

## PART IV

### ADMINISTRATIVE PROCESSING OF CLAIMS, POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE

#### D. EVALUATION AND WEIGHING OF EVIDENCE

##### 2. ELEMENTS OF ENTITLEMENT

###### a. Generally; Interpretation of Medical Data

The administrative law judge has substantial discretion in the consideration of the evidence and may assign more or less weight to an item of evidence, in relation to other evidence, for a variety of reasons. For instance, the administrative law judge may credit the medical reports that are determined to be better supported by the objective evidence of record. *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Pastva v. The Youhiogheny and Ohio Coal Co.*, 7 BLR 1-829 (1985). The administrative law judge may also give greater weight to the opinion of a doctor who performed a more thorough examination. *Hall v. Director, OWCP*, 8 BLR 1-193 (1985).

Several considerations may, however, in the administrative law judge's discretion, justify giving medical reports or opinions less weight, or rejecting them altogether. A medical opinion that is based on generalities rather than specifically focused on the miner may be rejected. *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5 (1985). An administrative law judge may also reject a report where it is not possible to determine the basis for the doctor's opinion, as where the evidentiary foundation for the opinion is lacking. See *Cosalter v. Mathies Coal Co.*, 6 BLR 1-1182 (1984). A brief and conclusory report that is lacking any supporting medical evidence may similarly be discredited. *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); see *Moseley v. Peabody Coal Co.*, 769 F.2d 357, 8 BLR 2-22 (6th Cir. 1985).

Also significant is the administrative law judge's determination of the conviction and persuasiveness of a medical opinion. S/he may, therefore, properly question opinions that are equivocal or qualified. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986); see *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145 (1984); cf. *Puleo v. Florence Mining Co.*, 8 BLR 1-198 (1984). Such opinions, however, need not be rejected on this basis. The administrative law judge simply must discuss the qualified nature of the opinion within the decision. *Salisbury v. Island Creek Coal Co.*, 7 BLR 1-501 (1984). S/he may also refuse to credit a physician's opinion where s/he concludes the physician's reasoning is seriously flawed. *Goss v. Eastern Associated*

**Coal Corp.**, 7 BLR 1-400 (1984). An administrative law judge should also consider factors that tend to undermine the reliability of a doctor's opinion. **Hutchens v. Director, OWCP**, 8 BLR 1-16 (1985). Additionally, the timing of evidence is significant and the administrative law judge may validly credit more recent evidence in appropriate cases. See Part IV.D.3.b. of the Desk Book.

Finally, although the weighing of the evidence is for the administrative law judge, the interpretation of medical data is for the medical experts. **Marcum v. Director, OWCP**, 11 BLR 1-23 (1987); **Casella v. Kaiser Steel Corp.**, 9 BLR 1-131 (1986); **Bogan v. Consolidation Coal Co.**, 6 BLR 1-1000 (1984). Accordingly, it is error for an administrative law judge to interpret medical tests and thereby substitute an adjudicator's conclusions for those of the physician.

### CASE LISTINGS

[Eighth Circuit affirmed adjudicator in not crediting two medical reports that contained nearly the same wording where evaluations not totally independent of each other and not supported by record] **Hon v. Director, OWCP**, 699 F.2d 441, 5 BLR 2-43 (8th Cir. 1983).

[fact-finder may give less weight to medical report that is brief, conclusory, and devoid of supporting evidence]. **Kendrick v. Kentland-Elkhorn Coal Corp.**, 5 BLR 1-730 (1983).

[adjudicator not compelled to credit uncontradicted medical opinion but must give rational reason for rejecting it] **Blackledge v. Director, OWCP**, 6 BLR 1-1060 (1984).

[fact-finder's mischaracterization of two examining doctors as treating physicians renders decision to weigh their reports over others erroneous] **Goode v. Eastern Associated Coal Co.**, 6 BLR 1-1064 (1984).

[adjudicator may discount doctor's opinion for failure to account for most of the medical evidence in the record *and* because employer did not establish date of x-ray doctor relied on] **Cosalter v. Mathies Coal Co.**, 6 BLR 1-1182 (1984).

[adjudicator may not reject medical report on grounds that objective test results do not support conclusions or because physician did not perform objective medical tests] **Fuller v. Gibraltar Coal Corp.**, 6 BLR 1-1291 (1984).

[adjudicator may not reject medical report because it does not accord with his own medical conclusion] **Hall v. Consolidation Coal Co.**, 6 BLR 1-1306 (1984).

[fact-finder properly rejected medical opinion that was qualified by phrase "more in keeping"; rejection of first report as equivocal would apply with equal force to opinion that contained phrase "more likely due." ***Carpeta v. Mathies Coal Co.***, 7 BLR 1-145 (1984).

[improperly discrediting of survivor's entire testimony because she could not remember names of deceased miner's medications; although relevant to credibility, does not justify discrediting testimony] ***Kosack v. Director, OWCP***, 7 BLR 1-248 (1984).

[adjudicator properly considered documentation underlying medical opinion in determining whether to credit conclusions; properly rejected medical opinion because physician failed to explain how clinical findings of "mild" disease supported assessment of disability] ***Duke v. Director, OWCP***, 6 BLR 1-673 (1983); see ***Cooper v. United States Steel Corp.***, 7 BLR 1-842 (1985).

[error in accepting medical report at face value without considering that: 1) x-ray relied on showing severe pneumoconiosis later found unreadable by B reader, 2) pulmonary function study relied on non-conforming, and 3) physician relied on arbitrary 17-year coal mine history while less than ten years] ***Hutchens v. Director, OWCP***, 8 BLR 1-16 (1985).

[adjudicator may reject medical opinion because doctor failed to consider history of heart disease] ***Hall v. Director, OWCP***, 8 BLR 1-193 (1985).

[adjudicator erred in rejecting medical opinion because physician did not take into consideration two existing positive x-rays] ***Shelosky v. Consolidation Coal Co.***, 8 BLR 1-303 (1985).

### **DIGESTS**

Administrative law judge may legitimately assign less weight to a medical opinion which presents an incomplete picture of the miner's health. ***Stark v. Director, OWCP***, 9 BLR 1-36 (1986).

An administrative law judge may not reject relevant medical evidence without an explanation. ***McGinnis v. Freeman United Coal Mining Co.***, 10 BLR 1-4 (1987); ***Tanner v. Freeman United Coal Co.***, 10 BLR 1-85 (1987); ***Ridings v. C & C Coal Co., Inc.***, 6 BLR 1-227 (1984).

Administrative law judge properly questions discrepancies in reports of claimant's treating physician which tend to cast doubt on his familiarity with the miner and his employment history. ***DeBusk v. Pittsburg & Midway Coal Co.***, 12 BLR 1-15 (1988).

Administrative law judge may give less weight to a doctor's opinion which is based on an inaccurate length of coal mine employment. **Addison v. Director, OWCP**, 11 BLR 1-68 (1988); **Hall v. Director, OWCP**, 8 BLR 1-193 (1985); **Long v. Director, OWCP**, 7 BLR 1-254 (1984).

Administrative law judge's calculation of years of coal mine employment impacts on his analysis regarding the reliability of medical and lay evidence. **Dawson v. Old Ben Coal Co.**, 11 BLR 1-58 (1988)(*en banc*).

Administrative law judge erred in citing medical report as corroborating a finding of simple pneumoconiosis while failing to discuss the physician's opinion that claimant was capable of performing his last duties in the coal mine and had 0 percent impairment. **Weiss v. Canterbury Coal Co.**, 4 BLR 1-663 (1982).

Administrative law judge cannot consider medical treatment not in evidence. **Fetterman v. Director, OWCP**, 7 BLR 1-688 (1985).

Administrative law judge may give greater weight to doctor who performed a more thorough examination. **Hall v. Director, OWCP**, 8 BLR 1-193 (1985).

The administrative law judge may credit the medical reports which he determines are better supported by the objective evidence of record. **King v. Consolidation Coal Co.**, 8 BLR 1-262 (1985); **Wetzel v. Director, OWCP**, 8 BLR 1-139 (1985); **Pastva v. The Youghiogheny & Ohio Coal Co.**, 7 BLR 1-829 (1985).

Administrative law judge properly accorded greater weight to doctor's report because he found doctor's conclusions to be better supported by the objective data. **Minnich v. Pagnotti Enterprises, Inc.**, 9 BLR 1-89, 1-90, n. 1 (1986).

An administrative law judge may reject a medical opinion where it is generalized and does not focus upon the claimant. **Knizner v. Bethlehem Mines Corp.**, 8 BLR 1-5 (1985).

A medical opinion may be rejected if the physician did not have a complete picture of the miner's health. **Stark v. Director, OWCP**, 9 BLR 1-36 (1986). In **Campbell v. North American Coal Corp.**, 6 BLR 1-244 (1983), the doctor lacked knowledge of the miner's symptoms.

Administrative law judge could give little weight to doctor's opinion because it was 5 years older than the other medical opinions of record and the doctor testified that he was unaware of claimant's present condition. **Fagg v. Amax Coal Co.**, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989).

The Board upheld the administrative law judge's rejection of three reports: the first stated only that claimant would not be hired as a coal miner because of x-ray evidence of pneumoconiosis; the second did not attribute claimant's disability to a single determinate factor and was based on a ventilatory study interpreted as normal; and the third could be accorded less weight than a report by a doctor with superior credentials. **Ousley v. National Mines Corp.**, 6 BLR 1-560 (1983).

A physician's opinion which is qualified or equivocal may properly be discredited by an administrative law judge. **Justice v. Island Creek Coal Co.**, 11 BLR 1-91 (1988); **Campbell v. Director, OWCP**, 11 BLR 1-16 (1987); **Snorton v. Zeigler Coal Co.**, 9 BLR 1-106 (1986); **Carpeta v. Mathies Coal Co.**, 7 BLR 1-145 (1984); **Stanley v. Eastern Associated Coal Corp.**, 6 BLR 1-1157 (1984).

Administrative law judge may not discredit a medical report based on a positive x-ray merely because the record contains subsequent negative x-rays. **Casey v. Director, OWCP**, 7 BLR 1-873 (1985); **Winters v. Director, OWCP**, 6 BLR 1-877 (1984).

Administrative law judge may not discredit opinion of total disability because doctor failed to perform a blood gas study or because pulmonary function study was non-qualifying. **Sabett v. Director, OWCP**, 7 BLR 1-299 (1984). See **Fuller v. Gibraltar Coal Corp.**, 6 BLR 1-1291 (1984).

Administrative law judge acted properly in finding two opinions submitted by one doctor inconsistent because they contained no explanation for the significantly different conclusions reached. **Fagg v. Amax Coal Co.**, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); **Hopton v. United States Steel Corp.**, 7 BLR 1-12 (1984); **Surma v. Rochester & Pittsburgh Coal Co.**, 6 BLR 1-799 (1984).

Administrative law judge acted within his discretion in considering doctor's inconsistent diagnosis as a factor in determining the weight to be accorded his opinion as a whole. **Puleo v. Florence Mining Co.**, 8 BLR 1-198 (1984).

Administrative law judge's determination that doctor's testimony was internally inconsistent and equivocal in its conclusions, and therefore insufficiently reasoned, was rational and based on substantial evidence. **Mabe v. Bishop Coal Co.**, 9 BLR 1-67 (1986).

It is permissible for the administrative law judge to credit opinion of physician with a more thorough knowledge of the miner's work duties. **Kozele v. Rochester & Pittsburgh Coal Co.**, 6 BLR 1-378 (1983).

Administrative law judge may give less weight to a doctor's opinion he finds supported by limited medical data, and more weight to an opinion he finds supported by extensive documentation. **Sabett v. Director, OWCP**, 7 BLR 1-299 (1984); see also **Fuller v.**

**Gibraltar Coal Corp.**, 6 BLR 1-1291 (1984).

Administrative law judge could discount doctor's opinion because he had never examined the miner and because the administrative law judge found the conclusions inadequately supported by the underlying documentation. **Fagg v. Amax Coal Co.**, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989).

While uncorroborated, uncontradicted hearsay testimony is admissible in administrative hearings, the administrative law judge is not required to accept such testimony merely because it is uncontradicted. **Wenanski v. Director, OWCP**, 8 BLR 1-487 (1986).

Where a significant discrepancy exists between the administrative law judge's finding as to claimant's length of coal mine employment and the assumption by the physicians regarding claimant's length of coal mine employment, the administrative law judge must note the discrepancy and explain how it affects the credibility of the physicians' opinions. This is especially true where, as here, there is a difference of ten to eleven years. Administrative law judge's failure to resolve above discrepancy in the physicians' reports constitutes prejudicial error. **Fitch v. Director, OWCP**, 9 BLR 1-45 (1986); *but see* **McMath v. Director, OWCP**, 12 BLR 1-6 (1989).

An administrative law judge may find that a medical report does not include objective testing where none of the objective tests are directly identified with the physician. **Budash v. Bethlehem Mines Corp.**, 9 BLR 1-48 and 13 BLR 1-44 (1985)(*en banc*), *aff'd on recon.* 9 BLR 1-104 (1986)(*en banc*).

The Third Circuit held that the administrative law judge erred in rejecting the uncontested medical opinion of an examining physician based on the administrative law judge's independent evaluation of the evidence. Although the administrative law judge's reasons for discrediting the opinion might not have been implausible, in the absence of evidence from some medical expert, the court found that the administrative law judge's inferences amounted to mere speculation. **Kertesz v. Crescent Hills Coal Co.**, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986).

An administrative law judge may reasonably question the validity of a physician's opinion that varies significantly from the remaining medical opinions of record. **Snorton v. Zeigler Coal Co.**, 9 BLR 1-106 (1986).

Administrative law judge acted within his discretion in according more weight to the opinions of doctors in light of the other relevant medical evidence of record. **Dillon v. Peabody Coal Co.**, 11 BLR 1-113 (1988).

The Board rejected claimant's contention that the physician's checking of the 'no' box on the Department of Labor physical examination Form 988 cannot support Section 727.203(b)(3) rebuttal under **Warman v. Pittsburg and Midway Mining Coal Co.**, 829

F.2d 257, 11 BLR 2-62 (6th Cir. 1988). **Hall v. Director, OWCP**, 12 BLR 1-133 (1989). An administrative law judge may reject an opinion where she/he finds that the doctor failed to adequately explain the diagnosis. **Clark v. Karst-Robbins Coal Co.**, 12 BLR 1-149 (1989)(*en banc*).

The administrative law judge reasonably discredited a medical report after concluding that the physician's underlying premise, *e.g.*, that the miner had childhood pneumonia, was incorrect. **Clark v. Karst-Robbins Coal Co.**, 12 BLR 1-149 (1989)(*en banc*).

An administrative law judge may accord diminished weight to the opinion of a non-examining physician who was not fully apprised of claimant's qualifying blood gas studies. **Clark v. Karst-Robbins Coal Co.**, 12 BLR 1-149 (1989)(*en banc*).

An administrative law judge is not required to defer to a physician with superior credentials. **Clark v. Karst-Robbins Coal Co.**, 12 BLR 1-149 (1989)(*en banc*); **Worley v. Blue Diamond Coal Co.**, 12 BLR 1-20 (1988).

Administrative law judge improperly substituted her opinion for that of a physician when the administrative law judge rejected the doctor's report because it was based in part on the doctor's view that claimant's 7.5 years of exposure to coal dust was short and she did not believe that 7.5 years was short. **Hucker v. Consolidation Coal Co.**, 9 BLR 1-137 (1986).

Administrative law judge properly assigned no weight to a certain doctor's report as the diagnosis could not be deciphered by the administrative law judge. **Cooper v. Director, OWCP**, 11 BLR 1-95 (1988)(Ramsey, CJ., concurring).

The interpretation of objective data is a medical determination and an administrative law judge may not substitute his opinion for that of a physician. **Marcum v. Director, OWCP**, 11 BLR 1-23 (1987).

Administrative law judge must provide a rationale for crediting one physician's opinion over another physician's conflicting opinion. **McGinnis v. Freeman United Coal Mining Co.**, 10 BLR 1-4 (1987); **Tanner v. Freeman United Coal Co.**, 10 BLR 1-85 (1987).

The Board held that while the administrative law judge may permissibly accord greatest weight to the evidence based upon the physician's familiarity with the exertional requirements of claimant's usual coal mine employment, see **Kozele v. Rochester and Pittsburgh Coal Co.**, 6 BLR 1-378 (1983), he is not bound to do so. Thus, the Board held that on remand, the administrative law judge should not limit his analysis in this regard, and should consider the medical reports of record as a whole in weighing the evidence under Section 718.204(c)(4). **Budash v. Bethlehem Mines Corp.**, 16 BLR 1-27 (1991).

Based on their holdings in **Stanford v. Director, OWCP**, 7 BLR 1-906 (1985); **Brown v. Director, OWCP**, 7 BLR 1-730 (1985); and **Chancey v. Consolidation Coal Co.**, 7 BLR 1-240 (1984), the Board held that unless the opinions of the physicians obtained by the parties are properly held to be biased, based on evidence in the record, the opinions of the Department of Labor physicians should not be accorded greater weight due to their impartiality, and absent a foundation in the record for a finding that the Department of Labor's expert is independent, the administrative law judge may not accord his opinion greater weight on that basis alone. **Melnick v. Consolidation Coal Co.**, 16 BLR 1-31 (1991)(*en banc*).

Before finding the medical reports of record sufficient to establish the existence of pneumoconiosis at Section 718.202(a) (4), the administrative law judge must resolve any inconsistencies between claimant's smoking history as reflected in the medical reports and in claimant's hearing testimony. **Trumbo v. Reading Anthracite Co.**, 17 BLR 1-85 (1993).

The administrative law judge cannot 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.**, 23 BLR 1-98 (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, 24 BLR 1-13 (2007)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting).

In resolving the conflict in the CT scan readings of record, the administrative law judge cannot rely upon his own determination that CT scan evidence of bullae, speculated nodules, and nodular areas in the upper lobes of a miner's lungs is consistent with pneumoconiosis. **Harris v. Old Ben Coal Co.**, 23 BLR 1-98 (2006) (*en banc*) (McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, 24 BLR 1-13 (2007)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting).

An administrative law judge may evaluate a physician's opinion in conjunction with the Department of Labor's discussion of prevailing medical science in the preamble to the revised regulations. The preamble to the revised regulations sets forth how the Department of Labor has chosen to resolve questions of scientific fact. A determination of whether a medical opinion is supported by accepted scientific evidence, as determined by the Department of Labor, is a valid criterion in deciding whether to credit the opinion. **J.O. v. Helen Mining Co.**, BLR (2009).

Noting that the Department of Labor, in the preamble to the revised regulations, recognizes that coal mine dust exposure can be associated with significant deficits in lung function in the absence of clinical pneumoconiosis, the administrative law judge

permissibly found that a physician's opinion, that coal mine dust-related emphysema is not possible without radiographic evidence of coal workers' pneumoconiosis, was inconsistent with both the definition of legal pneumoconiosis and the preamble to the revised regulations. Because the administrative law judge determined that the physician's opinion was predicated on a view of the medical evidence at odds with that credited by the Department of Labor, the administrative law judge permissibly determined that the physician's opinion was entitled to less weight on the issue of whether the miner's emphysema was related to his coal mine dust exposure. **J.O. v. Helen Mining Co.**, BLR (2009).

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