

## PART VI

### ESTABLISHING ENTITLEMENT UNDER 20 C.F.R. PART 410

#### D. ARISING OUT OF COAL MINE EMPLOYMENT

Section 410.416(a), implementing Section 411(c)(1) of the Act, 30 U.S.C. §921(c)(1), provides that in the absence of persuasive evidence to the contrary, it will be presumed that the miner's *pneumoconiosis* arose out of coal mine employment where claimant has established ten or more years of employment in the nation's coal mines.

Section 410.416(b) provides that, in any other case, a miner suffering from pneumoconiosis must submit the evidence necessary to establish that his *pneumoconiosis* arose out of coal mine employment in order to be entitled to benefits. For a complete discussion of the Section 411(c)(1) presumption see Part VIII.A. of the Desk Book. It is important to note that unlike Section 410.414(b), which addresses the etiology of claimant's *respiratory impairment*, Section 410.416(b) addresses the etiology of claimant's *pneumoconiosis*.

#### CASE LISTINGS

[when claimant has established less than ten years of coal mine employment, he has burden of proving causal relationship between any pneumoconiosis he may have and coal mine work without benefit of the presumption] ***Fly v. Peabody Coal Co.***, 1 BLR 1-713 (1978).

[as only three and one-quarter years of coal mine employment, not entitled to Section 411(c)(1) presumption, but work history revealed no other employment related to lung disease and adjudicator credited claimant's hearing testimony he had not smoked in seventeen years; finding of causal relationship affirmed] ***Rocchetti v. Jones & Laughlin Steel Corp.***, 1 BLR 1-812 (1978).

[adjudicator's finding that claimant failed to establish pulmonary condition arose out of coal mine employment affirmed where only two years of coal mine work but employed for approximately 17 years in various foundries and steel works and had smoked for 18 to 20 years] ***Lewandowski v. Director, OWCP***, 1 BLR 1-840, 1-846 (1978); see also ***Winton v. Director, OWCP***, 2 BLR 1-187 (1979).

[adjudicator's finding pursuant to Section 410.416(b) that claimant's pneumoconiosis did not arise out of coal mine employment affirmed where evidence showed claimant

worked 12-15 years in slate mine and was exposed to silica; only eight years coal mine employment established making presumption at Section 411(c)(1) unavailable] **Edwards v. Director, OWCP**, 6 BLR 1-265 (1983).

[widow did not meet burden of proof with testimony that miner had been employed in dusty jobs other than coal mining, and medical reports fail to link miner's respiratory condition to coal mine employment] **Shepherd v. Director, OWCP**, 6 BLR 1-485 (1983).

[adjudicator properly declined to credit medical report ascribing miner's pneumoconiosis to short term of mine employment in view of 32 year exposure to finely crushed coal in rubber industry job] **Howell v. Director, OWCP**, 6 BLR 1-504 (1983).

[adjudicator's reliance on medical opinion establishing claimant's bronchitis and pneumoconiosis caused by occupational coal dust exposure pursuant to Section 410.416(b) rational as opinion uncontradicted] **Meeks v. Director, OWCP**, 6 BLR 1-794 (1984).

[adjudicator properly found causation not established based on medical opinion that pneumoconiosis caused by coal dust exposure and exposure in coke battery and foundry since latter employment not covered by Act] **Green v. Director, OWCP**, 7 BLR 1-276 (1984).

[finding of causation based on medical report that did not fully account for exposure to non-coal mine irritants affirmed as adjudicator was aware of entire history of industrial exposure from all sources] **Speir v. Director, OWCP**, 7 BLR 1-833 (1985).

[adjudicator could not properly rely on medical opinion in finding pneumoconiosis arose out of coal mine employment established at Section 410.416(b) where doctor's failure to discuss 49 years of smoking history and to assess relative contributions of multiple etiologies listed diminished probative value of opinion] **Gouge v. Director, OWCP**, 8 BLR 1-307 (1985).

## **DIGESTS**

The Board has consistently interpreted Section 410.416(b) to require that, in cases in which the record indicates that the miner's pneumoconiosis could have arisen from conditions other than his qualifying coal mine employment, there must be competent *medical* evidence to carry claimant's burden of establishing the etiology of the disease. **Tucker v. Director, OWCP**, 10 BLR 1-35 (1987); **Gouge v. Director, OWCP**, 8 BLR 1-307 (1985); **Windom v. Director, OWCP**, 7 BLR 1-52 (1984); **Collura v. Director, OWCP**, 6 BLR 1-100 (1983), *aff'd* No. 83-3462 (3d Cir., May 21, 1984)(unpublished).

