

PART V

BENEFITS REVIEW BOARD POLICIES AND PROCEDURES

A. SCOPE OF REVIEW

10. STIPULATIONS AND CONCEDED ISSUES

Generally, stipulations of facts are permitted in claims arising under the Act, are binding, and prevent the stipulated issue from being contested at any stage of the proceedings. See 20 C.F.R. §725.463; see also **Grant v. Director, OWCP**, 6 BLR 1-619 (1983). The question of whether, for example, x-rays satisfy quality standards is a question of law and stipulations of law are not controlling on courts. **Nippes v. Florence Mining Co.**, 12 BLR 1-108 (1985)(McGranery, J., dissenting). The major exception to this rule is that stipulations will not be accepted where they are contrary to law.

Concessions differ from stipulations in that the decision not to contest an issue is made by one party rather than by agreement of the parties. Like a stipulation, however, a concession will prevent the issue in question from being contested.

CASE LISTINGS

[if party who is represented by counsel fails to challenge fact-finder's finding, it is deemed conceded and will not be addressed] **Bucshon v. Peabody Coal Co.**, 4 BLR 1-608, 1-610 (1982).

[denial of benefits affirmed where rebuttal established at Sections 727.203(b)(2), (b)(4) and claimant failed to contest (b)(2) finding] **Skrack v. Island Creek Coal Co.**, 6 BLR 1-710 (1983).

[as administrative law judge hearing is *de novo* proceeding, Director is not bound to any concessions made by district director] **Oggero v. Director, OWCP**, 7 BLR 1-860 (1985).

[right to contest claimant's eligibility not waived where employer explicitly preserved this right in cover letter to controversy form and where Director contested eligibility in summary of issues] **Vance v. Eastern Associated Coal**, 8 BLR 1-68 (1985).

[total disability properly at issue where district director's implicit finding that *pro se* claimant's stipulation that he was not totally disabled was not in his best interest; administrative law judge therefore properly considered total disability] ***Wilson v. Youghioghney and Ohio Coal Co.***, 8 BLR 1-73 (1985).

[failure to respond to district director's Memorandum of Informal Conference within 30 days constitutes acceptance of finding and final adjudication of claim] ***Key v. Alabama By-Products Corp.***, 8 BLR 1-241 (1984).

[acceptance of stipulation that claimant was eligible survivor under 20 C.F.R. §725.212 *et seq.* affirmed] ***Pendleton v. Director, OWCP***, 8 BLR 1-242 (1984)(Ramsey, CJ., dissenting).

[fact-finder erred in permitting Director to litigate issues not identified as contested until week before hearing; Director offered no excuse for this] ***Thornton v. Director, OWCP***, 8 BLR 1-277 (1985).

[Board vacated award based on claimant's stipulation that x-rays relied on for invocation did not meet quality standards. ***Nippes v. Florence Mining Co.***, 12 BLR 1-108 (1985)(McGranery, J., dissenting)[question of whether x-rays satisfy quality standards is a question of law and stipulations of law are not controlling on courts].

DIGESTS

The Board accepted the Director's Motion to Remand for Payment of Benefits as a withdrawal of controversion of all issues, thereby overruling the holdings in ***Lucas v. Director, OWCP***, 11 BLR 1-61 (1988)(Ramsey, CJ., concurring); ***Myers v. Director, OWCP***, 11 BLR 1-45 (1988)(en banc); ***Blake v. Director, OWCP***, 11 BLR 1-7 (1987)(en banc); ***Grieco v. Director, OWCP***, 10 BLR 1-139 (1987)(en banc); and ***Putnam v. Director, OWCP***, 8 BLR 1-388 (1985). ***Pendley v. Director, OWCP***, 13 BLR 1-23 (1989)(en banc).

Inasmuch as it is the Director's responsibility to name all potential operators at the district director's level, whenever the responsible operator issue has not been resolved, see ***Director, OWCP v. Trace Fork Coal Co. [Matney]***, 67 F.3d 503, 19 BLR 2-290 (4th Cir. 1995); ***Crabtree v. Bethlehem Steel Corp.***, 7 BLR 1-354 (1984), the Board stated that the mere naming of a party as a potential responsible operator is not a concession of this fact by the Department of Labor [DOL]. ***Lester v. Mack Coal Co.***, 21 BLR 1-126 (1999).

