§ 718.305 Presumption of pneumoconiosis.

(a) Applicability. This section applies to all claims filed after January 1, 2005, and pending on or after March 23, 2010.

(b) Invocation. (1) The claimant may invoke the presumption by establishing that—

(i) The miner engaged in coal-mine employment for fifteen years, either in one or more underground coal mines, or in coal mines other than underground mines in conditions substantially similar to those in underground mines, or in any combination thereof; and

(ii) The miner or survivor cannot establish entitlement under §718.304 by means of chest x-ray evidence; and

(iii) The miner has, or had at the time of his death, a totally disabling respiratory or pulmonary impairment established pursuant to §718.204, except that §718.204(d) does not apply.

(2) The conditions in a mine other than an underground mine will be considered “substantially similar” to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there.

(c) Facts presumed. Once invoked, there will be rebuttable presumption—

(1) In a miner’s claim, that the miner is totally disabled due to pneumoconiosis, or was totally disabled due to pneumoconiosis at the time of death; or

(2) In a survivor’s claim, that the miner’s death was due to pneumoconiosis.

(d) Rebuttal—(1) Miner’s claim. In a claim filed by a miner, the party opposing entitlement may rebut the presumption by—

(i) Establishing both that the miner does not, or did not, have:

(A) Legal pneumoconiosis as defined in §718.201(a)(2); and

(B) Clinical pneumoconiosis as defined in §718.201(a)(1), arising out of coal mine employment (see §718.203); or

(ii) Establishing that no part of the miner’s respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201.

(2) Survivor’s claim. In a claim filed by a survivor, the party opposing entitlement may rebut the presumption by—

(i) Establishing both that the miner did not have:

(A) Legal pneumoconiosis as defined in §718.201(a)(2); and

(B) Clinical pneumoconiosis as defined in §718.201(a)(1), arising out of coal mine employment (see §718.203); or

(ii) Establishing that no part of the miner’s death was caused by pneumoconiosis as defined in §718.201.

(3) The presumption must not be considered rebutted on the basis of evidence demonstrating the existence of a totally disabling respiratory or pulmonary impairment.

(4) In the case of a deceased miner, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner’s physical condition must be considered sufficient to establish total disability due to a respiratory or pulmonary impairment if no medical or other relevant evidence exists which addresses the miner’s pulmonary or respiratory condition; however, such a determination must not be based solely upon the affidavits or testimony of any person who would be eligible for benefits (including augmented benefits) if the claim were approved.

(c) Facts presumed. Once invoked, there will be rebuttable presumption—

(1) In a miner’s claim, that the miner is totally disabled due to pneumoconiosis, or was totally disabled due to pneumoconiosis at the time of death; or

(2) In a survivor’s claim, that the miner’s death was due to pneumoconiosis.

(d) Rebuttal—(1) Miner’s claim. In a claim filed by a miner, the party opposing entitlement may rebut the presumption by—

(i) Establishing both that the miner does not, or did not, have:

(A) Legal pneumoconiosis as defined in §718.201(a)(2); and

(B) Clinical pneumoconiosis as defined in §718.201(a)(1), arising out of coal mine employment (see §718.203); or

(ii) Establishing that no part of the miner’s respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201.

(2) Survivor’s claim. In a claim filed by a survivor, the party opposing entitlement may rebut the presumption by—

(i) Establishing both that the miner did not have:

(A) Legal pneumoconiosis as defined in §718.201(a)(2); and

(B) Clinical pneumoconiosis as defined in §718.201(a)(1), arising out of coal mine employment (see §718.203); or

(ii) Establishing that no part of the miner’s death was caused by pneumoconiosis as defined in §718.201.

(3) The presumption must not be considered rebutted on the basis of evidence demonstrating the existence of a totally

(168x446)Provided
(203x446), however
(241x446), That any diag-
(132x437)nosis made under this paragraph
(132x428)shall accord with acceptable medical
(132x419)procedures.
totally disabling obstructive respiratory or pulmonary disease of unknown origin.

[78 FR 59114, Sept. 25, 2013]

§ 718.306 [Reserved]

APPENDIX A TO PART 718—STANDARDS FOR ADMINISTRATION AND INTERPRETATION OF CHEST ROENTGENOGRAMS (X-RAYS)

The following standards are established in accordance with sections 402(f)(1)(D) and 413(b) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health. These standards are promulgated for the guidance of physicians and medical technicians to insure that uniform procedures are used in administering and interpreting X-rays and that the best available medical evidence will be submitted in connection with a claim for black lung benefits. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be assigned to the physician’s report of an X-ray.

(1) Every chest roentgenogram shall be a single postero-anterior projection at full inspiration on a 14 by 17 inch film. Additional chest films or views shall be obtained if they are necessary for clarification and classification. The film and cassette shall be capable of being positioned both vertically and horizontally so that the chest roentgenogram will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then a projection with a suitable filter or purification system shall be used.

(2) Miners shall be disrobed from the waist up at the time the roentgenogram is given. The facility shall provide a dressing area and, for those miners who wish to use one, the facility shall provide a clean gown. Facilities shall be heated to a comfortable temperature.

(3) Roentgenograms shall be made only with a diagnostic X-ray machine having a rotating anode tube with a maximum of a 2 mm source (focal spot).

(4) Except as provided in paragraph (5), roentgenograms shall be made with units having generators which comply with the following: (a) the generators of existing roentgenographic units acquired by the examining facility prior to July 27, 1973, shall have a minimum rating of 300 mA at 125 kVp; (b) generators of units acquired subsequent to that date shall have a minimum rating of 200 mA at 100 kVp.

NOTE: A generator with a rating of 150 kVp is recommended.

(5) Roentgenograms made with battery-powered mobile or portable equipment shall be made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or 200 mA at 110 kVp at 60 Hz.

(6) Capacitor discharge, and field emission units may be used.

(7) Roentgenograms shall be given only with equipment having a beam-limiting device which does not cause large unexposed boundaries. The use of such a device shall be discernible from an examination of the roentgenogram.

(8) To insure high quality chest roentgenograms:

(i) The maximum exposure time shall not exceed 1/20 of a second except that with single phase units with a rating less than 300 mA at 125 kVp and subjects with chest over 28 cm postero-anterior, the exposure may be increased to not more than 1/10 of a second;

(ii) The source or focal spot to film distance shall be at least 6 feet;

(iii) Only medium-speed film and medium-speed intensifying screens shall be used;

(iv) Film-screen contact shall be maintained and verified at 6-month or shorter intervals;

(v) Intensifying screens shall be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(vi) All intensifying screens in a cassette shall be of the same type and made by the same manufacturer;

(vii) When using over 90 kV, a suitable grid or other means of reducing scattered radiation shall be used;

(viii) The geometry of the radiographic system shall insure that the central axis (ray) of the primary beam is perpendicular to the plane of the film surface and impinges on the center of the film.

(9) Radiographic processing:

(i) Either automatic or manual film processing is acceptable. A constant time-temperature technique shall be meticulously employed for manual processing.

(ii) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality roentgenogram, a suitable filter or purification system shall be used.

(10) Before the miner is advised that the examination is concluded, the roentgenogram shall be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist.

In a case of a substandard roentgenogram, another shall be made immediately.

(11) An electric power supply shall be used which complies with the voltage, current, and regulation specified by the manufacturer of the machine.