



BLBA BULLETIN NO. 12-08

Issue Date: August 22, 2012

Expiration Date: Indefinite

Subject: Extensions of Time Following Issuance of Schedule for Submission of Additional Evidence (SSAE)

Background: The regulations at 20 CFR 725.423 state that time periods established for parties to submit evidence after issuance of the SSAE may be extended if the requesting party demonstrates “good cause” for the extension. No standardized procedural guidance currently exists for evaluating extension requests; each request is considered on its own merits. Experience has demonstrated that disparities exist in the timing and content of extension requests received, as well in how they are handled.

In June and July 2012, DCMWC district offices sent a letter (Attachment 1) along with a notice (Attachment 2, “Extensions of Time – Showing Good Cause”) to parties known to represent coal mine operators, insurers and claimants. (Originally, the attachment was titled, “A Note About Extension Requests.”) The letter advised that the notice would soon accompany the SSAE package as a guide for what parties had to submit when requesting extensions of time, in order to demonstrate “good cause,” as required by regulation.

Purpose: This Bulletin directs district offices to begin sending the attachment with all SSAE issuances; introduces changes to the language used in the SSAE describing timeframes for submitting evidence; introduces procedural guidelines aimed at standardizing the evaluation and response to extension requests; and introduces changes to the language used in letters responding to parties’ extension requests.

Procedures contained herein are effective on August 22, 2012.

Applicability: Appropriate DCMWC Personnel

Action:

1. Send Attachment 2, “Extensions of Time – Showing Good Cause” as a part of all SSAE packages.
2. Modify the language on page 2 of the SSAE as follows:

a. Current language used in SSAE:

Any party that wishes to submit medical evidence at this time should mail that evidence to this office, and a copy to the other parties to the claim, in accordance with the following schedule:

SSAE + 60 days: Evidence that supports each party's position
SSAE + 90 days: Evidence that responds to evidence submitted by another party

Either party may request that these time periods be extended by showing good cause. A request for extension must be filed before the dates listed above.

b. New language for SSAE

Any party that wishes to submit medical evidence must mail that evidence to this office, and send copies to the other parties to the claim. Such evidence must be postmarked on or before the dates shown below:

SSAE + 60 days: By this date, submit evidence that supports your position
SSAE + 90 days: By this date, submit evidence that responds to the evidence that:
(1) is on record already, as described in the attached documents, and/or
(2) may be submitted between now and [ENTER SSAE + 60 DAYS HERE] by some other party to this claim

Either party may request that these time periods be extended by showing good cause. A request for extension must be filed before the dates listed above. See the enclosed document "Extensions of Time – Showing Good Cause," for important information about extension requests.

3. Use the following guidelines to determine whether the party requesting an extension of time has demonstrated good cause for needing the extension. The extension request should specify:
- Why the extension is needed
 - Why the evidence cannot be submitted within the allotted SSAE time-frames
 - What evidence will be submitted
 - When the evidence will be submitted

In addition, ensure that extension requests are responsive to the following instructions contained on the notice sent with the SSAE:

"If you are planning to schedule a medical appointment, please make arrangements promptly. Include in any request for an extension of time an explanation for your failure to begin making arrangements within 15 days of your receipt of the SSAE. Likewise, if you are developing other forms of medical evidence, please begin development promptly or explain in an extension request your failure to begin development within 15 days.

An unexplained delay in scheduling medical appointments and/or initiating development of other medical evidence may result in a denial of the extension request if the delay is the basis of the extension request.”

Do not *automatically* deny extension requests not in full compliance with the new requirements. Use judgment and consider all requests for extension of time on a case by case basis.

4. District Office management must establish a protocol for peer and/or supervisory review of extension requests that do not meet all of the above requirements. Efforts should be taken at inter-office and intra-office levels to ensure consistent response to deficient extension requests, especially for parties who deal with multiple offices, and especially during the first several months following the effective date of this Bulletin.
5. Take one or more of the actions below in response to extension requests deemed deficient, that is, when good cause for additional time has not been established:
 - a. Contact the requesting party in an effort to obtain information or documentation to bring them into full compliance with the new guidelines, that is, to obtain evidence needed to demonstrate good cause
 - b. Grant an extension, but for less time than requested
 - c. Deny the request for extension

We cannot anticipate all of the reasons or circumstances that might affect a party’s inability to meet all the requirements specified above. It is important to use judgment and seek supervisory input on novel or unusual situations.

6. Use the appropriate letters and new language on Attachment 3 when granting a request for an extension of time. The new language is intended to clarify timeframes for all parties, especially claimants.

A new requirement for sending a letter addressed to the claimant – whenever an extension is granted to the RO – underscores this intent. It articulates specific timeframes for submission of affirmative evidence versus rebuttal evidence (or, more precisely, evidence submitted *in response to evidence* developed by the Director and/or the RO).

The language and letters contained on Attachment 3 presume an extension request by the RO. The language should be modified appropriately for extensions requested by and granted to the claimant or the claimant’s representative.

7. Use appropriate letters and language when denying a request for an extension of time. Suggested language will be provided for use, effective September 1, 2012.

8. New Diary Action Codes (DACs) to track requests for and responses to extensions of time will be provided for use, effective September 1, 2012.

Disposition: Retain this Bulletin until further notice or its incorporation into the Coal Mine (BLBA) Procedure Manual.



STEVEN D. BRESKIN
Director, Division of Coal
Mine Workers' Compensation

Distribution: All DCMWC staff

U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs
Division of Coal Mine Workers' Compensation
Washington, DC 20210



Dear

Please see the enclosed notice regarding requests for extensions of time to submit evidence in response to the District Director's issuance of the Schedule for the Submission of Additional Evidence (SSAE) in a black lung claim. As you know, the SSAE provides time frames in which additional evidence may be submitted, and includes the following language:

Any party may request that these time periods be extended by showing good cause. A request for extension must be filed before the dates listed above.

Extensions of time are permitted by 20 CFR 725.423. The District Director may grant such a request only if "good cause" is shown.

We will soon be enclosing this notice in our SSAE packages.

This letter provides you an advance copy of the notice. Our goal is to issue the Proposed Decision and Order in each claim at the earliest possible date while still affording all parties due process. Your anticipated cooperation in this matter will be greatly appreciated.

Sincerely,

DISTRICT DIRECTOR

Enclosure

U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs
Division of Coal Mine Workers' Compensation
Washington, DC 20210



Miner Name:
Claimant Name:
Claim Number:

<INSERT DATE HERE>

Attachment to Schedule for Submission of Additional Evidence (SSAE)

Extensions of Time – Showing Good Cause

The District Office will *not* routinely authorize extensions of time for development beyond those already provided for by the enclosed Schedule for the Submission of Additional Evidence (SSAE). Any party may request that the SSAE's time periods be extended by showing *good cause*; accordingly, the following information is required so the request can be properly evaluated.

All extension requests must specify:

- 1.) **Why the extension is needed;**
- 2.) **Why the evidence cannot be submitted within the allotted SSAE time-frames;**
- 3.) **What evidence will be submitted; and**
- 4.) **When the evidence will be submitted.**

Note: If an extension is granted, the period for submitting rebuttal evidence will be extended as well, but *only* for rebuttal of the evidence submitted during the extension period.

If you are planning to schedule a medical appointment, please make arrangements promptly. Include in any request for an extension of time an explanation for your failure to begin making arrangements within 15 days of your receipt of the SSAE. Likewise, if you are developing other forms of medical evidence, please begin development promptly or explain in an extension request your failure to begin development within 15 days.

An unexplained delay in scheduling medical appointments and/or initiating development of other medical evidence may result in a denial of the extension request if the delay is the basis of the extension request.

Thank you for your cooperation.

NEW LANGUAGE FOR LETTERS RESPONDING TO EXTENSION REQUESTS

1. Letter to RO granting extension following issuance of SSAE:

CURRENT

Your request for additional time to submit evidence in response to the Schedule for Submission of Additional Evidence dated [Month Day, Year] has been received. The District Director grants the request and will allow until [Month Day, Year], for submission of evidence. The District Director will further allow until [Month Day, Year], for evidence submitted in response by the other parties to the claim. Once all time periods allowed for submission of evidence have expired, the District Director will proceed with the adjudication of the claim based on review of all evidence accepted into the record.

NEW LANGUAGE

Your request for additional time to submit evidence in response to the Schedule for Submission of Additional Evidence (SSAE) dated [INSERT SSAE DATE HERE] has been received. The District Director grants the request and will allow until [INSERT EXTENSION DATE HERE], for submission of evidence.

This extension of time applies to [INSERT REQUESTING PARTY NAME HERE] only.

The District Director will, however, allow the other parties to the claim until [INSERT EXTENSION DATE PLUS 30 DAYS HERE] to submit evidence that responds to evidence submitted by [INSERT REQUESTING PARTY NAME HERE].

Once all time periods allowed for submission of evidence have expired, the District Director will proceed with the adjudication of the claim based on review of all evidence accepted into the record.

NEW LANGUAGE FOR LETTERS RESPONDING TO EXTENSION REQUESTS

2. Language for New Cover Letter to claimant – MUST BE SENT along with copy of letter sent to RO (above) granting extension following issuance of SSAE

Version 1: if sent less than 60 days after date of SSAE

Please see attached letter that grants [INSERT REQUESTING PARTY NAME HERE] additional time, through [INSERT EXTENSION DATE HERE], for submission of evidence related to your black lung claim.

Please note that this extension of time does *not apply to you* except as described below:

What has changed for you:

You are hereby granted an additional 30 days, through [INSERT EXTENSION DATE PLUS 30 DAYS HERE], to *submit only evidence that responds to evidence* submitted by [INSERT REQUESTING PARTY NAME HERE].

(You are granted this additional time only if [INSERT REQUESTING PARTY NAME HERE] submits evidence. If [INSERT REQUESTING PARTY NAME HERE] fails to submit evidence, your timeframes for submitting evidence remain unchanged, as explained below.)

Other timeframes described to you previously are unchanged:

[INSERT SSAE 60-DAY DEADLINE HERE]: By this date (as stated in the Schedule for Submission of Additional Evidence (SSAE) dated [INSERT SSAE DATE HERE]), you may submit any of your own evidence to support your claim or position, or request additional time to submit such evidence.

[INSERT SSAE 90-DAY DEADLINE HERE]: By this date (also as stated in the SSAE), you may submit any evidence in response to evidence described in the SSAE, or request additional time to submit such evidence.

NEW LANGUAGE FOR LETTERS RESPONDING TO EXTENSION REQUESTS

3. Language for New Cover Letter to claimant – MUST BE SENT along with copy of letter sent to RO (above) granting extension following issuance of SSAE

Version 2: if sent 60+ days after date of SSAE – *hopefully usage will be infrequent*

Please see attached letter that grants [INSERT REQUESTING PARTY NAME HERE] additional time, through [INSERT EXTENSION DATE HERE], for submission of evidence related to your black lung claim.

Please note that this extension of time does *not apply to you* except as described below:

What has changed for you:

You are hereby granted an additional 30 days, through [INSERT EXTENSION DATE PLUS 30 DAYS HERE], to *submit only evidence that responds to evidence* submitted by [INSERT REQUESTING PARTY NAME HERE].

(You are granted this additional time only if [INSERT REQUESTING PARTY NAME HERE] submits evidence. If [INSERT REQUESTING PARTY NAME HERE] fails to submit evidence, your timeframes for submitting evidence remain unchanged, as explained below.)

Other timeframes described to you previously are unchanged:

One timeframe has expired: As stated in the Schedule for Submission of Additional Evidence (SSAE) dated [INSERT SSAE DATE HERE], you had until [INSERT SSAE 60-DAY DEADLINE HERE] to submit any of your own evidence to support your claim or position, or request additional time to submit such evidence. You did not submit any such evidence or request an extension.

One timeframe is still open: As stated in the SSAE dated [INSERT SSAE DATE HERE], you may submit any evidence in response to evidence described in the SSAE, or request additional time to submit such evidence, by [INSERT SSAE 90-DAY DEADLINE HERE].