§ 410.410 Total disability due to pneumoconiosis, including statutory presumption.

(a) Benefits are provided under the Act to coal miners “who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation’s coal mines,” and to the eligible survivors of miners who are determined to have been totally disabled due to pneumoconiosis at the time of their death. (For benefits to the eligible survivors of miners whose deaths are determined to have been due to pneumoconiosis, see §410.450.)

(b) To establish entitlement to benefits on the basis of a coal miner’s total disability due to pneumoconiosis, a claimant must submit the evidence necessary to establish: (1) That he is a coal miner, that he is totally disabled due to pneumoconiosis, and that his pneumoconiosis arose out of employment in the Nation’s coal mines; or (2) that the deceased individual was a miner, that he was totally disabled due to pneumoconiosis, and that his pneumoconiosis arose out of employment in the Nation’s coal mines.

(c) Total disability is defined in §410.412; the basic provision on determining the existence of pneumoconiosis is in §410.414; and the requirement that the pneumoconiosis must have arisen out of coal mine employment is in §410.416. The statutory presumptions with respect to the burden of proving the foregoing are in §§410.414(b), 410.416(a), and 410.418, and the provision for determining the existence of total disability when the presumption in §410.418 does not apply is included in §410.422.

§ 410.412 “Total disability” defined.

(a) A miner shall be considered totally disabled due to pneumoconiosis if:

1. His pneumoconiosis prevents him from engaging in gainful work in the immediate area of his residence requiring the skills and abilities comparable to those of any work in a mine or mines in which he previously engaged with some regularity and over a substantial period of time (that is, “comparable and gainful work”); see §§410.421 through 410.426); and

(2) His impairment can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months.

(b) A miner shall be considered to have been totally disabled due to pneumoconiosis at the time of his death:

(1) His pneumoconiosis prevented him from engaging in gainful work in the immediate area of his residence requiring the skills and abilities comparable to those of any work in a mine or mines in which he previously engaged with some regularity and over a substantial period of time (that is, “comparable and gainful work”; see §§ 410.424 through 410.426); and

(2) His impairment was expected to result in death, or it lasted or was expected to last for a continuous period of not less than 12 months.

§ 410.414 Determining the existence of pneumoconiosis, including statutory presumption.

(a) General. A finding of the existence of pneumoconiosis as defined in § 410.110(o)(1) may be made under the provisions of § 410.428 by:

(1) Chest roentgenogram (X-ray); or
(2) Biopsy; or
(3) Autopsy.

(b) Presumption relating to respiratory or pulmonary impairment. (1) Even though the existence of pneumoconiosis is not established as provided in paragraph (a) of this section, a finding of total disability due to pneumoconiosis may be made if other relevant evidence establishes the existence of a totally disabling chronic respiratory or pulmonary impairment, and that such impairment arose out of employment in a coal mine. As used in this paragraph, the term other relevant evidence includes medical tests such as blood gas studies, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the miner’s physician, his spouse’s affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the individual’s physical condition, and other supportive materials. In any event, no claim for benefits under part B of title IV of the Act shall be denied solely on the basis of a negative chest roentgenogram (X-ray).

§ 410.416 Determining origin of pneumoconiosis, including statutory presumption.

(a) If a miner was employed for 10 or more years in the Nation’s coal mines, and is suffering or suffered from pneumoconiosis, it will be presumed, in the absence of persuasive evidence to the contrary, that the pneumoconiosis arose out of such employment.

(b) In any other case, a miner who is suffering or suffered from pneumoconiosis, must submit the evidence