
Table of ContentsSchedule for the Submission of Additional Evidence

<u>Paragraph</u>	<u>Subject</u>	<u>Page</u>
1.	Purpose and Scope.....	1
2.	Authority.....	1
3.	Policy.....	1
4.	Definitions.....	2
5.	Claims Development Process.....	4
6.	Schedule for the Submission of Additional Evidence.....	8
7.	Subsequent Miners' Claims.....	17
8.	Subsequent Survivors' Claims.....	20
9.	Summary of Time Frames for the SSAE.....	23
10.	Extensions of time.....	24

1. Purpose and Scope. This chapter explains the work flow as a claim moves through the adjudication process. It explains the purpose and content of the Schedule for the Submission of Additional Evidence (SSAE). The chapter also addresses the regulatory time frames for actions and responses, and mailing requirements for various documents.

2. Authority. Section 422(a) and (c) of the BLBA. 20 CFR 725 Subparts A, B, C, E and G: 725.101, 725.201, 725.304, 725.306, 725.307, 725.309, 725.311, 725.401 - .423 and 725.490 - .497.

3. Policy. Except with respect to a claim governed by the automatic entitlement provision of 30 USC 932(1)(see discussion below), a claimant must submit evidence to establish that five criteria are met to qualify for benefits under the Act:

- a. The claimant must have filed a timely, valid claim for benefits.
- b. The claimant must be or have been a coal miner or the eligible survivor of a coal miner.
- c. The claimant (or the miner on whose record the claim is based) must be or have been suffering from pneumoconiosis.
- d. The miner must be totally disabled due to pneumoconiosis, or the miner's death must have been due to pneumoconiosis.
- e. The miner's pneumoconiosis must have arisen from employment in the Nation's coal mines.

A claimant must meet all five criteria to qualify for benefits. The medical criteria may be established with the aid of a statutory presumption. If the claimant does not meet any one of the criteria, the claim cannot be approved.

The Patient Protection and Affordable Care Act (PPACA) amended Section 422(1) of the BLBA, 30 USC 932(1). Under amended Section 422(1), the eligible survivor of a miner who was awarded benefits is entitled to benefits based on the miner's award. The survivor does not have to prove that the miner's death was due to pneumoconiosis. The amendment applies to claims that are filed after January 1, 2005 and that are pending on or after the March 23, 2010

enactment date of PPACA. The PPACA also reinstated 30 USC 921(c)(4), which provides a rebuttable presumption of total disability or death due to pneumoconiosis if certain conditions are met. That amended provision also applies to claims filed after January 1, 2005 and pending on or after March 23, 2010.

4. Definitions.

a. Schedule for the Submission of Additional Evidence (SSAE). The SSAE is a document issued by the District Director (DD) to notify the parties of the DD's preliminary determination on the claimant's entitlement to benefits and the identification of the responsible operator. The DD issues an SSAE following the development of the Department's Complete Pulmonary Evaluation and the receipt of liability evidence from notified potentially liable operators. The SSAE contains the DD's designation of a responsible operator liable for the payment of benefits and notifies the operator that it must file a response accepting or contesting its liability. The SSAE notifies the parties of the DD's preliminary evaluation of the evidence regarding the miner's or claimant's eligibility, but does not require a formal response regarding eligibility from any party.

b. Operator. Operator means any owner, lessee, or other person who operates, controls, or supervises a coal mine, including a prior or successor operator, and certain transportation and construction employers.

c. Responsible Operator. Responsible operator means an operator that has been determined to be liable for the payment of benefits to a claimant for periods of eligibility after December 31, 1973, with respect to a claim filed under Part C of the Act.

d. Potentially Liable Operator. Potentially liable operator means an operator that meets the five requirements set forth in 20 CFR 725.494 and that therefore may be responsible for the payment of benefits. Upon receipt of the miner's employment history, the DD investigates whether any operator may

be held liable for the payment of benefits as a responsible operator in accordance with the criteria contained in Subpart G of section 725 of the regulations. The DD may identify one or more operators as potentially liable. An operator becomes a potentially liable operator when it is issued a Notice of Claim.

e. Notice of Claim. A notice of claim is a document sent to a potentially liable operator and its carrier, if any, that notifies it of the existence of the claim and of its potential liability for the payment of benefits. Any operator or carrier notified of the claim is thereafter considered to be a party to the claim unless it is dismissed by an adjudication officer (see 725.350) and is not thereafter notified again of its potential liability. The notice of claim includes a copy of the claimant's application and a copy of all evidence obtained by the DD relating to the miner's employment. An operator has 30 days from receipt of this notice to contest its identification as a potentially liable operator.

f. Designated Responsible Operator. The designated responsible operator is the one operator that the DD identifies as liable for the payment of benefits in the SSAE and PDO. After the DD completes development of medical evidence under 725.405 and receives responses and evidence submitted by the potentially liable responsible operator(s), the DD issues a SSAE. The SSAE contains the DD's designation of one responsible operator liable for the payment of benefits. The DD may, at the DD's discretion, dismiss as parties any of the remaining operators that had been notified of their potential liability or may keep additional operators on notice as parties to the claim. If a party has been dismissed and the DD thereafter determines that the participation of that party is required, he may once again notify the operator in accordance with 725.407(d).

g. Proposed Decision and Order. A proposed decision and order is a document, issued by the DD after the evidentiary development of the claim is completed and

all contested issues, if any, are joined, which purports to resolve a claim on the basis of the evidence submitted to or obtained by the DD. A proposed decision and order shall be considered a final adjudication of a claim only as provided in 725.419.

5. Claims Development Process.

a. Overview. When a claim for benefits is received, the DD will engage in a preliminary gathering of the relevant evidence. The DD will develop medical evidence, including the complete pulmonary evaluation. The DD will identify and notify those coal mine operators among the miner's former employers that are deemed to be potentially liable, and gather evidence from them regarding their employment of the miner and their status as operators. At the conclusion of this evidence-gathering, the DD will issue a Schedule for the Submission of Additional Evidence (SSAE). This document will contain a summary of the results of the complete pulmonary evaluation and the DD's preliminary analysis of that evidence. The analysis will include a discussion of the elements of entitlement and will clearly explain why each element has or has not been established. The schedule will also contain the DD's designation of a responsible operator liable for the payment of claimant's benefits.

Note that if a survivor is entitled to benefits under amended Section 422(1), the DD does not issue an SSAE. Instead, for such claims, the DD must issue a PDO awarding benefits.

Within 30 days of issuance of the SSAE, the designated operator must file a response indicating its intent to accept or contest its identification as the responsible operator liable for the payment of benefits. If the operator does not timely respond, it is deemed to have accepted liability and contested the claimant's entitlement.

The SSAE will allow the claimant and the designated responsible operator not less than 60 days to submit

additional evidence, including evidence relevant to the claimant's entitlement to benefits and the employer's liability for them. The schedule will also allow at least an additional 30 days within which one party may respond to the evidence submitted by the opposing party or evidence developed by the Department.

At the conclusion of the time scheduled for the submission of additional evidence, the DD may either notify additional operators of their potential liability for benefits, issue another SSAE designating another responsible operator liable for payment of benefits, schedule the claim for an informal conference, or issue a proposed decision and order.

b. Development of Documentary Evidence-General.

(1) Employment history. Each claimant must furnish the DD with a complete and detailed history of the coal miner's employment and, upon request, supporting documentation. If the claim is subject to the PPACA, the DD should obtain evidence documenting whether the miner worked in underground or in surface coal mining or both. If the miner worked in a surface mine, the DD should also obtain evidence concerning the extent to which the miner was exposed to dust in such employment.

(2) Matters of record. Where it is necessary to obtain proof of age, marriage, termination of marriage, death, family relationship, dependency, or any other fact that may be proven as a matter of public record, the claimant must furnish such proof to the DD upon request.

(3) Documentary evidence. If a claimant is required to submit documents to the DD, the claimant must submit either the original or a certified copy of the document.

(4) Submission of insufficient evidence. In the event a claimant submits insufficient evidence

regarding any matter, the DD will inform the claimant of what further evidence is necessary and request that such evidence be submitted within a specified reasonable time that may, upon request, be extended for good cause.

c. Development of medical evidence, scheduling of medical examinations and tests. In the case of a claim filed by or on behalf of a miner, the DD will, where necessary, schedule the miner for a complete pulmonary evaluation under 725.406.

In the case of a claim filed by or on behalf of a survivor of a miner, the DD will provide the claimant with the opportunity to submit whatever medical evidence is necessary and available for the development and evaluation of the claim.

d. Identification and notification of responsible operator. Upon receipt of the miner's employment history, the DD will investigate whether an operator should be held liable for the payment of benefits as a responsible operator in accordance with criteria contained in Part 725, Subpart G of the regulations. The determination and notification of one or more operators must be done in accordance with the procedures set forth in BLBA PM 2-800.

e. Schedule for the Submission of Additional Evidence (SSAE).

(1) In the event that the DD concludes that the evidence supports an award of benefits, and there is no operator that may be held liable for the payment of benefits, the DD will issue a Proposed Decision and Order awarding benefits payable by the Black Lung Disability Trust Fund. (See BLBA PM 2-1105, Proposed Decision and Order.) In such a case, the DD will not issue a Schedule for the Submission of Additional Evidence because no further evidentiary development is needed to establish entitlement. If additional evidence is needed to address ancillary issues, such as benefits augmentation or offset, the Proposed

Decision and Order should not be issued until all such evidence is received. Any necessary additional evidence should be obtained from the claimant through follow up letters or phone calls. The SSAE should not be used for this purpose.

(2) When the DD's preliminary evaluation of the medical evidence in a Trust Fund case weighs against a benefit award, the DD will issue the SSAE setting out the timeframes for the submission of additional medical evidence. The claimant need not respond, and indeed, may simply wait until the proposed decision and order is issued and then request a hearing within the applicable 30 day time period. Conversely, the claimant may respond to the SSAE with additional evidence or a request for an informal conference. The DD must return evidence received outside of the applicable time frames. If the claim is referred for a formal hearing, additional evidence may be submitted to the administrative law judge in accordance with the applicable hearing regulations (see Part 725, Subpart F).

(3) An operator need not respond to a DD's Schedule for the Submission of Additional Evidence. If the operator does not respond to the SSAE, it is deemed to have accepted potential liability and contested entitlement. This is sufficient to make the responsible operator liable for a reasonable attorney's fee if the claimant successfully prosecutes his claim.

(4) The DD should not delay issuing the SSAE after the Department's pulmonary evaluation has been completed, the time periods set forth in the Notice of Claim, including extensions, have expired and sufficient evidence has been presented to identify a "designated responsible operator". If there is insufficient evidence of coal mine employment (apart from that necessary to identify a responsible operator), relationship, dependency, etc., the DD will

follow up with the claimant to request the additional proof but will not delay the issuing of the SSAE.

6. Issuing the SSAE. The SSAE will contain the DD's preliminary analysis of the evidence, and identify for the claimant those elements of entitlement, if any, that the evidence fails to establish. In addition, the SSAE will provide an explanation of the steps remaining in the DD's claim processing.

The SSAE will also contain the DD's designation of the responsible operator liable for the payment of any benefits.

The SSAE must be served on all interested parties via certified mail on the same date it is issued. The service list should include, but is not limited to, the claimant, the designated responsible operator, the carrier, all other operators that received a Notice of Claim and that have not been dismissed, and the representatives of all parties.

a. Content of the SSAE. The SSAE is a document that advises the parties of the DD's preliminary findings on the claimant's entitlement and the identity of the responsible operator. When preparing the SSAE, the DD will consider all submitted evidence that is in substantial compliance with the regulatory quality standards and that conforms to the numerical limits on medical evidence. In addition, the SSAE will advise all parties that they may submit additional medical or liability evidence. The SSAE is to be issued as soon as the results of DOL's complete pulmonary evaluation are received, those tests have been determined to be valid, there is sufficient information to make a preliminary designation of a responsible operator, and the time periods for submission of evidence following the Notice of Claim have expired.

The SSAE must contain the following:

- o Summary of medical evidence
- o Preliminary analysis of the medical evidence

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- o Designation of a responsible operator
 - o Statement regarding the right to submit additional evidence
 - o Statement regarding the right to obtain representation or assistance
 - o Statement listing time frames for responding and submitting evidence

(1) Summary of medical evidence. If the claim was filed by, or on behalf of, a miner, the SSAE must contain a summary of the complete pulmonary evaluation administered pursuant to 725.406. If the claim was filed by, or on behalf of, a survivor, the SSAE must contain a summary of any medical evidence obtained by the DD pursuant to 725.405(c). All medical evidence received and admitted into the record will be recorded on the Summary of Medical and Employment Evidence. All evidence must be listed separately on the Medical Summary form. On that form, the DD must indicate, for each piece of evidence, the type of evidence submitted (i.e., x-ray reading, narrative medical report) and the date of the test or report, and must provide a summary of the diagnosis and findings in the report or a summary of the test results. Include the name of the doctor and the doctor's qualifications.

Evidence that is not in substantial compliance with the regulatory quality standards should be listed on the Summary and will count toward the numerical limitations for a party's submission of medical evidence. Evidence that exceeds the limitations on medical evidence should not be listed on the Summary.

(2) Preliminary Analysis of the Medical Evidence. The SSAE must contain the DD's preliminary analysis and weighing of the medical evidence. If the DD believes that the evidence fails to

establish any necessary element of entitlement, he must inform the claimant of the element of entitlement not established and the reasons for her/his conclusions. In addition, the SSAE will advise the claimant that, unless additional evidence is submitted, the DD will issue a Proposed Decision and Order denying the claim.

The DD must separately address each element of entitlement, must analyze and weigh each piece of evidence pertinent to that element and resolve any conflicts in the evidence. For example, if the X-ray from the DOL Complete Pulmonary Evaluation is positive for the presence of the disease and an RO X-ray is negative for the disease, the narrative must note the conflict, weigh the evidence, reach a conclusion and explain the basis for that conclusion. A conflict may also arise from different types of medical evidence. For example, an x-ray reading and a narrative medical report may conflict regarding the presence of clinical pneumoconiosis. In such situations, the DD must address the conflict and explain the basis for the conclusion that the presence of pneumoconiosis has or has not been established.

(3) Special Procedures for Claims Governed by PPACA. If a claimant is eligible for consideration under the Section 411(c)(4) presumption, the DD must review the evidence to determine if the presumption is invoked. To invoke the presumption, the evidence must establish (1) that the miner worked at least 15 years in underground employment or in surface employment in conditions substantially similar to underground employment, and (2) that the miner is totally disabled by a respiratory or pulmonary impairment under the criteria contained in 718.204. If the presumption is invoked, the DD must determine if it is rebutted. The presumption is rebutted if a preponderance of the evidence establishes that the miner did not have pneumoconiosis or that his disability (in the

case of a living miner's claim) or death (in the case of a survivor's claim) was unrelated to pneumoconiosis. Please refer to BLBA Bulletin 10-08 for a detailed description of procedures used to adjudicate claims under the Section 411(c)(4) presumption.

(4) Designation of a Responsible Operator. The SSAE must contain the DD's designation of a responsible operator potentially liable for the payment of benefits.

In the event that the DD has designated as the RO an employer other than the employer who last employed the miner, the DD must include a statement explaining the reasons for that designation. If the reasons include the most recent employer's failure to insure its liability for benefits, the records must also contain the 725.495(d) statement from the RO Section. This statement must confirm that OWCP has searched its files and has found no record of insurance coverage, or of authorization to self-insure, for the most recent employer that meets the applicable conditions of 725.494(e)(1) and (e)(2). It is important that this statement address both the existence of a commercial insurance policy and authorization to self-insure. Such a statement will be prima facie evidence that the most recent employer is not financially capable of assuming liability for a claim. In the absence of such a statement, it will be presumed that the most recent employer is financially capable of assuming liability for a claim.

The DD may, in the DD's discretion, dismiss as parties any of the operators notified of their potential liability pursuant to 725.407. If the DD thereafter determines that the participation of a party dismissed pursuant to this section is required, the DD may once again notify the operator in accordance with 725.407(d).

(a) If two or more potentially liable operators were notified of the claim, the DD MUST name only one of them as the designated responsible operator in the SSAE. The DD may not issue two separate SSAEs for two different designated employers at the same time. The DD need not dismiss the other operator(s) although the DD may do so if the evidence identifying one operator seems persuasive. The operator(s) that are not dismissed continue to be potentially liable and may develop and submit liability evidence. Any operator other than the designated one will not be permitted to develop medical evidence, however. If, following development of the RO issues, the DD determines that the original operator was incorrectly designated and another operator should now be designated, the DD must issue a second SSAE. The SSAE narrative should indicate that the second RO is now the designated RO and that the first named RO is retained as a potentially liable operator. If the newly designated operator was not sent a Notice of Claim, a Notice of Claim must be issued to the new operator prior to issuing a new SSAE.

(b) Other operators remain as parties to the claim and are potentially liable until the DD dismisses them from the claim. At the time that a Proposed Decision and Order is issued, the DD must finally designate one RO and dismiss all other operators.

(c) If the operator/carrier fails to respond timely to a Notice of Claim, the following paragraph should be added to the SSAE and PDO narrative:

"A Notice of Claim was received by the potentially liable operator/carrier (name of coal mine operator and/or carrier) on (date) as evidenced by the signed return receipt

from the post office. The potentially liable operator/carrier has failed to timely respond to the Notice of Claim or to timely request an extension of time for response. Therefore, in accordance with 20 CFR 725.408(a)(3), the operator shall not be allowed to contest its liability for the payment of benefits on any of the grounds set forth in the Operator Assertions - 20 CFR 725.408(a)(2)."

(d) If the operator/carrier fails to submit timely evidence relevant to its disagreement with its identification as a potentially liable operator, the following paragraph is added to the SSAE and PDO narrative:

"A Notice of Claim was received by the potentially liable operator/carrier (name of coal mine operator and/or carrier) on (date) as evidenced by the signed return receipt from the post office. The potentially liable operator/carrier has failed to timely submit evidence to support its position or to timely request an extension of the period of time for the submission of such evidence. In accordance with 20 CFR 725.408(b), no documentary evidence relevant to the grounds set forth in the Operator Assertions - 20 CFR 725.408(a)(2) - may be admitted in any further proceedings."

(5) Right to Submit Additional Evidence. The SSAE must notify the claimant and the designated RO that they have the right to request further adjudication of the claim and that they have the right to submit additional evidence.

(6) Right to Obtain Representation or Assistance. The SSAE must also notify the claimant of the right to obtain representation or assistance. In a case in which the DD has designated an RO, the SSAE must further notify the claimant that if the operator fails to accept the claimant's

entitlement to benefits within the time limit provided by 725.412, the cost of obtaining additional medical and other necessary evidence, along with a reasonable attorney's fee, will be reimbursed by the RO in the event that the claimant establishes entitlement to benefits payable by that operator. In a case in which no operator is liable for the payment of benefits, the SSAE must notify the claimant that the cost of obtaining additional medical and other necessary evidence, along with a reasonable attorney's fee, will be reimbursed by the Trust Fund in the event that the claimant establishes entitlement to benefits.

(7) Notification of Time Frames. The SSAE must allow the designated operator 30 days within which to accept or contest its liability. The same amount of time is provided for the designated operator to accept claimant's entitlement to benefits, if it should so choose. The SSAE must also allow all parties not less than 60 days within which to submit additional evidence, including evidence relevant to the claimant's eligibility for benefits and evidence relevant to the liability of the designated responsible operator, and must provide not less than an additional 30 days within which the parties may respond to evidence submitted by other parties.

7. Response to the SSAE.

a. Operator's Response. Within 30 days of the issuance of the SSAE, the designated operator shall either contest its designation as responsible operator or file a statement accepting its liability for the payment of the claimant's benefits. The 30-day period begins on the date that the SSAE is issued as evidenced by the date on the SSAE. The RO's response is timely if it is post-marked within the 30 day period. If the designated operator contests liability, it must submit any evidence regarding the liability of other operators in accordance

with the SSAE. Failure to contest its selection as designated responsible operator constitutes a waiver of the operator's right to further contest its liability and to submit additional evidence regarding its liability. Note that even if the designated operator timely contests its liability, it cannot submit evidence challenging its status as a potentially liable operator; the period for submission of evidence regarding the potentially liable operator requirements will have expired before the SSAE was issued.

In addition, within 30 days of the issuance of the SSAE, the designated operator may file a statement accepting or contesting claimant's entitlement to benefits. Failure to agree, or failure to respond to the issue of the claimant's entitlement to benefits, will be deemed a decision to contest the claimant's entitlement. The Schedule for the Submission of Additional Evidence provides for the simultaneous development of evidence by the claimant and the responsible operator. The regulations require that parties submit all evidence regarding operator liability while the claim is pending before the District Director, including information regarding other potentially responsible operators. The designated responsible operator may wish to submit documentary evidence to establish that another employer of the miner should be the designated responsible operator. The SSAE provides the time frames for this development and submission, and the time frames may be extended for good cause.

b. Time Frames for the Parties. The SSAE must provide a minimum of 60 days to submit evidence pertaining to both responsible operator liability and the claimant's entitlement, and an additional 30 days to respond to other parties' evidence including the evidence from the Department's complete pulmonary evaluation. These periods may be extended for good cause shown. Therefore, the DD must wait 90 days before issuing a Proposed

Decision and Order. Note that this does not mean the Responsible Operator and claimant each have 90 days to submit any type of evidence. All parties must submit their affirmative case evidence within the same sixty-day period, or request an extension prior to the expiration of the period, if their evidence is to be accepted. The additional thirty days only allows for the rebuttal of the affirmative case evidence submitted by other parties and rebuttal of evidence in the Department's complete pulmonary evaluation.

c. Extensions of Time. If the DD permits one party an extension of time for the submission of evidence, that extension does not apply to other parties who have not requested an extension. For example, if the parties' affirmative evidence was due on March 1, 2003, and the RO requested and was granted an extension until April 1, 2003, the claimant's evidence would still be due on or before March 1, 2003. Thirty days would still be granted to the claimant to rebut the evidence submitted by the RO. Thus, the claimant's 30 day rebuttal period would begin following the April 1, 2003, deadline for submission of the RO's evidence.

d. Actions After Expiration of Time Frames. Following the expiration of the time periods for submission of evidence, the DD may schedule a conference, issue a Proposed Decision and Order, or take such other action as the DD considers appropriate. Any party may request an informal conference within 30 days from the date of the issuance of the SSAE. Even without such a request, an informal conference may be held at the discretion of the DD. The conference cannot be held unless both parties are represented, however. The Proposed Decision and Order will be the only formal decision that the DD issues addressing the claimant's eligibility for benefits and the liability of a responsible operator for the payment of those benefits.

e. Enclosures to the SSAE include.

(1) A copy of all medical and employment evidence.

(2) A CM-2970 Operator response to the Schedule for the Submission of Additional Evidence Form.

(3) A CM-1078 for designation of a non-attorney representative, if the claimant is not represented.

(4) The Table of Coal Mine Industry Average Earnings, if applicable.

8. Subsequent Miner's Claims.

a. A subsequent miner's claim is one filed more than one year after the effective date of a final order denying the miner's prior claim (i.e., a claim not subject to the modification provision). 20 C.F.R. 725.309(d). A new complete pulmonary evaluation must be provided to the miner with each subsequent claim. The regulation at 725.309(d) states that, if the claimant files a subsequent claim, "the claim shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final."

(1) The Preamble to the October 8, 1999 Proposed Rule, 64 Fed. Reg. page 54984, makes clear that the claimant must show that his condition has changed: "If the miner produces new evidence concerning his physical condition that establishes any of the elements of entitlement previously resolved against him, he is entitled to litigate his entitlement to benefits without regard to findings made in the earlier adjudication."

Note that the applicable conditions of entitlement are limited to those conditions upon which the prior denial was based. For example, if the claim

was denied solely on the basis that the individual was not a miner, the subsequent claim must be denied unless the individual worked as a miner following the prior denial. Similarly, if the claim was denied because the miner did not meet one or more of the medical eligibility criteria contained in part 718, the subsequent claim must be denied unless the miner establishes at least one of the criteria that he or she did not meet previously.

(2) Under some circumstances, the Section 411(c)(4) presumption may be used to establish the required change in an applicable condition of entitlement. If the miner's prior claim was denied because he failed to establish that he has pneumoconiosis or that his totally disabling pulmonary impairment is related to pneumoconiosis, the miner could now prove those elements by invoking the Section 411(c)(4) presumption. Because 725.309(d)(3) requires that the change be proven by new evidence, the miner would be required to invoke the presumption based on newly developed medical evidence establishing total disability; he could not simply rely on a favorable finding of disability from the prior claim. If the miner's prior claim was denied because he failed to prove total disability, he may establish a change in an applicable condition of entitlement by proving with new medical evidence that he is now totally disabled. Under those circumstances, the miner would simultaneously establish a change and (assuming he also established the required 15 years of qualifying employment) invoke the presumption.

(3) Once an applicable condition of entitlement is proven, the subsequent claim must be judged on its own merits. Preclusive effect will not be given to findings made in the previous denial. For example, the fact that the presence of pneumoconiosis was found in the prior claim does not mean that it must be accepted in the current claim. The claimant must "re-prove" the fact.

However, 725.309(d)(4) provides that "any stipulation made by any party in connection with the prior claim shall be binding on that party in the adjudication of the subsequent claim." Thus, there is a clear distinction between findings on contested issues in a prior claim, which are not binding in a subsequent claim, and stipulations in prior findings, which are binding.

(4) In each case involving a subsequent claim, the DD should include language in the SSAE addressing the requirement that the miner establish a change in an applicable condition of entitlement. If the preliminary analysis indicates a denial of the subsequent claim, and all of the elements that were denied in the first claim are still denied in the subsequent claim, add a statement in the narrative analysis as follows:

"You have filed a claim more than one year after the effective date of a final order denying a previous claim; therefore, pursuant to 20 C.F.R. 725.309(d) the current claim is considered to be a subsequent claim.

(5) In accordance with 20 C.F.R. 725.309(d), the subsequent claim shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement has changed since the date upon which the order denying the prior claim became final.

You have not demonstrated that any of the applicable conditions of entitlement have changed. All of the entitlement conditions that were denied in the prior claim would still be denied in the current claim and, therefore, if we were to make a decision at this time, the current claim would be denied on the same basis as the prior claim."

(6) The above statements would follow the analysis of the entitlement factors and the finding regarding each of those entitlement factors.

b. If a previously denied element of entitlement is now established, but the claim will nonetheless be denied, the last paragraph of the above subsequent claim standard language will need to be modified. The paragraph should explain that although a change in an applicable condition of entitlement was established, one or more of the remaining conditions of entitlement has not been proven. If the claim will be awarded, the last paragraph should state that the necessary change in at least one element of entitlement has been demonstrated and that all remaining elements of entitlement have also been established.

c. In a subsequent filing, the claims examiner must review the findings in the prior claim in order to identify the applicable conditions of entitlement. The claims examiner must then review the new medical evidence and determine if there has been a change in one of the applicable conditions of entitlement. The prior evidence should not be listed on the Summary of Medical Evidence. Note that any evidence submitted in connection with any prior claim will become part of the record in the subsequent claim provided that it was not excluded in the adjudication of the prior claim.

d. In any case in which a subsequent claim is an award, no benefits may be paid for any period prior to the date upon which the order denying the prior claim became final (20 CFR 725.309(d)(5)).

9. Subsequent Survivor's Claims.

a. A miner's survivor may also file a subsequent claim. If the re-filing survivor is entitled to benefits under Section 422(1), the 725.309(d) requirement to establish a change in an applicable condition of entitlement does not apply; the DD should issue a PDO awarding the claim. Please see BLBA Bulletin 10-08. In all other cases, a survivor's claim must be denied if the claimant does not establish a change in an applicable condition of entitlement. Moreover, the condition of entitlement must be one that is capable of change. It is

therefore more difficult for a survivor to establish the required change because most of the conditions of entitlement for a survivor (most significantly, those relating to the miner's physical condition and cause of death) will not be capable of change.

Consistent with the above, the regulations provide that a subsequent claim filed by a surviving spouse, child, parent, brother, or sister must be denied unless the applicable conditions of entitlement in such claim include at least one condition unrelated to the miner's physical condition at the time of his death. 20 C.F.R. 725.309(d)(3). Accordingly, the regulations make clear that not all subsequent survivors' claims must be automatically denied.

Consequently, if the earlier survivor's claim was denied solely because the miner did not die due to pneumoconiosis, the regulation would require the denial of any additional survivor's claim as well, because this condition of entitlement could not change after death. In short, where the denial of a prior survivor's claim is based solely on the survivor's failure to establish that the miner suffered from pneumoconiosis, that the pneumoconiosis was caused by the miner's coal mine employment, or that the pneumoconiosis contributed to the miner's death, the subsequent survivor's claim must be denied, absent waiver by the liable party. However, where the earlier denial was based in whole or in part on a finding that is subject to change, for example, that the survivor had remarried, or the claimant is a child who left school, it is inconsistent with the basic tenets of issue preclusion to prohibit that survivor from establishing entitlement to benefits.

b. In a TF case, DOL may waive the automatic denial requirement if new evidence is presented that would result in an award. In an RO claim, the RO would need to waive the automatic denial provision for the claim to move forward to an award rather than to an automatic denial.

c. In any subsequent survivor's claim in which no

evidence relating to a change in an applicable condition of entitlement is submitted or developed, the Schedule for the Submission of Additional Evidence is not appropriate. In such a case, an Order to Show Cause would be issued followed by a Proposed Decision and Order. (See BLBA PM 2-1104, Order to Show Cause, and BLBA PM 2-1105, Proposed Decision and Order.) A show cause order would also be appropriate if the claimant submits only evidence that is not relevant to a condition of entitlement that is capable of change.

d. If the survivor establishes the requisite change in an applicable condition of entitlement, the claim will not be automatically denied. Instead, the DD should develop all issues fully and then issue the SSAE rather than an Order to Show Cause. Since one condition of entitlement has changed, all evidence must be reviewed and addressed in the SSAE. Pursuant to 725.309(d)(4), "If the claimant demonstrates a change in one of the applicable conditions of entitlement, no findings made in connection with the prior claim, except those based on a party's failure to contest an issue (see 725.463), shall be binding on any party in the adjudication of the subsequent claim. However, any stipulation made by any party in connection with the prior claim shall be binding on that party in the adjudication of the subsequent claim."

e. If the prior survivor's claim was denied on the basis of abandonment, all conditions of entitlement are considered as "applicable." The regulations provide that, "For the purposes of 725.309, a denial by reason of abandonment shall be deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. 725.409(c). Thus, if the survivor establishes that a condition subject to change, such as marriage status, has changed, the claim must be considered on its merits.

f. As with the LM claim, if the survivor's subsequent claim is awarded, no benefits may be paid for any period prior to the date upon which the order denying the prior claim became final.

10. Summary of Time Frames for the SSAE.

a. Pursuant to 725.412(a)(1), within 30 days after the DD issues an SSAE pursuant to 725.410 of this part containing a designation of the responsible operator liable for the payment of benefits, that operator shall file a response with regard to its liability.

The 30-day period within which the RO must file its response begins on the date that the SSAE is issued.

The RO's response is timely if it is post-marked within the 30 day time limit.

If the RO requests an extension of time regarding liability issues, that request should be made within this 30 day time period. (The written request must be postmarked within the 30 day time limit.)

Pursuant to 725.412(a)(2), if the responsible operator designated by the DD does not file a timely response, it shall be deemed to have accepted the DD's designation with respect to its potential liability and to have waived its right to contest potential liability in any further proceeding conducted with respect to the claim.

b. Pursuant to 725.410(b), the SSAE shall allow all parties not less than 60 days from the date the SSAE is issued to submit additional evidence, including evidence relevant to the claimant's eligibility and evidence relevant to the liability of the designated responsible operator, and shall provide not less than an additional 30 days within which the parties may respond to evidence submitted by other parties.

Pursuant to 725.414(b), except as provided by 725.408(b)(2), the designated RO may submit evidence to demonstrate that it is not the potentially liable operator that most recently employed the claimant.

The 60-day evidence submission period begins with the issuance of the SSAE. The RO has responded when the RO

has submitted evidence. The date of submission is the postmark on the envelope mailing the evidence or the date of the fax submitting the evidence.

c. Pursuant to 725.414(d), except to the extent permitted by 725.456 and 725.310(b), the evidentiary limitations set forth in section 725.414 shall apply to all proceedings conducted with respect to a claim, and no documentary evidence pertaining to liability shall be admitted in any further proceedings conducted with respect to a claim unless it is submitted to the DD in accordance with this section.

11. Extensions of time. In accordance with 725.423, except for the 30-day time limit set forth in 725.419 for response to the Proposed Decision and Order, any of the time periods set forth in this subpart may be extended, for good cause shown, by filing a request for an extension of time with the DD prior to the expiration of the time period.