

**BLBA BULLETIN NO. 20-01**Issue Date: **OCT 24 2019**

Expiration Date: When Incorporated into the Division of Coal Mine Workers' Compensation (DCMWC) Procedure Manual

Subject: Bulletin 14-05 – Creating stronger Proposed Decision Order (PDO) in living miner cases where the 15-year presumption may apply.

Background: On February 24, 2014, DCMWC issued Bulletin 14-05 – Creating stronger PDO's in living miner cases where the 15-year presumption may apply. The bulletin announced a pilot program applying to claims in which a miner: (1) had 15 years of qualifying coal mine employment; (2) the DCMWC complete pulmonary examination (*i.e.*, the 413(b) report) indicated the miner was entitled to benefits; and (3) received a preliminary finding of entitlement in the Schedule for Submission of Additional Evidence. If the party opposing entitlement later submitted evidence contrary to the preliminary finding, DCMWC would provide the evidence to the 413(b) provider and request a supplemental medical opinion addressing the new evidence, as well as any evidence that may have been submitted by the claimant.

Prior to the pilot program, 413(b) providers would base their opinions only upon review of the testing and information developed as part of their own evaluation. In contrast, providers for responsible operators (and their carriers) or claimants would typically review a wide array of medical data, including reports and testing developed by other physicians, which enhanced the apparent credibility of their opinions. The program was intended to strengthen the credibility of 413(b) provider opinions by allowing the physicians to review additional available medical evidence in certain cases. This in turn allowed DCMWC to strengthen the quality of its decisions in 15-year presumption claims by providing decision-makers with the most reasoned evidence possible.

In 2015, DCMWC contracted with the University of Illinois at Chicago, School of Public Health (UIC) to evaluate the procedures involved with pilot program claims, and their effect on the outcome of claims. UIC visited District Offices, conducted interviews with District Directors, and examined claims. The study noted that overall, “[T]he Pilot Project has yielded a more balanced assessment of the medical evidence submitted by the 413(b) provider and RO provider.”

Both the UIC study and internal DCMWC data show that 413(b) providers have altered their opinion after review of additional evidence in a significant number of claims. In a large number of cases, the strength and quality of the 413(b) provider's opinion were improved following review of additional medical evidence. For many cases, the additional evidence caused the 413(b) provider to reverse their original favorable opinion. As a result of the pilot and the supplemental report, DCMWC is able to issue decisions with a higher level of confidence in the medical opinion.

Based on the data accumulated over five years, DCMWC has determined that this program is effective at strengthening and improving PDOs and should be made permanent. The program benefits all parties to a claim by fostering fair and accurate DCMWC decisions supported by sound, well-documented medical evidence. Accordingly, the pilot program will be incorporated into DCMWC's regular procedures.

Applicability: Appropriate DCMWC personnel

Purpose: To strengthen and improve Proposed Decision and Orders in instances where the miner had 15 or more years of qualifying coal mine employment, and 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.

References: 20 CFR 718.201, 718.204, 718.305, 725.406(c), Section 411(c)(4) of the BLBA, 30 USC 921(c)(4); Section 413(b) of the BLBA, 30 USC 923(b).

Action: The program will cease to be a pilot, and will become standard procedure. Staff will continue to follow the actions set forth in Bulletin 14-05.

Disposition: Retain this Bulletin until incorporated into the DCMWC Procedure Manual.



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

Distribution: All DCMWC Staff