

PART IV

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

D. EVALUATION AND WEIGHING OF EVIDENCE

3. SPECIFIC EVIDENTIARY PRINCIPLES

c. True Doubt Rule

In *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 114 S.Ct. 2251 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993), the Supreme Court held that the true doubt rule violated Section 7(c) of the Administrative Procedures Act, 5 U.S.C. §557(c)(3)(A), as incorporated by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

The true doubt rule was an evidentiary rule applicable to the administrative law judge's conclusion concerning the weight of the evidence. "True doubt" was said to have arisen only when "equally probative" but contradictory evidence was presented in the record, where selection of one set of facts would have resolved the case against the claimant, but selection of the contradictory set of facts would have resolved the case in favor of the claimant. Cases outlining this history are presented below under Case Listings. Circuit court cases presenting similar historical perspective are *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993); *Hansen v. Director, OWCP*, 984 F.2d 364, 17 BLR 2-48 (10th Cir. 1993); *Freeman United Coal Mining Co. v. Director, OWCP* [*Jones*], 988 F.2d 706 (7th Cir. 1993).

CASE LISTINGS

[Board cases chronicling this history are: *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990). *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); *Shaw v. Cementation Company of America*, 10 BLR 1-114, 1-116 n.2 (1987); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *O'Brien v. United States Steel Corp.*, 8 BLR 1-103 (1985); *Ham v. Bethlehem Mines Corp.*, 8 BLR 1-3 (1985); *Burns v. Director, OWCP*, 7 BLR 1-597 (1984); *Stanford v. Director, OWCP*, 7 BLR 1-541 (1984); *Mucker v. Director, OWCP*, 7 BLR 1-492 (1984); *Conley v. Roberts and Schaefer Co.*, 7 BLR 1-309 (1984); *Isaacs v. Bailey Mining Co.*, 7 BLR 1-62 (1984);

Sampson v. Laurel Branch Coal Co., 6 BLR 1-1259 (1984); **Kozele v. Rochester & Pittsburgh Coal Co.**, 6 BLR 1-378 (1983); **Ridings v. C & C Coal Co.**, 6 BLR 1-227 (1983); **Meade v. The Pittston Co.**, 6 BLR 1-224 (1983); **Provance v. United States Steel Corp.**, 1 BLR 1-483 (1978)]

DIGESTS

Remand was required where the administrative law judge invoked the interim presumption at 20 C.F.R. §727.203(a)(1) by applying the true-doubt rule, subsequently held to be invalid in **Director, OWCP v. Greenwich Collieries [Ondecko]**, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993), and relied on his invocation determination to find rebuttal precluded pursuant to 20 C.F.R. §727.203(b)(4). **Cole v. East Kentucky Collieries** 20 BLR 1-50 (1996).

A finding of equally probative evidence under the discredited true-doubt principle does not automatically require a finding of insufficient evidence under a preponderance of the evidence standard. Rather, the administrative law judge as fact-finder must determine on remand whether, under this standard, claimant has met his burden of proof pursuant to Section 7(c) of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). **Cole v. East Kentucky Collieries**, 20 BLR 1-50 (1996).