PART V

BENEFITS REVIEW BOARD POLICIES AND PROCEDURES

A. SCOPE OF REVIEW

12. DISPOSITION AS A MATTER OF LAW

The resolution of issues as a matter of law is an exception to the principle that the fact-finder is responsible for the initial consideration of the evidence and factual issues. *See* Part IV.A.4. a. of the Desk Book. This method of disposing of an appeal is proper in limited situations where the consideration of relevant evidence in accordance with applicable law can lead to only one result. Deciding cases in this manner, where appropriate, fosters judicial economy by obviating the need for remands where the outcome is clear.

CASE LISTINGS

[Seventh Circuit found rebuttal established as matter of law where "no evidence was offered to challenge or contradict" medical opinion that disability due to cigarette smoking and rejection of that opinion was improper] ***Peabody Coal Co. v. Lowis***, 708 F.2d 266, 5 BLR 2-84 (7th Cir. 1983).

[doctor's indication of "one flight dyspnea" and "one block dyspnea" insufficient as matter of law to constitute finding of total disability sufficient to establish interim presumption under subsection (a)(4)] ***Parino v. Old Ben Coal Co.***, 6 BLR 1-104 (1983).

[Fourth Circuit reversed Board's holding of subsection (b)(2) rebuttal as matter of law; rejected holding that there was clear and uncontradicted medical report establishing absence of disability] ***Beavan v. Bethlehem Mines Corp.***, 741 F.2d 689, 6 BLR 2-101 (4th Cir. 1984).

[presumption of death due to pneumoconiosis rebutted as matter of law where pneumoconiosis not mentioned in death certificate, death attributed to carcinoma of lungs and uncontradicted report indicates lung cancer did not arise out of coal mine employment] ***Cryster v. Christopher Coal Co.***, 6 BLR 1-518 (1983).

[opinion that claimant is totally disabled due to pneumoconiosis for work in dusty

environment and partially disabled for manual labor insufficient as matter of law to establish presumption at subsection (a)(4)] ***New v. Director, OWCP***, 6 BLR 1-597 (1983).

[rebuttal at subsection (b)(3) established as matter of law where uncontradicted medical opinions diagnosed smoking as the cause of pulmonary disease and ruled out coal mine employment as etiology] ***Jenkins v. Imperial Coal Co.***, 6 BLR 1-631 (1983).

[rebuttal of Section 411(c)(5) established as matter of law based on uncontradicted medical report of consulting physician that there was no evidence of pneumoconiosis or any chronic occupational problem] ***Lawrence v. Alabama By-Products Corp.***, 6 BLR 1-917 (1984).

[subsection (b)(3) rebuttal established as matter of law where record revealed that pneumoconiosis was not causative factor, in whole or in part, with respect to total disability] ***Minor v. Alabama By-Products Corp.***, 7 BLR 1-676, 1-679 (1985).

[interim presumption invoked under subsection (a)(4) as matter of law by a medical opinion of disability from working in mines or doing other substantial activity, from a respiratory standpoint] ***Estep v. Director, OWCP***, 7 BLR 1-904 (1985).

[rebuttal at subsection (b)(2) established as a matter of law when discrediting of key medical report was erroneous. ***Wheaton v. North American Coal Corp.***, 8 BLR 1-21 (1983).

[where medical opinion rejected for erroneous reason that was noted as *otherwise* supportive of rebuttal, Board held that evidence established rebuttal under subsection (b)(2) as a matter of law] ***Kertesz v. Crescent Hills Coal Co.***, 8 BLR 1-112 (1985).

DIGESTS

The administrative law judge's finding that rebuttal was not established at 20 C.F.R. §727.203(b)(2) was affirmed because the record contained no medical opinion stating that the miner was able to do his usual coal mine employment, and the administrative law judge's finding that the evidence was insufficient to establish a totally disabling respiratory or pulmonary impairment did not satisfy employer's burden at 20 C.F.R. §727.203(b)(2) to establish that claimant is not totally disabled for any reason, *see* ***Youghiogheny & Ohio Coal Co. v. Webb***, 49 F.3d 244, 19 BLR 2-123 (6th Cir. 1995); ***York v. Benefits Review Board***, 819 F.2d 134, 137, 10 BLR 2-99, 2-103-04 (6th Cir. 1987). ***Cole v. East Kentucky Collieries***, 20 BLR 1-50 (1996).

Remand of the case for the administrative law judge to consider employer's answers to claimant's requests for admission is unnecessary where the parties' conduct at the hearing "makes manifest" that employer did not admit the existence of pneumoconiosis or that claimant's total disability is due to pneumoconiosis, and that claimant understood these issues were not admitted. ***Johnson v. Royal Coal Co.***, BLR , BRB No. 01-0388 BLA at 7 (Feb. 28, 2002)(Hall, J., dissenting).

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