

**BLBA BULLETIN NO. 15-06**Issue Date: **APR 10 2015**

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**Expiration Date: One Year from Issue Date or Inclusion in the BLBA Procedure Manual**

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**Subject: Requests for Extensions of Time to Submit Evidence Following Issuance of Schedule for Submission of Additional Evidence (SSAE)**

**Background:** Historically, the Division of Coal Mine Workers' Compensation (DCMWC) has granted requests for extensions of time to submit additional evidence following issuance of the Schedule for Submission of Additional Evidence (SSAE) only to the party seeking an extension, requiring an opposing party to request its own extension. See 20 CFR 725.410(b), 725.423. DCMWC's policy of requiring each party to submit its own 20 CFR 725.423 extension request in response to an SSAE has been reiterated in DCMWC communications, including memoranda, e-mailed guidance, BLBA Bulletin No. 12-08, and BLBA PM 2-1103.7.b.

In DCMWC's experience, the majority of extensions are requested by operators immediately before expiration of the original 60-day period. Most of these operator requests are for good cause, and are granted. See 20 CFR 725.423. Nearly half of all claimants are unrepresented while their claims are pending before the District Director (DD). Thus, the practical result is that unrepresented claimants receive notice of operator extensions and have either missed the deadline to file their own extension or have a few days to determine whether to file and/or seek legal counsel to do so. In many cases, the claimant is unable to timely seek an extension and loses the opportunity to submit affirmative evidence to the DD in support of his or her claim. Similarly, an operator may lose the opportunity to request additional time and submit evidence if it learns of a claimant's request after the operator's 60-day period has expired.

Because the timing of most extension requests coupled with DCMWC's policy of requiring each party to submit its own request can result in parties losing the opportunity to submit evidence had they anticipated the opposing party's extension and subsequent submission, DCMWC has reevaluated and is changing its policy.

**Scope:** Effective immediately, whenever a DD grants one party's request for an extension of time to submit evidence in response to an SSAE, the opposing party's time to submit evidence will automatically be extended for the same period of time. The non-requesting party will be limited to the additional time granted to the requesting party, and cannot ask for additional time unless he or she makes a timely request under 20 CFR 725.423. This bulletin does not supersede the guidance outlined in BLBA Bulletin No. 12-08, rather it supplements it. The only change is that now, when a request for an extension of time to respond to the SSAE is granted to one party, the new extended deadline applies to all parties.

References: See 20 CFR 725.410, 725.415, 725.417, 725.423.

Applicability: Appropriate DCMWC Personnel.

Actions:

- When any party to a claim makes a timely request for an extension of time to respond to an SSAE, the DD must determine whether a showing of good cause has been made.
- If a showing of good cause has been made, the DD will determine the amount of time necessary for the requesting party to complete evidentiary submissions and grant all parties that amount of time to complete submissions.
- Once the DD has notified all parties of the extension, the additional time granted may not be extended or curtailed without an additional showing of good cause.
- Use the language contained in Attachment 1, if an extension is requested by the operator. The language should be modified appropriately for extensions requested by and granted to the claimant or the claimant's representative.
- Continue sending Attachment 1 and 2 from BLBA Bulletin No. 12-08, "Extensions of Time Following Issuance of Schedule for Submission of Additional Evidence (SSAE)," as part of all SSAE decisions. Replace Attachment 3 from BLBA Bulletin No. 12-08 with Attachment 1 from this bulletin.

Please contact the Chief of BSRP if you have any additional questions.

Disposition: Retain this Bulletin until further notice or inclusion in the BLBA Procedure Manual.



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Coal Mine Workers' Compensation

Distribution: All DCMWC Personnel, Regional Directors

NEW LANGUAGE FOR LETTERS RESPONDING TO EXTENSION REQUESTS

**Letter to RO granting extension following issuance of SSAE:**

Your request for additional time to submit evidence in response to the Schedule for Submission of Additional Evidence (SSAE) dated <INSERT SSAE DATE> has been received. The District Director grants the request and will allow until <INSERT EXTENSION DATE>, for submission of evidence.

This extension of time applies also to the claimant, <INSERT CLAIMANT'S NAME> (and to any other parties to the claim).

The District Director will also allow the claimant 30 additional days after receipt of your evidence to submit evidence that responds to your evidence. You are also allowed 30 days to submit evidence that responds to any evidence submitted by the claimant.

Once all time periods allowed for submission of evidence have expired, the District Director will proceed with the adjudication of the claim based on review of all evidence accepted into the record.

**Language for New Cover Letter to claimant – MUST BE SENT along with copy of letter sent to RO (above) granting extension following issuance of SSAE:**

Please see attached letter that grants <INSERT REQUESTING PARTY NAME> additional time, through <INSERT EXTENSION DATE>, for submission of evidence related to your black lung claim. Please note that this extension of time, until <INSERT EXTENSION DATE>, *applies to you, as well*, for submission of evidence to support your claim or position.

In addition, you are hereby granted an additional 30 days – *to submit only evidence that responds to evidence* submitted by <INSERT REQUESTING PARTY NAME>. This additional 30 days begins to run on the date you receive any such evidence from <INSERT REQUESTING PARTY NAME>. (You are granted this additional time only if <INSERT REQUESTING PARTY NAME> actually submits evidence. If <INSERT REQUESTING PARTY NAME> fails to submit evidence, your timeframe for submitting evidence expires on <INSERT ABOVE-STATED EXTENSION DATE>.)