

PART III
PROCEDURAL ISSUES

F. VIABILITY OF CLAIMS

4. SUBSEQUENT CLAIMS/REVISED VERSION of 20 C.F.R. §725.309

DIGESTS

The Tenth Circuit held that the standard set forth in *Wyoming Fuel Co. v. Director, OWCP [Brandolino]*, 90 F.3d 1502, 20 BLR 2-302 (10th Cir. 1996), which required proof that the miner's condition had worsened, has been supplanted by the "one element" standard adopted by the Department of Labor in the revised version of 20 C.F.R. §725.309. The court further held that employer was not prejudiced by the destruction of records associated with the prior claim, as employer conceded total disability - the element of entitlement previously adjudicated against the miner. *Energy West Mining Co. v. Oliver*, 555 F.3d 1211, BLR 2- (10th Cir. 2009).

The Board held that the three-year statute of limitations at 30 U.S.C. §932(f), 20 C.F.R. §725.308(a), is applicable to the filing of both the initial claim by a miner and any subsequent claims. This decision overrules the Board's previous holdings in *Faulk v. Peabody Coal Co.*, 14 BLR 1-18 (1990) and *Andryka v. Rochester & Pittsburgh Coal Co.*, 14 BLR 1-34 (1990). *J.O. v. Helen Mining Co.*, BLR (2009).

A medical determination of total disability due to pneumoconiosis predating a prior, final denial of benefits is deemed a misdiagnosis and thus, cannot trigger the statute of limitations for filing a subsequent claim. *J.O. v. Helen Mining Co.*, BLR (2009).

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