

Black Lung Benefits Improvement Act of 2023

TITLE I – BLACK LUNG BENEFITS

Part A – Improvement in the Process of Filing and Adjudicating Claims for Benefits

Section 101. Providing Assistance with Claims for Miners and Their Dependent Family Members

This section expands services provided by black lung clinics to assist miners, surviving spouses, and dependents as they pursue claims for benefits. This assistance would be provided in addition to the clinics' existing role of treating respiratory and pulmonary impairments in active and former coal miners.

Section 102. Clarifying Eligibility for Black Lung Benefits

Under current law, a miner is entitled to an irrebuttable presumption that the miner is totally disabled by pneumoconiosis, died because of pneumoconiosis, or was totally disabled by pneumoconiosis at the time of death, as the case may be, in cases where the miner has been diagnosed with progressive massive fibrosis or complicated pneumoconiosis. To update terms and clarify the interpretative standard for complicated pneumoconiosis, this section substitutes the term "radiograph" for the outmoded term "roentgenogram"; clarifies the benchmark of an opacity, mass, or lesion for which the "greatest diameter" exceeds one centimeter, consistent with the revised *Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (2011)*; and allows for potential shrinkage of any masses or lesions measured after biopsy or autopsy.

Section 103. Development of Medical Evidence by the Secretary

This section expands the Secretary's current obligation to offer a coal miner a complete pulmonary evaluation to substantiate a claim for benefits, by further requiring the Secretary to supplement the medical evidence in cases where a party opposing the claim provides evidence that could be considered contrary to the initial report of the pulmonary examination, or such party's evidence has been submitted to an ALJ that had not been previously considered by the Secretary in making an award. To develop the supplemental evidence, the Secretary shall request the physician who developed the initial medical report for the claimant to review any medical evidence submitted after the initial report, and to update the opinion of such physician in a supplemental report, if warranted. If the original physician who examined the miner is no longer available, the Secretary shall select another qualified physician. In diagnosing whether a miner has complicated pneumoconiosis, but for which a conventional lung X-ray fails to provide a definitive image, the Secretary is authorized to provide a high-quality, low-dose or standard CT scan if a chest radiograph reveals advanced pneumoconiosis (ILO category 2/1 or greater) or a coalescence of small opacities.

This section codifies the Secretary's practice of creating and maintaining a list of qualified physicians to perform pulmonary examinations of coal miners but enhances quality assurance by requiring that the Secretary pre-screen physicians for adverse professional actions involving medical licensure, certifications, hospital privileges, or professional societies. This section precludes the use of physicians from the list maintained by the Secretary

who have a potential or actual conflict of interest through current or recent employment or contractual arrangements with a private party opposing an individual's claim, unless the claimant knowingly waives such conflict. The Secretary shall update such list annually by reviewing the suitability of the listed qualified physicians and assessing any potential conflicts of interest.

Section 104. False Statements or Misrepresentations, Attorney Disqualification, and Discovery Sanctions

This section strengthens criminal penalties for anyone knowingly and willfully making false statements or misrepresentations, provides guidelines for making determinations as to whether attorney behavior warrants disqualification, and grants Administrative Law Judges (ALJ) the authority to issue sanctions when a party fails to comply with a discovery order. Specifically, this section makes it a felony, punishable by no more than five years in prison, for a claimant, operator, examining physician, or any other person to (1) knowingly and willfully make a false statement or misrepresentation, or (2) threaten, coerce, intimidate, deceive, or knowingly mislead a party, representative, witness, potential witness, judge, or anyone participating in a proceeding. Any attorney found guilty of this conduct is also permanently disqualified from representing any party or appearing in any further proceedings under the Act. Current law imposes a misdemeanor penalty on persons willfully making a false statement for the purpose of obtaining a benefit or payment but is silent with regard to persons willfully making a false statement with the purpose of preventing a claimant from receiving a benefit for which the claimant would otherwise be eligible. The Secretary of Labor is also required to promulgate regulations to provide procedures for disqualifications and discovery sanctions.

Section 105. Re-adjudicating Cases Involving Certain Chest Radiographs

This section allows claimants, including coal miners and their survivors, to file a new claim for benefits if such claim has been denied and such decision involved a chest radiograph that had been interpreted as negative for simple pneumoconiosis, complicated pneumoconiosis, or progressive massive fibrosis by a physician with respect to whom the Secretary of Labor has directed that such physician's medical opinions be given no weight in evaluating a claim of benefits. A new claim may be refiled within 1 year after the date of enactment.

For example, on June 2, 2014, the Secretary directed its claims examiners not to credit negative chest x-ray readings for x-ray readings covering pneumoconiosis performed by Dr. Paul S. Wheeler of Johns Hopkins University Hospital in the absence of persuasive evidence rehabilitating his negative readings. This action by the Secretary followed an October 2013 report issued by the Center for Public Integrity which found that, in more than 3,400 x-ray readings involving more than 1,500 cases, Dr. Wheeler had never once interpreted an x-ray as positive for complicated pneumoconiosis. In response to these reports, Johns Hopkins began an internal investigation and subsequently terminated its Black Lung x-ray reading program. A June 2, 2014, DOL Bulletin states, "Such a consistent record of never diagnosing complicated pneumoconiosis and almost never diagnosing simple pneumoconiosis undermines the credibility of his conclusions and renders them less credible than a positive reading. In addition, the reports demonstrate that Dr. Wheeler's diagnoses have been wrong many times."

Section 106. Attorneys' Fees and Medical Expenses Payment Program

Recognizing the legal and medical complexities miners face when pursuing claims under the Act, as well as their well-documented difficulties in securing legal representation, this section authorizes program payments to provide miners' attorneys with legal fees of up to \$1,500 at the District Director level and up to \$3,000 at the Administrative Law Judge level for a total of up to \$4,500, provided that the claimant prevails at each level. In addition, claimants may seek reimbursement of up to \$1,500 for medical costs at each level, for a total of no more than \$3000. The legal fees and medical costs under this section would initially be paid from the Black Lung Disability Trust Fund; however, if the miner ultimately prevails in his or her claim for benefits, the responsible coal operator would be required to reimburse the Trust Fund for the legal fees and costs that were paid under

this section and, consistent with existing law, would be required to pay any additional attorney's fees and allowable costs that exceed the amount that was already paid from the Trust Fund. This section is necessary to counter the financial disincentives for attorneys accepting coal miners' cases: current law prohibits coal miners' attorneys from receiving any fees or costs for their representation of coal miners until the case becomes final, and only if the miner prevails, and black lung claims can take as long as a decade to resolve. Over the past five years, 57.2% of miners did not have an attorney to represent them during proceedings before the District Directors.

Section 107. Restoring Adequate Benefit Adjustments for Miners Suffering from Black Lung Disease and for Their Dependent Family Members

This section restores cost-of-living adjustments for beneficiaries that were blocked or reduced as a result of federal employee pay freezes in 2011, 2012, 2013, and 2014. This section also ensures that future payments to individuals receiving benefits under the Act will keep pace with the increasing cost of living. Under the Act, basic benefit payments are equal to 37-½ percent of the monthly rate of pay for federal employees in grade GS-2, step 1, with additional payments provided to claimants with one or more dependents.

Because these benefit payments are tied to the pay rate for federal employees, when Congress blocks cost-of-living adjustments for federal employees in a given year, beneficiaries similarly do not receive increases in their benefit payments that year. As a result, coal miners, surviving spouses, and dependents were deprived of cost-of-living adjustments of 0.9% in 2011, 1.1% in 2012, 1.2% in 2013, and a partial adjustment of 0.3% in 2014 (the adjustment in 2014 should have been 1.3%, but only 1.0% was provided). Adjustments were reinstated with a 1.0% increase for 2015, a 1.0% increase for 2016, a 1% increase for 2017, a 1.4% increase for 2018, a 1.4% increase in 2019, a 2.6% increase in 2020, a 1% increase in 2021, a 2.2% increase in 2022, and a 4.1% increase in 2023, with an [announced](#) 4.7% increase to come in 2024.

Had beneficiaries received the full amount of each of these cost-of-living adjustments, their annual benefit payments would be equal to \$9,195.60 in 2023, as opposed to \$8,854.80, a difference of more than \$340. To remedy this problem, this section sets the annual rate of benefit payments for Black Lung claimants at \$9,270.60, or \$802.30 per month, beginning in 2024, instead of \$772.60. After 2024, this section ties yearly increases in benefit payments to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), so that benefits will increase according to the cost of living and cannot be frozen if Congress blocks cost-of-living adjustments for federal employees in the future.

Section 108. Disclosure of Employment and Earnings Information for Black Lung Benefits Claims

This section requires the Social Security Administration (SSA) to provide the Department of Labor with access to miners' employment information in electronic form. It takes an average of 58 days to obtain miners' earnings records from SSA according to an April 2015 DOL-Inspector General (IG) report. DOL still uses a manual, paper-based system to request the employment records from SSA "because it does not have the statutory authority to directly access SSA's database," according to the IG. Because paper forms have to be mailed back and forth between DOL and SSA, each iteration of this process introduces delays and adds additional time when SSA rejects and returns forms for minor clerical errors. Online access to SSA earnings records would simplify and speed up the DOL's process of verifying claimants' employment histories. The IG recommended this legislative change.

Part B – Reports to Improve the Administration of Benefits Under the Black Lung Benefits Act

Section 121. Strategy to Reduce Delays in Adjudication

This section requires the Secretary of Labor, within 90 days, to submit to Congress a comprehensive strategy to reduce the backlog of cases pending before the Office of Administrative Law Judges (OALJ). The strategy must identify, among other things, the resources necessary to ensure that claims brought under the Black Lung Benefits Act are decided within 12 months from the date they are received by the OALJ.

Part C – Improvement in the Financial Security of the Black Lung Benefits Disability Trust Fund

Section 131. Policies for Securing the Payment of Benefits

Section 423 of the Black Lung Benefits Act (30 U.S.C. 933) requires operators to secure their liabilities through either self-insurance or a commercial or state insurance program. Testimony by the GAO in February 2020 identified deficiencies in DOL’s oversight of operators allowed to self-insure, including failure to estimate future benefit liability when assessing the amount of collateral required to self-insure and a lack of clear processes for periodic review of continued eligibility for self-insurance. In fact, three self-insured operators which filed for bankruptcy between 2014 and 2016 had collectively posted only \$27.4 million in collateral but shifted \$865 million in black lung liabilities to the Black Lung Disability Trust Fund. Section 131 requires DOL to issue an interim final rule within 60 days of enactment of this Act that will establish clear processes for determining an operator’s eligibility to self-insure, assessing appropriate levels of collateral to secure the operator’s estimated black lung liabilities, and reviewing an operator’s appeals of decisions about self-insurance eligibility or required security amounts. It also increases civil monetary penalties for failure to maintain required security or insurance from \$1,000 to \$25,000, expands the number of corporate officers and related business entities that can be jointly or severally liable with the operator.

TITLE II – ESTABLISHING THE OFFICE OF WORKERS’ COMPENSATION PROGRAMS

Section 201. Office of Workers’ Compensation Programs

This section codifies the Office of Workers’ Compensation Programs in the Department of Labor, which shall be directed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Office of Workers’ Compensation Programs administers the Black Lung Benefits Act, as well as the Federal Employees’ Compensation Act, the Longshore and Harbor Workers’ Compensation Act, and the Energy Employees Occupational Illness Compensation Program Act.

TITLE III – ADDITIONAL PROVISIONS

Section 301. Technical and Conforming Amendments

The “Byrd Amendments,” which were enacted as part of the Affordable Care Act, (1) restored the 15-year presumption of total disability or death caused by pneumoconiosis for coal miners who worked for at least 15 years in underground mining and who suffer or suffered from a totally disabling respiratory impairment; and (2) restored surviving spouses’ and dependents’ automatic entitlement to survivor benefits if the coal miner died while receiving federal Black Lung benefits. While the Byrd Amendments clearly reinstated the 15-year presumption for miners along with an automatic entitlement to benefits for surviving spouses, several other sections of the code referencing benefits for these miners and surviving spouses were left un-amended. Consistent with the clear language and intent of the Byrd amendments, as well as decisions from circuit courts that have interpreted those provisions (Third, Fourth, Sixth, and Eleventh), this section makes technical corrections to ensure that the Byrd amendments are applied consistently throughout Act.

This section also makes a series of technical amendments to render the Black Lung Benefits Act gender neutral. For example, it replaces the terms “wife” and “widow” with the terms “spouse” or “surviving spouse,” as appropriate. It modifies current law regarding eligibility for survivor benefits to provide that marital status is determined by the courts of the state where the marriage was celebrated, rather than determining the validity of the marriage based on state of domicile.

Section 302. Severability

This section ensures that if one section of this Act is found to be unconstitutional or otherwise legally unenforceable, that the other sections of the law are severed and continue to stand as good law.