

PART III

PROCEDURAL ISSUES

J. TIMELINESS OF CLAIM FILING

DIGESTS

The Fourth Circuit, citing its unpublished decision in ***Westmoreland Coal v. Amick***, No. 04-1147, 2004 WL 2791653 (4th Cir. Dec. 6, 2004), held that the statute of limitations provided by Section 422(f) of the Act, 30 U.S.C. §932(f), and implemented by 20 C.F.R. §725.308, applies to both initial and subsequent claims. The Court held that because neither the statute nor the Section 725.308 regulation makes any distinction between initial or subsequent claims, simply referring to “any” or “a” claim for benefits, an interpretation of the statute or regulation that makes a distinction between initial and subsequent claims is precluded. ***Sewell Coal Co. v. Director, OWCP [Dempsey]***, 523 F.3d 257, 24 BLR 2-128 (4th Cir. 2008), *vac’g and remanding Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004)(*en banc*).

The Board held that the three-year statute of limitations at 30 U.S.C. §932(f), 20 C.F.R. §725.308(a), is applicable to the filing of both the initial claim by a miner and any subsequent claims. This decision overrules the Board’s previous holdings in ***Faulk v. Peabody Coal Co.***, 14 BLR 1-18 (1990) and ***Andryka v. Rochester & Pittsburgh Coal Co.***, 14 BLR 1-34 (1990). ***J.O. v. Helen Mining Co.***, BLR (2009).

A medical determination of total disability due to pneumoconiosis predating a prior, final denial of benefits is deemed a misdiagnosis and thus, cannot trigger the statute of limitations for filing a subsequent claim. ***J.O. v. Helen Mining Co.***, BLR (2009).

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