

## PART VII

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

#### E. CAUSE OF DISABILITY:

##### 2. Revised SECTION 718.204(c)

The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002).

In the amended regulations, the standard for disability causation is set forth at 20 C.F.R. §718.204(c)(1). As amended, Section 718.204(c)(1) provides that:

A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

- (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
- (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1).

#### DIGESTS

Where a physician explained that both pneumoconiosis and cigarette smoke are known to cause the type of airflow limitation detected in the miner's lungs, and stated that the miner's totally disabling respiratory impairment was due to both twenty-five years of coal dust exposure and twenty-nine years of smoking, substantial evidence supported the administrative law judge's finding that the physician gave a well-reasoned opinion that the miner was totally disabled due to pneumoconiosis pursuant to revised 20 C.F.R. §718.204(c). **Gross v. Dominion Coal Corp.**, 23 BLR 1-8 (2003).

A physician's unequivocal opinion that pneumoconiosis was one of the two causes of the miner's totally disabling respiratory impairment was legally sufficient to establish that pneumoconiosis was a "substantially contributing cause" of the miner's total disability

pursuant to revised 20 C.F.R. §718.204(c). **Gross v. Dominion Coal Corp.**, 23 BLR 1-8 (2003).

The Seventh Circuit held that, because the miner's blindness was the sole cause of his disability, and pneumoconiosis played no role in his inability to work, entitlement to benefits under 20 C.F.R. Part 718 was precluded. **Gulley v. Director, OWCP**, 397 F.3d 535 (7th Cir. 2005).

The Fourth Circuit upheld the administrative law judge's reliance on Dr. Parker's well-reasoned medical report to support a finding of totally disabling pneumoconiosis, despite the physician's failure to apportion the miner's lung impairment between smoking and coal dust exposure. **Consolidation Coal Co. v. Williams**, 453 F.3d 609, 23 BLR 2-346 (4th Cir. 2006).

The Board held that the "differential diagnosis test," enunciated by the United States Court of Appeals for the Sixth Circuit in **Best v. Lowe's Home Centers, Inc.**, 563 F.3d 171 (6th Cir. 2009), is neither applicable under the facts of this case, nor does it present a new standard for evaluating disability causation opinions in black lung cases. The Board noted that, in **Best**, the court adopted the "differential diagnosis test" for evaluating the admissibility, reliability and probative value of medical expert testimony under Rule 702 of the Federal Rules of Evidence. However, the Federal Rules of Evidence do not apply to administrative proceedings, unless specifically provided by statute or regulation. **Stover v. Peabody Coal Co.**, BLR (2010) (*en banc* Decision and Order on Recon.).

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