

PART II
DEFINITIONS

A. MINER

3. STATUS/FUNCTION/SITUS AND SITUS/FUNCTION TESTS

b. Function Test

Claimant must establish that the work performed a function integral to the extraction or preparation of coal, and not merely ancillary to the delivery and commercial use of processed coal. *Whisman, supra* at 1-97; see also *Stroh v. Director, OWCP*, 810 F.2d 61, 9 BLR 2-212, 2-217 (3d Cir. 1987).

CASE LISTINGS

[grocery clerk in mine store not miner] *Carpenter v. Tennessee Consolidated Coal Co.*, 1 BLR 1-934 (1978).

[maintainer of railroad lines running out of mine is miner] *Freeman v. Califano*, 600 F.2d 1057 (5th Cir. 1979); see also *Adelsberger v. Mathews*, 543 F.2d 82 (7th Cir. 1976); *Roberts v. Weinberger*, 527 F.2d 600 (4th Cir. 1975).

[training specialist not miner] 20 C.F.R. §725.101(a)(5); *Zavora v. United States Steel Corp.*, 2 BLR 1-1202 (1980).

[mechanical work on strip mining machinery is work of miner] *Smith v. Central Ohio Coal Co.*, 2 BLR 1-58 (1979).

[office weighmaster satisfies function test] *Alexander v. Freeman United Coal Mining Co.*, 2 BLR 1-497 (1979).

[electrician installing mining equipment is miner] *Kovach v. Fauzio Bros.*, 2 BLR 1-624 (1979).

[grader-operator maintaining haulage roads at strip mine is miner] *Carrell v. Central Ohio Coal Co.*, 2 BLR 1-662 (1979).

[employment by power plant not mining where coal not resold] *Ferris v. Director*,

OWCP, 3 BLR 1-320 (1981); accord **Stewart v. Director, OWCP**, 3 BLR 1-109 (1981).

[carrying family coal from shed to home not mining] **Spisok v. Director, OWCP**, 4 BLR 1-225 (1981).

[claimant's work in foundry molding replacement parts for mine machinery constitutes coal mine employment] **Hunter v. Rochester & Pittsburgh Coal Co.**, 4 BRBS 538 (1976).

[work in blacksmith's shop not coal mine employment] **Hon v. Director, OWCP**, 699 F.2d 441, 5 BLR 2-43 (8th Cir. 1983).

[mining coal during childhood summers for family use was miner] **Bachert v. Director, OWCP**, 6 BLR 1-640 (1983).

[painting camp houses/hauling coal to private consumers not coal mine employment] **Thompson v. Director, OWCP**, 6 BLR 1-807 (1984).

[employer that purchases coal for resale not coal preparation facility] **Weikel v. M.E. Wallace Co.**, 6 BLR 1-858 (1984).

[hauling coal from the tipple to consumers not transportation worker under Act] **Cole v. Director, OWCP**, 6 BLR 1-1042 (1983); see also **Foster v. Director, OWCP**, 8 BLR 1-188 (1985); **Flener v. Director, OWCP**, 6 BLR 1-1274 (1984); **Whitaker v. Director, OWCP**, 6 BLR 1-983 (1984); **Duffy v. Director, OWCP**, 6 BLR 1-655 (1983); **Caldrone v. Director, OWCP**, 6 BLR 1-575 (1983); **Yoho v. Director, OWCP**, 1 BLR 1-202 (1977).

[to meet function test work must be integral to coal production process] **Tobin v. Director, OWCP**, 8 BLR 1-115 (1985); **Canonico v. Director, OWCP**, 7 BLR 1-547 (1984); **Pinkham v. Director, OWCP**, 7 BLR 1-55 (1984); **Duffy v. Director, OWCP**, 6 BLR 1-655 (1983).

[function test is question of fact for administrative law judge] **Price v. Peabody Coal Co.**, 7 BLR 1-671 (1985).

[function/situs met where claimant shoveled coal dust out of empty railroad cars by tipple for reloading] **Kee v. Director, OWCP**, 7 BLR 1-909 (1985).

[function met where claimant hauled coal, cleaned railroad cars, repaired, unloaded/shoveled coal] **Seltzer v. Director, OWCP**, 7 BLR 1-912 (1985).

[loading coal from pit of strip mine constitutes the work of a miner] **Bowman v. Director, OWCP**, 7 BLR 1-718 (1985).

[duties as a car man inspecting and repairing cars used for hauling prepared coal do not meet function test] **Richardson v. Denver & Rio Grande Western Railroad Co.**, 7 BLR 1-700 (1985).

[loading, recharging, and returning CO2 cylinders satisfied the situs-function test] **Pinkham v. Director, OWCP**, 7 BLR 1-55 (1984).

[mechanic at tipple, who maintained conveyor belts and made other repairs was miner] **Luther v. Director, OWCP**, 7 BLR 1-117 (1984).

[welder on tipple is miner] **Jones v. Director, OWCP**, 7 BLR 1-279 (1984).

[manager of exploration and development for coal company is work of a miner] **Canonico v. Director, OWCP**, 7 BLR 1-547 (1984).

[a significant portion of a transportation worker's duties/working day must be at the situs to meet the function test] **Clifford v. Director, OWCP**, 7 BLR 1-817 (1985).

[transportation worker may only be considered miner if activities at the situs are integral to the coal production process] **Whisman v. Director, OWCP**, 8 BLR 1-96 (1985); **Price v. Peabody Coal Co.**, 7 BLR 1-671 (1985); **Swinney v. Director, OWCP**, 7 BLR 1-524 (1984).

[miner's fourteen years as deck hand on tugboat towing coal barges from tipple to coke plant and steel mill not integral to coal production process, and thus not coal mine employment] **Straight v. U. S. Steel Corp.**, 8 BLR 1-14 (1985).

[status depended on whether the washing was part of coal preparation or merely part of coking preparation where claimant transported coal to washer at coke plant, even though washing is included within the definition of coal preparation] **Moore v. The Mead Corp.**, 8 BLR 1-421 (1985).

[service manager for company that did not mine coal but repaired and demonstrated mining equipment for operators at coal mine locations, satisfied function test] **Tobin v. Director, OWCP**, 8 BLR 1-115 (1985); see **Tobrey v. Director, OWCP**, 7 BLR 1-407 (1984).

[work as service engineer servicing and installing mining machinery within coal mines satisfied function test. **Price v. Dresser Industries, Inc.**, 8 BLR 1-179 (1985).

[case remanded where fact-finder failed to determine whether claimant's work transporting coal at tipple met "function" requirements or merely facilitated coking] **Hutson v. Director, OWCP**, 8 BLR 1-328 (1985).

DIGESTS

Claimant's duties loading already processed coal from a tipple to river barges was not coal mine employment as it did not satisfy the function requirement. **Luther v. Director, OWCP**, 8 BLR 1-42 (1985); see also **Vickery v. Director, OWCP**, 8 BLR 1-430 (1986).

An individual who is employed by a commercial user, which consumes coal or processes coal for a particular industrial purpose, is not a "miner" within the meaning of the Act, even though he may perform activities, such as "loading," that are listed in the statutory and regulatory definitions of coal preparation. Claimant's work was not integral to the extraction or preparation of coal, inasmuch as his tasks related to the consumption and utilization of coal already in the stream of commerce. **Foreman v. Director, OWCP**, 8 BLR 1-79 (1985), *aff'd*, 794 F.2d 569, 9 BLR 2-90 (11th Cir. 1986); **Trull v. Director, OWCP**, 7 BLR 1-380 (1984); **Vasquez v. Director, OWCP**, 6 BLR 1-373 (1983).

The Board held that claimant's coal storage inspection and inventory duties were the work of a miner as they inherently affected the level of coal production and were therefore integral to employer's plan, or schedule, of mining coal. **Settlemoir v. Old Ben Coal Co.**, 9 BLR 1-109 (1986)(Ramsey, C.J., dissenting).

Decedent's post-1969 work was that of a miner where such work involved the dismantling of coal mining equipment, transportation of that equipment to new mining sites, and erection of the equipment at the new sites. **Zimmerman v. J. Robert Bazley, Inc.**, 10 BLR 1-75 (1987).

Claimant was not a "miner" within the meaning of the Act while working as the sole proprietor of a coal hauling business engaged in delivering coal to the ultimate consumer. The Board notes that the Third Circuit, the jurisdiction in which this case arises, held in **Stroh v. Director**, 810 F.2d 61 (3d Cir. 1987), that an individual must satisfy a two-part "situs-function" test for his work to be considered that of a miner. Claimant herein failed to establish that his work met the "function" test. **Kane v. Director, OWCP**, 10 BLR 1-148 (1987).

Claimant's job working for two oil distributors delivering gas, oil and mining lubricants to coal mines and coal preparation facilities was held by the Board not to constitute coal mine employment under the Act. Even though claimant's work took place in or around a coal mine or coal preparation facility, his job of loading the oil products at the oil distributor, driving to the mines, and unloading the products there was held not to be performing a function integral to the coal preparation process. **Rose v. Director, OWCP**, 10 BLR 1-63 (1987), *published on recon.*, 10 BLR 1-71 (1987).

The "function" requirement does not dictate that claimant's job involve direct contact with coal, but rather that the job be integral to the extraction or preparation process. The administrative law judge erred here in finding that claimant was not a coal miner solely because the truck driving employment did not include the transportation of coal. **Rose v. Director, OWCP**, 10 BLR 1-67 (1987), *published on recon.*, 10 BLR 1-71 (1987).

Construction worker who was involved in a surface mine construction project that was not yet operable and who did not work in the vicinity of an operable mine was not a "miner" under the Act. **Williams Brothers, Inc. v. Pate**, 833 F.2d 261, 10 BLR 2-333 (11th Cir. 1987).

Claimant was not a "miner" within the meaning of the Act while working as a driver delivering and unloading sacks of limestone dust at coal mine sites. The Board held that claimant was not performing a function integral to the extraction and preparation of coal. **Hagy v. Director, OWCP**, 11 BLR 1-142 (1988), *aff'd*, No. 88-3809 (4th Cir. August 16, 1988)(unpublished).

Claimant's duties as a federal mine inspector, which concern health and safety, are integral to the operation of a coal mine and satisfy the function test. See **Bartley v. Director, OWCP**, 12 BLR 1-89 (1988)(Tait, J., concurring); **Mounts v. Director, OWCP**, 8 BLR 1-425 and 13 BLR 1-44 (1985); **Lynch v. Director, OWCP**, 6 BLR 1-1088 (1984); **Mansell v. Republic Steel Corp.**, 5 BLR 1-842 (1983); **Moore v. Duquesne Light Co.**, 4 BLR 1-40.2 (1981).

Claimant's work as a reclamation bulldozer operator at a mine site was the work of a "miner" as defined by the Act, 30 U.S.C. §902(d). Employer acknowledged that reclamation of previously mined land is required by state and federal law for its coal mine activities to be lawful and that claimant's work is a necessary part of employer's legitimate operation of its mine. Claimant's duties, therefore, were integral to the extraction or preparation of coal and accordingly satisfied the function prong of the definition of a miner. **Fagg v. Amax Coal Co.**, 12 BLR 1-77 (1988).

Claimant was not a "miner" within the meaning of the Act while working as a shipping clerk and weighmaster of processed coal. The Board notes that the United States Court of Appeals for the Third Circuit, the jurisdiction wherein this case arises, held in **Stroh v. Director, OWCP**, 810 F.2d 61, 9 BLR 2-212 (3d Cir. 1987), that an individual must meet a two-part "situs-function" test. Claimant here fails to satisfy the function test as his employment was not integral to the extraction and preparation of coal. **Johnson v. Jeddo-Highland Coal Co.**, 12 BLR 1-53 (1988).

Claimant's duties of cleaning coal cars for loading and delivery of coal is the work of a "miner" under the Act. **Mitchell v. Director, OWCP**, 855 F.2d 485 (7th Cir. 1988).

Claimant's job loading coal from the tipple into barges to be transported to steel mills satisfies the definition of a "miner" under the Act because removal of coal from the tipple is a necessary part of the preparation of coal for transport into the stream of commerce and that each step essential to the preparation of coal for entry into the stream of commerce was not yet completed after the coal entered the tipple. **Hanna v. Director, OWCP**, 860 F.2d 88, 12 BLR 2-15 (3d Cir. 1988).

Claimant's job as a night watchman did not qualify as a "miner" because, although it may have been "convenient" and "helpful" to employer's operation and commercial interests, it was not vital or essential to production or extraction of coal. **Falcon Coal Co., Inc. v. Clemons**, 873 F.2d 916, 12 BLR 2-271 (6th Cir. 1989); see also **Slone v. Director, OWCP**, 12 BLR 1-92 (1988).

Claimant's job as an electrician and welder/mechanic in a repair garage near the open pit lignite mines satisfies the definition of "miner" under the Act. **Consolidation Coal Co. v. McGrath**, 866 F.2d 1004, 12 BLR 2-152 (8th Cir. 1989).

Individuals maintaining mining equipment are "miners" under the Act. **Skipper v. Weinberger**, 448 F.Supp. 390 (M.D. Pa. 1977).

Claimant's transportation duties hauling raw coal by rail from a mine site to a preparation plant for processing constitutes coal mine employment. **Roberson v. Norfolk and Western Railway Co.**, 13 BLR 1-6 (1989), *aff'd sub nom. Norfolk and Western Railway Co.*, 918 F.2d 1144 (4th Cir. 1990), *cert. denied*, 111 S.Ct. 2012 (1991).

Claimant, who worked in a coal and coke plant with raw coal, was held not to be a miner under the Act. Here the Eleventh Circuit upheld the Board's determination that claimant's work involved the first steps of the coke process and that therefore the coal had entered the stream of commerce. **Fox v. Director, OWCP**, 889 F.2d 1037, 13 BLR 2-156 (11th Cir. 1989).

Claimant's duties as a "hoistman" were held to satisfy the function element under *Whisman* as the Board reiterates that the function test does not require that an individual be engaged in the actual extraction or preparation of coal, but rather that the work he performs be essential to coal mining. **Ray v. Williamson Shaft Contracting Co.**, 14 BLR 1-105 (1990)(en banc); see also **Fagg v. Amax Coal Co.**, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); **Zimmerman v. Robert Baxley, Inc.**, 10 BLR 1-75 (1987).

The Board affirmed the administrative law judge's finding that claimant's work repairing mining equipment satisfied the function test as enunciated by the Third Circuit in **Stroh v. Director, OWCP**, 810 F.2d 61, 8 BLR 2-212 (3d Cir. 1987). **Etzweiler v. Cleveland Brothers Equipment Co.**, 16 BLR 1-38 (1992)(en banc).

Claimant's work in a coke preparation plant railroad yard was the first step in the manufacturing process, not the last step in the coal preparation process. Accordingly, the Board reversed the award of benefits as claimant's work did not satisfy the function prong of the Eleventh Circuit court's situs-function test. **Cook v. Director, OWCP**, 17 BLR 1-90 (1993); see **Fox v. Director, OWCP**, 889 F.2d 1037, 13 BLR 2-156 (11th Cir. 1989); **Baker v. United States Steel Corp.**, 867 F.2d 1297, 12 BLR 2-213 (11th Cir. 1989); **Foreman v. Director, OWCP**, 794 F.2d 569, 9 BLR 2-90 (11th Cir. 1986); see also **Eplion v. Director, OWCP**, 794 F.2d 935, 9 BLR 2-52 (4th Cir. 1986); **Luther v. Director, OWCP**, 8 BLR 1-42 (1985).

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