

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 754

To make improvements in the Black Lung Benefits Act.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1995

Mr. HOLDEN (for himself, Mr. BOUCHER, Mr. KANJORSKI, Mr. KLINK, Mr. MASCARA, Mr. MURTHA, Mr. RAHALL and, Mr. WISE) introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

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## A BILL

To make improvements in the Black Lung Benefits Act.

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; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Black Lung Benefits Restoration Act of 1995”.

6 (b) REFERENCE.—Whenever in this Act (other than  
7 section 9(a)(1)) an amendment or repeal is expressed in  
8 terms of an amendment to, or repeal of, a section or other  
9 provision, the reference shall be considered to be made to  
10 a section or other provision of the Black Lung Benefits  
11 Act.

1 **SEC. 2. BENEFIT OVERPAYMENT.**

2 Part C is amended by adding at the end the following:

3 “SEC. 436 (a) The repayment of benefits paid on a  
4 claim filed under this part before the final adjudication  
5 of the claim shall not be required if the claim was finally  
6 denied, unless fraud or deception was used to procure the  
7 payment of such benefits.

8 “(b) The trust fund shall refund any payments made  
9 to it as a reimbursement of benefits paid on a claim filed  
10 under this part before the final adjudication of the claim,  
11 unless fraud or deception was used to procure the payment  
12 of such benefits.

13 “(c) The trust fund shall reimburse an operator for  
14 any benefits paid on a claim filed under this part before  
15 the final adjudication of the claim if the claim was finally  
16 denied.

17 “(d) If on a claim for benefits filed under this part—

18 “(1) the Secretary makes an initial determina-  
19 tion—

20 “(A) of eligibility, or

21 “(B) that particular medical benefits are  
22 payable, or

23 “(2) an award of benefits is made,

24 the operator found to be the responsible operator under  
25 section 422(h) shall, within 30 days of the date of such  
26 determination or award, commence the payment of month-

1 ly benefits accruing thereafter and of medical benefits that  
2 have been found payable. If an operator fails to timely  
3 make any payment required by an initial determination  
4 or by an award, such determination or award shall be con-  
5 sidered final as of the date of its issuance.”.

6 **SEC. 3. EVIDENCE.**

7 Section 422 (30 U.S.C. 932) is amended by adding  
8 at the end the following:

9 “(m)(1)(A) During the course of all proceedings on  
10 a claim for benefits under this part, the results of not  
11 more than 3 medical examinations offered by the claimant  
12 may be received as evidence to support eligibility for bene-  
13 fits.

14 “(B) During the course of all proceedings on a claim  
15 for benefits under this part, the responsible operator and  
16 the trust fund—

17 “(i) may each require, at no expense to the  
18 claimant, not more than one medical examination of  
19 the miner, and

20 “(ii) may not each offer as evidence the results  
21 of more than one medical examination of the miner.

22 “(C) An administrative law judge may require the  
23 miner to submit to a medical examination by a physician  
24 assigned by the District Director if the administrative law  
25 judge determines that, at any time, there is good cause

1 for requiring such examination. For purposes of this sub-  
2 paragraph, good cause shall exist only when the adminis-  
3 trative law judge is unable to determine from existing evi-  
4 dence whether the claimant is entitled to benefits.

5 “(D) The complete pulmonary evaluation provided  
6 each miner under section 413(b) and any consultive eval-  
7 uation developed by the District Director shall be received  
8 into evidence notwithstanding subparagraph (A) or (B).

9 “(E) Any record of—

10 “(i) hospitalization for a pulmonary or related  
11 disease,

12 “(ii) medical treatment for a pulmonary or re-  
13 lated disease, and

14 “(iii) a biopsy or an autopsy,

15 may be received into evidence notwithstanding subpara-  
16 graph (A) or (B).

17 “(2) In addition to the medical examinations author-  
18 ized by paragraph (1), each party may submit one inter-  
19 pretive medical opinion (whether presented as documen-  
20 tary evidence or in oral testimony) reviewing each clinical  
21 study or physical examination (including a consultive read-  
22 ing of a chest roentgenogram, an evaluation of a blood  
23 gas study, and an evaluation of a pulmonary function  
24 study) derived from any medical examination or contained  
25 in a record referred to in paragraph (1)(E).

1       “(3) A request for modification of a denied claim  
2 under section 22 of the Longshore and Harbor Workers’  
3 Compensation Act, as made applicable to this Act by sub-  
4 section (a) of this section, shall be considered as if it were  
5 a new claim for the purpose of applying the limitations  
6 prescribed by paragraphs (1) and (2).

7       “(4) The opinion of a miner’s treating physician, if  
8 offered in accordance with paragraph (1)(A), shall be  
9 given substantial weight over the opinion of other physi-  
10 cians in determining the claimant’s eligibility for benefits  
11 if the treating physician is board-certified in a specialty  
12 relevant to the diagnosis of total disability or death due  
13 to pneumoconiosis.

14       “(5) For purposes of this subsection, a medical exam-  
15 ination consists of a physical examination and all appro-  
16 priate clinical studies (not including a biopsy or an au-  
17 topsy) related to the diagnosis of total disability or death  
18 due to pneumoconiosis.”.

19 **SEC. 4. SURVIVOR BENEFITS.**

20       (a) DEATH.—Section 422 (30 U.S.C. 932), as  
21 amended by section 3, is amended by adding at the end  
22 the following:

23       “(n) If an eligible survivor files a claim for benefits  
24 under this part and if the miner—

1           “(1) was receiving benefits for pneumoconiosis  
2           pursuant to a final adjudication under this part, or  
3           “(2) was totally disabled by pneumoconiosis at  
4           the time of the miner’s death,  
5           the miner’s death shall be considered to have occurred as  
6           a result of the pneumoconiosis.”.

7           (b) RULES FOR WIDOWS AND WIDOWERS.—Section  
8           422 (30 U.S.C. 932), as amended by subsection (a), is  
9           amended by adding at the end the following:

10          “(o)(1) A widow or widower of a miner who was mar-  
11          ried to the miner for less than 9 months at any time pre-  
12          ceding the miner’s death is not qualified to receive survi-  
13          vor benefits under this part unless the widow or widower  
14          was the natural or adoptive parent of the miner’s child.

15          “(2) The widow or widower of a miner is disqualified  
16          to receive survivor benefits under this part if the widow  
17          or widower remarries before attaining the age of 50.

18          “(3) A widow or widower may not receive an aug-  
19          mentation in survivor benefits on any basis arising out of  
20          a remarriage of the widow or widower.”.

21       **SEC. 5. RESPONSIBLE OPERATOR.**

22           Section 422(h) (30 U.S.C. 932(h)) is amended by in-  
23           serting “(1)” after “(h)” and by adding at the end the  
24           following:

1       “(2)(A) Prior to issuing an initial determination of  
2 eligibility, the Secretary shall, after investigation, notice,  
3 and a hearing as provided in section 19 of the Longshore  
4 and Harbor Workers’ Compensation Act, as made applica-  
5 ble to this Act by subsection (a) of this section, determine  
6 whether any operator meets the Secretary’s criteria for li-  
7 ability as a responsible operator under this Act. If a hear-  
8 ing is timely requested on the liability issue, the decision  
9 of the administrative law judge conducting the hearing  
10 shall be issued not later than 120 days after such request  
11 and shall not be subject to further appellate review.

12       “(B) If the administrative law judge determines that  
13 an operator’s request for a hearing on the liability issue  
14 was made without reasonable grounds, the administrative  
15 law judge may assess the operator for the costs of the pro-  
16 ceeding (not to exceed \$750).”.

17 **SEC. 6. ATTORNEY FEES.**

18       Section 422 (30 U.S.C. 932), as amended by section  
19 4(b), is amended by adding at the end the following:

20       “(p)(1) If in any administrative or judicial proceeding  
21 on a claim for benefits a determination is made that a  
22 claimant is entitled to such benefits, the claimant shall  
23 be entitled to receive all reasonable costs and expenses (in-  
24 cluding expert witness and attorney’s fees) incurred by the  
25 claimant in such proceeding and in any other administra-

1 tive or judicial proceeding on such claim occurring before  
2 such proceeding.

3 “(2) In the case of a proceeding held with respect  
4 to such claim—

5 “(A) the person or Board which made the de-  
6 termination that the claimant is entitled to benefits  
7 in an administrative proceeding and any other per-  
8 son or Board which made a prior determination in  
9 an administrative proceeding on such claim, or

10 “(B) the court in the case of a judicial proceed-  
11 ing,

12 shall determine the amount of all costs and expenses (in-  
13 cluding expert witness and attorney’s fees) incurred by the  
14 claimant in connection with any such proceeding and shall  
15 assess the operator responsible to the claimant for such  
16 costs and expenses which are reasonable or if there is not  
17 an operator responsible to the claimant, shall assess the  
18 fund for such costs and expenses.

19 “(3) The determination of such costs and expenses  
20 shall be made within 60 days of the date the claimant sub-  
21 mits a petition for the payment of such costs and expenses  
22 to a person, the Board, or court which made a determina-  
23 tion on the claimant’s claim. The person, Board, or court  
24 receiving such petition shall take such action as may be  
25 necessary to assure that such costs and expenses are paid

1 within 45 days of the date of the determination of such  
2 costs and expenses unless a motion to reconsider—

3 “(A) the amount of such costs and expenses, or

4 “(B) the person liable for the payment of such  
5 amount,

6 is pending.

7 “(4) If an operator pays costs and expenses assessed  
8 under paragraph (1) and if the claimant for whom such  
9 costs and expenses were paid is determined in a later pro-  
10 ceeding not to be eligible for benefits under this part, the  
11 fund shall pay the operator the amount paid for such costs  
12 and expenses.

13 “(5) Section 28(e) of the Longshore and Harbor  
14 Workers’ Compensation Act shall apply with respect to  
15 any person who receives costs and expenses which are paid  
16 under this subsection on account of services rendered a  
17 claimant.”.

18 **SEC. 7. ADMINISTRATION.**

19 (a) APPEALS TO THE BENEFITS REVIEW BOARD.—  
20 No appeal of an order in a proceeding under the Black  
21 Lung Benefits Act may be made by a claimant or respond-  
22 ent to the Benefits Review Board unless such order has  
23 been made by an administrative law judge.

1 (b) ACQUIESCENCE.—The Secretary of Labor may  
2 not delegate to the Benefits Review Board the authority  
3 to refuse to acquiesce in a decision of a Federal court.

4 **SEC. 8. REFILING.**

5 Any claim filed under the Black Lung Benefits Act  
6 after January 1, 1982, but before the effective date of this  
7 Act prescribed by section 11(a), may be refiled under such  
8 Act after such effective date for a de novo review on the  
9 merits.

10 **SEC. 9. CONSTRUCTION.**

11 If in any legal proceeding a term in any amendment  
12 made by this Act is considered to be ambiguous, the legis-  
13 lative history accompanying this Act shall be considered  
14 controlling.

15 **SEC. 10. EFFECTIVE DATES.**

16 (a) GENERAL RULE.—Except as provided in sub-  
17 section (b), this Act and the amendments made by this  
18 Act shall take effect October 1, 1994.

19 (b) SECTION 6.—The amendment made by section 6  
20 shall apply only with respect to claims which are filed for  
21 the first time after October 1, 1994, and shall not apply  
22 with respect to any claim which is filed before such date  
23 and which is refiled under section 8 of this Act after such  
24 date.

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