

## PART V

### BENEFITS REVIEW BOARD POLICIES AND PROCEDURES

#### A. SCOPE OF REVIEW

##### 7. ADMINISTRATIVE PROCEDURE ACT

The Administrative Procedure Act (APA) provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and U.S.C. §932(a).

The failure of the administrative law judge to address all relevant evidence, explain her/his rationale, or clearly indicate the specific statutory or regulatory provisions involved in her/his decision, requires remand. An administrative law judge must provide a sufficient rationale that explains the relationship between the findings and conclusions and independently evaluate the evidence of record instead of adopting the Director's post-hearing brief in its entirety as the decision. If there is no independent evaluation of the evidence, the parties are deprived of their rights. *Hall v. Director, OWCP*, 12 BLR 1-80 (1988); see *Shaneyfelt v. Jones & Laughlin Steel Corp.*, 4 BLR 1-144 (1981).

#### CASE LISTINGS

[case must be remanded where administrative law judge failed to state what statutory or regulatory criteria were applied] *Walraven v. Director, OWCP*, 4 BLR 1-29 (1981).

[administrative law judge's failure to explain rejection of medical report requires remand] *Seese v. Keystone Coal Mining Corp.*, 6 BLR 1-149 (1983).

[administrative law judge's failure to identify a statutory or regulatory basis for his conclusions does not satisfy the APA or comply with the Fourth Circuit's Order in this case. *Ovies v. Director, OWCP*, 6 BLR 1-689 (1983); see also *Weiss v. Canterbury Coal Co.*, 4 BLR 1-663 (1982).

[administrative law judge's decision did not satisfy the requirements of the APA where he failed to explain his reasons for rejecting all medical evidence as "ambivalent" or to discuss evidence in terms of applicable methods of invocation and rebuttal] *Coleman v. Eastern Coal Corp.*, 6 BLR 1-757 (1983).

[administrative law judge's one sentence paragraph containing no reference to any medical evidence does not satisfy APA as it failed to specifically discuss relevant evidence in relation to applicable regulations] **Bridges v. Director, OWCP**, 6 BLR 1-988 (1984).

[general conclusion that interim presumption has not been rebutted is a violation of APA] **Goode v. Eastern Associated Coal Co.**, 6 BLR 1-1069 (1984); **Verdi v. Price River Coal Co.**, 6 BLR 1-1067 (1984).

[fact-finder's failure to discuss relevant evidence requires remand] **McCune v. Central Appalachian Coal Co.**, 6 BLR 1-996, 1-998 (1984); see also **Witt v. Dean Jones Coal Co.**, 7 BLR 1-21 (1984).

[remand required where fact-finder generally indicates that a specific medical report is outweighed by "other medical opinions and evidence" without identifying or discussing that evidence] **Brewster v. Director, OWCP**, 7 BLR 1-120, 1-123 (1984).

[rejection of medical opinion as "absurd on its face" does not comport with APA] **Adamson v. Director, OWCP**, 7 BLR 1-229, 1-231 (1984).

[finding of three years coal mine employment did not meet APA where there was conflicting evidence and the decision did not explicitly discuss this evidence and credit or discredit evidence] **Shapell v. Director, OWCP**, 7 BLR 1-304, 1-308 (1984).

[Sixth Circuit held that finding of over twenty-five years of coal mine employment did not meet APA because decision failed to explain reasons for crediting certain testimony while ignoring more substantial evidence contradicting this finding] **Director, OWCP v. Congleton**, 793 F.2d 428, 7 BLR 2-12 (6th Cir. 1984).

[addressing medical opinions at some point in the decision satisfies APA] **Fetterman v. Director, OWCP**, 7 BLR 1-688 (1985).

[finding that rebuttal was not established did not satisfy APA as decision failed to specifically discuss relevant evidence in relation to the particular subsections of Section 727.203(b) and did not provide sufficient explanation] **Robertson v. Alabama By-Products Corp.**, 7 BLR 1-793 (1985).

[Seventh Circuit held that particularly where physicians' reports are in conflict, APA requires trier-of-fact to explain reasons for discrediting a physician's report] **Peabody Coal Co. v. Hale**, 771 F.2d 246, 8 BLR 2-34 (7th Cir. 1985).

## DIGESTS

The APA restriction on substituting adjudication officers is applicable to cases on remand. The same administrative law judge who heard the case initially should hear the case on remand unless s/he is unavailable. **McRoy v. Peabody Coal Co.**, 11 BLR 1-107 and 1-139 (1987)(en banc)(McGranery, J., dissenting), *previously misprinted at* 10 BLR 1-33 (1987).

An administrative law judge must independently evaluate the evidence of record instead of adopting the Director's post-hearing brief in its entirety as the decision. If there is no independent evaluation of the evidence, the parties are deprived of their rights. **Hall v. Director, OWCP**, 12 BLR 1-80 (1988).

The APA requires that every adjudicatory decision be accompanied by a statement of findings of fact and conclusions of law and the basis therefor on all material issues of fact, law or discretion presented in the record. **Wojtowicz v. Duquesne Light Co.**, 12 BLR 1-162 (1989).

The Board held that inasmuch as the issues on remand were not dependent upon an assessment of claimant's testimony at the hearing, employer was not prejudiced by the reassignment of the case to a different administrative law judge on remand. Thus, the Board declined employer's request to remand the case for a hearing *de novo* before the substituted administrative law judge. **Gillen v. Peabody Coal Co.**, 16 BLR 1-22 (1991) (Stage, C.J., dissenting).

[Fourth Circuit held that the alj has, under §556(d) of the APA, the affirmative duty to qualify evidence as "reliable, probative, and substantial" before relying upon it to grant or deny a claim] **U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]**, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999).

An administrative law judge's analysis of the evidence pertaining to a miner's smoking history must be supported by sufficient rationale for his conclusions. Therefore, the Board vacated the administrative law judge's finding regarding the miner's smoking history where the administrative law judge did not explain why he chose to credit the health summary from Dr. Uhrig's office, noting a forty-five pack-year history, over the other documented histories of record. **Webber v. Peabody Coal Co.**, 23 BLR 1-123 (2006)(en banc)(Boggs, J., concurring), *aff'd on recon.*, BLR (2007)(en banc), *aff'd on recon.*, BLR (2007)(en banc).

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