

103^D CONGRESS
1ST SESSION

H. R. 2108

To make improvements in the Black Lung Benefits Act.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1993

Mr. MURPHY (for himself, Mr. FORD of Michigan, Mr. BOUCHER, Mr. WISE, Mr. BEVILL, Mr. HOLDEN, Mr. SANDERS, Mr. RAHALL, Mr. KLINK, Mr. MURTHA, Mr. ROGERS, Mr. KOPETSKI, Mr. KANJORSKI, Mr. MOLLOHAN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To make improvements in the Black Lung Benefits Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Black Lung Benefits Restoration Act of 1993”.

6 (b) REFERENCE.—Whenever in this Act (other than
7 section 9(a)(1)) an amendment or repeal is expressed in
8 terms of an amendment to, or repeal of, a section or other
9 provision, the reference shall be considered to be made to

1 a section or other provision of the Black Lung Benefits
2 Act.

3 **SEC. 2. BENEFIT OVERPAYMENT.**

4 Part C is amended by adding at the end the following:

5 “SEC. 436 (a) The repayment of benefits paid on a
6 claim filed under this part before the final adjudication
7 of the claim shall not be required if the claim was finally
8 denied, unless fraud or deception was used to procure the
9 payment of such benefits.

10 “(b) The trust fund shall refund any payments made
11 to it as a reimbursement of benefits paid on a claim filed
12 under this part before the final adjudication of the claim,
13 unless fraud or deception was used to procure the payment
14 of such benefits.

15 “(c) The trust fund shall reimburse an operator for
16 any benefits paid on a claim filed under this part before
17 the final adjudication of the claim if the claim was finally
18 denied.

19 “(d) If on a claim for benefits filed under this part—

20 “(1) the Secretary makes an initial determina-
21 tion—

22 “(A) of eligibility, or

23 “(B) that particular medical benefits are
24 payable, or

25 “(2) an award of benefits is made,

1 the operator found to be the responsible operator under
2 section 422(h) shall, within 30 days of the date of such
3 determination or award, commence the payment of month-
4 ly benefits accruing thereafter and of medical benefits that
5 have been found payable. If an operator fails to timely
6 make any payment required by an initial determination
7 or by an award, such determination or award shall be con-
8 sidered final as of the date of its issuance.”.

9 **SEC. 3. EVIDENCE.**

10 Section 422 (30 U.S.C. 932) is amended by adding
11 at the end the following:

12 “(m)(1)(A) During the course of all proceedings on
13 a claim for benefits under this part, the results of not
14 more than 3 medical examinations offered by the claimant
15 may be received as evidence to support eligibility for bene-
16 fits.

17 “(B) During the course of all proceedings on a claim
18 for benefits under this part, the responsible operator and
19 the trust fund—

20 “(i) may each require, at no expense to the
21 claimant, not more than one medical examination of
22 the miner, and

23 “(ii) may not each offer as evidence the results
24 of more than one medical examination of the miner.

1 “(C) An administrative law judge may require the
2 miner to submit to a medical examination by a physician
3 assigned by the District Director if the administrative law
4 judge determines that, at any time, there is good cause
5 for requiring such examination. For purposes of this sub-
6 paragraph, good cause shall exist only when the adminis-
7 trative law judge is unable to determine from existing evi-
8 dence whether the claimant is entitled to benefits.

9 “(D) The complete pulmonary evaluation provided
10 each miner under section 413(b) and any consultive eval-
11 uation developed by the District Director shall be received
12 into evidence notwithstanding subparagraph (A) or (B).

13 “(E) Any record of—

14 “(i) hospitalization for a pulmonary or related
15 disease,

16 “(ii) medical treatment for a pulmonary or re-
17 lated disease, and

18 “(iii) a biopsy or an autopsy,

19 may be received into evidence notwithstanding subpara-
20 graph (A) or (B).

21 “(2) In addition to the medical examinations author-
22 ized by paragraph (1), each party may submit one inter-
23 pretive medical opinion (whether presented as documen-
24 tary evidence or in oral testimony) reviewing each clinical
25 study or physical examination (including a consultive read-

1 ing of a chest roentgenogram, an evaluation of a blood
2 gas study, and an evaluation of a pulmonary function
3 study) derived from any medical examination or contained
4 in a record referred to in paragraph (1)(E).

5 “(3) A request for modification of a denied claim
6 under section 22 of the Longshore and Harbor Workers’
7 Compensation Act, as made applicable to this Act by sub-
8 section (a) of this section, shall be considered as if it were
9 a new claim for the purpose of applying the limitations
10 prescribed by paragraphs (1) and (2).

11 “(4) The opinion of a miner’s treating physician, if
12 offered in accordance with paragraph (1)(A), shall be
13 given substantial weight over the opinion of other physi-
14 cians in determining the claimant’s eligibility for benefits
15 if the treating physician is board-certified in a specialty
16 relevant to the diagnosis of total disability or death due
17 to pneumoconiosis.

18 “(5) For purposes of this subsection, a medical exam-
19 ination consists of a physical examination and all appro-
20 priate clinical studies (not including a biopsy or an au-
21 topsy) related to the diagnosis of total disability or death
22 due to pneumoconiosis.”.

1 **SEC. 4. SURVIVOR BENEFITS.**

2 (a) DEATH.—Section 422 (30 U.S.C. 932), as
3 amended by section 3, is amended by adding at the end
4 the following:

5 “(n) If an eligible survivor files a claim for benefits
6 under this part and if the miner—

7 “(1) was receiving benefits for pneumoconiosis
8 pursuant to a final adjudication under this part, or

9 “(2) was totally disabled by pneumoconiosis at
10 the time of the miner’s death,

11 the miner’s death shall be considered to have occurred as
12 a result of the pneumoconiosis.”.

13 (b) RULES FOR WIDOWS AND WIDOWERS.—Section
14 422 (30 U.S.C. 932), as amended by subsection (a), is
15 amended by adding at the end the following:

16 “(o)(1) A widow or widower of a miner who was mar-
17 ried to the miner for less than 9 months at any time pre-
18 ceding the miner’s death is not qualified to receive survi-
19 vor benefits under this part unless the widow or widower
20 was the natural or adoptive parent of the miner’s child.

21 “(2) The widow or widower of a miner is disqualified
22 to receive survivor benefits under this part if the widow
23 or widower remarries before attaining the age of 50.

24 “(3) A widow or widower may not receive an aug-
25 mentation in survivor benefits on any basis arising out of
26 a remarriage of the widow or widower.”.

1 **SEC. 5. RESPONSIBLE OPERATOR.**

2 Section 422(h) (30 U.S.C. 932(h)) is amended by in-
3 serting “(1)” after “(h)” and by adding at the end the
4 following:

5 “(2)(A) Prior to issuing an initial determination of
6 eligibility, the Secretary shall, after investigation, notice,
7 and a hearing as provided in section 19 of the Longshore
8 and Harbor Workers’ Compensation Act, as made applica-
9 ble to this Act by subsection (a) of this section, determine
10 whether any operator meets the Secretary’s criteria for li-
11 ability as a responsible operator under this Act. If a hear-
12 ing is timely requested on the liability issue, the decision
13 of the administrative law judge conducting the hearing
14 shall be issued not later than 120 days after such request
15 and shall not be subject to further appellate review.

16 “(B) If the administrative law judge determines that
17 an operator’s request for a hearing on the liability issue
18 was made without reasonable grounds, the administrative
19 law judge may assess the operator for the costs of the pro-
20 ceeding (not to exceed \$750).”.

21 **SEC. 6. ATTORNEY FEES.**

22 (a) ELIGIBILITY FOR FEES.—Section 422 (30 U.S.C.
23 932), as amended by section 4(b), is amended by adding
24 at the end the following:

25 “(p)(1) If in any administrative or judicial proceeding
26 on a claim for benefits a determination is made that a

1 claimant is entitled to such benefits, the claimant shall
2 be entitled to receive all reasonable costs and expenses (in-
3 cluding expert witness and attorney's fees) incurred by the
4 claimant in such proceeding and in any other administra-
5 tive or judicial proceeding on such claim occurring before
6 such proceeding.

7 “(2) In the case of a proceeding held with respect
8 to such claim—

9 “(A) the person or Board which made the de-
10 termination that the claimant is entitled to benefits
11 in an administrative proceeding and any other per-
12 son or Board which made a prior determination in
13 an administrative proceeding on such claim, or

14 “(B) the court in the case of a judicial proceed-
15 ing,

16 shall determine the amount of all costs and expenses (in-
17 cluding expert witness and attorney's fees) incurred by the
18 claimant in connection with any such proceeding and shall
19 assess the operator responsible to the claimant for such
20 costs and expenses which are reasonable or if there is not
21 an operator responsible to the claimant, shall assess the
22 fund for such costs and expenses.

23 “(3) The determination of such costs and expenses
24 shall be made within 60 days of the date the claimant sub-
25 mits a petition for the payment of such costs and expenses

1 to a person, the Board, or court which made a determina-
2 tion on the claimant's claim. The person, Board, or court
3 receiving such petition shall take such action as may be
4 necessary to assure that such costs and expenses are paid
5 within 45 days of the date of the determination of such
6 costs and expenses unless a motion to reconsider—

7 “(A) the amount of such costs and expenses, or

8 “(B) the person liable for the payment of such
9 amount,

10 is pending.

11 “(4) If an operator pays costs and expenses assessed
12 under paragraph (1) and if the claimant for whom such
13 costs and expenses were paid is determined in a later pro-
14 ceeding not to be eligible for benefits under this part, the
15 fund shall pay the operator the amount paid for such costs
16 and expenses.

17 “(5) Section 28(e) of the Longshore and Harbor
18 Workers' Compensation Act shall apply with respect to
19 any person who receives costs and expenses which are paid
20 under this subsection on account of services rendered a
21 claimant.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall apply only with respect to claims
24 which are filed for the first time after the date of the en-
25 actment of this Act and shall not apply with respect to

1 any claim which is filed before such date and which is
2 refiled under section 8 of this Act after such date.

3 **SEC. 7. ADMINISTRATION.**

4 (a) APPEALS TO THE BENEFITS REVIEW BOARD.—
5 No appeal of an order in a proceeding under the Black
6 Lung Benefits Act may be made by a claimant or respond-
7 ent to the Benefits Review Board unless such order has
8 been made by an administrative law judge.

9 (b) ACQUIESCENCE.—The Secretary of Labor may
10 not delegate to the Benefits Review Board the authority
11 to refuse to acquiesce in a decision of a Federal court.

12 **SEC. 8. REFILING.**

13 Any claim filed under the Black Lung Benefits Act
14 after January 1, 1982, but before the date of the enact-
15 ment of this Act, may be refiled under such Act after the
16 date of the enactment of this Act for a de novo review
17 on the merits.

18 **SEC. 9. DEFINITIONS.**

19 (a) COKE OVENS.—

20 (1) FEDERAL MINE SAFETY AND HEALTH ACT
21 OF 1977.—Section 3 of the Federal Mine Safety and
22 Health Act of 1977 (30 U.S.C. 802) is amended—

23 (A) in paragraph (d), by inserting before
24 the semicolon the following: “or who operates a

1 coke oven or any machine shop or other oper-
2 ation reasonably related to the coke oven”,

3 (B) in paragraph (g), by inserting before
4 the semicolon the following: “or working at a
5 coke oven or in any other operation reasonably
6 related to the operation of a coke oven”, and

7 (C) in paragraph (h)(2), by inserting be-
8 fore the semicolon the following: “and includes
9 a coke oven and any operation, structure, or
10 area of land reasonably related to the operation
11 of a coke oven”.

12 (2) BLACK LUNG BENEFITS ACT.—The first
13 sentence of section 402(d) (30 U.S.C. 902(d)) is
14 amended by inserting before the period the follow-
15 ing: “or who works or has worked at a coke oven or
16 in any other operation reasonably related to the op-
17 eration of a coke oven”.

18 (b) PNEUMOCONIOSIS.—Section 402(b) (30 U.S.C.
19 902(b)) is amended—

20 (1) by adding after “sequelae” the following:
21 “which disease or sequelae is restrictive or obstruc-
22 tive or both”, and

23 (2) by striking out “coal mine” and inserting in
24 lieu thereof “coal mine or coke oven”.

1 **SEC. 10. CONSTRUCTION.**

2 If in any legal proceeding a term in any amendment
3 made by this Act is considered to be ambiguous, the legis-
4 lative history accompanying this Act shall be considered
5 controlling.

○