



**U.S. DEPARTMENT OF LABOR Office of Workers' Compensation Programs  
Division of Coal Mine Workers' Compensation  
Washington, D.C. 20210**

**BLBA BULLETIN NO. 14-05**

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**Subject:** Creating stronger PDO's in living miner cases where the 15-year presumption may apply.

**Background:** This is a pilot initiative that applies only to certain living miner claims.

On March 23, 2010, Congress reinstated Section 411(c)(4) of the Act, 30 USC §921(c)(4). This section provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis where the miner had at least 15 years of qualifying coal mine employment and a totally disabling respiratory impairment. It applies to all claims filed after January 1, 2005, and pending on or after the date of enactment, March 23, 2010.

With the reinstatement of this presumption, if a miner proves that he (1) worked 15 or more years in underground coal mining or in surface mining in conditions substantially similar to an underground coal mine, and (2) is totally disabled by any of the means available under 20 CFR 718.204, he is presumed totally disabled **due to pneumoconiosis**. For living miner's claims, the presumption establishes both the disease and disability-causation elements.

But the presumption is rebuttable. It can be rebutted by evidence that the miner does not have either clinical or legal pneumoconiosis or that no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in 20 CFR 718.201. The burden to prove rebuttal is on the party opposing entitlement—usually the named responsible operator.

**Purpose and Scope:** To strengthen and improve Proposed Decision and Orders in instances where the party opposing entitlement has submitted medical evidence subsequent to the issuance of a Schedule for the Submission of Additional Evidence that recommended an award of benefits.

**Applicability:** Appropriate DCMWC personnel

**References:** 20 CFR 718.201, 718.204, 718.305, 725.406(c), Section 411(c)(4) of the BLBA, 30 USC 921(c)(4)

**Action:**

**A. *This pilot initiative applies to living miner cases meeting all of the following criteria:***

1. the miner has or had 15 or more years of qualifying coal mine employment;
2. DCMWC's complete medical examination indicates the miner is entitled to benefits;
3. the C/E has issued an SSAE proposing entitlement; *and*
4. the party opposing entitlement has submitted evidence that appears contrary to the C/E's proposed entitlement finding.

In these instances, we are adopting the procedure set forth in subheading B below.

**B. The C/E will:**

1. Perform a critical analysis of the medical evidence presented and identify any discrepancies between reports.
  - a. Is the reported smoking history the same?
  - b. Is the reported exposure history the same?
  - c. Is the proffered medical history the same?
  - d. Are there diagnoses presented in one report that are completely absent in another report?
  - e. Are there *major* differences in values reported on objective testing (e.g., DCMWC's pulmonary function tests produced qualifying values and later tests were non-qualifying under 20 CFR 718.204)?
2. Review the current claim file and any other previous filings to see if any discrepancies can be resolved.
  - a. What is the "history" of the smoking history? Are there different histories reported?
  - b. How much coal mine employment has actually been established as opposed to how much is alleged?

- c. Have there been recent relevant medical issues noted (e.g., recent heart attack/stroke, surgeries) that the DCMWC physician has not addressed in rendering his or her opinion?
3. Prepare a request for a supplemental report to the doctor who originally did DCMWC's physical examination. The request should include a copy of any medical evidence submitted after the SSAE and identify any discrepancies found between the doctor's original report and the newly submitted reports or objective testing results. The request also should specifically mention any unique or additional diagnoses not found in DCMWC's doctor's original report. You should ask the physician to clarify/explain/expand his or her original opinion in light of the additional evidence and any discrepancies noted.
4. Forward the request for the supplemental report to the physician along with a pre-coded HCFA-1500 to cover costs involved in obtaining this supplemental report. Add DAC 953S to the diary action screen. (The original report should have been brought into substantial compliance BEFORE the SSAE was issued; therefore, the request for a supplemental report will entail payment of an additional fee.) Allow 30 days for the physician to respond to your request.
5. Review the supplemental report carefully to be sure it answers all relevant issues.

Once the response is received, all evidence must be reviewed and weighed in light of the clarified report. The C/E must address whether the presumption has been invoked and, if so, whether it has been rebutted. Also remember the presumption may be rebutted only by proof that the miner does not have either clinical or legal pneumoconiosis or that no part of the miner's totally disabling respiratory or pulmonary impairment was caused by pneumoconiosis.

Depending on the outcome of that review, the C/E will issue a Proposed Decision & Order either affirming or reversing the previous SSAE decision.

This procedure should be followed even when the party opposing entitlement alleges that the miner does not have enough coal mine employment to access the Section 411(c)(4) presumption. For example,

the named responsible operator may argue that the miner's surface mine work was not substantially similar to work in an underground mine and therefore does not count towards the 15-year requirement. If the case file contains evidence that could result in a finding of 15 or more years of qualifying employment and the claim otherwise meets the criteria for the pilot set forth above, then you should obtain a supplemental report from DCMWC's examining physician.

**Disposition:** Until such time as the pilot initiative has ended.



MICHAEL A. CHANCE  
Director, Division of Coal  
Mine Workers' Compensation (Acting)

Distribution:  
All DCMWC Staff