

PART II
DEFINITIONS

J. PRIMARY CAUSE

To establish primary cause, it need only be shown that the miner's pneumoconiosis is, in and of itself, totally disabling. *Wells v. Peabody Coal Co.*, 3 BLR 1-85, 1-91 (1976), *aff'd sub nom. Peabody Coal Co. v. Benefits Review Board, [Wells]*, 560 F.2d 797 (7th Cir. 1977). Claimant need not show that the disability is due solely to pneumoconiosis; rather, the evidence must demonstrate only that the miner's pneumoconiosis is or was sufficiently severe to constitute an independent cause of disability. *Smaroff v. Bethlehem Mines Corp.*, 2 BLR 1-33, 1-36 (1979); *see also Burks v. Hawley Coal Mining Corp.*, 2 BLR 1-323, 1-328 (1979); *Branham v. Director, OWCP*, 2 BLR 1-111, 1-114 (1979); *Crawford v. Clinchfield Coal Co.*, 1 BLR 1-197, 1-201 (1977). If the record evidence shows that the miner is or was totally disabled due to a breathing impairment, and there exists no evidence attributing the impairment to a condition other than pneumoconiosis, it may be presumed that pneumoconiosis is the primary cause of the miner's disability. *See Kurimcak v. United States Steel Corp.*, 2 BLR 1-75, 1-79 (1979); *Collins v. United States Steel Corp.*, 1 BLR 1-654 (1978). In considering the record evidence pursuant to rendering a primary cause determination, the administrative law judge may properly reject a medical opinion which fails to include mention of the miner's smoking history. *E.g., Gomola v. Manor Mining and Contracting Corp.*, 2 BLR 1-130, 1-133 (1979). For a further discussion of the consideration of opinions that attribute disability to cigarette smoking rather than pneumoconiosis. *See* Part IV.D.2.e. of the Desk Book.

The regulatory provisions under which the primary cause concept has usually been considered are 20 C.F.R. §§410.426(a), 410.424. Section 410.426(a) provides that a miner shall be determined to be under a disability only if his pneumoconiosis is (or was) the primary reason for his inability to engage in work comparable to coal mine employment. 20 C.F.R. §410.426(a). Although Section 410.424(a) does not refer to "primary cause" *per se*, Board cases have held that evidence disproving pneumoconiosis as the primary cause of disability may be used to prevent a finding of total disability due to pneumoconiosis from being rendered under this section. *Saunders v. Director, OWCP*, 7 BLR 1-186, 1-188 (1984); *Maurizio v. Director, OWCP*, 2 BLR 1-116, 1-118 (1979); *Casaus v. Director, OWCP*, 1 BLR 1-518, 1-524 (1978). While the lead opinion in *Bellitts v. Bethlehem Mines Corp.*, 5 BLR 1-301 (1982) sought to extend the primary cause analysis to adjudications under 20 C.F.R. §727.203(b)(3), a majority of the Board has declined to do so. *See Bellitts, supra* (opinions of Ramsey, C.J. and Miller, J.); *see also Carozza v. United States Steel*

Corp., 5 BLR 1-642 (1983), *vacated on other grounds*, 727 F.2d 74, 6 BLR 2-15 (3d Cir. 1984).

CASE LISTINGS

[under Section 410.426(a), claimant bears the burden to establish that pneumoconiosis is primary cause of disability] See, e.g., **Stevens v. Director, OWCP**, 1 BLR 1-386, 1-391 (1978); see also **Kurimcak v. United States Steel Corp.**, 2 BLR 1-75, 1-79 (1979).

[to support a primary cause finding need include only a conclusion equivalent to one that pneumoconiosis is the primary cause of the miner's disability] **Retter v. Peabody Coal Co.**, 1 BLR 1-957, 1-960 (1978); **Vargo v. Bethlehem Mines Corp.**, 1 BLR 1-347, 1-351 (1977).

[even though evidence showed miner suffered breathing, back, and heart problems, determination that claimant had not met burden of establishing that they were the primary cause of his disability] **Castle v. Director, OWCP**, 4 BLR 1-237, 1-240 (1981).

[administrative law judge's primary cause finding vacated as the rationale for this finding had not been sufficiently set forth] **Pitoniak v. Director, OWCP**, 6 BLR 1-1154 (1984).

[once total disability due to pneumoconiosis is established with qualifying blood gas studies, 20 C.F.R. §410.414, burden shifts to opposing party to establish that pneumoconiosis is not the primary cause of claimant's disability] **Saunders v. Director, OWCP**, 7 BLR 1-186, 1-188 (1984).

DIGESTS

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