

PART X

SURVIVORS' CLAIMS

C. SECTION 411(c)(1)

Section 411(c)(1), 30 U.S.C. §921(c)(1), provides that, if a miner who is suffering from pneumoconiosis was employed for ten years or more in the coal mines, there is a rebuttable presumption that his pneumoconiosis arose out of his coal mine employment. Section 410.416(a), 20 C.F.R. §410.416(a), requires "persuasive evidence to the contrary" to establish rebuttal, whereas Section 718.302, 20 C.F.R. §718.302, states only that the presumption is rebuttable. See also 20 C.F.R. §718.203.

Under Section 410.416(b) and Section 718.203(c), if a miner who suffers or suffered from pneumoconiosis had less than ten years of coal mine employment, the causal relationship between the miner's pneumoconiosis and his coal mine employment must be established by affirmative evidence. See **Tucker v. Director, OWCP**, 10 BLR 1-35, 1-38 (1987); **Collura v. Director, OWCP**, 6 BLR 1-100, 1-102 (1983).

For additional digests concerning Section 411(c)(1) and the causal nexus between pneumoconiosis and coal mine employment, see Part IV.D.2.e., Part VI.D., Part VII.C., and Part VIII.A. of the Desk Book. For digests concerning establishing length of coal mine employment, see Part II.F. of the Desk Book.

CASE LISTINGS

DIGESTS

Under Section 410.416(b) and Section 718.203(c), if a miner who suffers or suffered from pneumoconiosis had less than ten years of coal mine employment, the causal relationship between the miner's pneumoconiosis and his coal mine employment must be established by affirmative evidence. **Tucker v. Director, OWCP**, 10 BLR 1-35, 1-38 (1987); **Collura v. Director, OWCP**, 6 BLR 1-100, 1-102 (1983).

In order to establish survivor's entitlement on the basis of proof of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205, it must be determined that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. If

claimant has established ten or more years of coal mine employment, he or she is entitled to a rebuttable presumption that the miner's pneumoconiosis arose out of coal mine employment. 20 C.F.R. §718.203(b); ***Boyd v. Director, OWCP***, 11 BLR 1-39 (1988).

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).

6/00