

Union Calendar No. 284

103^D CONGRESS
2^D SESSION

H. R. 2108

[Report No. 103-5071]

A BILL

To make improvements in the Black Lung Benefits Act.

MAY 12, 1994

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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[Report No. 103-507]

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, and Mr. MOLLOHAN) introduced the following bill; which was referred to the Committee on Education and Labor

MAY 12, 1994

Additional sponsor: Mr. MCCLOSKEY

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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,*

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

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

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

10 **SEC. 2. BENEFIT OVERPAYMENT.**

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

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

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

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

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

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

3 “(A) of eligibility, or

4 “(B) that particular medical benefits are
5 payable, or

6 “(2) an award of benefits is made,

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

15 **SEC. 3. EVIDENCE.**

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

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

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

1 “(i) may each require, at no expense to the
2 claimant, not more than one medical examination of
3 the miner, and

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

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

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

18 “(E) Any record of—

19 “(i) hospitalization for a pulmonary or related
20 disease,

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

23 “(iii) a biopsy or an autopsy,

24 may be received into evidence notwithstanding subpara-
25 graph (A) or (B).

1 “(2) In addition to the medical examinations author-
2 ized by paragraph (1), each party may submit one inter-
3 pretive medical opinion (whether presented as documen-
4 tary evidence or in oral testimony) reviewing each clinical
5 study or physical examination (including a consultive read-
6 ing of a chest roentgenogram, an evaluation of a blood
7 gas study, and an evaluation of a pulmonary function
8 study) derived from any medical examination or contained
9 in a record referred to in paragraph (1)(E).

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

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

23 “(5) For purposes of this subsection, a medical exam-
24 ination consists of a physical examination and all appro-
25 priate clinical studies (not including a biopsy or an au-

1 topsy) related to the diagnosis of total disability or death
2 due to pneumoconiosis.”.

3 **SEC. 4. SURVIVOR BENEFITS.**

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

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

9 (1) was receiving benefits for pneumoconiosis
10 pursuant to a final adjudication under this part, or

11 (2) was totally disabled by pneumoconiosis at
12 the time of the miner’s death,

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

15 (b) RULES FOR WIDOWS AND WIDOWERS.—Section
16 422 (30 U.S.C. 932), as amended by subsection (a), is
17 amended by adding at the end the following:

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

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

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

4 **SEC. 5. RESPONSIBLE OPERATOR.**

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

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

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

1 **SEC. 6. ATTORNEY FEES.**

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

5 “(p)(1) If in any administrative or judicial proceeding
6 on a claim for benefits a determination is made that a
7 claimant is entitled to such benefits, the claimant shall
8 be entitled to receive all reasonable costs and expenses (in-
9 cluding expert witness and attorney’s fees) incurred by the
10 claimant in such proceeding and in any other administra-
11 tive or judicial proceeding on such claim occurring before
12 such proceeding.

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

15 “(A) the person or Board which made the de-
16 termination that the claimant is entitled to benefits
17 in an administrative proceeding and any other per-
18 son or Board which made a prior determination in
19 an administrative proceeding on such claim, or

20 “(B) the court in the case of a judicial proceed-
21 ing,

22 shall determine the amount of all costs and expenses (in-
23 cluding expert witness and attorney’s fees) incurred by the
24 claimant in connection with any such proceeding and shall
25 assess the operator responsible to the claimant for such
26 costs and expenses which are reasonable or if there is not

1 an operator responsible to the claimant, shall assess the
2 fund for such costs and expenses.

3 “(3) The determination of such costs and expenses
4 shall be made within 60 days of the date the claimant sub-
5 mits a petition for the payment of such costs and expenses
6 to a person, the Board, or court which made a determina-
7 tion on the claimant’s claim. The person, Board, or court
8 receiving such petition shall take such action as may be
9 necessary to assure that such costs and expenses are paid
10 within 45 days of the date of the determination of such
11 costs and expenses unless a motion to reconsider—

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

13 “(B) the person liable for the payment of such
14 amount,

15 is pending.

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

22 “(5) Section 28(e) of the Longshore and Harbor
23 Workers’ Compensation Act shall apply with respect to
24 any person who receives costs and expenses which are paid

1 under this subsection on account of services rendered a
2 claimant.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply only with respect to claims
5 which are filed for the first time after the date of the en-
6 actment of this Act and shall not apply with respect to
7 any claim which is filed before such date and which is
8 refiled under section 8 of this Act after such date.

9 **SEC. 7. ADMINISTRATION.**

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

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

18 **SEC. 8. REFILING.**

19 Any claim filed under the Black Lung Benefits Act
20 after January 1, 1982, but before the date of the enact-
21 ment of this Act, may be refiled under such Act after the
22 date of the enactment of this Act for a de novo review
23 on the merits.

24 **SEC. 9. DEFINITIONS.**

25 (a) COKE OVENS.—

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

4 (A) in paragraph (d), by inserting before
5 the semicolon the following: “or who operates a
6 coke oven or any machine shop or other oper-
7 ation reasonably related to the coke oven”,

8 (B) in paragraph (g), by inserting before
9 the semicolon the following: “or working at a
10 coke oven or in any other operation reasonably
11 related to the operation of a coke oven”, and

12 (C) in paragraph (h)(2), by inserting be-
13 fore the semicolon the following: “and includes
14 a coke oven and any operation, structure, or
15 area of land reasonably related to the operation
16 of a coke oven”.

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

23 (b) PNEUMOCONIOSIS.—Section 402(b) (30 U.S.C.
24 902(b)) is amended—

1 (1) by adding after “sequelae” the following:

2 “which disease or sequelae is restrictive or obstruc-
3 tive or both”, and

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

6 **SEC. 10. CONSTRUCTION.**

7 If in any legal proceeding a term in any amendment
8 made by this Act is considered to be ambiguous, the legis-
9 lative history accompanying this Act shall be considered
10 controlling.