

## PART VIII

### STATUTORY PRESUMPTIONS IN MINERS' CLAIMS

#### C. SECTION 411(c)(4)

##### 1. THE 15 YEAR PRESUMPTION (Generally)

Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), was added to the Act in 1972 in an apparent response to the difficulty encountered by many claimants in establishing entitlement to benefits under the 1969 Act. See **Morris v. Mathews**, 557 F.2d 563 (6th Cir. 1977). This section is not applicable to any claim filed on or after January 1, 1982. See 30 U.S.C. §921(c)(4). Section 411(c)(4) provides presumptions of total disability due to pneumoconiosis, death due to pneumoconiosis, and total disability due to pneumoconiosis at the time of death.

For purposes of invocation of Section 411(c)(4) of the Act, a miner who works in a coal mine *other than* an underground mine bears the additional burden of producing evidence that surface conditions were substantially similar to those found in an underground mine. In **Director, OWCP v. Midland Coal Co.**, 855 F.2d 509 (7th Cir. 1988), the Seventh Circuit ruled that the claimant is required only to produce sufficient evidence of the surface mining condition under which the miner worked. It is then the function of the administrative law judge to compare the surface mining conditions to conditions known to prevail in underground mines. In making such a comparison, the administrative law judge relies on his or her expertise, knowledge, and that which the Court referred to as "certain appropriate objective factors." The claimant need not establish conditions prevailing in an underground mine. For Part 727 claims (filed prior to March 31, 1980), however, a claimant need not satisfy a comparability requirement. **Peabody Coal Co. v. Director, OWCP**, 778 F.2d 358 (7th Cir. 1985). For a discussion of work that constitutes coal mine employment and the determination of length of coal mine employment see Part II.A., F. of the Desk Book.

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