

# **TABLE OF CONTENTS**

## **PART I INTRODUCTION**

- A. General History and Purposes
- B. Structure of the Act; Responsibility for Payment of Benefits; Establishment of Black Lung Disability Trust Fund
- C. Structure and Applicability of the Regulations
- D. Constitutionality of the Act and Regulations
- E. Incorporation of the Provisions of the Longshore and Harbor Workers' Compensation Act (LHWCA) into the Act through Section 422
- F. Statute of Limitations, Summary of Prior Law and Reform Act Changes

## **PART II DEFINITIONS**

- A. Miner
  - 1. General
  - 2. Coal Dust/Coal Mine Dust
  - 3. Status/Function/Situs & Situs/Function Tests
    - a. Status of the Coal
    - b. Function Test
    - c. Situs Test
  - 4. Construction/Transportation Workers

- B. Survivors/Dependents
  - 1. Surviving Spouse
  - 2. Dependent or Surviving Child
- C. Coal Mine
- D. Pneumoconiosis
- E. Total Disability
- F. Length of Coal Mine Employment
- G. Usual Coal Mine Work
- H. Effect of Current Coal Mine Employment or Coal Mine Employment at Time of Death
- I. Comparable and Gainful Work
- J. Primary Cause
- K. Chronic Disease or Respiratory Impairment
- L. Responsible Operator
  - 1. Generally
  - 2. Successor Operator

**PART III PROCEDURAL ISSUES**

- A. Requirement to File State Workers' Compensation Claim; Offset
- B. Consequences of Filing a Part B Claim
  - 1. Medical Benefits Only Claims (MBO)

- C. Payment of Benefits
  - 1. Generally; Assessment of Interest On Past Due Benefit Installments
  - 2. Under the 1981 Amendments to the Act
    - a. General Provisions
    - b. Claim "Denied"
    - c. Approval under Section 435
    - d. Procedural Issues Involving Transfer of Liability
    - e. Overpayments
- D. Parties
- E. Applicable Law
- F. Viability of Claims
  - 1. Abandonment
  - 2. Merger of Claims/Duplicate Claims
- G. Modifications
- H. Commencement of Benefits
  - 1. Date of Onset of Total Disability Due to Pneumoconiosis
  - 2. The Effect of Continued Employment
  - 3. Survivor's Claims
  - 4. Part B and Transitional Period Claims

**PART IV     ADMINISTRATIVE PROCESSING OF CLAIMS,  
POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE**

- A. The Claims Process
  - 1. Filing of Claims, Withdrawal
  - 2. The District Director's Role
  - 3. Formal Hearing
  - 4. Procedural Issues at the District Director or the Hearing Level
    - a. General Evidentiary Matters
    - b. Hearing Issues
    - c. Burden to Produce Evidence
    - d. Admission of Evidence
      - (1). Generally; Timely Evidence
      - (2). Late Evidence
    - e. Hearsay; Right to Cross-Examination
    - f. Claimants' Rights (Including Criteria for Ordering a Physical Examination)
    - g. Controversion
- B. Jurisdiction; Dismissals
- C. Full and Fair Hearing
  - 1. Right to a Hearing; Waiver
  - 2. Conduct of Hearing; Due Process
  - 3. Right to Counsel; *Pro Se* Status; Notice to Counsel
- D. Evaluation and Weighing of Evidence
  - 1. General Principles; Burden of Proof
  - 2. Elements of Entitlement
    - a. Generally; Interpretation of Medical Data

- b. Impairment
  - c. Disability
  - d. Existence of Pneumoconiosis
  - e. Cause of Disability and Pneumoconiosis
3. Specific Evidentiary Principles
- a. *Blevins* Test for Admissibility
  - b. Later Evidence
  - c. True Doubt Rule
  - d. Adverse Inferences
4. Medical Reports
- a. Documented Opinion
  - b. Reasoned Opinion
  - c. Non-Examining Physician
  - d. Opinions in Conflict with the Spirit of the Act
  - e. Qualifications of Physicians
  - f. Treating Physicians
5. Lay Testimony

6. X-Rays, Readers, Quality Standards
  - a. Generally
  - b. Section 413(b)
7. Autopsy and Biopsy Evidence, Quality Standards
8. Ventilatory and Blood Gas Studies, Quality Standards
9. Vocational Experts and Evidence
10. Determinations of State Medical Boards and Other Governmental Agencies
11. Contraindication of Continued Employment
12. Prejudice of Witnesses

**PART V      BENEFITS REVIEW BOARD POLICIES AND PROCEDURES**

- A. Scope of Review
  1. Generally; Issues Inadequately Raised and Briefed
  2. Timeliness
  3. Finality
  4. Standing
  5. Mootness
  6. Judicial Notice
  7. Administrative Procedure Act
  8. Law of the Case
  9. Issues on Appeal
  10. Stipulations and Conceded Issues
  11. Harmless Error
  12. Disposition as a Matter of Law
- B. Policies and Procedures

1. Dismissal
2. Remand
3. Motions for Reconsideration
4. *Pro Se* Claimant
5. Settlements

**PART VI ESTABLISHING ENTITLEMENT UNDER 20 C.F.R. PART 410**

- A. In General
- B. Existence of Pneumoconiosis
- C. Total Respiratory Disability
  1. Section 410.412
  2. Section 410.422
  3. Section 410.424
  4. Section 410.426
  5. The Primary Cause Requirement of Section 410.426(a)
- D. Arising Out of Coal Mine Employment
- E. Section 410.414(c)

**PART VII ESTABLISHING ENTITLEMENT UNDER 20 C.F.R. PART 718**

- A. In General
  - 1. Applicability
  - 2. Validity
  - 3. Entitlement
  - 4. Quality Standards
- B. Existence of Pneumoconiosis
  - 1. Generally
  - 2. Section 718.202(a)(1): X-ray Evidence
  - 3. Section 718.202(a)(2): Biopsy or Autopsy Evidence
  - 4. Section 718.202(a)(3): Presumptions
    - a. Section 718.304: Complicated Pneumoconiosis
    - b. Section 718.305
    - c. Section 718.306: "25 Years" Presumption
  - 5. Section 718.202(a)(4): Medical Reports
- C. Pneumoconiosis Arising Out of Coal Mine Employment
- D. Total Disability: Section 718.204
  - 1. Generally
  - 2. Section 718.204(c)(1)
  - 3. Section 718.204(c)(2)
  - 4. Section 718.204(c)(3)
  - 5. Section 718.204(c)(4)
  - 6. Section 718.204(c)(5)
- E. Cause of Disability:
  - 1. Section 718.204(b)

- 2. Revised Section 718.204(c)
- F. Survivors' Claims Without Benefit of a Presumption: Sections 718.205, 718.303; Filing
- G. Length of Coal Mine Employment: Section 718.301

**PART VIII STATUTORY PRESUMPTIONS IN MINERS' CLAIMS**

- A. Section 411(c) (1)
- B. Section 411(c) (3)
- C. Section 411(c) (4)
  - 1. The 15 Year Presumption (Generally)
  - 2. Implementation under Part 718 and in Survivors' Claims
  - 3. Implementation under Part 410
  - 4. The "Many Years" Presumption

**PART IX REGULATORY PRESUMPTIONS**

- A. 20 C.F.R. §727.203 Interim Presumption
  - 1. Invocation of the Interim Presumption Generally
    - a. Section 727.203(a) (1)
    - b. Section 727.203(a) (2)
    - c. Section 727.203(a) (3)
    - d. Section 727.203(a) (4)
    - e. Section 727.203(a) (5)
  - 2. Rebuttal of the Interim Presumption Generally
    - a. Section 727.203(b) (1)
    - b. Section 727.203(b) (2) [usual coal mine work; comparable and gainful work]

- c. Section 727.203 (b) (3)
  - d. Section 727.203 (b) (4)
  - 3. Reconsideration under Part 410 and Part 718 -  
Effect of Holdings Under Interim Presumption  
on Entitlement Under Part 410 and Part 718
- B. 20 C.F.R. §410.490 Interim Presumption

**PART X SURVIVORS' CLAIMS**

- A. Introduction
- B. Derivative Entitlement
- C. Section 411(c) (1)
- D. Section 411(c) (2)
  - 1. General
  - 2. Multiple Causes of Death
  - 3. Pneumoconiosis or A Respirable Disease
  - 4. Medical Infeasibility of Distinguishing  
Which Disease Caused Death
  - 5. Rebuttal of Section 411(c) (2)
- E. Section 411(c) (3)
- F. Section 411(c) (4)
- G. Section 411(c) (5)
- H. Survivors' Claims Under 20 C.F.R. §§727.203 and  
410.490
- I. Survivors' Claims Under 20 C.F.R. Parts 410 and  
718

**PART XI ATTORNEY FEES**

- A. Board Review of Attorney Fee Awards Made Below
  - 1. General Overview

2. Standard of Review
  3. Time for Filing Fee Petition
  4. Successful Prosecution of the Claim
  5. Jurisdictional Issues
  6. Requirements for Fee Petition
  7. Issues on Appeal of Attorney Fee Awards
    - a. Opposition to Attorney Fees
    - b. Counsel's Appeal of Substantial Reductions in the Requested Fee
      - (1). The Hourly Rate
      - (2). The Number of Hours
      - (3). Miscellaneous Expenses
        - (a). Travel
        - (b). Overhead Expenses
    - c. Enhancement of Fees
  8. Board Modification of Attorney Fees Awards
  9. Liability for Attorney Fees
    - a. Notice of Liability
    - b. Lay Representatives
    - c. Fee Related Issues Which Must Be Raised *Sua Sponte* by the Board
    - d. Escrow Accounts
    - e. Effect of Continued Coal Mine Employment
    - f. Employer's Ability to Pay
  10. Miscellaneous Issues
- B. Attorney Fees for Services Performed Before the Board

1. Hourly Rate
2. Successful Prosecution of Claim Before the Board

12/04