

## PART VI

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

#### C. TOTAL RESPIRATORY DISABILITY

##### 3. SECTION 410.424

Section 410.424(a), 20 C.F.R. §410.424(a), provides that medical criteria alone shall justify a finding of total respiratory disability if the impairment involved: 1) meets the durational requirements of Section 410.412(a)(2) or (b)(2); *and* 2) the impairment is either listed in the Appendix to 20 C.F.R. Part 410, Subpart D or is found to be its medical equivalent. ***Dunlap v. Director, OWCP***, 8 BLR 1-375 (1985). Evidence meeting any of the medical criteria in the Appendix to Subpart D establishes a rebuttable presumption that the miner's pneumoconiosis is totally disabling. ***Dunlap, supra***.

An impairment is the medical equivalent of an impairment listed in the Appendix if the medical findings pertaining to that impairment show that it is at least equivalent in duration and severity to the impairments listed in the Appendix. See ***Kinnick v. National Mines Corp.***, 2 BLR 1-221 (1979). Any finding as to whether such an impairment is the equivalent of an impairment listed in the Appendix must be based on medically accepted clinical and laboratory diagnostic techniques including a judgment furnished by a physician designated by the administration relative to the question of medical equivalence. 20 C.F.R. §410.424(b).

Two types of evidence may rebut a finding of total disability under Section 410.424: 1) evidence showing that the miner is (or was) engaged in comparable and gainful work, 20 C.F.R. §410.424 (a), or 2) evidence showing that the primary cause of claimant's disability is something other than pneumoconiosis. See Appendix to Subpart D; ***Maurizio v. Director, OWCP***, 2 BLR 1-116 (1979).

6/95