

Testimony of Gary Hairston, o/b/o the National Black Lung Association
U. S. House of Representation
Subcommittee on Workforce Protections
“Breathless and Betrayed: What is MSHA Doing to Protect Miners from the
Resurgence of Black Lung”
June 20, 2019

Chairwoman Adams, Ranking Member Byrne, and Members of the Subcommittee:

My name is Gary Hairston, and I am from Beckley, West Virginia. I serve as vice-president of the Fayette County Black Lung Association and thank you for the opportunity to speak here today on behalf of the National Black Lung Association.

I was an underground coal miner in West Virginia for 27 ½ years. I worked for Westmoreland Coal Company 8 ½ years at their East Gulf mine, then 13 years for Maben Energy at Tommy Creek and Stoney Gap mines as an electrician and scoop operator, and the last 6 years I worked for Massey Coal Company at Brushy Eagle and Low Gap doing maintenance and repair work on the beltline.

There was plenty of dust at all those mines, but at Maben, the dust and smoke was so bad that you could hardly see. They told us not to hang ventilation curtain unless there were inspectors in the mines and to make sure the samplers were out of the dust.

At Massey, I also was exposed to a lot of dust and most of all when I had to repair the equipment that broke down in the return air filled with dust.

I was only 48 years old when I got too short of breath to do the work. When I went to the doctor, they found a mass in my lung. At first, the doctor thought it was cancer, but a biopsy showed that it was really complicated black lung.

Being disabled at such a young age nearly broke my spirit. I couldn't provide for my family. I couldn't play ball with my grandkids. And my wife had to go out and work to help support us.

With the help of a student clinic at Washington & Lee Law School, I was able to get federal black lung benefits that now helps us to make ends meet. Sometimes I can still do a few odd jobs if they don't require much exertion. I'm on the board of directors of a federally funded

community health center that helps miners with black lung. I've gotten involved with other coal miners again through the Black Lung Association.

I'm here today to talk about two things that are very important to the Black Lung Association and to all coal miners with black lung:

Excise Tax on Coal

First is the Black Lung Excise Tax on coal that is intended to pay the costs of administering the black lung program and also the black lung benefits for miners like me when the responsible coal company goes bankrupt. After I became disabled, Massey Coal Company was responsible for my benefits, but Massey sold out to Alpha Coal Company. Then, Alpha went bankrupt, so now, my benefits have to come from the Trust Fund

After 32 years, Congress allowed more than half of that excise tax to expire this past January. And, according to the Government Accounting Office, this decrease will cause the Black Lung Disability Trust Fund debt to reach 15.4 billion dollars in 2050 and shift the burden from the coal industry to the taxpayers.

At a time when more and more miners are getting complicated black lung and disabled like me, the Trust Fund should be fully funded, and Congress should reject the cuts in benefits being proposed by the National Mining Association. It is very important to the growing number of miners who are suffering from black lung and their families that Congress fully restore the Excise Tax Rate for at least 10 years.

Many of our members also are UMWA pensioners, so we urge you to pass legislation like the American Miners' Act of 2019 (S 27) that would restore the Excise Tax and protect our UMWA pensions.

Affordable Care Act

Our second concern is the effort by state attorney generals and the Trump administration to end the Affordable Care Act through the courts because the Act contains two amendments that are extremely important to coal miners disabled by black lung.

One provides continuing benefits to the widows and dependent children of miners who qualify for federal black lung. Without this amendment, those widows and dependent children will lose their benefits unless and until they could prove that black lung hastened the miner's death. In most cases, this would require a long legal battle at a time when widows and children are most vulnerable.

The other amendment is what we call the "15-year [rebuttable] presumption." If a coal miner has a totally disabling pulmonary impairment and 15 or more years of exposure to coal mine dust, then it is presumed that all those years of dust exposure contributed to his or her disability. This presumption is based on a lot of scientific evidence and can be rebutted if the coal company can show that the miner's disability was caused entirely by something else.

Also, the Affordable Care Act provides:

- (a) Medical coverage for about 225,000 West Virginians,
- (b) No exclusions for pre-existing conditions,
- (c) Coverage for children up to age 26, and
- (d) Funding for community health centers.

As I mentioned before, I am on the board of a community health center, and I know firsthand how important all of these provisions are to our members and to our communities.

It is a shame that our own Attorney General (Patrick Morrisey) and the current administration in Washington are trying to end the Affordable Care Act with nothing to replace these important provisions and benefits. The President made a lot of promises to West Virginia coal miners during his campaign, and we were not expecting this kind of treatment from his administration.

Thank you and I would be glad to answer your questions.