

# JUDGES' BENCHBOOK OF THE BLACK LUNG BENEFITS ACT

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## CHAPTER 20 Medical Treatment Dispute (BTD)

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|--|-----------------------------|
| <b>Medical Treatment Dispute (BTD)</b> .....                     | <a href="#"><u>20.1</u></a> |
| I. Generally .....   | <a href="#"><u>20.1</u></a> |
| II. Entitlement to a hearing and scope of consideration .....    | <a href="#"><u>20.1</u></a> |
| III. Treatment related to the miner's black lung condition ..... | <a href="#"><u>20.1</u></a> |
| A. Burden of persuasion/production .....                         | <a href="#"><u>20.1</u></a> |
| 1. Prior to applicability of December 2000 regulations .....     | <a href="#"><u>20.1</u></a> |
| 2. After applicability of December 2000 regulations .....        | <a href="#"><u>20.4</u></a> |
| B. Treatment of respiratory and non-respiratory conditions ..... | <a href="#"><u>20.4</u></a> |

## *Chapter 20*

### Medical Treatment Dispute (BTD)

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#### **I. Generally** [ III(B) ]

In some cases, an employer will dispute certain medical services, asserting that the treatment was unauthorized or unrelated to the miner's black lung condition. Medical treatment dispute cases commence with the district director who “shall attempt to informally resolve such dispute.” 20 C.F.R. § 725.707(a).<sup>1</sup> Payments for medical treatment commence 30 days after the initial determination of liability by the District Director. 20 C.F.R. §§ 725.707(b) and 725.522. However, in *Balaban v. Duquesne Light Co.*, 16 B.L.R. 1-120 (1992), the Board held that neither it nor the administrative law judge has jurisdiction to order that an employer reimburse the Trust Fund for a paid medical bill. Citing the Sixth Circuit's holding in *The Youghiogheny and Ohio Coal Co. v. Vahalik*, 970 F.2d 161 (6th Cir. 1992), the Board concluded that the sole issue of reimbursement “requires no administrative expertise” and, therefore, should be decided by the federal district court of appropriate jurisdiction. As a result, the administrative law judge should determine only whether certain medical expenses are related to the miner's black lung condition.

#### **II. Entitlement to a hearing and scope of consideration**

Any party may request a hearing by the administrative law judge, including an interested medical provider (if appropriate). 20 C.F.R. §§ 725.707(b) and (d). The scope of consideration is limited to the dispute of particular medical treatment and not to the re-adjudication of entitlement to benefits.

The Board has held that, where liability for medical benefits is at issue as in a medical benefits only case, the hearing process is bifurcated pursuant to § 725.701A of the regulations whereby liability for medical benefits is determined prior to reimbursement for particular medical treatment or the resolution of any medical treatment disputes. *Stiltner v. Doris Coal Co.*, 14 B.L.R. 1-116 (1990)(*en banc*), *aff'd in part sub nom, Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492 (4th Cir. 1991); *Lute v. Split Vein Coal Co.*, 11 B.L.R. 1-82, 1-84 (1987)(*en banc*).

#### **III. Treatment related to the miner's black lung condition**

##### **A. Burden of persuasion/production**

##### **1. Prior to applicability of December 2000 regulations**

Because such information is within the control of the claimant, it is the claimant's burden to provide documentation that the treatment was “for such periods as the nature of the miner's

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<sup>1</sup> See 20 C.F.R. § 725.708(a) (Dec. 20, 2000).

pneumoconiosis and ancillary pulmonary conditions and disability require.” 20 C.F.R. § 725.701(b). However, in *Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492, 496-97 (4th Cir. 1991), the Fourth Circuit held that because “most pulmonary disorders are going to be related or at least aggravated by the presence of pneumoconiosis, when a miner receives treatment for a pulmonary disorder, a presumption arises that the disorder was caused or at least aggravated by the miner’s pneumoconiosis, making the employer liable for the medical costs.”

The Board applied the *Stiltner* court’s presumption in *Seals v. Glen Coal Co.*, 19 B.L.R. 1-80 (1995)(en banc), a case involving disputes over medical bills under the jurisdiction of the Fourth Circuit. In *Seals*, the Board held that the “claimant must establish that his medical expenses were necessary to treat his pneumoconiosis and ancillary pulmonary conditions and disability.” It was then determined that a physician who concluded that the miner did not have occupational pneumoconiosis, was “contrary to the spirit of the Act in that a final determination of entitlement to medical benefits precluded raising the basic issues of entitlement.” The Board concluded that, under the *Stiltner* presumption, the party opposing entitlement carries the burden of establishing that the miner’s pulmonary-related medical bills were not for the treatment of his pneumoconiosis.

On appeal, in *Glen Coal Co. v. Seals*, 147 F.3d 502 (6<sup>th</sup> Cir. 1998), the Sixth Circuit overruled the Board decision to hold that the claimant is not entitled to a rebuttable presumption that his pulmonary or respiratory medical treatment is related to his coal workers’ pneumoconiosis. The Sixth Circuit acknowledged its departure from the Fourth Circuit’s holding on the issue in *Doris Coal Co. v. Director, OWCP*, 938 F.2d 492 (4<sup>th</sup> Cir. 1991) (a miner who is found totally disabled due to pneumoconiosis is entitled to a rebuttable presumption that his pulmonary and respiratory medical treatment is related to this condition). The Sixth Circuit did not find that the *Doris Coal* presumption violated § 7 of the Administrative Procedure Act:

We hold that the *Doris Coal* presumption (does not violate § 7 because it) merely reallocates the burden of production, and does not affect the burden of proof. The effect of the *Doris Coal* presumption is to find that where there is a stage one determination that the claimant is totally disabled due to pneumoconiosis, then in stage two the claimant does not have to come forward with any additional evidence to provide that his medical bills are related to his pneumoconiosis; instead, the employer/carrier must come forward with evidence to prove that his medical bills are not related to his pneumoconiosis.

...

The claimant still must satisfy the trier of fact that the bills are related, but the claimant is relieved of the requirement of producing additional evidence of this relationship.

The court concluded, however, that the rebuttable presumption created in *Doris Coal* is not consistent with the purpose of the Black Lung Benefits Act. Citing to the Supreme Court’s decision in *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267 (1994), the circuit court found that the decision “suggest[ed]” that the Act “was intended to be applied with uniformity which could be destroyed if the door is suddenly opened to the creation of judicial presumptions.” The court further noted that such a presumption may “open the door to fraud in the preparation of medical

bills.”

Subsequent to the Sixth Circuit's *Seals* decision, the Fourth Circuit revisited the issue and reaffirmed its earlier holding in *Doris Coal*. In *Gulf & Western Industries v. Ling*, 176 F.3d 226 (4<sup>th</sup> Cir. 1999), the miner sought payment for medical treatment which he argued was the result of his pneumoconiosis. The employer maintained that the miner was being treated for an obstructive lung disorder related to his cigarette smoking history and not associated with pneumoconiosis. The employer argued that the miner's pneumoconiosis was not severe enough to produce the medical treatments for which he sought payment. The administrative law judge concluded that the miner's treatments for shortness of breath were to be paid by the employer as “[s]hortness of breath is a primary symptom of pneumoconiosis.” In declining to overrule its prior holding in *Doris Coal*, the court stated the following:

It by no means distorts the truth to postulate that, in the great majority of cases, the disorders and symptoms associated with the miner's disability will closely correspond to those for which he later receives treatment. Even where there is less than perfect identity, however, the threshold creating the entitlement to benefits--that the pulmonary condition treated be merely aggravated by the miner's pneumoconiosis--is low enough to permit a rational conclusion that a particular respiratory infirmity will likely be covered.

Hence, rather than compel the miner to exhaustively document his claim for medical benefits, *i.e.*, requiring him to again laboriously obtain all the evidence that he can that his shortness of breath, wheezing, and coughing are still the result of his pneumoconiosis, we have fashioned the Doris Coal presumption as a shorthand method of proving the same thing. The proof needed is a medical bill for the treatment of a pulmonary or respiratory disorder and/or associated symptoms.

Though the miner's burden of proving his claim is not onerous, it does not follow that it is non-existent or that it has somehow been shifted to the employer or its insurer.

The court concluded that it disagreed with the Sixth Circuit's holding in *Seals*. It found that the miner had presented medical bills for treatment of respiratory ailments. Moreover, the breathing difficulties were attributed by the physician to the miner's chronic obstructive pulmonary disease and clinical pneumoconiosis. As a result, the court concluded that the *Doris Coal* presumption was properly invoked. The court stated that the presumption “remains a valid, rational evidentiary device that serves the important public purpose of facilitating the administrative processing of medical benefit claims by coal miners previously adjudged entitled to disability payments under the BLBA.”

Similarly, in *General Trucking Corp. v. Salyers*, 175 F.3d 322 (4<sup>th</sup> Cir. 1999), the Fourth Circuit held that the *Doris Coal* presumption may be rebutted if the employer demonstrates that: (1) the expenses claimed exceed those necessary to treat a covered pulmonary disorder; (2) the treatment was not for a pulmonary disorder; or (3) the treatment is for a pulmonary disorder unrelated to the coal dust induced disease.

The Board follows the Fourth Circuit's *Stiltner* decision. In *Allen v. Island Creek Coal Co.*,

21 B.L.R. 1-1 (1996), *aff'g. on recon.*, 15 B.L.R. 1-32 (1991), the employer sought reconsideration on grounds that it should not be required to pay medical bills related to treatment of chronic bronchitis and chronic obstructive pulmonary disease, as these “conditions do not fall within the regulatory definition of pneumoconiosis.” The Board held, to the contrary, that insofar as the claimant is entitled to a presumption that his chronic bronchitis and chronic obstructive pulmonary disease are substantially related to, or aggravated by, the presence of pneumoconiosis, the employer is liable for the medical costs associated with Claimant's treatment. The “presumption” is derived from the Fourth Circuit's decision in *Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492 (4th Cir. 1991) wherein the court held that because “most pulmonary disorders are going to be related or at least aggravated by the presence of pneumoconiosis, when a miner receives treatment for a pulmonary disorder, a presumption arises that the disorder was caused or at least aggravated by the miner's pneumoconiosis, making the employer liable for the medical costs.”

## **2. After applicability of December 2000 regulations**

Subsections 725.701(e) and (f) have been added under the amended regulations wherein the *Doris Coal* presumption is codified:

(e) If a miner receives a medical service or supply, as described in this section, for any pulmonary disorder, there shall be a rebuttable presumption that the disorder is caused or aggravated by the miner's pneumoconiosis. The party liable for the payment of benefits may rebut the presumption by producing credible evidence that the medical service or supply provided was for a pulmonary disorder apart from those previously associated with the miner's disability, or was beyond that necessary to effectively treat a covered disorder, or was not for a pulmonary disorder at all.

(f) Evidence that the miner does not have pneumoconiosis or is not totally disabled by pneumoconiosis arising out of coal mine employment is insufficient to defeat a request for coverage of any medical service or supply under this subpart. In determining whether treatment is compensable, the opinion of the miner's treating physician may be entitled to controlling weight pursuant to § 718.104(d). A finding that a medical service or supply is not covered under this subpart shall not otherwise affect the miner's entitlement to benefits.

20 C.F.R. § 725.701(e) and (f) (Dec. 20, 2000).

### **B. Treatment of respiratory and non-respiratory conditions**

With regard to separating items on a physician's bill of a respiratory, as opposed to a non-respiratory, nature, the Board in *Stiltner* held that it was within the administrative law judge's discretion as the trier-of-fact to evaluate the evidence and conclude that it was “impractical to apportion the time spent by the physician in treating respiratory, as opposed to non-respiratory, conditions” since it is already determined that the miner is totally disabled due to pneumoconiosis. *Id.* at 1-119. However, on appeal in *Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492, 498 (4th Cir. 1991), the Fourth Circuit overruled the Board on this point to hold that the administrative law judge, as trier-of-fact, must specifically determine which medical services and

charges are related to pneumoconiosis which, in turn, requires that the treating physician itemize his or her bill so as to clearly reflect those charges related to the miner's black lung condition.