PART IV

ADMINISTRATIVE PROCESSING OF CLAIMS, POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE

A. THE CLAIMS PROCESS

4. PROCEDURAL ISSUES AT THE DISTRICT DIRECTOR OR THE HEARING LEVEL

a. General Evidentiary Matters

The Act incorporates by reference Section 23(a) of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §923(a), which precludes mandatory application of common law or statutory rules of evidence. 33 U.S.C. §923(a), as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §§702.338-339, 725.450, *et seq.*; ***Cochran v. Consolidation Coal Co.***, 12 BLR 1-136 (1989); ***Darnell v. Bell Helicopter International, Inc.***, 16 BRBS 98, *aff'd sub nom*. ***Bell v. Helicopter International, Inc. v. Jacobs***, 746 F.2d 1342, 17 BRBS 13 (CRT)(8th Cir. 1984). The administrative law judge generally is not bound by common law or statutory rules of evidence. 20 C.F.R. §725.455 (1984); 29 C.F.R. §18.44. ***American Coal Co. v. Benefits Review Board***, 738 F.2d 387, 390, 6 BLR 2-81, 2-89 (10th Cir. 1984); ***Blawut v. The Youghiogheny and Ohio Coal Co.***, 6 BLR 1-511 (1983); ***Cochran***, ***supra***.

Implementing regulations provide that the administrative law judge is required, subject to objection by any party, to admit into the record all evidence that has been timely developed and exchanged in accordance with 20 C.F.R. §725.456. *See* ***Cochran***, 12 BLR at 1-128. The Supreme Court held in ***Richardson v. Perales***, 402 U.S. 389 (1971) that *ex parte* medical reports may constitute substantial evidence provided that certain procedural safeguards are met. For further discussion concerning the admission of medical reports, *see* Part III.A.4.d.e. of the Desk Book; for criteria concerning the ordering of a physical examination, *see* Part III.A.4.f. of the Desk Book.

It is within the administrative law judge's discretion to reopen the record for the submission of evidence. 20 C.F.R. §725.456(e); ***Lynn v. Island Creek Coal Co.***, 12 BLR 1-146 and 13 BLR 1-57 (1989)(en banc recon.)(McGranery, J., concurring); ***Toler v. Associated Coal Co.***, 12 BLR 1-49 (1989); ***Borgeson v. Kaiser Steel Coal Co.***, 12 BLR 1-169 (1989); ***Clark v. Karst-Robbins Coal Co.***, 12 BLR 1-149 (1989)(en banc); ***White v. Director, OWCP***, 7 BLR 1-348, 1-351 (1988); ***Tackett v. Benefits Review Board***, 806 F.2d 640, 10 BLR 2-93 (6th Cir. 1986).

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[copies of medical reports may be accepted into evidence] ***Sullivan v. The Youghiogheny & Ohio Coal Co.***, 1 BLR 1-972 (1978); *see also* 20 C.F.R. §725.404(c).

DIGESTS

Reports prepared by the court of litigation are probative evidence and are not presumptively biased. ***Cochran v. Consolidation Coal Co.***, 16 BLR 1-101 (1992).

In considering a request to reopen the record on remand, an administrative law judge must determine whether a refusal to do so would result in "manifest injustice" against either party. ***Cochran v. Consolidation Coal Co.***, 16 BLR 1-101 (1992).

If the administrative law judge concludes that the documentary evidence is insufficient, it is within his/her discretion to leave the record open and take evidence or to remand the case to the district director to develop the evidence. ***Krizner v. United States Steel Mining Co., Inc.***, 17 BLR 1-31 (1992)(en banc)(Brown, J. concurring; Smith, J. dissenting).

Section 725.456(d) did not require the administrative law judge to exclude evidence, that had been withheld by claimant until the claim was forwarded to the Office of Administrative Law Judges, where employer expressly waived its objection to the exhibits' admission. ***Dankle v. Duquesne Light Co.***, 20 BLR 1-1 (1995).

The administrative law judge is not bound by technical or formal rules of procedure, except as provided by the Administrative Procedure Act and Part 725 of the regulations. ***Johnson v. Royal Coal Co.***, 22 BLR 1-132 (2002)(Hall, J., dissenting).

The D.C. Circuit held that the evidentiary limitations set forth in the revised regulations at 20 C.F.R. §§725.310(b), 725.414, 725.456, 725.457(d) and 725.458, are consistent with the Administrative Procedure Act, which empowers agencies to exclude irrelevant, immaterial or unduly repetitious evidence, *see* 5 U.S.C. §556(d), and with the Black Lung Act, *see* 30 U.S.C. §923(b), incorporating 42 U.S.C. §405(a). These rules are not arbitrary, capricious, artificial, or inflexible, but rather enable the administrative law judge to focus on the quality of the medical evidence in the record. ***Nat'l Mining Ass'n v. Department of Labor***, 292 F.3d 849, 873-874, 23 BLR 2-124 (D.C. Cir. 2002), *aff'g in part and rev'g in part* ***Nat'l Mining Ass'n v. Chao***, 160 F.Supp.2d 47 (D.D.C. 2001).

As the adjudication officer empowered to conduct formal hearings and render decisions under the Act, an administrative law judge is granted broad discretion in resolving procedural issues, particularly where the statute and the regulations do not provide

explicit guidance as to the action that the administrative law judge should take when the requirements of a regulation are not satisfied. ***Harris v. Old Ben Coal Co.***, 23 BLR 1-98 (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting), citing ***Consolidation Coal Co. v. Director, OWCP* [*Stein*]**, 294 F.3d 885, 22 BLR 2-409 (7th Cir. 2002); ***Freeman United Coal Mining Co. v. Benefits Review Board* [*Whited*]**, 909 F.2d 193, 14 BLR 2-32 (7th Cir. 1990).

A party seeking to overturn an administrative law judge's disposition of an evidentiary issue must prove that the administrative law judge's action represented an abuse of his or her discretion. ***Harris v. Old Ben Coal Co.***, 23 BLR 1-98 (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting), citing ***Consolidation Coal Co. v. Director, OWCP* [*Stein*]**, 294 F.3d 885, 22 BLR 2-409 (7th Cir. 2002); ***Freeman United Coal Mining Co. v. Benefits Review Board* [*Whited*]**, 909 F.2d 193, 14 BLR 2-32 (7th Cir. 1990).

The Fourth Circuit held that the administrative law judge properly exercised his discretion in granting a motion to compel discovery where the discovery request related to bias was appropriate, employer's allegations that the discovery requests sought irrelevant information and imposed burdensome costs were unsupported, and employer's own recalcitrance in refusing to disclose the requested discovery created any untimeliness issue under 20 C.F.R. §725.456(b). ***Consolidation Coal Co. v. Williams***, 453 F.3d 609, BLR (4th Cir. 2006).

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