SUPREME COURT OF THE UNITED STATES

No. 93–744

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, PETITIONER *v.* GREENWICH COLLIERIES

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, PETITIONER *v.* MAHER TERMINALS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[June 20, 1994]

JUSTICE O'CONNOR delivered the opinion of the Court.

In adjudicating benefits claims under the Black Lung Benefits Act (BLBA), 83 Stat. 792, as amended, 30 U. S. C. §901 *et seq.* (1988 ed. and Supp. IV), and the Longshore and Harbor Workers' Compensation Act (LHWCA), 44 Stat. 1424, as amended, 33 U. S. C. §901 *et seq.*, the Department of Labor applies what it calls the "true doubt" rule. This rule essentially shifts the burden of persuasion to the party opposing the benefits claim—when the evidence is evenly balanced, the benefits claimant wins. This case presents the question whether the rule is consistent with §7(c) of the Administrative Procedure Act (APA), which states that "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." 5 U. S. C. §556(d).

We review two separate decisions of the Court of Appeals for the Third Circuit. In one, Andrew Ondecko

applied for disability benefits under the BLBA after working as a coal miner for 31 years. The Administrative Law Judge determined that Ondecko had pneumoconiosis (or black lung disease), that he was totally disabled by the disease, and that the disease resulted from coal mine employment. In resolving the first two issues, the Administrative Law Judge relied on the true doubt rule. In resolving the third, she relied on the rebuttable presumption that a miner with pneumoconiosis who worked in the mines for at least 10 years developed the disease because of his employment. 20 CFR §718.203(b) (1993). The Department's Benefits Review Board affirmed, concluding that the Administrative Law Judge had considered all the evidence, had found each side's evidence to be equally probative, and had properly resolved the dispute in Ondecko's favor under the true doubt rule. The Court of Appeals vacated the Board's decision, holding that the true doubt rule is inconsistent with the Department's own regulations under the BLBA, §718.403, as well as with *Mullins Coal Co.* v. *Director, Office of Workers' Compensation Programs*, 484 U. S. 135 (1987). 990 F. 2d 730 (CA3 1993).

In the other case, Michael Santoro suffered a work-related back and neck injury while employed by respondent Maher Terminals. Within a few months Santoro was diagnosed with nerve cancer, and he died shortly thereafter. His widow filed a claim under the LHWCA alleging that the work injury had rendered her husband disabled and caused his death. After reviewing the evidence for both sides, the Administrative Law Judge found it equally probative and, relying on the true doubt rule, awarded benefits to the claimant. The Board affirmed, finding no error in the Administrative Law Judge's analysis or his application of the true doubt rule. The Court of Appeals reversed, holding that the true doubt rule is inconsistent with §7(c) of the APA. 992 F. 2d 1277 (CA3 1993). In so holding, the court expressly disagreed with *Freeman United Coal Mining Co.* v.

Office of Workers' Compensation Programs, 988 F. 2d 706 (CA7 1993). We granted certiorari to resolve the conflict. 510 U. S. ___ (1994).

As a threshold matter, we must decide whether §7(c)'s burden of proof provision applies to adjudications under the LHWCA and the BLBA. Section 7(c) of the APA applies "[e]xcept as otherwise provided by statute," and the Department argues that the statutes at issue here make clear that §7(c) does not apply. We disagree.

The Department points out that in conducting investigations or hearings pursuant to the LHWCA, the "Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter." 33 U. S. C. §923(a). But the assignment of the burden of proof is a rule of substantive law, *American Dredging Co.* v. *Miller*, 510 U. S. ___, ___ (1994) (slip op., at 10), so it is unclear whether this exception even applies. More importantly, §923 by its terms applies "except as provided by this chapter," and the chapter provides that §7(c) does indeed apply to the LHWCA. 33 U. S. C. §919(d) ("[n]otwithstanding any other provisions of this chapter, any hearing held under this chapter shall be conducted in accordance with [the APA]"; 5 U. S. C. §554(c)(2). We do not lightly presume exemptions to the APA, *Brownell* v. *Tom We Shung*, 352 U. S. 180, 185 (1956), and we do not think §923 by its terms exempts the LHWCA from §7(c).

The Department's argument under the BLBA fares no better. The BLBA also incorporates the APA (by incorporating parts of the LHWCA), but it does so "except as otherwise provided . . . by regulations of the Secretary." 30 U. S. C. §932(a). The Department argues that the following BLBA regulation so provides: "In enacting [the BLBA], Congress intended that claimants be given the benefit of all reasonable doubt as to the existence of total or partial disability or death due to pneumoconiosis." 20 CFR §718.3(c)

(1993). But we do not think this regulation can fairly be read as authorizing the true doubt rule and rejecting the APA's burden of proof provision. Not only does the regulation fail to mention the true doubt rule or §7(c), it does not even mention the concept of burden shifting or burdens of proof. Accordingly—and assuming *arguendo* that the Department has the authority to displace §7(c) through regulation—this ambiguous regulation does not overcome the presumption that these adjudications under the BLBA are subject to §7(c)'s burden of proof provision.

We turn now to the meaning of "burden of proof" as used in §7(c). Respondents contend that the Court of Appeals was correct in reading "burden of proof" to include the burden of *persuasion*. The Department disagrees, contending that "burden of proof" imposes only the burden of *production* (*i.e.*, the burden of going forward with evidence). The case turns on this dispute, for if respondents are correct, the true doubt rule must fall: because the true doubt rule places the burden of persuasion on the party opposing the benefits award, it would violate §7(c)'s requirement that the burden of persuasion rest with the party seeking the award.

Because the term "burden of proof" is nowhere defined in the APA, our task is to construe it in accord with its ordinary or natural meaning. *Smith* v. *United States*, 508 U. S. ___, ___ (1993) (slip op., at 5). It is easier to state this task than to accomplish it, for the meaning of words may change over time, and many words have several meanings even at a fixed point in time. *Victor* v. *Nebraska*, 511 U. S. ___, ___ (1994) (slip op., at 10–11); see generally Cunningham, Levi, Green, & Kaplan, Plain Meaning and Hard Cases, 103

Yale L. J. 1561 (1994). Here we must seek to ascertain the ordinary meaning of "burden of proof" in 1946, the year the APA was enacted.

For many years the term "burden of proof" was ambiguous, because the term was used to describe two distinct concepts. Burden of proof was frequently used to refer to what we now call the burden of persuasion—the notion that if the evidence is evenly balanced, the party that bears the burden of persuasion must lose. But it was also used to refer to what we now call the burden of production—a party's obligation to come forward with evidence to support its claim. See J. Thayer, Evidence at the Common Law 355–384 (1898) (detailing various uses of the term burden of proof among 19th-century English and American courts).

The Supreme Judicial Court of Massachusetts was the leading proponent of the view that burden of proof should be limited to burden of persuasion. In what became an oft-cited case, Chief Justice Lemuel Shaw attempted to distinguish the burden of proof from the burden of producing evidence. *Powers* v. *Russell*, 30 Mass. 69 (1833). According to the Massachusetts court, "the party whose case requires the proof of [a] fact, has all along the burden of proof." *Id.*, at 76. Though the burden of proving the fact remains where it started, once the party with this burden establishes a prima facie case, the burden to "produce evidence" shifts. *Ibid.* The only time the burden of proof—as opposed to the burden to produce evidence—might shift is in the case of affirmative defenses. *Id.*, at 77. In the century after *Powers*, the Supreme Judicial Court of Massachusetts continued to carefully distinguish between the burden of proof and the burden of production. See, *e.g.*, *Smith* v. *Hill*, 232 Mass. 188 (1919).

Despite the efforts of the Massachusetts court, the dual use of the term continued throughout the late 19th and early 20th centuries. See 4 J. Wigmore,

Evidence §2486–2487, pp. 3524–3529 (1905); Thayer, *supra*, at 355; W. Elliott, Law of Evidence §129, pp. 184–185 (1904); Chamberlayne, Modern Law of Evidence §936, pp. 1096–1098 (1911). The ambiguity confounded the treatise writers, who despaired over the "lamentable ambiguity of phrase and confusion of terminology under which our law has so long suffered." Wigmore, *supra*, at 3521–3522. The writers praised the "clear-thinking" efforts of courts like the Supreme Judicial Court of Massachusetts, Chamberlayne, *supra*, at 1097, n. 3, and agreed that the legal profession should endeavor to clarify one of its most basic terms. According to Thayer, "[i]t seems impossible to approve a continuance of the present state of things, under which such different ideas, of great practical importance and of frequent application, are indicated by this single ambiguous expression." Thayer, *supra*, at 384–385; see also Chamberlayne, *supra*, at 1098. To remedy this problem, writers suggested that the term burden of proof be limited to the concept of burden of persuasion, while some other term—such as burden of proceeding or burden of evidence—be used to refer to the concept of burden of production. Chamberlayne, *supra*, at §936; Elliott, *supra*, at 185, n. 3. Despite the efforts at clarification, however, a dwindling number of courts continued to obscure the distinction. See Annot., 2 A. L. R. 1672 (1919) (noting that some courts still fail to properly distinguish "between the burden of proof and the duty of going forward with the evidence").

This Court tried to eliminate the ambiguity in the term burden of proof when it adopted the Massachusetts approach. *Hill* v. *Smith*, 260 U. S. 592 (1923). Justice Holmes wrote for a unanimous Court that "it will not be necessary to repeat the distinction, familiar in Massachusetts since the time of Chief Justice Shaw, *[Powers*, *supra]*, and elaborated in the opinion below, between the burden of proof and the

necessity of producing evidence to meet that already produced. The distinction is now very generally accepted, although often blurred by careless speech." *Id.*, at 594.

In the two decades after *Hill*, our opinions consistently distinguished between burden of proof, which we defined as burden of persuasion, and an alternative concept, which we increasingly referred to as the burden of production or the burden of going forward with the evidence. See, *e.g.*, *Brosnan* v. *Brosnan*, 263 U. S. 345, 349 (1923) (imposition of burden of proof imposes the burden of persuasion, not simply the burden of establishing a *prima facie* case); *Radio Corp. of America* v. *Radio Engineering Laboratories, Inc.*, 293 U. S. 1, 7–8 (1934) (party who bears the burden of proof "bears a heavy burden of persuasion"); *Commercial Molasses Corp.* v. *New York Tank Barge Corp.*, 314 U. S. 104, 111 (1941) (party with the burden of proof bears the "burden of persuasion," though the opposing party may bear a burden to "go forward with evidence"); *Webre Steib Co.* v. *Commissioner*, 324 U. S. 164, 171 (1945) (claimant bears a "burden of going forward with evidence . . . *as well as* the burden of proof") (emphasis added). During this period the Courts of Appeals also limited the meaning of burden of proof to burden of persuasion, and explicitly distinguished this concept from the burden of production.[1]

The emerging consensus on a definition of burden

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[1]See, *e.g.*, *Lee* v. *State Bank & Trust Co.*, 38 F. 2d 45, 48 (CA2 1930); *United States* v. *Knoles*, 75 F. 2d 557, 561 (CA8 1935); *Department of Water and Power of Los Angeles* v. *Anderson*, 95 F. 2d 577, 583 (CA9 1938); *Rossman* v. *Blunt*, 104 F. 2d 877, 880 (CA6 1939); *Cory* v. *Commissioner*, 126 F. 2d 689, 694 (CA3 1942); *Commissioner* v. *Bain Peanut Co.*, 134 F. 2d 853, 860, n. 2 (CA5 1943); *New York Life Ins. Co.* v. *Taylor*, 147 F. 2d 297, 301 (CADC 1945).

of proof was reflected in the evidence treatises of the 1930's and 1940's. "The burden of proof is the obligation which rests on one of the parties to an action to persuade the trier of the facts, generally the jury, of the truth of a proposition which he has affirmatively asserted by the pleadings." W. Richardson, Evidence 143 (6th ed. 1944); see also 1 B. Jones, Evidence in Civil Cases 310 (4th ed. 1938) ("The modern authorities are substantially agreed that, in its strict primary sense, `burden of proof' signifies the duty or obligation of establishing, in the mind of the trier of facts, conviction on the ultimate issue"); J. McKelvey, Evidence 64 (4th ed. 1932) ("[T]he proper meaning of [burden of proof]" is "the duty of the person alleging the case to prove it," rather than "the duty of the one party or the other to introduce evidence").

We interpret Congress' use of the term "burden of proof" in light of this history, and presume Congress intended the phrase to have the meaning generally accepted in the legal community at the time of enactment. *Holmes* v. *Securities Investor Protection Corp.*, 503 U. S. ___, ___ (1992) (slip op., at 8); *Miles* v. *Apex Marine Corp.*, 498 U. S. 19, 32 (1990); *Cannon* v. *University of Chicago*, 441 U. S. 677, 696–698 (1979). These principles lead us to conclude that the drafters of the APA used the term "burden of proof" to mean the burden of persuasion. As we have explained, though the term had once been ambiguous, that ambiguity had largely been eliminated by the early twentieth century. After *Hill*, courts and commentators almost unanimously agreed that the definition was settled. And Congress indicated that it shared this settled understanding, when in the Communications Act of 1934, it explicitly distinguished between the burden of proof and the burden of production. 47 U. S. C. §§309(e) and 312(d) (a party has *both* the "burden of proceeding with the introduction of evidence and the burden of proof").

Accordingly, we conclude that as of 1946 the ordinary meaning of burden of proof was burden of persuasion, and we understand the APA's unadorned reference to "burden of proof" to refer to the burden of persuasion.

We recognize that we have previously asserted the contrary conclusion as to the meaning of burden of proof in §7(c) of the APA. In *NLRB* v. *Transportation Management Corp.*, 462 U. S. 393 (1983), we reviewed the National Labor Relation Board's (NLRB) conclusion that the employer had discharged the employee because of the employee's protected union activity. In such cases the NLRB employed a burden shifting formula typical in dual motive cases: the employee had the burden of persuading the NLRB that antiunion animus contributed to the employer's firing decision; the burden then shifted to the employer to establish as an affirmative defense that it would have fired the employee for permissible reasons even if the employee had not been involved in union activity. *Id.*, at 401–402. The employer claimed that the NLRB's burden shifting formula was inconsistent with the National Labor Relations Act (NLRA), but we upheld it as a reasonable construction of the NLRA. *Id.*, at 402–403.

The employer in *Transportation Management* argued that the NLRB's approach violated §7(c)'s burden of proof provision, which the employer read as imposing the burden of persuasion on the employee. In a footnote, we summarily rejected this argument, concluding that "[§7(c)] . . . determines only the burden of going forward, not the burden of persuasion. *Environmental Defense Fund, Inc.* v. *EPA*, [548 F. 2d 998, 1004, 1013–1015 (CADC 1976)]." 462 U. S., at 404, n. 7. In light of our discussion in Part II A above, we do not think our cursory conclusion in the *Transportation Management* footnote withstands

scrutiny. The central issue in *Transportation Management* was whether the NLRB's burden shifting approach was consistent with the *NLRA*. The parties and the *amici* in *Transportation Management* treated the APA argument as an afterthought, devoting only one or two sentences to the question. None of the briefs in the case attempted to explain the ordinary meaning of the term. *Transportation Management*'s cursory answer to an ancillary and largely unbriefed question does not warrant the same level of deference we typically give our precedents.

Moreover, *Transportation Management* reached its conclusion without referring to *Steadman* v. *SEC*, 450 U. S. 91 (1981), our principal decision interpreting the meaning of §7(c). In *Steadman* we considered what *standard* of proof §7(c) required, and we held that the proponent of a rule or order under §7(c) had to meet its burden by a preponderance of the evidence, not by clear and convincing evidence. Though we did not explicitly state that §7(c) imposes the burden of persuasion on the party seeking the rule or order, our reasoning strongly implied that this must be so. We assumed that burden of proof meant burden of persuasion when we said that we had to decide "the degree of proof which must be adduced by the proponent of a rule or order *to carry its burden of persuasion* in an administrative proceeding." *Id*., at 95 (emphasis added). More important, our holding that the party with the burden of proof must prove its case by a preponderance only makes sense if the burden of proof means the burden of persuasion. A standard of proof, such as preponderance of the evidence, can apply only to a burden of persuasion, not to a burden of production.

We do not slight the importance of adhering to precedent, particularly in a case involving statutory interpretation. But here our precedents are in tension, and we think our approach in *Steadman* makes more sense than does the *Transportation*

Management footnote. And although we reject *Transportation Management*'s reading of §7(c), the holding in that case remains intact. The NLRB's approach in *Transportation Management* is consistent with §7(c) because the NLRB first required the employee to persuade it that antiunion sentiment contributed to the employer's decision. Only then did the NLRB place the burden of persuasion on the employer as to its affirmative defense.

In addition to the *Transportation Management* footnote, the Department relies on the Senate and House Judiciary Committee Reports on the APA to support its claim that burden of proof means only burden of production. See *Environmental Defense Fund* v. *EPA*, 548 F. 2d, at 1014–1015 (accepting this argument), cited in *Transportation Management*, *supra*, at 404, n. 7. We find this legislative history unavailing. The Senate Judiciary Committee Report on the APA states as follows:

> "That the proponent of a rule or order has the burden of proof means not only that the party initiating the proceeding has the general burden of coming forward with a prima facie case but that other parties, who are proponents of some different result, also for that purpose have a burden to maintain. Similarly the requirement that no sanction be imposed or rule or order be issued except upon evidence of the kind specified means that the proponents of a denial of relief must sustain such denial by that kind of evidence. For example, credible and credited evidence submitted by the applicant for a license may not be ignored except upon the requisite kind and quality of contrary evidence. No agency is authorized to stand mute and arbitrarily disbelieve credible evidence. Except as applicants for a license or other privilege may be required to come forward

with a prima facie showing, no agency is entitled to presume that the conduct of any person or status of any enterprise is unlawful or improper." S. Rep. No. 752, 79th Cong., 1st Sess., 22 (1945).

The House Judiciary Committee Report contains identical language, along with the following:

"In other words, this section means that every proponent of a rule or order or the denial thereof has the burden of coming forward with sufficient evidence therefor; and in determining applications for licenses or other relief any fact, conduct, or status so shown by credible and credited evidence must be accepted as true except as the contrary has been shown or such evidence has been rebutted or impeached by duly credited evidence or by facts officially noticed and stated." H. R. Rep. No. 1980, 79th Cong., 2d Sess., 36 (1946).

The Department argues that this legislative history indicates congressional intent to impose a burden of production on the proponent. But even if that is so, it does not mean that §7(c) is concerned *only* with imposing a burden of production. That Congress intended to impose a burden of production does not mean that Congress did not also intend to impose a burden of persuasion.

Moreover, these passages are subject to a natural interpretation compatible with congressional intent to impose a burden of persuasion on the party seeking an order. The primary purpose of these passages is not to define or allocate the burden of proof. The quoted passages are primarily concerned with the burden placed on the *opponent* in administrative hearings ("other parties . . . have a burden to maintain"), particularly where the opponent is the government. The Committee appeared concerned with those cases in which the "proponent" seeks a license or other privilege from the government, and in such cases did not want to allow the agency "to stand mute and arbitrarily disbelieve credible

evidence." The Report makes clear that once the licensee establishes a prima facie case, the burden shifts to the government to rebut it. This is perfectly compatible with a rule placing the burden of persuasion on the applicant, because when the party with the burden of persuasion establishes a prima facie case supported by "credible and credited evidence," it must either be rebutted or accepted as true.

The legislative history the Department relies on is imprecise and only marginally relevant. Congress chose to use the term "burden of proof" in the text of the statute, and given the substantial evidence that the ordinary meaning of burden of proof was burden of persuasion, this legislative history cannot carry the day.

In part due to Congress's recognition that claims such as those involved here would be difficult to prove, claimants in adjudications under these statutes benefit from certain statutory presumptions easing their burden. See 33 U. S. C. §920; 30 U. S. C. §921(c); *Del Vecchio* v. *Bowers*, 296 U. S. 280, 286 (1935). Similarly, the Department's solicitude for benefits claimants is reflected in the regulations adopting additional presumptions. See 20 CFR §§718.301–718.306 (1993); *Mullins Coal*, 484 U. S., at 158. But with the true doubt rule the Department attempts to go one step further. In so doing, it runs afoul of the APA, a statute designed "to introduce greater uniformity of procedure and standardization of administrative practice among the diverse agencies whose customs had departed widely from each other." *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 41 (1950). That concern is directly implicated here, for under the Department's reading each agency would be free to decide who shall bear the burden of persuasion. Accordingly, the Department

cannot allocate the burden of persuasion in a manner that conflicts with the APA.

Under the Department's true doubt rule, when the evidence is evenly balanced the claimant wins. Under §7(c), however, when the evidence is evenly balanced, the benefits claimant must lose. Accordingly, we hold that the true doubt rule violates §7(c) of the APA.

Because we decide this case on the basis of §7(c), we need not address the Court of Appeals' holding in *Greenwich Collieries* that the true doubt rule conflicts with §718.403 or with *Mullins Coal*, 484 U. S. 135.

Affirmed.