

BLBA BULLETIN NO. 10-07

Issue Date: May 11, 2010

Expiration Date: Indefinite

Subject: Automatic Entitlement of Eligible Survivors in New Claims with Responsible Operator Liability (First Time Filings)

Background: This is one of a series of Bulletins dealing with actions to be taken in various types of claims affected by the Patient Protection and Affordable Care Act of 2010, which includes several provisions in Section 1556 that amend the Black Lung Benefits Act. This Bulletin is concerned with Section 1556 (b) of the PPACA, which allows an eligible survivor who meets certain filing requirements to be entitled to benefits based on an award made to the miner. Under the Black Lung Benefits Amendments of 1981, a survivor of a miner who was awarded benefits could obtain benefits only by proving that the miner's death was due to pneumoconiosis. The PPACA removes this requirement for those survivors' claims that are filed after January 1, 2005, and are pending on or after the date of enactment. The date of enactment and the effective date of the changes is March 23, 2010, the date the President signed the PPACA into law.

The relevant sentence of 30 USC 932(l) now reads: "In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner."

References: 20 CFR 725.212; 30 USC 932(l).

Purpose: To provide guidance for District Office staff in adjudicating survivors' claims filed on or after March 23, 2010, that meet the following criteria: a responsible operator (RO), whether insured or self-insured, is liable for payment of benefits; the miner's claim had been filed on or after January 1, 1982, had been awarded, and the award is now final; and the survivor had not previously filed a claim.

Applicability: Appropriate DCMWC Personnel.

Action:

1. Upon receipt of a first-time survivor's claim based upon a miner's claim that had been awarded, the DD shall promptly issue a Proposed Decision and Order - Award of Benefits pursuant to 20 CFR 725.418(a)(2), which authorizes issuance of a PDO "at any time during the adjudication of [a] claim if ... [t]he district director determines that its issuance will expedite the adjudication of the claim."

2. The Proposed Decision and Order – Award of Benefits shall include the following language: “This claim is subject to **Section 1556 – Equity For Certain Eligible Survivors** of the **Patient Protection and Affordable Care Act of 2010, which applies to claims filed after January 1, 2005 that are pending on or after the PPACA’s March 23, 2010 enactment date.** Subsection (b) of Section 1556, entitled Continuation of Benefits, amends 30 USC 932(l) of the Black Lung Benefits Act. That section, as amended, states that ‘[i]n no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner.’ Consequently, under amended 30 USC 932(l), an eligible survivor of a miner who was awarded benefits is entitled to benefits without having to prove that the miner’s death was due to pneumoconiosis.”

3. The PDO must include appeal rights for the liable party. The PDO will not be held in abeyance for any reason. If the RO appeals the PDO and refuses to initiate benefit payments, the DD will follow the standard procedures for referring the claim to the Office of Administrative Law Judges and initiating interim benefits from the Black Lung Disability Trust Fund.

4. The changes in procedure described in this Bulletin are effective immediately.

5. This Bulletin does not apply to survivors’ claims based on an award to a miner who had filed his claim prior to enactment of the 1981 Amendments. The standard procedures for awarding such cases should be followed.

Please contact Michael McClaran in BSRP at mcclaran.michael@dol.gov if you have any questions.

Disposition: Retain this Bulletin until further notice or its incorporation into the Black Lung Benefits Procedure Manual.

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Distribution: All DCMWC staff
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