

PART III

PROCEDURAL ISSUES

H. COMMENCEMENT OF BENEFITS

4. PART B AND TRANSITIONAL PERIOD CLAIMS

A Part B claim is one that was filed after the inception of the Act and before July 1, 1973. **Chadwick v. Island Creek Coal Co.**, 7 BLR 1-883, 1-885 n.1 (1985). In those applications for benefits approved under the Social Security Administration regulations, the onset date of total disability was presumed to coincide with the date of filing, absent clear evidence to the contrary establishing an alternative onset date. **McCoy v. The Valley Camp Coal Co.**, 2 BLR 1-243, 1-247 (1979), citing **Callear v. Director, OWCP**, 8 BRBS 913 (1978). In those Part B claims that are fully adjudicated under the statutory and regulatory law in effect at the time of filing, the courts have refused to limit eligibility for benefits to periods beginning with either July 1, 1973 or January 1, 1974 as provided for transitional period and Part C claims. 20 C.F.R. §§725.503(d), 727.302, 727.303; see e.g., **Treadway v. Califano**, 584 F.2d 48 (4th Cir. 1978); **Yakim v. Califano**, 587 F.2d 149 (3d Cir. 1978); **Freeman v. Califano**, 600 F.2d 1057 (5th Cir. 1979).

In those Part B claims denied by the Social Security Administration and claimant elected review under Section 435 of the Reform Act, benefits can be awarded retroactively, but can begin no earlier than January 1, 1974. The commencement date for such benefits is determined by the date of onset where ascertainable; if not, benefits commence as of the date of election. 30 U.S.C. §945(c); 20 C.F.R. §§725.503(b), 727.302(c); **Curse v. Director, OWCP**, 843 F.2d 456, 11 BLR 2-139 (11th Cir. 1988); **Larioni v. Director, OWCP**, 6 BLR 1-1276 (1984); **Badovinus v. Director, OWCP**, 5 BLR 1-541 (1982).

Transitional period claims are those filed between July 1, 1973 and December 31, 1973. **Saylor v. Colowyo Coal Co.**, 9 BLR 1-85 (1986); see **Chadwick**, *supra* [for complete historical perspective]. When transition period claims are fully adjudicated and benefits are awarded under the 1972 Act, then payment commences as of the date of onset or month of filing, but no earlier than July 1, 1973. 20 C.F.R. §725.503(b), (d); **Saylor**, *supra*; **Mismash v. Director, OWCP**, 6 BLR 1-1240 (1984); **Clevenger v. Director, OWCP**, 2 BLR 1-557 (1979); cf. **Treadway**, *supra*; **Yakim**, *supra*; **Freeman**, *supra*. In contrast, when the claim has been denied under the 1972 Act or review under the 1972 Act has been waived in favor of Department of Labor review under the 1977 Act and the Part 727 regulations, then benefits cannot commence earlier than January 1, 1974. 30 U.S.C. §945; 20 C.F.R. §§725.503(d), 727.303; **Saylor**, *supra*; **Foley v. Director, OWCP**, 7 BLR 1-896 (1985).

CASE LISTINGS

DIGESTS

6/95