

JUDGES' BENCHBOOK OF THE BLACK LUNG BENEFITS ACT



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CHAPTER 1 Introduction to the Claims Process

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Chapter 1

Introduction to the Claims Process

I. Filing the claim and adjudication by the district director

The adjudication process begins when the claimant (miner or survivor) files a Form CM-911 at the nearest Social Security office or at the Department of Labor district director's office. In the Form CM-911, general information, such as the miner's physical characteristics, educational and employment background, age, and dependents, is recorded. The record in the claim is then developed under the supervision of the district director.

A. The Director, OWCP and district director

The district director (formerly called a “deputy commissioner”) is the first adjudicating officer at the Department of Labor to decide the claim. The district director should not be confused with the Director, Office of Workers' Compensation Programs (also known as “Director” or “Director, OWCP”), who is a party-in-interest in every claim. The Director, OWCP represents the Department of Labor's Black Lung Disability Trust Fund which may be held responsible for the payment of benefits in the event that there is no responsible operator (employer) or the named operator is not financially able to pay the benefits. *See Boggs v. Falcon Coal Co.*, 17 B.L.R. 1-62 (1992). *See also Chapter 7.*

B. Development of the record

Pursuant to the provisions at 20 C.F.R. § 725.405(b), the district director must provide the miner with a complete medical evaluation. *Hodges v. Bethenergy Mines, Inc.*, 18 B.L.R. 1-84 (1994).¹ Usually this independent medical evaluation will be reported by the physician on a Form CM-787. The district director has not properly discharged this duty if the physician's opinion is not credible or is incomplete. *Petry v. Director, OWCP*, 14 B.L.R. 1-98 (1990); *Hall v. Director, OWCP*, 14 B.L.R. 1-51 (1990) (administrative law judge may require district director to provide complete pulmonary evaluation to miner who files a duplicate claim). *See also Cline v. Director, OWCP*, 917 F.2d 9 (8th Cir. 1990) (case remanded to the administrative law judge for evidential hearing wherein the Department's physician would be asked to comment on the etiology of the miner's pneumoconiosis); *Newman v. Director, OWCP*, 745 F.2d 1162 (8th Cir. 1984). The miner may also be evaluated by his or her physicians of choice as well as physicians designated by the responsible operator. 20 C.F.R. § 725.414(a). Medical evidence constitutes the core of a black lung claim and, therefore, the record will normally contain a number of chest roentgenograms, pulmonary function studies, blood gas studies, and physicians' reports. The reader is cautioned, however, that

¹ Under the amended regulations, the requirements for the Department's examination are found at 20 C.F.R. § 727.406 (Dec. 20, 2000). Under these provisions, the miner may select the physician to conduct the examination from a list provided by the district director. The results of the complete pulmonary evaluation “shall not be counted as evidence submitted by the miner under § 725.414.”

the amended regulations published on December 20, 2000 contain limitations on the medical evidence which may be submitted in a claim. *See* 20 C.F.R. § 725.414(a) (Dec. 20, 2000).²

C. The notice of initial finding

1. Prior to applicability of December 2000 regulations

In the adjudication process, the district director first issues a Notice of Initial Finding (Form CM-971) wherein he or she concludes that the miner is, or is not, entitled to benefits. If the district director initially determines that the claimant is not entitled to benefits, then a report on a Form CM-1000a (usually from the claims examiner) is included with the Notice of Initial Finding. This report will point to deficiencies in the claim and notify the claimant of any additional evidence which needs to be submitted. If the district director initially determines that the claimant is entitled to benefits, then the employer will be notified in writing and may commence to pay such benefits or may dispute the payment of the claim and submit evidence.

2. After applicability of December 2000 regulations

The provisions at 20 C.F.R. §§ 725.410 and 725.411 have been deleted. Rather than issuing an initial finding, the district director issues a proposed decision and order after completion of record development at that level. 20 C.F.R. § 725.418.

D. Determination of the responsible operator

If it is initially determined that the claimant is entitled to benefits, or if the claimant contests a denial of benefits, the district director must determine which employer(s) is/could be responsible for the payment of benefits. A Notice of Claim and a Notice of Initial Finding are served upon the potential employer(s). If a designated employer disputes responsibility over the claim or the claimant's entitlement to benefits, then it must submit a Notice of Controversion. Typical grounds of controversion include the following: (1) inability to pay benefits; (2) assertion that the claimant is not entitled to benefits; and (3) dispute as to whether the miner was last employed by the employer for one year as required under the Act.

1. Before applicability of December 2000 regulations

If there are multiple employers listed, the district director must make a factual determination as to the single employer which will be responsible for the payment of benefits. Occasionally, a case will reach the administrative law judge wherein multiple employers are still listed. This is because the Benefits Review Board has held that, where one employer is designated by the district director as the responsible operator and is subsequently dismissed by the administrative law judge who determines that another operator should have been so designated, the Black Lung Disability Trust Fund becomes responsible for the payment of benefits. *Crabtree v. Bethlehem Steel Corp.*, 7 B.L.R.

² The amended provisions at 20 C.F.R. Part 725 are applicable to claims filed after January 19, 2001. These provisions do not apply to petitions for modification (§ 725.310) or subsequent claims (§ 725.309) pending on January 19, 2001.

1-354 (1984). See also *Matney v. Trace Fork Coal Co.*, 17 B.L.R. 1-145 (1993) (on appeal to the Fourth Circuit, Case No. 93-2379); *England v. Island Creek Coal Co.*, 17 B.L.R. 1-141 (1993); *Sisko v. Helen Mining Co.*, 8 B.L.R. 1-272 (1985); *Director, OWCP v. Oglebay Norton*, 877 F.2d 1300 (6th Cir. 1989) (the Sixth Circuit limited the application of *Crabtree* to permit a redetermination of the responsible operator at any time prior to a hearing by the judge). The rationale underlying the Board's holding in *Crabtree* is that the employer who should have been designated was prejudiced in that it did not have notice and an opportunity to be heard at the level of the district director and administrative law judge and, therefore, did not participate in the development of the record. For a discussion regarding naming the proper responsible operator, see *Chapter 7*.

2. After applicability of December 2000 regulations

Under the amended regulations, the provisions at 20 C.F.R. § 725.418(c) require that the district director name a single responsible operator which is potentially liable for the payment of benefits. All other potentially responsible operators are dismissed by the district director. Therefore, a claim which is referred to this Office under the amended regulations will have only one operator named. If there is no responsible operator, then the Trust Fund may be held liable for the payment of benefits. It is also noteworthy that the amended regulations at 20 C.F.R. § 725.465(b) provides, in part, that “[t]he administrative law judge shall not dismiss the operator designated as the responsible operator by the district director, except upon the motion or written agreement of the Director.”

E. The notice of an award/denial of benefits

Upon receipt of any additional evidence, the district director will issue a proposed decision and order of an award or denial of benefits (*i.e.*, the CM-1098 for an Award of Benefits) which constitutes his or her final adjudication of the matter. 20 C.F.R. § 725.418. Once the district director issues the notice, the unsuccessful party has 30 days in which to request a formal hearing before an administrative law judge. 20 C.F.R. § 725.419(a). In those cases where the employer requests a formal hearing and continues to dispute the claimant's entitlement to benefits or its designation as the responsible operator, then the Director, OWCP will make payments from the Black Lung Disability Trust Fund until the claim is finally adjudicated.

II. The request for a formal hearing

If the employer or claimant is dissatisfied with the district director's ruling, a request for a formal hearing may be made. If the request is timely filed, then the district director will transmit the file to the Office of Administrative Law Judges with a list of parties on the Form CM-1025a and contested issues on a Form CM-1025. 20 C.F.R. § 725.421. The case is then assigned to an administrative law judge who schedules the case for a hearing and issues a decision and order upon conducting a *de novo* review of the record wherein all questions of fact and law are decided. The issues listed on the CM-1025 may be amended within the discretion of the administrative law judge provided the opposing party is given adequate notice and an opportunity to develop evidence with regard to the issues. *Perry v. Director, OWCP*, BRB No. 91-1197 BLA (Apr. 28, 1993)(unpublished) (citing *Carpenter v. Eastern Assoc. Coal Corp.*, 6 B.L.R. 1-784 (1984)).

Given the informal nature of the black lung claims process, considerable latitude is afforded claimants in construing hearing requests. Specifically, almost any informal communication submitted with the district director at any point during the pendency of the claim at that level may be considered a hearing request. In *Plesh v. Director, OWCP*, 71 F.3d 103 (3d Cir. 1995), the Third Circuit held that a letter, wherein the miner stated, “I am appealing this as of now,” constituted a formal hearing request thus, triggering the district director's duty to refer all contested issues to the Office of Administrative Law Judges for resolution. This is so, according to the court, even where the hearing request is “premature.” In *Plesh*, the hearing request was filed after issuance of an order to show cause, but prior to entry of the district director's proposed decision and order. The court found that the letter preserved the claimant's right to a hearing such that it was unnecessary that he file a second request.

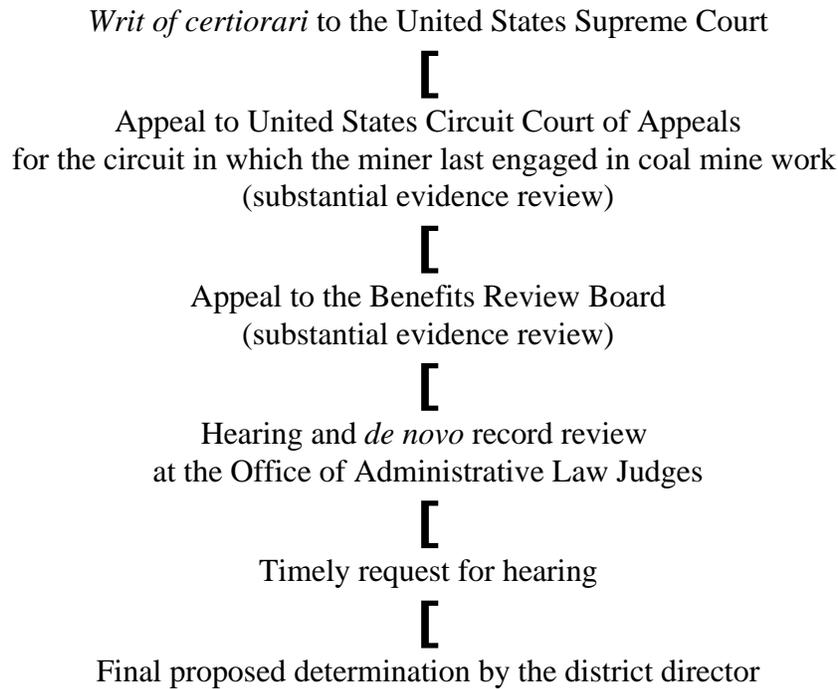
It is noteworthy that the amended regulations have codified the *Plesh* decision to make clear that any premature hearing request will be considered valid and the district director will forward the claim to this Office upon completion of the development of the record at his or her level. 20 C.F.R. § 725.418(c) (Dec. 20, 2000).

III. The adjudicative process:

A. Circuit court jurisdiction

In *Shupe v. Director, OWCP*, 12 B.L.R. 1-200, 1-202 (1989)(en banc), the Board held that the location of the miner's last coal mine employment is determinative of the circuit court jurisdiction. In *Broyles v. Director, OWCP*, 143 F.3d 1348 (10th Cir. 1998), the Tenth Circuit held that a survivor's appeal must be filed in the jurisdiction where the miner's coal mine employment, and therefore his harmful exposure to coal dust, occurred. In so holding, the Tenth Circuit cited to *Kopp v. Director, OWCP*, 877 F.2d 307, 309 (4th Cir. 1989), wherein the Fourth Circuit held that “jurisdiction is appropriate only in the circuit where the miner's coal mine employment, and consequently his harmful exposure to coal dust, occurred.” The *Kopp* court found that, based upon the record before it, the miner's “only exposure to coal dust occurred in the Seventh Circuit” such that the case would be transferred to that court for adjudication pursuant to 28 U.S.C. § 1631. However, it is noteworthy that, in *Hon v. Director, OWCP*, 699 F.2d 441 (8th Cir. 1983), the Eighth Circuit held that “black lung disease is a 'cumulative' injury” which is “caused by extensive exposure to coal dust, and it is impossible to say that any one exposure 'caused' the miner to get black lung.” Consequently, the court rejected the “last injurious contact” rule to state that the “appeal lies in any circuit in which claimant worked and was exposed to the danger, prior to manifestation of the injury.”

B. Claims processing



If a claimant is **finally adjudicated** to be entitled to benefits, then the employer must commence the payment of benefits. In those cases where the Director, OWCP made interim payments out of the Black Lung Disability Trust Fund, then the employer will be required to reimburse the Trust Fund for all such monies paid with interest. If there is no designated employer, or the responsible operator is financially incapable of paying the benefits, then the Director, OWCP will continue to pay benefits out of the Black Lung Disability Trust Fund. Finally, where the Director, OWCP or employer made interim payments to a claimant who is finally adjudicated as not entitled to such benefits, then a claim for the recovery of the overpayment may be filed with the district director. *See Chapter 17* for a discussion of overpayment claims.