

PART IX

REGULATORY PRESUMPTIONS

A. 20 C.F.R. §727.203 INTERIM PRESUMPTION

3. RECONSIDERATION UNDER PART 410 AND PART 718 -

Effect of Holdings under Interim Presumption on Entitlement under Part 410 and Part 718

Section 727.203(d) provides that a claimant who cannot establish entitlement under the interim presumption of Section 727.203(a), may attempt to establish entitlement to benefits under 20 C.F.R. Part 718, "as amended from time to time." 20 C.F.R. §718.2 (1979). In *Muncy v. Wolfe Creek Collieries Coal Co.*, 3 BLR 1-627 (1981), the Board invalidated that part of Section 727.203(d) that provides for the application of Part 718 "as amended from time to time" to failed interim presumption claims. Consequently, claims filed before March 31, 1980, the effective date of the permanent Part 718 regulations, and denied pursuant to Section 727.203, are to be reviewed under Part 410, Subpart D of the regulations. *Muncy, supra*. In reconsidering failed interim presumption claims under Part 410, the Board has concluded that various holdings pertaining to entitlement under the interim presumption are dispositive of entitlement under Part 410 as well.

The Third, Sixth, Seventh, and Eighth Circuits, however, have held that where entitlement to benefits is not established under Part 727, and the claim was filed before March 31, 1980 and adjudicated after that date, entitlement must be considered under Part 718. *Knuckles v. Director, OWCP*, 869 F.2d 996, 12 BLR 2-217 (6th Cir. 1989); *Caprini v. Director, OWCP*, 824 F.2d 283, 10 BLR 2-180 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Oliver v. Director, OWCP*, 888 F.2d 1239, 13 BLR 2-124 (8th Cir. 1989). Thus, the Board applies *Muncy, supra*, to cases arising in all judicial circuits except the Third, Sixth, Seventh, and Eighth.

CASE LISTINGS

[rebuttal pursuant to subsection (b)(2) precludes entitlement under Part 410] *Wheaton v. North American Coal Corp.*, 8 BLR 1-21 (1985); *Capers v. The Youghioghny and Ohio Coal Co.*, 6 BLR 1-1234 (1984); *Guy v. United States Steel Corp.*, 6 BLR 1-556 (1983).

[rebuttal pursuant to subsection (b)(3) precludes entitlement under Part 410] ***Pastva v. The Youghiogheny and Ohio Coal Co.***, 7 BLR 1-829 (1985); ***Maypray v. Island Creek Coal Co.***, 7 BLR 1-683 (1985); ***Spradlin v. Island Creek Coal Co.***, 6 BLR 1-716 (1984).

[rebuttal at to subsection (b)(4), precludes entitlement under Part 410] ***Lefler v. Freeman United Coal Co.***, 6 BLR 1-579 (1983).

DIGESTS

A finding of rebuttal at Section 727.203(b)(2) precludes entitlement under Part 718. ***Shupe v. Director, OWCP***, 12 BLR 1-200 (1989)(en banc).

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