

PART VI

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

C. TOTAL RESPIRATORY DISABILITY

5. THE PRIMARY CAUSE REQUIREMENT OF SECTION 410.426(a)

Section 410.426(a) provides, *inter alia*, that a miner be determined to be under a disability only if pneumoconiosis is the primary reason for his inability to engage in comparable and gainful work. Medical impairments other than pneumoconiosis may not be considered. 20 C.F.R. §410.426(a). The Board has construed this requirement to mean that the medical severity of the miner's pneumoconiosis must be stressed rather than factors of age, education, work experience or other medical impairments. **Vargo v. Bethlehem Mines Corp.**, 1 BLR 1-347 (1977); **Crawford v. Clinchfield Coal Co.**, 1 BLR 1-197 (1977). Additionally, the Board has held that the claimant bears the burden of proving this element. **Rogers v. Ziegler Coal Co.**, 1 BLR 1-847 (1978); **Stevens v. Director, OWCP**, 1 BLR 1-386 (1978).

While Section 410.426(a) provides that pneumoconiosis must be the primary reason for the miner's inability to engage in "comparable and gainful work," in light of the claimant's general burden of proof in establishing total disability under Section 410.412 and 410.426, the primary cause requirement properly applies to the miner's ability to perform his usual coal mine work. See **Fletcher v. Appalachian Coal Co.**, 1 BLR 1-785 (1978). A claimant can establish that pneumoconiosis is the primary cause of the miner's disability if he shows that his pneumoconiosis is, in and of itself, totally disabling. **Wells v. Peabody Coal Co.**, 3 BLR 1-85 (1976), *aff'd sub nom. Peabody Coal Co. v. Benefits Review Board*, 560 F.2d 797 (7th Cir. 1977). A claimant need not prove that the miner is disabled solely due to pneumoconiosis, nor that the miner's pneumoconiosis, when weighed with all of his other impairments, is the most severe. Rather, the claimant need only establish that the miner's pneumoconiosis is sufficiently severe so as to be an independent cause of his total disability. See **Burks v. Hawley Coal Mining Corp.**, 2 BLR 1-323 (1979); **Branham v. Director, OWCP**, 2 BLR 1-111 (1979); **Smaroff v. Bethlehem Mines Corp.**, 2 BLR 1-33 (1979).

If the miner is totally disabled due to a breathing impairment and the evidence is in conflict as to the cause of that impairment, the administrative law judge must weigh the evidence, resolve the conflicts and make a finding of fact. **Kurimcak v. United States Steel Corp.**, 2 BLR 1-75 (1979). Additionally, the administrative law judge must provide an adequate rationale supporting this determination. **Rasel v. Bethlehem Mines Corp.**, 1 BLR 1-918 (1978). Nonetheless, the administrative law judge need not use the precise language "primary cause." Rather, the administrative law judge's

finding on this issue will be deemed sufficient so long as it is equivalent to a conclusion that pneumoconiosis is the primary cause of the miner's disability. **Matney v. Jones & Laughlin Coal Co.**, 3 BLR 1-332 (1981); **Retter v. Peabody Coal Co.**, 1 BLR 1-957 (1978).

In determining the primary cause of a miner's disabling pulmonary or respiratory impairment, the administrative law judge may consider a miner's history of cigarette smoking, since that is a generally accepted cause of pulmonary insufficiency. **Romero v. Director, OWCP**, 2 BLR 1-531 (1979); **Chastest v. Director, OWCP**, 2 BLR 1-259 (1979). The administrative law judge may also properly reject a physician's opinion that a miner is totally disabled due to pneumoconiosis where the physician failed to consider the miner's history of cigarette smoking. **Gomola v. Manor Mining & Contracting Corp.**, 2 BLR 1-130 (1979).

While a physician's opinion attributing the miner's impairment to smoking once had to be expressed with a "reasonable degree of medical certainty," **Blevins v. Peabody Coal Co.**, 1 BLR 1-1023 (1979) (**Blevins II**), the Board subsequently held that a doctor's opinion on the issue is admissible if it constitutes a reasoned medical judgment. **Blevins v. Peabody Coal Co.**, 6 BLR 1-750 (1983) (**Blevins III**). For a discussion of the **Blevins** tests for admissibility, see Part IV.D.3.a. of the Desk Book.

CASE LISTINGS

[adjudicator failed to make adequate finding of "primary cause" under Section 410.426(a) stating claimant's disability was, to a substantial degree, due to pneumoconiosis; standard is primary causation, not substantial causation] **Hogarty v. Honeybrook Mines, Inc.**, 3 BRBS 485 (1976).

[circumstances surrounding miner's job indicative of reduced ability to perform as a result of pneumoconiosis, then continued employment may be consistent with finding of total respiratory disability] **Felthager v. Weinberger**, 529 F.2d 130 (10th Cir. 1976).

[Tenth Circuit upheld adjudicator's finding of no disability as record showed claimant was *effectively* performing his job] **Felthager v. Weinberger**, 529 F.2d 130 (10th Cir. 1976).

[shift to light duty work indicative of reduced ability to perform sufficient to render continued employment consistent with total disability] **Collins v. Mathews**, 547 F.2d 795 (4th Cir. 1976).

[adjudicator's finding of total disability upheld where record contained x-ray diagnosis of

pneumoconiosis, medical opinion diagnosing moderately severe obstructive and restrictive lung impairment, evidence showing claimant was in mid-sixties, had seventh grade education and 19 years coal mine employment] **Shafer v. The Youghiogheny & Ohio Coal Co.**, 1 BLR 1-175 (1977); see also **Collins v. U. S. Steel Corp.**, 1 BLR 1-654 (1978).

[claimant's total disability due to some other condition will not negate entitlement if record shows claimant's pneumoconiosis is independently totally disabling] **Crawford v. Clinchfield Coal Co.**, 1 BLR 1-197 (1977); **Abney v. Republic Steel Corp.**, 1 BLR 1-51 (1976); **Wells v. Peabody Coal Co.**, 3 BLR 1-85 (1976), *aff'd sub nom. Peabody Coal Co. v. Benefits Review Board*, 560 F.2d 797 (7th Cir. 1977); **Hughes v. Heyl & Patterson, Inc.**, 1 BLR 1-604 (1978).

[as pneumoconiosis is progressive and irreversible, once existence of clinical pneumoconiosis is established, duration element of Section 410.412 is satisfied] **Travis v. Peabody Coal Co.**, 1 BLR 1-314 (1977).

[claimant's testimony, if found credible by adjudicator, is sufficient evidence to establish level of exertion required by former coal mine employment and current physical capabilities for purposes of determining comparable and gainful work] **Neal v. Clinchfield Coal Co.**, 1 BLR 1-427 (1978).

[finding of total respiratory disability based on qualifying blood gas study was rebutted because primary cause of disability was back dysfunction, obesity, and underlying emotional difficulties. **Stevens v. Director, OWCP**, 1 BLR 1-386 (1978); see also **Casaus v. Director, OWCP**, 1 BLR 1-518 (1978).

[finding that miner not totally disabled even though record contained qualifying pulmonary function study but also showed that miner continued to work in usual coal mine employment] **Vance v. Buffalo Mining Co.**, 1 BLR 1-555 (1978); see also **Miller v. United States Steel Corp.**, 1 BLR 1-438 (1978).

[adjudicator's finding miner retained ability to engage in usual coal mine employment upheld where medical opinion that miner's residual lung capacity allowed lifting up to twenty pounds and carrying in excess of ten pounds frequently and miner's depiction of usual coal mine duties fell within these parameters] **Polly v. Director, OWCP**, 1 BLR 1-709 (1978).

[remand required where although adjudicator found no total disability since miner continued working effectively in usual coal mine job, he failed to consider regular missed work due to lung disorders] **Carr v. Bethlehem Mines Corp.**, 1 BLR 1-734 (1978); see also **Collins v. Mathews**, 547 F.2d 795, 798 (4th Cir. 1976).

[to establish existence of comparable and gainful work, party opposing entitlement must

actually identify types of jobs requiring miner's skills, location, and show miner would have reasonable opportunity to be hired] **Fletcher v. Appalachian Coal Co.**, 1 BLR 1-785 (1978).

[Sixth Circuit affirmed finding that claimant's back impairment was primary cause of disability as evidence in conflict with respect to whether miner was totally disabled from any black lung ailment; "[w]e do not know how a claimant can be totally and permanently disabled more than once."] **Gastineau v. Matthews**, 577 F.2d 356, 360 (6th Cir. 1978).

[to make highly technical and complex judgment that claimant's disabling respiratory impairment due to heart disease or any other physical/psychological impairment other than pneumoconiosis without a single medical opinion establishing a causal connection for such inference was error] **Clegg v. Director, OWCP**, 1 BLR 1-433 (1978); see also **Gober v. Matthews**, 574 F.2d 772, 777 (3d Cir. 1978); **Honaker v. Jewell Ridge Coal Corp.**, 2 BLR 1-947 (1980); **Burks v. Hawley Coal Mining Corp.**, 2 BLR 1-323 (1979); **Mendis v. Director, OWCP**, 2 BLR 1-162 (1979); **Stiltner v. Island Creek Coal Co.**, 2 BLR 1-120 (1979); **Gurule v. Director, OWCP**, 1 BLR 1-797 (1978).

[adjudicator must weigh conflicting ventilatory studies and determine whether they are sufficient to establish total disability pursuant to Section 410.426(b)] **Gober v. Mathews**, 574 F.2d 772 (3d Cir. 1978); **Edwards v. Republic Steel Corp.**, 2 BLR 1-3 (1979); **Shultz v. The Youghiogheny & Ohio Coal Co.**, 1 BLR 1-660 (1978).

[medical criteria in Appendix or Subpart D relevant to issue of total disability: can demonstrate existence of pulmonary impairment that can demonstrate miner's inability to work; criteria cannot be used to establish existence of clinical pneumoconiosis] **Crawford v. Clinchfield Coal Co.**, 2 BLR 1-40 (1979); **Ansel v. Weinberger**, 529 F.2d 304 (6th Cir. 1976).

[where record shows total disability due to *breathing impairment*, and there is no evidence attributing impairment to any cause other than pneumoconiosis, pneumoconiosis may be presumed the primary cause of disability] **Kurimcak v. U.S. Steel Corp.**, 2 BLR 1-75 (1979); **Collins v. United States Steel Corp.**, 1 BLR 1-654 (1978).

[finding heart disease was primary cause of disability affirmed where one physician attributed cause to heart disease, two others noted presence of heart disease, and no physicians stated that miner's pneumoconiosis totally disabling] **Maurizio v. Director, OWCP**, 2 BLR 1-116 (1979); see also **Riley v. Director, OWCP**, 1 BLR 1-543 (1978); **Cook v. Old Ben Coal Co.**, 1 BLR 1-130 (1977).

[primary cause requirement of Section 410.426(a) is equally applicable to finding of total respiratory disability under Section 410.426(b), **Epperly v. Director, OWCP**, 1 BLR 1-

746 (1978), and under Section 410.426(d)] **Gomola v. Manor Mining & Contracting Co.**, 2 BLR 1-130 (1979).

[where record contains substantial evidence supporting finding of total disability under Section 410.424, adjudicator must make clear finding as to what specific evidence *rebutts* finding of total disability]. **Call v. Director, OWCP**, 2 BLR 1-146 (1979); *see also Williamson v. United States Steel Corp.*, 2 BLR 1-470 (1979).

[adjudicator must determine whether comparable work is gainful; finding that claimant's work on parents' farm gainful work not supported by substantial evidence where claimant testified he worked only on occasional basis and to aid his parents who were in poor health] **Young v. Harper Valley Coal Co.**, 2 BLR 1-167 (1979).

[failure of medical evidence to establish total disability under Section 410.426(b) does not rule out *per se* possibility of finding claimant suffers from totally disabling respiratory or pulmonary impairment] **Perkins v. Ryans Creek Coal Co.**, 2 BLR 1-214 (1979).

[adjudicator erred not considering evidence that might establish equivalent impairment, such as A-aO₂ gradient findings, under Section 410.424] **Grimmet v. Jewell Ridge Coal Co.**, 1 BLR 1-547 (1978); *see also Kinnick v. National Mines Corp.*, 2 BLR 1-221 (1979); **Lauderback v. Director, OWCP**, 1 BLR 1-1033 (1978).

[adjudicator's finding pneumoconiosis rather than lung cancer was "primary cause" affirmed where two physicians attributed reduced pulmonary function study results to pneumoconiosis explaining tissue affected by lung cancer too small to have produced diagnosed impairment] **McCoy v. Valley Camp Coal Co.**, 2 BLR 1-243 (1979); *see also Hughes v. Heyl & Patterson, Inc.*, 1 BLR 1-604 (1978).

[proof of mere possibility of obtaining comparable and gainful work does not satisfy **Fletcher** requirement] **Couch v. Shamrock Coal Co.**, 2 BLR 1-342 (1979).

[adjudicator erred in finding comparable work without making specific findings concerning physical exertion and skills required by each job] **Gleza v. Ohio Mining Co.**, 2 BLR 1-436 (1979); **Sebben v. Director, OWCP**, 2 BLR 1-177 (1979); **Young v. Harper Valley Coal Co.**, 2 BLR 1-167 (1979).

[adjudicator must address "other relevant evidence" that may be sufficient to establish total disability under Section 410.426(d)] **Brown v. Eastern Associated Coal Corp.**, 2 BLR 1-450 (1979); **Sebben v. Director, OWCP**, 2 BLR 1-177 (1979); **Murray v. Bishop Coal Co.**, 1 BLR 1-702 (1978).

[medical report failed to sufficiently specify miner's current limitations due to pneumoconiosis to permit comparison with requirements of former coal mine work or comparable and gainful work, therefore failing to establish total disability] **Williamson**

v. United States Steel Corp., 2 BLR 1-470 (1979).

[finding of no total disability affirmed as claimant continued to work effectively in usual coal mine job nearly three years after qualifying blood gas study] **Williamson v. United States Steel Corp.**, 2 BLR 1-470 (1979); see also **Kinnick v. National Mines Corp.**, 2 BLR 1-221 (1979).

[abnormal EKG will not establish total disability due to pneumoconiosis pursuant to Appendix unless it satisfies one of the specific criteria of disability listed therein] **Childress v. Harman Mining Corp.**, 2 BLR 1-644 (1979).

[blood gas study results obtained either at rest or during exercise may establish total disability under Section 410.424(a)] **Hutchens v. Director, OWCP**, 2 BLR 1-688 (1979); **Strako v. Ziegler Coal Co.**, 1 BLR 1-510 (1978).

[blood gas study results may *not* be rounded off when comparing them to table values in Appendix to Subpart D of Part 410] **Gutierrez v. Califano**, 612 F.2d 1247, 1248 (10th Cir. 1979).

[Sixth Circuit reversed adjudicator's finding of no total disability where claimant working under increasing physical hardship and work capacity and performance were proportionally decreasing] **Miniard v. Califano**, 618 F.2d 405 (6th Cir. 1980).

[harmless error to fail discussing hearing testimony as other relevant evidence pursuant to Section 410.426(d) as defined in Section 410.414(c) as medical evidence insufficient to corroborate lay testimony] **Mullins v. Director, OWCP**, 3 BLR 1-746.2 (1981); see also **United States Steel Corp. v. Bridges**, 582 F.2d 7 (5th Cir. 1978); **Wells v. Peabody Coal Co.**, 3 BLR 1-85 (1976).

[claimant, who suffered breathing, back, and heart problems, failed to prove pneumoconiosis was primary cause of disability] **Castle v. Director, OWCP**, 4 BLR 1-237 (1981).

[Board overturned precedent established in **Strako v. Zeigler Coal Co.**, 3 BLR 1-136 (1981), whereby nonconforming ventilatory studies may not be considered when weighing evidence for invocation pursuant to 20 C.F.R. §727.203(a)(2); while adjudicator must generally consider such evidence in accord with quality standards specified in Section 410.430, qualifying study that is non-conforming retains its validity and may be weighed along with conforming studies where it fails to satisfy quality standards only because it lacks a statement of cooperation and comprehension, which can only improve values of an already non-qualifying test] **Crapp v. United States Steel Corp.**, 6 BLR 1-476 (1983).

[reversal of award of benefits holding claimant's present job driving truck comparable

and gainful employment even though not as arduous physically; comparing levels of exertion one factor to be considered in determining disability, but not dispositive] **Kane v. Director, OWCP**, 6 BLR 1-791 (1984).

[adjudicator properly found total disability based on medical opinion stating he could perform light manual labor, where claimant's usual coal mine work found to be "heavy"] **Meeks v. Director, OWCP**, 6 BLR 1-794 (1984).

[adjudicator may find no total disability without addressing issue of comparable and gainful work if record supports finding that miner failed to carry initial burden of proving inability to perform usual coal mine work due to pneumoconiosis] **Bentley v. Director, OWCP**, 7 BLR 1-612 (1984); **Stiltner v. Island Creek Coal Co.**, 2 BLR 1-120 (1979); **Crawford v. Clinchfield Coal Co.**, 2 BLR 1-40 (1979); **Polly v. Director, OWCP**, 1 BLR 1-709 (1978).

["age" is factor in considering total disability under Section 410.426(d) only when adjudicator is analyzing miner's ability to do comparable and gainful work after its been established that miner unable to do usual coal mine work] **Kolesar v. The Youghiogheny & Ohio Coal Co.**, 760 F.2d 728, 7 BLR 2-211 (6th Cir. 1985); see also **Warmus v. Bethlehem Mines Corp.**, 1 BLR 1-182 (1977).

[no authority in 20 C.F.R. §727.203(a) to extrapolate any values for determining disability listed in subsection (a)(2) to make them applicable to cases arising under 20 C.F.R. Part 410, Subpart D] **Hutchens v. Director, OWCP**, 8 BLR 1-16 (1985); see **Ovies v. Director, OWCP**, 3 BLR 1-610 (1981).

[doctor's conclusion that miner is totally disabled for work in dusty environment insufficient to establish total disability pursuant to Section 410.426(d)] **Hall v. Director, OWCP**, 8 BLR 1-193 (1985).

[adjudicator may properly find total respiratory disability by relying on medical opinion containing non-qualifying blood gas and pulmonary function studies when physician indicated blood gas study showed overaeration precluding possibility of work and pulmonary function study of no value in arriving at diagnosis "demonstrated by a careful history and x-ray."] **Smith v. Director, OWCP**, 8 BLR 1-258 (1985).

[total disability established by blood gas study qualifying under Appendix to 20 C.F.R. Part 410, Subpart D, considered due to pneumoconiosis in absence of evidence to contrary, 20 C.F.R. §410.424(a); party opposing entitlement bears burden to establish that some other condition was primary cause of miner's respiratory disability] **Dunlap v. Director, OWCP**, 8 BLR 1-375 (1985); **Saunders v. Director, OWCP**, 7 BLR 1-186 (1984).

[adjudicator may consider cumulative effect of all relevant evidence in resolving issue of total respiratory disability even though this evidence may be insufficient when considered by itself] ***Burnett v. Director, OWCP***, 7 BLR 1-781 (1985); see also ***Allen v. Union Carbide Corp.***, 8 BLR 1-393 (1985).

DIGESTS

The Board affirmed the administrative law judge's uncontested finding that claimant had established a *prima facie* case of total respiratory disability based on a qualifying pulmonary function study pursuant to 20 C.F.R. §410.426(b). Board remanded case to administrative law judge to properly weigh the comparability of skills, abilities and physical exertion between the miner's current employment and his previous job as a coal loader for purposes of determining whether claimant's *prima facie* case of total disability had been defeated by proof that the miner was engaged in comparable and gainful work. 20 C.F.R. §§410.412(a), 410.424(a), 410.426(a). ***Caudill v. Director, OWCP***, 9 BLR 1-174 (1986).

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