



BLBA BULLETIN NO. 10-08

Issue Date: July 9, 2010

Expiration Date: Indefinite

Subject: Automatic Entitlement of Eligible Survivors in Claims with Previous Denials

Background: This is one of a series of Bulletins dealing with actions to be taken in various types of claims affected by the Patient Protection and Affordable Care Act of 2010, which includes several provisions in Section 1556 that amend the Black Lung Benefits Act. This Bulletin is concerned with Section 1556 (b) of the PPACA as it applies to survivors who have previously been denied because they could not establish that the miner's death was due to pneumoconiosis. Bulletins 10-05 and 10-07 dealt with survivors who met the provisions of Section 1556 and whose claims were new or pending. Under the Black Lung Benefits Amendments of 1981, a survivor of a miner who was awarded benefits could obtain benefits only by proving that the miner's death was due to pneumoconiosis. The PPACA removes this requirement for those survivors' claims that are filed after January 1, 2005, and are pending on or after the date of enactment.

The relevant sentence of 30 USC 932(l) now reads: "In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner."

References: 20 CFR 725.212; 20 CFR 725.309(d) and (e), 30 USC 932(l), BLBA (422(l)).

Purpose: To provide guidance for District Office staff in adjudicating survivors' claims that meet two criteria: the miner's claim had been filed on or after January 1, 1982, had been awarded, and the award is now final; and the survivor had previously filed a claim which was denied because the miner's death could not be attributed to pneumoconiosis. This guidance shall apply whether the Black Lung Disability Trust Fund (TF) or a responsible operator (RO) is liable for payment of benefits

Applicability: Appropriate DCMWC Personnel.

Action:

1. Upon receipt of a refiled survivor's claim based upon a miner's claim that had been awarded, the DD shall promptly issue a Proposed Decision and Order - Award of Benefits pursuant to 20 CFR 725.418(a)(2), which authorizes issuance of a PDO "at any time during the adjudication of [a] claim if ... [t]he district director determines that its issuance will expedite the adjudication of the claim."

2. The Proposed Decision and Order – Award of Benefits shall include the following language: "This claim is subject to **Section 1556 – Equity For Certain Eligible Survivors of the Patient Protection and Affordable Care Act of 2010, which applies to claims filed after January 1, 2005 that are pending on or after the PPACA's March 23, 2010 enactment date.** Subsection (b) of Section 1556, entitled Continuation of Benefits, amends 30 USC 932(l) of the Black Lung Benefits Act. That section, as amended, states that '[i]n no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner.' Consequently, under amended 30 USC 932(l), an eligible survivor of a miner who was awarded benefits is entitled to benefits without having to prove that the miner's death was due to pneumoconiosis."

3. The PDO shall also contain this additional language: "The regulatory requirement that a subsequent claim be denied based on the prior denial unless a change is established, 20 CFR 725.309(d)(3), does not apply in the case of a subsequent survivor claim governed by amended Section 422(l). This award to a previously-denied survivor does not constitute re-litigation of the survivor's prior claim, but is derivative of the miner's award. No benefits are payable for any period of time prior to the date upon which the order denying the prior claim became final."

4. Any retroactive benefits due the survivor shall be calculated and paid from the month following the date that the most recent denial of benefits became final (725.309(d)(5)).

5. The PDO must include appeal rights for the liable party. The PDO will not be held in abeyance for any reason. If the RO appeals the PDO and refuses to initiate benefit payments, the DD will follow the standard procedures for referring the claim to the Office of Administrative Law Judges and initiating interim benefits from the Black Lung Disability Trust Fund.

6. The changes in procedure described in this Bulletin are effective immediately.

Please contact Kathleen Smith in BSRP at smith.kathleen@dol.gov if you have any questions.

Disposition: Retain this Bulletin until further notice or its incorporation into the Black Lung Benefits Procedure Manual.

A handwritten signature in blue ink, appearing to read "Steven D. Breeskin". The signature is fluid and cursive, with a long horizontal stroke at the end.

STEVEN D. BRESKIN
Acting Director, Division of Coal
Mine Workers' Compensation

Distribution: All DCMWC staff
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