

PART IV

ADMINISTRATIVE PROCESSING OF CLAIMS, POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE

D. EVALUATION AND WEIGHING OF EVIDENCE

11. CONTRAINDICATION OF CONTINUED EMPLOYMENT

A physician's opinion advising claimant that from a medical standpoint he should not return to coal mine employment because of pneumoconiosis or because his respiratory impairment will be aggravated, does not establish total respiratory disability under the Act. *Taylor v. Evans and Gambrel Co., Inc.*, 12 BLR 1-83 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988).

CASE LISTINGS

[diagnosis that claimant totally disabled due to pneumoconiosis for work in dusty environment and partially disabled for manual labor insufficient as matter of law to establish totally disabling pulmonary-respiratory impairment] *New v. Director, OWCP*, 6 BLR 1-597 (1983).

[diagnosis that return to coal mine employment would be inadvisable insufficient to establish totally disabling pulmonary-respiratory impairment] *Coleman v. Harman Mining Corp.*, 6 BLR 1-601 (1983).

[medical contraindication argument rejected] *Tackett v. Director, OWCP*, 6 BLR 1-839 (1984); *Pruett v. Pickands Mather & Co.*, 6 BLR 1-824 (1984); *Wilkerson v. Island Creek Coal Co.*, 6 BLR 1-780 (1984).

[evidence that claimant should not work in dusty environment insufficient to establish inability to perform usual coal mine employment] *Carter v. Beth-Elkhorn Corp.*, 7 BLR 1-15 (1984).

[medical contraindication theory of disability rejected] *Bartley v. L.& M Coal Co.*, 7 BLR 1-243 (1984).

[test for total disability solely medical test not vocational one; fact that miner would not be rehired does not support finding of total disability] *Ramey v. Kentland Coal Corp.*,

755 F.2d 485, 7
BLR 2-124 (6th Cir. 1985).

[potential aggravation of miner's disability by return to coal mine employment not sufficient basis for compensation] ***Butela v. United States Steel Corp.***, 8 BLR 1-48 (1985).

[party opposing entitlement need not establish claimant's return to usual coal mine employment not medically contraindicated by pneumoconiosis] ***Wetzel v. Director, OWCP***, 8 BLR 1-139 (1985).

[doctor's conclusion claimant totally disabled for working in dusty environment insufficient to establish total disability under section 410.426(d)] ***Hall v. Director, OWCP***, 8 BLR 1-193 (1985).

DIGESTS

A medical opinion that the miner "should not return to underground coal mining" because of pneumoconiosis is not equivalent to a finding of total disability. ***Zimmerman v. Director, OWCP***, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989).

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