

PART III
PROCEDURAL ISSUES

G. MODIFICATIONS

1. GENERALLY

DIGESTS

In a case involving an employer's request for modification, the Fourth Circuit held that the employer's motive was "patently improper," in that employer was attempting to circumvent the law which prohibited employer from defending against the survivor's claim by showing that the miner did not have complicated pneumoconiosis. The Fourth Circuit held that "allowing employers to regularly use modification to evade application of the collateral estoppel doctrine and the irrebuttable presumption of death due to pneumoconiosis would effectively eradicate those entrenched legal principles." The Fourth Circuit held that retroactively denying the living miner's claim award, in order to foil his widow's good faith survivor's claim, would not render justice under the Act. The Fourth Circuit, therefore, affirmed the Board's ruling that the administrative law judge abused his discretion in granting employer's modification request. ***Westmoreland Coal Co. v. Sharpe***, 692 F.3d 317, 25 BLR 2-157 (4th Cir. 2012).

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