

PART I

INTRODUCTION

B. STRUCTURE OF THE ACT; RESPONSIBILITY FOR PAYMENT OF BENEFITS; ESTABLISHMENT OF BLACK LUNG DISABILITY TRUST FUND

The Federal Coal Mine Health and Safety Act is divided into three parts. Part A, which includes Sections 401 through 404, 30 U.S.C. §§901-904, concerns primarily Congressional purpose and definitions. Part B presents adjudication standards for claims filed between December 30, 1969, the date of enactment and June 30, 1973. Part B claims are adjudicated by the Secretary of Health, Education, and Welfare (now, Health and Human Services) and benefits are paid by the federal government. Part B includes Sections 411 through 415 of the Act, 30 U.S.C. §§921-925. Section 415 presents adjudication standards for "transition period" claims, *i.e.*, those claims filed between July 1, 1973, and December 31, 1973. Transition period claims are adjudicated by the Secretary of Labor. See *Warholic v. Barnes and Tucker Co.*, 8 BLR 1-281 (1985). The federal government is responsible for payment on those claims until December 31, 1973. Responsible operators, having been notified of a claim and entitled to participate in a hearing thereon, are thereafter liable for benefits. In cases where no operator liability is found, the Trust Fund will assume benefit payment responsibility.

Part C presents adjudication standards for claims filed after December 31, 1973, and includes Sections 421 through 435 of the Act, 30 U.S.C. §§931-945. Part C claims are processed under an applicable state workers' compensation law approved by the Secretary of Labor under standards set forth in Section 421 of the Act, 30 U.S.C. §931. In the absence of an approved state program, claims are to be filed with and adjudicated by the Secretary of Labor and benefits paid by the mine operators. To date, no state workers' compensation program has been approved by the Secretary of Labor.

Under Part C, Section 422(c) of the Act, as amended by the Reform Act and the 1981 Amendments, modifies the employer's responsibility for payment of benefits. This Section states that except as provided in Section 422(i), 30 U.S.C. §932(i) no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis: (1) that did not arise, at least in part, out of employment in a mine during a period after December 31, 1969 when it was operated by such operator; or (2) that was the subject of a claim denied before March 1, 1978, [see 30 U.S.C. §902(i)] and that is or has been approved in accordance with the provisions of Section 435, 30 U.S.C. §945. 30 U.S.C. §932(c). The passage of the 1981 Amendments requires that liability be transferred from the operators to the Director for all claims that were

previously denied by HEW or the Department of Labor before March 1, 1978, but are subsequently approved under the liberalized criteria of Section 435. See **Director, OWCP v. Goudy**, 777 F.2d 1122, 8 BLR 2-74 (6th Cir. 1985).

Under the 1981 Amendments, liability transfers from coal operators to the Trust Fund for claims that were denied prior to March 1, 1978, the effective date of the Reform Act, and that are or have been approved under Section 435, the reviewing provision of the Act. 30 U.S.C. §932(j)(3); 26 U.S.C. §9501(d)(1)(B). In the relevant part, the Act states in Section 402(i)(2)(A) that "denied" claims include those in which claimant was notified by the Department of Labor of an administrative or informal denial more than one year prior to the effective date of the Reform Act, *i.e.*, by March 1, 1977, and did not within one year of the date of notification of such denial, request a hearing, present additional evidence or indicate an intention to present additional evidence. 30 U.S.C. §902(i)(2)(A). The final regulations promulgated by the Department of Labor to implement this portion of the transfer provisions followed the language of Section 402(i)(2)(A) but also added a fourth provision, stating that liability would also transfer if claimant did not within one year, "[r]equest a modification or reconsideration of the denial on the ground of a change in conditions or because of a mistake in a determination of fact." 30 U.S.C. § 902(i)(2)(A); 20 C.F.R. §725.496(b)(2)(iv); see generally **Hedrick v. Green Construction Co.**, 7 BLR 1-783 (1985).

CASE LISTINGS

[Sixth Circuit held that Director may contest claims approved by HEW under Section 435 and certified to DOL for payment; Court held that HEW's initial determinations of eligibility are not binding on DOL as final adjudications of eligibility] **Director, OWCP v. Goudy**, 777 F.2d 1122, 8 BLR 2-74 (6th Cir. 1985).

DIGESTS

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