

**Q&As – Impact of OWCP Bulletin 14-09 (Addressing Dr. Wheeler X-ray Readings)
on Previously Denied Claims**

BACKGROUND: On June 2, 2014, the Office of Workers' Compensation Programs (OWCP) issued BLBA Bulletin 14-09, "Weighing Chest X-ray Evidence that Includes a Negative Reading by Dr. Paul Wheeler," that instructed Division of Coal Mine Workers' Compensation (DCMWC) district offices *not* to credit negative chest x-ray readings for pneumoconiosis performed by Dr. Paul S. Wheeler of Johns Hopkins University Hospital in the absence of persuasive evidence rehabilitating his negative readings. OWCP will apply this policy to all claims currently pending before DCMWC.

The questions and answers below apply to previously-denied claims containing a negative X-ray reading from Dr. Wheeler.

1. QUESTION: What is the impact of OWCP's new policy (Bulletin 14-09) on previously denied claims in which the file contained a negative chest x-ray reading for pneumoconiosis performed by Dr. Paul S. Wheeler?

ANSWER: The impact varies based on when the claim was denied and the identity of the claimant (i.e. whether the claimant is the miner or a miner's survivor). DCMWC is currently in the process of reviewing these claims and sending letters to claimants informing them of their rights.

2. QUESTION: I am a miner. My claim was denied within the past year. What should I do?

ANSWER: DCMWC has sent letters to advise these miners of their right to request modification (reconsideration) of their denial. Once they receive the notification letter—or even if they do not receive a letter—these miners should contact the district office and indicate their intent to request modification if they believe their claims were wrongfully denied. A telephone call is sufficient to request modification if a claim was denied within the past year.

3. QUESTION: I am a survivor of a miner. My survivor's claim was denied within the past year. What should I do?

ANSWER: These survivors should contact the district office and indicate their intent to request modification if they believe their claims were wrongfully denied. A telephone call is sufficient to request modification if a claim was denied within the past year.

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4. QUESTION: I am the survivor of a miner whose claim for benefits was denied within the past year. He has since passed away. What should I do?

ANSWER: DCMWC will advise these survivors (**if they can be reached**) of their right to request modification of the denial of the miner’s claim. Once they receive the notification letter—or even if they do not receive a letter—these survivors should contact the district office and indicate their intent to request modification of the miner’s claim if they believe the claim was wrongfully denied. A telephone call is sufficient to request modification if a claim was denied within the past year.

NOTE ON QUESTIONS 1-4: On June 16, DCMWC district offices sent letters to approximately 70 miners whose claims were denied within the past year (after May 2013). The letter advised:

According to our records, evidence in your denied black lung claim included at least one chest x-ray reading performed by Dr. Paul S. Wheeler of Johns Hopkins University Hospital. The Department of Labor recently issued guidance to its Black Lung District offices instructing them not to credit Dr. Wheeler’s negative readings for pneumoconiosis under certain circumstances. The Department has decided to contact previously denied claimants, like you, to be sure you are aware that you may request further review of the evidence in your claim.

The letter further advised the claimants that if they wished to request reopening – otherwise known as a modification request – they needed to contact the DCMWC district office that issued the letter. Each letter contained a deadline by which the claimant must contact the district office: one year from the effective date of the claimant’s final denial, the last date allowed for a reopening/modification request.

In addition, several miners in this group received phone calls from the district office advising them of the situation and of their right to request modification because the 1-year time threshold was quickly approaching.

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5. QUESTION: I am a miner. My claim was denied more than one year ago. What should I do?

ANSWER: DCMWC is sending letters to advise these miners of their right to file a new claim. Once they receive the notification letter—or even if they do not receive a letter—these miners should file a new claim with the district office if they believe they are entitled to benefits.

NOTE ON QUESTION 5: DCMWC will send these letters, beginning the week of June 30, as miner information is verified. There may be over 1,000 of these claimants and the denials date back more than 10 years. A best available listing of denied miners will be finalized soon. The letter advises:

According to our records, evidence in your denied black lung claim included at least one chest x-ray reading performed by Dr. Paul S. Wheeler of Johns Hopkins University Hospital. The Department of Labor recently issued guidance to its Black Lung District offices instructing them not to credit Dr. Wheeler’s negative readings for pneumoconiosis under certain circumstances. The Department has decided to contact previously denied claimants, like you, whose previous claim was denied, to ensure that you are aware of your right to file a new claim.

The letter goes on to advise these miners that if they file a new black lung claim, they will be offered a complete pulmonary medical examination, including a chest x-ray, arterial blood gas study and pulmonary function study, at no expense.

6. QUESTION: I am a miner’s survivor. My claim was denied more than one year ago. What should I do? Will I receive a letter?

ANSWER: DCMWC will send letters to *miner-claimants only*. Except in situations not applicable here, any second or subsequent claim filed by a survivor whose previous claim was finally denied more than one year ago (and thus beyond the period during which modification is permitted), must be automatically denied in accordance with the Department’s regulations. Accordingly, DCMWC will not send letters to previously-denied survivor claimants.

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7. QUESTION: I am the survivor of a miner. The miner’s claim was denied more than one year ago, and he has since passed away. What rights/recourse do I have?

ANSWER: A survivor in this situation may file a survivor’s claim on his or her own behalf (if it is the survivor’s *initial* filing) and attempt to establish that the miner’s death was due to pneumoconiosis arising out of coal mine employment. If the miner worked in underground coal mines for at least 15 years or in above-ground mines in substantially similar conditions for at least 15 years, his or her survivor will have the benefit of the 15-year presumption (Byrd Amendment) when trying to establish death due to pneumoconiosis.

8. QUESTION: What will happen if a claimant has moved since his/her black lung claim was denied?

ANSWER: DCMWC will use the most current name and address data in its system to attempt to contact the claimant. DCMWC knows that there will be a number of claimants who either have passed away or moved since their claims were denied, and we anticipate receiving some returned/undeliverable letters.

9. QUESTION: After a miner or survivor requests modification, then what?

ANSWER: DCMWC will acknowledge the claimant’s modification request by sending the claimant a letter – and copying all parties, including the Responsible Coal Mine Operator, Insurance Carrier and attorneys/agents of operators and carriers – that states, “We will evaluate your request for modification in accordance with BLBA Bulletin 14-09.” That is, the negative x-ray readings by Dr. Wheeler will not be credited in the absence of persuasive evidence rehabilitating his readings.

The DCMWC acknowledgement letter also will state that, “In addition, the record will remain open for sixty (60) days from today’s date to allow all parties to submit additional evidence (including evidence aimed at rehabilitating Dr. Wheeler’s x-ray readings).”

After any additional evidence is submitted by the parties and the 60-day period (and any requested extension period if requested and granted by DCMWC) expires, DCMWC will evaluate all evidence received and issue a Proposed Decision and Order regarding the request for modification.

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10. QUESTION: After a miner files a new claim, then what?

ANSWER: The standard DCMWC claims process will be followed. The miner will be offered a complete pulmonary medical examination, including a chest x-ray, arterial blood gas study and pulmonary function study, at DOL expense. The miner will be advised that the coal mine operator potentially liable for the payment of benefits will have the opportunity to participate in the process and may – at some point – schedule him/her for medical examinations as well.

Any request by a coal mine operator to examine the miner routinely follows the preliminary recommendation by DCMWC, called the Schedule for Submission of Additional Evidence (SSAE). DCMWC issues the SSAE after evaluating the results of the full battery of medical tests offered and paid for by DOL. DCMWC will issue a Proposed Decision and Order (PDO) to approve or deny the claim at the conclusion of evidentiary development, as set out in the SSAE, and all parties will be advised of their right to request revision or a formal hearing in response to the PDO. Of course, if the operator submits an x-ray reading by Dr. Wheeler at any point, it will not be credited, per the instructions in Bulletin 14-09, unless the operator provides persuasive information rehabilitating his readings.