

PART IV

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

D. EVALUATION AND WEIGHING OF EVIDENCE

2. ELEMENTS OF ENTITLEMENT

b. Impairment

In order to determine whether total disability has been established in a particular case, the administrative law judge must examine the medical opinions of record relevant to the extent of the miner's impairment. A finding of pulmonary or respiratory impairment refers to a loss of *function*. **Clay v. Director, OWCP**, 7 BLR 1-82 (1984). Neither x-rays nor lung scans are necessarily diagnostic of the degree of respiratory or pulmonary impairment, **Webb v. Armco Steel Corp.**, 6 BLR 1-1120 (1984), but impairment may be demonstrated by blood gas and pulmonary function testing. See **Sweet v. Jeddo-Highland Coal Co.**, 7 BLR 1-659 (1985).

A mere recitation of symptoms does not constitute a finding on the existence, or a conclusion as to the severity, of an impairment based on those symptoms. **Bushilla v. North American Coal Corp.**, 6 BLR 1-365 (1983). A notation of "shortness of breath" without accompanying information is not a diagnosis of impairment. See **Clay, supra**; see also **Heaton v. Director, OWCP**, 6 BLR 1-1222 (1984); **Parsons v. Director, OWCP**, 6 BLR 1-272 (1983).

In differentiating between "impairment" and "disability", the Board has held a physician's diagnosis of "mild hypoxemia" (based on blood gas studies) and mild obstruction (based on pulmonary function tests) establishes the *existence* of an impairment but does not establish to what extent, if any, the impairment disabled the miner. See **Boyd v. Freeman United Coal Mining Co.**, 6 BLR 1-159 (1983). The administrative law judge must determine whether statements made in a medical report constitute an assessment of physical limitations that must be compared to the exertional requirements of claimant's usual coal mine employment, or merely a narrative of claimant's symptoms, insufficient alone to establish total disability. **McMath v. Director, OWCP**, 12 BLR 1-6 (1988).

CASE LISTINGS

[diagnosis of "mild hypoxemia" and "mild obstruction" establishes impairment but not to what degree impairment is disabling] **Boyd v. Freeman United Coal Mining Co.**, 6 BLR 1-159 (1983).

[medical opinion of "shortness of breath" describes mere symptom; is not diagnosis of impairment; cannot provide substantial evidence for subsection (a)(4) invocation] **Clay v. Director, OWCP**, 7 BLR 1-82 (1984); **Parsons v. Director, OWCP**, 6 BLR 1-272 (1983).

[physicians may rely on American Medical Association standards for evaluating respiratory impairment in diagnosing disability] **Kozele v. Rochester & Pittsburgh Coal Co.**, 6 BLR 1-378 (1983).

[lung scans not necessarily diagnostic of degree of respiratory or pulmonary impairment] **Webb v. Armco Steel Corp.**, 6 BLR 1-1120 (1984).

[physician's recitation of symptoms does not establish existence or severity of respiratory or pulmonary impairment] **Heaton v. Director, OWCP**, 6 BLR 1-1222 (1984); **Bushilla v. North American Coal Corp.**, 6 BLR 1-365 (1983).

[blood gas and pulmonary function studies measure different types of impairment, **Whitaker v. Director, OWCP**, 6 BLR 1-983 (1984); medical opinion of no impairment based only on pulmonary function study does not, *per se*, rule out existence of respiratory or pulmonary impairment] **Sweet v. Jeddo-Highland Coal Co.**, 7 BLR 1-659 (1985).

[where *source* of disabling impairment addressed in medical report attributing it to other than diagnosed respiratory or pulmonary condition, adjudicator could infer that doctor concluded that there was no respiratory or pulmonary impairment] **White v. Director, OWCP**, 7 BLR 1-348 (1984).

[if blood gas studies disclose presence of impairment, adjudicator may discredit medical opinion that does not address the specific impairment] **Sweet v. Jeddo-Highland Coal Co.**, 7 BLR 1-659 (1985).

[adjudicator could properly credit medical opinion of no respiratory impairment where overall documentation supported conclusion even though diagnosis was seemingly contradicted by doctor's physical findings indicating minimal impairment]. **Gillespie v. Badger Coal Co.**, 7 BLR 1-839 (1985).

[medical opinion based on factors other than objective tests, such as history, symptoms,

and physical examination, sufficient to establish finding of impairment] **Marsiglio v. Director, OWCP**, 8 BLR 1-190 (1985).

DIGESTS

Administrative law judge erred in stating that he was precluded from finding that claimant had no ventilatory impairment because all of the medical reports diagnosed either coal workers' pneumoconiosis or bronchitis, because a diagnosis of pneumoconiosis or bronchitis does not go to the issue of impairment. **Jarrell v. C & H Coal Co.**, 9 BLR 1-52 (1986)(Brown, J., concurring and dissenting).

X-rays are not diagnostic of the extent of respiratory disability, but only of the presence or absence of disease. **Short v. Westmoreland Coal Co.**, 10 BLR 1-127, 1-129, n. 4 (1987); **Arnoni v. Director, OWCP**, 6 BLR 1-423 (1983).

Administrative law judge must determine whether statements made in a medical report constitute an assessment of physical limitations that must be compared to the exertional requirements of claimant's usual coal mine employment, or merely a narrative of claimant's symptoms which are insufficient to establish total disability. **McMath v. Director, OWCP**, 12 BLR 1-6 (1988).

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