

Denver Law Review

Volume 68
Issue 4 *Tenth Circuit Surveys*

Article 40

February 2021

Workman's Compensation

Denver University Law Review

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Recommended Citation

Denver University Law Review, Workman's Compensation, 68 Denv. U. L. Rev. 755 (1991).

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WORKMAN'S COMPENSATION

Big Horn Coal Co. v. Department of Labor, 897 F.2d 1052

Author: Judge Logan

Alley filed a claim for black lung benefits. The administrative law judge ("ALJ") found in favor of Alley and awarded him benefits. Big Horn Coal Company ("Big Horn") appealed, contending the ALJ erred in: (1) considering test results without requiring the tests meet certain criteria; (2) not considering the report and testimony of Dr. Hiller before invoking the presumption of disability; (3) not taking into account factors other than pulmonary disability in evaluating test results; and (4) awarding damages despite Alley's gainful employment.

First, the Tenth Circuit declined to review whether the ALJ erred in not requiring the tests to meet certain criteria. The court explained that Alley failed to preserve the issue for appeal. Second, the court found no error in the ALJ's failure to consider certain testimony before invoking the presumption of disability. The court explained that the ALJ rejected all of Dr. Hiller's testimony, stating it was inconsistent and lacked credibility. Accordingly, failure to consider the testimony amounted, at most, to harmless error. Third, the court refused to reverse the ALJ's evaluation of test results. The court reasoned that the ALJ was in a better position to evaluate the relative credibility of testimony and other evidence. Thus, absent clear error, the ALJ's decision not to consider factors other than pulmonary disability in evaluating test results was proper. Fourth, the court affirmed the ALJ's decision that Alley's present job was not comparable. The court reasoned that the two jobs involve different skills, education, and types of exertion. Thus, the award of damages was proper.

Lukman v. Director of Office of Workers' Compensation Programs, 896 F.2d 1248

Author: Judge McKay

Plaintiff, Lukman, appealed the benefits review board's (the "board's") dismissal, on *res judicata* grounds, of his second claim for black lung benefits. He also appealed the Board's refusal to review the administrative law judge's ("ALJ's") conclusion on the merits.

On *de novo* review, the Tenth Circuit reversed the board's dismissal of Lukman's claim. Accordingly, the case was remanded to the board for a review of the ALJ's decision on the merits. Moreover, the court found that provisions of the Longshore Act and the black lung procedural regulations establish the right of black lung benefit applicants to an ALJ hearing upon request. Furthermore, the court ruled that a second claim for black lung benefits, submitted more than one year after denial of a first claim, is entitled to the same procedural treatment as any initial claim. Since the Board's refusal to review the ALJ's decision on

the merits was procedurally improper, Lukman was entitled to such review.