

103^D CONGRESS
1ST SESSION

H. R. 792

To amend the Black Lung Benefits Act to provide special procedures for certain claims due to pneumoconiosis, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1993

Mr. RAHALL introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Black Lung Benefits Act to provide special procedures for certain claims due to pneumoconiosis, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Black Lung Benefits
5 Act Amendments of 1993”.

6 **SEC. 2. CLAIMS PROCEDURE.**

7 The Black Lung Benefits Act is amended by adding
8 at the end the following new part:

1 **“PART D—SPECIAL PROVISIONS**

2 **“SEC. 441. CLAIMS.**

3 “(a) STANDARD.—If a claim is filed after the date
4 of the enactment of this section under part C for death
5 or total disability of a miner due to pneumoconiosis, such
6 miner shall be presumed to have been totally disabled by
7 pneumoconiosis or to have died because of pneumoconiosis
8 if the conditions described in any one of the following
9 paragraphs are met:

10 “(1) A single positive chest roentgenogram (x-
11 ray), biopsy, or autopsy of such miner indicates the
12 existence of pneumoconiosis.

13 “(2) A single set of ventilatory studies of such
14 miner indicates the presence of a chronic respiratory
15 or pulmonary disease that meets or exceeds the se-
16 verity standards of regulations of the Secretary of
17 Health and Human Services published at 20 C.F.R.
18 410.490(b)(1)(ii).

19 “(3) A single set of blood gas studies of such
20 miner indicates the presence of an impairment in the
21 transfer of oxygen from the lungs to the blood that
22 meets or exceeds the severity standards of regula-
23 tions of the Secretary of Labor published at 20
24 C.F.R. 727.203(a)(3).

25 “(4) Other medical evidence involving such
26 miner, including the documented opinion of a physi-

1 cian exercising reasonable medical judgment, indi-
2 cates the presence of a respiratory disease or pul-
3 monary impairment that would prevent the miner
4 from performing his usual coal mine work.

5 The person who submits such claim shall not be required
6 to prove the matters described in paragraph (1), (2), (3),
7 or (4) by a preponderance of the evidence or by any higher
8 evidentiary standard.

9 “(b) CAUSATION.—

10 “(1) If a claim is filed after the date of the en-
11 actment of this section under part C for death or
12 total disability due to pneumoconiosis and if the
13 miner with respect to whom the claim was filed
14 worked 10 or more years in a coal mine and pre-
15 sents evidence which proves the evidence of the mat-
16 ter described in any paragraph of subsection (a),
17 there shall be a rebuttable presumption that the
18 miner’s pneumoconiosis arose out of the miner’s coal
19 mine employment. No evidence shall be excluded in
20 determining the length of a miner’s coal mine em-
21 ployment. In the absence of complete Social Security
22 Administration records, affidavits from the miner’s
23 co-workers shall be accepted as sufficient proof of
24 the coal miner’s period of employment.

1 “(2) If a miner is unable to prove 10 years of
2 employment in a coal mine, the miner may prove
3 that the miner’s pneumoconiosis is due to the min-
4 er’s coal mine employment through other evidence.

5 “(c) REBUTTAL OF PRESUMPTION.—

6 “(1) The presumption under subsection (a) that
7 a miner is totally disabled by pneumoconiosis may be
8 rebutted only if—

9 “(A) there is evidence that establishes that
10 the claimant is in fact doing the claimant’s
11 usual coal mine work, or

12 “(B) in light of all relevant evidence, it is
13 established that the miner is able to do the
14 miner’s usual coal mine work or comparable
15 and gainful work.

16 A physician’s opinion that the miner is not totally
17 disabled shall not rebut such presumption when in-
18 voked by qualifying ventilatory studies or arterial
19 blood gas testing.

20 “(2) In connection with a rebuttal of a pre-
21 sumption under subsection (a), the Secretary of
22 Labor may submit not more than 1 opinion from an
23 examining or consulting physician and not more
24 than 3 x-ray readings to supplement such evidence.

1 “(3) The presumption under subsection (b) may
2 be rebutted only by clear and convincing proof that
3 the miner’s pneumoconiosis, established by a condi-
4 tion described in subsection (a), did not arise, in
5 whole or in part, out of the miner’s coal mine em-
6 ployment.

7 **“SEC. 442. APPLICATION OF SECTION 441.**

8 “(a) IN GENERAL.—Section 441 shall apply to all
9 claims filed under part C on and after the date of the
10 enactment of this Act, except that the Secretary of Labor
11 shall review any claim that—

12 “(1) was filed under part B or part C, and

13 “(2) is either pending on the date of enactment
14 of this Act or has been denied on or before such
15 date,

16 to determine if the evidence establishes eligibility under
17 the presumption of section 441(a). The Secretary shall re-
18 view each such claim regardless of whether the claimant
19 also filed any subsequent claim under part B or C or such
20 claim resulted in an award of benefits. The Secretary’s
21 review of a claim which resulted in the award of benefits
22 may not result in the reversal or forfeiture of such bene-
23 fits. The Secretary shall promptly notify each claimant
24 having a claim subject to review under this subsection that

1 the claim shall be reviewed by the Secretary in accordance
2 with this subsection.

3 “(b) PROCEDURE.—

4 “(1) In carrying out the review of a claim
5 under subsection (a), the Secretary shall not allow
6 the claimant or any other party to submit additional
7 medical or other evidence if the Secretary deter-
8 mines that the evidence on file meets the criteria of
9 eligibility set forth in section 441(a). If the Sec-
10 retary determines that the evidence on file does not
11 meet the criteria of eligibility set forth in section
12 441(a), the Secretary shall provide an opportunity
13 for the claimant to present additional medical or
14 other evidence to substantiate the claimant’s claim
15 under such criteria and shall notify the claimant of
16 that opportunity. The Secretary shall not be per-
17 mitted to supplement the evidence in any claim re-
18 viewed under subsection (a). Each claim reviewed
19 under this section shall be afforded the administra-
20 tive and judicial review that is afforded claims that
21 are not subject to this section.

22 “(2) If a claim is determined under subsection
23 (a) to meet the eligibility requirements of section
24 441(a), the individual for which the claim was sub-
25 mitted shall be awarded benefits prospectively (un-

1 less, at the time of such determination, the individ-
2 ual is receiving black lung benefits prospectively pur-
3 suant to an award made in connection with a sepa-
4 rate claim) and retroactively for any period begin-
5 ning on or after January 1, 1974, for which the
6 claimant (1) has not received benefits, and (2) is eli-
7 gible under the statutory and regulatory provisions
8 governing the retroactive payment of benefits for
9 claims that are not subject to the special review re-
10 quired by subsection (a).

11 **“SEC. 443. PAYMENT OF BENEFITS.**

12 Benefits payable under any claim which is determined
13 under section 441 or 442 to be eligible for benefits shall
14 be paid from the fund.

15 **“SEC. 444. JUDICIAL REVIEW.**

16 “A claimant who files a claim after the date of enact-
17 ment of this Act and whose claim is denied by the Depart-
18 ment of Labor’s Benefits Review Board pursuant to the
19 procedure of section 21(b) of the Longshore and Harbor
20 Workers’ Compensation Act (33 U.S.C. 921(b)), may peti-
21 tion for review in the United States District Court for the
22 district in which the claimant last worked as a coal miner
23 or where the claimant resides at the time the appeal is
24 filed, whichever the claimant chooses. Section 205(g) of
25 the Social Security Act (42 U.S.C. 405(g)) shall govern

1 all such petitions for review, except that (1) each reference
2 therein to the Secretary shall be interpreted as meaning
3 the Secretary of Labor, and (2) if the claim was denied
4 because of the application of a regulation which violates
5 this Act or any other Federal law, the period in which
6 a claimant may petition for review shall not apply. A peti-
7 tion for review under this section may not be denied be-
8 cause the claimant has not exhausted the administrative
9 remedies available to the claimant.

10 **“SEC. 445. SURVIVORS AND DEPENDENTS.**

11 “(a) IN GENERAL.—The Secretary shall award the
12 survivor or dependent of a deceased miner benefits under
13 a claim under part C if the conditions in any one of the
14 following paragraphs are met:

15 “(1) The deceased miner worked 25 years or
16 more in one or more coal mines.

17 “(2) The miner’s death was due in whole or in
18 part to pneumoconiosis.

19 “(3) The miner was receiving benefits for
20 pneumoconiosis at the time of the miner’s death.

21 “(4) The miner had a claim for benefits for
22 pneumoconiosis pending at the time of the miner’s
23 death—

24 “(A) in which the existing medical evidence
25 or such evidence combined with any additional

1 medical evidence submitted by survivors or de-
2 pendents demonstrates a level of impairment
3 sufficient to qualify for benefits under section
4 441(a), or

5 “(B) in which the medical evidence was not
6 sufficient to qualify for benefits under section
7 441(a) but lay evidence (i) demonstrates by a
8 preponderance of the evidence the existence of
9 a respiratory disease or pulmonary impairment
10 that would prevent the miner from performing
11 the miner’s usual coal mine work, and (ii) such
12 disease or impairment is established in accord-
13 ance with section 441(b)(2) as resulting from
14 the miner’s coal mine work.

15 “(b) DEFINITION.—For purposes of this section, sur-
16 vivors and dependents are those individuals who filed
17 claims under part C after the date of enactment of this
18 Act or whose claims under part B or C are eligible for
19 review under section 442.

20 **“SEC. 446. GENERAL PROVISIONS.**

21 “(a) MULTIPLE CLAIMS.—If a claimant has had a
22 claim denied under this Act, the Secretary shall permit
23 the claimant to file an additional claim under this part
24 without a showing of a material change in the claim. Such

1 an additional claim shall be considered de novo on the
2 merits.

3 “(b) APPEALS BY THE SECRETARY.—The Secretary
4 may not file an appeal from a decision of the Deputy Com-
5 missioner, the Office of Administrative Law Judges, the
6 Benefits Review Board, or a district court of the United
7 States with respect to a claim under this part which is
8 adverse to the Secretary.

9 “(c) REOPENING CLAIMS.—No claim under this part
10 under which the claimant was awarded benefits and with
11 respect to which no appeal is pending may be reopened
12 by the Secretary unless the Secretary offers reasonable
13 evidence to suspect fraud in connection with the adjudica-
14 tion of the claim.”.

15 **SEC. 3. CONFORMING AMENDMENT.**

16 Section 224(a)(2)(B) of the Social Security Act (42
17 U.S.C. 424a(a)(2)(B)) is amended by striking out “and
18 (iv)” and inserting in lieu thereof “(iv)” and by inserting
19 at the end the following: “and (v) benefits payable under
20 the Black Lung Benefits Act,”.

21 **SEC. 4. BENEFIT REPAYMENTS.**

22 Part C of the Black Lung Benefits Act is amended
23 by adding at the end the following:

24 “SEC. 436. (a) In the administration of the benefits
25 payable under this part, if a claimant receives benefits

1 under this part under a claim but before final adjudication
2 of the claim for benefits is made and if the final adjudica-
3 tion is that the claimant is ineligible for benefits, the pay-
4 ment of such benefits to the claimant shall not be consid-
5 ered an overpayment of benefits and the claimant shall
6 not be legally responsible for the return of such benefits.

7 “(b) If, before the date of the enactment of this sec-
8 tion, a claimant received benefits under this part under
9 a claim but before a final adjudication of the claim for
10 benefits was made, the claimant will not be required to
11 repay such benefits. If, before the date of the enactment
12 of this section, a claimant who received benefits under this
13 part under a claim but before final adjudication of the
14 claim for benefits was made was required under regula-
15 tions of the Secretary to repay the benefits as an overpay-
16 ment of benefits, the Secretary shall refund to the claim-
17 ant the amount repaid by the claimant.”.

18 **SEC. 5. WIDOW'S BENEFITS.**

19 (a) IN GENERAL.—In the administration of the Black
20 Lung Benefits Act—

21 (1) a widow of a miner who received or is re-
22 ceiving benefits under that Act shall not be disquali-
23 fied to receive such benefits if the widow remarries,
24 and

1 (2) a widow of a miner shall be entitled to re-
2 ceive such benefits without regard to the length of
3 time the widow was married to the miner.

4 Any regulations of the Secretary of Labor which disqualify
5 a widow described in paragraph (1) or impose a minimum
6 marriage period as described in paragraph (2) shall on
7 and after the date of the enactment of this Act have no
8 legal effect.

9 APPLICATIONS.—Any widow who on the date of the
10 enactment of this Act is entitled to receive benefits under
11 the Black Lung Benefits Act because of subsection (a)
12 shall file a claim for such benefits within 3 years of the
13 date of the enactment of this Act.

○