

# JUDGES' BENCHBOOK OF THE BLACK LUNG BENEFITS ACT

---



PREPARED BY THE U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
WASHINGTON, DC

AUGUST 2001

---

## CHAPTER 17 Onset, Augmentation, Termination, and Interest

### *Chapter 17*

<b>Onset, Augmentation, Termination, and Interest</b> .....	<a href="#"><u>17.1</u></a>
I. Commencement of the payment of benefits .....	<a href="#"><u>17.1</u></a>
A. Claims filed before July 1, 1973 (Part B claims) .....	<a href="#"><u>17.1</u></a>
B. Claims filed on or after July 1, 1973 (Part C claims) .....	<a href="#"><u>17.1</u></a>
1. Onset of disability .....	<a href="#"><u>17.2</u></a>
2. Effect of continuing employment .....	<a href="#"><u>17.3</u></a>
3. Petitions for modification .....	<a href="#"><u>17.3</u></a>
C. Survivors' claims .....	<a href="#"><u>17.3</u></a>
II. Augmentation of benefits .....	<a href="#"><u>17.4</u></a>
A. Spouse .....	<a href="#"><u>17.4</u></a>
B. Divorced spouse .....	<a href="#"><u>17.5</u></a>
C. Child .....	<a href="#"><u>17.5</u></a>
D. Special rules for Part B claims .....	<a href="#"><u>17.6</u></a>
III. Interest on overdue benefits .....	<a href="#"><u>17.6</u></a>
A. Assessed against employer, not Trust Fund .....	<a href="#"><u>17.7</u></a>
B. Date of accrual .....	<a href="#"><u>17.7</u></a>
C. Payments made by the Trust Fund .....	<a href="#"><u>17.7</u></a>
D. The interest rate .....	<a href="#"><u>17.7</u></a>
IV. Termination of benefits .....	<a href="#"><u>17.7</u></a>

## *Chapter 17*

### Onset, Augmentation, Termination, and Interest

---

#### **I. Commencement of the payment of benefits** [ III(H) ]

Once it is determined that the claimant is entitled to benefits under the Act, the fact-finder must determine from what date benefit payments should begin. Benefits are paid in monthly increments, beginning with the first month in which claimant satisfies all conditions of entitlement. 30 U.S.C. § 932(d); 20 C.F.R. § 725.203(a).

#### **A. Claims filed before July 1, 1973 (Part B claims)** [ III(H)(4) ]

Claims filed between December 30, 1969 and June 30, 1974 are known as “Part B claims” as they are filed, processed, and paid according to the provisions of Part B of title IV of the Act. 20 C.F.R. § 725.1(b); 20 C.F.R. Part 410. For Part B claims, absent clear evidence establishing the date of onset of disability, the date of disability is presumed to be the date of filing the claim. *McCoy v. Valley Camp Coal Co.*, 2 B.L.R. 1-243, 1-247 to 1-248 (1979).

The 1977 amendments permit a claimant review under 20 C.F.R. Part 727 upon filing an election card when benefits have been denied under Part B of title IV of the Act and the regulations found at 20 C.F.R. Part 410. For these claims that were denied by the Social Security Administration and were subsequently granted after claimant elected review by the Department of Labor under 30 U.S.C. § 945(c), benefits should commence with the month during which the claimant elected review under Part 727 of the regulations, when the onset date cannot be ascertained. 20 C.F.R. § 725.503(b). *See also Gottke v. Director, OWCP*, 6 B.L.R. 1-1300, 1-1302 (1984). Benefits can be awarded retroactively under Parts 727 and 718, but not for any period prior to January 1, 1974.

#### **B. Claims filed on or after July 1, 1973 (Part C claims)** [ III(H)(1) ]

Claims filed on or after January 1, 1974 are known as “Part C claims” as they are filed, adjudicated, and paid according to the provisions of Part C of title IV of the Act. 20 C.F.R. § 725.1(d). Claims filed between July 1, 1973 and December 31, 1973, inclusive of those dates, are known as “section transition 415 claims,” as they are adjudicated and paid according to that section of the Act. 20 C.F.R. § 725.1(c). According to the regulations, § 415 transition claims are considered the same as Part C claims.

For Part C claims, if the claimant is a miner totally disabled due to pneumoconiosis, the claimant should be paid his or her benefits beginning with the month of onset of total disability due to pneumoconiosis. 33 U.S.C. § 906(a), as incorporated at 30 U.S.C. § 932(a). *See also* 20 C.F.R. § 725.503; *Carney v. Director, OWCP*, 11 B.L.R. 1-32 (1987). If the month of onset of disability cannot be deduced from the evidence of record, the claimant should be paid beginning with the

month during which the claim was filed. 20 C.F.R. § 725.503(b). *See Owens v. Jewell Smokeless Coal Corp.*, 14 B.L.R. 1-47 (1990). However, the filing date should not be used if uncontradicted medical evidence establishes that the claimant was not totally disabled at some point after the claim was filed. *See, e.g., Edmiston v. F & R Coal Co.*, 14 B.L.R. 1-65 (1990).

For all Part C claims (Parts 727 and 718), regardless of date of onset, no benefits are payable for any period of eligibility before January 1, 1974. 20 C.F.R. § 725.503(e). For § 415 transition claims (20 C.F.R. § 410.490), no benefits are payable for any period of eligibility prior to July 1, 1973. 20 C.F.R. § 725.503(d).

### **1. Onset of disability**

Once a claimant proves entitlement to benefits, benefits should be paid commencing at the date of onset of total disability due to pneumoconiosis. 20 C.F.R. § 725.503. To establish date of onset of disability, the miner must demonstrate the date of total disability due to pneumoconiosis. *Edmiston*, 14 B.L.R. at 1-69. The miner cannot receive benefits for any month during which he or she was not totally disabled. *Lykins v. Director, OWCP*, 12 B.L.R. 1-181, 1-183 (1989).

The claimant bears the burden of proof in establishing the date of onset of total disability. *See, e.g., Johnson v. Director, OWCP*, 1 B.L.R. 1-600 (1978). In determining the onset date, the administrative law judge must consider all relevant evidence of record and assess the credibility of that evidence. *Lykins*, 12 B.L.R. at 1-183.

The date of the first medical evidence of record indicating total disability does not necessarily establish the onset date. Such evidence only indicates that the miner became totally disabled at some point prior to when the medical tests revealed claimant's disability. *Tobrey v. Director, OWCP*, 7 B.L.R. 1-407, 1-409 (1984); *Hall v. Consolidation Coal Co.*, 6 B.L.R. 1-1306, 1-1310 (1984). As x-ray readings are probative only to the existence of pneumoconiosis and not to the extent of disability, *Short v. Westmoreland Coal Co.*, 10 B.L.R. 1-127, 1-129 n.4 (1987), x-ray readings alone are insufficient to prove onset of disability. However, x-rays may be used in conjunction with other medical evidence to determine when pneumoconiosis has progressed to a totally disabling stage. *Gottke*, 6 B.L.R. at 1-1302. Also, lay testimony in combination with other evidence of record may be used to establish claimant's onset date. *Cantrell v. United States Steel Corp.*, 6 B.L.R. 1-1003, 1-1007 (1984).

If the miner establishes that he has complicated pneumoconiosis according to 30 U.S.C. § 921(c)(3), the onset date is the month during which complicated pneumoconiosis was first diagnosed. *Truitt v. North American Coal Corp.*, 2 B.L.R. 1-199, 1-203 to 1-204 (1979). In *Truitt*, the Board held that the miner was entitled to benefits from the first month the evidence established that he suffered from complicated pneumoconiosis (in this case the earliest x-ray study interpreted as positive for complicated pneumoconiosis), notwithstanding the fact that the study was interpreted as positive two years after it was taken. Moreover, it is noted that, in *Williams v. Director, OWCP*, 13 B.L.R. 1-28 (1989), the Board held that, “[i]f the evidence does not reflect when claimant's simple pneumoconiosis became complicated pneumoconiosis, the onset date for payment of benefits is the month during which the claim was filed or during which the claimant filed his election card, unless the evidence affirmatively establishes that claimant had only simple pneumoconiosis for any period

subsequent to the date of filing or date of election.” The Board noted, however, that the administrative law judge committed error when she did not consider a series of early chest x-rays which were interpreted as positive for the existence of complicated pneumoconiosis.

## **2. Effect of continuing employment**

Generally, the claimant is not entitled to benefits for any period during which he or she engaged in coal mine employment or comparable gainful work. 20 C.F.R. § 725.503A. However, if claimant has shown that he or she has complicated pneumoconiosis under 30 U.S.C. § 921(c)(3), continued employment does not preclude the commencement of benefits. 20 C.F.R. § 725.503A(a)(1).

In order to retain entitlement to benefits under the Act, the miner must end all coal mine employment within one year from the date of final disposition of his or her claim. 20 C.F.R. § 725.503A(a)(2). As engaging in any comparable gainful work indicates that claimant is in fact not totally disabled, compensation payments are suspended for any period during which claimant engages in comparable gainful employment. 20 C.F.R. § 725.503A(c).

## **3. Petitions for modification**

Under the amended regulations, § 725.503(d) has been amended to address onset determinations in claims involving modification petitions and it provides as follows:

(d) If a claim is awarded pursuant to section 22 of the Longshore Act and § 725.310, then the date from which benefits are payable shall be determined as follows:

(1) Mistake in fact. The provisions of paragraphs (b) or (c) of this section, as applicable, shall govern the determination of the date from which benefits are payable.

(2) Change in conditions. Benefits are payable to a miner beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment provided that no benefits shall be payable for any month prior to the effective date of the most recent denial of the claim by a district director or administrative law judge. Where the evidence does not establish the month of onset, benefits shall be payable to such miner from the month in which the claimant requested modification.

20 C.F.R. § 725.303(d) (Dec. 20, 2000).

## **C. Survivors' claims**

If the claimant is an eligible survivor of a miner entitled to benefits under the Act, benefits may be paid beginning with the month of the miner's death. 20 C.F.R. § 725.503(c). However, if the miner died before January 1, 1974, benefits are payable commencing January 1, 1974. 20 C.F.R. § 725.503.

## **II. Augmentation of benefits**

[ III(H) ]

A claimant's award of benefits under Part C of the Act should be augmented on behalf of the following dependents who meet the conditions of relationship set out in the regulations: (1) spouse; (2) divorced spouse; or (3) child. 20 C.F.R. § 725.210. For the miner's benefits to be supplemented because of any of these relationships, the individual must qualify under both a relationship test and a dependency test. The individual must establish the validity of the purported relationship and the appropriate degree of dependency upon the miner.

Augmentation of benefits commences with the first month in which the dependent satisfies all of the conditions applicable to that particular relationship, according to the regulations at 20 C.F.R. §§ 725.204-725.209. Augmentation continues through the month before the month in which the dependent ceases to qualify under any of the enumerated conditions. 20 C.F.R. § 725.211.

Although the conditions for establishing entitlement due to dependency parallel the requirements for survivors' claims, the two types of benefits are functionally distinct. Augmented benefits are paid to the miner on behalf of qualifying individuals who are dependent upon that living miner for support. Survivor's claims are paid to qualifying dependents upon the death of a miner who was entitled to benefits under the Act. Unlike claims for augmentation of benefits, which are inexorably linked to the miner's claim, survivor's claims are discrete and functionally distinct from the miner's claim.

### **A. Spouse**

An individual satisfies the entitlement condition of the relationship test for miner's spouse set forth at 20 C.F.R. § 725.204(a) under any of the following criteria:

- (1) if the individual's marriage to the miner would be valid under the laws of the state in which the miner is domiciled;
- (2) if the individual would qualify for the miner's intestate property, either as the miner's spouse or as an individual otherwise entitled to the spousal share, under the laws of intestate succession of the state in which the miner is domiciled; or,
- (3) if the individual participated in a marriage ceremony with the miner that would have been valid but for an unknown legal impediment.

20 C.F.R. § 725.204. Under this third scenario, augmentation for that individual ceases either upon another individual qualifying as the miner's spouse for augmentation purposes or upon the individual validly marrying any person other than the miner. 20 C.F.R. § 725.204.

An individual qualifies for the status of dependent spouse according to the dependency test set forth at 20 C.F.R. § 725.204 under any of the following criteria:

- (1) if the individual is a member of the same household as the miner, 20 C.F.R.

§ 725.205(a);

(2) if the individual is receiving regular support contributions from the miner, either voluntarily or under court order, 20 C.F.R. §§ 725.205(b)-(c);

(3) if the individual is the natural parent of the miner's child, 20 C.F.R. § 725.205(d);  
or,

(4) if the individual was married to the miner for at least one year.

20 C.F.R. § 725.205(e).

### **B. Divorced spouse**

An individual satisfies the entitlement condition for miner's divorced spouse under the relationship test set forth at 20 C.F.R. § 725.206 if this individual has been married to the miner for ten years before the divorce decree. If the individual was married and divorced from the miner more than once, the relationship test is satisfied if the individual and the miner were married in each of the ten calendar years prior to finalization of divorce. *Id.*

An individual claiming to be the miner's dependent divorced spouse qualifies for that status under the dependency test set forth at 20 C.F.R. § 725.207 under either of the following criteria:

(1) if the individual is receiving at least one-half of his or her support from the miner, 20 C.F.R. § 725.207(a); or,

(2) if the individual is receiving “substantial contributions” from the miner pursuant to either written contract or court order, 20 C.F.R. § 725.207(b)-(c).

Child support should not be used in calculating the support share. *Trevena v. Director, OWCP*, 7 B.L.R. 1-799, 1-802 (1985).

### **C. Child**

An individual satisfies the entitlement condition of the relationship test for miner's child set forth at 20 C.F.R. § 725.208 under any of the following criteria:

(1) if the individual is the beneficiary's child according to the laws of the state in which the beneficiary is domiciled, 20 C.F.R. § 725.208(a);

(2) if the individual is the beneficiary's legally adopted child, 20 C.F.R. § 725.208(b);

(3) if the individual is the beneficiary's stepchild by reason of a valid marriage of the beneficiary to the individual's natural or adoptive parent, 20 C.F.R. § 725.208(c);

(4) if the individual would qualify under state law for a child's share of the beneficiary's intestate property, 20 C.F.R. § 725.208(d); or

(5) if the individual is the beneficiary's natural son or daughter, and

(a) does not otherwise qualify under the regulations set forth in 20 C.F.R. §§ 725.208(a)-(d),

(b) does meet the evidentiary requirements set forth in either 20 C.F.R. § 725.208(e) or 20 C.F.R. § 725.208(f).

For the individual claiming to be the miner's dependent child to qualify for that status under the dependency test set forth at 20 C.F.R. § 725.209, that individual must be unmarried and either under the age of 18, disabled, or a qualifying student.

For purposes of augmenting benefits based upon a dependent child, benefits payable both to a miner and to a miner's surviving spouse may be augmented as appropriate under the regulations. 20 C.F.R. § 725.208.

In *Blair v. R&E Coal Co.*, 20 B.L.R. 1-15 (1996)(on recon.), the Board held that benefits may be augmented to the survivor of a miner who adopted a child after the miner's death. In so holding, the Board concluded that the "relationship test" was satisfied upon legal adoption of the child and that, because the child is unmarried and under 18 years of age, she also satisfies the "dependency test."

#### **D. Special rules for Part B claims**

For special regulations regarding augmentation of benefits for successful Part B claimant, *see* 20 C.F.R. §§ 410.300-410.395.

### **III. Interest on overdue benefits**

[ III(C)(1) ]

After making an initial determination that claimant is eligible for benefits under the Act, and after the district director concludes that the employer has been properly named as the responsible operator, the employer should commence the payment of benefits within 30 days in accordance with 20 C.F.R. § 725.522. If the employer does not pay any portion of the benefits due the claimant under the district director's initial determination of eligibility, an administrative law judge's decision and order, a decision filed by the Benefits Review Board, or a decision by a United States circuit court of appeals, that employer is liable to the beneficiary for simple annual interest on all past due benefits. 20 C.F.R. § 725.608(a). This amount includes any penalties for non-payments assessed pursuant to 20 C.F.R. § 725.607. *See Chapter 21* regarding interest assessed on past due medical benefits.

#### **A. Assessed against employer, not Trust Fund**

Interest may only be assessed against an employer; the Trust Fund cannot be held liable for the payment of interest to a claimant. *Marple v. Jones & Laughlin Steel Corp.*, 7 B.L.R. 1-580, 1-581 (1984).

#### **B. Date of accrual**

For claims filed after December 31, 1981, interest begins to accrue 30 days after the initial determination of eligibility. 20 C.F.R. § 725.608(a). *See also Baldwin v. Oakwood Red Ash Coal Corp.*, 14 B.L.R. 1-23, 1-27 to 1-28 (1990). This rule also holds for claims filed on or before that date. *But see Clinchfield Coal Co. v. Cox*, 611 F.2d 47, 48 (4th Cir. 1979) (following earlier Benefits Review Board interpretation). For survivors' claims, interest begins to accrue as of the month of the miner's death. *Harkey v. Alabama By-Products Corp.*, 7 B.L.R. 1-26, 1-29 (1984).

However, in *Greene v. Director, OWCP*, 892 F.2d 1385 (8th Cir. 1990), the government was not required to pay interest on benefits awarded to a miner's widow during the period between the Board's reversal of the administrative law judge's award and the circuit court's reversal of the Board.

#### **C. Payments made by the Trust Fund**

If benefits due are paid from the Black Lung Disability Trust Fund, the employer is liable for simple interest upon the amount that must be reimbursed to the Trust Fund. 20 C.F.R. § 725.608(b). The employer's liability for such interest begins on the date that such benefits were due and payable. *Harkey*, 7 B.L.R. at 1-29.

#### **D. The interest rate**

The applicable interest rate for all amounts due for years after 1982 is the rate in effect for that calendar year according to Internal Revenue Code § 6621. 20 C.F.R. § 725.608(c).

### **IV. Termination of benefits**

The miner is entitled to receive benefits through the month before the month in which the miner dies or his total disability otherwise ceases. 20 C.F.R. § 725.203(b).