of Health and Human Services**, 673 F.2d 1313, 4 BLR 2-20 (4th Cir. 1981).

[ventilatory studies with qualifying values that fail to meet quality standards contained in Section 410.430 may nonetheless serve as "other relevant evidence" under Section 410.414(c)] **Gibson v. Ryan's Creek Coal Co.**, 4 BLR 1-591 (1982); **Shrewsbury v. Jewell Ridge Coal Co.**, 1 BLR 1-868 (1978); **Grove v. United States Steel Corp.**, 1 BLR 1-382 (1978).

[while non-qualifying pulmonary function or blood gas studies may be "other relevant evidence" at Section 410.414(c), there must also be other supportive evidence] **Kauzlarich v. Director, OWCP**, 4 BLR 1-744 (1982); **Miller v. Director, OWCP**, 2 BLR 1-447 (1979).

[adjudicator erred failing to discuss deposition testimony by two doctors regarding miner's pulmonary deficiencies as "other relevant evidence" under Section 410.414(c)] **Harrell v. Pittsburg & Midway Coal Co.**, 6 BLR 1-961 (1984).

[adjudicator erred at Section 410.414(c) rejecting as other medical evidence a pulmonary function study that qualified at Section 410.426(b) because contemporaneous blood gas studies did not meet disability standards of Section 727.203(a)(3); studies measure different physical functions and need not be consistent] **Whitaker v. Director, OWCP**, 6 BLR 1-983 (1984).

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

[lay testimony, by itself, may be sufficient to establish total disability in survivor's claim where there is no relevant medical evidence] **Henderson v. Director, OWCP**, 7 BLR 1-866 (1985).

## DIGESTS

6/95