PART VII

ESTABLISHING ENTITLEMENT UNDER 20 C.F.R. PART 718

A. <u>IN GENERAL</u>

4. QUALITY STANDARDS

The regulations found at 20 C.F.R. §§718.102-107 contain detailed quality standards for x-rays, pulmonary function tests, physical examination reports, blood gas studies, autopsies and biopsies. 20 C.F.R. Part 718, Subpart B and Appendices A, B and C. *See also* Part IV.D.6., 7. and 8. of the Desk Book.

Except for cases arising in the Third Circuit, the standards set forth in 20 C.F.R. §§718.102-107 are to be considered and should be used as guidelines by the administrative law judge. An otherwise reliable and probative study must not be rejected, however, simply for failing to satisfy a non-critical quality standard. This rule differs significantly from cases adjudicated pursuant to Parts 727 and 410 where the quality standards are mandatory. *See* ***Anderson v. Youghiogheny & Ohio Coal Co.***, 7 BLR 1-152 (1984).

In reviewing the objective medical evidence pursuant to Part 718, the administrative law judge should determine whether the missing information is essential to the reliability or the probative value of the evidence. If so, the administrative law judge may reject or attribute less weight to the evidence. If the missing information is not essential, the administrative law judge may consider and accept the evidence. Such a determination can only be made by the administrative law judge, as fact-finder, based on the unique facts of each case.

The party objecting to the admission of the objective medical evidence has a two-part obligation at the hearing. First, the party must specify in what way the objective medical evidence fails to conform to the quality standards. Second, the party must demonstrate how this defect or omission renders the study unreliable. The administrative law judge can then explain the basis for his determination. ***Orek v. Director, OWCP***, 10 BLR 1-51 (1987)(Levin, J., concurring); *see also* ***Defore v. Alabama By-Products Corp.***, 12 BLR 1-27 (1988); ***Dillon v. Peabody Coal Co.***, 11 BLR 1-113 (1988); ***Gorman v. Hawk Contracting, Inc.***, 9 BLR 1-76 (1986); ***Budash v. Bethlehem Mines Corp.***, 9 BLR 1-48 and 13 BLR 1-46 (1986)(en banc), *aff'd on recon.*, 9 BLR 1-104 (1986)(en banc).

For cases arising in the Third Circuit, the quality standards are mandatory, and where the objective tests do not strictly conform to the applicable quality standard, the

administrative law judge may, nevertheless, consider the objective test if the test is found to be in substantial compliance with the quality standard. ***Mangifest v. Director, OWCP***, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); ***Director, OWCP v. Siwiec***, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990).

CASE LISTINGS

[Section 727.203(a) provides no general authority to extrapolate values to determine disability to make them applicable to cases under Part 718] ***Matteo v. Director, OWCP***, 8 BLR 1-200 (1985).

DIGESTS

Part 718 quality standards do not apply to claims adjudicated pursuant to Part 727. The Board rejected the Director's argument that because the blood gas studies were administered after the Part 718 effective date, the Part 718 quality standards should apply in a case subject to consideration under Part 727. ***Pezzetti v. Director, OWCP***, 8 BLR 1-464 (1986).

The administrative law judge is entitled to consider the reliability of the pulmonary function studies in accordance with the standards found in Appendix B to 20 C.F.R. Part 718. ***Winchester v. Director, OWCP***, 9 BLR 1-77 (1986).

The party challenging a blood gas study for failure to conform with Section 718.105 must raise this issue at the hearing level, not for the first time on appeal. ***Orek v. Director, OWCP***, 10 BLR 1-51 (1987).

An administrative law judge is not limited to the four corners of the autopsy or biopsy report in determining its reliability. The administrative law judge may look to supportive documentation in the record in an attempt to cure any defects in the actual report. ***Dillon v. Peabody Coal Co.***, 11 BLR 1-113, 1-115, n. 1 (1988)

A "conforming" pulmonary function study complies with the quality standards set forth in 20 C.F.R. §718.103, Part 718, Appendix B. A "non-conforming" study does not comply with these standards. A "qualifying" pulmonary function study yields values that are equal to or less than the values set out in the tables at 20 C.F.R. Part 718, appendices B and C. Such a study is evidence of a totally disabling respiratory condition. A "non-qualifying" study exceeds those values in the tables and thus is insufficient to establish total disability. *See* 20 C.F.R. §718.204(c)(1)(2). ***Director, OWCP v. Siwiec***, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990).

In order to comply with the quality standards contained in 20 C.F.R. §718.104, a medical report does not have to be in writing, but rather, it is sufficient if the opinion is well-reasoned and well-documented. ***Gorzalka v. Big Horn Coal Co.***, 16 BLR 1-48 (1990).

Under the revised regulation at 20 C.F.R. §718.101(b), a clinical test that is not in substantial compliance with the standards for administering the test is insufficient to establish the fact for which it is proffered. ***Webber v. Peabody Coal Co.***, BLR 1- (2006) (*en banc*) (Boggs, J., concurring).

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