



**BLBA BULLETIN NO. 10-04**

Issue Date: March 11, 2010

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Expiration Date: March 10, 2011

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**Subject:** Limitations on Compelling CT Scans

**Background:** DCMWC's policy concerning the requirement that the miner cooperate with the Responsible Operator in the development of the operator's medical evidence includes submitting to operator-ordered CT scans for the purpose of diagnosis. The miner's failure to cooperate may lead to the District Director's issuance of an Order To Show Cause why the claim should not be deemed abandoned in accordance with 20 CFR 725.409(a)(1). This policy followed the discussion in the Preamble to the Regulations issued December 20, 2000 (comments on 20 CFR 718.202, pp. 79945-6).

However, some operator attorneys have insisted that miners submit to multiple CT scans, usually in conjunction with the two medical examinations permitted under 20 CFR 725.414, and have asked DCMWC to initiate the abandonment process when a claimant refuses to schedule one or both scans. Some claimants and their attorneys have objected to this on the grounds that multiple CT scans are intrusive and subject the miner to excessive radiation.

Computer-assisted tomography can be useful in the diagnosis and treatment of certain pulmonary diseases, and may be covered by the Federal Black Lung Program as part of a miner's treatment. However, as diagnostic of a miner's pneumoconiosis under 20 CFR 718.202, they are of value only as "other evidence" under 20 CFR 718.107 because no quality or classification standards for CT scans have been developed by the International Labour Office as have been for chest x-rays. 718.107 also requires the party submitting other evidence to establish that the evidence is medically acceptable and relevant to proving the existence or nonexistence of pneumoconiosis, the sequelae of pneumoconiosis, or a respiratory impairment. In general, the medical acceptability of CT scans has been established, although the District Director must ascertain in all cases whether or not it is relevant to the claim at hand.

A standard chest x-ray delivers an effective radiation dose of 0.1 milliSieverts (mSv) absorbed by the body's organs. A chest tomography has an effective radiation dose of 8 mSv, an equivalent of approximately 80 chest x-rays. In another comparison, a chest x-ray is equivalent to approximately 10 days of natural background radiation, while a chest CT scan is equivalent to about 2 years of background radiation. (Sources: [RadiologyInfo](#), Radiological Society of North America, July 8, 2009, and [Computed Tomography – An Increasing Source of Radiation Exposure](#), New England Journal of Medicine, November 29, 2007.) DCMWC believes that

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requiring miners to involuntarily undergo more than one CT scan may expose them to an unacceptable level of radiation.

References: 20 CFR 718.107, 718.202, 725.409(a)(1).

Purpose: To provide guidance concerning interpretation of the requirement that a miner cooperate with the responsible mine operator's development of medical evidence in claims filed after January 19, 2001.

Applicability: Appropriate DCMWC Personnel.

Action: The Division has determined that miners should not be subject to abandonment proceedings by the District Director for refusing to cooperate with the responsible operator by submitting to more than one CT scan scheduled by the operator or insisted upon by the physician selected by the operator. While the miner may be subject to such sanction upon refusing to submit to one CT scan (if the DD determines that the claimant's refusal to undergo a CT scan is unreasonable in light of the relevant circumstances in the case), the DD should not initiate abandonment proceedings if the miner has already submitted to an operator-ordered CT scan. Also, in cases where an operator has access to a recent CT scan and can refer the study to its own physician for an interpretation, the District Director may be justified in not initiating abandonment proceedings for the miner's refusal to undergo a first scan at the operator's request.

Miner claimants should be notified of their right to decline unnecessary or excessive medical testing in correspondence concerning their responsibility to cooperate with the operator in the development of the operator's medical evidence. Notification should generally follow this example: *Although you are required to cooperate with the operator, you have the right to decline unnecessary, experimental, or excessive test procedures, including multiple CT scans. If you think the testing required by the operator is excessive or unreasonable, you should contact your attorney, if you have one, or the District Office as soon as possible.*

Disposition: Retain this Bulletin until its expiration date or its incorporation into the Coal Mine (BLBA) Procedure Manual.

  
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Distribution: All supervisors, claims examiners, and workers' compensation specialists