

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 792

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To amend the Black Lung Benefits Act to provide special procedures for certain claims due to pneumoconiosis, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1993

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

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## A BILL

To amend the Black Lung Benefits Act to provide special procedures for certain claims due to pneumoconiosis, and for other purposes.

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.**

4        This Act may be cited as the “Black Lung Benefits  
5        Act Amendments of 1993”.

6        **SEC. 2. CLAIMS PROCEDURE.**

7        The Black Lung Benefits Act is amended by adding  
8        at the end the following new part:

1                   **“PART D—SPECIAL PROVISIONS**

2   **“SEC. 441. CLAIMS.**

3           “(a) STANDARD.—If a claim is filed after the date  
4 of the enactment of this section under part C for death  
5 or total disability of a miner due to pneumoconiosis, such  
6 miner shall be presumed to have been totally disabled by  
7 pneumoconiosis or to have died because of pneumoconiosis  
8 if the conditions described in any one of the following  
9 paragraphs are met:

10           “(1) A single positive chest roentgenogram (x-  
11 ray), biopsy, or autopsy of such miner indicates the  
12 existence of pneumoconiosis.

13           “(2) A single set of ventilatory studies of such  
14 miner indicates the presence of a chronic respiratory  
15 or pulmonary disease that meets or exceeds the se-  
16 verity standards of regulations of the Secretary of  
17 Health and Human Services published at 20 C.F.R.  
18 410.490(b)(1)(ii).

19           “(3) A single set of blood gas studies of such  
20 miner indicates the presence of an impairment in the  
21 transfer of oxygen from the lungs to the blood that  
22 meets or exceeds the severity standards of regula-  
23 tions of the Secretary of Labor published at 20  
24 C.F.R. 727.203(a)(3).

25           “(4) Other medical evidence involving such  
26 miner, including the documented opinion of a physi-

1       cian exercising reasonable medical judgment, indi-  
2       cates the presence of a respiratory disease or pul-  
3       monary impairment that would prevent the miner  
4       from performing his usual coal mine work.

5       The person who submits such claim shall not be required  
6       to prove the matters described in paragraph (1), (2), (3),  
7       or (4) by a preponderance of the evidence or by any higher  
8       evidentiary standard.

9       “(b) CAUSATION.—

10           “(1) If a claim is filed after the date of the en-  
11           actment of this section under part C for death or  
12           total disability due to pneumoconiosis and if the  
13           miner with respect to whom the claim was filed  
14           worked 10 or more years in a coal mine and pre-  
15           sents evidence which proves the evidence of the mat-  
16           ter described in any paragraph of subsection (a),  
17           there shall be a rebuttable presumption that the  
18           miner’s pneumoconiosis arose out of the miner’s coal  
19           mine employment. No evidence shall be excluded in  
20           determining the length of a miner’s coal mine em-  
21           ployment. In the absence of complete Social Security  
22           Administration records, affidavits from the miner’s  
23           co-workers shall be accepted as sufficient proof of  
24           the coal miner’s period of employment.

1           “(2) If a miner is unable to prove 10 years of  
2 employment in a coal mine, the miner may prove  
3 that the miner’s pneumoconiosis is due to the min-  
4 er’s coal mine employment through other evidence.

5           “(c) REBUTTAL OF PRESUMPTION.—

6           “(1) The presumption under subsection (a) that  
7 a miner is totally disabled by pneumoconiosis may be  
8 rebutted only if—

9           “(A) there is evidence that establishes that  
10 the claimant is in fact doing the claimant’s  
11 usual coal mine work, or

12           “(B) in light of all relevant evidence, it is  
13 established that the miner is able to do the  
14 miner’s usual coal mine work or comparable  
15 and gainful work.

16 A physician’s opinion that the miner is not totally  
17 disabled shall not rebut such presumption when in-  
18 voked by qualifying ventilatory studies or arterial  
19 blood gas testing.

20           “(2) In connection with a rebuttal of a pre-  
21 sumption under subsection (a), the Secretary of  
22 Labor may submit not more than 1 opinion from an  
23 examining or consulting physician and not more  
24 than 3 x-ray readings to supplement such evidence.

1           “(3) The presumption under subsection (b) may  
2           be rebutted only by clear and convincing proof that  
3           the miner’s pneumoconiosis, established by a condi-  
4           tion described in subsection (a), did not arise, in  
5           whole or in part, out of the miner’s coal mine em-  
6           ployment.

7   **“SEC. 442. APPLICATION OF SECTION 441.**

8           “(a) IN GENERAL.—Section 441 shall apply to all  
9           claims filed under part C on and after the date of the  
10          enactment of this Act, except that the Secretary of Labor  
11          shall review any claim that—

12                  “(1) was filed under part B or part C, and

13                  “(2) is either pending on the date of enactment  
14          of this Act or has been denied on or before such  
15          date,

16          to determine if the evidence establishes eligibility under  
17          the presumption of section 441(a). The Secretary shall re-  
18          view each such claim regardless of whether the claimant  
19          also filed any subsequent claim under part B or C or such  
20          claim resulted in an award of benefits. The Secretary’s  
21          review of a claim which resulted in the award of benefits  
22          may not result in the reversal or forfeiture of such bene-  
23          fits. The Secretary shall promptly notify each claimant  
24          having a claim subject to review under this subsection that

1 the claim shall be reviewed by the Secretary in accordance  
2 with this subsection.

3 “(b) PROCEDURE.—

4 “(1) In carrying out the review of a claim  
5 under subsection (a), the Secretary shall not allow  
6 the claimant or any other party to submit additional  
7 medical or other evidence if the Secretary deter-  
8 mines that the evidence on file meets the criteria of  
9 eligibility set forth in section 441(a). If the Sec-  
10 retary determines that the evidence on file does not  
11 meet the criteria of eligibility set forth in section  
12 441(a), the Secretary shall provide an opportunity  
13 for the claimant to present additional medical or  
14 other evidence to substantiate the claimant’s claim  
15 under such criteria and shall notify the claimant of  
16 that opportunity. The Secretary shall not be per-  
17 mitted to supplement the evidence in any claim re-  
18 viewed under subsection (a). Each claim reviewed  
19 under this section shall be afforded the administra-  
20 tive and judicial review that is afforded claims that  
21 are not subject to this section.

22 “(2) If a claim is determined under subsection  
23 (a) to meet the eligibility requirements of section  
24 441(a), the individual for which the claim was sub-  
25 mitted shall be awarded benefits prospectively (un-

1 less, at the time of such determination, the individ-  
2 ual is receiving black lung benefits prospectively pur-  
3 suant to an award made in connection with a sepa-  
4 rate claim) and retroactively for any period begin-  
5 ning on or after January 1, 1974, for which the  
6 claimant (1) has not received benefits, and (2) is eli-  
7 gible under the statutory and regulatory provisions  
8 governing the retroactive payment of benefits for  
9 claims that are not subject to the special review re-  
10 quired by subsection (a).

11 **“SEC. 443. PAYMENT OF BENEFITS.**

12 Benefits payable under any claim which is determined  
13 under section 441 or 442 to be eligible for benefits shall  
14 be paid from the fund.

15 **“SEC. 444. JUDICIAL REVIEW.**

16 “A claimant who files a claim after the date of enact-  
17 ment of this Act and whose claim is denied by the Depart-  
18 ment of Labor’s Benefits Review Board pursuant to the  
19 procedure of section 21(b) of the Longshore and Harbor  
20 Workers’ Compensation Act (33 U.S.C. 921(b)), may peti-  
21 tion for review in the United States District Court for the  
22 district in which the claimant last worked as a coal miner  
23 or where the claimant resides at the time the appeal is  
24 filed, whichever the claimant chooses. Section 205(g) of  
25 the Social Security Act (42 U.S.C. 405(g)) shall govern

1 all such petitions for review, except that (1) each reference  
2 therein to the Secretary shall be interpreted as meaning  
3 the Secretary of Labor, and (2) if the claim was denied  
4 because of the application of a regulation which violates  
5 this Act or any other Federal law, the period in which  
6 a claimant may petition for review shall not apply. A peti-  
7 tion for review under this section may not be denied be-  
8 cause the claimant has not exhausted the administrative  
9 remedies available to the claimant.

10 **“SEC. 445. SURVIVORS AND DEPENDENTS.**

11 “(a) IN GENERAL.—The Secretary shall award the  
12 survivor or dependent of a deceased miner benefits under  
13 a claim under part C if the conditions in any one of the  
14 following paragraphs are met:

15 “(1) The deceased miner worked 25 years or  
16 more in one or more coal mines.

17 “(2) The miner’s death was due in whole or in  
18 part to pneumoconiosis.

19 “(3) The miner was receiving benefits for  
20 pneumoconiosis at the time of the miner’s death.

21 “(4) The miner had a claim for benefits for  
22 pneumoconiosis pending at the time of the miner’s  
23 death—

24 “(A) in which the existing medical evidence  
25 or such evidence combined with any additional

1 medical evidence submitted by survivors or de-  
2 pendants demonstrates a level of impairment  
3 sufficient to qualify for benefits under section  
4 441(a), or

5 “(B) in which the medical evidence was not  
6 sufficient to qualify for benefits under section  
7 441(a) but lay evidence (i) demonstrates by a  
8 preponderance of the evidence the existence of  
9 a respiratory disease or pulmonary impairment  
10 that would prevent the miner from performing  
11 the miner’s usual coal mine work, and (ii) such  
12 disease or impairment is established in accord-  
13 ance with section 441(b)(2) as resulting from  
14 the miner’s coal mine work.

15 “(b) DEFINITION.—For purposes of this section, sur-  
16 vivors and dependents are those individuals who filed  
17 claims under part C after the date of enactment of this  
18 Act or whose claims under part B or C are eligible for  
19 review under section 442.

20 **“SEC. 446. GENERAL PROVISIONS.**

21 “(a) MULTIPLE CLAIMS.—If a claimant has had a  
22 claim denied under this Act, the Secretary shall permit  
23 the claimant to file an additional claim under this part  
24 without a showing of a material change in the claim. Such

1 an additional claim shall be considered de novo on the  
2 merits.

3 “(b) APPEALS BY THE SECRETARY.—The Secretary  
4 may not file an appeal from a decision of the Deputy Com-  
5 missioner, the Office of Administrative Law Judges, the  
6 Benefits Review Board, or a district court of the United  
7 States with respect to a claim under this part which is  
8 adverse to the Secretary.

9 “(c) REOPENING CLAIMS.—No claim under this part  
10 under which the claimant was awarded benefits and with  
11 respect to which no appeal is pending may be reopened  
12 by the Secretary unless the Secretary offers reasonable  
13 evidence to suspect fraud in connection with the adjudica-  
14 tion of the claim.”.

15 **SEC. 3. CONFORMING AMENDMENT.**

16 Section 224(a)(2)(B) of the Social Security Act (42  
17 U.S.C. 424a(a)(2)(B)) is amended by striking out “and  
18 (iv)” and inserting in lieu thereof “(iv)” and by inserting  
19 at the end the following: “and (v) benefits payable under  
20 the Black Lung Benefits Act,”.

21 **SEC. 4. BENEFIT REPAYMENTS.**

22 Part C of the Black Lung Benefits Act is amended  
23 by adding at the end the following:

24 “SEC. 436. (a) In the administration of the benefits  
25 payable under this part, if a claimant receives benefits

1 under this part under a claim but before final adjudication  
2 of the claim for benefits is made and if the final adjudica-  
3 tion is that the claimant is ineligible for benefits, the pay-  
4 ment of such benefits to the claimant shall not be consid-  
5 ered an overpayment of benefits and the claimant shall  
6 not be legally responsible for the return of such benefits.

7 “(b) If, before the date of the enactment of this sec-  
8 tion, a claimant received benefits under this part under  
9 a claim but before a final adjudication of the claim for  
10 benefits was made, the claimant will not be required to  
11 repay such benefits. If, before the date of the enactment  
12 of this section, a claimant who received benefits under this  
13 part under a claim but before final adjudication of the  
14 claim for benefits was made was required under regula-  
15 tions of the Secretary to repay the benefits as an overpay-  
16 ment of benefits, the Secretary shall refund to the claim-  
17 ant the amount repaid by the claimant.”.

18 **SEC. 5. WIDOW'S BENEFITS.**

19 (a) IN GENERAL.—In the administration of the Black  
20 Lung Benefits Act—

21 (1) a widow of a miner who received or is re-  
22 ceiving benefits under that Act shall not be disquali-  
23 fied to receive such benefits if the widow remarries,  
24 and

1           (2) a widow of a miner shall be entitled to re-  
2           ceive such benefits without regard to the length of  
3           time the widow was married to the miner.

4 Any regulations of the Secretary of Labor which disqualify  
5 a widow described in paragraph (1) or impose a minimum  
6 marriage period as described in paragraph (2) shall on  
7 and after the date of the enactment of this Act have no  
8 legal effect.

9           APPLICATIONS.—Any widow who on the date of the  
10 enactment of this Act is entitled to receive benefits under  
11 the Black Lung Benefits Act because of subsection (a)  
12 shall file a claim for such benefits within 3 years of the  
13 date of the enactment of this Act.

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