

PART VII

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

A. IN GENERAL

2. VALIDITY

The regulations at Part 718 are valid and may be applied prospectively to any claim adjudicated after March 31, 1980. See *Tennessee Consolidation Coal Co. v. Crisp*, 866 F.2d 179, 12 BLR 2-121 (6th Cir. 1989); *Saginaw Mining Co. v. Ferda*, 879 F.2d 198, 12 BLR 2-376 (6th Cir. 1989); see also *Muncy v. Wolfe Creek Collieries Coal Co., Inc.*, 3 BLR 1-627 (1981); *Saginaw Mining Co v. Ferda*, 879 F.2d 198, 12 BLR 2-376 (6th Cir. 1989); *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).

CASE LISTINGS

DIGESTS

Section 421(c) of the Act, 30 U.S.C. §931(c), which requires the Secretary to promulgate regulations implementing amendments to the Act within 6 months of the date of enactment, does not render the effective date of Part 718 criteria invalid despite promulgation of Part 718 more than six months after the enactment of the Reform Act. *Sizemore v. National Mines Corp.*, 10 BLR 1-93 (1987).

Section 421(c) of the Act, 30 U.S.C. §931(c), does not require the application of 20 C.F.R. Part 718 to all claims filed more than six months after the effective date of the 1977 Amendments to the Act. *Crow v. Peabody Coal Co.*, 11 BLR 1-54 (1988) (Ramsey, C.J., concurring).

The Board rejected employer's argument that the rulemaking record is devoid of proof that legal pneumoconiosis may be latent and progressive in the absence of further coal dust exposure. In *Nat'l Mining Ass'n v. U.S. Dep't of Labor*, 292 F.3d 849 (D.C. Cir. 2002), the validity of 20 C.F.R. §718.201, as amended, was upheld as supported by its underlying medical and scientific literature, and employer in the present case failed to produce the type and quality of medical evidence that would invalidate the regulation.

Workman v. Eastern Associated Coal Corp., BRB No. 02-0727 BLA, BLR (Aug. 19, 2004)(Motion for Recon.) (*en banc*); **Parsons v. Wolf Creek Collieries**, BRB No. 02-0188 BLA, BLR (Sep. 30, 2004)(Motion for Recon.)(*en banc*)(McGranery, J., concurring and dissenting).

12/04