## PART VII

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

### B. EXISTENCE OF PNEUMOCONIOSIS

#### 2. SECTION 718.202(a)(1): X-RAY EVIDENCE

Under Section 718.202(a)(1), where x-ray readings are in conflict, the administrative law judge **shall** consider the radiological qualifications of the reader. ***Dixon***, ***supra***. Section 727.202(a)(1)(i), paralleling Section 413(b) of the Act and 20 C.F.R. §727.206(b), provides that, in all claims filed before January 1, 1982, where there is other evidence of pulmonary or respiratory impairment, an x-ray that satisfies the quality standards and was interpreted by a Board-certified or Board-eligible radiologist shall be accepted by the Office of Workers' Compensation Programs, if it was taken by a radiologist or qualified radiologic technician and if there is no evidence that the claim was fraudulently represented. For a complete discussion of Section 413(b) as it pertains to x-ray rereadings, *see* Part IV.D.6.b. of the Desk Book.

## CASE LISTINGS

## DIGESTS

The administrative law judge did not err where he accorded greater weight to the x-ray reading by a B-reader rather than to the two more recent x-ray readings since the later x-rays were not read by B-readers and were only five months more recent. ***Taylor v. Director, OWCP***, 9 BLR 1-22 (1986).

While Section 718.202(a)(1) permits the administrative law judge to find pneumoconiosis based on a chest x-ray, such a finding is not required whenever there is qualifying positive x-ray evidence in the record. ***Mabe v. Bishop Coal Co.***, 9 BLR 1-67 (1986).

The administrative law judge properly found the description "small nodule foreign body right apex" to not be consistent with the classification system found at Section 718.102. He also reasonably found the reading of O/1 to be negative for pneumoconiosis. ***Trent v. Director, OWCP***, 11 BLR 1-26 (1987).

In evaluating the x-ray evidence, an administrative law judge is not required to defer to the opinion of a physician with superior credentials. ***Clark v. Karst-Robbins Coal Co.***, 12 BLR 1-149 (1989)(en banc); ***Trent v. Director, OWCP***, 11 BLR 1-26 (1987); ***Taylor v. Director, OWCP***, 9 BLR 1-22 (1986).

An administrative law judge may accord greatest weight to the most recent x-ray evidence of record. ***Clark v. Karst-Robbins Coal Co.***, 12 BLR 1-149 (1989)(en banc).

Although the regulations provide no guidance for the evaluation of CT or CAT scans, Section 718.304(c) provides for new methods of diagnosis, and allows the consideration of any acceptable medical means of diagnosis. *See* 20 C.F.R. §718.304(c). Therefore, when initially weighing the evidence in each category pursuant to Section 718.304, CT scans are not to be considered x-rays but must be evaluated pursuant to subsection (c) together with any evidence or testimony which bears on the reliability and utility of CT scans and any other evidence not applicable to subsections (a) and (b). ***Melnick v. Consolidation Coal Co.***, 16 BLR 1-31 (1991)(en banc).

The Board construed the prohibition in ***Melnick v. Consolidation Coal Co.***, 16 BLR 1-31 (1991) (en banc), regarding reliance on a reader's professorial credentials, holding that ***Melnick*** does not bar the administrative law judge in the instant case, who had also considered the B-reader and Board-certified status of the readers as required by Section 718.202(a)(1), from relying on a reader's professorship in radiology as a basis for according greater weight to the readings rendered by that reader. ***Worhach v. Director, OWCP***, 17 BLR 1-105 (1993).

The Board held that a physician's comments that address the source of a pneumoconiosis diagnosed by x-ray are not relevant to the issue of the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Rather, those comments are to be considered at 20 C.F.R. §718.203. ***Cranor v. Peabody Coal Co.***, 21 BLR 1-201 (1999).

The Board instructed the administrative law judge to consider on remand that two of employer's physicians are professors of radiology in addition to being Board-certified radiologists and B readers. The Board held that, while contrary to employer's suggestion, the additional qualifications of the two physicians do not mandate that their opinions be accorded greatest weight, the administrative law judge should consider these qualifications on remand, as they may bear on the quality of the various x-ray interpretations of record. ***Chaffin v. Peter Cave Coal Co.***, BLR , BRB No. 02-0643 BLA (June 17, 2003).

The revised regulations at 20 C.F.R. §§718.101(b), 718.102(a), (e) provide that no chest x-ray shall constitute evidence of the presence or absence of pneumoconiosis unless documented and reported in compliance with 20 C.F.R. §718.102 and Appendix

A to Part 718, which set forth the standards for administering and interpreting chest x-rays, developed in consultation with the National Institute for Occupational Safety and Health (NIOSH). ***Webber v. Peabody Coal Co.***, BLR 1- (2006) (*en banc*) (Boggs, J., concurring); ***Harris v. Old Ben Coal Co.***, BLR 1- (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting).

The Board held that a reading of the plain language of Appendix A to Part 718 makes clear that the x-ray standards described therein do not apply to digital x-rays, and that, therefore, the admission of digital x-rays is not properly considered at Section 718.202(a)(1). Rather, the administrative law judge should consider the admission of digital x-rays under 20 C.F.R. §718.107, where the administrative law judge must determine, on a case-by-case basis, pursuant to 20 C.F.R. §718.107(b), whether the proponent of the digital x-ray evidence has established that it is medically acceptable and relevant to entitlement. ***Webber v. Peabody Coal Co.***, BLR 1- (2006) (*en banc*) (Boggs, J., concurring); ***Harris v. Old Ben Coal Co.***, BLR 1- (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting).

Although the administrative law judge may give greater weight to a physician's x-ray readings based upon his or her academic qualifications and involvement in the B reader program, the administrative law judge is not required to do so. ***Harris v. Old Ben Coal Co.***, BLR 1- (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting), citing *Old Ben Coal Co. v. Battram*, 7 F.3d 1273, 18 BLR 2-42 (7th Cir. 1993).

The administrative law judge may not rely upon his own medical conclusions when characterizing the x-ray interpretations of record. In this case, the Board vacated the administrative law judge's determination that Dr. Wiot's findings of bullae and emphysematous changes in the upper lung fields, and his finding of interstitial fibrosis were consistent with the positive readings for pneumoconiosis. ***Harris v. Old Ben Coal Co.***, BLR 1- (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting).

The revised regulations at 20 C.F.R. §§718.101(b), 718.102(a), (e) provide that no chest x-ray shall constitute evidence of the presence or absence of pneumoconiosis unless documented and reported in compliance with 20 C.F.R. §718.102 and Appendix A to Part 718, which set forth the standards for administering and interpreting chest x-rays, developed in consultation with the National Institute for Occupational Safety and Health (NIOSH). ***Webber v. Peabody Coal Co.***, BLR 1- (2006) (*en banc*) (Boggs, J., concurring).

The Board held that a reading of the plain language of Appendix A to Part 718 makes clear that the x-ray standards described therein do not apply to digital x-rays, and that, therefore, the admission of digital x-rays is not properly considered at Section 718.202(a)(1). Rather, the administrative law judge should consider the admission of digital x-rays under 20 C.F.R. §718.107, where the administrative law judge must determine, on a case-by-case basis, pursuant to 20 C.F.R. §718.107(b), whether the

proponent of the digital x-ray evidence has established that it is medically acceptable and relevant to entitlement. ***Webber v. Peabody Coal Co.***, BLR 1- (2006) (*en banc*) (Boggs, J., concurring).

An administrative law judge is not required to defer to the numerical superiority of the x-ray readings, or to the readings by the physicians with dual qualifications. ***Webber v. Peabody Coal Co.***, BLR 1- (2006) (*en banc*) (Boggs, J., concurring).

03/06