

103D CONGRESS
2D SESSION

H. R. 2108

AN ACT

To make improvements in the Black Lung Benefits Act.

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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 1994”.

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
10 a section or other provision of the Black Lung Benefits
11 Act.

12 **SEC. 2. BENEFIT OVERPAYMENT.**

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

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

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

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

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

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

13 “(A) of eligibility, or

14 “(B) that particular medical benefits are
15 payable, or

16 “(2) an award of benefits is made,

17 the operator found to be the responsible operator under
18 section 422(h) shall, within 30 days of the date of such
19 determination or award, commence the payment of month-
20 ly benefits accruing thereafter and of medical benefits that
21 have been found payable. If an operator fails to timely
22 make any payment required by an initial determination
23 or by an award, such determination or award shall be con-
24 sidered final as of the date of its issuance.”.

1 **SEC. 3. EVIDENCE.**

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

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

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

12 “(i) may each require, at no expense to the
13 claimant, not more than one medical examination of
14 the miner, and

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

17 “(C) An administrative law judge may require the
18 miner to submit to a medical examination by a physician
19 assigned by the District Director if the administrative law
20 judge determines that, at any time, there is good cause
21 for requiring such examination. For purposes of this sub-
22 paragraph, good cause shall exist only when the adminis-
23 trative law judge is unable to determine from existing evi-
24 dence whether the claimant is entitled to benefits.

25 “(D) The complete pulmonary evaluation provided
26 each miner under section 413(b) and any consultive eval-

1 uation developed by the District Director shall be received
2 into evidence notwithstanding subparagraph (A) or (B).

3 “(E) Any record of—

4 “(i) hospitalization for a pulmonary or related
5 disease,

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

8 “(iii) a biopsy or an autopsy,

9 may be received into evidence notwithstanding subpara-
10 graph (A) or (B).

11 “(2) In addition to the medical examinations author-
12 ized by paragraph (1), each party may submit one inter-
13 pretive medical opinion (whether presented as documen-
14 tary evidence or in oral testimony) reviewing each clinical
15 study or physical examination (including a consultive read-
16 ing of a chest roentgenogram, an evaluation of a blood
17 gas study, and an evaluation of a pulmonary function
18 study) derived from any medical examination or contained
19 in a record referred to in paragraph (1)(E).

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

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

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

13 **SEC. 4. SURVIVOR BENEFITS.**

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

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

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

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

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

1 (b) RULES FOR WIDOWS AND WIDOWERS.—Section
2 422 (30 U.S.C. 932), as amended by subsection (a), is
3 amended by adding at the end the following:

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

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

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

15 **SEC. 5. RESPONSIBLE OPERATOR.**

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

19 “(2)(A) Prior to issuing an initial determination of
20 eligibility, the Secretary shall, after investigation, notice,
21 and a hearing as provided in section 19 of the Longshore
22 and Harbor Workers’ Compensation Act, as made applica-
23 ble to this Act by subsection (a) of this section, determine
24 whether any operator meets the Secretary’s criteria for li-
25 ability as a responsible operator under this Act. If a hear-

1 ing is timely requested on the liability issue, the decision
2 of the administrative law judge conducting the hearing
3 shall be issued not later than 120 days after such request
4 and shall not be subject to further appellate review.

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

10 **SEC. 6. ATTORNEY FEES.**

11 Section 422 (30 U.S.C. 932), as amended by section
12 4(b), is amended by adding at the end the following:

13 “(p)(1) If in any administrative or judicial proceeding
14 on a claim for benefits a determination is made that a
15 claimant is entitled to such benefits, the claimant shall
16 be entitled to receive all reasonable costs and expenses (in-
17 cluding expert witness and attorney’s fees) incurred by the
18 claimant in such proceeding and in any other administra-
19 tive or judicial proceeding on such claim occurring before
20 such proceeding.

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

23 “(A) the person or Board which made the de-
24 termination that the claimant is entitled to benefits
25 in an administrative proceeding and any other per-

1 son or Board which made a prior determination in
2 an administrative proceeding on such claim, or

3 “(B) the court in the case of a judicial proceed-
4 ing,

5 shall determine the amount of all costs and expenses (in-
6 cluding expert witness and attorney’s fees) incurred by the
7 claimant in connection with any such proceeding and shall
8 assess the operator responsible to the claimant for such
9 costs and expenses which are reasonable or if there is not
10 an operator responsible to the claimant, shall assess the
11 fund for such costs and expenses.

12 “(3) The determination of such costs and expenses
13 shall be made within 60 days of the date the claimant sub-
14 mits a petition for the payment of such costs and expenses
15 to a person, the Board, or court which made a determina-
16 tion on the claimant’s claim. The person, Board, or court
17 receiving such petition shall take such action as may be
18 necessary to assure that such costs and expenses are paid
19 within 45 days of the date of the determination of such
20 costs and expenses unless a motion to reconsider—

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

22 “(B) the person liable for the payment of such
23 amount,
24 is pending.

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

7 “(5) Section 28(e) of the Longshore and Harbor
8 Workers’ Compensation Act shall apply with respect to
9 any person who receives costs and expenses which are paid
10 under this subsection on account of services rendered a
11 claimant.”.

12 **SEC. 7. ADMINISTRATION.**

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

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

21 **SEC. 8. REFILING.**

22 Any claim filed under the Black Lung Benefits Act
23 after January 1, 1982, but before the effective date of this
24 Act prescribed by section 11(a), may be refiled under such

1 Act after such effective date for a de novo review on the
2 merits.

3 **SEC. 9. DEFINITIONS.**

4 (a) COKE OVENS.—

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

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

12 (B) in paragraph (g), by inserting before
13 the semicolon the following: “or working at a
14 coke oven or in any other operation reasonably
15 related to the operation of a coke oven”, and

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

21 (2) BLACK LUNG BENEFITS ACT.—The first
22 sentence of section 402(d) (30 U.S.C. 902(d)) is
23 amended by inserting before the period the follow-
24 ing: “or who works or has worked at a coke oven or

1 in any other operation reasonably related to the op-
2 eration of a coke oven”.

3 (b) PNEUMOCONIOSIS.—Section 402(b) (30 U.S.C.
4 902(b)) is amended—

5 (1) by adding after “sequelae” the following:
6 “which disease or sequelae is restrictive or obstruc-
7 tive or both”, and

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

10 **SEC. 10. EFFECTIVE DATES.**

11 (a) GENERAL RULE.—Except as provided in sub-
12 sections (b) and (c), this Act and the amendments made
13 by this Act shall take effect October 1, 1994.

14 (b) SECTION 5.—The amendment made by section 5
15 shall apply only with respect to claims which are filed for
16 the first time after October 1, 1994, and shall not apply
17 with respect to any claim which is filed before such date
18 and which is refiled under section 8 of this Act after such
19 date.

20 (c) COSTS OFFSET.—The amendments made by this
21 Act shall not take effect unless the costs of the amend-
22 ments are fully offset in each fiscal year through fiscal

1 year 1999 by changes to the Black Lung Benefits Pro-
2 gram.

Passed the House of Representatives May 19, 1994.

Attest:

Clerk.