

## PART III

### PROCEDURAL ISSUES

#### C. PAYMENT OF BENEFITS

##### 2. UNDER THE 1981 AMENDMENTS TO THE ACT

###### a. General Provisions

Section 205(a)(1) of the Black Lung Benefits Amendments of 1981 (the 1981 Amendments), which amended Section 422(c) and (j) of the Reform Act, 30 U.S.C. §932(c), (j), transferred liability from operators to the Trust Fund for payment of claims that were denied prior to March 1, 1978, *i.e.*, the effective date of the Reform Act, and which are or have been approved under Section 435 of the Reform Act, 30 U.S.C. §945. There is no automatic remand for payment, however, simply because a claim falls within the provisions of the 1981 Amendments and employer is relieved of liability. Rather, the Director is permitted to defend the claim on the merits. *Pavesi v. Director, OWCP*, 758 BLR 956, 963, 7 BLR 2-184, 2-192 (3d Cir. 1985); *Markus v. Old Ben Coal Co.*, 712 F.2d 322, 5 BLR 2-130 (7th Cir. 1983); *White v. Director, OWCP*, 7 BLR 1-348 (1984); *Covert v. Westmoreland Coal Co.*, 6 BLR 1-1111 (1984). Section 205(b) of the 1981 Amendments, which amended Section 402 of the Reform Act, 30 U.S.C. 902, defined the term "claim denied" as: (1) a claim denied by the Social Security Administration (SSA), (2) a claim in which the claimant was notified by the Department of Labor (DOL) of an administrative or informal denial more than one year prior to March 1, 1978, *i.e.*, the enactment date of the Reform Act, and did not, within one year from the date of notification of such denial, request a hearing, present additional evidence, or indicate an intention to present additional evidence, or (3) a claim denied under the law in effect prior to March 1, 1978, following a formal hearing or administrative or judicial review proceeding. 30 U.S.C. §902(i).

The final regulations promulgated by DOL to implement this portion of the 1981 Amendments, 20 C.F.R. §725.496, followed the language of Section 402(i)(2)(A) but also added a fourth provision providing that liability would also transfer to the Trust Fund if claimant did not, within one year of notification of the denial: "(iv) Request a modification or reconsideration of the denial on the ground of a change in conditions or because of a mistake in a determination of fact." 20 C.F.R. §725.496(b)(2)(iv). See *Johnson v. Eastern Associated Coal Co.*, 8 BLR 1-248 (1985).

The transfer provisions of the 1981 Amendments were intended to shift liability for claims that, once closed, were then reopened and approved under the liberal entitlement provisions of the 1977 Act. *Chadwick v. Island Creek Coal Co.*, 7 BLR 1-

883 (1985), *aff'd*, 8 BLR 1-447 (1986)(*en banc recon.*); see generally **Old Ben Coal Co. v. Lukey**, 826 F.2d 688, 10 BLR 2-249 (7th Cir. 1987).

### CASE LISTINGS

[Seventh Circuit rejected claimant's argument that transfer claim subject to remand for automatic payment based on finding of eligibility by district director, reversed by fact-finder, Board and Court] **Markus v. Old Ben Coal Co.**, 712 F.2d 322, 5 BLR 2-130 (7th Cir. 1983).

[liability transfers from operators to Trust Fund for any claim finally *denied* before March 1, 1978 and approved under Section 435 of Act] **Krysik v. Harmar Coal Co.**, 6 BLR 1-1167 (1984), *aff'd*, 7 BLR 1-586 (1984)(*en banc recon.*).

[Board upheld 1981 Amendments transfer of liability criteria on equal protection and due process grounds] **Henson v. United States Steel Corp.**, 6 BLR 1-1245 (1984).

[Seventh Circuit held that Director could contest fact-finder's award and benefit from evidence developed by dismissed employer notwithstanding prior support of award and objection to admission of the evidence; Court stated "there is nothing like the prospect of financial loss to concentrate the mind"] **Hardisty v. Director, OWCP**, 776 F.2d 129 (7th Cir. 1985); *cf.* **Patellos v. Director, OWCP**, 7 BLR 1-661 (1985).

### DIGESTS

Board rejected employer's contention that the term "claim" is defined as a unitary cause of action and that distinctions between Part B and Part C claims are abrogated. Claims filed pursuant to Part B and Part C are separate and distinct assertions of entitlement. If filed by the same claimant, they merge, in appropriate cases, only by operation of law pursuant to the duplicate claims regulations set forth in 20 C.F.R. §§410.705, 725.309, and 727.103. **Chadwick v. Island Creek Coal Co.**, 7 BLR 1-883 (1985). On reconsideration, the Board rejected employer's contention that its decision in **Chadwick, supra**, conflicted with its earlier decision in **Yakubco v. Republic Steel Corp.**, 2 BLR 1-1116 (1980), and the Seventh Circuit's decision in **Markus v. Old Ben Coal Co.**, 712 F.2d 322, 5 BLR 2-130 (7th Cir. 1983). In **Yakubco**, the Trust Fund was held liable for benefits because the Part B claim was approved by the Social Security Administration and certified to the Department of Labor for payment. In **Chadwick**, the denied Part B claim was not reviewed and approved by SSA. Employer's potential liability for benefits was based on a Part C claim pending on the effective date of the Reform Act. Transfer in **Markus** was required because the Part C claim was denied as of March 1, 1977,

rather than pending as in **Chadwick**. **Chadwick v. Island Creek Coal Co.**, 7 BLR 1-883 (1985), *aff'd*, 8 BLR 1-447 (1986)(*en banc recon.*).

The Board rejected employer's contention that the 1978 merger regulations were not intended to have any substantive impact on the 1981 Amendments transfer provisions, citing the rationale in **Chadwick** and that Congressional intent was for the transfer provisions "to be applicable concurrently with the merger provisions." **Botkins v. Midland Coal Co.**, 8 BLR 1-485 (1986).

The Third Circuit rejected the contention that the Director is bound by the initial decision of the district director throughout the processing of the application for benefits. The Court followed **Markus v. Old Ben Coal Co.**, 712 F.2d 322, 5 BLR 2-130 (7th Cir. 1983) regarding Trust Fund liability. **Pavesi v. Director, OWCP**, 758 F.2d 956, 7 BLR 2-184 (3d Cir. 1985). Similarly, the Fourth Circuit followed **Markus. Shortt v. Director, OWCP**, 766 F.2d 172, 8 BLR 2-9 (4th Cir. 1985); see also **Patton v. Earl Patton Coal Co.**, 9 BLR 1-164, *aff'd* 848 F.2d 668, 11 BLR 2-97 (6th Cir. 1988).

Party responsible for payment of *survivor's* benefits is not relieved of that responsibility merely because the *miner's* claim is subject to the transfer of liability provisions. **Johnson v. Eastern Associated Coal Corp.**, 8 BLR 1-248 (1985); see also **Patton v. Earl Patton Coal Co.**, 9 BLR 1-164, *aff'd* 848 F.2d 668, 11 BLR 2-97 (6th Cir. 1988).

5/95