

§ 410.428

20 CFR Ch. III (4-1-08 Edition)

paragraph (b) of this section. Any decision with respect to such medical equivalence shall be based on medically accepted clinical and laboratory diagnostic techniques including a medical judgment furnished by one or more physicians designated by the Administration.

(d) Where a ventilatory study and/or a physical performance test is medically contraindicated, or cannot be obtained, or where evidence obtained as a result of such tests does not establish that the miner is totally disabled, pneumoconiosis may nevertheless be found totally disabling if other relevant evidence (see §410.414(c)) establishes that the miner has (or had) a chronic respiratory or pulmonary impairment, the severity of which prevents (or prevented) him not only from doing his previous coal mine work, but also, considering his age, his education, and work experience, prevents (or prevented) him from engaging in comparable and gainful work.

(e) When used in this section, the term *age* refers to chronological age and the extent to which it affects the miner's capacity to engage in comparable and gainful work.

(f) When used in this section, the term *education* is used in the following sense: Education and training are factors in determining the employment capacity of a miner. Lack of formal schooling, however, is not necessarily proof that a miner is an uneducated person. The kinds of responsibilities with which he was charged when working may indicate ability to do more than unskilled work even though his formal education has been limited.

§ 410.428 X-ray, biopsy, and autopsy evidence of pneumoconiosis.

(a) A finding of the existence of pneumoconiosis as defined in §410.110(o)(1) may be made under the provisions of §410.414(a) if:

(1) A chest roentgenogram (X-ray) establishes the existence of pneumoconiosis classified as Category 1, 2, 3, A, B, or C according to:

(i) The ILO-U/C International Classification of Radiographs of Pneumoconioses, 1971; or

(ii) The International Classification of Radiographs of the Pneumoconioses

of the International Labour Office, Extended Classification (1968); or

(iii) The Classification of the Pneumoconioses of the Union Internationale Contra Cancer/Cincinnati (1968).

A chest roentgenogram (X-ray) classified as Category Z under the ILO Classification (1958) or Short Form (1968) will be reclassified as Category 0 or Category 1 and only the latter accepted as evidence of pneumoconiosis. A chest roentgenogram (X-ray) classified under any of the foregoing classifications as Category 0, including subcategories o/-, o/o, or o/1 under the UICC/Cincinnati (1968) Classification, is not accepted as evidence of pneumoconiosis; or

(2) An autopsy shows the existence of pneumoconiosis, or

(3) A biopsy (other than a needle biopsy) shows the existence of pneumoconiosis. Such biopsy would not be expected to be performed for the sole purpose of diagnosing pneumoconiosis. Where a biopsy is performed for other purposes, however (e.g., in connection with a lung resection), the report thereof will be considered in determining the existence of pneumoconiosis.

(b) The roentgenogram shall be of suitable quality for proper classification of the pneumoconioses and conform to accepted medical standards. It should represent a posterior-anterior view of the chest, and such other views as the Administration may require, taken at a preferred distance of 6 feet (a minimum of 5 feet is required) between the focal point and the film on a 14 x 17 inch or 14 x 14 inch X-ray film. Additional films or views should be obtained, if necessary, to provide a suitable roentgenogram (X-ray) for proper classification purposes.

(c) A report of autopsy or biopsy shall include a detailed gross (macroscopic) and microscopic description of the lungs or visualized portion of a lung. If an operative procedure has been performed to obtain a portion of a lung, the evidence should include a copy of the operative note and the pathology report of the gross and microscopic examination of the surgical specimen. If any autopsy has been performed, the evidence should include a complete copy of the autopsy report.