

PART I

INTRODUCTION

A. GENERAL HISTORY AND PURPOSES

The federal black lung program is derived from four statutes. In 1969, Congress enacted the Federal Coal Mine Health and Safety Act, Pub. L. No. 91-173, 83 Stat. 798 (1969)(codified as amended at 30 U.S.C. §901 *et seq.*). Title IV of the Federal Coal Mine Health and Safety Act established a federal black lung benefits program for coal miners who are totally disabled due to pneumoconiosis and surviving dependents of miners whose death was due to pneumoconiosis. Title IV provided an irrebuttable presumption under Section 411(c)(3) if the miner had complicated pneumoconiosis, as well as two rebuttable presumptions under Section 411(c)(1), (2) which were available if the miner had ten or more years of coal mine employment. See 30 U.S.C. §921(c)(1)-(3).

The first major amendment to Title IV was the Black Lung Benefits Act of 1972 (1972 Amendments), Pub. L. No. 92-303, 86 Stat. 153 (1972)(codified as amended at 30 U.S.C. §901). The 1972 Amendments liberalized provisions for black lung benefits. Some of the most significant changes resulting from this legislation included: 1) expanding the definition of "total disability" under Section 402(f) to include a miner prevented from engaging in gainful employment by pneumoconiosis, 30 U.S.C. §902(f); 2) extending Title IV coverage to surface miners; 3) expanding the definition of "dependents" under Section 412, 30 U.S.C. §922; 4) providing that no claim can be denied solely on the basis of a chest roentgenogram under Section 413(b), 30 U.S.C. §923(b); and 5) adding a rebuttable presumption under Section 411(c)(4) based on 15 years of coal mine employment, 30 U.S.C. §921(c)(4). The Black Lung Benefits Act of 1972 also gave the Secretary of Health, Education and Welfare broad authority to promulgate regulations to reopen all pending and denied claims and review them under this new legislation. The Social Security Administration (SSA) soon thereafter promulgated 20 C.F.R. §410.490, a set of liberal interim regulations implementing the 1972 amendments. These regulations applied to Part B claims processed by SSA, while Part C claims continued to be adjudicated under more restrictive medical eligibility regulations, 20 C.F.R. Part 410, Subpart D.

The second major amendment to Title IV was the Black Lung Benefits Reform Act of 1977 (Reform Act), Pub. L. No. 95-239, 92 Stat. 95 (1978)(codified as amended at 30 U.S.C. §901). The Reform Act expanded the definition of "miner" from any individual who is employed in a coal mine to any individual who works in or around a coal mine or coal preparation facility in the extraction or preparation of coal under

Section 402(d). 30 U.S.C. §902(d). The Reform Act also provided under Section 402(f)(2) that all claims pending or denied as of March 1, 1978, as well as any new claims filed before March 1, 1980, were to be adjudicated pursuant to criteria *no more restrictive than* the criteria applicable to a claim filed on June 30, 1973, *i.e.*, 20 C.F.R. §410.490. 30 U.S.C. §902(f)(2); see ***Pittson Coal Group v. Sebben***, 109 S.Ct. 414, 12 BLR 2-89 (1988); see generally ***Stanton v. Director, OWCP***, 8 BLR 1-438 (1986). Other key features of the Reform Act were the prohibition against x-ray rereadings in certain instances under Section 413(b), and the creation of a new presumption under Section 411(c)(5) based on 25 years or more of coal qualifying mine employment. 30 U.S.C. §§923(b), 921(c)(5).

At the same time the Reform Act was passed, Congress also passed the Black Lung Benefits Revenue Act of 1977, Pub. L. No. 95-227, 92 Stat. 11 (1978). The Black Lung Benefits Revenue Act of 1977 established the Black Lung Disability Trust Fund (Trust Fund). The Trust Fund is financed by an excise tax paid by coal mine operators on each ton of coal sold. 26 U.S.C. §4121. The Trust Fund assumed liability for all Part C claims in which the miner's last coal mine employment ended before January 1, 1970.

The most recent amendment to Title IV was the Black Lung Benefits Amendments of 1981, Pub. L. 97-119, 95 Stat. 1635 (1981)(1981 Amendments). The 1981 Amendments make it significantly more difficult to establish eligibility for Black Lung Benefits in claims filed on or after January 1, 1982. The 1981 legislation repealed three of the five presumptions based on duration of coal mine employment (the 10-year presumption in Section 411(c)(2), 30 U.S.C. §921(c)(2), the 15-year presumption in Section 411(c)(4), 30 U.S.C. §921(c)(4), and the 25-year presumption in Section 411(c)(5), 30 U.S.C. §921(c)(5)). The 1981 Amendments also removed the provision allowing entitlement to survivors based on the miner's *total disability* due to pneumoconiosis at the time of death. The Act now requires that a survivor's entitlement must be predicated on the miner's *death* being due to pneumoconiosis. 30 U.S.C. §901 (1982). The 1981 Amendments also deleted the provision requiring the Department of Labor to accept a board certified or board eligible radiologist's positive x-ray reading and diagnosis of pneumoconiosis where there is other evidence of a pulmonary or respiratory impairment. 30 U.S.C. §923(b)(1982).

CASE LISTINGS

DIGESTS

The Seventh Circuit held that the intent of Section 902(f)(2) was to have the Secretary of Labor apply the interim medical standards in Part B in reviewing pending and previously denied Part C claims. The Secretary, however, was not bound by the Part B

rules and was free to adopt new adjudicative criteria for processing such claims. **Strike v. Director, OWCP**, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987).

The D.C. Circuit held that the Black Lung Act invests the Secretary of Labor with the authority to write regulations, 30 U.S.C. §902(f)(1), and to supplement statutory terms, 30 U.S.C. §932(a). **Nat'l Mining Ass'n v. Department of Labor**, 292 F.3d 849, 869, 23 BLR 1-24 (D.C. Cir. 2002), *aff'g in part and rev'g in part Nat'l Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001).

The D.C. Circuit held that the Black Lung Act, 30 U.S.C. §902(f)(1)(D), grants the Secretary of Labor the authority to establish the medical criteria for adequate proof of total disability. **Nat'l Mining Ass'n v. Department of Labor**, 292 F.3d 849, 873, 23 BLR 1-24 (D.C. Cir. 2002), *aff'g in part and rev'g in part Nat'l Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001).

On March 23, 2010, amendments to the Act, applicable to claims filed after January 1, 2005 that were pending on March 23, 2010, were enacted. With respect to living miners' claims and survivors' claims, Section 1556 of Public Law No. 111-148 reinstated the "15-year presumption" of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). Under Section 411(c)(4), if a miner is found to have at least fifteen years of qualifying coal mine employment, and a totally disabling respiratory impairment, there will be a rebuttable presumption that the miner is totally disabled due to pneumoconiosis, that the miner's death was due to pneumoconiosis, or that at the time of the miner's death he or she was totally disabled by pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)). **Mathews v. United Pocahontas Coal Co.**, BLR (2010).

With respect to survivors' claims, the amendments revive the "derivative entitlement" provision of Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), for claims filed after January 1, 2005, that are pending on or after March 23, 2010. Under Section 932(*l*), a survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*). **Mathews v. United Pocahontas Coal Co.**, BLR (2010).

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