THE FEDERAL BLACK LUNG BENEFITS ACT

A summary for miners, their survivors and people who assist them.

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A message from UMWA
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For far too long, the scourge of black lung has caused tremendous pain and suffering throughout America's coalfields. That suffering has been made worse by a continued effort on the part of coal companies to first, deny that the disease even exists; and second, after it was proved to exist, to attempt to avoid paying any compensation to those who contracted the disease simply because they went to work everyday.

But there is hope. The long fight of the UMWA and the National Black Lung Association to win recognition of this disease and then to demand compensation for those who suffer from it has made progress. Today, under the regulations, black lung benefits will be available for those who qualify for them and their survivors.

Winning those benefits can be difficult, however. It can be a complicated process, full of twists and turns that can be frustrating and demoralizing. That's why the UMWA is pleased to provide this booklet to miners, their survivors and those who assist them in applying for black lung benefits.

With the right approach, miners and survivors can and do win benefits. This booklet explains that approach, and provides guidance and insight into the federal Black Lung Law and how it works. Use it well.

Cecil E. Roberts
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A SUMMARY FOR MINERS,
THEIR SURVIVORS, AND
PEOPLE WHO ASSIST THEM

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1. PREFACE

The pursuit of a black lung claim is never an easy process. Coal companies and their insurance companies hire lawyers, doctors and expert witnesses, who fight hard to prevent miners from winning. The Department of Labor processes claims very slowly and adverse decisions often have to be appealed, making the process even more difficult.

The watchword is to keep fighting. Nothing good comes easy, and that is surely true when it comes to black lung compensation battles. Nonetheless, we hope that this booklet provides information that will make the task easier. If you have questions, talk to your local black lung association, or call your UMWA District office and ask for the Benefits Services Fund representative. Also, find out which lawyers in your part of the country represent miners and widows in black lung claims.

The rules governing black lung claims are not always easy to understand. They are contained in federal regulations put out by the Department of Labor in Title 20 of the Code of Federal Regulations.

Generally, Part 718 of Title 20 sets out the rules on how to establish a miner or his widow’s eligibility. Part 725 contains the procedures followed as a black lung claim goes through the system. These regulations are periodically changed, sometimes in a way that helps miners and sometimes so as to make it more difficult to obtain compensation. The most recent changes to the black lung regulations were adopted in 2000 and can be found at 65 Federal Register 79920. They govern all claims filed after January 19, 2001. Many provisions cover older claims as well.¹

2. PURPOSE OF THE ACT

The Black Lung Benefits Act provides for monthly benefits and medical treatment for coal miners who are totally disabled by black lung disease. The Act applies to miners who have contracted a disabling lung disease caused by their coal mine employment. It also applies to the surviving dependents of miners whose death was due to black lung disease. The Act provides for the following benefits:

1. compensation for the miner’s inability to earn a living;
2. medical care and rehabilitation; and
3. if black lung disease causes a miner’s death, benefits to the
miner’s eligible dependents.
A living miner’s benefits may be augmented to provide for
a dependent wife, divorced wife, or children. Also, the widow,
child, surviving divorced wife, or disabled dependent of a miner
who died of black lung may qualify for benefits.

3. WHAT TO DO IF YOU THINK YOU
HAVE BLACK LUNG DISEASE

If you are a retired miner and are having breathing problems,
shortness of breath, cough, cough with phlegm, or wheezing,
see your doctor. If you do not have a doctor, find one in your
area who treats and understands miners. Ask your friends and
coworkers to recommend a good family doctor who is not paid to
provide reports and testimony to the coal companies.

If your family doctor cannot help you with your breathing, ask
him to refer you to a pulmonary physician for regular treatment.
A pulmonary physician specializes in treating lung diseases,
breathing disorders, and sleep disorders. Most of the effects
of black lung disease are permanent, but some symptoms can
be treated. Regular treatment by a pulmonary physician will
improve your health, quality of life, and may help you to live
longer. The lung doctor may also help you get the evidence you
need to qualify for black lung benefits. Be sure to fully explain to
your doctor how much lifting and carrying were required by your
last coal mine job.

If you smoke, you should consider stopping today. See your
doctor if you need help. As you probably know, smoking can
seriously damage your lungs and heart. Coal mine dust also
damages your lungs. The combined effects of coal mine dust
and tobacco smoke are even worse. If you stop smoking, your
breathing will improve. Also, your chances of proving that
coal mine dust caused your breathing problems will increase
dramatically.

The tobacco industry and coal companies want you to smoke.
Don’t help the companies defeat your black lung claim by giving
their doctors another possible cause of your lung condition.
Miners who still smoke more rarely win their black lung claims.

4. WHAT TO DO WHEN A MINER DIES OF
BLACK LUNG DISEASE

If a miner dies of black lung disease, his widow can file a
survivor’s claim. This is necessary whether the miner was
receiving black lung benefits when he died or not. If a miner who
is receiving benefits dies, his benefits do not transfer to his widow
—they stop.

To qualify for benefits, the widow must prove that black lung
disease caused or contributed to the miner’s death. The only
way to prove this is by medical evidence. The best evidence is
an autopsy report or a report from the pulmonary doctor who
treated the miner the longest time.

If the miner was receiving benefits when he died, the existence
of black lung disease was already proven, so an autopsy is not
necessary. However, the extent to which black lung contributed
to the miner’s death must be proven by a medical report from
a doctor who treated the miner at the end of his life. A well-
documented opinion from a long time treating pulmonary doctor
will carry the most weight.

5. PROCEDURE OF A BLACK LUNG CLAIM

The first step in a black lung claim is the filing of an application
with the U.S. Department of Labor. Applications can be obtained
at any Social Security office, by calling one of the Department
of Labor’s nine district offices, or by calling the Department of
Labor (DOL) national office at (800) 347-2502. Forms can also
be obtained through the DOL website at:
www.dol.gov/esa/regs/compliance/owcp/blforms.htm

Each district office covers a different geographical area. The
district offices are in Pennsylvania, West Virginia, Kentucky,
Ohio, and Colorado. Each district office has a district director
and claims examiners who process the applications.

The claimant must first complete the application forms
describing the miner’s personal information, dependents,
employment history, and medical information. In a living miner’s
claim, the district director will send the miner a list of doctors in
the miner’s home state and bordering states. The miner should
choose a doctor from the list to arrange for an initial pulmonary
examination, but may not choose a doctor who is related to the miner or has examined or treated him within the previous year. The Department of Labor pulmonary examination is done at no cost to the miner. This examination includes a chest x-ray, breathing tests, and blood gas tests. These tests are to show whether the miner has black lung disease and how much damage there is to the lungs.

The breathing tests measure how well the miner's lungs can move air in and out while breathing. These tests are difficult even for healthy people. Each test involves at least three and up to eight efforts that must produce similar results. Sick miners sometimes have difficulty putting forth the effort needed to produce consistent results.

The blood gas tests measure how well the miner's lungs can take oxygen out of the air and put it into the miner's bloodstream. The doctor should take this measurement both at rest and during exercise. Black lung disease reduces ability of the lungs to transfer oxygen into the bloodstream, especially with exercise. It is important for the miner to exercise as hard as his personal doctor will allow. This will simulate the heavy work required in the mines, and show how much the oxygen level actually drops.

When the examining doctor returns the medical test results to the district director, the director will notify the coal mine operator that the claimant has filed a black lung claim. The operator will have 30 days to respond. The district director will then give both the miner and the operator at least 60 days to submit evidence, and another 30 days to file rebuttal evidence.

The new regulations changed the amount of medical evidence each party may submit. Under the new regulations, each side may submit only two x-ray readings, two breathing tests, two blood gas tests, two medical reports, and one biopsy or autopsy report, besides the Department of Labor initial pulmonary examination. Medical treatment records, including CT scans, are unlimited.

The parties may submit their limited evidence to the district director. However, it may be better to wait and submit evidence to an Administrative Law Judge if the case is appealed. This is a tactical decision best left to your representative.

Under the old regulations, miners were required to submit to one exam by a company doctor. Unfortunately, the new regulations allow companies to examine miners twice during each claim.

The miner should beware of biased tactics used by company doctors. Company doctors often test blood gases only while the miner is resting to avoid showing the miner's true level of lung damage (claiming that exercise might be bad for the miner). Or, if they do an exercise test, they test the blood after exercise rather than during exercise. This recovery time raises the miner's oxygen level. The miner should find out from his personal doctor if strenuous exercise is safe. If so, he should insist on exercising as hard as possible to prove the effects of coal dust exposure.

After the parties have submitted all evidence, the claims examiner may conduct an informal conference if the claimant has a lawyer or other representative. After considering the evidence, the district director issues a proposed decision and order. Any party who is dissatisfied with the decision may request a formal hearing. The case is then transferred to the Office of Administrative Law Judges and set for a hearing.

The formal hearing is like a trial. An Administrative Law Judge conducts the hearing, and lawyers argue the case and offer medical reports and other documents as exhibits. A court reporter records the testimony and arguments, and prepares a transcript of the hearing.

The miner should testify about his or her employment history, the physical requirements of his last job, dust exposure, smoking history, breathing problems, and his treating pulmonary doctor. A widow should testify about the years her husband worked in the mines, how dusty he was when he came home, his smoking history, breathing problems toward the end of his life, and his treating pulmonary doctor.

The parties must exchange all medical evidence between the two sides at least twenty days before the formal hearing. Any medical evidence submitted later will not be admitted into the
record unless all parties agree. The Judge cannot consider any evidence not admitted to the record.

The Judge will issue a decision a few months after the hearing. He or she must decide the case, giving a scientific rationale for why the miner's doctor's opinions were accepted or rejected.11 Either party may appeal the Administrative Law Judge's decision to the Department of Labor's Benefits Review Board.12 Either party may appeal the Benefits Review Board's decision to the United States Court of Appeals for the circuit in which the miner last worked in the mines or where the injury occurred.13

6. WHAT CLAIMANTS MUST PROVE TO QUALIFY

A living miner who files a claim must prove three main elements to qualify for black lung benefits.14 First, the miner must show he or she has black lung disease;15 second, that coal mine employment caused black lung disease;16 and third, that the miner has total respiratory disability caused at least in part by black lung disease.17

As a threshold element, a widow must prove she was the miner's wife to qualify for benefits. She also must prove three elements similar to those required in a living miner's claim. First, she must show that the miner had black lung disease; second, that coal mine employment caused the miner's black lung disease; and third, that black lung disease was a significant contributing cause of the miner's death.18

7. DISEASES COVERED UNDER THE ACT

The legal term for black lung disease is pneumoconiosis (pronounced “new-mo-con-sis”). Pneumoconiosis is any respiratory or lung disease caused by inhaling coal mine dust.19 Some of the types of dust present in coal mines are coal dust, silica dust, and asbestos dust.

The definition of legal pneumoconiosis is considerably broader than the definition of medical pneumoconiosis.20 The new regulations include both medical pneumoconiosis and legal pneumoconiosis. The broader definition includes obstructive lung diseases such as chronic bronchitis or emphysema, called Chronic Obstructive Pulmonary Disease (COPD). Tobacco smoke and coal mine dust both have been shown to cause these diseases.

The existence of black lung may be proven by x-rays, biopsy, autopsy, or a well-reasoned doctor's report that states that the miner suffers or suffered from black lung.21 Sometimes, black lung is diagnosed by x-ray. Doctors can see spots on the x-rays that represent the scars in the lungs caused by clinical pneumoconiosis.

Often, however, black lung is present but poorly seen on an x-ray. Significant lung scarring can develop before it is visible on x-rays. Emphysema which often occurs in black lung can make the scars harder to see. The better educated doctors understand that black lung is a disease that cannot always be seen on x-rays.

It is possible to establish the presence of black lung despite negative x-ray interpretations. If the miner has a regular treating pulmonary physician who believes that coal mine dust caused the miner's breathing condition, the doctor's opinion can outweigh negative x-ray evidence. The treating doctor must show an accurate knowledge of the miner's medical and employment history, address all negative evidence, and base his opinion on objective medical evidence.22

Black lung is a progressive disease. That means that it creeps up on you. It is gradual, comes on slowly and some miners think their symptoms are just a natural part of getting old. Black lung can continue to get worse slowly but surely even after the miner leaves dusty work.

The courts have described black lung as "a dreadful and insidious disease which interferes with the respiratory functions of its victims, and which slowly and progressively makes the very act of breathing more and more difficult."23 As the disease progresses, it may cause physical disability and ultimately "may induce death by cardiac failure, and may contribute to other causes of death."24

Company doctors generally claim that black lung rarely progresses after a person leaves the mines. They invariably claim that if a miner became disabled by lung disease well after he left the mines, coal dust exposure did not cause his disability. The new regulations, however, recognize black lung as a "latent and progressive disease," a description that was not in the old
COPD is a condition that blocks the flow of air out of the breathing tubes of the lungs, and causes shortness of breath. This is called an obstructive respiratory impairment. The two most common forms of COPD are chronic bronchitis and emphysema. Chronic bronchitis is an inflammation of the lining of the bronchial passages that causes the miner to cough and produce sputum. Emphysema is destruction of the walls of air sacs that causes enlarged spaces or holes in the lungs like Swiss cheese. The damaged lung cannot support the airways normally and they collapse easily causing obstruction.

Historically, doctors believed coal dust exposure caused only a restrictive respiratory impairment from scarring of the lungs. Restrictive impairment means that the lungs are smaller, usually due to scarring, but there is no problem with air flowing in and out of the lungs as seen in obstructive diseases. Restriction can occur from many causes, other than scarring such as pneumonia, serious heart disease, or from outside pressure on the lungs from a tumor, obesity, or pregnancy.

Company doctors have claimed for years that coal dust only causes a restrictive form of lung impairment, not obstructive impairments like chronic bronchitis and emphysema. These same company doctors have also claimed that lung diseases caused by coal mine dust do not progress after the miner leaves the mines. Current medical and scientific research do not support these views. Research done in many different countries over a long time by independent doctors and scientists shows that coal dust can and does cause obstructive and restrictive impairments, or a mixture of both, and can be progressive. The Department of Labor now includes in its legal definition of black lung disease "any restrictive or obstructive pulmonary disease arising out of coal mine employment."26

8. MINERS COVERED BY THE ACT

A miner is any person who works or has worked in or around a coal mine or coal preparation facility by extracting, preparing, or transporting coal. Also, a miner is any person who works or has worked in coal mine construction or maintenance around a coal mine or coal preparation facility.29 Generally, UMWA members who worked in or around the mines are covered by the Act.

The new regulations are more inclusive, but the Act still applies only to miners and their survivors. In fact, the new regulations specify that coke oven workers are not considered miners under the Act, though others working with coal at coke plants are covered.30 Railroad workers and steel workers, although they are often exposed to coal dust, do not qualify under the Act.

9. SURVIVORS COVERED BY THE ACT

If black lung significantly contributes to a miner's death, his dependents are entitled to benefits. The Department of Labor has broadened the group of dependents eligible for benefits. This will help many families affected by black lung disease.

If a spouse remarries after the miner dies, she loses entitlement to survivors' benefits.31 Under the new regulations, however, she may resume entitlement if her second marriage ends.32 A divorced spouse who was financially dependent on the miner is also eligible.

A widow’s benefits may be augmented to provide for
dependent children up to age 18, or 22 if they are full time students. If a dependent child becomes disabled before age 23, he will be eligible for benefits as long as he is disabled.

10. TOTAL DISABILITY DUE TO PNEUMOCONIOSIS

The Act provides for benefits to miners who are totally disabled by black lung disease. Total respiratory disability is the inability of the miner to do his usual coal mine work or comparable work. Total disability due to black lung is a disabling respiratory or pulmonary impairment substantially caused by or worsened by coal mine dust exposure.

Total respiratory disability may be proven by pulmonary function tests, exercise tests, arterial blood gas tests, or a well-reasoned doctor's report that states that the miner cannot do his usual coal mine work because of his pulmonary impairment. The miner must also prove that black lung caused his pulmonary impairment.

The regulations state that pneumoconiosis is a "substantially contributing cause" of the miner's disability if it adversely affects the miner's respiratory condition, or worsens a disabling respiratory condition unrelated to coal mine employment. "Substantially contributing cause" of total disability was not defined in the old regulations.

If the evidence shows that the miner has complicated pneumoconiosis, a finding of total disability due to pneumoconiosis is automatically made. Complicated pneumoconiosis is often called progressive massive fibrosis. With complicated pneumoconiosis, the scar tissue in the lungs gets bigger and destroys air sacs, airways, and blood vessels. The regulations define it as massive lesions in the lung that appear on x-rays as opacities larger than one centimeter in diameter.

Under the new regulations, any non-respiratory condition that causes an independent disability unrelated to the miner's respiratory disability is not considered in determining whether a miner is totally disabled by black lung disease. If, however, a non-respiratory condition or disease causes a chronic respiratory impairment, that condition or disease is considered in determining whether the miner is or was totally disabled by black lung.

The new regulations prohibit coal mine operators from defeating a claim by pointing to the existence of non-respiratory impairments that may also be disabling. Even under the old regulations, most courts recognized that the Act does not permit the denial of benefits based merely on the existence of another disabling condition.

For example, suppose a miner left the mines because of a disabling back injury, and now suffers from residual arthritis and black lung. The new regulations would be directly applicable in this situation. If the miner now has total respiratory disability due to black lung, he wins his claim. The presence of arthritis, even if disabling, cannot stop the miner from getting black lung benefits.

Company doctors generally claim that it is possible for black lung to cause a disabling condition, but only if the condition is a restrictive respiratory impairment (discussed above) and the chest x-rays show extensive scarring. The literature, however, contains overwhelming scientific evidence that coal mine dust exposure can cause obstructive lung disease, with or without extensive fibrosis visible on x-ray.

The courts have determined that a miner's lung disease need not be caused exclusively by occupational exposure to coal mine dust. Many miners have a smoking history that contributed to their respiratory disability. However, if a miner has total pulmonary disability caused at least in part by coal mine dust exposure, the miner is not required to prove that coal dust exposure contributed a certain percentage to his disability, only that the contribution by coal dust was significant.

11. DEATH DUE TO PNEUMOCONIOSIS

The Act provides for benefits to survivors of miners if black lung disease contributed significantly to the miner's death. The regulations require widows to prove that a miner's death was "due to" pneumoconiosis.

Many courts have been asked to interpret what the "due to" language of the statute means. The coal companies argue that black lung must be the primary cause of the miner's death. Lawyers for claimants argue that if the miner's black lung caused him to die sooner than he otherwise would have, his widow should win.

The miners and widows have won this issue in every important
court that has considered it. The Department of Labor has now agreed that if black lung disease hastened the miner’s death, the widow wins.\textsuperscript{41} For example, even if a miner dies of lung cancer, his widow receives benefits if she can show that his black lung worsened his lung function and prevented the removal of the miner’s lung tumor, causing him to die sooner than a non miner would have.

A miner’s death will be considered “due to” pneumoconiosis if coal mine dust exposure was a substantially contributing cause of the miner’s death. Pneumoconiosis is a “substantially contributing cause” of the miner’s death if it hastened the miner’s death.\textsuperscript{45}

If the evidence establishes that the miner had complicated pneumoconiosis, a finding that the miner’s death was due to pneumoconiosis is required.\textsuperscript{46} However, the widow is not automatically entitled to benefits. She must still prove that the miner’s complicated pneumoconiosis was caused by coal mine employment.

12. MEDICAL OPINIONS

Most courts have recognized that the doctor who regularly treats the miner knows more about the miner’s medical condition than the company doctors who only review medical records and offer opinions without ever seeing the miner.\textsuperscript{47} The new regulations provide that the opinion of the miner’s treating physician may be given controlling weight on the questions of whether the miner suffers from black lung and whether the miner’s black lung is disabling or causes death.

To be given controlling weight, the doctor must have treated the miner for his respiratory condition, seen him frequently over a significant period, and conducted the kind of tests that would give the doctor insight into the miner’s condition. The miner’s doctor must also present a convincing explanation for his views.\textsuperscript{48}

Before the regulations were revised, several courts ruled that a treating physician’s opinion may be entitled to greater weight, but only if it is well reasoned and well documented.\textsuperscript{49} The new regulations adopt this standard.\textsuperscript{50} Such weight, however, is not to be applied mechanically. The judge must still determine whether the physician’s opinion is reasoned, documented, and credible before accepting it over contrary opinions.

If a medical opinion is well documented and reasoned, it can establish the presence of black lung and disability due to black lung. A documented medical opinion sets out the clinical findings, observations, facts and other data on which the diagnosis is based.\textsuperscript{51} A reasoned medical opinion is adequately supported by the underlying documentation and data.\textsuperscript{52}

A well reasoned, well-documented medical opinion is essential to winning a black lung claim. Such an opinion conservatively addresses the miner’s coal dust exposure, fully acknowledges the miner’s smoking history, and states clearly whether the miner’s pulmonary impairment was caused at least in part by coal dust exposure. It should acknowledge all x-ray interpretations negative for pneumoconiosis. It should also state unequivocally whether the miner has lung disease caused by various factors that include occupational exposure to coal mine dust.

Company doctors are paid well to diagnose “anything but” black lung disease. They often state that a miner does not have black lung so they can claim that coal dust exposure did not contribute to the miner’s pulmonary disability. If such an opinion is shown to be incorrect, it is entitled to little or no weight.\textsuperscript{53}

Company doctors try to state with certainty that the miner does not (or did not) have black lung. Sometimes, however, they claim to be unsure whether a miner has (or had) black lung. Predictably, they use this uncertainty as the basis for claiming that black lung played no part in the miner’s disability or death. Such an opinion may be given little weight.\textsuperscript{54}

The new regulations contain very precise rules, called quality standards, about test results that the Department of Labor will accept to determine if a miner has black lung disease.\textsuperscript{55} According to treating doctors, these rules are too strict and may invalidate many test results that show respiratory disability or death due to black lung. The Department has modified these strict rules for deceased miners, but the new rules will impact miners whose doctors are less familiar with these technical standards than the company doctors.
13. DUPLICATE CLAIMS AND MODIFICATION

The Black Lung Benefits Act recognizes that the effects of black lung are not always seen immediately. Because the progressive nature of black lung is well recognized, the Act allows a miner to file for benefits long after he has left the mines. If a miner applies for benefits but does not qualify, he can submit new medical evidence that shows his respiratory condition has worsened since the denial.

The Act allows a miner to file a new claim after a denial if he obtains new medical evidence that shows he has total pulmonary disability from black lung. If he obtains the new evidence within one year of the denial, he can submit the evidence and ask for a modification.

If a miner obtains the new evidence more than one year after the denial, he must file a new claim for benefits. He will need to complete another set of forms and undergo another set of medical examinations. If the evidence in the new claim shows that the miner’s condition has changed and he now has pneumoconiosis or he has now become totally disabled due to black lung, he will qualify for benefits.

A widow, however, must win her first claim. If benefits are denied, she has one year from the date of the denial to request a modification and submit medical evidence showing black lung contributed to her husband’s death. She cannot win if she files a new claim after one year – this is because she cannot show that the miner’s condition changed after the denial. If she tries to file another claim, it will automatically be denied, except in rare cases. One example would be a widow who remarried, and thereby lost her entitlement, and then divorced and regained entitlement to benefits.

14. OVERPAYMENTS

If a claimant receives an award of benefits and the company challenges that award, the Black Lung Disability Trust Fund generally pays the claimant interim benefits. If the award is later overturned on appeal, the claimant will be asked to repay the Trust Fund. This is known as an overpayment by the Trust Fund.

If the claimant shows that the overpayment was not the claimant’s fault and that the claimant does not have the resources to pay the money back, the overpayment is usually forgiven, or “waived,” by the government. The claimant should cooperate with the government by providing all information or records requested as soon as possible.

Rarely, a mine operator might begin paying benefits to the claimant before the final resolution of the case. Before, if a company paid temporary benefits and the award was overturned, the company demanded the return of its money, even if the miner or widow could not afford to pay it back. Under the new regulations, overpayments by operators can now be waived.

Essentially, the new regulations provide that collection of overpayments by both the Trust Fund and operators can be waived by the Department of Labor.

15. ATTORNEY FEES

Under the Act, a claimant never pays an attorney for legal services. If the claim does not succeed, the claimant’s attorney is not entitled to a fee. If the claim succeeds, the coal company or government is generally liable for a reasonable fee due to the claimant’s attorney. Attorney fees must be approved and ordered by each administrative tribunal where the attorney represented the claimant.

The new regulations recognize that miners need effective representation during the earliest stages of their cases. Where the operator contests the case, and the claimant wins, the claimant’s lawyer can now be paid for all reasonable time spent from the beginning of the case. This should help claimants find attorneys who can help them win their cases.

16. FREQUENTLY ASKED QUESTIONS

Can I draw Social Security benefits and black lung benefits at the same time?

ANSWER: Yes, if you meet the eligibility requirements of both. Generally, Social Security benefits do not affect black lung benefits, and black lung benefits do not affect Social Security benefits. It is usually to your financial advantage to try to draw
both types of benefits if you qualify.

Can I receive federal black lung benefits and state black lung benefits?
ANSWER: It depends on where you live. Some states have black lung benefits programs, and others do not. If your state has a black lung program, and you qualify for both federal and state benefits, the amount of federal black lung benefits will be reduced dollar for dollar by any state benefits you receive at the same time. If your state benefits have already been paid in full, then your federal benefits will not be reduced at all. If your state does not have a black lung program, it probably covers black lung as an occupational disease under its workers’ compensation laws.

Can I draw Workers’ Compensation benefits and black lung benefits at the same time?
ANSWER: Yes, if you qualify for both. The amount of federal black lung benefits, however, will be reduced dollar for dollar if your workers’ compensation benefits are based on lung disease. If the workers’ compensation benefits are based on another injury, those benefits will not affect your federal black lung benefits.

Will it hurt my chance for success if I earn income from other sources?
ANSWER: Your regular income will not impact your eligibility for black lung. This also applies to the income of any other qualified applicant, such as a widow.

What happens if my coal operator went out of business?
ANSWER: Your eligibility remains the same, and someone will be held responsible to pay for any benefits awarded. If a responsible operator cannot be identified, then benefits will be paid out of the Disability Trust Fund.

How do I find a good representative?
ANSWER: Talk to an expert. Ask your local black lung association, or call your UMWA District office and ask for the Benefits Services Fund representative. If you want legal representation, ask for the name of a lawyer in your part of the country who represents miners and widows in black lung claims.

If you cannot find a lawyer in your area, contact the Union at the national office, and ask for the name of a lawyer who might be able to help you.

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APPENDIX A
HISTORY OF THE ACT

The Black Lung Benefits Program was established in 1969 as part of the Federal Coal Mine Health and Safety Act. It was intended to provide compensation for coal miners who became disabled from their normal coal mine employment.

The program was first administered by the Social Security Administration, and used public funds to compensate disabled coal miners. The number of claims filed under the initial program far exceeded estimates, and the Black Lung Benefits Act of 1972 was enacted to provide simplified interim eligibility criteria for claims filed with the Social Security Administration.

In 1978, the Black Lung Benefits Reform Act of 1977 was enacted. The Reform Act again mandated the use of interim criteria based on the presumption of eligibility to resolve old, unapproved claims. It also created the Black Lung Disability Trust Fund.

Eligible recipients are coal miners who are totally disabled by pneumoconiosis and survivors of miners whose deaths were due to pneumoconiosis. 30 U.S.C. §§ 901(a), 922(a), 932(c). The Act was intended to be remedial in nature (provide benefits to victims of black lung disease) and liberally construed (doubts are supposed to be resolved in favor of the disabled miner or his survivors). Stomps v. Dir., OWCP, 816 F.2d 1533, 1534 (11th Cir. 1987) (citing Pub.L.No. 92-303, 1972 U.S. Code Cong. & Admin. News 2305, 2315 and Pub.L.No. 95-239, 1978 U.S. Code Cong. & Admin. News 237, 240). Even though the Act is supposed to help victims, black lung claimants have been confronted with obstacles that prevented about nine out of ten claimants from receiving benefits.

In 1997, the U.S. Department of Labor issued proposed regulations that made significant changes to the application process. After a long period of public comment and reconsideration by the government, the Department of Labor published final rules that went into effect in January 2001. Two of the major changes are: 1) limits to the amount of medical evidence to be submitted by either side, and 2) standards to permit greater weight given to the medical opinion of treating physicians who are more familiar with the black lung victim’s respiratory condition.

One of the biggest improvements in the new regulations is the limitation on evidence. Because coal companies have so much more money than miners, they have traditionally purchased dozens of x-ray reports, medical reports, and depositions, often spending tens of thousands of dollars on a single case. This strategy limited the judges’ ability to rule fairly because of the sheer volume of evidence against the claimants, discouraged miners and widows from pursuing their claims, and forced many attorneys to stop representing black lung claimants.

Under the new regulations, each side may submit only three of x-ray readings, two breathing tests, two blood gas tests, two medical reports, and one biopsy or autopsy report, besides the Department of Labor initial pulmonary examination. Each side can then submit one rebuttal report in each of these categories and, if the rebuttal reports challenge the validity of the evidence, the party offering the evidence can then file one bolstering report in each category.

The parties may submit this evidence up to twenty days before the formal hearing before the administrative law judge. Depositions may only be taken of those doctors who have offered a medical report, and a deposition now counts as a medical report. These rules will substantially help to level the playing field and ensure that cases will be decided based on the most reliable evidence, and not always in favor of the party who can afford the most evidence.

The national trade association of coal companies and several insurance companies sued the government to prevent the new regulations from going into effect. The National Black Lung Association, the United Mine Workers of America, and the Department of Labor defended the new regulations. The court upheld the new regulations. National Mining Assn. v. Chao, 160 F. Supp. 2d 47 (D. D.C. 2001), aff’d, 292 F.3d 849 (D.C. Cir. 2002).

**APPENDIX B**

**SELECTED NEW REGULATIONS**

20 C.F.R. § 718.104 Report of physical examinations

(d) *Treating physician.* In weighing the medical evidence of record relevant to whether the miner suffers, or suffered, from pneumoconiosis, whether the pneumoconiosis arose out of coal mine employment, and whether the miner is, or was, totally disabled by pneumoconiosis or died due to pneumoconiosis, the adjudication officer must give consideration to the relationship between the miner and any treating physician whose report is admitted into the record. Specifically, the adjudication officer shall take into consideration the following factors in weighing the opinion of the miner’s treating physician:

1. **Nature of relationship.** The opinion of a physician who has treated the miner for respiratory or pulmonary conditions is entitled to more weight than a physician who has treated the miner for non respiratory conditions;

2. **Duration of relationship.** The length of the treatment relationship demonstrates whether the physician has observed the miner long enough to obtain a superior understanding of his or her condition;
(3) **Frequency of treatment.** The frequency of physician patient visits demonstrates whether the physician has observed the miner often enough to obtain a superior understanding of his or her condition; and

(4) **Extent of treatment.** The types of testing and examinations conducted during the treatment relationship demonstrate whether the physician has obtained superior and relevant information concerning the miner's condition.

(5) In the absence of contrary probative evidence, the adjudication officer shall accept the statement of a physician with regard to the factors listed in paragraphs (d)(1) through (4) of this section. In appropriate cases, the relationship between the miner and his treating physician may constitute substantial evidence in support of the adjudication officer's decision to give that physician's opinion controlling weight, provided that the weight given to the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.

**20 C.F.R. § 718.201 Definition of Pneumoconiosis**

(a) For the purpose of the Act, "pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes both medical, or "clinical," pneumoconiosis and statutory, or "legal," pneumoconiosis.

(1) **Clinical Pneumoconiosis.** "Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, progressive massive fibrosis, silicosis, or silicotuberculosis.

(2) **Legal Pneumoconiosis.** "Legal pneumoconiosis" includes any chronic lung disease or impairment and

its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.

(b) For purposes of this section, a disease "arising out of coal mine employment" includes any chronic pulmonary disease resulting in respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

(c) For purposes of this definition, "pneumoconiosis" is recognized as a latent and progressive disease that may first become detectable only after the cessation of coal mine dust exposure.

**20 C.F.R. § 718.204 Total disability and disability causation defined**

(a) **General.** Benefits are provided under the Act for or on behalf of miners who are totally disabled due to pneumoconiosis, or who were totally disabled due to pneumoconiosis at the time of death. For purposes of this section, any nonpulmonary or nonrespiratory condition or disease, which causes an independent disability unrelated to the miner's pulmonary or respiratory disability, shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis. If, however, a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis.

**20 C.F.R. § 718.204(b)(2)**

A finding of total disability may be established by one of the following:

(i) a pulmonary function study that yields results that are both conforming (meets the appropriate quality standards) and qualifying (meets the disability standards); or

(ii) an arterial blood gas study that yields results that are both conforming and qualifying; or
(iii) the medical evidence shows that the miner has pneumoconiosis and cor pulmonale with right sided congestive heart failure; or
(iv) a reasoned medical opinion based on medically accepted clinical and laboratory diagnostic techniques.

20 C.F.R. § 718.205 Death due to Pneumoconiosis

(c) [In survivors’ claims filed on or after January 1, 1982, a miner’s] death will be considered due to pneumoconiosis if any of the following conditions are met:

(1) Where competent medical evidence established that the miner’s death was due to pneumoconiosis; or
(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death or the death was caused by complications of pneumoconiosis; or
(3) Where the miner had complicated pneumoconiosis. (4) However, survivors are not eligible for benefits where the miner’s death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
(5) Pneumoconiosis is a “substantially contributing cause” of a miner’s death if it hastens the miner’s death.

20 C.F.R. § 725.202 Definition of Miner

(a) Miner defined. A “miner” for the purposes of this part is any person who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal, and any person who works or has worked in coal mine construction or maintenance in or around a coal mine or coal preparation facility. There shall be a rebuttable presumption that any person working in or around a coal mine or coal preparation facility is a miner. This presumption may be rebutted by proof that:

(1) The person was not engaged in the extraction, preparation, or transportation of coal while working at the mine site, or in maintenance or construction of the mine site; or
(2) The individual was not regularly employed in or around a coal mine or coal preparation facility.

20 C.F.R. § 725.2(c) sets forth the applicability of Part 725 of the regulations and which new regulations are to be applied retroactively.

APPENDIX C
Effective Date of New Regulations

1. In general, the new regulations apply to all claims filed on or after January 19, 2001.
2. For claims filed before January 19, 2001, that were still pending as of that date, some new regulations may apply.

Regulations with a Retroactive Effect
(may impact claims pending on 1/19/01)

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>718.104(d)</td>
<td>Treating physician rule</td>
</tr>
<tr>
<td>718.201(a)(2)</td>
<td>Definition of pneumoconiosis</td>
</tr>
<tr>
<td>718.201(c)</td>
<td>Latent and progressive disease</td>
</tr>
<tr>
<td>718.205</td>
<td>Hasting death standard</td>
</tr>
<tr>
<td>725.101(a)(6)</td>
<td>Benefits; no cost exams</td>
</tr>
<tr>
<td>725.701</td>
<td>Presumption that pulmonary disorder is due to black lung disease</td>
</tr>
</tbody>
</table>

3. Some sections may apply to pending claims, depending on your geographical location. Check with your representative to determine if the sections listed below could impact your pending claim.
Effective Date Dependent on Location (may impact claims pending on 1/19/01)

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Location Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>718.204 (a)</td>
<td>Total disability rule</td>
<td>For IN, IL, WI: prospective only. For everywhere else: may apply to cases pending 1/19/01.</td>
</tr>
<tr>
<td>725.101 (a)(31)</td>
<td>Funds paid from general revenues not considered worker's comp.</td>
<td>For PA, NJ, DE: prospective only. For everywhere else: may apply to cases pending 1/19/01.</td>
</tr>
<tr>
<td>725.701 (e)</td>
<td>Presumption that pulmonary disorder caused by black lung</td>
<td>For OH, KY, TN: prospective only. For everywhere else: may apply to cases pending 1/19/01.</td>
</tr>
</tbody>
</table>

4. The following chart shows the remaining significant sections. These will be applied ONLY to claims filed after January 19, 2001.

Effective January 19, 2001

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>718.101-106</td>
<td>Quality standards for med. Evidence</td>
</tr>
<tr>
<td>725.209, 212, 213, 223</td>
<td>Dependent/survivor eligibility</td>
</tr>
<tr>
<td>725.309</td>
<td>Subsequent claims</td>
</tr>
<tr>
<td>725.367</td>
<td>Attorney's fees</td>
</tr>
<tr>
<td>725.405-418</td>
<td>Streamlined hearing procedure</td>
</tr>
<tr>
<td>725.406</td>
<td>DOL examiner location</td>
</tr>
<tr>
<td>725.414, 456</td>
<td>Two exam maximum by opponent</td>
</tr>
<tr>
<td>725.414, 456, 457</td>
<td>Limits on evidence</td>
</tr>
<tr>
<td>725.547</td>
<td>Overpayment waiver</td>
</tr>
</tbody>
</table>

ENDNOTES

1. The current set of rules was challenged by the coal and insurance industries because many benefitted the miners. The federal courts, however, rejected these challenges in a lawsuit the United Mine Workers and the National Black Lung Association won. National Mining Assn. v Chao, 160 F.Supp.2d 47 (D.D.C. 2001), aff'd, National Mining Assn. v Department of Labor, 299 Fed. 439 (D.C. Cir. 2002). Appendix C of this booklet has a chart showing which regulations apply only to claims filed on or after January 19, 2001 and which apply to all claims.

2. 20 C.F.R. § 725.406(b).

3. 20 C.F.R. § 725.406(a).

4. Id.

5. See 20 C.F.R. § 718.103. Under the new regulations, the Department of Labor has recognized the prevailing view among lung doctors that pulmonary function tests can be valid, even if the miner's best efforts are not within 5% of each other, if the doctor administering the test certifies that the miner made a good effort. This will help some of the sickest miners win their cases.


8. 20 C.F.R. § 725.414(3)(i). See also 20 C.F.R. § 725.456(b)(i).

9. 20 C.F.R. § 725.450.

10. For details regarding hearings, see 20 C.F.R. §§ 725.450-725.483 referred to as "Subpart F - Hearings."

11. Stalcup v. Peabody Coal Co., 477 F.3d 492 (7th Cir. 2007).

12. 20 C.F.R. § 725.481.

13. 33 U.S.C. § 931(c); 20 C.F.R. § 725.482(a).


16. 20 C.F.R. § 718.203.

17. 20 C.F.R. § 718.204(c)(i).

18. 20 C.F.R. § 718.205(b)-(d). See also §§ 718.201-203.

19. 20 C.F.R. § 718.201. If a miner worked for ten or more years in one or more coal mines and proves that he has pneumoconiosis, a presumption arises that his coal mine employment caused his pneumoconiosis.

20 C.F.R. §§ 718.203(b) and 718.302. This presumption is rebuttable, meaning the company must overcome the presumption by
proving that the miner’s lung disease was caused by something other than coal mine employment.

20. C.F.R. § 718.201(a)(1)-(2); 65 Fed. Reg. 79920, 79937-45 (Dec. 20, 2000). See, e.g., Freeman United Coal Mining Co. v. Summers, 272 F.3d 473 (7th Cir. 2001); Gulf & Western Ind. v. Ling, 176 F.3d 226, 231-32 (4th Cir. 1999); Labelle Processing Co. v. Swarrow, 72 F.3d 308, 315 (3d Cir. 1995); Consolidation Coal Co. v. Hage, 908 F.2d 393, 395-396 (8th Cir. 1990); Campbell v. Consolidation Coal Co., 811 F.2d 302, 304 (6th Cir. 1987); Stomps v. Dir., OWCP, 816 F.2d 1533, 1535 (11th Cir. 1987); Peabody Coal v. Lowis, 708 F.2d 266, 268 n.4 (7th Cir. 1983).


25. C.F.R. § 718.201(c); Midland Coal Co. v. Shores, 358 F.3d 486 (7th Cir. 2004); Workman v. Eastern Associated Coal Corp., 23 BLR 1-23 (2004).


27. Old Ben Coal Co. v. Prewitt, 755 F.2d 588, 591 (7th Cir. 1985).

28. Consolidation Coal Co. v. Williams, 453 F.3d 609 (4th Cir. 2006).


31. C.F.R. § 725.213(b)(i).

32. C.F.R. § 725.213(c).

33. C.F.R. § 725.209(a).

34. C.F.R. § 725.219(b)(5).

35. C.F.R. § 718.204(b)(1).

36. C.F.R. § 718.204(c)(1).

37. Id.

38. PROFESSIONAL GUIDE TO DISEASES 536 (5th ed., Springfield Corp. 1995).


40. C.F.R. § 718.204(a).


42. Boness v. United States Steel Corp., 884 F.2d 726, 733 (3d Cir. 1989).

43. C.F.R. § 718.205(a).

44. C.F.R. § 718.205(c)(5).

45. C.F.R. § 718.205(c).

46. C.F.R. § 718.304.

47. See, e.g., Peabody Coal Co. v. Groves, 277 F.3d 829, 834-35 (6th Cir. 2002); Thorn v. Irmann Coal Co., 3 F.3d 713, 717 n.3 (4th Cir. 1993); McClendon v. Drummond Coal Co., 861 F.2d 1512, 1514 (11th Cir. 1988); Micheli v. Dir., OWCP, 846 F.2d 632, 636 (10th Cir. 1988); Schaff v. Matthews, 574 F.2d 157, 160 (3d Cir. 1978); Assoc. Elec. Cooper. v. Hudson, 73 F.3d 845, 849 (8th Cir. 1996).

48. 20 C.F.R. § 718.104(d); Peabody Coal Co. v. Odom, 342 F.3d 486 (6th Cir. 2003); Jerical Mining Inc. v. Napier, 301 F.3d 703 (6th Cir. 2002).

49. Grizzle v. Pickands Mather and Co., 994 F.2d 1093, 1097 (4th Cir. 1993); Peabody Coal Co. v. Helms, 901 F.2d 571, 573 (7th Cir. 1990); Halsey v. Richardson, 441 F.2d 1230, 1236 (6th Cir. 1971); Tedesco v. Dir., OWCP, 18 B.L.R. 1-103, BRB No. 93-0419 BLA (Apr. 26, 1994).

50. C.F.R. § 718.104(d).


52. Id.


56. C.F.R. § 725.310(a).

57. C.F.R. § 725.309; U.S. Steel Mining Co. v. Director, 386 F.3d 977 (11th Cir. 2004) (discussing cases from other circuits as well).

58. C.F.R. § 725.213(c).

59. C.F.R. §§ 725.542, 725.547(b).

60. C.F.R. § 725.367(a).
The Byrd Amendments

On March 23, 2010, President Obama signed into law what is popularly called the “Byrd Amendments,” which improve the opportunity for many claimants to receive Black Lung benefits. There are two basic provisions which apply to existing claims filed on or after January 1, 2005:

(1) If a coal miner wins his own Black Lung claim, his spouse will now automatically get widow’s benefits after his death; and

(2) If a miner who worked at least 15 years in coal mining or his widow can prove the miner has a totally disabling respiratory impairment, he will be presumed to have Black Lung arising from coal mining. That means the miner will be eligible for benefits unless the employer can prove that his respiratory impairment did not result from coal mine employment.

There are some technical aspects to the Amendments, so claimants should consult with a benefits counselor, union representative or attorney concerning the application of these amendments to your particular claim.