PART II

DEFINITIONS

G. USUAL COAL MINE WORK

The Board has defined an individual's usual coal mine work as "the most recent job the miner performed regularly and over a substantial period of time." ***Shortridge v. Beatrice Pocahontas Coal Co.***, 4 BLR 1-534, 1-539 (1982). The mere fact that claimant changed jobs recently, however, does not establish that his latest job is not his usual coal mine work, unless he changed jobs because of respiratory inability to do his usual coal mine work. ***Pifer v. Florence Mining Co.***, 8 BLR 1-153, 1-155 (1985); ***Daft v. Badger Coal Co.***, 7 BLR 1-124, 1-127 (1984).

It is claimant's burden to establish the exertional requirements of his usual coal mine employment to provide a basis of comparison for the administrative law judge to evaluate a medical assessment of disability and reach a conclusion regarding total disability. *See* ***McMath v. Director, OWCP***, 12 BLR 1-6 (1988); ***Cregger v. U. S. Steel Corp.***, 6 BLR 1-1219 (1984).

In ***Fletcher v. Central Appalachian Coal Co.***, 1 BLR 1-980 (1978), *aff'd*, 679 F.2d 1086, 4 BLR 2-92 (4th Cir. 1982), the Board discussed the various vocational factors which must be considered when determining a miner's ability to perform comparable and gainful work. *See* Part II.I of the Desk Book. The Board has repeatedly rejected the argument that the ***Fletcher*** factors must be considered when determining whether a miner can perform his usual coal mine work. *E.g.,* ***Bytner v. North American Coal Corp.***, 6 BLR 1-240, 1-242 (1983); ***Pokorny v. United States Steel Corp.***, 6 BLR 1-67, 1-69 (1983); ***Johnson v. Cannelton Industries, Inc.***, 2 BLR 1-1081, 1-1088 (1980); ***Sturnick v. Consolidation Coal Co.***, 2 BLR 1-972, 1-978 (1980). The Board has made it clear that the determination of whether a miner is able to do his usual coal mine work is to be based on respiratory factors alone. The miner's non-respiratory conditions and his age, for example, are not relevant in determining his ability to perform the duties of his usual coal mine employment. *See* ***Byrne v. Allied Chemical Corp.***, 6 BLR 1-734, 1-736 n.2 (1984); ***Coletti v. Consolidation Coal Co.***, 6 BLR 1-698, 1-700 (1983); ***Skaggs v. Cannelton Industries, Inc.***, 3 BLR 1-434 (1981). The *Fletcher* rule, however, requiring discussion and evidence of comparable and gainful employment, has no application where the employer attempts to establish (b)(2) rebuttal proving claimant is able to do his usual coal mine employment. ***Chach v. Harmar Coal Co.***, 6 BLR 1-493 (1983); ***Sturnick v. Consolidation Coal Co.***, 2 BLR 1-972 (1981); *see also* ***Grezlick v. North American Coal Corp.***, 4 BLR 1-298 (1981).

The question of claimant's ability to perform his usual coal mine work is to be assessed at the time of the hearing, not at the time claimant has ceased his employment. ***Coffey v. Director, OWCP***, 5 BLR 1-404, 1-407 (1982). Before the administrative law judge can determine whether the miner is able to perform his usual coal mine work, he must identify the employment that is or was the miner's usual coal mine work and then compare evidence of the exertional requirements of the usual coal mine employment with the medical opinions as to claimant's work capabilities. *See* ***McMath v. Director, OWCP***, 12 BLR 1-6 (1988); ***Hvizdzak v. North American Coal Corp.***, 7 BLR 1-469 (1984); ***Turner v. Director, OWCP***, 7 BLR 1-419 (1984); ***Parsons v. Black Diamond Coal Co.***, 7 BLR 1-236 (1984); ***Laird v. Alabama By-Products Corp.***, 6 BLR 1-1146 (1984). Additionally, the medical opinion relied upon by the administrative law judge to determine that the miner is unable to perform his usual coal mine employment must provide an assessment of the miner's impairment or physical limitations. *See* ***Aleshire v. Central Coal Co.***, 8 BLR 1-70 (1985); ***Stanley v. Eastern Associated Coal Co.***, 6 BLR 1-1157 (1984).

Further, the Board has held that any evidence bearing on claimant's physical limitations must *specifically* describe those limitations. *E.g.*, ***Williamson v. United States Steel Corp.***, 2 BLR 1-470, 1-475 (1979) ("'definite restriction' on his walking, climbing, and lifting" deemed not sufficiently specific); *compare* ***Polly v. Director, OWCP***, 1 BLR 1-709, 1-712 (1978)(physician's description of the miner's limitations encompassed the duties of his usual coal mine work, and thus was probative on this issue). A medical opinion, however, does not necessarily have to reflect consideration of the miner's job requirements if it contains an assessment from which the administrative law judge can render a determination on this issue. The administrative law judge may consider a physician's assessment of the miner's ability to do general work, along with evidence of the nature of the miner's usual coal mine employment, and reach a conclusion on his ability to do his usual work. ***Daniel v. Westmoreland Coal Co.***, 5 BLR 1-196, 1-220 (1982).

Finally, the Board has consistently held that a medical opinion stating that a miner *should* not return to or remain in his usual coal mine employment, or one stating that further coal dust exposure would *aggravate* his respiratory condition, is insufficient to establish inability to perform usual coal mine work. ***Tackett v. Director, OWCP***, 6 BLR 1-839, 1-842 n.3 (1984); ***Pruett v. Pickands Mather & Co.***, 6 BLR 1-824, 1-826 (1984); ***Wilkerson v. Island Creek Coal Co.***, 6 BLR 1-780, 1-783 (1984); ***Coleman v. Kentland Elkhorn Coal Co.***, 5 BLR 1-260, 1-268 n.8 (1982); ***Hatcher v. Consolidation Coal Co.***, 5 BLR 1-132, 1-143 n.6 (1982); *see also* ***Webb v. U.S. Pipe & Foundry Co.***, 1 BLR 1-190 (1977).

CASE LISTINGS

[findings of other government agencies in regard to a miner's disability are relevant but not binding on the determination of the miner's ability to perform his usual coal mine work] *See e.g.,* ***Bain v. Old Ben Coal Co.***, 2 BLR 1-1219, 1-1227 (1981); ***Cuppett v. U.S. Steel Corp.***, 1 BLR 1-945, 1-948 (1978); *see also* ***Stanley v. Eastern Associated Coal Corp.***, 6 BLR 1-1157, 1-1163 (1984)[West Virginia Occupational Pneumoconiosis Board finds "15% pulmonary functional impairment"].

[lay evidence probative in determination of usual coal mine duties] *c.f.,* ***Auton v. Eastern Gas & Fuel Corp.***, 2 BLR 1-269, 1-274 (1989); *see also* ***Regalis v. Director, OWCP***, 5 BLR 1-873, 1-876 (1983) (Ramsey, C.J. dissenting) [affidavit regarding substitution of lighter duty work].

[medical report not addressing effect of claimant's respiratory defect on ability to perform usual coal mine work cannot support finding of no disability] ***Kendrick v. Kentland-Elkhorn Coal Corp.***, 5 BLR 1-730, 1-733 (1983).

[less strenuous job, which paid less, requested by claimant because he could not perform prior, more demanding job, not usual coal mine work] ***Vargo v. Valley Camp Coal Co.***, 6 BLR 1-1217, 1-1218 (1984); *see also* ***Fazio v. Consolidation Coal Co.***, 8 BLR 1-223, 1-224 (1985)[belt watcher]; ***Regalis v. Director, OWCP***, 5 BLR 1-873, 1-876 (1983)(Ramsey, C.J. dissenting)[motorman].

[determination of nature of usual coal mine work and its physical requirements, is for fact-finder] ***Heavilin v. Consolidation Coal Co.***, 6 BLR 1-1209, 1-1213 (1984).

[requirements of usual coal mine work, in conjunction with medical opinion of physical capacity for work in general is needed] ***Stanley v. Eastern Associated Coal Corp.***, 6 BLR 1-1157, 1-1163 (1984); *see also* ***Newland v. Consolidation Coal Co.***, 6 BLR 1-1286, 1-1289 (1984); ***Boyd v. Freeman United Coal Mining Co.***, 6 BLR 1-159, 1-165 (1983); ***Parsons v. Black Diamond Coal Co.***, 7 BLR 1-236, 1-239 (1984); ***Keen v. Laurel Creek Coal Co.***, 7 BLR 1-498 (1984)[finding of fact for administrative law judge].

[walk from mine site to entrance of mine was part of usual coal mine work] ***Campbell v. North American Coal Corp.***, 6 BLR 1-244, 1-250 (1983).

[testimony of overtime work in two years preceding retirement supported finding that claimant could perform usual coal mine work. ***Kozele v. Rochester and Pittsburgh Coal Co.***, 6 BLR 1-378 (1983).

[coal loader operator could perform his usual coal mine work with common assistance

provided] ***Braden v. Tennessee Consolidated Coal Co.***, 6 BLR 1-991, 1-992 (1984).

[age is non-respiratory factor: may not be considered in usual coal mine work determination] ***Bolyard v. Peabody Coal Co.***, 6 BLR 1-767, 1-770 (1984).

[Eleventh Circuit held vocational evidence not needed to establish miner's ability to do usual coal mine work] ***Taft v. Alabama By-Product Corp.***, 733 F.2d 1518, 6 BLR 2-68, 2-71 (11th Cir. 1984).

[Sixth Circuit held that vocational proof is not required to rebut pursuant to §727.203(b)(2); Court stated that ***Haywood*** not applicable to this issue] ***Ramey v. Kentland Elkhorn Coal Corp.***, 755 F.2d 485, 7 BLR 2-124, 2-132 (6th Cir. 1985).

[assessments of claimant's physical limitations must be compared with exertional requirements of usual coal mine work before weighing them against medical opinions of no disability] ***Bartley v. L & M Coal Co.***, 7 BLR 1-243, 1-247 (1984).

[medical report of no disabling respiratory impairment need not consider ability to perform usual coal mine work] ***Vargo v. Valley Camp Coal Co.***, 7 BLR 1-901, 1-903 (1985).

[physician need not actually view usual coal mine work before determining miner's ability to perform that work] ***Wright v. Director, OWCP***, 7 BLR 1-475, 1-477 (1984).

[age, education, and work experience are relevant to comparable and gainful findings, not issue of ability to perform usual coal mine work. ***Bentley v. Director, OWCP***, 7 BLR 1-612, 1-614 (1984).

[Sixth Circuit held that neither statute or regulations requires consideration of age at §727.203(b)(2)] ***Kolesar v. The Youghiogheny and Ohio Coal Co.***, 760 F.2d 728, 7 BLR 2-211 (6th Cir. 1985).

[Section 727.203(b)(1) rebuttal affirmed where, even though miner's last job less strenuous than previous job, fact-finder found the performance in both jobs satisfactory; thus the failure to determine which was miner's usual coal mine work was harmless error] ***Spadafore v. Director, OWCP***, 8 BLR 1-82, 1-85 (1985).

[medical opinion which does not assess degree of miner's impairment or physical limitations cannot support rebuttal under subsection (b)(2) by establishing ability to do usual coal mine work] ***Aleshire v. Central Coal Co.***, 8 BLR 1-70, 1-72 (1985).

[potential aggravation of an underlying disability from return to coal mine employment is not sufficient basis for finding claimant cannot perform usual coal mine work] ***Butela v. United States Steel Corp.***, 8 BLR 1-48, 1-49 (1985).

[fact-finder cannot discredit medical report because of physician's failure to discuss impact of how further bronchitis aggravation by coal dust exposure would affect ability to do usual coal mine work] ***Wheaton v. North American Coal Corp.***, 8 BLR 1-21, 1-23 (1985).

[Seventh Circuit questioned whether miner's last job was usual coal mine work under ***Shortridge***, 4 BLR 1-534: job may have lasted only two months and claimant may have received job because he could no longer do former work; employer also had failed to establish that claimant could perform this most recent job] ***Inland Steel Coal Co. v. Colwell***, No. 84-1999 (7th Cir., Apr. 26, 1985)(unpublished).

[claimant's job as a belt watcher, taken because it was easier than previous work as a general laborer, was not claimant's usual coal mine work] ***Fazio v. Consolidation Coal Co.***, 8 BLR 1-223 (1985).

[claimant's latest job as a maintenance shop foreman was usual coal mine employment where there was no evidence that: (1) transfer from the job of electrician to maintenance shop foreman due to inability to perform job as an electrician; and (2) miner unable, from respiratory standpoint, to perform duties at the time of transfer; case remanded for reconsideration of exertional requirements of maintenance shop foreman since] ***Pifer v. Florence Mining Co.***, 8 BLR 1-153 (1985).

DIGESTS

Claimant's position as a dispatcher, rather than as an inside laborer, was his usual coal mine employment as the mere fact that claimant changed jobs recently did not necessarily indicate that his latest job was not his usual coal mine employment. ***Brown v. Cedar Coal Co.***, 8 BLR 1-86 (1985).

While an administrative law judge is not *required* by 20 C.F.R. §718.204(e)(3)(iii) to use a claimant's changed circumstances of employment to affirmatively support a finding of total disability, the administrative law judge may not consider claimant's lighter, less strenuous job to be his usual coal mine work when it was received as a result of his inability to perform his prior, more demanding job. ***Mazgaj v. Valley Camp Coal Co.***, 9 BLR 1-201 (1986).

The Board affirmed the administrative law judge's finding of (b)(1) rebuttal because claimant, a federal mine inspector, was performing his usual coal mine work. The Board followed it holdings in ***Mounts***, 8 BLR 1-425 (1985) and ***Moore***, 4 BLR 1-40.2 (1981). ***Uhl v. Consolidation Coal Co.***, 10 BLR 1-72 (1987).

Voluntary overtime work may not be considered in defining a miner's usual coal mine work. Thus, the Section 727.203(a)(1) presumption awarded miners who claim total disability where they no longer are able to do a usual amount of voluntary overtime will be rebutted by subsection (b)(1), since continuance of their regular work hours indicates they are doing their usual coal mine work or comparable and gainful work. ***Shreve v. Director, OWCP***, 864 F.2d 32, 12 BLR 2-85 (4th Cir. 1988); ***Brown v. Cedar Coal Co.***, 8 BLR 1-86 (1985).

The administrative law judge may take judicial notice of the *Dictionary of Occupational Titles* to determine the exertional requirements of claimant's usual coal mine employment. The Board distinguished the cases of ***Snorton*** and ***Creeger*** herein. ***Onderko v. Director, OWCP***, 14 BLR 1-2 (1989).

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