

CHAPTER 2-100, MAJOR CONCEPTS IN CLAIMS PROCESSINGTABLE OF CONTENTS

<u>Section</u>	<u>Subject</u>	<u>Page</u>
1.	Purpose and Scope.....	1
2.	Legislative Authority.....	1
3.	Policy.....	6
4.	References.....	7
5.	Definitions.....	7
6.	Responsibilities.....	8
7.	Time Limitations.....	8
8.	Benefits.....	9
9.	Representation of Parties.....	10
10.	Presumptions.....	11
11.	Disclosure of Information under the Privacy Act.....	12
12.	DOL Administration.....	12

Part 2 - Claims

1. Purpose and Scope.

a. Part 2 - Claims. This part of the Division of Coal Mine Workers' Compensation (DCMWC) Procedure Manual (PM) establishes policies, responsibilities and procedures for the filing, development and adjudication of claims under Part C of the Black Lung Benefits Act. It also provides procedures and responsibilities for the maintenance of claims awarded under Parts B and C of the Act. The chapters of this part cover the filing and processing of claims, requirements for coverage, evidentiary standards, eligibility requirements, benefit payments and adjudication procedures.

b. Chapter 2-100 - Major Concepts in Claims Processing. This chapter provides the background for DCMWC's work in processing Black Lung claims. The legislative authority for the work and major concepts and principles applied in the claims process are discussed in the sections below.

2. Legislative Authority.

The Department of Labor's (DOL) administration of the Black Lung Program is governed primarily by four acts: the Black Lung Benefits Act (BLBA or the Act); the Longshore and Harbor Workers' Compensation Act (LHWCA); the Administrative Procedure Act (APA); and the Social Security Act.

a. BLBA (Title IV of the Federal Mine Safety and Health Act of 1977). The BLBA is the primary legislative authority for the DOL Black Lung Program. The Act consists of three parts:

(1) Part A declares that Congress enacted the BLBA to provide benefits to miners and their dependents for total disability or death due to pneumoconiosis because States did not adequately do so. This part includes the statutory definitions of "dependent," "pneumoconiosis," "miner," "Secretary," "widow," "total disability" and "child."

(2) Part B contains the provisions applicable to claims filed by a miner on or before June 30, 1973, and to claims filed by a miner's survivor on or before December 31, 1973 (although under certain limited circumstances survivors' claims filed after that date may be considered Part B claims). The Part B program was originally administered by the Social Security Administration (SSA), and was designed as a disability program based largely on the disability provisions of the Social Security Act. Benefits were paid out of general U.S. Treasury funds. Section 415 of Part B provided for the transition of the Black Lung Program from SSA to DOL, and the transition of responsibility for payment of benefits from general revenues to responsible coal mine operators. Certain provisions of Part B also apply to Part C

claims.

(3) Part C contains the provisions applicable to claims filed after December 31, 1973 (and to miner's claims filed between July 1 and December 31, 1973). Part C includes changes to the Black Lung Program to make the coal mining industry responsible for benefit payments. It also adopts many of the procedural provisions of the LHWCA. Part C starts with Section 421 of the BLBA. Provisions of each section of Part C are outlined below:

(a) Section 421 states that after January 1, 1974, claims for total disability or death due to pneumoconiosis must be filed under State law if the Secretary of Labor determines that the State provides adequate coverage for black lung disease using certain criteria. To date, no State laws have been approved by the Secretary.

(b) Section 422 provides that the BLBA will apply in States whose coverage is not approved by the Secretary of Labor; describes the benefits payable under Part C and certain applicable offsets; creates a limitations period for filing a miner's claim; imposes liability on individual coal mine operators (or the Black Lung Disability Trust Fund if appropriate) for the payment of benefits; authorizes the Secretary of Labor to promulgate regulations; and makes the Secretary a party to all claim proceedings. Section 422(a) incorporates a number of LHWCA provisions governing the procedures for adjudication of Part C claims and other matters.

(c) Section 423 requires coal mine operators to secure the payment of benefits; sets forth requirements for insurance contracts; and imposes penalties for failure to insure.

d) Section 424 requires coal mine operators to reimburse the Trust Fund for the payment of benefits made on the operators' behalf. It imposes a lien on the operator's property and authorizes the Secretary of Labor to sue for recovery if the operator refuses to repay.

(e) Section 425 gives the Secretary of Labor authority to use the services of State or local agencies in carrying out his/her responsibilities under Part C.

(f) Section 426 authorizes the issuance of regulations, requires annual reports to Congress and addresses questions of conflict with State workers' compensation laws.

(g) Section 427 authorizes the Secretary of Health and Human Services to enter into contracts and make grants for the purpose of diagnosing, treating, and conducting research regarding coal workers' pneumoconiosis.

(h) Section 428 prohibits discrimination by coal mine operators against any miner who is suffering from pneumoconiosis.

(i) Section 429 authorizes appropriation of funds for the Secretary of Labor to carry out his/her responsibilities under the Act.

(j) Section 430 provides that amendments to Part B made by the 1972, 1977 and 1981 acts also apply to Part C, to the extent appropriate.

(k) Section 431 provides criminal penalties for persons fraudulently obtaining or attempting to obtain benefits under the Act.

(l) Section 432 allows the Secretary of Labor to publish regulations requiring coal mine operators to file reports concerning miners who are or may be entitled to Black Lung benefits.

(m) Section 433 authorizes the Secretary of Labor to establish a Black Lung insurance program.

(n) Section 434 requires written statements of the reasons for denial to persons denied benefits under the Act.

b. LHWCA. The LHWCA was originally passed to provide workers' compensation coverage to persons injured over the navigable waters of the United States. Since these navigable waters are under Federal jurisdiction, coverage under State laws was often denied persons injured over them because such waters were outside State jurisdiction. Since its original passage, Congress has used the LHWCA as a model and extended its coverage to other classes of persons not adequately covered by State law such as employees of certain Government contractors working overseas and employees working on the outer continental shelf. Similarly, Congress has extended certain provisions of the LHWCA to coal miners, another group not adequately protected, with respect to occupational disease, by existing State laws.

Section 422(a) of Part C incorporates Sections of the LHWCA in the negative, *i.e.*, all sections not excluded are included. The included sections and their subjects are as follows:

Section	5	Exclusiveness of Remedy and Third-Party Liability
Section	6	Time for Commencement of Compensation
Section	7	Medical Services and Supplies
Section	11	Guardian for Minor or Incompetent
Section	14	Payment of Compensation
Section	15	Invalid Agreements
Section	16	Assignment and Exemption from Claims of Creditors
Section	17	Compensation Lien Against Assets
Section	18	Defaulted Payments
Section	19	Procedure in Respect to Claims
Section	20	Presumptions
Section	21	Review of Compensation Order
Section	22	Modification of Awards
Section	23	Procedure Before the District Director (DD)
Section	24	Witnesses
Section	25	Witness Fees
Section	26	Costs in Proceedings Brought Without Reasonable Grounds
Section	27	Powers of District Directors
Section	28	Fees for Services
Section	34	Compensation Notice
Section	35	Substitution of Carrier for Employer
Section	36	Insurance Policies
Section	39	Administration and Vocational Rehabilitation
Section	40	District Directors
Section	42	Traveling Expense

The actual application of these sections may be modified by regulations issued under the BLBA.

c. APA. Title V of the APA contains general provisions governing agency hearings, which address, among other topics, the notification of parties, the conduct of hearings, applicable burdens, and the contents of the resulting decision. These provisions are made applicable to the BLBA through LHWCA Section 19(d), incorporated into the BLBA by Section 422(a).

Other statutory provisions also apply to the BLBA.

d. Social Security Act. Certain provisions of Title II of the Social Security Act are incorporated into the BLBA. These include the requirements for establishing that certain survivors of the miner are eligible dependents (incorporated by BLBA Sections 402, 412, 422(c)) and the rules governing overpayment recovery (incorporated by BLBA Section 413(b)).

e. Miscellaneous Provisions. Additional statutory provisions that provide authority for the DOL Black Lung program include:

Part 2 - Claims

- (1) Certain provisions of the Internal Revenue Code of 1954. Most important is 26 USC 9501, which governs the funding of, and expenditures by, the Trust Fund.
- (2) Black Lung Benefits Revenue Act of 1977. This created the Trust Fund.
- (3) Sections of the Black Lung Benefits Reform Act not codified in the United States Code. With the exception of Section 11 of the Reform Act which is the legislative authority for processing claims filed after March 1, 1978, by Part B beneficiaries for medical treatment benefits (See PM 3-500), these provisions do not affect the processing of claims.
- (4) The Black Lung Consolidation of Administrative Responsibility Act of 2002 (PL 107-275) permanently transferred authority for maintenance of Part B claims from SSA to DOL. There are a few differences in the manner in which Parts B and C claims are handled, particularly in overpayment processing, and such differences are addressed in the individual manual chapters.
- (5) The Patient Protection and Affordable Care Act of 2010 (PPACA) reinstated two provisions of the BLBA repealed by the 1981 Amendments to the BLBA. 30 USC 921(c)(4), 932(1).

Provisions (2)-(5) constitute amendments to the BLBA.

f. Code of Federal Regulations (CFR). Parts 718 and 725-727 of Title 20 of the CFR address the processing and adjudication of claims, and the requirements imposed on coal mine operators, under the BLBA. These regulations are issued under the authority granted the Secretary of Labor by the BLBA.

- (1) 20 CFR Part 718 contains the standards for determining coal miners' total disability or death due to pneumoconiosis. Part 718 applies to all claims filed on or after April 1, 1980. It has been amended from time to time to incorporate statutory changes, new medical technology and revised definitions.
- (2) 20 CFR Part 725 contains standards for processing claims under Part C of the BLBA, including the maintenance and oversight of approved claims.
- (3) 20 CFR Part 727 describes procedures and medical criteria for adjudicating claims filed under the now-repealed BLBA Section 435 and Part C claims filed prior to April 1, 1980. Although still in effect, Part 727 is no longer published.
- (4) 20 CFR Part 726 describes how coal mine operators may

Part 2 - Claims

fulfill their insurance requirements under the BLBA. It also describes procedures for imposing civil money penalties under the BLBA.

3. Policy.

a. Major Areas. DCMWC staff should be guided by two major policy concerns when evaluating and processing claims:

(1) Remedial Nature of the BLBA. As reflected in Section 401(a), the BLBA's purpose is remedial. It is intended to aid coal miners (and the dependents and survivors of coal miners) who gave their health and lives in meeting the nation's energy needs. Congress intended that the BLBA's coverage be applied broadly and its provisions construed liberally to ensure that those meant to benefit from the BLBA actually do so.

(2) Industry Liability. With the 1977 Amendments, Congress shifted the burden of Black Lung compensation entirely to the coal industry. Approved Part C claims will involve payment of benefits by one of two sources: individual coal mine operators found liable on the basis of employment of the claimant after December 31, 1969; or the Trust Fund where no operator can be found liable. It is Congress' intent that claims should be the responsibility of individual coal mine operators to the maximum extent possible. Accordingly, every reasonable effort should be made to ensure that the correct coal mine operator (and carrier) is identified in each claim.

b. Several broad guidelines define DCMWC staff's major responsibilities in claims processing under the BLBA.

(1) The DD must inquire fully and objectively into all matters at issue in the claim and receive into evidence relevant material or documents if timely submitted by the parties and consistent with any applicable limitations. The DD is responsible for obtaining the evidence necessary for proper adjudication of the claim by using procedures described in the regulations. The claimant must cooperate with lawful requests of the DD and is responsible for submitting the evidence necessary to establish his or her eligibility. The DD must ensure that any document submitted by a party is used for the purpose the party intended.

The DD must also properly identify and notify the correct parties liable for payment of benefits while the claim is pending before the DD. Failure to notify the correct parties prior to a claim being forwarded for a hearing may result in liability being assigned to the Trust Fund.

Part 2 - Claims

(2) Because of the progressive and latent nature of coal workers' pneumoconiosis, greater weight may be assigned to more recent test results if the results can logically be said to demonstrate the progression of pneumoconiosis. Consequently, this rule applies only when earlier testing is negative and the more recent is positive and when there is a significant gap in time between the negative and positive evidence. The rule cannot be applied where the earlier evidence is positive and the later evidence is negative, or when a short period of time separates conflicting evidence.

(3) The DD is the official who initially determines if the claimant has established entitlement to benefits and who identifies the party liable for paying those benefits. Consequently, it is the DD's responsibility to weigh the evidence and draw inferences from that evidence and to employ any appropriate burden-shifting presumptions provided in the statute and regulations. In evaluating whether total disability or death due to pneumoconiosis is established, the DD must consider all medical information submitted as evidence for the record. The DD need not accept a particular medical opinion if the DD finds it is not credible for an acceptable reason or that it is outweighed by contrary and credible medical evidence. The DD cannot reject a medical opinion simply because it conflicts with the DD's personal impression of the miner's symptoms or test results, however.

(4) The DD has a responsibility to protect the rights of the claimant in adjudication proceedings. Consequently, the DD must fully advise the claimant of his or her rights and obligations at each stage of the proceeding to allow the claimant to make informed decisions regarding the claim. Similarly, the DD must act in a manner that protects the rights of potentially liable parties.

c. Sections 4-11 below outline additional important considerations in claims processing.

4. References. (Reserved)

5. Definitions.

a. Party. A party is a person or entity that is authorized to participate in the adjudication of a claim. Any party may participate through an authorized representative. The parties in any claim may include the following:

(1) The claimant;

Part 2 - Claims

- (2) A person other than the claimant authorized to execute a claim on such claimant's behalf;
- (3) A claimant's dependent who may be entitled to receive augmented benefits;
- (4) Any coal mine operator who has been notified of its possible liability for benefits;
- (5) Any insurance carrier of such operator(s);
- (6) A surviving spouse, child, parent, brother or sister of the claimant, or a representative of a decedent's estate who makes a showing in writing that the individual's rights with respect to benefits may be prejudiced by any decision that may be made;
- (7) The Director, Office of Workers' Compensation Programs (OWCP), on behalf of the Secretary of Labor and his/her designees;
- (8) Any coal mine operator who has not been notified of any possible liability, or insurance carrier, who makes a showing in writing that their rights may be prejudiced by any final decision by the adjudication officer;
- (9) Any other individual whose rights with respect to benefits may be prejudiced by the decision, upon notice given to that individual by an adjudication officer to appear at a proceeding or otherwise present evidence.

6. Responsibilities.

- a. The DD is responsible for all executive functions at the administrative level in claims under Part C of the BLBA, as a designee of Director, OWCP, and for administrative functions in claims under Part B of the Act.
- b. The claims staff is responsible for carrying out such responsibilities as the DD may delegate to such examiner.

7. Time Limitations.

All time limitations given in the Regulations relating to proceedings and involving transmittal of documents by mail are final, unless the DD grants an extension at the request of one of the parties. In computing any period of time described in this part, by any applicable regulation, or by the order of any adjudication officer, the day of the act or event from which the designated period of time begins to run shall not be included. The last day

Part 2 - Claims

of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period extends until the next day which is not a Saturday, Sunday, or legal holiday. Applicable legal holidays are set forth in 20 CFR 725.311(c).

Extensions may be granted for all deadlines except the time for responding to a Proposed Decision and Order. A party claiming to have made a timely response that was not received by the DD may establish that a response was in fact timely by submitting proof of such timeliness, such as a receipt for certified mail. In most cases, the date of the postmark is the date of the response.

a. General Rules. In addition, the following general rules apply to DDs:

(1) Generally, a document is considered filed on the date it is received by the DD.

(2) In cases where a required document is mailed and the date of delivery would result in loss of certain rights, the date of postmark will be considered the date of delivery, but if the postmark is missing or is not legible, then other evidence may be used to establish the mailing date.

(3) If a required document is submitted to any agency or component of DOL other than the one to which it is required to be submitted, or to any other agency of the U.S. or State government, the document will be considered to have been received as of the date of receipt by the other governmental unit, if the DD determines that this is in the interest of justice.

b. Reasonable Period. In circumstances in which the regulations require the DD to allow "a reasonable period" for a party to take some action, at least 30 days should be allowed, subject to extension for good cause shown, unless circumstances exist for the granting of a longer period initially.

8. Benefits.

a. Monthly Benefits. The Act provides monthly compensation payments to each entitled coal miner or surviving spouse at a basic rate (37.5% of the monthly salary of a GS-2, step 1 government employee), augmented according to the number of dependents of the beneficiary, up to a maximum of three.

b. Medical Benefits. Part C living miner beneficiaries are entitled to reimbursement for the costs of medical treatment and services for totally disabling pneumoconiosis. Travel expenses to and from a medical facility (hospital, clinic, or visit to a doctor) may also be

Part 2 - Claims

reimbursed. DOL provides standards for both the costs and types of medical treatment to which the miner is entitled (PM 3-200).

c. Vocational Rehabilitation. Section 39 of the LHWCA, which is incorporated by Section 422(a) of the BLBA, authorizes the provision of vocational rehabilitation services to miner beneficiaries. Each beneficiary shall be informed by OWCP of the availability and advisability of such services. If a miner chooses to undergo vocational rehabilitation, the request shall be processed and referred by OWCP vocational rehabilitation advisors. (See 20 CFR 725.710-711; PM 2-1400.)

9. Representation of Parties.

a. Right of Parties to Representation. Except for the Secretary of Labor whose interests must be represented by the Office of the Solicitor, each of the parties may appoint an individual to represent his/her interests in any claim proceeding. Such appointment shall be made in writing or on the record at the hearing. A written notice, either a letter of appointment or Form CM-1078 appointing a representative, shall be signed by the party or a legal guardian and shall be sent to DCMWC or, for representation at a hearing, to the Chief Administrative Law Judge. In any case, such representative must meet the following qualifications:

(1) Attorney. Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession, the Supreme Court of the United States, or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative, may be appointed as a representative.

(2) Other Person. Any other person with the approval of the adjudication officer may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

b. Authority. A representative, appointed and qualified as provided above, may make or give on behalf of the party represented, any request or notice relative to any proceeding before an adjudication officer including formal hearing and review, except that such representative may not execute a claim for benefits, unless the representative is a person designated as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and make allegations as to facts or law in any proceeding affecting the party represented and to obtain information with respect to the claims of such party to the same extent as such party. Notice to any party of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative of such

Part 2 - Claims

party, and such notice or request shall have the same force and effect as if it has been sent to the party represented.

c. Change of Representative. A party may change his/her representative at any time during the processing of the claim. However, any representative designated must be qualified, and must have proper authorization. The party changing representatives must notify the DD of the change, and also the effective date of the change. If the party is a claimant, he/she may remain responsible for payment of a fee to the discharged representative in the event the claimant is finally awarded benefits. (See PM 2-1404.)

10. Presumptions.

a. To ease the burden of proof on the claimant, the BLBA provides presumptions to aid in establishing certain facts. A presumption is a legal inference of a fact from another fact or set of facts. A presumption may be rebuttable (i.e., a presumption, although invoked, may be negated by evidence contrary to the fact presumed) or irrebuttable (i.e., once established, the law does not permit it to be challenged). There are two kinds of rebuttable presumptions. One, referred to as a bursting bubble presumption, merely shifts the burden of production from one party to another. To rebut the presumption, the second party need only submit evidence supporting a finding that the presumed facts are untrue. Once rebutted, the presumption falls out of the case, and the burden of proof remains with the first party. The presumption of causation of pneumoconiosis contained in 30 USC 921(c)(1) is a production-shifting presumption. The second type of presumption shifts the burden of proof. Where a rebuttable presumption shifts the burden of proof, rebuttal must be based on substantial evidence to the contrary. The presumption contained in 30 USC 921(c)(4) is a burden-shifting presumption. Substantial evidence is the kind of evidence a reasonable mind might accept as adequate to support a conclusion.

b. The presumptions applicable to claims under the BLBA are listed below (only the Section 411(c)(3) presumption is irrebuttable; all others are rebuttable):

Presumption	Section of the Act	Code of Federal Regulations (20 CFR ...)	PM Chapter
Causal Relationship Between Pneumoconiosis and Coal Mine Employment	411(c)(1)	718.302	2-1004
Complicated Pneumoconiosis	411(c)(3)	718.304	2-1002

Part 2 - Claims

Total Disability or Death Due to Pneumoconiosis	411(c)(4)	718.305	2-1001
Timely Filing		725.308(a), 725.308(c)	2-200, 2-100.11b
Miner		725.202(a)	2-600.15a
Exposure: Construction, transportation workers		725.202(b)	2-600.15b

11. Disclosure of Information under the Privacy Act.

The Privacy Act of 1974, as applicable to the DOL Black Lung program, protects the privacy of individuals with respect to information submitted to or obtained by DOL in connection with Federal Black Lung claims. Release of such information is restricted by DOL Regulations on administration of the Privacy Act (See PM 1-500.)

12. DOL Administration.

DOL administers the Black Lung Benefits Program through DCMWC within OWCP. DCMWC administers and operates the program from a National Office and several District Offices across the Nation.