

PART II
DEFINITIONS

A. MINER

3. STATUS/FUNCTION/SITUS AND SITUS/FUNCTION TESTS

c. Situs Test

The situs test is satisfied when the work is performed in or around a coal mine or coal preparation facility. A coal mine is an area of land used or intended to be used for the extraction or preparation of coal, including a custom coal preparation facility. See 30 U.S.C. §802(h)(2); 20 C.F.R. §725.101(a)(23); **Seltzer v. Director, OWCP**, 7 BLR 1-912 (1985). While a miner involved in extraction of coal must prove a situs prong (*i.e.*, work in or around a mine), however, miners involved in the preparation of coal need not establish a geographical nexus to a coal mine. **Director, OWCP v. Zeigler Coal Co., [Wheeler]**, 853 F.2d 529, BLR (7th Cir. 1988); see also **Stroh v. Director, OWCP**, 810 F.2d 61, 9 BLR 2-212, 2-216 (3d Cir. 1987).

CASE LISTINGS

[blacksmith's shop work not coal mine employment/ no showing that work involved preparation or mining of coal] **Hon v. Director, OWCP**, 699 F.2d 441, 5 BLR 2-43 (8th Cir. 1983).

[foundry work not coal mine employment/foundry nine miles from nearest mine] **Duffy v. Director, OWCP**, 6 BLR 1-655 (1983).

[work repairing railroad tracks and removing spilled coal near them performed in or around a coal preparation facility] **Musick v. Norfolk and Western Railway Co.**, 6 BLR 1-862 (1984).

[work with CO2 cylinders satisfies situs-function test] **Pinkham v. Director, OWCP**, 7 BLR 1-55 (1984).

[loading coal from a tippel to river barges did not satisfy the situs test] **Luther v. Director, OWCP**, 7 BLR 1-117 (1984).

[servicing and installing mining equipment within coal mines meets situs test] **Price v.**

Dresser Industries, Inc., 8 BLR 1-179 (1985).

[coke manufacturing plant not a coal mine; work there does not satisfy situs test] **Huston v. Director, OWCP**, 8 BLR 1-328 (1985); see also **Trull v. Director, OWCP**, 7 BLR 1-380 (1984); **Morris v. Director, OWCP**, 6 BLR 1-653 (1983); **Vasquez v. Director, OWCP**, 6 BLR 1-373 (1983).

[transportation of coal within mine site is coal mine employment notwithstanding that coal is being loaded for delivery to ultimate consumer] **Rose v. Benefits Review Board**, No. 84-3548 (6th Cir., Aug. 26, 1985)(unpublished).

DIGESTS

A transportation worker's duties must be integral to coal production process and a significant portion of his working day must be at the situs. **Clifford v. Director, OWCP**, 7 BLR 1-817 (1985); see also **Ray v. Williamson Shaft Contracting Co.**, 14 BLR 1-105 (1990).

Construction worker who was involved in a surface mine construction project that was not yet operable and who did not work in the vicinity of an operable mine was not a "miner" under the Act. **Williams Brothers, Inc. v. Pate**, 833 F.2d 261, 10 BLR 2-333 (11th Cir. 1987).

Court liberally construed the language "in or around" a coal preparation facility to hold that claimant, who worked at a central repair shop no less than one-half a mile from the three mines operated by employer, satisfied the "situs" requirements. **Baker v. U. S. Steel Corp.**, 867 F.2d 1297, 12 BLR 2-213 (11th Cir. 1989)(citing **Skipper v. Matthews**, 448 F.Supp 300 (MD Pa. 1977); **Consolidation Coal Co. v. Graham**, 725 F.2d 674 (4th Cir. 1983); **Director, OWCP v. Zeigler Coal Co.**, [**Wheeler**], 853 F.2d 529 (7th Cir. 1988).

Claimant's work as an electrical repairman in a repair shop over one mile from the mine site satisfied the "situs" requirement because the repair shop was used in the work of preparing coal. This site, however, is insufficient to satisfy Section 802(i) of the Act to be defined as a "coal mine." Distance from the extraction site is a proper consideration in determining if claimant is a "miner" under the Act. Additionally, this is an "intensively fact dependent" determination. **Director, OWCP v. Zeigler Coal Co.** [**Wheeler**], 853 F.2d 529 (7th Cir. 1988).

The Board affirmed the administrative law judge's finding that claimant, who worked in a central machine repair shop that was located on mine property one-half mile from the excavation site, met the situs requirement. The Board distinguished its holding from

that of the Seventh Circuit in **Director, OWCP v. Ziegler Coal Co.**, [*Wheeler*], 853 F.2d 529 (7th Cir. 1988), and also **OVERRULED** their previous holding in **Seibert**, 7 BLR 1-42 (1984) insofar as it is inconsistent. **Wilt v. Wolverine Mining Co.**, 14 BLR 1-70 (1990).

The Board affirmed the administrative law judge's finding that claimant's work activities in the repair of mining equipment satisfied the situs test as followed by the Third Circuit in **Stroh v. Director, OWCP**, 810 F.2d 61, 9 BLR 2-212 (3d Cir. 1987). **Etzweiler v. Cleveland Brothers Equipment Co.**, 16 BLR 1-38 (1992)(en banc).

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