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§ 410.699a Penalties for fraud.

The penalty for any person found guilty of willfully making any false or misleading statement or representation for the purpose of obtaining any benefit or statement or payment under this part shall be:

- (a) A fine of up to \$1,000, or
- (b) Imprisonment for not more than 1 year, or
- (c) Both (a) and (b).

(Sec. 411, Federal Coal Mine Health and Safety Act of 1969, as amended; 85 Stat. 793, 30 U.S.C. 921)

[43 FR 34781, Aug. 7, 1978]

Subpart G—Rules for the Review of Denied and Pending Claims Under the Black Lung Benefits Reform Act (BLBRA) of 1977

AUTHORITY: Sec. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)), sec. 411, 82 Stat. 793 and 30 U.S.C. 902.

SOURCE: 43 FR 34781, Aug. 7, 1978, unless otherwise noted.

§ 410.700 Background.

(a) The Black Lung Benefits Reform Act of 1977 broadens the definitions of *miner* and *pneumoconiosis* and modifies the evidentiary requirements necessary to establish entitlement to black lung benefits. Section 435 of the Black Lung Benefits Reform Act of 1977 requires that each claimant whose claim has been denied or is pending be given the opportunity to have the claim reviewed under this Act. The purpose of the subpart G is to explain the changes and the procedures, and rules which are applicable with regard to the Social Security Administration's review of part B claims in light of the BLBRA of 1977.

(b) Two Government agencies are responsible for the review of claims. The Social Security Administration, upon the request of the claimant, is responsible for the review of claims filed with the Social Security Administration under part B of title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, except those claims filed under section 415 of the Act. The Department of Labor, Office of Workers' Compensation Programs is respon-

sible for the review of the following claims:

(1) Claims filed under part C of title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended;

(2) Part B claims filed under section 415 of the Act; and

(3) Those part B claims for which the claimant elects review by DOL. The Department of Labor regulations explaining the review procedures for these claims are published at 20 CFR part 727.

[43 FR 34781, Aug. 7, 1978, as amended at 62 FR 38454, July 18, 1997]

§ 410.701 Jurisdiction for determining entitlement under part B.

In order for the Social Security Administration to approve a claim under this subpart G, the evidence on file must show, in a living miner's claim, that the miner was totally disabled due to pneumoconiosis prior to July 1, 1973. In a survivor's claim, the evidence must show (1) that the deceased miner was either totally disabled due to pneumoconiosis at the time of death, or that death was due to pneumoconiosis, and that death occurred prior to January 1, 1974, or (2) that the miner was entitled to part B benefits at the time of death, and that the survivor filed for benefits either within 6 months of such death or before January 1, 1974, whichever is later, regardless of when such death occurred.

§ 410.702 Definitions and terms.

The following definitions shall apply with regard to review under this subpart G.

(a) *Denied claim defined.* Denied claim means: (1) Any claim that was filed with the Social Security Administration under part B of title IV of the Act; and

(2) Entitlement to benefits was not established; and

(3) The time limit for any further appeal has expired.

(b) *Pending claim defined.* Pending claim means: (1) Any claim that was filed with the Social Security Administration under part B of title IV of the Act; and

(2) Entitlement to benefits has not been established; and

(3) The time limit for any appeal has not expired or action is still pending on an appeal which was requested timely, or on which an extension of time to request appeal has been granted.

(c) *Withdrawn claim defined.* Withdrawn claim means: Any claim that was filed with the Social Security Administration under part B of title IV of the Act which has been previously withdrawn at the request of the claimant. This claim shall not be considered a pending or denied claim.

(d) *Pneumoconiosis defined.* In addition to the definition of pneumoconiosis contained in §§ 410.110(o) and 410.401(b), pneumoconiosis means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.

(e) *Evidence on file defined.* Evidence on file is information in the black lung claims file, in the social security title II and title XVI disability claims files, or in a person's earnings record, as of March 1, 1978.

(f) *Determining total disability—the working miner.* A miner shall be considered totally disabled when pneumoconiosis prevents the miner from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time.

(1) In the case of a living miner if there are changed circumstances of employment indicative of reduced ability to perform the miner's usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled.

(2) A deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled.

(3) Any miner not totally disabled by complicated pneumoconiosis who has been determined to be eligible for benefits as a result of a claim filed while the miner is engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date the determination becomes final.

(g) *Survivor entitlement for deceased miner—25 years or more coal mine employment.* If a miner died on or before March 1, 1978, and had worked for 25 years or more in one or more coal mines before June 30, 1971, the eligible survivors of the miner shall be entitled to the payment of benefits at the same rate as that under section 412(a)(2) of the Act, unless it is established that at the time of the miner's death the miner was not partially or totally disabled due to pneumoconiosis.

(h) *Miner defined.* A miner is any person who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation or transportation of coal, and any person who works or has worked in coal mine construction or maintenance in or around a coal mine or coal preparation facility. A coal mine construction or transportation worker shall be considered a miner to the extent such individual is or was exposed to coal dust as a result of his or her employment in or around a coal mine or preparation facility. In the case of an individual employed in coal transportation or coal mine construction, there shall be a rebuttable presumption that such individual was exposed to coal dust during all periods of such employment occurring in or around a coal mine or coal preparation facility for purposes of determining whether such individual is or was a miner. The presumption may be rebutted by evidence which demonstrates that the individual was not regularly exposed to coal dust during his or her employment in or around a coal mine or preparation facility or that the individual was not regularly employed in or around a coal mine or coal preparation facility. An individual employed by a coal mine operator, regardless of the nature of such individual's employment, shall be considered a miner unless such individual was not employed in or around a coal mine or coal preparation facility. A person who is or was a self employed miner, independent contractor, or coal mine worker, as described in this paragraph, shall be considered a miner for the purposes of this subpart.

(i) *X-ray rereading prohibition.* Where there is other evidence, such as the

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kind in § 410.414(c), that a miner has a pulmonary or respiratory impairment, a board certified or board eligible radiologist's interpretation of a chest X-ray taken by a radiologist or qualified technician will be accepted if: (1) It is of a quality sufficient to demonstrate the presence of pneumoconiosis and; (2) it was submitted in support of a claim, unless it is established that the claim has been fraudulently represented.

(j) *Acceptance of autopsy reports.* Unless there is reason to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, an autopsy report concerning the presence of pneumoconiosis and the stage of advancement of the disease will be accepted if it is already on file.

(k) *Acceptance of affidavits—miner deceased.* Where there is no medical evidence or other relevant evidence (see § 410.414(c)) to establish total disability or death due to pneumoconiosis of a deceased miner, affidavits from the spouse and other individuals having knowledge of the deceased miner's physical condition will be sufficient to establish total disability or death due to pneumoconiosis if they are already on file.

[43 FR 34781, Aug. 7, 1978, as amended at 44 FR 10058, Feb. 16, 1979]

§ 410.703 Adjudicatory rules for determining entitlement to benefits.

(a) *General.* Section 402(f)(2) of the Act provides that the criteria and standards to be applied to a claim reviewed under section 435 of the Act, for determining whether a miner is or was totally disabled due to pneumoconiosis or died due to pneumoconiosis, shall be no more restrictive than the criteria applicable to a claim filed with the Social Security Administration on or before June 30, 1973, under part B of title IV of the Act. In keeping with this provision, the interim evidentiary rules and disability criteria contained in § 410.490 will be applicable for this review.

(b) *Payment provisions.* The DOL has sole responsibility for assigning liability for payment purposes. The DOL regulations relating to the amount of benefits payable, the manner of payment and all other provisions published

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at 20 CFR part 725 shall be applicable to a claim approved under this subpart.

(c) *Date from which benefits are payable.* Benefits for claims reviewed under this subpart G for which entitlement to benefits is established under the BLBRA of 1977 are payable on a retroactive basis for a period which begins no earlier than January 1, 1974.

§ 410.704 Review procedures.

(a) *Notification.* Each claimant who has filed a claim for benefits under part B of title IV of the Act, and whose claim is either pending before the Social Security Administration or the courts or has been denied on or before March 1, 1978, will be mailed a notice advising that, upon the request of the claimant, the claim shall be:

(1) Reviewed by the Social Security Administration or DOL, Office of Workers' Compensation Programs to see whether entitlement to benefits may be established under the BLBRA of 1977; and

(2) If review by the Social Security Administration is requested, the review will be made on the basis of the evidence on file as of March 1, 1978; and

(3) If review by the Office of Workers' Compensation Programs is requested, the Office of Workers' Compensation Programs will provide an opportunity for additional evidence to be submitted for consideration prior to a determination.

(b) Where the claimant is mentally incompetent or physically incapable, or is a minor, review of the claim may be elected by those people described in § 410.222. Where the original claimant is deceased, any person who may be entitled to benefits as a survivor of the claimant, including those described in § 410.570(c), may elect review of the claim.

(c) *Effect of review of a pending part B claim under the BLBRA of 1977 on the pending claim.* Part B claims pending before the Social Security Administration or the courts will continue to be processed under the old law at the same time that these claims are being reviewed by the Social Security Administration, at the claimant's request, under the BLBRA of 1977. Claimants would then have two separate and