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BLACK LUNG BENEFITS

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HEARING

BEFORE THE

GENERAL SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

H.R. 18, H.R. 42, H.R. 43, and H.R. 5702

BILLS TO AMEND TITLE IV OF THE FEDERAL COAL MINE
HEALTH AND SAFETY ACT OF 1969

HEARING HELD IN WASHINGTON, D.C., MAY 10, 1971

Printed for the use of the Committee on Education and Labor

CARL D. PERKINS, *Chairman*



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BLACK LUNG BENEFITS

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BLACK LUNG BENEFITS

WEDNESDAY, MAY 19, 1971

**HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.**

The subcommittee met at 10:15 a.m., pursuant to call, in room 2175, Rayburn House Office Building, Hon. Augustus F. Hawkins presiding.

Present: Representatives Hawkins, Perkins, Burton, Erlenborn, and Landgrebe.

Staff members present: Robert E. Vagley, director, General Subcommittee on Labor, and Michael J. Bernstein, minority counsel for labor.

Mr. HAWKINS. The General Subcommittee on Labor of the Committee on Education and Labor will now come to order. The chairman of the subcommittee, Mr. Dent, is necessarily absent and is in Pennsylvania recovering from surgery. I am happy to say his condition is excellent, and we look forward to having him back in Washington in just a few short weeks.

On December 30, 1969, the President signed the Federal Coal Mine Health and Safety Act of 1969 into law. Title IV of the act established a program of Federal benefit payments to coal miners totally disabled by pneumoconiosis—commonly known as black lung—and to widows of miners who died with pneumoconiosis. The program became effective on the date of enactment of the act.

Since that time, more than 286,000 claims for benefits have been filed. Of that total, decisions have been reached with respect to 245,800, and 118,700 have been allowed. Including widows and children, about 190,000 individuals are now beneficiaries.

Since benefit amounts are based upon payments made pursuant to the Federal Employees' Compensation Act, and thereby affected by modifications in the pay rate of Federal employees, they have increased since the program began.

An eligible miner or widow with no dependents currently receives monthly benefits of \$153.10, an eligible miner or widow with one dependent receives monthly benefits of \$229.60, one with two dependents monthly benefits of \$267.90, and one with three dependents monthly benefits of \$306.10.

The program is administered through the Social Security Administration of the Department of Health, Education, and Welfare. I am compelled to say that the Social Security Administration certainly deserves our plaudits for implementing the program so expeditiously.

We may have criticisms of the type of medical evidence required,

the judgment made in specific cases, or the practice of offsetting disability insurance benefits with black lung benefits, but I think we can all agree on the efficiency and dispatch with which this program was initially administered. It was certainly a mammoth undertaking for which no governmental agency was adequately prepared.

This hearing was called to receive views on four bills introduced by the chairman of the Committee on Education and Labor: H.R. 18, H.R. 42, H.R. 43, and H.R. 5702.

(The texts of the bills follow:)

[H.R. 18, 92d Cong., first sess.]

A BILL To extend for an additional year the existing program for payment of black lung benefits

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended—

(1) by striking out "1971" where it appears in section 414(b), and inserting in lieu thereof "1972".

(2) by striking out "1972" each place it appears and inserting in lieu thereof "1973".

(3) by striking out "1973" each time it appears and inserting in lieu thereof "1974", and

(4) by striking out "seven" where it appears in section 422(e) and inserting in lieu thereof "eight".

[H.R. 42, 92d Cong., first sess.]

A BILL To amend the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits of orphans whose fathers die of pneumoconiosis

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 412(a) of the Federal Coal Mine Health and Safety Act of 1969 is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or of a miner who is receiving benefits under this part at the time of his death, and who leaves no widow, and in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children."

SEC. 2. (a) Section 412(b) of such Act is amended by inserting after "widow" the first time it appears the following: "or child", and by striking out "or widow" and inserting "widow or child".

(b) Section 402 of such Act is amended by adding at the end thereof the following new subsection:

"(g) The term 'child' has the meaning given such term in section 8101(9) of title 5, United States Code."

(c) Section 414(a) of such Act is amended by adding at the end thereof the following new sentence: "In the case of a claim by a child, such claim shall not be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1972, whichever is the later."

[H.R. 43, 92d Cong., first sess.]

A BILL To amend the Federal Coal Mine Health and Safety Act of 1969 with respect to the amounts of black lung benefits in certain cases

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 412(b) of the Federal Coal

This is where we have the offset provision. I will speak on this in just a few moments.

The next bill, H.R. 5702, relates to the requirements of proof of entitlement to black lung benefits under the Federal Coal Mine Safety Act.

Mr. Chairman, as I understand, we have presently filed some 288,000 claims. We have processed perhaps 254,000 claims.

Of course, the States involved primarily are Pennsylvania, West Virginia, and Kentucky. The Kentucky claims are to a great degree disappointing to me, because of the total allowances and the denials. The denials in my home State have been 72 percent, compared with the approvals of approximately 28 percent, contrasted with some other States, in West Virginia the denials have been only 56 percent, and in Pennsylvania 31 percent.

I do want to point out that Kentucky had a tremendous number of claims, perhaps more in proportion to the mining population than any other State.

Back in my early days, we had 30,000 coal miners within a radius of perhaps 30 or 40 miles around my home. Today we have not over 4,000 or 5,000. That just points up what has happened in the coal industry.

But these people who spent their lives in the coal industry deserve the consideration of this Congress, where they have contracted this disease, and they would never have been compensated under State law for a disease that occurred 12, 15, 20, or 25 years ago.

We intended that this statute be realistic when we wrote into the law that the definition of disability should not be more restrictive than the disability definition in the Social Security Act. But to my way of thinking, the Department of HEW in construing the statute has gone far beyond the intent of the Congress and has gone off too many times on tangents. Their analysis of so many of these claims has been unrealistic.

We have a bill here that says that an individual, an applicant, cannot be denied solely because of an X-ray examination.

I think in my younger days as an attorney I had considerable experience with X-rays. Neurosurgeons, the best orthopedic surgeons in the country, I have seen disagree just about 50 percent of the time in reading X-rays, unless it was a bone injury, and to undertake to deny claims for black lung benefits solely on an X-ray examination was never intended by this Congress, and is a disgraceful situation insofar as justice is concerned to the coal miners in this country. We have a bill here to correct that situation.

Dozens and dozens of people in my district have been denied solely on an X-ray examination. They herd them up like sheep, send them through a hospital with X-rays, maybe 50 or 75 or 100, as many as they can throw in in a day, and later on they would receive denial notices.

That system was never intended under the black lung statute, and we have a bill here to correct it. That is one of the reasons we are asking the subcommittee to approve legislation to extend the effective date of filing claims, because so many claims I know in the congressional district that I represent will have to be reconsidered.

There are thousands of claims that have been wrongfully denied. When you see a situation like this, I think it behooves us all as Members of the Congress to make some corrections.

Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following: "This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act".

(b) The amendment made by this Act shall be effective as of December 30, 1969.

[H.R. 5702, 92d Cong., first sess.]

A BILL Relating to the requirements for proof of entitlement to black lung benefits under the Federal Coal Mine Health and Safety Act of 1969

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 402(f) of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

"(f) The term 'total disability' means the inability of a miner by reason of a medically determinable physical impairment to engage in substantially gainful employment as a miner."

Sec. 2. The first sentence of section 413(b) of such Act is amended by inserting before the period at the end thereof the following: ", but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram".

Mr. HAWKINS. We will also hear testimony regarding the administration of the program.

The first witness is the author of the legislation before us, and one of the earliest and chief architects of the black lung program. He is from one of the leading coal-producing States in the Nation, and he is the chairman of this committee.

I am pleased to recognize our most distinguished and honorable chairman of our committee, the Honorable Carl D. Perkins.

STATEMENT OF HON. CARL D. PERKINS, CHAIRMAN, COMMITTEE ON EDUCATION AND LABOR

Chairman PERKINS. Let me thank you, Mr. Chairman, and members of the committee.

I want to express my deepest regrets that Congressman Dent is not here on this occasion because of illness. He set the hearings up before he went to the hospital. We are thankful nevertheless that the committee is chaired by one of our most distinguished members of Congress, Mr. Hawkins.

I appear here this morning in behalf of H.R. 18, a bill to extend for an additional year the existing program for payment of black lung benefits. That is, the time limit expires on December 31, 1972. I will give the reasons why it should be extended to December 31, 1973.

Perhaps the subcommittee may see fit to extend the time for filing for at least 2 or 3 additional years. I just picked that 1 year because I well realize myself that it was a necessity to provide at least that additional time.

The bill, H.R. 42, is to amend the Federal Coal Mine Health and Safety Act to extend black lung benefits to orphans whose fathers died of pneumoconiosis.

We have an extreme hardship on children where there is no parent in the family, no survivors. There was a gap in the law, and we certainly felt that justice should be done in that instance.

H.R. 43 is to amend the Federal Coal Mine Health and Safety Act of 1969 with respect to the amount of black lung benefits in certain cases.

Now, on another subject, the offset provision that has been applied was never intended by the Congress. They have unjustly taken from black lung recipients thousands and thousands of dollars from hundreds and hundreds of claimants in my congressional district alone.

I know that is the truth, because we have many of those cases in our office, and you cannot go through that district without people complaining about being robbed of their social security disability payments because of the black lung benefits.

On page 13 of the original report, we stated :

This program of payments, maintained in the bill by a committee vote of 25 to nine, is not a workmen's compensation plan. It is not intended to be so, and it contains none of the characteristic features which mark any workmen's compensation plan.

Now, I have read the analysis of the Social Security Administration, and they go ahead and try to justify it on some statement that the President of the United States made, and relate it to Federal compensation, which is just as farfetched as it can possibly be.

Mr. BURTON. Mr. Chairman.

Mr. HAWKINS. Mr. Burton.

Mr. BURTON. Would the distinguished chairman of the full committee yield for a question?

Chairman PERKINS. Yes.

Mr. BURTON. Congressman Perkins, do you remember when the House-Senate conferees all but concluded their deliberations, and we had but one final issue resolve, which was the black lung payment?

Do you recall that it was for more than 3 weeks that the conference committee's final decision was held in abeyance because the administration first insisted there be a full deduction for disability payments and our side said, "No."? Does the chairman remember further, that just 72 hours before this matter was brought to the floor the gentleman from California, Mr. Burton, went to the distinguished chairman, Mr. Perkins, and said, "The administration has made us one other offer. They have agreed to let the bill go if we deduct 50 percent of the disability payments." I asked the opinion of the distinguished chairman of the full committee, Mr. Perkins. I said, "Carl, you and John Dent and Dan Flood have given your blood on this bill. We have got a sure win if we will take the 50 percent deduction of disability insurance."

Congressman Dent had indicated he did not want to do it, and the distinguished chairman of the full committee stated, "We ain't a-going to do it. We are going to run with the bill as it is, with no disability insurance, and make them vote it up or down."

Is that not a correct statement of the history?

Chairman PERKINS. That is a correct statement of the history. And I recall that we held this bill up 3 or 4 weeks in conference because of this issue, and no one knew why we were holding it up at that time.

Mr. BURTON. As the chairman further knows, it is because we refused to accede to any deduction in terms of the OASDI that the Republicans then most vigorously, as our distinguished ranking member will articulate in a moment, fought this bill on final passage.

Chairman PERKINS. That is correct.

Mr. BURTON. There was no other reason for the fight. There was no other reason for the 3 week delay.

Mr. ERLNBORN. Would the gentleman yield, Mr. Chairman?

Mr. HAWKINS. Would you suspend, Mr. Perkins?

Mr. Erlenborn.

Mr. ERLNBORN. Let me just make one very quick observation.

This seems to be an attempt to rewrite history, when you talk about a 3-week delay in the conference. I think anyone with any memory will recall that our conference met for 1 day, 1 day; and we reported out at the end of that day, which happened to be the anniversary of the disaster.

Chairman PERKINS. Will the gentleman yield to me?

Mr. ERLNBORN. Let me just finish.

We met one day, and the conference never met again, and now you are talking about a 3-week delay in the conference.

Chairman PERKINS. Let me say to the gentleman we did only meet 1 day, but we were arguing over what was decided within that 1-day period for a period of 3 or 4 weeks.

Mr. ERLNBORN. Now the gentlemen is admitting what I said on the floor that the conference met for 1 day, then the staff wrote the agreement, and the conference report did not reflect at all what the conference decided in that 1 day.

Mr. BURTON. Will the Chairman yield?

Chairman PERKINS. Yes, I yield.

Mr. BURTON. The gentlemen from Illinois was in the minority every step of the way, from the first meeting of the subcommittee through the subcommittee, the full committee, the floor, and conference.

Perhaps he would have wished for a majority to agree with him, but we did not agree with him on virtually anything. From the standpoint of the gentleman from Illinois, he happened to have been consistently on the side which did not prevail.

I wrote this provision myself, so I know what it says. The gentleman from Illinois cannot tell me that we agreed to or said we would assent to a deduction of the disability insurance.

It was right down here that the gentleman from Illinois and a representative of the administration discussed with the gentleman from California, now speaking, the offer of a deduction of not only the full social security deduction, but how about 50 percent. The gentleman will recall that our side rejected it.

Chairman PERKINS. We rejected it teetotally, to put it bluntly.

Mr. HAWKINS. Teetotally.

Chairman PERKINS. That is correct.

Mr. ERLNBORN. That is a very sober statement, Mr. Chairman.

Chairman PERKINS. Let me make a further observation on this point.

I hate to see disabled people robbed of just benefits, and I mean thousands and thousands of claimants. This is all we are doing in this case. This disability provision, the black lung provision, has no relation to Federal compensation, and there is no way to tie it to Federal compensation in the Social Security Act.

It is true that there was a great debate on it before the conference report was approved on the floor of the house, and to let the administration come back and take from these needy people millions of dollars is just not justice in this country.

I am most hopeful that the committee will approve this bill. We can put it under suspension of the rules and pass it overwhelmingly,

and what we should do is that we should restore the benefits that have unjustly been offset and taken from thousands of claimants.

Now, in some of these cases, after black lung benefits have been adjudged, there is a loss. There is a case down home where the individual claimant receives 50 cents less than he received before his black lung claims were approved.

I hope that we do not let the administration in administering the black lung statute continue to take from the people money in a way that was never contemplated. The bill that I have here will correct that situation, Mr. Chairman, and I am most hopeful that it will be approved.

I have a number of letters from people in my district which make crystal clear the need for these revisions. I ask that they be included in the record of the hearings.

Mr. HAWKINS. Without objection, the letters will be inserted into the record at this point.

(The letters referred to follow:)

CANNEL CITY, KY., *October 30, 1970.*

CONGRESSMAN PERKINS: I'm writing in regard to the Black Lung Benefits. I have spent most of my life working in the mines. I am disabled and have only one lung. I was signed up in February for the Black Lung.

I was approved to be 100% disability by fifty doctors. I haven't heard anything since. I have three children in school and can't make ends meet. I have been denied any help from the State, I do draw some Social Security. I would appreciate if you would let me know something.

Sincerely yours,

JEFF, KY., *February 16, 1971.*

HON. CARL D. PERKINS,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN: I filed for Social Security Apr. 1-70 and was denied for reasons not enough medical proof. I applied and was again denied.

Before the hearing on my Social Security Claim I was admitted to V.A. Hospital for complete physical examination and was found to be permanent and totally disable due to Lung condition. I receive a non service conn. of \$142.00 monthly and \$136.00 Federal Food Stamps for which I pay \$39.00. I have three children in school.

I applied for Public Assistance and was denied. Enclosed is list of Doctors and hearing officers decision on public assistance and Doctors reports on Social Security.

Since June 30-70 I have not heard from Bluck Lung, if you can help me in this please for I am in need.

DEAR MR. CARL D. PERKINS: I thought I would write you again. Mr. Perkins I thank you for helping my mother get on the welfare now I am asking you to help my father get his Social Security. Mr. Perkins he has worked 15 years for _____ company as tippleman. Mr. Perkins here is what he work on belt and rock crusher. Mr. Perkins I would like for you to look into it for me. Mr. Perkins I am going to give you the names of the doctors that give it to him and the places too this one was at the clinic given by _____. 1. short winded 2. eyes bother him 3. pain in the chest at times and weakness. 4. head is negative EENT. 5. Chronic lung disease. Mr. Perkins all this given by _____ at the Hazard clinic. Mr. Perkins he began working at _____ July 16, 1916 he worked till Sept. 15, 1959 as tripple. Mr. Perkins my father does not have good mind you know what I am saying don't you. Mr. Perkins I would like for you to help me get his Social Security for we need it. My mother is just getting \$110 and that is not enough to live on, we get food stamps \$84 and have to pay \$27 dollars and when we pay that we don't have much left to buy our food with. I would like for you to help me get it. Answer soon.

SWAMP BRANCH, KY., March 24, 1971.

CARL D. PERKINS.

DEAR CONGRESSMAN: I am writing you concerning my black lung benefits, which I signed up for in November, and the 3rd day of March I received the decision which said, I was turned down for the Black Lung benefits. But the decision also said, I had a lung condition and the way it reads I'm not able to work, because of the lung condition. I have the paper which is the decision they sent me, if you need it I will send it to you. I don't want to get it misplaced, as they said I would need it to open up my claim if I wasn't satisfied, so I'm not satisfied. That's why I am writing you to see if you will help me. I am 58 years old and I'm not working and any help you can give me will be appreciated. I have worked in the mines better than 20 yrs. If you need any more information please let me know.

Yours truly,

PINSONFORK, KY., December 12, 1970.

DEAR CARL: I am writing in concern of Arthur H. ———. He worked the Coal Mines here for 53 years and now 78 yrs. old. Two weeks ago he was denied black lung and said his letter reported he was able to do gainful work.

He can barely breathe to walk to the post office.

See what can be done if any for Mr. ———. He'll appreciate the favor I'm sure.

JANUARY 14, 1971.

HON. CARL D. PERKINS,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN PERKINS: I am sending you a copy of the letter you sent Mr. Ball. I have not heard anything, I think they put my papers in the trash can. If they have I will file again, I filed my claim the first of February, 1970. I think that's too long to wait. I have to leave the Coal Mines on account of my breathing and after that I could not hold any job. I been in a TB hospital 9 different times in Kentucky, they didn't find any TB I still got the spots on my lungs. I draw 75.50 Social Security so if I got Black Lung I could use the money while I am living. If there is anything you can do please do it for me.

Thank you very much,

OCTOBER 21, 1970.

HON. CARL D. PERKINS,
House of Representatives,
Washington, D.C.

DEAR CARL: I filed for my Black Lung Disability over 5 months ago and have not heard anything yet. They have not sent me for x-rays or breathing test yet. They have a medical record on me at the Social Security Office, they might use it. If you could find out anything I sure would appreciate it.

Thank you very much,

MCANDREWS, KY., Rt. Box 35.

CARL D. PERKINS,
Congressman

DEAR SIR: I am coming to you again for advice or help, concerning my black lung benefits. I am 71 yrs. old, and I am an invalid, unable to get around to see about my claim—have been a coal miner since I was 13 yrs. of age. Until 1959 when I suffered a major heart attack, then another in 1969—since I filed my claim—I have got additional evidence—that I think might be of help in establishing my claim—here they tell me at Pikesville to wait until I am asked for more evidence—it will be 12 months the 6th day of January since I filed—had an x-ray soon after. Then a breathing test the 6th day of August, and have heard nothing since. This is a copy of the medical report, and do you think it would help to submit it now?

————— has had asthma and Emphysema and I have treated him for it for 30 years, my diagnosis—is Miners Asthma and Anthroconis)

Signed ———, M.D.

If you could help me in any way I would be very grateful. All these coal miners in Eastern, Ky., that I known feel you are their personal friend.

Respectfully yours, _____

FLEMING, KY.

Mr. CARL D. PERKINS

DEAR SIR: I am writing you in regards to my Black Lung Claim. I sent my Claim to the social security boards at Hazard Ky. and they said I was eligible for it cause they had my x-rays from _____ clinic at Jenkins and my Dr. is Dr. _____ and he told me I had a bad case of Black Lung & I would appreciate any advice or help of any kind you could give me I am disable I got hurt in the mines June 4, 1947 and haven't worked any since I am drawing public assistance from the state.

I draw \$138.00 a month for me & my wife my social security.

Thank you—please notify me if there is any way you can help me it will be grateful appreciated.

Thank you,

PHYLLIS, Ky., December 29, 1970.

Mr. CARL D. PERKINS.

DEAR MR. PERKINS: I have been drawing Social Security for 7 years and I filed for Black Lung & was turned down & I worked 26 years in Coal mine & I have went to 2 doctors I sent in more reports my trouble is breathing that what I draw Social Security on. But yet they don't want me to draw Black Lung & I have to go to the Doctor or hospital one & get breathing shots to breath & I spent 5 weeks in Va hospital at Huntington & 11 days in pikeville _____ hospital unit 2 doctor _____ was my doctor & I still have to have fluid in the vaine of my arm every so often some doctors calls my trouble Imnesiema. But I was over come with dust & smoke on June 10 & I managed to work on until July 11th of 1962 then I went to the hospital on July 12 & I haven't been able to work any from that day on. So I would appreshate anything you could do to help me & any information you could give me on what steps to take. Several ones has drawed Black lung hasn't work half that long in the mines that I no here in my neighborhood

Very truly,

HON. CARL D. PERKINS,
Washington, D.C.

DEAR MR. PERKINS: I recved youf from Mr. Ball. Carl I had that special chest exray 9 day Dec I not heard anything.

Carl I am not working now I had quit work. I went long I could my hart bothered me at night I couldnt rest I just got about 50 ore 55 breathing. Why dont they take me for breath test. They no I not got no breath I had surgy work. My doctor couldn't put me sleep on count breath I work on mainstream as I could I just had quit i got no income I just got stamps tell Mr. Ball I had that exray 9 Dec.

Would it be best for me get atunney.

I aperate your enteres,

Yours truly,

PS talk kind to Mr. Ball and see that you can do.

INEZ, KY., October 3, 1970.

HON. CARL D. PERKINS,
Congressman Seventh District of Kentucky,
Washington, D.C.

DEAR SIR: Shortly after Jan. 1, 1970 I applied for benefits under the "black lung" law. I was given an examination by Dr. _____ of Pikeville, Kentucky and the results revealed a 85% disability of my lungs. I was employed in the mining industry my lifetime until I was disable in an accident in the mines and was awarded Social Security benefits under the disability clause. I was recently awarded non-service connected benefits by the Veterans Administration immediately after examination.

I haven't heard from any action taken on the above mentioned application and subsequent examination even though several in this vicinity have received their entitlement who applied long after me and within a short period. I have a large family all in school (one in college).

Please investigate and advise, my efforts have been ignored. Thanks,
Yours truly,

BEVENSVILLE, KY., Box 15.

HON. CARL D. PERKINS,

DEAR SIR: I would like for you to tell me the law on Black Lung or Pneumoconiosis because I have worked in the Mines about 45 years two doctors have given me pneumoconiosis but the Department of Health-Education and welfare of the Social Security Board has denied me payment they agree that I have pneumocosis but do not have it bad to draw benefits from it.

They say that they requirement or by taking a breathing test.

I would like to have a copy Federal Coal Mine Health and Safety Act, 1969—the part I want is the black Lung or Pneumoconiosis.

Hoping to hear from in the near future.

Yours truly,

DORTON, KY., March 9, 1971.

DEAR MR. PERKINS: Sir I am a very sick man, I draw Black Lung Benefit. No Insurance Co. will carry be for insurance because of Black Lung. I was drawing very little Social Security at the amount of \$80.80 per month. When they paid my Black Lung Benefit they cut off my Social Security Check.

I am a poor and a sick man. Now I only draw \$225 per month of Black Lung. I have to go to the Doctor and buy alot of medicine. It is unfair to take my Social Security check away from me. I payed into the Social Security Fund.

Sincerely Yours,

PIKESVILLE, KY., December 1, 1971.

Congressman CARL D. PERKINS,
House Office Building,
Washington, D.C.

SIR: I am requesting your help in Black Lung Benefits, I applied 1/23/70, had an interview at the Social Security Office 5/1970. Was called before their doctor's for breathing test, which they were unable to do due to the fact I wear a trachostomy tube this was 9/12/70. They said I would be called to ——— hospital for this test I have not heard any more from them. I gave them all information they required. I haven't heard from them since 9/12/70. I am in dire need. My condition has worsened, my wife did work she has to resign to take care of me. I was diagnosed with Silicosis back in 1949, by ———. I work in the Mines 14 years, this record I gave them I worked two years after I was diagnosed with Silicosis. I am a christian, member of Regular Baptist Church, I would not lie about this matter, anything you may be able to do to speed this process up would be greatly appreciated by me, and my family.

Sincerely,

McANDREWS, KY., November 10, 1970.

DEAR MR. PERKINS: I am writing you in regard of my husband ——— about his Black Lung Claim he signed up in January, he had Extra's and Brewer Tests he has the proof he has got it he is a very sick man we don't have a way to get to the doctor we just draw a social security check which isn't enough for a family to eat on. We hope you can do us a favor. Check on his Black Lung for us. We can't get doctor's or hospital care. Later we had a state hospital card in March, they never even paid my hospital bill. We have a little girl that needs doctor's care too. Please we are asking you for a favor for us, check on this for us. My husband hasn't been able to work since November 4, 1963.

GUAGE, KY., December 29, 1970.

HON. CARL D. PERKINS,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE PERKINS: I am sending you some forms showing that I have black lung. January the 15th will be one year ago that I signed up for black lung. Today I got a letter wanting me to go to Hazard the 12th of January for more X-rays.

These forms I am sending you show that I have black lung. I am not able to run back and forth so much, if they don't get this straightened out soon, all I know to do is get a lawyer.

Take care of these forms and mail them back to me, by January 12th, if you can at all.

I am just sending you these forms to show you that I have proof that I do have black lung. I don't see why it took them a year to get around to taking an x-ray.

I put in more than 45 years in the coal mines. If you can help me in anyway, I'd sure appreciate your help. You can see from these papers that I have black lung.

My social security number is -----.

Sincerely,

TEABERRY, KY., February 8, 1971.

MR. CARL D. PERKINS.

DEAR SIR: I would like for you to see what you can find out about my Black Lung Case, it has been six weeks since I sent my last medical reports in let me know as soon as you can find out. I've seen 3 doctors. They sent me to the last one. I applied for this in Jan of 1970. I spent 20 years and 5 months in the mines. I'll waiting for an ans. look like they could let me know something real soon.

Yours truly,

WALES, KY., January 8, 1971.

DEAR SIR: I am writing in concern of my Black Lung benefits. I signed up for Black Lung benefits around the first of July 1970 and since I have seen seven doctors. All doctors gave me second & 3rd stage rock dust. Since then I have heard nothing. I would like to know if I am going to get any benefits or not. I would appreciate any information you could suggest.

Sincerely yours,

STONE, KY., September 28, 1970.

HON. CARL PERKINS.

DEAR SIR: I'm writing you in regards to the Black Lung benefits.

I signed up on it nine months ago and haven't got anything as of yet.

I sent proof from two doctors and a work record for 41 years under ground. There is men that has signed up 4 months after I did and have done received their money please look in to this for me.

Thank you,

FEBRUARY 1, 1971.

DEAR MR. CARL D. PERKINS: This is from Pike Co. Ky. Post office Regina, Ky. I have Medical reports of Dr. Clarke of his examination of May 15, 1970 Dr. Clarke reports a diagnosis of Coal Miners Pneumoconiosis (Black Lung). I have been singed up on black lung ever sense March-9-1970.

I have the 3th stage of black lung I draw social Security \$82.20 a month. My wife and son did draw but he came 18 years. So they have been a delay in his because they are changing as a student.

I would like for you to give me a little help in rushing up my Black Lung benefits. My income is not enough to support my family.

Thank you,

DEAR CONGRESSMAN: I am writing you in regard to my Black Lung Claim the letter I recd I was turned down & I spent 35 years in the mines and I worked from 17 to 52 I dont no why I was turned down I cant do no work or walk very far I am so short winded so I would be glad if you would help me if you could so it looks like I didnt get a fair deal so it looks if any body needs it I do so I sure hope you can help.

JENKINS, KY.

Hon. CARL D. PERKINS:

I am riting you conserning the Black Lung Benifit agane I have filed for over a year ago. I have took the breathing test 2 times and exrayed once and I want to know is there anything you can do to help me get it as I am in kneed of it bad. I have rote to Frankfort and Hazard and they wont even ans my letters if you can do anything for me I sure will appreciate it so much and thank you to. I have got a bad lung trouble and not able to work any more I have spent 35 years in the coal mines and I know I am due to get it I haven't bin able to work none since 1967. I have bin wornd to stay out of the coal mine by doctors. I am 59 yrs. old and I stay with my mother and she just draws a small social security check and she is 77 years old and that all we both get to live on I will appreciate if you would rite to Frankfort and see about it for me and see if they will let you know as I rote and they never ans my letter. Mr. Perkins I will appreciate it so much if you can help me ore tell me what steps to take to try to get it as I am in kneed of some money to live on myself I was told at London Ky. that I had Rock Dust and Coal Dust in my lungs thank you a millian.

BEVINSVILLE, KY., December 28, 1970.

DEAR CARL D. PERKINS: I am sending you my social security number and I have not drawned anything and still not drawing anything. I sued for my Rock Dust in the year of 66.

I had nine Doctors reports second to third stage and I turned them in when I filed in March of 1970. I have kids in school and me disabled to work.

And why? Do they want to drag me around for more examinations when I turned in 5 or 6 Doctors reports when I filed for Black Lung.

I would appreciate it, if you would try to find out why that a man who has that many reports turned in has to be delayed 10 months and still hasn't received any benefitts and is not at the present time. After they have seen the reports.

I thank you very much for everything that you have done.

Yours very truly,

RANSOM, KY., December 29, 1970.

CARL D. PERKINS,
House of Representatives, Washington, D.C.

DEAR MR. PERKINS: First of all my name is ———. I live beside of ——— which was my uncle until he passed away.

I would like for you to try and help me get my Black Lung. I filed for Black Lung on January 4, 1970 and haven't heard from it yet. I worked at ——— Coal Corporation for over 21 years. I have been disabled for three years and the doctors will not let me work.

Anything that you could possibly do to help me will be deeply appreciated.

Sincerely yours,

MINNIE, KY., January 26, 1971.

Hon. CARL D. PERKINS,
House of Representatives, Washington, D.C.

DEAR HONORABLE PERKINS: I am writing to you in regard to my Black Lung and Social Security that I have already filed.

I have been out of work since February 16, 1969. At that time I was hospitalized and I was given all kinds of tests, the doctors told me I would never be able to work again. When I got out of the hospital I filed for my Black Lung, Social Security, and Veterans Pension. I have been sent to different doctors and my Veterans Pension has been approved with total disability.

I took my work records to Pikeville, Kentucky concerning my Black Lung and they told me they already had what they needed. That was in June 1970. I haven't

heard anything since then on Black Lung, and I haven't heard anything since December 1970 on my Social Security.

Would you please check into this for me. I certainly would appreciate it. I have a large family and it is hard on us trying to live on a veterans pension.. If you should need to phone me you can call at my Dad's house. He will get in touch with me. Thank you very much.

Yours truly,

NEON, KY.

DEAR MR. PERKINS: I am writing you again concerning the black lung as you know I didn't quit the mines on my on I was told to quit by Doctors on the account of black lung.

The Social Security board has three xray report from me on three breathing test.

An today I got another letter telling me to go for another xray and said they might have to have more reports.

I am going this time if im able.

I dont know why they are dragging me to every doctor in the state all other men that got compensation has been paid the black lung but me, they try to tell me when I sign for social security that I could do light work but there is no light work for a broke down coal miner about to year before I quit the truck mine I got a job with ——— mines an they turned me down on examination so I worked on in the truck mines as long as I could look like they tell me yes or no.

Im sorry to be so much trouble to you

I thank you very much,

HAZARD, KY., September 1, 1970.

Hon. CARL D. PERKINS.

My husband John C has been signed up on his black lung for quite a while and hasent heard anything yet.

He draws disabled Social Security. He had his medical record from the ——— Medical Center in Lexington and it stated that he had the exact thing that gives you the black lung pension.

As you know we got our son Calvin Ray out of the Service for this cause. Thats how we came about having John C's medical report from Lexington. They might be holding his claim and reports in Frankfort. As you know they held his Social Security papers there until I contacted you.

I sure would appreciate it, if you would see into this matter for us.

You are our good friend and we can depend on you for help and guidance.

Cordially yours,

McCARR, KY., December 19, 1970.

Mr. CARL PERKINS:

DEAR SIR AND FRIEND: if you can do any way to help me to get on the Black Lung I tuck the test some time back I have work most of my years in the coal mines I worked up until 1951 I gave them 29 years that I had the dates for I were borned Sept 13, 1887. At my last birth I were 83 years of age So if you can help me to get on the Black Lung I sure will be thankful to you

LOUISA, KY., December 2, 1970.

Hon. CARL PERKINS.

House of Representatives, Washington, D.C.

DEAR SIR: I am asking your help concerning the black lung benefits available to coal miners.

I worked in the coal mines for twenty-seven years, and I have been disabled for several years. My doctors say my respiratory trouble is caused from working in the coal mines.

I applied for black lung benefits, and have been called in for my examination, but have received no further word.

I am very much in need of this, as I am very ill and cannot afford medical treatment.

I will appreciate anything you can do for me.

Sincerely your,

FEBRUARY 19, 1971.

Congressman CARL D. PERKINS,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN PERKINS: This letter is in regard to a Pike County citizen,
Mr. _____.

He has worked thirty-nine years in the mines around Majestic, Kentucky.
He has applied for Black Lung, but was turned down in September 1970.

Since that time he has been x-rayed for silicosis on more than one occasion,
and the x-rays have shown that he does have first and second stage silicosis.

If there is any way you could help him to obtain Black Lung or advise him on
what procedures to take please do. Anything you can do to help him will be
greatly appreciated.

Sincerely,

PIKEVILLE, KY., March 5, 1971.

HON. CARL D. PERKINS,
House of Representatives, Washington, D.C.

DEAR SIR: I am writing you to see if you could help me obtain Black Lung
benefits. I worked in the coal mines for approximately 20 years and have been
checked by two doctors who say that I have second degree Silicosis.

I am also afflicted with a gall bladder disorder and rheumatism and am in no
condition to work. Any consideration and assistance you could give me in ob-
taining my Black Lung benefits would be greatly appreciated.

Sincerely yours,

PILGRIM, KY., November 27, 1970.

HON. CARL D. PERKINS,
Congressman Seventh District of Kentucky, Washington, D.C.

DEAR SIR: I am hoping that you can assist me in securing information about
the status of my black lung benefits under the Mine Safety Act. I applied about
the 1st of February and was called before the Social Security Administration at
Pikesville, Ky. and completed application. About three months ago or more I was
called for additional tests and haven't heard from the Social Security Adminis-
tration. I am 80 years old and spent a lifetime coal mining and presently am
drawing old age Social Security. I feel that I am entitled to these benefits and
the reason I am writing you is because all of the people who applied and under-
went the additional test and etc., have received their benefits or a notice that they
have been denied. Please advise as soon as you can because these benefits are
needed badly. Thanks

Yours truly,

HON. CARL D. PERKINS,

DEAR CONGRESSMAN: I am a disabled miner worked in the mines 27 yrs. and
received S.S. on my lungs in Feb. 1965. And I have a heart condition and Doctors
says the breathing would cause the heart to be bad. I applied for Black Lung
pention in Jan. of this year but have not heard from it. I will be 66 years old in
this November the 6th and I have a wife that is disable, and needs open heart
surgery, and our income is only \$132.00 a month.

Confidentially speaking the Doctor here that is chairman of the Board was
against me getting Social S. when other Doctors told me I should have been draw-
ing since 1958 or longer. I feel that this Doctor does not go by the eligibility.
Only for those he wants to have it, and them he don't want to have it he works
against.

It looks like everything our Government is for he is against.

If you do not believe he is against everything the Government is for ask the
_____ some time when you are in Hazard, and as a friend I hope you will con-
sider my case.

I have been a long time friend of yours and people of _____ and adjoining es-
pecially _____ where I was born speak of so many things you have done for
them, and our Government to make progress and help the people. I am for every
greatful that we have a Congressman like. I am forever your friend.

Always,

VIRGIE, KY., April 4, 1971.

SENATOR CARL D. PERKINS: The fund is being cut out of our social security each month, and the P.A. Office claims the card has been cancelled for the reason of Black Lung Benefits, which if I remember correctly there was a clause in the Black Lung law stating it didn't have any effect on anything that we were already drawing.

My wife is a heart patient and I am also completely disabled, and I would appreciate if you could get these cards restored to us, which hope you can.

After food, rent, etc. is taken out we don't have very much left, from what we're drawing each month.

Hoping to hear results from this letter soon.

We do need our cards very badly & if you'd try to help us we'd appreciate it very much.

Sincerely,

I signed up on the Black Lung in September and was examining by—— M.D. of Pikesville, Ky. and he gave me the 2 stage of black lung and a total permit not to work in dust if you could help me I would preaze it very much it you could this doctor was on my own and they have never call me for another examination on it I have work in the mines 15 to 20 years in the cold mines.

Your truly,

KIMPER, KY., June 20, 1970.

Date started work January 3, 1948.

Date of disability January 6, 1961.

HON. CARL D. PERKINS.

DEAR MR. PERKINS: I am writing in reguard to my black lung benefits which i signed up for on 1-3-1970 and i have not heard from this yet—I worked for —— from 1-3-48 to my disability before in 4-6-61 withch i collected compensation for this occupetial disease, witch i am sending you as proof that i am eligible for this benefits. Mr. Perkins i would be forever gratefull if you would intervent on my behalf and contact the Commissioner of Social Security and let me know whether i am eligibility for their benefits, so i will thank you very much Mr. Perkins if you do this for me, and sure will do everything i can for you.

Your friend

WHITESBURG, KY.

HON. CARL D. PERKINS,
Washington, D.C.

DEAR SIR: Mr. Perkins I am writing you in reguard to my black lung pension. I filed for this last January a year ago and they have never done any thing about it. Several doctors have said I have three stages of it, and I have been drawing disable social security for several years, and I think I am due this pension.

Mr. Perkins if there is any thing you can do to rush this up I sure will appreciate it, as I think they have had plenty of time to act on this.

My health is very bad and I need this money to make my home more comfortable for a sick man, if I am due it.

Thank you,

DAVID, KY., February 4, 1971.

HON. CARL D. PERKINS,
Washington, D.C.

DEAR MR. PERKINS: This letter is in regards to Black Lung Benefits. You will find enclosed a letter for my denial. Mr. Perkins I am receiving workmens Compensation in the amount of \$52.00 dollars a week due to Pneumoconiosis. Can you tell me why I have been denied Black Lung Benefits.

I am trying to pay for my home which is \$65.00 a mongh. I also pay \$68.00 dollars a month for my food stamps. Then I have some other bills to pay. I have been off from work since January 6, 1970.

I was denied Public Assistance see I had it put in court. The circuit Judge ruled in my favor on January 12th of this year. He said anyone with Second

Stage Pneumoconiosis was totaley Disable to work in this area have not received anything yet. I was turned down for a job in the Fall of '69 due to my lungs. I could not pass the physical. If there was a Job I could do in my field and area I would be happy to do it. I have 23 years under ground in the Coal Mines.

My family and I are desperate, we need something done. I was sent to Dr. _____ at Pikesville, Ky on December 14th and he was one of the Doctors that gave me second stage of pneumoconiosis back in January of '70 also april of '70 and then again December. I also went for a breathing test at Pikesville, Ky. January of this year.

Mr. Perkins I am waiting for a letter from you before I ask for a reconsideration.

Yours very truly

P.S. Mr. Perkins I will have 5 children in school this coming school year one of them will be in Hi School. I will also have 2 at home.

FREEBURN, KY., August 24, 1970.

Mr. CARL D. PERKINS.

DEAR SIR: I _____ has been out of work for about 16 months. The Dr. turned me down for work and I have a claim for silicosis as 5 or 6 Dr's say I have second stage of silicosis also signed up on Disable Social Security I have been turned down twice and have took another repeal and if you can be of any help to me I sure would appreciate it. I have paid in social security since 1936 and why do we hafta fight for Social Security here in Eastern, Ky., to get anything? after having turned down for work. I haven't got any income at all only what my children gives me and that isn't much for they have family's to support and I can't even get Food Stamps it is very difficult for me to live and if there is anything in my favor I will appreciate hearing from you soon

Sincerely,

GARRETT, KY., November 16, 1970.

Mr. CARL D. PERKINS,
Washington, D.C.

DEAR CARL: I am writing to see if you would do me a favor.

I signed up for the Black lung benefit in Jan. Please try to find out if I am turned down are have passed I cant hear one thing from it. I had to quit the Coal Mines in 63 due to rock dust on my lungs Ill thing you very mutch if you will let me know about this

Yours truly,

WHEELWRIGHT, KY.

Mr. CARL D. PERKINS,
House of Representatives,
Washington, D.C.

DEAR SIR: Mr. Carl D. Perkins, I have worked 42 years in the coal mines at Wheelwright. I am unable to work, and I signed up on Social Security. They waited nine months and turned me down. I have doctors reports that say I have silicosis and coal mine pneumoconiosis. I would appreciate your help in getting Social Security. I am sending you some doctor's reports so you can look them over. As you remember you told me you would help me get my Social Security if I needed it. So I would appreciat your help now.

Sincerely yours,

mh.

NOVEMBER 23, 1970.

DEAR GUVNOR MR. PERKINS: I am riting you in behalf about my Black lung. They sent me to miners welfare hospital to have an exam of my lungs, and I bet they didn't turn in my exam my reason for thinking this when I was trying to get on disable suddenly they got against me even told me my lungs was clear as a bell. I know that is faltz cause I have had a good check up at Lexington and my lungs in Pikeville, Ky. My lawyer got my comsation on my Black lung and I have drawn it, all out.

So my co. Dr. at stone I got him to make me a extra of my lungs so he did cost me \$14.50 and Dr. _____ told me to go back to Miners hospital and tell them they lied to me. This report I know my self is true. Yes Dr. _____ said I had silicosis and have it real bad. Dr. _____ sent my extra to Pikeville, and day before I was to take my breathing test, so please look into this for me. I know men is draeing thers and signed up when I did so if you need a little cash from me let me know for your trouble.

Yours truly,

JENKINS, KY.

HON. CARL PERKINS,

DEAR SIR: I am writing to you to see if you can give me some information on this Black Lung Benefit I filed back in last January for it and I was cared to Va to make some exrays-pictures and all so care back to take a breathing test I have worked in the mines about 35 years and come to the place I am not able to work anymore in the mines. I have worked so many places in W Va and some in Va and some in Ky. But I did not keep no reckord of none of these places when I started and when I quit as I did not know that this Black Lung Business was coming up I have rote to different places where I worked at. But cant seem to get no understanding from name of the companys. I went to London, Ky. as I was sent there to see Dr. _____ and find out what was rong with me. So he took exray picture of my lungs and said I had silicosis of my lungs I rote to him and ask him would he rite and tell them what I had and he says he did not have time to do anything about it he had so much to do he is a commonwealth dr. for the TB sanitarium at London, Ky. I haven't got nothing yet from the Black Lung and I just got no job and can't get none and has to stay here an my mothers and she is a widow and only get a small check and it make it hard on her to keep me up. I am 58 year old and my mothers is 76 year old if there is any thing you can help me out in getting the Black Lung Benefit I sure would appreciate it to the bottom of my heart. I don't have no income in no way. You can rite any of these places and find out that I worked there altho some of the companys may sold out and may be different companys now. I was only 14 years old and my mother had to sign for me to go in when I first started in the Mine Mr. Perkins you can rite to Dr. _____ to Whitesburg, Ky. he is a heart dr. and he can tell you what is rong with me my social security is at Hazard Ky. Well I will stop and I hope I can get some help from you. Thank you, I will be thankful for your reply.

PILGRIM, KY., February 12, 1971.

DEAR HONORABLE CARL: I thought I write you concerning my black lung claim. I am sorry to bother you I know you are very busy, but I am in very bad need of my black lung claim. I am permit an total disable by Dr's I haven't been able to work a day since 1961. I got payed \$1,000 for silcocus they said it was first stage, but I get _____ attorney at law to see what stage I had and he say's he checked the comministor books in Charleston and he say's I have the 3rd stage of silcocus. I am trying to live on a little thing as social security. I own so many debts I can't pay without some other money, if I was able I could not get a job I am too old but I am not hardly able to walk. Would you please contact them in my behalf. I haven't hardly heard from it. I got all kinds of medical proof I can send them if they need it. I can get exray's also if they need them. I can hardly get my breath. Dear sir I am sorry to bother you but I am in very bad need. Write an tell me if I'll have to get a turney. I don't understand why they are so slow. They have all ready printed that I have pneumosconiosis. I am in very bad need of this.

Yours very truly,

SEPTEMBER 10, 1970.

REV. CARL D. PERKINS: I am writting you consurning the Black Lung Law which was passed last year. I filed a Claim in Jan. & give proof of your Doctors. July they called me in for x-ray so I've not heard anything since if I am entitled to it. I'd appreciate very much hearing form it.

I have more proof if necessary.

Yours very truly,

FEDS CREEK, KY., NOVEMBER 5, 1970.

HON. CARL PERKINS,
House of Representatives.

DEAR MR. PERKINS: I had planned to talk to you personally during your recent trip to Pikeville but as time was pressing you I decided to wait and write instead.

We just can't do without you up there. I would like, if it isn't asking too much of you, to check my Black Lung Case for me. There have been lots of men that signed up as much as 4 months after I did already have money and didn't spend one third the time I did in the mines.

I worked 44 years straight under the ground and had to quit because of my health. I have been under three of the best doctors in Pikeville, Ky. & they all tell me my lungs are more than half sealed up like honey comb. I signed up for Back Lung Jan. 11, 1970 and had all my tests in June.

I would love to get my money without consulting a Lawyer.

Will appreciate any help you can give me.

Sincerely,

HAZARD, KY., November 24, 1970.

HON. CARL D. PERKINS:

I am writing you a letter concerning my Black Lung Benefits.

I signed up for my Black Lung benefits in June of this year and haven't heard anything from it yet. I am a Coal Miner who spent 25 years on the inside of a coal mine and since I have been took out of the Coal Mines on a disability. I have been admitted to the Appalachian hospital for x-rays and treatment resulting from a spot on one of my lungs.

I would like for you to help me get my black lung benefits which I think I certainly am due. Any help you can give me on this matter will certainly be appreciated.

Very sincerely yours,

KIMPER, KY., August 28, 1970.

MR. CARL D. PERKINS,
Congress of the United States,
Washington, D.C.

DEAR MR. PERKINS: In reference to your letter of August 24, 1970. Thank you for your concern. I appreciate your help in this matter.

My father's name was _____. My mother filed a Black Lung Claim the first week in January, 1970 at the District office of Social Security in Pikeville, Kentucky (Pike County). My father's hospital records are at Williamson hospital, W. Va. The attending physician's were Doctor's _____ and _____. Doctor _____ is still in residence. My father died August 21, 1950 at Kimper, Kentucky of Cardiac Arrest directly caused by rock & coal dust on the lungs. Dr's. _____ & _____ operated on my father for Silicosis of the lungs the last week in May 1950.

It was the first time I had heard of the disease called Silicosis & caused by coal and rock dust.

Thanking you for any help you can give in this matter, I remain

Your friend,

MOUTH CARD, KY., October 17, 1970.

HON. CARL D. PERKINS,
House of Representatives,
Washington, D.C.

DEAR MR. PERKINS: In the past, I have sought your assistance in matters dealing with Social Security. At this time, I again must turn to you for any help that you may be able to give.

I am writing you, today, concerning Black Lung Benefits.

In January of this year, I signed up to become eligible for these benefits; and in June, I was called into the Social Security Office at Pikeville. At this time, I was told that I had enough doctor's reports confirming the fact that I have coal-miner's pneumoconiosis, Stage II, to receive these benefits. Since that time, I have heard nothing from the Social Security Office; nor have I received any benefits.

Enclosed you will find three doctor's reports that I have received lately. These reports are further proof that I do have pneumoconiosis, Stage II. Therefore, I would like for you to check into this matter for me if it is at all possible; and perhaps you can tell me why I have not heard anything about these benefits. I have called the Social Security Office several weeks ago at Pikesville, but could not find out any information about my claim.

If you can help me in anyway, I would greatly appreciate it. Both my family and I appreciate all of the help and assurance you have given us in the past.

Yours truly,

BIG ROCK, KY., December 21, 1970.

DEAR MR. PERKINS: Would like some information on Black Lung. I am a Coal Miner of 34 years in and around underground coal mines.

I am disabled from Rock Dust and Coal Dust and others such as nervousness, ears are bad and also my eyes are failing fast. But when you go to a doctor the first thing they want to know is who you work for and is this a compensation case, and when you are examined you still can't get them to tell you the truth. I have a affidavit from Dr. ———, London, Ky. stating I have Silicosis grade 2. Dr. ——— Lexington medical center stating I have pneumoconiosis grade 1. I signed up on Black Lung at Hazard office, and never was sent for examination. I like to know what a man can do to get a fair deal.

The Social Security and all welfare program acts like they have to pay the bill themself. I have paid Social Security 34 years would love to know what you have to do. Beside being disable to collect Black Lung Benefits Social Security disabled benefits. They have the standard set so high you can't get a doctor to give you a disability that they will accept.

Your friend,

please ans.

PINSONFORK, KY.

HON. CARL D. PERKINS.

DEAR SIR: I know you are a very busy person, and I want you to know I am proud to say we have a person of your standing to represent the people.

Mr. Perkins, here are the facts that the Social Security is doing to me and my family.

When my claim was approved, I was drawing \$172.00 my wife and three daughters were drawing \$30.30 each, total \$293.20.

When I was approved for Black Lung, I was supposed to draw \$288.90 instead I got \$98.00 then my Social Security was cut, to \$154.00 this included my wife. My three children was cut to \$40.30. I got \$17.50 raise in Black Lung then they cut my Social Security which was cut to \$122.50 for the month of April. My claim is to be raised to \$136.90 in May, to me this is approximately \$52.00 cut.

We have fourth child. Mr. ——— says that he is entitled 30¢ a month. I wish I could tell him, face to face what he could do with the 30¢.

There are thousands of families of Coal Miners just like me that are being treated this way. I thought we lived in a Society, but how can we be in Society and a pauper at the same time. Mr. Perkins, I worked 30 years in the Coal Mines, I paid into the Social Security, and I feel this is my money, and my family and I should get it.

You may not get anything out of this for I am mad, just like thousands of others are. At the beginning my family and I draw \$293.20 then we were cut, this was in 1970. We were supposed to have a 10 percent raise, now the same thing has happened in 1971. I thought we were to get a raise not a cut.

I want you to see the figures. Before I got black lung benefits I drew, \$293.20. Beginning May I wall draw \$294.00.

My wife and I will get	136.90
My Black Lung Benefits	115.50
My four children	41.60
	294.00

Can you figure out where those raises went to? I sure can't? Inclosed is the telegram and letters so you won't have to take my word.

Thank you very much for helping my family and I. We are thankful to have you in Washington, I sure wish we had more like you. Maybe the Coal Mine people could get what they deserve.

Respectfully yours,

ANXIER, KY., March 9, 1971.

DEAR MR. PERKINS: I am writing you to see if you can help me on my social security I think they are doing me wrong in 1970 when I got my Black lung money the social security cut me down to hundred and 85 dollars and cut my wife and 3 kids completely off and this month I got a \$17 dollars raise on Black lung and they cut my social security down to \$115 dollars and my wife and 3 kids draw \$18.90 the way other people draw I think they are doing me wrong I draw compensation \$188 dollars a month they didn't cut anyone else see they must be some mistake and I would like for you to check this for me and see if they are doing me wrong.

Mr. Perkins I don't think they are doing us miners right. About anything do you we have 3 small kids and have a house to pay for and it sure is rough see please let us hear from you.

Yours truly,

BEVINSVILLE, KY., March 15, 1971.

CONGRESSMAN OF U.S.,
House of Rep.,
Washington, D.C.

DEAR CARL: Here is a letter I received from the Social Security Adm. Today it will explain itself. But they have cut me again in my social security again from \$158.00. Now look what my check for the month of March will be when I get it in April, \$123.90. After that it will jump to \$141.10. That still takes away over \$16.00 dollars after the raise. So you see what they are trying to do they are taking away more than the raise give I would like for you to check into this. Hoping to hear from you soon.

Sincerely,

HAZARD, KY., Dec. 17, 1970.

CONGRESSMAN CARL D. PERKINS,

DEAR FRIEND: Just a short letter concerning my Uncle, he asked me to write you for him.

He is totally disabled and my aunt is to they don't have any hospital coverage at all. When he got his Social Security it was \$144.50.

Then when he got his Black Lung check which was \$216.70 his Social Security was cut down to \$79.30.

My Aunt doesn't draw Social Security but she draws \$72.00 black lung they have a lot of bills to pay, she is now sick in bed and no way to go to a hospital.

When my uncle got his Social Security, my aunt was drawing \$60.00 each month State pay, then they cut her State check to \$12.00 per month and her keep her State card then in around three months they cut her completely out, and called her card in, is there anything you can do to help them get a State card since they are both disabled? Everything you do will be appreciated by them and you know your help is appreciated by me you have done so much for us I can't never for get you.

Yours truly,

HAZARD, KY.

Mr. PERKINS: I got my Black Lung check but it hurt me worse than it help me it cut my Social Security out and so my medicare card out on me. Mr. Perkins I sign on my social security in 1964 I didn't get it till 1967. But I draw Veteran 1964 but I don't think they should cut my social security out on me. It said in this letter I could make \$1,600 dollars if I was able to make it but I'm not able to make anything I want you to help me to get my social security back fore me.

TOPMOST, KY., December 7, 1970.

CARL D. PERKINS,
*Congress of the United States,
 House of Representatives.*

DEAR SIR: Sir I am sorry to bother you but I have no one left to turn to. I feel I have been treated unfair on the social security I am supposed to draw. I received my black lung benefits on the October 22, 1970 and my social security was cut as you can see in this letter.

I was drawing \$267.90 of social security they took my wife and six children off. Now I only draw \$159.10 of social security and \$98.30 of black lung. I am now drawing 50¢ less than I was before I got black lung.

I have seven kids in school, two in high school, one in college and four in grade school. I thought black lung was to help men like who can't work. It looks like I am going to have to take my children out of high school and college. Unless something is done.

Sir I would like for you to check in this matter for me.

Sincerely yours,

Mr. CARL D. PERKINS,

DEAR SIR AND BROTHER CONGRESSMAN: I want to discuss a few things with you and to get your opinion on them I worked at _____ mines for thirty years and got sick June 16, 1970 I got my Black Lung on Social Security but they cut my Social Security \$72.20 now I've won my compensation my Black lung will be practically stopped and I have to take my compensation or pay back what Black lung I've drawn that leaves all my doctor bills and things for me to pay so I'll be in worse shape after winning my compensation than I was before I got it so please answer my letter and let me know what to do.

Thanks very much,

KNOTT COUNTY, KY., April 17, 1971.

CARL D. PERKINS,
*Congress of the United States,
 House of Representatives,
 Washington, D.C.*

DEAR CARL: I got my black lung in March and received a back payment check of \$1,410.60. But when I began receiving the monthly checks the amount of our social security checks were cut down. Now, the black lung payments and social security payments add up to less than the total amount I was receiving before I filed for black lung.

This was the way I was receiving social security checks before I got my black lung:

Gulf	\$178.20
Clarice	30.30
Children	90.90
Total	\$299.40

This is the way I am receiving them now:

Newsome (Miners)	\$111.50
Newsome (Disability Insurance)	154.00
Newsome (Disability Insurance)	7.40
Children	22.20
Total	299.10

I feel that I have not received fair treatment. And, I want to know if there is anything that can be done about the reduction of our social security checks.

I will be waiting to hear from you, and any advice you can give me will be greatly appreciated.

Sincerely,

HAZARD, KY., May 12, 1971.

DEAR MR. PERKINS: I have been told you may be able to help me in this matter. I am a widow and I have applied for the Black Lung benefits. My husband worked in the mines over twenty years. He was not killed in the mines. He died from brain damage from an accidental fall. But he had trouble with his breathing and coughing and was treated by the Doctors who worked in the Camp we lived in the mining camp until after his death. He was also treated at the _____ hospital and he died from the injuries in the _____ hospital at Lexington, Ky.

I checked at the _____ hospital, Hazard, Ky. for records and was told they were destroyed in the flood.

I was told the records from the _____ hospital were sent to the _____ hospital. I checked there and was told they had no records on him sent from the _____ hospital, Hazard, Ky.

The Doctors who treated him in the Mining Camps I do not know where they are now. I returned the information where I had men who had worked with him to the Social Security office. But I received this decision saying I had been turned down. The Social Security office has his records on the years he had worked because I drew the full amount from Social Security on my two sons until they became of age. I have gone to the Social Security office and refilled my claim and have had three men who worked with him and knew him and his condition will fill out the other forms they gave me. I feel my husband had twenty years or more in the mines and I am a widow with only my veterans pension to live on and I would like to know what else I can do if I can't find any records. I would like know where they are and why I am not entitled to the benefits. I would like for you to tell me what I should do. I do not know what else I can do. Mr. Perkins I am sending you a copy of the decision but I have gone back to the Social Security and refilled. If I can't find any records I want them to show me the records where he didn't have black lung, because he was treated for some time for pain in his chest before the accident.

Thank you.

P.S.—The reason for Denial: Mr. Perkins when you read that part, the man who I filed with told me his death did not have to have been caused by pneumoconiosis. He said if he had it—not that it was what killed him. He died from an accident.

BURDINE, KY., April 22, 1971.

DEAR MR. PERKINS: I am writing you about the Black Lung benefits. I applied in May of 70 and was turned down.

As you know Raymond had been a miner for 40 years. He was working in the Mines when we married at the age of eighteen it is on our marriage record. Raymond died 1-11-60 at Jenkins hospital he was only in the hospital an hour when he passed away. On his death certificate it states heart attack. Something caused his heart attack. When he discharged from the Army in 44 he was in the Jones hospital in Battle Creek, Mich. on his discharged it said Poor Health.

He was discharged because of his lungs. They said whatever was wrong with his lungs the training brought the attacks on him.

He was only in Service 3 months. He was called to Johnson City hospital. The veteran hospital they xrayed his lung. There I know are some x-rays if they would only go to the trouble of asking for them. They run a T-B test on him in Johnson City hospital it didn't show he had T-B but lung trouble. I know he had Black lung. He was never treated for any heart trouble. I want to reopen my case this month. If I didn't know I was entitled to it I would ask for help. Will you please help me.

Thank you.

STATEMENT OF HON. DANIEL J. FLOOD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. FLOOD. Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you.

Mr. FLOOD. This committee is honored to have you before it.

We are deeply grateful for the interest and the concern that you as a member of the Appropriations Committee have shown in the many pieces of legislation that this committee has reported out, and we know that as a Representative of one of the great coal mining States that your testimony is most important to this committee.

We certainly wish to welcome you as a witness before the committee.

Mr. FLOOD. Thank you, Mr. Chairman.

My name is Daniel J. Flood. I am a Member of Congress from the 11th District of Pennsylvania, which is in the anthracite coal field, the hard coal field.

You would not know, Mr. Chairman, but in the hard coal fields we have collie dogs who with their hind legs can scratch deeper holes than exist in the entire bituminous coal field.

It so happens that I came here first in 1945. At that time I had in just one county, Luzerne County, with Wilkes-Barre as the county seat, over 30,000 men working in the mines underground. Today I have probably 3,500.

My great grandfather worked in the mines. My grandfather worked in the mines. My father worked in the mines. Seventeen of my uncles on both sides of the family worked in the mines. In Mrs. Flood's family, all the men worked in the mines. My brother, who was shot down in the first year of the war as a naval aviator, and myself worked, but not underground, during the summer we worked outside. I was a tracklayer. That is tough work in the summer.

I must say this, as Mr. Perkins said. I did not know about this hearing until about 9:30. As you know, I am chairman of the Appropriations Committee for the Departments of Labor and Health, Education, and Welfare.

I have worked with your committee, Mr. Chairman, and the full committee, for many years, including this bill. John Dent I knew years ago, when he was in Harrisburg in the State assembly, and I was deputy attorney general of the State of Pennsylvania. How long ago? It is none of your business.

I introduced this kind of a bill in 1945. This kind of a bill became law in 1969, and as my friend, Mr. Erlenborn, was going to say, I think, this bill I do not think would have passed the House that day had it not been that just before that was that terrible disaster in West Virginia. I think that, perhaps more than any one thing, helped us pass the bill. I think my friend recalls the incident.

By no coincidence, Mr. Chairman, I presided that day as Chairman of the Committee of the Whole. The former beloved Speaker, the gentleman from Massachusetts, Mr. McCormack, was Speaker. It was no coincidence that I presided, and that John Dent handled the bill for your subcommittee, Mr. Chairman, on the floor.

I did not know about this meeting this morning. I had a letter from your committee, signed by John Dent. It came to my office on last Thursday. In Pennsylvania we had a primary on Tuesday. What a primary! At half past nine, I was advised you were going to sit, so I am especially pleased to be here.

Mr. Ball, by an extraordinary coincidence, will be before my subcommittee today. As a matter of fact, they are waiting now.

Following up what Mr. Perkins said, I have talked to Mr. Ball about the situation, and to Mr. Dent. I hear he is doing well. He had good

sense enough to have his gallbladder removed without waiting any longer.

Mr. Ball had agreed to meet with me and Mr. Dent, hoping that most of these rejections, denials, could be worked out administratively by Social Security. I believe, Mr. Chairman, that will be done. I believe a great many, a great many of these denials can be worked out with Mr. Ball, with you, Mr. Perkins, and with Mr. Dent, in probably a month or so. I believe this can be done.

Let me say about the administration. As my friend, Mr. Erlenborn, will recall, I was sitting in the Chair. A distinguished minority leader during the debate came to me. He said, "How much will this cost, the benefit section only? I am speaking only of the benefit section."

I had not the faintest idea. Neither did Mr. Dent. So my friend will recall, Mr. Erlenborn, that we used a ball park figure off the top of my head, \$60 million. He will recall that.

I am advised that we are now paying over \$200 million. The administration has been completely cooperative. They were against this benefit section, and may I say this, Mr. Perkins and you will not mind, and John Dent will not mind. I do not think Mr. Burton from California can spell anthracite or bituminous, but it is my opinion that without his loudmouthed table pounding, this benefit section probably most likely would not have been in this bill.

Originally, it was a safety bill. I believe Burton, backed up by my friend from Kentucky, whom I am glad to see is wearing shoes this morning, put this in, and we passed the bill.

In my own county of Luzerne, now hear this, there are 15,000 people, applicants who are being paid now, 7,000 retired miners, 7,000 widows of miners. Out of 20,000 applications filed, 20,000, Mr. Chairman, have been filed, 82 percent have been paid. Into my county every month comes \$1,700,000 for retired miners, about \$1,200,000 for widows. I am advised it will be about \$35 million a year.

Now, why are we here this morning? The denials, the denials. As Mr. Perkins said, most of these denials must be corrected.

I repeat that I believe in conference with Mr. Ball of Social Security, and Mr. Perkins, and Mr. Dent, and myself, and whoever you suggest, that much of this could be corrected, many of these can be approved.

Now, you, my friends who are not from the coalfields, this is no reflection upon you. You simply cannot understand this kind of thing, this condition. You cannot. No matter how elastic your imagination is, you simply cannot. This is horrible.

Now, black lung is interesting. The soft coal became aware of this condition, this phrase, very late compared to England and Japan, Wales, Germany. I do not know why. Nobody knows why. In the soft coal, the bituminous, in the hard coal, the anthracite, we have been dealing with this for years and years and years. We call it miner's asthma. We never heard the phrase "black lung" until very, very recently. We have adopted the phrase. It is now black lung.

What is it? Well, you should see your Uncle Tom, your Uncle Mike, Joe Filkowski, who lives across the street, Jim Davis, the Welsh mine boss on the next street, sit in the kitchen spitting out their guts and their lungs and blood into a coal bucket alongside of the kitchen stove. You should see that all your life, hear it and see it.

Examinations, doctors, then they must blow into a bag—you should see that—to determine what degree of asthma, as we call it in Pennsylvania.

Now, in Pennsylvania, as Mr. Perkins suggested, we have what is known as an Occupational Disease Act which includes miner's asthma, and we pay, and have for years, first, second, and third degree.

Now, hear this: Here, in a great coal State, the heart of the hard coal in the world, with a law on the State books for years, these men have been examined by doctors, have been certified and are being paid by the State of Pennsylvania for miner's asthma, now black lung.

This you will not believe. They file an application under your act. They must take an examination in the doctor's office. The examination is not done by the doctor. He is too busy, God knows. It is done by an aide of some kind.

There is nothing wrong with that. I have seen this. "Blow into that bag." Now, this man is in his 70's. He worked in the mines 30 years, underground. "Blow into that bag," and he blows, and the gal, the aide, says, "Blow harder. Blow harder." Almost apoplexy for the old guy. And he is denied because the chemical analysis which is the purpose of the test does not meet some technical yardstick. This is beyond me.

This is why we are here.

You cannot blame Mr. Ball. In his heart I believe he agrees with your chairman, Mr. Perkins, and with me, but he is handcuffed by the law and by regulations. Cause of death is on the paper.

This you must do something about, if we cannot change it administratively.

Let me say this. After Congress passed this bill, we were threatened by a veto on the floor. You will recall that, Mr. Burton. I held my breath, not very medical, for about 3 days and nights, afraid the President would veto the bill. He did not. In my opinion, he will not veto any change within reason, within reason, that you see fit to make.

Let me finish by just these quotations.

My husband worked 44 years in the underground coal mines, and every day when he came home from work, he spent a long time spitting up black coal dust.

Did you ever see anybody spit up black coal dust, and blood, and go to work the next day? I have.

"At night he could hardly sleep." In the summer, open the window where I live, and you could hear them breathe next door.

"A few weeks ago he died of a fractured neck from a car accident. When the Social Security office wrote me back, they said I could not get a pension"—they call it a pension—"because his death certificate said he did not die of pneumoconiosis."

One more. Now, Mr. Chairman, these are from letters dictated on the phone to me at half past nine this morning:

I have been told I cannot get a black lung pension by the Social Security people. The doctors said my husband died of a myocardial condition and cardiac decomposition. He worked in the mines for 12 years, and had to go for oxygen treatments almost every week for the last ten years of his life.

I am chairman of Appropriations for HEW. Myocardial condition, nonsense. He was denied.

The next to the last one, Mrs. Keroy Andreas:

He worked in the mines for 22 years, and his doctor, who is now deceased, advised him to get out of the mines fast. He did and was soon confined to a

hospital. In his final days, he could not have lived without an oxygen tent. Now the Social Security people say there is no proof he died of black lung.

Finally, Mr. Chairman, and you have been very patient with me, and I thank you: "His death certificate showed that he died of a shock and pulmonary hemorrhage."

Do you know what a pulmonary hemorrhage is? I do.

Continuing to quote: "I wonder what caused that if it wasn't the strain and abuse of black lung."

Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you, Mr. Flood.

Mr. FLOOD. Mr. Chairman, I will go the limit, because it is not hearsay. You know me, and I know you. If I say to you, any man who works first underground under your law for 10 years, believe me, he has got black lung, period. Doctor, social security, or no doctor, he has got black lung. We know. We know.

Now, one detail, Mr. Chairman. Our bill says underground. We meant this. This was the purpose and the intent of the act.

Now, I hold no brief for strippings. I do not plead that cause, but I have men who have been denied, who filed. I told everybody to file.

"Should I file?"

"File."

Breaker bosses. Do you know what a breaker is in the coalfields? That is on the surface.

The late beloved Mike Kirwan, of Ohio, born and raised two blocks for my home, at 9 years of age walked miles with a dinner bucket. If there was high snow, he had to hold it up. He was a kid. He was a breakerboy at 9 years of age, picking coal in the breaker.

Mr. Chairman, there was never any working in any mines as dusty, as deadly, as the coal dust in a breaker, unbelievable. From the blackest part of Africa, nobody was black enough, when those 9-year-old kids left after a 12-hour day.

Now, I have here dictated on the phone something which I did not have time to read, but I shall, if you do not mind. These are five excerpts from letters of denial received by me. I have many. I know you all have.

Let me say this. How dramatic this is. There is a case in my hometown where a man worked in the mines for 30 years. Of course, he had black lung, as you call it now. Of course, he had. He shot his wife. She is paralyzed today. He committed suicide. He was denied. The death certificate said, "Cause of death, suicide."

In our coalfields, Mr. Chairman, during those years that I speak of, our doctors were the great family physicians, with horse and buggy and old Ford cars, the first ones. They did not keep records. They simply did not. They had no assistants. There was Dr. Sheridan, Dr. Jones, Dr. McCormack. They have no records. You know that. They worked 29 hours a day and night visiting homes.

The hospitals, X-rays, they kept no records. There were no X-rays except now and then.

In come these denials in 1971, "Cause of death"—now imagine—"heart attack, arteriosclerosis, cancer of the lung." Denied because the evidence does not say, "Black lung," or the technical phrase, "hard coal or soft coal," technical denial by Social Security. A man who works

20 years in the mines has a rock fall. Cause of death, crushed skull, broken neck broken back. After 20 years in the mines, rockfall, denied.

Chairman PERKINS. I want to comment additionally, Mr. Chairman, that I have hundreds of letters along the same line that Mr. Flood read.

But in the term "total disability," as we like to refer to the term in all compensation statutes of the Nation, a man is totally disabled if he is unable to go about his usual occupation and earn a livelihood, but here, the Social Security Administration goes far beyond that interpretation, and in the proposal H.R. 5702 we try to liberalize that definition of total disability to take care of some of these situations that Congressman Flood has so ably described.

I am of the opinion that we must have this type of legislation if we are going to have reconsidered thousands of these claims that have already been denied.

That is all I have to say, Mr. Chairman.

I understand Congressman Kee is here and wants to be heard.

Mr. HAWKINS. Thank you, Mr. Chairman.

Mr. Burton.

Mr. BURTON. Before the distinguished chairman of the Appropriations Subcommittee on Labor and Health, Education, and Welfare leaves the stand, I think it vital that the record at this point reflect that there were a great number of men throughout the country, more particularly those that have had some intimate association with coal mining, that worked very diligently to assist Chairman Dent and Chairman Perkins in the enactment of this vital provision. There is no living man who used up more of his political credits among his colleagues, who beseeched if beseeching would be useful, who argued if argument would carry the day, and who I might even note, believe it or not, hinted at a threat or two if begging and reasoning did not carry the day, then the gentleman from Pennsylvania, Mr. Flood, who has been here for many years and who has spent most of his congressional life helping his colleagues. He took occasion on this important bill, the coal mine health and safety bill, but even more importantly the black lung benefit provision, to call in every chip he had stored away to assure its successful approval.

One might best note that when this matter was dealt with by the tellers, there was literally only one Member on the Democratic side who opposed the committee's black lung benefit provision. There were Members, I am sure all our colleagues recall, on the Republican side, including some conservatives whose voting records had not varied for the 15 to 30 years they had been here, who had decided they were going to resolve this one by giving Dan Flood a vote after all he had done for them.

I do not know a hard coal mine from a soft coal mine, as you know, and I have never seen one, frankly, but when the history of this legislation is written, Dan, you and the Mrs. and your many friends in the coalfields, should read that Dan Flood calling in his chips was a very big factor to the end result that all these deserving widows and "black lung" miners are receiving at least some money for recompense for the injury done to them.

Mr. FLOOD. May I say, Mr. Chairman, that I just wrote that for him about a half hour ago. He is a very fast study.

Mr. HAWKINS. Well, at this point I suppose it would be a good idea to excuse the two witnesses.

We again wish to thank both of you.

Mr. LANDGREBE. Mr. Chairman?

Mr. HAWKINS. Mr. Landgrebe?

Mr. LANDGREBE. Do we get 5 minutes to ask questions?

Mr. HAWKINS. You are in the company of a professional actor. I hope you can do a good job of your equal time.

Mr. LANDGREBE. Are you warning me that I should not even ask a question of our distinguished colleague from Pennsylvania?

Mr. HAWKINS. You may proceed.

Mr. LANDGREBE. Thank you.

I listened, of course, with a great deal of sympathy, Mr. Flood, to your story, and we do have some very sad situations in our country. We have a lot people suffering great hardships. Of course, I have also been in Kentucky for an investigation. I heard a 79-year-old gentleman boast of his 46 years in the coal mines, and I would have hesitated to take him on in a wrestling match. He really boasted of his health and vigor. Of course, he was not working in the Pennsylvania mines.

Really, you tell of the history, and the thousands of men that worked in the Pennsylvania mines, and we people in Indiana bought a lot of that coal. We paid the price, whatever the coalyard asked.

Why in the world did not Pennsylvania, who really reaped the harvest from this industry, take care of these people through their State legislature? Why did they have to wait until 1970, in the U.S. Congress, for us to write a bill that means that truckdrivers in Indiana, the farmers in Indiana, the clerks, the waitresses, everybody in Indiana must help take care of these tremendously sad situations that have come from the Pennsylvania coal mines?

Mr. FLOOD. May I say to my friend I know the answer. I do not think I should place it on the record. I really do not.

Mr. LANDGREBE. I will not force you to, really.

Mr. FLOOD. We do belatedly have a Pennsylvania miner's asthma bill in which the State now pays pensions for miner's asthma, as we call it. It is not a separate bill. It is an occupational hazard act, but it includes this thing, belatedly. But we do it.

I know the answer. I would prefer not to place it on the record.

Mr. LANDGREBE. Thank you. I will not force you to, or press you for it. Thank you very kindly.

Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you, Mr. Flood.

The next witness is the Honorable Ken Hechler, a Representative in Congress from West Virginia.

Mr. Hechler, would you come to the witness table, please.

While you are doing that, may I say I think that you are very deserving of some of the commendation which seems to be flowing rather freely around here this morning, and rightly so, because you have been a consistent fighter. All of us in the House certainly recognize the contribution that you have been making for a long time.

While you have not been directly connected with this committee, you have been before the committee on many occasions, and it is again a pleasure to welcome you as a witness before the committee.

STATEMENT OF HON. KEN HECHLER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WEST VIRGINIA

MR. HECHLER. Thank you very much, Mr. Chairman.

I want to commend the committee and its members for holding these hearings, because it is indeed true that title IV—the black lung provision of the Federal Coal Mine Health and Safety Act is, unfortunately, not being interpreted according to the will of Congress.

The definition of disability by the Social Security Administration is very restrictive, and there are many, many cases which will be brought out before this committee by others who will testify that will demonstrate the extreme difficulty experienced by miners who have disabling cases of pneumoconiosis, and who cannot seem to qualify or assemble the evidence which is necessary to qualify for payments to which they are entitled.

I am going to defer on specific illustrations to Dr. Donald Rasmussen, who will testify later, Mr. Arnold Miller, Mrs. Cody, James Haviland, and others who are going to present you with more specific information.

I would simply like to summarize by indicating that in the coalfields of West Virginia and eastern Kentucky, where the highest percentage of denials have occurred, the burden of proof is put almost exclusively on the miners and the widows.

The technical and medical facilities are simply not available close by for them to get the proper type of examination. Too much emphasis is placed on exclusive use of X-rays, which may only depict one section of a lung. Many doctors examining these X-rays have historically down through the years been individuals who have denied that pneumoconiosis as a disease actually exists. There has been disagreement between doctors and radiologists reading the same X-rays.

For all these reasons, it is unfortunate that there have been denials of too many cases by the Social Security Administration.

When the President signed the Federal Coal Mine Health and Safety Act of 1969, it will be remembered that he signed the measure with a great deal of reluctance. There were threats openly expressed on the floor of the House of Representatives that the President would veto the bill if the black lung payments provision was included in the bill. A motion to recommit the bill to strike out this black lung payment provision was made, obviously with the encouragement of the White House, and the motion was defeated on a record vote prior to final passage of the bill.

Following congressional action on the Federal Coal Mine Health and Safety Act of 1969, there was a long delay while the bill remained on the President's desk, and there appeared to be serious doubt whether he would sign it because of his objections to the black lung payment provisions. Finally, on December 30, 1969, the President signed the bill without any public ceremony or witnesses, and at that time the President issued a public statement which bowed to public opinion in briefly acknowledging the need for the legislation. But then the bulk of the President's statement criticized the bill and the black lung provisions.

I can only conclude that some type of an order came down to the Social Security Administration to administer this new law in a re-

strictive fashion, and in particular to avoid the liberal interpretation of the law to favor the applicants for black lung benefits.

I have never seen this order in writing, but it seems to me that, when you have this kind of repeated denial of applicants who are short of breath, and obviously disabled, who cannot qualify, that such an order must have been handed down, because otherwise we would have had the provisions of the act carried out in accordance with the intent of Congress.

Again, Mr. Chairman, I want to thank the committee for its determination to clarify what is happening with title IV of the Federal Coal Mine Health and Safety Act, and I would defer to the miners and others from West Virginia, who will give more specific examples of evidence deduced from their medical observations, who will be on the witness stand a little later in the morning.

Mr. HAWKINS. Thank you, Mr. Hechler.

We certainly look forward to the witnesses who are from West Virginia. It appears that they will not be on the stand this morning, but probably will this afternoon. We certainly look forward to hearing from them.

Thank you again.

Mr. ERLBORN. Mr. Chairman.

Mr. HAWKINS. Mr. Erlenborn.

Mr. ERLBORN. Mr. Chairman.

Congressman Hechler, let me ask you: Are you aware of any cases where the rules and regulations of the Social Security Administration for the determination of total disability are more restrictive for black lung than they are for social security disability benefits?

Mr. HECHLER. I would be glad to submit the answer to that question for the record. I would say to the gentleman from Illinois that I do not have that data with me, but I will be glad to submit that information directly for the record.

(Answer referred to follows:)

This question refers to the requirement of Section 402(f) of the Federal Coal Mine Health and Safety Act which limits the discretion of the Secretary of Health, Education and Welfare, under Section 411(b) in adopting by regulation standards of "total disability" to criteria not "more restrictive" than those applicable under Section 223(d) of the Social Security Act, which is the Social Security Disability Insurance Benefits Program.

Sections 410.403(b) and (c) of the Federal Black Lung regulations (20 CFR 410.101 *et seq.*) as a practical matter, severely limit the methods of proving disability provided under the Social Security Disability Insurance Benefits Program in 20 CFR 404.1502(b) and (c); and, therefore, the Federal Black Lung regulations provide more restrictive criteria than those applicable under Section 223(d) in violation of Section 402(f) of the Federal Coal Mine Health and Safety Act.

The scheme of proof of disability under the Disability Insurance Benefits Program requires proof of: (1) an *impairment(s)* which may be identified as causing disability and, separately, (2) proof of *severity* of disability caused by the *impairment(s)* by several methods:

(A) The existence of specified physiological or psychiatric abnormalities of a required severity which, by themselves, are presumed to cause total disability without any proof of inability to engage in substantial, gainful activity available in the national economy. 20 CFR 410.1502(a) (Copies of entire Section 1502 attached)

(B) The fact that the *impairment(s)* *actually* limits certain bodily functions as seen by non-medical evidence (e.g. lifting, bending, thinking) to the point where the claimant cannot engage in substantial, gainful activity available in the national economy. 20 CFR 410.1502(b).

(C) In the case of older workers who have engaged in lifelong arduous labor, *actual* proof of inability to engage in substantial, gainful activity as in (B) above, with only limited consideration of inability to engage in other job activities.

The Black Lung Regulations attempt to lift this scheme of the Disability Insurance Benefits Program found in Sections 404.1502(a) through (c) to Sections 410.403(a) through (c) by a nearly verbatim regurgitation of the wording of the 1502(a) through (c). Crucial changes, the insertion of the third sentence in 410.403(b) which includes the MVV and FEV(1) tables and the first sentence of Section 410.403(c) (See attached, marked "Copy of Black Lung Regulations"), however, renders the *actual* proof of disability methods as found in the analogous Sections 1502(b) and (c) inoperative in the Federal Black Lung Program. The *actual* proof of disability methods is rendered inoperative because the requirement of a certain level of physiological dysfunction implicit in the MVV and FEV(1) tables requires that for a case to be considered under Section 403(b) or (c), the claimant must first be found to suffer from a physiological abnormality of a required *severity* of impairment. Under the analogous Sections 1502(b) and (c), there is no requirement of medical proof of *severity* of impairment before evidence of the actual effect of the *impairment* of the claimant on his ability to work can be considered. Under Sections 1502(b) and (c), once the existence of impairment is established, the severity of impairment is proven with non-medical evidence of actual inability to work. Except for the most obvious case of disability, most Disability Insurance Benefits cases can be advocated and won, if at all, under Section 1502(b) (or 1502(c) in the case of older workers); because, the actual inability of the claimant to work can be documented using the actual experiences of the claimant without having to rely upon medical evidence, with all of its weaknesses and difficulties, of the severity of the impairment.

Therefore, Sections 410.403(b) and (c) violate Sections 402(f) of the Federal Coal Mine Health and Safety Act; because, both sections, in effect, render the most practical method of proof of disability allowed under the Social Security Disability Insurance Benefits Program (proof of *actual* inability to work) a dead letter by imposing the requirement that a certain level of physiological abnormality exists before actual inability to work can be considered.

Mr. ERLBORN. The question is: Are you aware of cases where the rules or regulations are more restrictive for black lung than they are for social security disability?

Mr. HECHLER. I do not have the answer to the gentleman's question immediately available.

Mr. ERLBORN. You do not know, then?

Mr. HECHLER. Well, I may have some illustrations which I would be glad to supply for the record, but I do not have any right here with me this morning.

Mr. ERLBORN. Do you support the approach of Chairman Perkins to redefine total disability for purposes of the pneumoconiosis compensation?

Mr. HECHLER. I think I would certainly support Chairman Perkins' bill which would redefine the definition of pneumoconiosis, yes.

Mr. ERLBORN. I just wonder whether Mr. Perkins and you would want a different definition of total disability for pneumoconiosis than you would for disabled workers who should qualify for social security disability benefits.

Should not all workers who are disabled, who would qualify for benefits, be entitled on the same basis? In other words, if you are a totally disabled auto mechanic, or totally disabled as a movie projection operator, should you not be entitled to compensation on the same basis as a coal miner, or should coal miners have a different definition of total disability?

Mr. HECHLER. I think, as has been demonstrated, or will be demonstrated before this committee, the extremely high percentage of coal

miners with disabling pneumoconiosis that have been denied benefits has made it very obvious that the law is being interpreted with a far more restrictive nature than other cases under social security.

Mr. ERLNBORN. Do you have any cases that have been denied under the pneumoconiosis compared to those who have been denied for other illnesses under social security to show that there is that distinction?

Mr. HECHLER. I will supply that for the record.

Mr. ERLNBORN. You do have those figures?

Mr. HECHLER. I do. I will supply that for the record.

(Information to be furnished follows:)

ILLUSTRATIONS OF HOW BLACK LUNG REGULATIONS CREATE A DEFINITION OF "TOTAL DISABILITY" WHICH IS "MORE RESTRICTIVE" THAN THE DEFINITION UNDER SECTION 223(d) OF THE SOCIAL SECURITY ACT

Three cases of retired coal miners, who have simple pneumoconiosis but whose Federal Black Lung claims have been denied due to the fact that their cases were evaluated on the question of total disability under the breathing tests required by Section 410.403(b), demonstrate that the definition of total disability is more restrictive under the Federal Black Lung Program than under the Social Security Act. In determining the question of "total disability due to pneumoconiosis", the Social Security Administration as a matter of practice does not consider the *actual* inability of the claimant to work due to his lung condition, as would be done under Section 223(d) of the Social Security Act (and under the relevant regulation 20 CFR Section 404.1502(b)). Rather, in the three cases the fact *by itself* that the claimant's breathing tests (the FEV₁ and MVV tests) did not register the values specified in the second paragraph of Section 403(b) was used, without further consideration whatsoever of lay or medical evidence, to infer that the claimants were not "totally disabled."

First Case:

80 year-old house-bound black lung claimant with at least 35 years employment in underground coal mines.

Presently being treated for:

Arteriosclerotic cardiovascular disease.

Generalized rheumatoid arthritis.

Peripheral neuritis of the right forearm and hand.

Pulmonary fibrosis and emphysema.

Experiences shortness of breath on slight exertion, has a history of pneumonia, and suffers from strokes and arthritis.

Reason for denial (quoted from claim file): "Pulmonary function studies (even with poor effort) show an FEV one of 2.54 and an MVV of 118. The remaining lung function is sufficient to allow the claimant to engage in any activity in accordance with his vocational background."

Conclusion. Had this case been evaluated under Section 223(d) of the Social Security Act the *actual* effect of the pneumoconiosis on the ability of the claimant to perform basic job-related functions, such as "moving about, handling objects, hearing, speaking, reasoning, and understanding" (20 CFR Section 404.1502(b)) would have been considered. On the other hand, under the more restrictive Federal Black Lung Regulations, there was no consideration whatsoever of the *actual* effect of pneumoconiosis on the ability of the claimant to perform work-related functions. Rather, the results of the two simple breathing tests were used as the sole basis for inferring that the claimant was not "totally disabled."

Whether or not the claimant would be ultimately found to be totally disabled, the fact is that the *method* under which this case has been evaluated is significantly narrower than the method provided under the Social Security Act in that the method excludes from consideration the actual inability of the claimant to work—until a certain level of physiological abnormality is established. In so limiting consideration of relevant evidence of actual inability to work, the method of evaluation of total disability under the Federal Black Lung Program creates a definition of total disability more restrictive than that under Section 223(d) of the Social Security Act.

Second case:

54-year-old retired coal miner with 26 years experience in underground mining.

Presently being treated for a pulmonary problem and "nerves" (family doctor states he is "totally disabled").

Experiences shortness of breath on slight exertion, has to stop once or twice when climbing flight of stairs, has difficulty keeping breath at night.

Reason for denial (quoted from claim file): "Results of ventilatory studies indicate essentially normal pulmonary function with an FEV₁ of 3.4L. Consequently, the claimant's pneumoconiosis does not prevent him from engaging in substantial gainful activity."

Conclusion. Again no consideration was given to the respiratory symptoms of this claimant or to the assertion of his family doctor that the man was totally disabled. The fact alone that one breathing test did not register the correct numbers was used to deny his claim. No consideration whatsoever was given to his *actual* inability (or ability) to work, as would have been done under Sections 223(d) and 1502(b), cited above.

Third case:

57-year-old retired coal miner with 21 years experience in underground coal mining.

Presently being treated for chest pains, loss of breath, and nerves.

Can only walk about 1/4 mile on flat ground before "giving out," has difficulty sleeping.

Reason for denial: "Although chest x-rays taken 8/4/70 show simple pneumoconiosis, PFS findings on 9/5/70 were normal, i.e. FEV₁ of 3.07, an MVV of 123.9. There is no conflicting evidence in file. Since any impairment which claimant may have is not due to disabling pneumoconiosis, he is not totally disabled according to regulations of Section 410.402 and the claim is denied."

Conclusion As in the other two cases, this case illustrates the fact that *actual* inability to work received no consideration when the claimant was denied, because the threshold requirement of a specified degree of physiological abnormality was not established. Under Section 223(d) and 20 CFR 404.1502(b) there is no such requirement that a certain level of severity be established before the *actual* inability of the claimant to work is considered.

Of course, the eligibility for Federal Black Lung Benefits must be based on pneumoconiosis being a primary cause of disability. Nevertheless the inability of claimant to work due to pneumoconiosis should be decided on the facts of each case rather than on the basis of breathing alone. Such determination could be made by an evaluation in each case of how and to what extent the respiratory impairment caused by pneumoconiosis interferes with the work-related functions described above.

It is further interesting to note that the practice of the Social Security Administration, as seen in these three cases, is to evaluate the question of disability under Section 410.403(b). Apparently it is not the practice of the Social Security Administration to order tests which could be used to establish eligibility under 410.403(a), tests which would evaluate lung functions in more detail or document complications of black lung. Nor is it the practice of the Social Security Administration to suggest to claimants that they themselves could obtain such further tests.

The mechanistic analysis encouraged by Section 403(b) also overlooks the need for especially careful development of the medical background of black lung cases due to the fact that old medical records and treatment histories will in all probability not discuss a diagnosis for treatment for a disease (pneumoconiosis) which was not then recognized, has only been recently recognized, and the existence of which is still questioned by many physicians (especially in the coal mining regions by physicians who have long-standing relationships with coal companies).

With reference to H.R. 5702 which would liberalize the definition of "total disability" to mean the inability to return to substantial, gainful activity *as a miner*, rather than in any employment theoretically available in the "national economy" (the so-called "national economy" or "national employability" test:

Why should coal miners be favored by special, less restrictive definition of "total disability" under Section 402(f) of the Federal Coal Mine Health and Safety Act, while other workers under the Social Security Disability Insurance Benefits Program are not so favored?

(A) Coal miners are discriminated against by the national employability test because:

(1) Generally, as a class, coal miners are immobile and unable or unwilling to move to other areas of the nation to find jobs which generally do not exist in the Appalachian region;

(2) Even if they did move to other regions, the coal miners usually, due to advancing age and a characteristic degree of illness and disability, present poor employment prospects to employers who are concerned with production and who prefer to hire younger and healthier men in the interest not only of production but of keeping Workmen's Compensation and private insurance accident and disability ratings low;

(3) Most of the skills acquired in coal mining are non-transferable and, accordingly, even if the miner does have some "skills" he will be considered, if at all, only for a low-paying, unskilled position.

(B) There is no reason for consistency in the definition of "total disability" in the different Social Security Disability Insurance Benefits and Federal Black Lung Benefits Programs. The Federal Black Lung Benefits Program is a special limited-purpose program, applicable only to a narrow class of workers and is funded through general revenues; while the Social Security Disability Insurance Benefits Program is a broad program, applicable to all types and classes of employees and self-employed persons and is funded through ear-marked payroll deductions. In the Social Security Disability Insurance Benefits Program there is arguably some reason to attempt to treat all contributors equally, by requiring all that they be unemployable on a national scale. On the other hand, the attempt to impose a national standard of disability on Appalachian coal miners is not required by the interests of fair treatment to all workers on a national level.

(C) Disabled coal miners in many cases are going to receive some form of income maintenance benefits from federal transfer payment programs (public assistance, veterans' benefits, Social Security, Medicaid) any way. If they are ineligible for Federal Black Lung benefits they may well be eligible for other benefits at nearly the same expense to federal transfer payment programs. Accordingly, the payment of income maintenance benefits to disabled coal miners can most efficiently and effectively be made by a program such as the Federal Black Lung Program which is especially designed to meet a major disability problem of this special class of workers.

(D) The restrictive national employability test of the Social Security Disability Insurance Benefits Program should be changed anyway to require that the applicant only be unable to engage in his old occupation or other jobs reasonably available to him.

Mr. ERLNBORN. I think that the act was quite fair. It says in section 402, subsection (f) that:

The term total disability has a meaning given to it by regulation determined by the Secretary of Health, Education, and Welfare, but such regulation shall not provide any criteria stricter than those.

Which seems to me quite fair.

As a matter of fact, it would allow a relaxing of the rules for the pneumoconiosis compensation over other disability benefits, and why you would want to change that definition I would not know.

Mr. HECHLER. I would say to the gentleman from Illinois that my hesitancy in answering his first question was because of experience with the highly restrictive interpretations of disability by social security to all areas, so far as I am concerned, I would like to see both of these expanded and liberalized in such a way that it would provide just protection to all those disabled, across the board.

Mr. ERLNBORN. I think that is a fair approach. I would think that if we do not like the definition of total disability under the Social Security Act, we ought to amend that, and benefit all workers rather than just one group.

Mr. HECHLER. Of course, sometimes in Congress, you know, you have to advance one step at a time, and it is not possible, I have discovered, as the gentleman from Illinois has, to change the world overnight.

My appearance here is primarily directed to the injustices that have been accorded to coal miners with pneumoconiosis. I think that is the central problem that this committee must tackle right now.

If the gentleman wants to liberalize the definition of disability under social security to cover other cases, I will gladly and enthusiastically join with him in that effort.

Mr. ERLNBORN. Thank you.

Mr. HAWKINS. Thank you.

Are there any further questions?

Thank you again, Mr. Hechler.

Mr. HECHLER. Thank you, Mr. Chairman.

Mr. HAWKINS. The next witness is the Honorable John P. Saylor, a Representative in Congress from Pennsylvania.

Mr. Saylor, again it is a pleasure to welcome you before this committee. It is not the first time you have been before the committee. We certainly have benefited from the many times you have appeared before us.

We wish now to give you the opportunity to proceed as you see fit.

Mr. BURTON. Would the gentleman yield before he starts his testimony?

Mr. SAYLOR. I will be happy to yield.

Mr. BURTON. Except for the two of our distinguished colleagues who were on the subcommittee, Congressman Hansen of Idaho and Congressman Bell of California, I think the record should reflect that it is the gentleman from Pennsylvania, Mr. Saylor, who is now testifying, was the first Republican, and more importantly, that a man of his enormous stature in the House, organized the effort on the other side to see that there was no possibility that this issue could be deemed a partisan issue.

They organized the Pennsylvania Republicans first, and fanned out from there, and most articulately presented the case to the Republican caucus and made it possible that this issue was decided on the merits rather than becoming a political ping-pong ball with some effort to inject a false note of partisanship.

STATEMENT OF HON. JOHN P. SAYLOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. SAYLOR. I want to thank my colleague from California for those kind words, because I think that this issue is not partisan, should never be partisan. When you begin to deal with health, the bugs don't care what your politics are. They don't care what your color is. They don't care what your religion is.

When we look at these problems that our Congress is trying to solve, and this is one of the serious problems we are trying to solve, I think we should look at it on the broadest basis in the broadest possible spectrum that we can take.

Very frankly, my background is not Irish. Therefore, I will concede to my good colleague, Mr. Flood, having kissed the Blarney Stone, that he can have all the accolades as far as Pennsylvania is concerned with his dramatics. He is a good friend of mine, and all I can say is that I hope that you were impressed by what he said, because Dan is sincere in his belief of the problems that this bill has presented in Pennsylvania.

Very frankly, Mr. Chairman, and members of the committee, in my lifetime, this disease was unknown. Doctors did not recognize it as a disease. It was originally thought of as an occupational hazard.

I have lived in the soft coal area all my life. From the time I was a small boy, the men who worked in the mines, Mr. Chairman, who came out of the mines and walked home into their company houses in which they lived, would cough, be short of breath, have a difficult time, some of them, actually walking home.

The only doctor they had in the community was the company doctor; a doctor that was hired by the company to take care of all of the problems of not only the men who worked in the mines, but their entire families.

These doctors were busy, because the mines in the early days were hand worked, and there were many men, with more patients than the doctors could take care of.

What the miners had was described as miner's consumption. Well, after certain of the doctors out in our area made some discoveries that it was not tuberculosis from which these men were suffering, they began to give it a new name, and they called it miner's asthma. They then decided it was not asthma, and they called it silicosis. They got to the next stage, and called it anthracosilicosis, and now the doctors have come along and given it the final and fancy name of pneumoconiosis.

But by whatever name it is called, it is a disabling disease.

You must understand that many of the men who worked in the mines in the early days whose widows are still surviving, died from rock fall, died from runaway cars, died from gas in the mines, mine fires but these women are the ones who are today being denied any benefits under this act because the medical records of the old company doctors are gone.

We ceased to have company doctors about 25 years ago in Pennsylvania, and I gather that in most of the States of the Union we have eliminated the company doctor. Those doctors are gone. Their records are gone.

These widows who have survived up until now find themselves denied benefits because of what some doctor put on a death certificate 10, 15, 20 years ago, and it has created untold hardships.

There were two cases that I would like to tell you about because they show, Mr. Chairman, just how opposite results can happen.

Two men lived on the opposite sides of the street in a little town in my community. They worked in a coal mine together for over 35 years. Both had the same type of disability.

The one, because he was a few years older, became a hospital case. He, too, had to have an oxygen tank with him at all times, so that he could survive. He succumbed. His widow, at the request of the doctors who attended him, asked for a post mortem. It was discovered that his lungs were full of coal dust, and that he had pneumoconiosis, and his death certificate so specified.

The other man, maybe because of his age being several years younger, still used oxygen at home, because he could not breathe. He was taken for a ride by his son-in-law, just to get dad out. A car comes across the road and hits them head-on, and the miner is killed. The death certificate said automobile accident, fractured skull.

The one widow is getting benefits under the act. The other widow,

because of the regulations that have been issued by social security under the requirements of the act, cannot get any benefits.

These are some of the cases that have created the hardship that we would like to have solved by the change of definition.

I realize that those who have charge of our social security have tried to do a good and conscientious job. They have worked with the people in the Ways and Means Committee as they discovered and talked about total disability, but, very frankly, if you have worked for years and years in an underground mine, and you have survived, there is not much that you can do except live out your old age.

One of our colleagues talked about whether or not there should be any difference between a man who became totally disabled because he was a mechanic.

Have you ever tried to spend 12 and 14 hours a day in a coal mine, where you were mining 22- and 24-inch seam of coal, so that from the time that you went into that mine and got out of the basic heading, that you crawled on your hands and knees?

If you have ever seen any of those men in a wash house, you find scars on their knees and their elbows, from where they had to work. They have deformed bodies as a result of this kind of work.

Then to have somebody sit in Harrisburg or sit in Baltimore, or some place else, and say that they are not totally disabled seems to me to be stretching the words "total disability" a great deal farther than was ever intended.

I do not know. It seems to me when this committee originally wrote the act, I thought they tried to take care of it, because section 411 specifies that for the purposes of this section, first, he has to work for more than 10 years in a mine, then it comes down and says (3) he must be suffering from a chronic dust disease of the lung which has been diagnosed and would be classified in class A, B, or C, in the International Classification of Radiographs of Pneumoconiosis by the International Labor Organization.

It goes on to say that if this has been done, there is an irrebuttable presumption that he is totally disabled.

Now, we have had in our office, and I am sure that every other Member of Congress who has retired miners in his district has had cases come down from the Social Security Board, where they say that this man has pneumoconiosis, he has worked more than 10 years, but he is not totally disabled.

It certainly seems to me that the narrowest construction possible has been placed by the Social Security people, to say that he is not entitled to benefits, and for that reason I would support the bill which has been introduced by the chairman of the full committee, Mr. Perkins, to make a change and see to it that not only those individuals who now are suffering from pneumoconiosis would be conclusively presumed to be totally disabled, and get the benefits of this act, but then allow other evidence to be produced in the case of widows to show that their husbands, if they lost their lives or worked in the coal mines for more than 10 years, could qualify for the benefits under this act.

I realize you have some tremendous problems on your shoulders Mr. Chairman, and members of this committee, to try to solve this very delicate and difficult problem, but I am satisfied that with the heart that you people have, that you will do it.

I appreciate the opportunity to be here this morning to help in solving the problems that you have.

Mr. HAWKINS. Thank you, Mr. Saylor.

Are there any questions?

Mr. ERLBORN. Mr. Chairman.

Mr. HAWKINS. Mr. Erlenborn.

Mr. ERLBORN. Just one question, Congressman Saylor.

My recollection is that, at the time that the special pneumoconiosis compensation law was passed last year, we had evidence that the State of Pennsylvania had compensation for coal miners who were suffering from pneumoconiosis. Is my recollection correct?

Mr. SAYLOR. They did not call it pneumoconiosis. I believe it is an occupational compensation for anthracosilicosis, I think is the word which we used in Pennsylvania, and because of that, people in Pennsylvania got some benefits because they did not qualify under this act.

In other words, they did not have the third stage, as we specified in section 411.

Mr. ERLBORN. I think the second stage is what was specified.

Mr. SAYLOR. That is right. They had the second stage, but not the third stage.

Mr. ERLBORN. I am just curious as to the application of this law. Are those who qualified for benefits under the Pennsylvania law, who now qualify for benefits under the Federal law, drawing double compensation, or do they come off State compensation?

Mr. SAYLOR. Very frankly, Mr. Erlenborn, I cannot answer that question.

Mr. BURTON. Will the gentleman yield?

Mr. ERLBORN. Yes.

Mr. BURTON. This is my recollection.

I do not know that there is any causal relationship between the fact that the chairman of the subcommittee, Mr. Dent, comes from Pennsylvania, and the gentleman in the witness chair comes from Pennsylvania, nor, for that matter, any correlation in the fact that the Republican leader of the Senate comes from Pennsylvania, but some of us were aware that there might be a possibility that the Pennsylvania Treasury might be relieved of some significant part of its existing financial burden if this legislation passed in the form it was passed.

Some of us thought that the contribution made by the gentlemen I have named, including the gentleman from Pennsylvania, Mr. Flood, had never fully been appreciated by the taxpayers of Pennsylvania. It has been fully appreciated by the taxpayers out our way how well those gentlemen from Pennsylvania did in terms of the taxpayers of Pennsylvania.

Mr. ERLBORN. The gentleman has not quite explained how generous that might have been. I understand that it is something in the neighborhood of \$100 million annually.

Mr. BURTON. It is more than a nickel or a dime by quite a number of cups of coffee with the relief given to the taxpayers of Pennsylvania.

I noted with amazement the political power and dexterity and effectiveness of this, and I might say he is no longer in public office, but the Governor of Pennsylvania attacked Chairman Dent and Mr. Saylor for not having done what they had very skillfully achieved, and the attack on them almost cost Pennsylvania this modest—did you say \$100 million a year, Mr. Erlenborn?

Mr. ERLBORN. That was just an estimate.

Mr. SAYLOR. About \$100 million. We say very frankly that this bill saved Pennsylvania about \$100 million.

Mr. ERLNBORN. I find that really quite interesting, because I remember that one day that the conference met. The chairman of our subcommittee, who is not here with us today, finally came up with an estimate as to what the cost of the pneumoconiosis compensation nationwide would be, and it was in the neighborhood of \$40 million. Mr. Flood had estimated \$60 million. The administration, as I recall, said it would be \$250 to \$500 million, and they were laughed out of the subcommittee room when they suggested that it might be that high.

Now we find that it is in the neighborhood, I guess, of \$250 million, without all of the claims being processed, and that Pennsylvania alone is relieved of \$100 million, in light of the estimates of \$40 or \$60 million nationwide.

I think maybe the administration's estimates have proved a bit more accurate than those of the members.

Mr. BURTON. Would the gentleman yield?

Mr. ERLNBORN. Yes.

Mr. BURTON. Without regard to what the estimates are in the record, I suspect that Chairman Dent and the gentleman from Pennsylvania, Mr. Flood, were talking about the non-Pennsylvania cost of the program. Including Pennsylvania, it could not be that small.

Mr. SAYLOR. Mr. Erlenborn, those of us who came from Pennsylvania knew at the time this was passed that the estimates of the administration, as was advocated, as you know, in conference by Mr. Javits, were awfully close to being correct.

Mr. HAWKINS. Thank you, Mr. Saylor.

Mr. SAYLOR. Thank you.

Mr. HAWKINS. The next witness is one of our distinguished colleagues, Congressman Kee, who is sitting in the audience. I overlooked you in the haste to get on to other witnesses. I am extremely sorry, and I certainly apologize, Congressman Kee.

We are glad to have you testify before the committee.

STATEMENT OF HON. JAMES KEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. KEE. Thank you, Mr. Chairman.

I did not know and had not been notified about the meeting today until last evening when we were on the floor of the House.

Mr. Chairman at this time I respectfully enclose a letter dated May 5, 1971, received from the Commissioner of Social Security, as well as the attached black lung statistics cumulative to May 7, 1971.

(The letter referred to follows:)

DEPARTMENT OF HEALTH, EDUCATIONAL, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., May 5, 1971.

HON. JAMES KEE,
House of Representatives,
Washington, D.C.

DEAR JIM: You will be interested to know we have processed 241,000 of the 284,000 initial black lung claims filed to date. As you know, nationally the program has already paid cash benefits totalling more than \$250 million to more than 190,000 beneficiaries. The relatively few remaining older cases are receiving the highest priority processing and this group is diminishing at a rapid rate. However, initial claims continue to be filed at the rate of about 2,500 a week.

We have received over 50,000 black lung reconsideration requests thus far.

Each request for reconsideration results in a new and independent review of the initially denied claim. The procedure includes an explanation of the reason for the original denial and an offer to assist the claimant in obtaining additional evidence to support his claim. This process is being accelerated to provide appellants with a decision as promptly as possible.

We recognize the special problems a miner's widow may face in documenting her black lung claim. Our allowance rate on widow's claims (2 out of 3 widows claims are being paid) demonstrates, I think, our concern and commitment to administer the law in the spirit in which Congress intended.

I want to thank you for the high degree of interest and knowledge you have demonstrated in the administration of the benefit provisions of the Coal Mine Health and Safety Act as well as your appreciation of the administrative challenge it represents. I believe our personal meetings and telephone conversations have been of great benefit in helping us fully understand the legislative background for the Act and providing us some "grass roots" feel for reactions to policy decisions in the administration of this program. I would like to commend Dr. Andrew Henderson for his very valuable advice and assistance in the administrative implementation of this complex new program.

I am attaching a copy of the current black lung workload picture consisting of filings and processed cases for West Virginia and your congressional district. Please let me know if there is anything else I can do at this time.

Sincerely yours,

ROBERT M. BALL,

Commissioner of Social Security.

BLACK LUNG STATISTICS (AS OF APR. 24, 1971)

	West Virginia	5th Congressional District
Claims filed ¹	53,990	² 28,550
Claims processed.....	44,100	22,670
Claims paid.....	20,100	11,570
Miners.....	12,450	7,040
Widows.....	7,650	4,530
Additional dependents paid.....	17,000	10,600
Total beneficiaries.....	37,100	22,170
Total monthly payment amount.....	\$3,900,000	2,339,170
Total cumulative payment amount.....	\$48,400,400	29,974,000
Denials.....	24,000	11,000
Miners.....	19,300	8,900
Widows.....	4,700	2,200

¹ Earlier figures were based on location of social security office where claim was filed regardless of residence of applicant. Adjustment has been made to reflect claims count on the basis of applicant's residence. Additional adjustment was made to purge duplicate filings.

² Estimate.

BLACK LUNG STATISTICS FOR REPRESENTATIVE KEE, OF WEST VIRGINIA (CUMULATIVE TO MAY 7, 1971)

	West Virginia	5th Congressional District	Cabell, Wayne, and Logan Counties
Claims filed.....	58,300	28,600	¹ 17,436
Claims processed.....	45,472	23,670	5,471
Claims paid.....	20,410	11,820	2,220
Miners.....	12,800	7,170	1,476
Widows.....	7,610	4,650	744
Additional dependents paid (wives and children).....	17,450	10,826	2,290
Total beneficiaries.....	37,860	22,646	4,510
Total monthly payment amount.....	\$3,972,150	\$2,380,412	\$455,436
Total cumulative payment amount.....	\$53,224,620	\$32,983,335	\$6,325,413
Denials.....	24,684	11,850	3,251
Miners.....	20,193	9,599	2,641
Widows.....	4,491	2,251	610

¹ Estimated.

Mr. HAWKINS. Thank you.

Mr. KEE. Mr. Chairman, I introduced H.R. 9850 in the 91st Congress in April 1969. That was the very first bill that was introduced in the Congress to provide for black lung benefits, medically known as pneumoconiosis.

As one whose family has for 39 years, going on 40 years, continuously represented the largest coal-producing congressional district in the United States, I enthusiastically support H.R. 18, H.R. 42, H.R. 43, and H.R. 5702.

Unfortunately, I have had illness in my family, and have not had a chance to draft up a bill as yet, but I intend to put one in, to have the legal fees conform to those legal fees that people that apply for social security disability benefits have.

There has been some talk about the people that have been denied black lung benefits, so to speak. One of the reasons for that is because so many X-rays that have been submitted to the Social Security Administration have not been of sufficient quality. That is why you had denials and had to tell people they had the opportunity to request reconsideration.

The second thing is that I take my hat off and highly commend the representatives of the Social Security Administration for the most effective and efficient manner in which they have administered the law as presently existing.

Quite briefly, in my own State of West Virginia, as the aforementioned statistics will attest, there are claims filed amounting to 58,300. In the Fifth Congressional District of West Virginia, which as I said before is the largest coal producing congressional district in the United States, we have had 28,600 applications filed. Claims processed for the State of West Virginia are 45,472. The Fifth Congressional District had 23,670. Claims paid for the entire State of West Virginia are 20,410. The claims paid in the Fifth Congressional District of West Virginia amount to 11,820.

This divides down on the State level on coal miners 12,800, widows 7,610. In the Fifth District we have 7,170 coal miners receiving benefits, and we have 4,650 widows that are receiving benefits.

Additional benefits paid to wives and children throughout the State amount to 17,450, and in the Fifth District 10,826.

The total beneficiaries, therefore, when you add these figures for the State of West Virginia, out of 58,300 applications submitted are total beneficiaries of 37,860, and in the Fifth Congressional District 22,646 who are receiving financial benefits under this act.

Now, a total monthly payment amount for the entire State of West Virginia, the money that comes in every month from the Social Security Administration, amounts to \$3,972,150. In the Fifth Congressional District of West Virginia, the total monthly payments amounts to \$2,380,412.

Mr. Chairman, these figures are the best figures available as of this month, May 7, 1971.

The total cumulative payments for the State of West Virginia amount to \$53,224,620, and in the Fifth Congressional District \$32,983,335.

The denials statewide are 24,684, and it boils down to miners 20,193, widows 4,491. In the Fifth District, those denials are 11,850, miners 9,599, and widows 2,251.

I make no claim that all of these denials will be approved under any circumstance, but I do state that in reviewing these applications under this reconsideration, in requesting adequate and proper X-rays, quite a few of them will.

This is the finest program, Mr. Chairman, humanitarian, in title IV, that has ever been enacted in the Congress of the United States for those folks that are employed in the most hazardous industry in the country we love.

I thank you very much.

Mr. HAWKINS. Thank you, Mr. Kee.

Are there any questions?

Mr. ERLNBORN. Let me ask just one question.

Mr. HAWKINS. Mr. Erlenborn.

Mr. ERLNBORN. I was not here, Congressman Kee, for all of your testimony, but counsel advises me that in substance what you have testified to is that the administration of the act, in your opinion, is proper, that the act is being administered as it was written, and intended, but that you feel that amendments may be necessary.

Is that accurate?

Mr. KEE. That is exactly correct; yes, sir.

Mr. ERLNBORN. Thank you.

Mr. HAWKINS. Thank you, Mr. Kee.

Mr. KEE. Thank you.

Mr. HAWKINS. Our next witness is Congressman Mollohan of West Virginia.

STATEMENT OF HON. ROBERT H. MOLLOHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. MOLLOHAN. I welcome the opportunity to testify before this subcommittee on legislation to amend the Federal Coal Mine Health and Safety Act of 1969. All of us from the First District of West Virginia are extremely interested in mine safety and in the welfare of the miners and their families. The people of the First District continue to live under the shadow of the Farmington disaster and they are acutely aware of the legislation which followed, and they have a vital interest in the proper implementation and improvement of this legislation.

The Federal Coal Mine Health and Safety Act of 1969 made great strides toward better mine safety and miners' health. Time, however, has revealed some problems with this law. I am here today to discuss some solutions to these problems with regard to black lung benefits.

The two most persistent criticisms about this law—that medical techniques for determining black lung are inadequate and that those miners receiving both social security disability benefits and black lung compensation are being penalized—strike so directly at the core of the present law to lead many of us to believe that there are serious flaws to be corrected if the intent of the Congress is to be fulfilled.

The four bills introduced by Hon. Carl Perkins, of Kentucky, are solutions to some of the problems which have arisen during the administration of the black lung benefits.

I support H.R. 18 which would extend for 1 year the payment under the black lung program. I believe there has been considerable confusion as to determining eligibility. Also, a great deal of difficulty

has been encountered by many miners, and especially by miners' widows, in locating medical records. A year's extension would provide sufficient time to iron out these problems.

I believe it was an oversight by the Congress to permit the enactment of the Federal Coal Mine Health and Safety Act without extending benefits to the orphans of miners afflicted with black lung. It is hard to determine the number of orphans who would benefit from such an extension, but it must be assumed that their numbers are sufficient to justify the passage of H.R. 42. Such action would not be unique or untested since there are precedents in social security legislation.

Technology has not advanced far enough to eliminate the need for coal to produce, among other things, the majority of our electrical energy. Neither has technology advanced far enough to eliminate the need for men to enter mines to produce that coal. And again technology, although making progress, has not been able to eliminate the probability that a man who works in a coal mine for an extended period will contract some type of lung disease caused by the inhalation of coal dust. I think, therefore, that it is sufficient to allow a man to qualify for black lung benefits if his health has been impaired to the point that he is unable to continue mining coal. I think it only fair that these men be given some benefits for the service they have rendered and the sacrifices which they have made in order to produce fuel for the Nation.

When the Federal Coal Mine Health and Safety Act was passed, the ideas of the Congress were several steps ahead of the technology required for implementation. We provided for benefits for black lung victims, but so far, we have discovered the people in charge of administering these benefits have not been able to come up with totally reliable methods of detecting black lung.

The diagnostic techniques have not been completely dependable, and as it turns out; they have, in fact, been hit or miss. Often diagnosis has been based solely on chest X-rays. Pneumoconiosis is a difficult disease to detect and according to several medical authorities, it requires more than the chest X-ray in order to determine whether black lung is present. As the situation now stands, we not only find miners with black lung whose claims have been refused, but also miners who in fact do not have black lung whose claims have been accepted. This situation is the result of basing diagnosis solely on chest X-rays. Those miners with legitimate claims should receive them. I believe that section 2 of H.R. 5702 will help rectify this situation and extend benefits to those who deserve them.

The following two tables of statistics show the reasons for denial of benefits of a national basis and the number of claims processed in West Virginia.

We see that the most common reason for denial of claims was that chest X-rays did not show the presence of black lung. It follows that, if indeed, as may medical experts in this field claim that chest X-rays are not completely reliable as the sole means for determining the presence of black lung, then if we alter this situation we could enable black lung compensation to reach a substantially large number of coal miners. We should not shrink from this burden of finding new diagnostic tools, nor should we fail to meet this increased expense if our efforts will result in a greater realization of the aims on the Con-

gress declared in the first sentence of the Federal Coal Mine Health and Safety Act of 1969:

The first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the miner.

Reason for denials of benefits on national basis

[Figures to date]

	Percent
Chest X-ray did not show pneumoconiosis -----	62.3
Pneumoconiosis was not disabling—miner was not working -----	29.8
Pneumoconiosis was not disabling—miner was working -----	2.4
No employment in mines -----	2.0
Other (claim withdrawn, etc.) -----	3.5

Applications for black lung benefits in West Virginia, as of April 1971

Applications submitted -----	56,700
Applications processed -----	45,000
Applications approved -----	20,000

I would also like to endorse H.R. 43. I have introduced legislation to repeal section 224 of title II of the Social Security Act. Federal black lung benefits should not be considered workmen's compensation because in so doing the recipient of benefits is penalized. Today, a miner cannot receive the full social security disability benefit if he is receiving black lung benefits. This is the case even if he is receiving disability benefits for injuries totally unrelated to black lung. For example, a miner receiving black lung benefits will lose some of his disability benefits he receives for the loss of a leg if the combined benefits total more than 80 percent of his original income. A man in this situation will need more than 80 percent of his income because of the added expense of living incurred by these disabled persons in meeting medical costs.

There is a question of basic fairness involved in this issue as well. The workmen's compensation system and the social security system are independently administered and independently financed. Contributions have been paid into each fund by or on behalf of the employee, and because of this the employee should receive the full benefits of both funds. We do not permit private insurance companies to reduce their liability to a policyholder because the policyholder may be entitled to benefits from another insurance company and there is no good reason to allow this kind of situation in our public insurance funds.

Additionally, a disabled person whether a miner or any other kind of worker will most probably have a considerably larger cost of living because of his disability, and it is cruel assumption that a person in this situation is able to live on 80 percent of his previous income.

Mr. HAWKINS. Thank you, Mr. Mollohan.

Mr. Popick, will you come to the table.

The next witness is Mr. Bernard Popick, Director of the Bureau of Disability Insurance, Social Security Administration.

Mr. Popick, you have a statement before the committee which you may either read or comment on.

STATEMENTS OF BERNARD POPICK, DIRECTOR, BUREAU OF DISABILITY INSURANCE, SOCIAL SECURITY ADMINISTRATION; DR. WILLIAM ROEMMICH, CHIEF MEDICAL OFFICER, BUREAU OF DISABILITY INSURANCE, SOCIAL SECURITY ADMINISTRATION; AND DR. WILLIAM LAINHART, DEPUTY DIRECTOR, DIVISION OF EPIDEMIOLOGY, NATIONAL INSTITUTE FOR OCCUPATIONAL HEALTH AND SAFETY

Mr. POPICK. My name is Bernard Popick. I am Director of the Bureau of Disability Insurance in the Social Security Administration. Because Secretary Richardson and Commissioner Ball were unable to honor your invitations, I have been asked by them to appear today to present the department's position on several bills which concern the black lung benefits provisions of title IV of the Federal Coal Mine Health and Safety Act of 1969.

I am accompanied here today by Dr. William Roemmich, on my right, Chief Medical Officer for the Bureau of Disability Insurance of the Social Security Administration, and on my left by Dr. William Lainhart, the Deputy Director of the Division of Epidemiology and Special Services of the National Institute for Occupational Safety and Health.

Before presenting the Department's position on the proposed bill, with your permission I should like to first present a brief status report on the progress we have made in the administration of these provisions up to this time.

The Federal Coal Mine Health and Safety Act is designed to establish health and safety standards and regulations for the coal mining industry which will minimize accidental injury and working conditions that are detrimental to the coal miners' health, such as those contributing to the development of coal miners' pneumoconiosis, or black lung disease.

While such standards and regulations are expected to result in a substantial decrease in the incidence of work-related injuries and diseases, they do not, of course, directly benefit former coal miners who are already disabled because of black lung disease, or survivors of those who died from it.

Generally, compensation for work-related injuries and most work-related diseases are covered under State workmen's compensation programs. The Congress found, however, that few States provided adequate benefits for coal miners or their surviving dependents because of disability or death due to black lung disease.

Title IV of the act, therefore, provides for cash benefit payments from Federal general revenues to coal miners totally disabled due to black lung arising out of employment in underground coal mines, and to widows of such coal miners who died from the disease.

The act places responsibility for administration of part B of title IV on the Department of Health, Education, and Welfare. Within the Department, this responsibility has been delegated to the Social Security Administration.

Under the statute, the Department of Health, Education, and Welfare is to administer the black lung benefits provisions until the end of calendar year 1972. After 1972, the general responsibility for the provisions will shift to the Department of Labor.

Under part C of title IV of the act, these claims will be processed through workmen's compensation agencies in States which have enacted appropriate legislation to provide comparable benefit payments and the prescribed coverage. In States which have not enacted such appropriate legislation, each individual coal mine operator is financially liable for pneumoconiosis death and disability claims.

These claims will be processed through the Department of Labor, which will pay benefits to eligible individuals and collect the amount of such benefits from the mine operators who employed such individuals.

The Department of Health, Education, and Welfare will continue payment of benefits it has awarded after 1972 under Part B when the claim was filed on or before December 31, 1971, and will continue to handle certain widow's claims. Our Department also retains continuing responsibility for prescribing standards for determining whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Payment of benefits by the Department of Labor under part C ceases by December 31, 1976.

The benefit provisions of the law became effective immediately upon its signing by President Nixon on December 30, 1969.

With benefits payable only prospectively from the date a claim was filed, it was essential to take emergency action to obtain applications from potential eligibles as quickly as possible, in order to prevent loss of benefits due to delayed filing.

Accordingly, on the day the act was signed, every social security district office in the country was provided special instructions for the acceptance of applications for benefits under the new law.

At the same time, a massive effort was launched through all available information channels to advise potential eligibles of the new provisions and to urge anyone to file a claim who felt he might be entitled to benefits.

Within 1 week of enactment, 18,000 claims for black lung benefits had been filed. By the end of the first month the number had grown to almost 100,000, and continued to increase rapidly thereafter.

With the limited knowledge available in the early months concerning the specific criteria for eligibility, it was to be expected that this all-out effort on our part to protect individual benefit rights would result in applications from a very substantial number who were eventually found not to meet the requirements of the law.

Currently, total claims filed since enactment approximate 290,000, with about 10,000 new claims being received each month. Decisions have already been completed in about 250,000 of the total claims filed.

Of those completed, 120,000 represent payment awards—70,000 to miners and 50,000 to widows, with the number of both types of award increasing each week as additional claims are processed.

This experience of awards of 70,000 to miners and 50,000 to widows up to this point contrasts with the estimate of 61,400 miners' claims payable by July 1971, made by the Secretary of the Interior at the time of legislative consideration of the bill.

Taking into account miners, widows, and dependents covered, about 190,000 people are currently beneficiaries of the program. Benefit disbursements to date have been almost \$275 million, and current monthly payments total about \$22 million.

The Office of the Actuary of the Social Security Administration now estimates that by the end of fiscal year 1972 benefit disbursements are expected to be almost \$400 million annually and total beneficiaries at that time will be about 260,000.

I would be glad to introduce for the record more detailed data, State by State, reflecting the results of program operations to date, if the committee so desires.

Mr. HAWKINS. Without objection, that will be placed in the record at this point.

(Data to be furnished follows:)

NUMBER OF BLACK LUNG CLAIMS FILED AND ALLOWED, TOTAL CUMULATIVE PAYMENTS SINCE ENACTMENT AND TOTAL MONTHLY PAYMENTS AS OF APRIL 30, 1971, BY STATE OF CURRENT BENEFICIARY RESIDENCE

State	Claims filed	Claims allowed	Total cumulative payments since enactment	Total monthly payments
U.S. total.....	286, 109	120, 416	\$273, 700, 626	\$21, 842, 240
Alabama.....	15, 700	5, 120	12, 941, 261	1, 007, 579
Alaska.....	16	4	9, 812	765
Arizona.....	370	178	334, 986	32, 995
Arkansas.....	2, 070	559	1, 300, 654	105, 575
California.....	1, 400	516	1, 152, 673	92, 119
Colorado.....	1, 740	402	787, 222	69, 563
Connecticut.....	700	341	595, 732	58, 041
Delaware.....	300	126	228, 645	19, 964
District of Columbia.....	210	52	90, 898	9, 336
Florida.....	2, 380	994	2, 222, 942	187, 194
Georgia.....	190	83	133, 306	13, 733
Hawaii.....	2	1	2, 336	153
Idaho.....	46	12	29, 471	1, 911
Illinois.....	15, 700	5, 820	10, 888, 606	1, 071, 255
Indiana.....	5, 260	1, 317	2, 746, 725	241, 636
Iowa.....	1, 385	495	795, 073	92, 145
Kansas.....	333	93	130, 496	15, 717
Kentucky.....	31, 200	8, 020	20, 585, 518	1, 542, 203
Louisiana.....	29	16	22, 690	2, 636
Maine.....	6	3	3, 425	429
Maryland.....	3, 360	1, 301	2, 118, 593	203, 569
Massachusetts.....	110	34	55, 574	6, 284
Michigan.....	3, 080	830	1, 556, 677	139, 213
Minnesota.....	31	10	20, 920	1, 979
Mississippi.....	58	19	29, 046	3, 401
Missouri.....	430	84	129, 936	14, 833
Montana.....	290	73	91, 307	11, 404
Nebraska.....	19	6	3, 164	688
Nevada.....	59	24	31, 742	3, 470
New Hampshire.....	8	5	3, 821	841
New Jersey.....	2, 500	1, 510	3, 044, 486	255, 507
New Mexico.....	600	180	337, 106	33, 429
New York.....	2, 420	930	1, 847, 485	161, 713
North Carolina.....	730	256	486, 609	45, 854
North Dakota.....	12	7	8, 917	1, 252
Ohio.....	12, 300	3, 300	6, 703, 135	605, 906
Oklahoma.....	1, 120	395	703, 207	72, 132
Oregon.....	72	25	44, 875	4, 182
Pennsylvania.....	93, 600	57, 810	125, 190, 690	9, 916, 300
Puerto Rico.....	5	2	5, 264	382
Rhode Island.....	12	6	11, 341	1, 070
South Carolina.....	120	42	76, 796	7, 826
South Dakota.....	5	2	4, 541	382
Tennessee.....	9, 700	3, 200	7, 684, 546	630, 784
Texas.....	200	76	135, 301	13, 399
Utah.....	1, 100	330	463, 194	59, 834
Vermont.....	1	1	1, 757	153
Virginia.....	16, 900	5, 200	13, 948, 462	1, 052, 203
Washington.....	340	99	166, 594	16, 163
West Virginia.....	56, 700	20, 000	52, 760, 253	3, 922, 031
Wisconsin.....	90	32	55, 283	5, 361
Wyoming.....	1, 100	475	977, 533	85, 746

Mr. ERLBORN. Mr. Chairman.

Mr. HAWKINS. Mr. Erlenborn.

Mr. ERLBORN. May I interrupt for a moment and ask: Do you have the information as to Pennsylvania, not only as to how much is being paid in the way of Federal compensation under this law, but how much the State of Pennsylvania has been relieved from as a result of the Federal payments, and if so, would you put that in the record at this point, also?

Mr. POPICK. Yes, I will. We can provide that information.

Mr. HAWKINS. Without objection, so ordered.

(Information to be furnished follows:)

As of April 30, 1971, cumulative Federal benefit payments to Federal black lung beneficiaries residing in Pennsylvania totalled \$125,190,690. Payments were at the monthly rate of \$9,916,300.

In July 1970, Pennsylvania enacted a provision whereby the \$100-a-month benefit payable under its State occupational disease benefit program is suspended if the beneficiary becomes entitled to Federal black lung benefits. As a result, since July 1970, the Federal black lung miner beneficiary who because of the new Pennsylvania provision does not receive the State \$100 monthly payment, receives his monthly Federal black lung benefit in full, without offset reduction. The effect for the beneficiary, therefore, is no net change in the total amount of his combined monthly benefits from both sources.

It is estimated that from July 1970 through April 1971, reductions in Pennsylvania occupational disease benefit payments due to the payment of Federal black lung benefits totalled approximately \$16,500,000.

Mr. BURTON. Mr. Chairman.

Mr. HAWKINS. Mr. Burton.

Mr. BURTON. I would hope as soon as you can give us some statistically useful information that you can find some method by which you could ascertain the reduction in costs that would otherwise have been incurred with public assistance payments.

It was of interest to me in the earlier discussions during the course of deliberations on this title as to how much we might otherwise have had to pay under more demeaning circumstances these same persons, either in old age or disabled public assistance or aid to families with dependent children.

I do not know what that time frame should be, and I do not think it useful that you respond in terms of a specific time frame, but I would think that it would be helpful if we could on some statistically valid basis be given a reasonable estimate on the reduced cost of welfare and public assistance that could be reasonably traceable to the passage of this particular title.

Mr. HAWKINS. Mr. Popick, I hope you understand the request and if you can comply with it, that also will be entered into the record along with the other information.

(Information to be furnished follows:)

There is no information presently available on this point. A special study will need to be made on the subject. As data becomes available it will be furnished the committee.

Mr. POPICK. Mr. Burton we know has been interested in this from the very beginning, and we have been moving in the direction of being able to provide some information along these lines.

Unfortunately, Mr. Burton, we do not get this kind of information on a routine basis in the handling of the claims. It will take some kind

of special sample study or survey, and we will be doing something on that as soon as we can.

Mr. HAWKINS. Thank you. You may proceed.

Mr. POPICK. I am happy to report to you today that the backlog of initial claims filed in the first year of program operations has now been virtually eliminated.

With a near-normal workload of pending initial claims, the delays encountered in handling initial claims in the first year are no longer being experienced. For claims now being filed, processing time should be more in line with regular social security disability claims experience, that is, about 10 to 12 weeks from filing to completion, on the average.

Mr. LANDGREBE. Mr. Chairman.

Mr. HAWKINS. Mr. Landgrebe.

Mr. LANDGREBE. I am going to have to leave in a few minutes. I would like to ask Mr. Popick a question, if he would permit me to.

Earlier testimony indicated that the applicants, particularly at the point of medical examination, are being handled rather badly, and perhaps are not being given a thorough examination, particularly in the area of X-ray.

It does not indicate that you are a doctor yourself, but could you comment on that?

Are we really instructing the doctors to specifically deny claims where there is a possibility of real black lung, or a serious progression of the case in existence?

Mr. POPICK. I would like Dr. Roemmich to comment on the matter of the practices with respect to which X-rays are being [taken], and the reading of those X-rays by the qualified radiologists who are providing them under this program, but I would like to directly and emphatically respond "No" to your question as to whether anyone is being directed to deny any claim on an improper basis.

Mr. ERLNBORN. Would the gentleman yield?

Mr. LANDGREBE. I will be very happy to yield. I would hope that the doctor would be permitted to make a brief statement before I leave, but go ahead.

Mr. ERLNBORN. I would like to ask a simple question.

It has been testified by one of the congressional witnesses here this morning that, although he has not seen it, he is sure that there is some directive from the Social Security Administration to deny many of these claims. Could you state for the record categorically, yes or no, whether such a directive exists?

Mr. POPICK. I have no knowledge whatsoever of such a directive and none exists.

Mr. ERLNBORN. Thank you.

Mr. HAWKINS. Mr. Landgrebe I think has directed a question to which he desires an answer.

Mr. Popick, would you have the witness answer? Which one is the best qualified to answer Mr. Landgrebe?

Mr. POPICK. Dr. Roemmich, our chief medical officer, is quite familiar with our procedures and requirements with respect to medical evidence. I would like him to respond.

Mr. HAWKINS. Dr. Roemmich.

Dr. ROEMMICH. I am not sure I understand the question.

Mr. LANDGREBE. Perhaps you did not hear the testimony. There were statements made here that there were as many as 60 or 75 applicants rushed through hospitals, giving the indication of the accusation that they were not being given a real X-ray examination, but were just run through as a group, and told as a group, "No, you don't qualify for benefits."

Is this the policy? This would be in line with my colleague's question. Is there a directive from the headquarters here, from the Social Security office directing doctors to find ways to avoid payment of claims in this application?

Dr. ROEMMICH. There has never been such a directive that I know of.

In regard to the other question, about the testimony about applicants being lined up 60 or 70 in a row and being shoved through to get X-rays, I doubt that that is true.

Although I have no personal experience from the field, I communicate with them. I do have information about the number of X-rays that are taken by certain sources, and as they accumulate over a period of time, and I cannot imagine any sources that exist in which such a mass of individuals would be pushed through in a hurry.

Mr. LANDGREBE. On the other hand, do you not have a responsibility to be sure that approval is given only to those cases that under the law qualify for the benefits? That is part of your business, too, is it not?

Dr. ROEMMICH. Yes. We do the best we can to make the decisions according to the statute, and the regulations as we have published them.

Mr. LANDGREBE. Thank you.

Mr. POPICK. May I just add a point there?

The decisions on these claims are not made by the doctors who do the examinations. The doctors who do the examinations, who provide their services through State agencies that work with us in accordance with the law, these doctors perform the X-rays, and report the readings, or they perform the breathing test and report the results. This is part of the evidence, along with whatever evidence the individual himself is in a position to present from his own treatment sources, or any other source that has evidence of his condition.

All of this evidence then comes to our headquarters in Baltimore, where we have a staff of trained adjudicators who are removed, completely removed from the sources of the evidence, and who make a decision solely on the merits of the claim on the basis of the law, the regulations, and the evidence in file.

Mr. LANDGREBE. Thank you very kindly. I appreciate your forthright statement.

Mr. POPICK. Thank you, Mr. Landgrebe.

Mr. HAWKINS. Would you proceed, Mr. Popick?

Mr. POPICK. I believe I was saying that the average time we would expect would be about 10 to 12 weeks, on an average, for new claims now being filed.

While the initial claims load has been largely processed, there is developing an increasing group of claims in which the denied claimant is exercising his right to request reconsideration of the adverse decision.

The handling of these requests is reaching very substantial proportions, as we make every effort to insure that any additional evidence having a bearing on the decision is obtained and carefully considered

as part of a new and independent review made of the applicant's claim.

Following the decision on reconsideration, a dissatisfied applicant may request a hearing before a hearing examiner of the Social Security Administration. Hearing examiner decisions may be appealed to the Appeals Council of the Social Security Administration, and there are further appeal rights to the Federal courts.

From our present projections, it appears most likely that requests for hearing, and subsequently for judicial review will place a heavy burden on our administrative hearing process, as well as on the dockets of the Federal courts in certain areas. Action is well underway, however, to gear up our hearing process to expedite the handling of this new workload.

In summary, while very substantial progress has been made in implementing this new and important benefit program, a great deal of effort still lies ahead.

From the standpoint of overall claims processing, full attention will continue to be directed to giving applicants their final decisions, and the benefits to which they are entitled, as promptly as possible, while maintaining the standard of service that is basic to all social security claims operations—namely, to provide every assistance possible to applicants in establishing their rights to benefits under the law, and to give full and fair consideration to each claim.

From a broader program perspective, it is apparent that more needs to be known about pneumoconiosis itself as a disease—its cause, techniques for diagnosis, its disabling effects, and how to measure them, and its relationship to other diseases of the lung—that can be utilized in the further refinement of evaluation criteria under the program.

Toward this objective, we are closely analyzing our case experience and will continue to seek out new medical knowledge and the most expert professional advice and guidance available.

A close working relationship is being maintained with the Public Health Service, in the planning and conduct of medical research and studies to be carried out under title V of the act under the leadership of the Public Health Service.

We will be alert to opportunities for applying to the fullest extent possible the added knowledge gained from such studies to improving the administration of the program.

In reviewing program accomplishments to date, it is fitting to acknowledge that the Social Security Administration has been assisted in implementing the black lung benefit program by Members of Congress, the Public Health Service, the Department of Labor, the Department of the Interior, and other components of the Federal Government, State workmen's compensation and occupational disease agencies, the United Mine Workers of America and other representatives of miner and widow claimants, the United Mine Workers Welfare and Retirement Fund, the Social Security Administration Medical Advisory Committee, representatives of the coal mine industry, a wide range of professional and technical specialists in the field, and many others.

Such liaison and consultation will continue to be utilized in assuring equitable and effective administration of the program.

Let me now turn to the specific legislative proposals for changes in the black lung benefits program which are before the subcommittee.

Title IV of the act provides that black lung benefits can only be paid to miners or their widows, although the benefits are higher if the miner has dependents. Where both the miner and his spouse are deceased, the dependent surviving children, usually referred to as "double orphans," are not entitled to benefits.

It seems inequitable to pay additional benefits to a miner or his widow for the support of their dependent children, but to withdraw that support when both the miner and widow have died.

There is precedent for the payment of benefits to double orphans under workmen's compensation law. The Longshoremen's and Harbor Workers' Compensation Act provides death benefits for dependent double orphans. The Federal Employees Compensation Act also pays death benefits for dependent double orphans.

We believe that there is merit in the proposal to pay black lung benefits to double orphans, the proposal embodied in H.R. 42, and would therefore support enactment of this bill.

Mr. BURTON. Mr. Chairman.

Mr. HAWKINS. Mr. Burton.

Mr. BURTON. Are you authorized to speak for, and does that statement incorporate the position of the Administration?

Mr. POPICK. I believe it does, Mr. Burton.

Mr. BURTON. Are we then entitled to assume that in the action of you communicating to this committee within a reasonable period of time, and I would think a couple of weeks would suffice, that then the record could rest in that this is the Administration position?

Mr. POPICK. Yes.

Mr. ERLNBORN. Mr. Chairman.

Mr. HAWKINS. Mr. Burton, will you yield?

Mr. BURTON. I yield.

Mr. ERLNBORN. Before you make that commitment, may I ask for your interpretation of the meaning of this specific bill?

When I first read it, it seemed to me to be awfully broad. I see that there are some definitions involved. It says:

In the case of the child or children of a miner whose death is due to pneumoconiosis or of a miner who is receiving benefits under this part at the time of his death, and who leaves no widow, and in the case of the child or children of a widow who is receiving benefits—

and so forth. Then it goes on to say what benefits the child or children should receive.

It does not use the word "dependent" which is in the act and is defined in the act.

From the first reading of this, it would appear that the child of a miner whose death is due to pneumoconiosis may be a 50-year-old man whose father died many years ago, who is not dependent upon the father at this time, nor does it apparently limit the payment to the child during the period of dependency. If he qualifies for benefits under this, apparently the benefits are extended to him throughout his lifetime, not during his dependency upon the deceased coal miner.

Now, if that were the proper interpretation of this bill, do you think that you would be endorsing the bill, or would you only approve of payments during the dependency?

Mr. BURTON. Would the gentleman yield?

Mr. HAWKINS. Just a minute, Mr. Burton.

Do you yield to Mr. Burton?

Mr. ERLNBORN. Yes, I yield.

I would like to have this clarified so that we know what the bill provides before we get an endorsement.

Mr. BURTON. I commend the gentleman.

I assume the witness was responding to the bill which includes the definition of child, and the definition of child taken from the Federal Employees Compensation Act is the definition that we are referring to.

I would not deem it to be within the parameters of what the gentleman asked. The gentleman has stated that this would apply to an able bodied adult 35-year-old child whose father sometime in the past had died.

Mr. ERLNBORN. The definition of child under the Social Security Act?

Mr. BURTON. I think under the Federal Employees Compensation Act.

Mr. ERLNBORN. Let me read the definition:

Child means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self support and includes step children, adopted children, post-humous children but does not include married children.

If you apply that definition of child to section (3) of H.R. 42, it says: "In the case of a child or children of a miner whose death is due to pneumoconiosis."

That miner may have died 20 years ago, and at the time of his death he had a dependent child under the age of 18 who today may be 35, and would, therefore, become entitled to these benefits, because he was a dependent child by this definition at the time of his father's death.

The second point I make is that even though he be a dependent at the time he qualifies under this act, there apparently is no termination to the payment to that recipient when he no longer is dependent, when he reaches the age of majority and becomes self-supporting.

I do not think that that is the interpretation that we want to put on this act, but it seems quite clear by a reading of the act that that is what it would do. It would give benefits in perpetuity once one becomes qualified, and would not cease those payments when one became self-supporting.

Mr. POPICK. Mr. Erlborn, have you had a chance to note in section 2 of the bill that there is a proposal to include a section (g) of section 412 of the original act which would define child: "The term 'child' has the meaning given such term in section 8101 (9) of title 5, United States Code."

And that definition, which I have just been handed, is:

Child means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self support and includes step children, adopted children, post-humous children, but does not include married children.

Mr. ERLNBORN. That is the section I just read.

My point is if the miner died 20 years ago, and at that time had a 15-year-old child who was dependent upon him for support, that that child would then be covered by this definition, because at the time of the death of the miner, the child was dependent upon him for support.

Mr. BURTON. Would the gentleman yield?

I for one do not deem the response of the witness to permit that construction.

If there would be any doubt about it, we would be sure that the language of any such proposal, if it were to receive approval, would be narrowed as common sense would dictate, and not permit adult, able-bodied people, working or not, to be encompassed within the term of child.

This is not a forever, lifetime benefit kind of notion, at least as I think the chairman proposed it.

Mr. ERLNBORN. I would agree that that is what we should draft here.

Let me ask the question of the witness or Congressman Burton: Is there any place in the bill where there is a termination of benefits when the child is no longer dependent?

Mr. POPICK. In this bill?

Mr. BURTON. That is entirely too good a question for me to answer at this point.

Mr. ERLNBORN. A close reading of the bill reveals no termination of the benefits. Once one becomes qualified for the benefits, he is entitled to them for his lifetime, in H.R. 42.

Mr. BURTON. If that be the case, in terms of the supplemental proposal for the added coverage, I think the record is very clear that we are not going to get the agreement to implement, in the absence of that point being clarified.

Mr. ERLNBORN. Let me caution the witness that I do not think the administration would want to endorse the bill while there is a question like this pending.

Mr. BURTON. (presiding). To the extent this is not an issue, I think the record speaks for itself.

But apart from a little reading of the transcript, obviously if we went to the point of decision, and the administration comes in and says, "This goes further than we had thought the proposal went," obviously at that point we do not have any kind of agreement.

I think we all understand that, and I would deem the witness' response to be limited by the discussion which the gentleman from Illinois and I have just had.

I have been asked by Acting Chairman Hawkins to chair this meeting, at least, I gather, until we get the second ringing of the bell.

What is your time problem? Chairman Hawkins may well not be able to get back until Mr. Erlenborn and I have to leave. What is the time problem of you and your staff in terms of this afternoon?

Mr. POPICK. We are at your disposal.

Mr. BURTON. Would the gentleman from Illinois agree that if we are not able to exhaust the questions that would be useful, that we would set a time, certain to give the witnesses an opportunity to come back, and the members to question them further?

Mr. ERLNBORN. Yes.

Mr. BURTON. Have you completed your prepared statement?

Mr. POPICK. No. I have comments on the three other bills.

Mr. BURTON. Rather than that, for now, are there any questions that immediately occur to the gentleman from Illinois?

I would like to spend some time, and we may have to go over this twice on this third-year business. I am not just sure I understand that.

Mr. ERLNBORN. May I request that we might recess at this time, and return at a time certain this afternoon?

Mr. BURTON. What time would the gentleman suggest?

Mr. ERLNBORN. I would suggest 1:30 or 2.

Mr. BURTON. Which would you prefer?

Mr. ERLNBORN. I prefer 2.

Mr. BURTON. If we receive the approval of Congressman Mazzoli, we will recess the meeting until 2. It will give you a chance to get some lunch, and give more of the subcommittee members an opportunity to be back.

We want to thank you very much for the patience you have shown us this morning.

(Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.)

AFTER RECESS

Mr. HAWKINS. The General Subcommittee on Labor, of the House Committee on Education and Labor will now reconvene.

When we recessed this morning, Mr. Popick was testifying.

Mr. Popick, did you conclude your statement?

Mr. POPICK. I had a small portion left.

Mr. HAWKINS. All right, would you proceed, then?

Mr. POPICK. Surely.

I will resume with a comment on H.R. 43.

Mr. HAWKINS. That is on page 11?

Mr. POPICK. Yes, at the bottom.

Mr. HAWKINS. Thank you.

Mr. ERLNBORN. Are you going to comment on H.R. 42 also?

Mr. POPICK. Yes, sir.

Thanks to Mr. Erlenborn we stand corrected on the point made with respect to my remarks on H.R. 42. There is a question about the bill as it stands now and particularly the intent and the meaning of the provisions on which my remarks of endorsement of H.R. 42 were based.

I could best summarize it by saying that the intent of the endorsement of H.R. 42 is that it would provide to the double orphan, benefits under the same circumstances that are now available to the single orphan. And that on that basis there seems to be a question about whether or not the language of H.R. 42, as it stands now, would serve that purpose. It might very well go beyond that purpose.

There are questions of the definition of dependency and the question of the termination of the benefit which arise from the present language. So what I am endorsing in my remarks here is the payment of benefits to double orphans essentially under the same conditions as they are now payable to single orphans.

Mr. HAWKINS. Thank you. I think that is clear enough.

Would you then proceed with H.R. 43?

Mr. POPICK. H.R. 43 would exempt black lung benefit payments from the workmen's compensation offset provision of the Social Security Act. As you know, under these provisions, social security disability benefits to a worker and his family must be reduced under certain specified circumstances if he is also entitled to workmen's compensation, and if the combined benefits exceed 80 percent of the worker's average predisability earnings.

This, of course, means it is not a dollar-for-dollar offset, but is an offset with respect to that part of the combined benefits which would exceed 80 percent of the worker's average predisability earnings.

Mr. BURTON. May I ask a question at this point?

Mr. HAWKINS. Yes.

Mr. Popick, would you yield to Mr. Burton?

Mr. POPICK. Surely.

Mr. BURTON. And I would invite any response from my colleague from Illinois.

I stated in the record, and it was clearly our intent as the authors of the legislation, that this payment was not to be considered as workmen's compensation for any purpose. A statement made by the President can't characterize this payment contrary to our clearly expressed legislative intent.

I did not intend that this black lung benefit payment be considered as workmen's compensation. I am the author of the provision. I think I wrote every word of it.

Now, of course, if the record of this hearing states that we have invaded the workmen's compensation field and we are operating on that premise, then of course I may find that to be an acceptable foundation, if you will, for future legislative programs.

I have difficulty understanding your judgment that the black lung benefits are workmen's compensation. I specifically make note of the gentleman from Wisconsin, Mr. Steiger, who stated emphatically that this was not intended as workmen's compensation. The chairman of the subcommittee said the same, as did the chairman of the full committee. These are all the men who participated at one time or another in supporting this legislation.

One of the reasons that we made it perfectly clear it wasn't workmen's compensation is that this case had to be dealt with on its own. It was to serve neither as a precedent nor prejudgment on any other matters. The administration's position, if you deem this to be workmen's compensation, and I think you have to opt one way or the other—you may have to get the Secretary himself to answer this ultimately—if you say we invaded the workmen's compensation field, which is something I would love to do, then the record will have to rest on that.

But you can't have it both ways. You can't at one time say we have not invaded the field and yet on the other hand reduce benefits by saying, in effect, this is workmen's compensation.

I yield to the gentleman from Illinois.

Mr. ERLNBORN. I recall quite well the debate concerning the first Federal intrusion into workmen's compensation and I made the point that it was, no matter what you called it, legislatively, tactically, and for strategic reasons, although a statement was made in the bill, that this shall not be considered workmen's compensation, it is a compensation for a work-related disability, industrial disease, and there is just no two ways about that.

I think it was also quite clear in the discussions and the debate that the cost to the Federal Treasury of the pneumoconiosis compensation was going to be less than it would appear. The gentleman from California made that quite apparent when we discussed this and would call attention to the fact that disability compensation under social

security and other Federal compensation would be reduced as a result of the receipt of the pneumoconiosis compensation. In other words the pneumoconiosis compensation of the bill, the impact on the Treasury, was something less than that because there were offsets. This is one of those offsets.

Mr. BURTON. Would the gentleman yield at this point?

Mr. ERLBORN. Yes.

Mr. BURTON. I have worked with the gentleman enough to know that he never intentionally misstates the situation.

This section was drafted with some care. I hope that those of you who have implemented it have noted that. I permitted an offset, the language permitted an offset of State workmen's compensation and that is perfectly clear. If you receive a State workmen's compensation payment for an injury in this area, then the black lung payment could be offset by an identical amount.

The same is true for State disability payments. I am sure some of my colleagues may have felt that that meant Federal social security but viewing the report it can't possibly be so construed.

There are only four State disability laws, and they are not notable coal mining States.

If this keeps the other side feeling better, we will keep it in, because it is linked to State laws not the Federal Social Security Act.

So the fact is that we did not intend your construction and we said it every way we possibly could say it. You can't take the point of view of a member who was in the minority at every stage of the game, and draw your intent from what was consistently, although honorably, a minority point of view. You simply can't do it that way.

Nor can you take a press release or statement made by the President of the United States as equivalent of congressional intent. That isn't the way it works, not by any procedures of construction that I am aware of.

Mr. ERLBORN. Would the gentleman yield?

Mr. BURTON. Yes.

Mr. ERLBORN. Let me ask the witness—I am reading your statement here which you haven't had an opportunity to complete reading yourself. I see it says it has resulted in reduction of social security benefits for only a small percentage of those awarded black lung benefits.

So as I understand your statement, you have not reduced black lung benefits?

Mr. POPICK. No. Not with respect to the provision we are discussing here.

Mr. ERLBORN. Nor have you reduced workmen's compensation benefits. What you have reduced is social security benefits?

Mr. POPICK. Under limited circumstances the social security disability benefit is subject to reduction as a result of the black lung payment and it is the language in section 224 of the Social Security Act and not language in the black lung law that is the basis for this.

Mr. ERLBORN. That is right. And I remember very clearly the gentleman from California pointing out that there would be these offsets in social security disability.

Now all of this talk about workmen's compensation is pretty much beside the point.

Mr. BURTON. If the gentleman will yield.

Your statement is quite clear and it points out the limited application that you have invoked with reference to the black lung payments. The fact of the matter is in your shop you had a great deal of difficulty with this.

All I can state is that we had no trouble, in the early days, if you remember I took your position when I stated that if they kept the Pennsylvania black lung payment, that could be offset.

Because the Pennsylvania special black lung payment was not a law of general application applicable through the work force generally for work-connected disability, injury or death, they could reduce or repeal that law in whole or in part if they saw fit, and then the Federal Government would have to pick up that slack and that is what happened.

But I stated if there were workmen's compensation laws of general application that then that payment would reduce the Federal black lung payments, and it was clearly so intended. We were trying to get at the notion, really, that the States had not moved in this field. We were trying to do it with a mechanism that avoided workmen's compensation equivalency so that none of us could say we had created this precedent. One of the reasons why we did not provide health or medical benefits, as one might expect, is because of all of the workmen's compensation laws in the country have provisions relating to the payment of all or part of the medical costs of the disease or injury. We left that out. We left that out, in part, because we were making this a black lung payment and that is all it was. No more, no less. It wasn't workmen's compensation.

The records state, and the language of the bill makes it perfectly clear that it doesn't have any of the characteristics of workmen's compensation laws; no medical coverage, it is not wage related in any respect, there is no employer-contribution requirement. All three of those are universally present factors in workmen's compensation laws.

Mr. POPICK. Mr. Burton, you appreciate, I am sure, that the individual who will first become entitled to benefits under part C after 1972 getting them through a State workmen's compensation law, that such benefits could cause a reduction in his social security disability benefits.

Mr. BURTON. Absolutely correct. And for your information in the conference, they in effect said we will give you a couple of years of the house version, but we will demand a couple of years of what we want. And the couple of years of what the Senate wanted did not conform to our objectives, but we had to accept it. So we got a couple of years of the House version, and then you have got a year we will talk about later, and then we have got 4 years of the Senate version. So you can't compare the apples in the Senate version to the oranges in the House version and then say you are insisting on consistency.

Mr. HAWKINS. Mr. Popick, would you continue? I think the point has been well made.

Mr. POPICK. The principle behind the workmen's compensation offset provisions is to prevent duplication of benefits to the extent that combined benefits equal or even exceed the worker's earnings before he became disabled. The rationale behind this is, of course, to avoid

creating a situation where it is more profitable to collect benefits than to attempt to become rehabilitated and return to work. Because the offset provision is limited to applicants under age 62 and who became disabled after June, 1965, it has resulted in reduction of social security disability benefits for only a small percentage of those awarded black lung benefits.

Our data shows less than 5 percent of black lung awards have been affected. However, even though the impact is limited, we believe that the principle involved is sound and should apply to black lung benefits. We think it would be inequitable to exempt benefits payable under part B from the offset provisions when future benefits payable under part C would not be exempt. We, therefore, would be opposed to enactment of H.R. 43, which would exempt black lung benefits from the workmen's compensation offset provisions.

H.R. 5702 contains two provisions that would materially change the present law. It amends the definition of disability in section 402(f) of the Federal Coal Mine Health and Safety Act of 1969 and amends section 413(b) of the act to prohibit use of chest X-rays as the sole basis for denial of claims.

Under present law, benefits are payable to a miner only if he is totally disabled due to pneumoconiosis; that is, if he has pneumoconiosis and such functional breathing limitation, or other impairment due to pneumoconiosis, as to prevent him from engaging in any type of substantial gainful activity.

Diagnostic X-ray evidence is the primary source in determining if a miner has pneumoconiosis. If positive X-ray evidence of "complicated pneumoconiosis" is found, no further evidence is required and the claim is allowed. If negative X-ray evidence is ascertained, the individual's claim is denied. If positive X-ray evidence reveals simple pneumoconiosis, other medical tests are needed to determine the level of severity of the impairment.

This bill would require the Social Security Administration to abandon the position that coal worker's pneumoconiosis can be diagnosed in the living person only by chest X-ray. The consensus of expert medical judgment is that no means, other than chest X-ray, (except lung biopsy in a very unusual case) is presently available to diagnose coal worker's pneumoconiosis, as distinguished from other respiratory ailments, in the living person. Thus the bill could include as compensable under the law disability due to other lung disease, such as emphysema and chronic bronchitis.

To extend benefits under the law to nonoccupational diseases such as emphysema and chronic bronchitis would appear to be inconsistent with the concept of occupational causality which is basic to the law.

The proposal that total disability be defined to mean inability to work as a miner could be interpreted to mean inability to work not only because of coal worker's pneumoconiosis, but also inability to work because of other medical conditions.

Few claims have been denied on the basis that a miner who is unable to work as a coal miner because of pneumoconiosis can do other work. Generally, such a miner is found unable to engage in other work on the basis of his vocational limitations of age, education, and restricted work experience. However, it would appear inappropriate to define total disability for all cases as inability to work as a miner, particularly

where the individual is actually performing, or has clearly demonstrated the ability to perform, nonmining work.

Mr. BURTON. Would the gentleman yield at this point?

The disability provision was understood. First, it clearly says that it should be no more restrictive. The understanding for the first year was that it would be coincident level with the total disability provision. This was done under the Social Security Act. This was done for a lot of reasons, none the less so that we could get the administrative show on the road. Now you really have to read the bill in its entirety. It is not, and I am trying to find it, is not the earnings of the retirement test earnings that we made reference to, the retirement test earnings under the survivors section of the Social Security Act.

Mr. POPICK. Retirement and survivors sections.

Mr. BURTON. Not under disability section, am I correct in that?

Mr. POPICK. Yes. The earnings test referred to here is the one that applies to the beneficiary of social security retirement or survivors benefits.

Mr. BURTON. Not to the disability beneficiaries?

Mr. POPICK. No; it is a different test for those beneficiaries.

Mr. BURTON. You are absolutely right. I hope you don't think it was accidental that it was worded that way. This is the point I am trying to establish is that we had the minimum disability language with authority to expand, the understanding the first year being that. The reason why we used the retired earnings test not the disability test, in light of the committee's general statement that this section should be liberally construed, is that when read together, if in fact you weren't earning that amount and you had a disability, if in fact you weren't earning that amount, that was positive evidence to the beneficiary that that pneumoconiosis or black lung caused this diminished earning ability.

Because what we had in mind was gearing benefits plus earnings to that which a coal miner working under today's conditions could earn if he hadn't been afflicted by this dread disease.

I am not sure you men have read those two sections together, as obviously you must. Because if I intended as the author to make it a disability test, I could have done that. That wasn't my intention. That was why I didn't do it that way.

Do you have your attorneys here, by the way, so at least they have heard that?

Mr. POPICK. Yes, I believe so.

Shall I go on?

Mr. HAWKINS. Yes, would you continue?

Mr. POPICK. Also, extending compensation under the law to workers disabled from coal mining for any medical reason would be inconsistent with the basic requirement that the disability must result from occupational disease.

For these reasons, we would oppose enactment of H.R. 5702.

Another bill on which your committee has requested comments is H.R. 18, a bill to extend for an additional year the existing program for payment of black-lung benefits.

As I pointed out earlier, starting with 1973, the Department of Labor will take over the primary Federal administrative responsibility for subsequent black-lung benefit claims. It is contemplated

that under the program as it will be administered by the Department of Labor most benefit payments will be made by State workmen's compensation agencies or, in States where workmen's compensation laws do not provide adequate coverage for black lung, by the mine operators.

The extension for an additional year of the Department of Health, Education, and Welfare's payment of benefits under the provisions now in effect would put off for a year the States' and the mine operators' responsibilities for meeting the needs of miners and their families. By 1973, when the program will, under present law, be modified to shift responsibility from the Federal Government to the States and the mine operators, 3 full years will have passed since enactment of the Coal Mine Health and Safety Act of 1969. During these 3 years State governments will, in our opinion, have had ample opportunity to modify their workmen's compensation laws as may in some cases be necessary for providing adequate coverage for pneumoconiosis. There would seem to be no assurance that States which will not have taken action by 1973 to cover black lung under their workmen's compensation laws would do so by 1974. We believe that the 3-year period provided under the present law, during which preparations can be made by the States for the modified black-lung benefits program, is adequate for this purpose and therefore would oppose the enactment of H.R. 18.

I wish to thank the subcommittee for inviting our department to appear and comment on the proposed changes in the black-lung benefits provisions.

Mr. HAWKINS. Mr. Popick, I think that the questions have already extensively explored your statement. But probably there are a few remaining.

Mr. BURTON. Do you have any additional questions?

Mr. BURTON. Yes, Mr. Chairman.

I would like to have join with you those that can give us the benefit of your view on what the meaning is of this bridge year.

Mr. POPICK. Do you refer to 1972 where, during that year, a miner who files an application and becomes entitled to benefits may receive benefits only until the end of that year?

Mr. BURTON. Repeat that once more, please.

Mr. POPICK. An application for miner's benefits filed during that year—

Mr. BURTON. What year?

Mr. POPICK. Calendar year 1972. From January 1 to December 31, 1972. His eligibility for Part B benefits based on an application filed during that year extends only until the end of that calendar year.

Now, as you know, for Part B benefits where entitlement is established prior to that year, the benefits run continuously thereafter.

Mr. BURTON. No, for claims filed prior to that year, not benefits.

Mr. POPICK. Claims filed, I am sorry.

Mr. BURTON. In other words, we could be confronted with the situation.

Let's get on to the bridge year and the fourth year or the third year. Where is a person who is receiving Federal claims, Federal black-lung payment, where are they in January 1, 1973?

Mr. POPICK. Who are already receiving benefits?

Mr. BURTON. Yes.

Mr. POPICK. Their benefits go on.

Mr. BURTON. It might be helpful if you had some of the others come up, if they think they can help on this.

Mr. POPICK. Are you referring to the benefits for the individual who files a claim during 1972?

Mr. BURTON. Anyone filing a claim during calendar year 1971 obviously is home free. Someone filing in calendar year 1972 is perhaps somewhat ambiguous.

Mr. POPICK. His benefits terminate under Part B at the end of 1972.

Mr. BURTON. So where is that person—would you join us, please? Because we are looking for information. This is a highly technical thing. It probably only affects 100,000 people, so it might be useful if we take a chance to explore it.

Mr. HAWKINS. Would the witness identify himself for the record?

Mr. MEADE. Hugh Meade, with the Bureau of Disability Insurance, Social Security Administration.

Mr. HAWKINS. Could you answer the question of Mr. Burton?

Mr. MEADE. I will attempt to answer it, Mr. Chairman.

The miner who files in calendar year 1972 under part B will continue to receive benefits under part B until the end of that calendar year.

Effective January 1, 1973, he would then have to file under part C with the Department of Labor or with the State workmen's compensation, if they have a pertinent program.

Mr. BURTON. Do the regulations spell out that one determined to be entitled in 1972 has then satisfied that aspect of eligibility for claims filed on or after January 1, 1973?

Mr. MEADE. The definition of disability that is promulgated by the Secretary under part B, the same definition, I believe, would apply to the claims filed under part C in 1973.

Mr. BURTON. Do your regulations in effect, then, eliminate the supplementary requirement if a determination was made that he go through this medical eligibility test again?

Mr. MEADE. We really haven't dealt with that question in depth, Mr. Burton. However, I am sure that the regulations promulgated by the Secretary of Labor under part C would take into account the claimants who filed and were entitled under part B for calendar year 1972.

Mr. BURTON. Mr. Chairman, I ask unanimous consent at this point in the record that the Secretary of HEW and the Secretary of Labor both be requested by the staff to respond to this question and it be placed in the record at this point.

Mr. HAWKINS. Without objection, it is so ordered.

(The information referred to follows:)

U.S. DEPARTMENT OF LABOR,
WAGE AND LABOR STANDARDS ADMINISTRATION,
BUREAU OF EMPLOYEES' COMPENSATION,
Washington, D.C., August 4, 1971.

WILLIAM RIVERS,
Executive Officer, Bureau of Disability Insurance, Social Security Administration,
Administration Building, Baltimore, Md.

DEAR MR. RIVERS: This letter is in response to your questions raised in our discussion of Black Lung claims filed with the Social Security Administration during calendar year 1972. You have expressed an interest in the action contemplated by the Department of Labor in the following areas:

1. Will beneficiaries who filed during 1972, and are found to be entitled to benefits under Part B of the Act be required to refile a new claim for benefits under Part C in 1973? We are advised that the Secretary of Labor by regulation may accept claims filed under Part B in 1972 as claims properly filed under Part C, subject to any other conditions he may find it necessary to impose. Such authority is granted the Secretary under Section 422 (e) (1) of the Act, which provides in part that claims shall be filed in such manner, in such form, and containing such information as the Secretary shall by regulation prescribe.

2. Will provision be made to insure the continuity of payments to entitled 1972 Part B beneficiaries after December 31, of that year? Section 424 of Title IV states in part that if a totally disabled miner or surviving widow is found entitled to benefits under Section 422, and, an operator has not paid such benefits within a reasonable time, "The Secretary (of Labor) shall pay such miner or such widow the benefits to which he or she is so entitled." The United States may then recover from the responsible operator those amounts paid in a civil action. We have proposed that the above section be utilized in meeting the problem of providing for continuity of benefit payments to 1972, Part B beneficiaries, pending a determination of their eligibility under Part C. If for any reason there are found to be legal defects in this proposal, we would then recommend that a special fund be made available by supplemental appropriation exclusively for the continued payment of 1972 beneficiaries.

3. Will 1972 Part B beneficiaries continue to receive benefits in the event that there is no responsible operator liable for such payment? Such a contingency appears to be provided for under Section 424 of the Act, which states that the Secretary of Labor shall pay benefits to a totally disabled miner or widow in those situations where (1) an operator liable for such benefits has failed to provide surety for such benefits or, (2) there is no operator who was required to secure such benefit payments.

4. Will the Department of Labor accept medical determinations in respect to total disability or death due to pneumoconiosis previously made by the Social Security Administration in 1972 Part B cases? We have been advised that the Secretary of Labor by regulation, may accept any such determination previously made in respect to Part B claims filed during calendar year 1972. We were further advised, however, that the liability of an operator under Section 422 and 423 of Part C, would depend on the determination that the pneumoconiosis arose, at least in part, from employment in a mine which he operated during the period in question. Adequate provision for due process of law in this regard should be made in any regulations issued by the Secretary under Section 422(h). Such regulations should allow the coal operator to controvert any allegation that a miner's pneumoconiosis arose out of employment in an underground coal mine during the period of operation by that operator.

I hope that the discussion in the numbered paragraphs above will be sufficient to provide you guidance on the matters to which your questions related.

JOHN M. EKEBERG,
Director.

Mr. BURTON. The vital importance of that is, of course, that we are just some 6 months and a week or two away from the first part of this time problem, January 1, 1972. It is of enormous importance that this thing be resolved in some way and preferably the Congress find out soon enough how you intend to do it so either we can complain or, if we lose the complaint, consider changing the law.

My next question is, if the regulation is such that you don't have to go through this eligibility, total disability hurdle again, the claimant whose claim was approved and the determination of eligibility was in being, then to whom does the liability attach for payments starting on or after January 1, 1973?

Mr. MEADE. Mr. Burton, again this would have to be something that the Secretary of Labor with his authority to carry out the part C program would have to determine how, if at all, the employer coal mine operators would fund or whether the Federal Government would continue to fund this particular benefit payment that was initiated under part B.

Mr. BURTON. I am particularly interested in the situation that these employees, almost all of whom will be out of the work force and their employers may or may not still be in being.

Let us say that the disability determination has been made favorably in terms of the miner filing the claim and the first week or 30 days in January 1973 come and go. This man has not received a payment from anyone.

Is it your understanding that the Secretary of Labor has a responsibility, first, to see that that miner gets that payment before there has been determination as to who the Secretary of Labor in this instance can look to for recoupment or repayment? The latter is my understanding. I wonder if you have a view on that? Otherwise we are stuck with the impossible dilemma that if employers quarrel about whose responsibility it is and say, "Look, we are going to go to court on this," it could be 3 years until the matter is resolved and the miner would be without benefit. So that just doesn't add up.

I want to see whether you are currently under the impression that that is the way it would work.

Mr. POPICK. The Department of Labor has put out some preliminary regulations already. I am afraid we are not in a position to respond to detailed questions about this.

We will have to furnish that answer to you for the record to be sure that we have an authoritative answer, if one has been established already.

Mr. BURTON. You do have kind of a never-never land, and it was our intent that the Secretary be authorized to collect from those who otherwise would be liable in the event he had to make the payments because they failed to do so.

On the other hand, if you have an employer and he has a reasonable basis and says, "Look, we are just not liable in this situation." He also is entitled to some mechanism to make a determination of whether or not in fact he is liable.

But certainly during that interim you could not expect this disabled miner to be waiting around without any payment.

Doesn't that sound rational?

Mr. POPICK. Yes, it does.

Mr. BURTON. It may be or may not be the state of the Department of Labor's regulation.

Mr. POPICK. I think you have pointed to several important questions that go to the matter of the transition period between our administration and the administration under part C. We have carried on some very active liaison and communication with the Department of Labor to begin to come to grips with these important questions.

Mr. BURTON. Who is the Department of Labor do you have occasion to communicate with with respect to this problem?

Mr. MEADE. We have been communicating with the Department of Labor, the Bureau of Employee Compensation, and the Director in that Bureau. And they have even now set up a group to work toward their responsibility which they will assume in 1973, as well as to work with us to ease the transition to hopefully, as you point out, prevent any stoppage of payments that might otherwise occur unless there is a regulation to provide that it should not be so.

Mr. BURTON. Are you aware, as of this minute, if any State in the country has taken action that brings them within compliance of part C?

Mr. POPICK. It was my understanding that there were at least two States, although I don't have direct knowledge of this.

Mr. BURTON. At this point, obviously, I am not seeking representation of fact. I want to get an impression. Are you under the impression that they have acted?

Mr. POPICK. There may be some other people in the room who can answer that. Maybe Dr. Kerr can.

Mr. BURTON. Would you please come to the microphone.

I might add parenthetically that this third year is kind of a never-never land and we may not learn much, but there are an awful lot of people who are in no position to defend themselves that are heavily dependent upon us sorting this thing out, and this is about as good a time to do it as any.

Mr. HAWKINS. Would the witness identify himself for the record?

Dr. KERR. Yes, I am Dr. Kerr, director of the department of occupational health for the United Mine Workers of America.

In response to your question, there are only two States that have taken action thus far, Montana and West Virginia. The action that they have taken does not bring them fully into compliance with the criteria which were finally published on March 17. However, they are well along and will only need a few additional amendments to be in total compliance with the Federal act.

Mr. BURTON. Mr. Chairman, at this point I would ask unanimous consent that the Federal criteria be placed in the record at this point.

Mr. HAWKINS. Let's see if we understand you. Are you referring to the Federal criteria with respect to what?

Mr. BURTON. With respect to the Department of Labor's regulations already promulgated that detail the criteria that States must meet in order to comply with part C.

Dr. KERR. These are the criteria to which you are referring. They were published in the Federal Register on March 17, 1971. They set the criteria and standards necessary for evaluating the ability of the State workmen's compensation laws to provide benefits for coal workers' pneumoconiosis in accordance with Public Law 91-173.

Mr. HAWKINS. Are you asking that the Federal Register criteria be inserted in the record at this point?

Mr. BURTON. Yes.

Mr. HAWKINS. All right, without objection it is so ordered.

(The information referred to follows:)

[Federal Register, vol. 36, No. 52—Wednesday, Mar. 17, 1971]

RULES AND REGULATIONS

TITLE 29—LABOR: CHAPTER XIII—BUREAU OF LABOR STANDARDS, DEPARTMENT OF LABOR

Part 1520—Criteria for determining whether State Workmen's Compensation Laws provide adequate coverage for pneumoconiosis

On October 9, 1970, it was proposed to amend 29 CFR Chapter XIII by adding thereto a new Part 1520 entitled "Criteria for Determining Whether State Workmen's Compensation Laws Provide Adequate Coverage for Pneumoconiosis" (35 F.R. 15933). Written data, views or arguments of interested persons were invited on the new Part 1520.

After consideration of all the comments received, it has been decided to make several changes and additions to clarify the proposed Part 1520 and to provide more precision in implementing Part C of Title IV of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 795). A new paragraph designated (k), which defines the term "insurer", is inserted in § 1520.2. In response to suggestions, paragraph (c) of § 1520.3 is revised in the interest of clarity and to make more specific the time requirements for payments of benefits. A new paragraph designated (k), which requires coal mine operators to secure the payment of benefits by either qualifying as a self-insurer or insuring with an insurer, is incorporated in § 1520.3. Also, a new paragraph (o) is added to § 1520.3 requiring assumption of responsibility for the continuation of benefits in 1973 and beyond for claims filed in 1972 and affording a hearing for those mine operators who choose to dispute whether death or total disability resulted from employment for which they are responsible. In addition, a maintenance of effort requirement set forth in paragraph (p) is added at the end of § 1520.3, which prohibits the reduction of benefits previously paid. Other minor changes are also made.

Effective upon publication of this document in the FEDERAL REGISTER, Part 1520 is hereby adopted as set forth below:

Sec.

1520.1 Purpose and scope.

1520.2 Definitions.

1520.3 Provisions of State workmen's compensation laws necessary to provide adequate coverage for pneumoconiosis.

AUTHORITY: The provisions of this Part 1520 issued under secs. 421, 426, 83 Stat. 795, 798.

§ 1520.1 Purpose and scope.

(a) Section 421(a) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 795) provides that on and after January 1, 1973, any claim for benefits (see Title IV, Part B, of the Act for exceptions) for death or total disability due to pneumoconiosis shall be filed pursuant to applicable State workmen's compensation law, except that during any period when miners or their surviving widows are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis they shall be entitled to claim benefits under Title IV, Part C, of the Act. Section 421(b)(1) of the Act provides that a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary of Labor to provide adequate coverage for pneumoconiosis during such period. Section 421(b)(2) of the Act provides that the Secretary of Labor shall include a State workmen's compensation law in such list during any period only if he finds that during such period there are in effect under such law certain provisions specified in the Act, and other provisions as may be prescribed by the Secretary of Labor.

(b) The purpose of this part is to set forth the criteria which the Secretary of Labor and his delegates will use in determining whether a State workmen's compensation law will be included in the list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis during any period.

§ 1520.2 Definitions.

For the purposes of this part, except where the context clearly indicates otherwise:

(a) "Act" means the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742);

(b) "Benefit" means benefits under or pursuant to Title IV, Part C, of the Act for death or total disability of a miner, due to pneumoconiosis;

(c) "Miner" or "coal miner" means any individual who is working or has worked as an employee in an underground coal mine, whether he works under the surface performing functions in extracting the coal or above the surface at the mine preparing the coal so extracted;

(d) "Widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried;

(e) "Dependent" means—

(1) A wife, if—

(i) She is a member of the same household as the miner; or

(ii) She is receiving regular contributions from the miner for her support; or

(iii) The miner has been ordered by a court to contribute to her support; and

(2) An unmarried child, while living with the miner or receiving regular contributions from the miner toward his support, and who is—

(i) Under 18 years of age; or, if he is a student as defined by 5 U.S.C. § 8101 (and as applied in 20 CFR 1.14(c)) at the time he reaches 18 years of age, for so long as he continues to be such a student or until he marries; or

(ii) Over 18 years of age and incapable of self-support because of physical or mental disability;

(f) "Coal Mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(g) "Underground coal mine" means a coal mine in which the earth and other materials which lie above the natural deposit of coal (overburden) is not removed in mining. In addition to the natural deposit of coal in the earth, the underground coal mine includes all land, buildings, and equipment appurtenant thereto;

(h) "The Nation's underground coal mines" means all underground coal mines as defined in paragraph (g) of this section, located in a State as defined in paragraph (1) of this section;

(i) "Employee" means every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and any helper or assistant of a miner whether paid by the employer or miner, if employed with the knowledge, actual or constructive, of the employer;

(j) "Pneumoconiosis" means a chronic dust disease of the lung arising out of employment in the Nation's underground coal mines, and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment;

(k) "Insurer" means any private company, corporation, mutual association, reciprocal or interinsurance exchange, or any other person or fund, including any State fund, authorized under the laws of a State to insure workmen's compensation;

(l) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands;

(m) "State agency" means the agency or officer designated by the workmen's compensation law of a State to administer such law;

(n) "Workmen's compensation law" means a law providing for payment of compensation by employers to employees and their dependents for injury, occupational disease, or death, suffered in connection with employment.

(o) The definitions contained in this section shall not be considered to derogate from the terms of the Coal Mine Health and Safety Act of 1969.

§ 1520.3 Provisions of State workmen's compensation laws necessary to provide adequate coverage for pneumoconiosis.

The Secretary of Labor will find that a State workmen's compensation law provides adequate coverage for pneumoconiosis during any period, and will include the State law in the list of State workmen's compensation laws found to provide such coverage, only if he finds that during such period under such law:

(a) Benefits are paid for total disability or death of a miner, due to pneumoconiosis, in a cash amount equal to, or greater than, the amount of benefits prescribed by section 412(a) of the Act. Thus:

(1) In the case of total disability of a miner, due to pneumoconiosis, the disabled miner must be paid benefits during the period of the disability at a rate equal to or greater than 50 percent of the minimum monthly payment to which a Federal employee in Grade GS-2, who is totally disabled, is entitled at the time of payment under 5 U.S.C. chapter 81;

(2) In the case of death of a miner, due to pneumoconiosis, or of a miner receiving benefits under Title IV, Part C, of the Act, benefits must be paid to his widow, if any, at least at the rate the deceased miner would receive such benefits if he were totally disabled;

(3) If, in a case described in subparagraphs (1) or (2) of this paragraph, the individual entitled to benefit payments has one or more dependents (see § 1520.2 (e)), the benefit payments must be increased at least at the rate of 50 percent of

such benefit payments if the individual has only one dependent, 75 percent if the individual has only two dependents, and 100 percent if the individual has three or more dependents;

(b) There are in effect provisions for the appointment, for any person who is mentally incompetent, of a guardian, conservator, or similar representative to receive compensation payable to such person under the law;

(c) Provisions are made for the payment of benefits periodically, promptly, and directly to the person entitled thereto, unless liability to pay benefits is controverted by the employer or insurer, including provisions requiring, except where the State agency for reasonable cause determines otherwise,

(1) That the first installment of compensation is due and payable no later than 15 days after the employer has knowledge of the disability or death;

(2) That, after payment of the first installment, compensation becomes due and payable not less often than semimonthly; and

(3) Providing, except where compensation is payable from a State fund, penalties for failure to pay compensation with or without an award within 15 days after it becomes due;

(d) In any case in which payments of benefits are being made without an award by an employer or insurer, and in any case where the right to benefits is controverted or payments of compensation have been stopped to make such investigations, to cause such medical examinations to be made, to hold such hearings, and to take such further actions as will adequately protect the rights of all parties concerned;

(e) (1) Any assignment or release of compensation or benefits due and payable under the law is declared invalid;

(2) Such compensation or benefits are exempt from all claims of creditors and from levy, execution, attachment, garnishment, or any other remedy for recovery or collection of a debt, which exemption may not be waived; and

(3) Except where compensation is payable from a State fund, any person entitled to compensation has a lien against the assets of the insurer or employer for such compensation, and, upon insolvency, bankruptcy, or reorganization in bankruptcy, of the insurer or employer, or both, is entitled to preference and priority in the distribution of the assets of the insurer or employer, or both;

(f) The standards for determining death or total disability due to pneumoconiosis are substantially equivalent to those established by section 411 of the Act, and by regulations of the Secretary of Health, Education, and Welfare promulgated thereunder (see 20 CFR Part 410, Subpart D);

(g) A claim for benefits on account of total disability or death of a miner, due to pneumoconiosis, is deemed to be timely filed if such claim is filed within 3 years of the discovery of the total disability or the date of such death, as the cause may be;

(h) In any proceeding for the enforcement of a claim for compensation under the law, it is presumed, in the absence of substantial evidence to the contrary that the claim comes within the provisions of the law;

(i) If compensation liability may be discharged by payment of a lump sum, such discharge is subject to the following conditions:

(1) The lump sum is equal to or greater than, the present value of future compensation payments otherwise payable under the law, computed at no more than 4 percent true discount compounded annually. The probabilities of the death of a disabled worker or of the remarriage of a widow must be determined in accordance with the American Experience Tables of Mortality and the Remarriage Tables of the Dutch Royal Insurance Institution respectively; and

(2) The lump sum settlement is approved by the State agency on the basis of a finding that the settlement is in the interests of the claimant;

(j) Any agreement by an employee to pay any portion of the workman's compensation insurance premium to be paid by his employer to an insurer, or to contribute to a fund maintained for the purpose of providing compensation or other benefits required by the law, or to waive his right to compensation and other benefits is prohibited and/or declared invalid;

(k) There are in effect provisions requiring each operator of an underground coal mine, where one or more miners are employed, to secure the payment of benefits by qualifying as a self-insurer or by insuring and keeping insured with an insurer as defined in this part;

(l) A coal mine operator who has acquired such mine, or substantially all of the assets thereof, from a person (prior operator) who was an operator of such mine on or after December 30, 1969, is liable for, and must secure the payment of, all benefits which would have been payable by that person with respect to

miners previously employed in such mine if the acquisition had not occurred and that person had continued to operate such mine; and that person is not relieved of any liability under the law.

(m) Provisions are made for such methods of administration as are found by the Secretary of Labor, or his designee, to be reasonably calculated to insure full payment of compensation when due, including provisions—

(1) For the administration of the law by a State agency, with powers to make or cause to be made all necessary investigations, inquiries, and examinations, and to conduct hearings, in connection with claims for compensation for death or total disability due to pneumoconiosis;

(2) Requiring the State agency and State courts to approve fees for legal services rendered to a claimant in connection with such a claim;

(3) Requiring the substitution of the insurer for any coal mine operator who is not a self-insurer in order that liability for compensation be discharged, and regulating the cancellation of insurance with respect to total disability or death due to pneumoconiosis;

(4) Requiring the posting by the employer of conspicuous notices showing compliance with the provisions of the law; and

(5) Requiring that coal mine employees with pneumoconiosis be offered vocational rehabilitation in all cases, where it is feasible;

(n) (1) With respect to any claim for benefits for death or total disability due to pneumoconiosis, there must be afforded: (i) An opportunity for a fair hearing to the employer or insurer and the claimant before final administrative decision is made on such claim; and (ii) An opportunity for judicial review of such administrative decision.

(2) If a proper court determines that proceedings in respect of a claim for compensation or a compensation order have been instituted or continued without reasonable grounds, the cost of the proceedings must be assessed against the party who has instituted or continued the proceedings;

(o) There are in effect provisions for the payment, after December 31, 1972, of benefits for total disability or death due to pneumoconiosis, to claimants whose claims were filed during the calendar year 1972 under Title IV, Part B, of the Act, which provisions shall: (1) Accord recognition to the filing and any adjudication under Part B as satisfying the requirements of the State law in respect of the filing of a claim for such benefits and adjudication of the issues, if any, previously adjudicated under Part B; and (2) Provide for adjudication of any issues not so previously adjudicated and, where the issue of liability of any mine operator to pay or secure such benefits is presented for determination, afford the mine operator an opportunity to be heard on the relationship between the pneumoconiosis and employment in a mine operated by him; and

(p) Any reduction, after the date of enactment of the Act, of benefits previously paid to persons, for total disability or death due to pneumoconiosis under the State's laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance, is prohibited even though the amount of the reduced benefits equals or exceeds the amount prescribed in paragraph (a) of this section.

Signed at Washington, D.C., this 12th day of March 1971.

J. D. HODGSON,
Secretary of Labor.

Mr. BURTON. In what respect, as best you recall, are either of the States in noncompliance? Do you happen to have the criteria with you, by the way?

Dr. KERR. Yes, I do.

Montana has complied with the six requirements that are stipulated in the Federal Coal Mine Health and Safety Act. However, the criteria that were published by the Department of Labor go further in spelling out the details of the Federal law.

Mr. BURTON. How about the West Virginia situation?

Dr. KERR. West Virginia is also in compliance, as I remember, with the six major requirements stipulated in the act itself. I think there may be some question about other portions of the criteria not being covered.

Mr. BURTON. Do either of these laws encompass disabilities? Are these laws of general application, one, are these laws covering the whole

range of respiratory disability, or, two, are they narrowly drawn to exclusively meet the terms of part C?

Dr. KERR. The Montana law reproduces the criteria that were published by the Social Security Administration in March of 1970 which stipulated methods of assessing disability benefits payable for coal workers' pneumoconiosis.

I seriously question whether these amendments would cover in either State, Montana or West Virginia, any dust disease other than silicosis, or coal workers' pneumoconiosis.

Mr. BURTON. Are either of these laws—

Mr. HAWKINS. Mr. Burton, Dr. Kerr is going to testify as a witness. I think we may better end up with Mr. Popick and allow Dr. Kerr to testify as a subsequent witness.

Mr. BURTON. I think the chairman's point is well taken.

I have this one final question. I am laying the basis to see how much further I pursue questions with Mr. Popick.

Dr. KERR. I refer to this in my testimony.

Mr. BURTON. Both of these laws have permanent duration, or do they have a terminal date that is so coterminous with the date in part C? Are they the permanent law of the respective States, or do they lapse when part C lapses? Do you know?

Dr. KERR. I think West Virginia's law goes into effect at the present time. I think Montana's also does. But I would have to refer to both pieces of legislation to be able to answer your question precisely.

Mr. BURTON. It would help me, if you will, to give me a copy of those March 17 regulations when you leave the witness stand now so I can see them.

Dr. KERR. Surely.

Mr. HAWKINS. Mr. Erlenborn?

Mr. ERLENBORN. I have no further questions, Mr. Chairman.

Mr. HAWKINS. Mr. Mazzoli?

Mr. MAZZOLI. No, thank you, Mr. Chairman.

Mr. HAWKINS. Mr. Popick, again we wish to thank you for the testimony before the committee.

I think there are some materials that you were supposed to supply to the committee.

Mr. BURTON. Mr. Chairman, I have an additional question to ask Mr. Popick. I hate to take all of the 2½ hours but I have got about 2,000 man-hours of my own on this bill.

Mr. HAWKINS. Our problem is we are running out of man-hours this afternoon for the committee. There are about 12 to 15 other witnesses. But I certainly don't want to foreclose your questioning.

Suppose you go ahead, Mr. Burton.

Mr. BURTON. We have the question as to widows and how their claims are being processed. Have you resolved yet how to handle the widows' claims? You had a bulk of them I had been led to believe. As it relates to the clearly stated presumptions in the law with reference to whether or not their husbands were of the class, if that presumption was operative so that those widows would receive benefits and if you have resolved it how have you resolved it?

Mr. POPICK. We are pretty much up to date on decisions on initial claims with respect to widows of miners who died due to pneumoconiosis. The law and our basic policy recognizes that the widow is entitled to benefits if the man died from pneumoconiosis or if he worked 10 years or more in the mine and died from a respirable disease.

Mr. BURTON. Do you—I believe this will be my final question of these witnesses, Mr. Chairman—have you kept a record, if you will, of the reasons for denials? Have you done that?

Mr. POPICK. We do have data and records on the reasons for denials.

Mr. BURTON. Is that in some compiled form?

Mr. POPICK. Not compiled at the moment, but we could provide some further information on this if you want it.

Mr. BURTON. I would ask that there be submitted to the committee a compilation of the major reasons for finding of ineligibility, just as you do on the whole other range of programs that you administer. I can't put a time frame on it, because I don't know in what condition the data is, but it will then highlight those problem areas at least that you have found by way of administration. And finally do you keep track of the payment by county as well as by States?

Mr. POPICK. Yes; we can provide information by county. All awards, do you mean, or are you referring only to these widows' claims?

(The information requested follows:)

Basis for denial of miners and widows black lung claims percent distribution, April 1971

MINER DENIALS	
Basis for denial:	Percent of total miner denials
Total percent.....	100.0
Chest X-ray (or biopsy) does not establish pneumoconiosis.....	62.3
Pneumoconiosis not disabling, minor not working.....	29.8
Pneumoconiosis not disabling, minor working (statutory definition not met—411(c) (3))	2.4
No employment in Nation's underground coal mines.....	2.0
Other.....	3.5

WIDOW DENIALS	
Basis for Denial:	Percent of total widow denials
Total percent	100.0
No evidence that miner's death was due to pneumoconiosis or respirable disease	88.3
Evidence conclusive that pneumoconiosis or respirable disease was not cause of death.....	9.1
Deceased was not employed in the Nation's underground coal mines --	2.4
Other.....	.2

Mr. BURTON. These are awards generally.

Mr. POPICK. Yes, we can provide breakdowns below the State level.

Mr. BURTON. Is that data in a form that could be given to the committee within, let's say, a week?

Mr. POPICK. A week or two, possibly.

Mr. BURTON. I would ask unanimous consent, Mr. Chairman, that the witness be directed to provide us with that. I say that with the idea that a number of our colleagues would be most interested to find out the incidents of these payments in respective constituencies.

Mr. POPICK. We have been furnishing some of this information on individual requests.

Were you suggesting that we submit this for all States?

Mr. BURTON. I would apply the rule of common sense to that. If you have every county in Illinois, certainly it isn't useful if only two or three of them have payments of statistical interest.

Mr. POPICK. The major areas in which these claims are involved.

Mr. HAWKINS. Without objection, it is so ordered.

(The information referred to follows:)

NUMBER OF BLACK LUNG CLAIMS ALLOWED, TOTAL CUMULATIVE PAYMENTS SINCE ENACTMENT AND TOTAL MONTHLY PAYMENTS, BY STATE OF CURRENT BENEFICIARY RESIDENCE, AND COUNTIES WITH 50 OR MORE CLAIMS ALLOWED, AS OF JUNE 25, 1971

State and county	Claims allowed	Monthly payment amount	Total cumulative amount	State and county	Claims allowed	Monthly payment amount	Total cumulative amount
Alabama	5,579	\$1,097,200	\$14,802,145	Kentucky—Continued			
Bibb	192	37,563	518,289	Harlan	1,297	\$253,159	\$3,929,570
Cullman	50	10,406	122,830	Hopkins	413	81,870	953,139
Jefferson	3,257	638,604	8,875,980	Jefferson	58	10,634	122,007
Marion	143	28,733	374,905	Johnson	216	41,839	562,513
St. Clair	63	13,577	133,810	Knott	127	25,470	359,402
Shelby	161	32,117	382,837	Knox	193	37,638	538,565
Tuscaloosa	141	28,616	372,017	Laurel	94	18,862	262,860
Walker	1,280	250,872	3,464,485	Lawrence	59	11,755	158,791
Alaska	4	765	11,342	Leslie	76	15,821	234,166
Arizona	181	35,375	424,750	Letcher	551	106,801	1,450,641
Maricopa	117	23,017	259,172	McCreary	242	49,123	673,310
Arkansas	599	115,621	1,475,682	Martin	88	18,332	275,984
Franklin	79	15,266	184,217	Muhlenberg	374	71,437	817,774
Johanson	131	25,310	341,082	Perry	466	93,887	1,370,635
Logan	113	22,907	329,548	Pike	1,418	275,379	4,055,197
Sebastian	200	37,920	465,873	Union	54	10,173	115,222
California	581	104,691	1,229,083	Webster	158	30,071	350,489
Los Angeles	223	40,042	471,597	Whitley	282	56,137	787,895
Colorado	442	81,636	1,015,711	Louisiana	18	3,171	32,152
Boulder	73	13,238	175,005	Maine	2	276	4,130
Denver	53	9,731	103,705	Maryland	1,455	236,201	2,511,838
Los Animas	103	19,738	255,706	Alleghany	754	114,304	1,170,112
Connecticut	354	61,455	753,839	Anne Arundel	52	8,496	103,875
Fairfield	166	29,212	363,582	Baltimore	86	14,443	168,843
Hartford	62	10,255	128,432	Baltimore City	103	17,300	188,819
New Haven	109	18,801	217,368	Garrett	182	31,096	323,317
Delaware	120	21,057	283,041	Montgomery	59	10,539	115,180
New Castle	98	16,850	229,321	Prince Georges	113	20,357	219,994
District of Columbia	64	11,591	125,012	Massachusetts	36	6,476	74,509
Florida	1,059	204,427	2,516,474	Michigan	940	165,611	1,793,655
Brevard	60	10,502	126,989	Macomb	68	11,994	137,618
Broward	82	15,269	176,902	Oakland	102	18,261	185,112
Date	76	13,620	168,140	Wayne	561	98,584	1,033,827
Hillsborough	108	21,140	251,001	Minnesota	11	2,208	25,867
Orange	75	14,347	192,216	Mississippi	20	3,554	37,055
Pinellas	147	29,446	353,915	Missouri	114	20,641	195,324
Georgia	88	15,299	176,317	Montana	81	13,252	129,855
Hawaii	2	320	5,161	Nebraska	5	841	5,152
Idaho	12	2,446	36,913	Nevada	23	3,776	4,054
Illinois	6,659	1,245,785	13,045,660	New Hampshire	5	841	3,545
Christian	212	36,981	414,364	New Jersey	1,600	284,780	3,306,183
Cook	182	31,295	340,248	Bergen	90	14,959	187,045
Franklin	1,861	353,079	4,234,148	Camden	99	18,038	226,244
Fulton	129	23,221	220,790	Essex	280	52,120	573,150
Jackson	152	28,810	306,993	Hudson	104	18,532	220,430
Macoupin	279	48,510	408,420	Mercer	84	14,338	169,821
Madison	95	16,335	138,007	Middlesex	120	30,561	380,871
Marion	65	12,427	101,648	Morris	69	11,560	139,727
Montgomery	61	10,825	83,884	Passaic	102	17,958	220,912
Perry	301	55,714	567,312	Somerset	97	16,867	215,121
Randolph	141	26,099	231,913	Union	222	41,188	452,435
St. Clair	88	16,371	146,702	New Mexico	202	38,723	443,530
Saline	628	120,724	1,246,488	Colfax	65	12,698	129,670
Sangamon	253	45,301	438,861	McKinley	69	13,056	169,477
Vermilion	308	57,857	487,961	New York	998	177,047	2,087,140
Williamson	1,325	256,946	2,607,161	Broome	122	21,777	244,783
Indiana	1,589	286,117	3,232,316	Erie	130	23,066	269,251
Gibson	76	13,733	177,746	Kings	94	17,059	198,433
Greene	133	23,532	273,720	Monroe	50	9,050	114,432
Knox	215	38,531	354,422	New York	50	8,798	99,940
Lake	50	8,921	99,499	Queens	99	18,977	212,855
Marion	74	13,347	134,868	North Carolina	273	50,514	610,958
Sullivan	153	26,669	298,706	North Dakota	6	1,099	11,268
Vermilion	126	22,154	223,719	Ohio	3,917	719,229	8,108,862
Vigo	238	42,161	458,840	Athens	221	40,708	449,439
Iowa	653	123,348	1,012,319	Belmont	467	83,241	873,272
Appanoose	249	48,094	380,596	Butler	60	11,397	121,554
Marion	56	10,211	87,779	Cuyahoga	592	106,754	1,170,785
Monroe	86	16,526	129,799	Franklin	369	68,085	837,421
Polk	79	14,307	109,291	Gallia	81	16,608	200,797
Kansas	111	19,424	182,239	Hamilton	161	29,142	341,336
Crawford	54	9,181	101,649	Jefferson	192	34,609	365,907
Kentucky	8,731	1,711,198	23,920,407	Lorain	73	12,995	157,052
Bell	784	157,572	2,319,967	Lucas	80	14,844	155,002
Boyd	54	9,868	119,476	Mahoning	52	8,990	100,015
Clay	129	28,936	379,185	Meigs	65	13,251	138,717
Floyd	921	172,328	2,438,520	Montgomery	247	43,632	460,903

NUMBER OF BLACK LUNG CLAIMS ALLOWED, TOTAL CUMULATIVE PAYMENTS SINCE ENACTMENT AND TOTAL MONTHLY PAYMENTS, BY STATE OF CURRENT BENEFICIARY RESIDENCE, AND COUNTIES WITH 50 OR MORE CLAIMS ALLOWED, AS OF JUNE 25, 1971—Continued

State and county	Claims allowed	Monthly payment amount	Total cumulative amount	State and county	Claims allowed	Monthly payment amount	Total cumulative amount
Ohio—Continued				Tennessee—Continued			
Muskingum.....	53	\$10,697	\$125,833	Marion.....	233	\$48,124	\$583,015
Perry.....	82	14,441	145,415	Morgan.....	92	18,756	236,378
Stark.....	82	15,825	183,785	Putnam.....	61	12,665	165,170
Summit.....	113	19,474	230,461	Roane.....	343	68,876	846,868
Trumbull.....	59	10,812	115,764	Scott.....	106	22,842	298,291
Tuscarawas.....	55	9,571	121,318	Sullivan.....	167	32,166	384,374
Oklahoma.....	413	77,311	877,618	White.....	176	32,990	256,632
LeFlore.....	89	17,139	205,057	Texas.....	89	17,077	187,697
Okmulgee.....	74	13,390	147,528	Utah.....	355	67,572	649,771
Pittsburgh.....	128	24,030	265,478	Carbon.....	222	42,528	401,646
Oregon.....	28	4,984	58,546	Salt Lake.....	50	9,443	87,028
Pennsylvania.....	58,771	10,554,738	141,290,364	Vermont.....	1	153	2,063
Allegheny.....	1,559	279,700	3,585,772	Virginia.....	5,884	1,191,882	16,267,151
Armstrong.....	397	74,224	976,177	Bristol City.....	73	14,576	193,019
Bedford.....	220	40,653	491,991	Buchanan.....	474	105,473	1,438,922
Berks.....	107	18,295	235,842	Dickenson.....	386	80,735	1,170,906
Blair.....	54	9,180	110,197	Lee.....	590	120,796	1,709,028
Bucks.....	227	40,849	476,871	Norton City.....	199	38,114	526,626
Butler.....	113	20,854	258,693	Roanoke City.....	61	10,732	135,145
Cambria.....	3,907	711,113	9,690,749	Russell.....	400	83,151	1,128,973
Carbon.....	1,495	271,091	3,904,543	Scott.....	67	12,566	166,413
Centre.....	159	29,554	350,941	Smyth.....	71	14,773	195,701
Chester.....	61	9,991	139,315	Tazewell.....	1,287	263,303	3,698,982
Clarion.....	160	30,427	356,745	Washington.....	78	16,335	225,406
Clearfield.....	933	174,079	2,094,529	Wise.....	1,216	239,183	3,316,949
Columbia.....	413	76,769	1,098,906	Wythe.....	159	32,260	249,093
Cumberland.....	63	10,954	137,671	West Virginia.....	22,676	4,539,843	62,244,785
Dauphin.....	500	84,447	1,128,132	Barbour.....	233	44,835	548,257
Delaware.....	192	33,766	403,894	Boone.....	726	144,179	1,935,703
Elk.....	177	32,363	373,602	Braxton.....	52	10,993	155,444
Erie.....	67	11,697	145,478	Brooke.....	67	13,352	157,503
Fayette.....	2,701	501,260	6,511,377	Cabell.....	116	22,305	294,910
Greene.....	645	119,683	1,486,081	Clay.....	119	24,840	305,870
Huntingdon.....	188	35,293	465,889	Fayette.....	2,644	519,161	7,296,039
Indiana.....	1,258	231,146	3,001,631	Greenbrier.....	348	67,446	861,714
Jefferson.....	369	70,278	861,064	Harrison.....	557	109,561	1,281,811
Lackawanna.....	7,855	1,405,024	17,710,695	Kanawha.....	1,388	266,077	3,362,952
Lancaster.....	68	11,655	141,560	Lincoln.....	144	30,683	420,604
Lebanon.....	65	10,904	129,710	Lögan.....	2,170	446,539	6,560,612
Lehigh.....	93	16,026	192,863	McDowell.....	2,781	569,770	8,607,792
Luzerne.....	16,852	2,987,339	41,267,032	Marion.....	846	162,778	2,021,747
Merger.....	51	9,653	122,605	Marshall.....	75	14,325	180,839
Montgomery.....	171	29,401	385,554	Mercer.....	1,341	271,713	3,667,936
Montour.....	59	10,078	113,777	Mineral.....	68	13,579	155,103
Northampton.....	96	17,327	240,259	Mingo.....	1,485	319,252	4,637,272
Northumberland.....	2,719	489,901	6,475,513	Monongalia.....	585	113,654	1,415,765
Philadelphia.....	358	64,552	782,366	Monroe.....	58	11,424	156,158
Schuylkill.....	7,828	1,376,037	19,546,408	Nicholas.....	242	48,908	604,049
Somerset.....	1,846	347,820	4,689,081	Ohio.....	154	29,925	352,267
Susquehanna.....	258	46,184	594,878	Preston.....	182	38,264	498,830
Tioga.....	83	14,748	198,557	Putnam.....	70	13,886	169,244
Washington.....	2,141	386,627	5,236,706	Raleigh.....	3,613	708,665	10,413,448
Wayne.....	137	25,716	320,163	Randolph.....	181	35,838	475,417
Westmoreland.....	1,496	273,874	3,396,769	Summers.....	59	12,435	155,163
Wyoming.....	125	22,683	291,064	Taylor.....	91	17,338	220,699
Puerto Rico.....	2	382	6,028	Tucker.....	109	20,603	277,520
Rhode Island.....	6	1,070	13,481	Upshur.....	90	18,434	213,712
South Carolina.....	48	9,278	99,110	Wayne.....	107	22,347	288,004
South Dakota.....	3	688	10,591	Webster.....	166	35,229	507,751
Tennessee.....	3,600	721,207	9,089,160	Wyoming.....	1,550	310,444	3,419,055
Anderson.....	516	104,563	1,400,413	Wisconsin.....	39	6,661	77,467
Campbell.....	676	134,206	1,908,689	Wyoming.....	487	91,062	1,101,168
Claiborne.....	162	32,638	490,610	Lincoln.....	55	10,257	128,097
Cumberland.....	54	10,096	102,240	Sweetwater.....	366	68,769	830,852
Fentress.....	58	11,159	111,756				
Grundy.....	250	50,770	651,651				
Hamilton.....	144	27,537	256,387				
Knox.....	152	32,149	417,673				
				Total claims allowed.....	129,133	24,185,259	315,968,584

Mr. HAWKINS. Again, thank you, Mr. Popick and your associates.

The next witnesses will be a panel consisting of Mr. Arnold Miller, president, West Virginia Black Lung Association, Mrs. Clara Cody, Mr. James Haviland, Mr. Earl Adkins, and Mr. Verlan Golden, of the Knox County Economic Opportunity Council.

Would those witnesses please come to the witness table?

Mr. MILLER, I assume that you are the chairman of this group, are you?

Mr. MILLER. Yes, sir.

Mr. HAWKINS. Would you organize your witnesses as you desire so that we can hear from them?

STATEMENTS OF ARNOLD MILLER, PRESIDENT, WEST VIRGINIA BLACK LUNG ASSOCIATION; ACCOMPANIED BY LEE LANE, KNOX COUNTY, KY.; MRS. CLARA CODY, FAYETTE COUNTY, W. VA.; VERLAN GOLDEN, KNOX COUNTY, KY., ECONOMIC OPPORTUNITY COUNCIL; CLIFFORD LANE, KNOX COUNTY, KY.; STEVEN CLARK, MOUNTAIN PEOPLES RIGHTS, INC., HEIDRICK, KY.; AND JAMES HAVILAND, APPALACHIAN RESEARCH AND DEFENSE FUND, CHARLESTON, W. VA.

Mr. MILLER. Mr. Chairman, and honorable members of the committee, I have six witnesses whom I will introduce. I would like to make a statement before I introduce them.

Mr. HAWKINS. Would you then proceed in that order?

Mr. MILLER. First, I want to say that the coal miners of this Nation have suffered from this dreaded lung disease. Many of them, in fact, have died as a result of it. Many more have lived the last few years of their life in poverty.

All of this because medical authorities and other people in the position to know simply did not want to recognize this problem. We work with medical authorities in the State of West Virginia in dealing with this problem. We were shown a great lack of concern and a lot of bias.

In 1969, the miners in West Virginia decided they would do something about it. I am sure everyone here is aware of what happened in 1969. Much of what we have done was because the medical authorities we went to for this lung problem referred to it as miners' asthma or anything that wasn't compensable.

We are appreciative, the miners in West Virginia and the country in general, of what Congress has done in 1969 in recognizing the problem. We have worked with the Social Security people and their administration of this program. And we feel that since they are going back to the same people that we had to deal with in the beginning in trying to get someone to recognize this problem, and their recognitions are more restrictive than the intent of the law, that something has to be done about the way the program is being run today.

The feeling in general, among miners in the four States I have traveled much in, are that we will be back in the same circumstances we were before 1969 if some changes are not brought about.

All the miners today in this country are aware of this problem. And they want something done about it.

This concludes what I wanted to say.

I will introduce the witnesses now, or should I wait for questions?

Mr. HAWKINS. Would you proceed to introduce your witnesses?

Mr. MILLER. The next witness is Mr. Lee Lane from Knox County, Ky.

Mr. LEE LANE. Mr. Chairman, I have some doctors' reports here from 1965 to 1971. And I have got them from a TB hospital in London, Ky., from Dr. Biggs, and I won't go over it all. He gave me silicosis, bad heart.

Then I went up to Dr. Bushey. He gave me fibrosis, and two-plus silicosis with a bad heart. Total permanent disability.

And I run it on up to Dr. Bushey, same thing, in 1971.

Dr. Crowler gave me the same thing, that is in 1966. Then I have Dr. Webb who gave me fibrosis, silicosis, two-plus, with a total disability. And this doctor here, Wells, told me that my right lung was going to explode and I was going to have to have it took out. And I don't draw any social security, got no medical card, and don't draw no black lung among these reports.

I live on \$55 a month food stamps.

Mr. HAWKINS. Thank you, sir.

Were you through, sir?

Mr. LEE LANE. Yes, sir, I am through.

Mr. MILLER. The next witness will be Mrs. Clara Cody, from Fayette County, W. Va.

Mrs. CODY. I am here in behalf of a large number of people in our community—mostly widows come to me for aid. And I only have one case here that I want to talk about.

Her name is Evie Watkins. She is 69 years old and she gets \$100 a month. Her husband died in 1962 after 42 years in the mines. He has a death certificate of coronary thrombosis, but he did have a bad breathing problem, such as he couldn't climb steps, he couldn't work in the garden anymore, and any exertion at all would affect his breathing.

She was denied on the basis of this death certificate. So she went to Social Security and asked for reconsideration. I didn't go with her there and I don't know what happened, but she came to me for assistance. And I got a medical report from Oak Hill Hospital, Beckley Hospital. And, by the way, Social Security hasn't said yet whether they would reimburse for the fee for searching the records and compiling them.

Mr. BURTON. Excuse me, ma'am. At this point the law is absolutely clear. Social Security must reimburse for the cost of preparing the medical aspects of these claims.

Go on.

Mrs. CODY. The reason that I came, well, it is just this: that I don't believe that Social Security is doing a fair job to aid these people. Widows like Mrs. Watkins are the difficult. It is hard to prove anything in their cases. Social Security hasn't so far rendered much assistance to them. And in some instances there is no medical reports. I realize that. But in others there are, they just don't have—these are people that you are dealing with just—we feel that Social Security could do a better job to help them, talk to them and try to get information out of them as to where these medical reports are and that is the biggest trouble that I have found: that Social Security really isn't doing the job that they are supposed to do. Otherwise, why should they come to me for help?

Mr. HAWKINS. Thank you, Mrs. Cody.

(The following supplemental statement was submitted for the record:)

EXTENSION OF REMARKS—CLARA CODY AND JAMES HAVILAND

The purpose of this extension of remarks is to provide further details of the case of Evie Watkins, discussed by Clara Cody before the Subcommittee on May 19, and to emphasize that the case of Evie Watkins is representative of a broad group of cases which are not receiving adequate assistance from the Social Security Administration. These remarks conclude with several specific changes recommended in the hope of making the Federal Black Lung Program more responsive to the needs of this particular class of beneficiaries.

The information provided herein, in response to the request of Representative Burton made during the hearings and to the request of a member of the committee staff made after the hearings, is tendered in the hope that it will not be accepted as proof merely of one irregularity, but will be accepted by the Committee as representative of the lack of assistance many claimants for black lung benefits are receiving. The witnesses, a person with special training in assisting people with Federal Black Lung claims and a licensed attorney, are now handling the development of the claim of Mrs. Watkins and feel that they can do so adequately.

I. The Case of Evie Watkins

The facts of the case of Evie Watkins are as follows:

1. Evie Watkins, age 69, Route 2, Box 107, Fayetteville, West Virginia, unmarried widow, husband—Henry Watkins, Social Security Account No. XXXXXX, date of death: May 23, 1962, at age 75—Mrs. Watkins' present income: \$136.00 per month in Social Security Retirement benefits.

2. Mrs. Watkins applied for Federal Black Lung Benefits in April, 1970, at the Beckley District Office of the Social Security Administration. Later on December 14, 1970, she was called in for what was apparently a very complete interview which included an exhaustive summary of the places Mr. Watkins had received medical attention and the places where medical reports describing his condition might be available. Subsequently the claim was denied at the initial consideration stage. On January 26, 1971, Mrs. Watkins and another woman saw a representative of the Social Security Administration at a field office of the Social Security Administration in Fayetteville, West Virginia, which interview took about five minutes. Mrs. Watkins asked that her claim be reconsidered and the representative asked Mrs. Watkins if she had any new evidence. She replied that she had no new evidence and the representative asked her why then was she applying for reconsideration. The reply of Mrs. Watkins was that her husband was suffering from shortness of breath when he died.

At this interview the representative of the Social Security Administration did not suggest any further steps which Mrs. Watkins could take, nor did he offer any explicit forms of assistance. On April 16, 1971, Mrs. Watkins came to Mrs. Clara Cody for help with her claim at a local meeting of the Association of Disabled Miners and Widows. Mrs. Cody interviewed Mrs. Watkins and proceeded to search out additional evidence concerning the cause of death of Mr. Watkins. Mrs. Cody was finally able to obtain reports from the Oak Hill (W.Va.) Hospital which indicate, among other things, that Mr. Watkins was suffering from an advanced pulmonary condition and had "nodulations" on his lungs.

3. Mr. Watkins worked for fifty (50) years in the coal mines of West Virginia performing numerous jobs from hand loading to supervision. He developed difficulty breathing and suffered from shortness of breath. The shortness of breath was marked upon exertion, such as climbing stairs, etc. Due to his declining health, Mr. Watkins had to curtail his gardening work and finally had to give up gardening. At night, he would suffer from coughing spells and chest seizures and would have to get out of bed and go outside to catch his breath.

4. In order to establish her eligibility for Federal Black Lung Benefits, Mrs. Watkins must prove that her husband's death was "due to pneumoconiosis." This can be proven under §411(c)(2) of the Federal Coal Mine Health & Safety Act by showing that Mr. Watkins worked ten (10) years in the nation's underground coal mines and that his death was due to a "respirable disease." The problem in this case, and apparently the reason why the claim was denied initially, is that the death certificate of Mr. Watkins gives as the cause of death "coronary occlusion." When Mrs. Cody obtained the reports from the Oak Hill Hospital, she was told that the same reports had not been requested or submitted to the Social Security Administration previously, in spite of the fact that the evidence was probably known to the Social Security Administration or

should have been known, given the lengthy initial interview performed at the Beckley District Office. It was apparently only through Mrs. Cody's efforts that the report from the Oak Hill Hospital suggesting that Mr. Watkins was indeed suffering from a "respirable disease" that created any hope in this case.

When Mrs. Cody went to the Beckley District Office of the Social Security Administration on April 27, 1971, she asked to see the claim file of Mrs. Watkins' claim but was told that the file was in Baltimore. No attempt was made to inform Mrs. Cody that as a representative she had a right to see the claim file or that the office would expedite any request she might have to see the claim file. Mrs. Cody submitted the medical reports she had obtained for Mrs. Watkins and discussed further points with the representative of the Social Security Administration. Ultimately, she was told by the representative that she was "meddling" in the case of Mrs. Watkins and that the representative would rather see Mrs. Cody submit any further reports to the Social Security Administration using envelopes he provided her with rather than having her come into the office and continuing her "meddling."

II. The General Need of Applicants for Federal Black Lung Benefits Not Now Being Met by the Social Security Administration

Mrs. Cody, who has received special training from the Appalachian Research and Defense Fund of Charleston, West Virginia, in helping other persons with their Federal Black Lung claims, has been in contact with hundreds of widows and has provided individual counseling to more than 100 widows throughout Fayette County and nearby counties in West Virginia. Based on this experience, Mrs. Cody feels that the case of Mrs. Watkins is representative of what is happening in many cases where widows have claims which require some "digging" to secure the required evidence. The claimants are not informed of the need to get other evidence or what the other evidence should show and apparently the Social Security Administration is not doing the type of digging required.

The Appalachian Research and Defense Fund has found it necessary to offer training to volunteers from coal mining communities who help persons back in their own communities with problems arising from their Federal Black Lung claims. Clara Cody is one such trainee. James Haviland in his work as a staff attorney for the Appalachian Research and Defense Fund represents more than thirty black lung claimants on an individual basis and has counseled other numerous groups and individuals concerning certain aspects of the Federal Black Lung Program. The training and individual counseling has consisted primarily of encouraging claimants to identify the reasons they have been denied and to gather needed, relevant evidence. This type of assistance and training is necessary because a substantial number of people who are denied benefits do not, on their own, undertake a course of rational claim analysis; nor do they effectively receive such needed assistance from the Social Security Administration, despite assertions of the Administration to the contrary. In many cases the only post-denial assistance rendered by the Social Security Administration consists of helping claimants to execute an appeal form—as was done in the above-described case of Evie Watkins.

The fact that the training offered by the Appalachian Research and Defense Fund has been so well received and is in such demand, and the fact that the assistance needed in the individual cases which Clara Cody and James Haviland counsel, proves that there is a demand for advice and assistance among many miners and widows who have been denied Federal Black Lung benefits, which need is not now being met by the Social Security Administration.

III. Changes in Social Security Administration Policy and in the Federal Coal Mine Health and Safety Act Necessary to Remedy Problems Discussed Above

A. Recognition by the Social Security Administration that many Federal Black Lung cases are not receiving adequate assistance and an affirmative program to disseminate to all Federal Black Lung claimants information to raise their level of understanding of the black lung process to an acceptable level.

Rather than treating the problems raised by testimony and statements of representatives of the Black Lung Association as isolated individual cases, the Social Security Administration should recognize that a significant number of Federal Black Lung claimants in Appalachia are not adequately informed and do not understand several essential concepts necessary to minimal claim preparation. A representative list of these problems follows:

1. Many claimants in Appalachia are unable to rationally analyze the reason they have been denied to the end that they can recognize the needed, relevant types of proof necessary for successful claim development. Despite the accuracy of the boiler plate type of notice provided by the Social Security Administration to claimants of the reason they have been denied, it is our experience that numerous claimants with limited education and experience in dealing with government do not, in fact, understand which eligibility criterion or criteria they do not need; and, accordingly, they do not identify and obtain relevant forms of proof.

2. Federal Black Lung claimants should be specifically and effectively informed that ultimately it is their own job to win their own claims. It is not questioned that the usual representation by the Social Security Administration that it will "help" a black lung claimant is not made in good faith, rather the problem is that many claimants who are not accustomed to legal or administrative procedures do not really understand the significance of their bearing the burden of proof.

3. Claimants should be informed that they will want to be selective in seeking out the all-important medical evidence of the separate questions of the existence of black lung and the presence of "total disability." If the Social Security Administration is to continue to require the quantity and fineness of medical evidence, which it is now requiring, claimants should be informed of the fact that medical evidence is basically opinion evidence and that in developing their own claims they would naturally be well advised to appreciate the well known and established fact that doctors have different leanings and opinions. For example, claimants should be informed of the radiologist who consistently "over read" or "under read" chest X-rays. Claimants should be informed of the completeness or lack of completeness of different breathing tests that are available. The fact that the claimant can prove "total disability" with blood gas studies and other sophisticated medical tests under 20 CFR 410.403 (a) should be spelled out effectively to claimants. Claimants should also be informed of the completeness of such tests, the differences of administration of these tests in the few pulmonary laboratories which exist in Appalachia, and the leanings of the physicians who administer the tests.

In most cases when the claimant is represented by a private attorney, the chief benefit of representation is that the attorney knows the best sources of medical evidence and will see that the claimant approaches traditionally favorable physicians and testing facilities for needed medical evidence. There is no reason why the Social Security Administration should not compile and make available such information to claimants.

4. The Social Security Administration should aggressively inform the claimants of basic rights essential to adequate claim development and the Administration should develop procedures to effectuate rather than defeat several of the claimant's basic rights. For instance, some of the more important rights which are not now adequately explained to claimant's, or adequately appreciated by claimants are as follows:

(a) The right of the claimant to select a physician and testing facility of his own choice; and

(b) The right of the claimant to request reimbursement for reasonable medical expenses.

The statistics of the Social Security Administration, detailing the millions of dollars expended for medical tests, while impressive by themselves, are used to cover up the failure of the Administration to inform claimants of the need to exercise the above two rights in conjunction with each other. That is, claimants should have medical tests performed by a physician of their choice and paid for by the Social Security Administration. These two rights used in conjunction should be used to encourage claimants to obtain their own tests. The Administration has paid millions of dollars for medical tests, but the tests have been performed by physicians and facilities of the Administration's own choosing on claimants who have no idea whatsoever that they can request reimbursement for examination by doctors of their own choice.

(c) The right of the claimant to *prompt* access to his claim file so that he himself may analyze his case as fully as possible.

5. If the claimant does not appreciate the importance of the above considerations, or if the claimant feels he needs assistance with his claim, then the Social Security Administration should inform him specifically of the services which it can and cannot render, and the services which a qualified attorney

or other qualified representative can and cannot render. The Social Security Administration at that time should also inform the claimant of the benefits which private representation has (obtaining an experienced representative who is obligated to pursue only the interests of his client) and the detriments, i.e. the cost of representation. In the case the claimant does express an interest in obtaining private representation, then the Administration should further inform him of the nature of the attorney-client relationship, including the fact that the claimant can terminate the relationship and can negotiate the fee.

B. The Federal Black Lung Regulations promulgated by the Secretary of Health, Education and Welfare should be reformed to reduce the excessive and unwarranted reliance on medical evidence.

C. The Social Security Administration should assume an active role in making available facilities which can administer the more advanced multiple exposure chest X-ray and blood-gas breathing procedure not required, but acceptable and necessary in proving many Federal Black Lung claims.

The position of the Administration thus far has been that adequate facilities are available. However, this means only facilities which administer the single X-ray and simple ventilation tests required under 20 CFR 404(a) and 403(b) on a mass, impersonal basis, and not facilities such as the X-ray and pulmonary laboratories at the Beckley Appalachian Regional Hospital (West Virginia) which administer more sophisticated and valuable medical tests.

Mr. MILLER. Mr. Chairman, the next witness will be Mr. Verlan Golden, from Knox County, Ky.

Mr. GOLDEN. Let me start from the experience that I have had with black lung. When black lung was established by law, I met with eight social security men from OEO all around the Nation. They told us some tips that the Social Security would attempt to do before this ever happened.

Some of the experiences that I have had is I first started signing people up on black lung, approximately 400 people, and four of them out of 400 in my knowings have received black lung benefits. Two of them died; one of them died within 2 days after he got it. One of them died within 4 weeks.

I have visited several people that have black lung applications that have been turned down for several different reasons. I have visited people and got their names that are on public assistance from having black lung in the second degree measuring a diameter of 2.1, 2.3. The papers stated that they were denied because they didn't meet the guidelines set forth in the law that it required that you had silicosis in the third degree.

I have with me a piece of paper that I signed up eight self-enrollees for black lung, who had worked 25 and 35 years in the coal mines. The Social Security Office informed them that they were not eligible to process their claims because they worked for a mainstream program.

I got on the phone and called the Social Security Office and he tells me a different tale. We people that go down to the Social Security Office are misled, abused, lied to, and you name it we can furnish it.

First of all, I would like to state this—and this is my personal opinion—that my experience with this committee should have been held in the southern part of Kentucky and West Virginia coalfields to really give black lung consideration of what it needs because the people that really have been done bad on black lung couldn't be here today because they are in too bad a shape.

Now, you were talking about the permanently total disability from coal mines. I have clients that have four and five permanent total disabilities and states on the diameter of the black lung and they have been turned down for the reasons that they don't meet the qualifications

under the black lung law for two and three different reasons. And there is nobody that I have been able to find that can really come up with what the Social Security means when they are talking about total and permanent disability. And this is one of the faults that has never been clarified for the people.

When you talk to them they don't know what Social Security really wants and I don't think the Social Security really knows itself what they want.

And for my personal feeling and the people that sent me here as a representative to them, we don't aim to put up with it. We are tired and we know they are lying to us and we don't aim to take it. And we are going to take every effort and step to change some of the laws that are made or some of the people of the offices behind it.

Now, we feel that we have been done dirty in Kentucky. We held a meeting with approximately 400 people, and out of the 400 people there had been only four people that had received black lung. The rest of them had been turned down for some reason or another.

Their hospitals are not equipped to take tests; they run them through like stock and this can be proved. They don't give them time to take X-rays. And I have a man that told me that he went and was X-rayed and turned down. The doctor told him he had two perfect lungs. He said, "Doc, did you see the 18-inch scar on my back that I had one of my lungs removed?" That this is the type of thing that you have got going on in the black lung services and this has come from the Social Security Administration.

They may not be aware of this. But there is one place they can be aware of this and I think it is this committee's place and duties to take steps to see that the Social Security Administration enforces the law that is already applied.

And I thank you for being here and thank you for hearing our case.

Mr. HAWKINS. Thank you, Mr. Golden.

Mr. Miller, would you present your next witness?

Mr. MILLER. The next witness, Mr. Chairman, will be Mr. Clifford Lane.

Mr. LANE. One thing I would like to talk about that was talked about earlier this morning of how they do it at the Social Security Board in our community. I happened to be one of them that went to the hospital for tests. They stood about 60 of us back in the hall so they would take 10 at a time. Say, "Boys, get your shirts off, get your shirts off." And I would be safe in saying that 10 or 11 minutes they would X-ray the 10, then bring in 10 more. And it was the same way all day I was there.

I am safe in saying that they X-rayed 70 within 5 hours. So we go back to the Social Security Board. They say, "well, boys, they have turned you down. You have got to do this, you have got to get your medical reports." So the majority of the people in that county just aren't able to pay a doctor \$50 or \$60 or maybe \$100 for a physical examination that is required for black lung.

So that is their big problem down there.

Mr. BURTON. Mr. Chairman?

Mr. HAWKINS. Mr. Burton?

Mr. BURTON. It was precisely because we believed this would be a problem that poor people simply cannot afford to make their case, if

you will, by getting enough medical data that the Social Security Office, social security people are clearly and flatly required to pay for all reasonable expenses incurred or obligations incurred in developing the medical aspect of the claim.

There may be some misunderstanding. I do have trouble believing that Social Security is rejecting these claims, although that is something I think the staff should look into.

I do fear the possibility that a lot of the people are enough uncertain about it that they are unwilling to take the chance, that Social Security will assume this debt if they incur it by getting examinations.

But the law is clear and I would hope Social Security would make some efforts to see that that is made clearer in terms of the people who think they have got a valid claim.

But the law is clear in that respect. I would hope Social Security is not rejecting any such claims and I think there may be some misunderstanding in terms of the applicants and potential beneficiaries under this bill.

Mr. HAWKINS. Mr. Lane, what office of the Social Security are you referring to?

Mr. CLIFFORD LANE. Corbin, Ky.

Mr. ERLÉNORN. Mr. Golden, did you want to add something?

Mr. GOLDEN. Lane, in his statement, I think left out something that is vitally important. Mr. Lane is retired as a social security black lung.

Mr. HAWKINS. Is that so, Mr. Lane?

Mr. CLIFFORD LANE. Yes; They took me out of the mine in 1961 with black lung. They have taken me to the miners' hospital. I stayed there a couple of weeks and I really wanted to go back to work. I didn't see how I could make it on a social security check. They told me to go home and try a week and not try to go back to work, just fool around at home and come back. So when I came back to the hospital they brought a man from Knoxville to take a stereo picture of my lungs and gave me a blood test and they gave me the whole works, that was all, and they told me they said you might just as well go home and forget about work. You will never work no more.

Now, so this black lung has denied me for it, which they cut me out in 1961 with a total disability.

Mr. BURTON. Have you told your Congressman that?

Mr. GOLDEN. What Congressman?

Mr. BURTON. Well, I would hope the staff would get your name and address so that we can see that this specific matter is at least pursued.

Would you object to giving us your name and address now?

Mr. CLIFFORD LANE. No.

Mr. BURTON. What is your name?

Mr. CLIFFORD LANE. Clifford Lane.

Mr. BURTON. What is your mailing address, Mr. Lane?

Mr. CLIFFORD LANE. Route 2, Corbin, Ky.

Mr. BURTON. We will pursue your individual case. That is maybe nice for you, and hopefully you are successful, but it doesn't help the general problem much, but at least we will go to work on that.

Mr. MILLER. The next witness is Mr. Steven Clark, lawyer for the Mountain Peoples Rights, Inc., in Kentucky.

Mr. CLARK. For the last two or so years I have been representing miners in various types of disability claims, primarily before welfare agencies and also involving social security matters.

It appeared to us when social security decisions began to come down that a vast number were being denied. And it appeared that we had on our hands a crisis situation. This was confirmed when congressmen began making statistics available and it appeared that Kentucky had the lowest rate of awards of any of the States that were reported.

I believe the current figures are that Kentucky's proportion of awards is somewhere in the neighborhood of 25 percent, whereas the national average is 50 percent.

Recently, the Social Security Administration had statements in the press to the effect that this does not necessarily mean there is a crisis. This may mean that there are fewer eligible miners in Kentucky. I think these statements beg the issue.

I feel that the characteristics of the population there may have a little to do with what is causing the denials. I think the factors that are causing denials are the way the law is being administered at the local offices in part, and also the problem results from the lack of adequate medical testing facilities. You have heard of some of the miners speak of some of the problems they had had.

Congressman Burton said it was quite clear that social security is to pay for medical examinations. I do not know a single miner, and I have been in contact with many, to the best of my knowledge, who has received any reimbursement. Now, maybe some day ultimately some of these people that I have talked to will receive reimbursement. People do not know that they should be requesting it in many cases.

In any event, the policy of the administration, the thrust of the policy has been that we will supply you with an examination at Government cost. Why worry about the doctor of your choice in a sense is what they are saying.

Mr. BURTON. At this point may I request the staff to direct a letter to HEW that addresses itself to the points made, the number of requests by applicants for the payment directly to the provider of the service or reimbursement of the cost of the service and the rightful acceptance or rejection of those requests. And also, the total amounts paid by the Social Security Administration to either providers of service or by way of reimbursement to the claimants.

Mr. HAWKINS. Without objection, the staff is directed to direct that inquiry to the Department of Health, Education, and Welfare.

Mr. CLARK. I hope I can provide further detail and clarity in a written statement at a later time on that particular issue.

In any event, what I have addressed myself to is that there have been problems in the administration, among them are those which have been mentioned.

I might explain that Mr. Golden was talking about denial of men in the mainstream program. There have been precedents in the courts on social security claims saying that this activity is not substantial gainful activity, yet the men seem to be denied on this basis.

Also miners have called to our attention where claims have been withdrawn. There is one instance where it appears, I can't document this yet because I haven't got the record from Social Security, where the claim was withdrawn without any clear expression of intent by the miner to have it withdrawn. It appears that where there is a questionable claim where the miner is working, a withdrawal is being solicited. I can't tell you the magnitude of this. I know that this just seems to be happening.

It may be true that the miner, you know, is free to pursue his claim. He is not told always that he absolutely can't. But the facts are presented in such a way that he is told that the administration doesn't have time to process his claim. He is discouraged, whether it is done intentionally or not.

Mr. BURTON. Is your statement that a miner currently working who files a claim is encouraged to withdraw the claim?

Mr. CLARK. Yes.

Mr. BURTON. The entire purpose for permitting a claim to be filed, even though a man may be earning an amount under the retirement test that invalidates his receiving benefits, I would hope would be self-evident. In a situation as you stated the claim can be approved because the man has in effect total disability but he is out of the ball game just temporarily so long as his earnings preclude him from receiving a benefit. This was the only way to achieve what I suspect is one of the primary reasons for the differing results in Pennsylvania and other places.

In Pennsylvania they had a law that provided a benefit. So people could at an earlier point in time file the claim and, therefore, accumulate medical records before they were lost. Whereas in Kentucky and West Virginia, you didn't have such a law. So these medical records were lost, and the basis upon which you could prove your claim. And the whole point was to get those records into a safe place, if you will, so that no one may be ineligible to receive payment because he is still working and his earned income is such that the payments are reduced to zero. We wanted those claims to be valid and view the point in time of 4, 5, or 6 years from now when that man, the pneumonconiosis may set into the point where that man can no longer work. So these men are being given very bad advice as it affects themselves. And these claims, in effect, should stay on file with the medical reports.

Mr. CLARK. All too often, though, it appears that the records are either not gathered or they are gathered to a certain point but not really adequately gathered and adequate tests aren't given and the man will ultimately withdraw his claim without understanding what has happened because he has not been so advised.

Turning away from the procedural problems that miners have been having—and I don't think I have given you really an accurate representation of the full picture. There are many more problems that we have heard of and I will communicate them with you later in writing, if that is all right.

In Kentucky, we have a difficult problem scheduling adequate medical exams. We heard earlier today from one of the Congressman from Pennsylvania that doctors are paid by the State to do evaluations for coal workers pneumoconiosis. I do not know exactly how that works there. But I know in Kentucky there are very few doctors whose salaries are provided by the State and the few that are say that they will not be able to make a diagnosis of pneumoconiosis. I think we have to consider factors like this when we want to understand why the award rate is so low in Kentucky.

I do not think it is enough to say that the miners there are younger and therefore less likely to have black lung. I do not think it is enough to say that the miners there have worked in less mechanized mines because it is not quite clear that the mines in Kentucky are any

cleaner than they are elsewhere. It wasn't clear in the case of the Finley mines in Hyden where the explosion took place around New Year's.

So I feel that the claims by miners have to be given careful consideration. Maybe there is no systematic way to do this. But I think you will find, if you really want to find out how this law is being administered, that the miners would be able to give you an awful lot of information as to how the law is actually working.

Thank you for your time.

Mr. HAWKINS. Mr. Miller?

Mr. MILLER. The last witness will be Mr. James Haviland, lawyer for Appalachian Research and Defense Fund in Charleston, W. Va.

Mr. HAVILAND. Mr. Chairman, I would like to join in Mr. Clark's remarks and say that my experience in West Virginia in the last 3 years dealing with disability insurance benefit cases and then Federal black lung cases is very similar to his in Kentucky.

So as not to repeat Mr. Clark, I would like to make a few remarks on H.R. 43 dealing with the offsets. The Black Lung Association favors H.R. 43, but would ask that it be expanded to prohibit offsetting Federal black lung benefits and State workmen's compensation benefits where the State—

Mr. BURTON. May I interrupt you at this point?

Mr. HAVILAND. Yes, sir.

Mr. BURTON. For a whole variety of reasons that isn't going to be a successful avenue. Our dilemma was to come to grips with the gaps in coverage. The thrust of the representation was you have not only an uneven gap but an inadequate level. As to our colleagues, this would be the last time in their political lives that they would accept a similar kind of effort, if we then start switching signals on them and eliminated the workmen's compensation offset.

But we made it perfectly clear without any possibility of doubling back, if you will, that if they gave us this benefit—and it is now, what, \$250 to \$300 million a year, so it is not a minor benefit item. Our colleagues did provide it on the assurances we weren't going to change the signals and eliminate the offset.

Whether or not I am in agreement with you is not the point I am making. It is just a practical matter that is one we are not going to be able to do much business on.

Perhaps you could spend some time in some other point.

Mr. HAVILAND. Thank you, sir.

Well, the Black Lung Association favors without qualification H. R. 18 and 42. I would like to take some time discussing H.R. 5702. In answer to a problem that was raised this morning, the first part of 5702 deals with the definition of total disability and would make it so that a man would be considered to be totally disabled only if he could not return to his former work as a coal miner.

It was suggested that this provision would create an inequity because between the treatment of coal miners and persons in other professions and occupations.

On the face of it, it certainly does seem to create an inequity, but there are several reasons why there really isn't an inequity.

First of all, the test of total disability we are talking about says that there is a definition of 223(d) of the Social Security Act and it

says that a man is totally disabled if he cannot engage in substantial work in any job theoretically, theoretically available in the national economy.

This so-called national employability test discriminates against Appalachian coal miners for several reasons. And it is for these reasons that the definition of the total disability can and should be changed.

In the first place, Appalachian coal miners are very immobile. They are not likely to move to other regions of the country where employment is more likely to be available. Other forms of employment in the Appalachian hills and mountains are not generally available for persons without advanced education. Coal miners, by and large, have non-transferable skills. So they can't move, in addition to being unable to move physically to another part of the country, they cannot move their skills to another part of the country and make a living.

Also, coal miners who are disabled tend to be of advancing age and diminished physical capacity. And they present a very, very poor prospect to prospective employers who would possibly be faced with workmen's compensation or private insurance costs.

Finally, I would like to point out that the change in the definition can be made consistent and it is not inconsistent with the social security program because the Federal black lung program is a special purpose program financed from general revenues, whereas the social security program is financed from payroll deductions and there is more reasons in that program for making the standards uniform. The Federal black lung program is special purpose legislation.

The next point I would like to make with regard to 5702 concerns the policy of 5702 that a negative X-ray cannot provide a basis for denial of a black lung claim. The problem here is not that there shouldn't be some medical basis for the finding of disability, but the problem is, rather, that with all due respect to the Social Security Administration, based on my experience with them, I think their determinators at all levels are obsessed with proof of disability by some very objective means such as a line on a graph or a spot on an X-ray or certain laboratory findings. And in many cases disability simply cannot be determined this way.

Finally, I would like to make one closing remark about the thrust of 5702 and try to tie in some of the remarks that were made earlier.

On the whole, I think all of us can only have admiration for the fine job that the Social Security Administration does in handling their complex and demanding work. My admiration does not extend, however, to what I characterize as a difficult or hard case, the hard disability case. Disability can be very, very difficult to prove. You have conflicting medical reports, conflicting doctor's theories, and so forth.

It is my feeling that in these cases the Social Security Administration is not providing adequate assistance to disabled coal miners in the Appalachian region.

Many disabled coal miners in Appalachia, I do not think, are adequately prepared to deal with a large bureaucracy and a complex determination process. And I think more assistance should be provided.

Thank you.

Mr. HAWKINS. Thank you, sir.

Mr. Miller, does that conclude your witnesses?

Mr. MILLER. Yes, sir.

Mr. BURTON. Mr. Chairman?

Mr. HAWKINS. Mr. Burton?

Mr. BURTON. I would like to commend the witnesses and urge particularly if there are bills of particulars, to send them to our subcommittee so that we can examine any of the particulars or a class of problems or a specific, individual case. We will work at processing them.

I think, by and large, the Social Security Administration has done quite well even though there are whole areas of the administration that I think we may well quarrel with. The fact of the matter is that I, for one, am delighted that all of you came this distance to tell us how this law is working.

I truly hope the worst of the fears of my distinguished colleagues from Illinois are fulfilled, that in time to come our colleagues will do something that will be deemed as a workmen's compensation precedent and we will be able to take a meaningful national step so that all persons who have been robbed of some part of their full life will have some tangible recompense to take care of that situation.

But send us those letters with the particulars. It is a lot easier for us to follow up after these public sessions with the points that you have raised.

Mr. HAWKINS. Mr. Erlenborn?

Mr. ERLBORN. Let me ask the last witness, Mr. Haviland, in referring to, I think it was 5702, you take issue with the observation I made this morning that the test of the total permanent disability should be uniform. I am just curious as to how different the problem of one with asbestosis, black lung disease, silicosis, the lung problems, the talc miners, many other types of diseases that cause disability that are compensated under the social security disability laws, is really from that of the pneumoconiosis sufferer?

Mr. HAVILAND. Well, I don't think the point is whether the other possible respiratory diseases are more or less serious. The problem I was trying to address myself to was the class of beneficiary and the problems that he faces are unique.

Mr. ERLBORN. I wonder if they really are. Do you think that the talc miner who spends his life in a talc mine has a different kind of a problem from the coal miner or the one who has worked in a sand-pit all of his life or one, for that matter, who has worked in the clothing business, the cotton and textile industries and contracting a lung disease?

Mr. HAVILAND. Well, my experience has been and I think the experience of areas in the country which receive the outmigration from Appalachia has been that many people who leave Appalachia to live in other parts of the country and try to find jobs simply can't find them. There is simply no work available. Now, that may be the case of people afflicted with other kinds of diseases, but I think the problem of the Appalachian coal miner is especially marked.

Is that responsive?

Mr. ERLBORN. I think it is. I think I might make the observation that your concern is directed to them and that might in some way lead you to feel that they should be treated differently. But I am not so certain that that is a valid reason.

Mr. HAWKINS. Mr. Erlenborn, would you yield to the Chair?

Mr. ERLNBORN. Yes, sir.

Mr. HAWKINS. I notice that our colleague, Mr. Thompson, is in the room and has a group with him. I would like to defer to him at the moment to introduce his group that has come to the Congress to see a committee in session.

Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman. This is a group of students from Trenton, N.J., from Holy Cross School, who have come down annually. This is very lucky for us. I have just explained the subcommittee process and wanted them to see the full committee room. So they have had an opportunity of seeing actually a subcommittee in session on a very important piece of legislation, which, incidentally, I favor rather strongly.

With that, I will take them out.

Mr. HAWKINS. Maybe the record should show that this gratuitous support has been given to the pending bills.

We are very delighted to have your group, Mr. Thompson.

Mr. THOMPSON. Thank you very much, Mr. Chairman.

Mr. GOLDEN. You have got me curious when you talk about the disability from the coal miners. You know Social Security is talking about you have to be a permanent and total disability from the mines to draw black lung. Well, if any of you all knew coal miners when they retired, they are short lived. There are many jobs that these coal miners could do with light work and still be eligible for black lung if the law was right. And in justification, I don't go with the permanent and total disability from all of the other types of work, because when you retire a coal miner that has put 45 to 50 years in the coal mines, he is used to work and he is short lived. Another thing is on the disability, they are not getting adequate consideration under the circumstances that exist now because our doctors are not equipped with the right equipment to give a complete examination. I think that it should be established in all States that there are places set up to send these men with the right equipment to examine them and give them a reasonable examination instead of running them through like a bunch of stock. You know, I don't think and you don't think that one X-ray really shows up black lung. And I don't think that breathing tests shows up black lung because you might have a case of asthma when you go in and you put it down black lung. He may not have black lung and I don't think any coal miner wants the black lung benefits without his good, but I think he does want it if he is good.

And I think the only way the coal miner is going to get justice is for the Social Security Administration to establish adequate equipment in these hospitals to take the tests.

Thank you.

Mr. ERLNBORN. I might make one further observation. When we began to consider this law we found there was very little in the way of research that had been done in this country as far as pneumoconiosis was concerned and its relationship to the existence of coal dust and certain concentrations in the coal mine.

So we went to the one country that had done considerable research over the course of years, England. We were advised by the experts there that simple pneumoconiosis was—and this is the international classification. I think there is A, B, C, and 1, 2, 3 within each one

of the categories—simple pneumoconiosis was not disabling, complicating pneumoconiosis was not disabling, but massive fibrosis, the third stage, was.

What we did as a result of that medical evidence, when we passed the bill in the House, and by the way when it passed in the Senate, was take the lesser test, that is category B, complicated pneumoconiosis, which was not considered to be, by the medical experts in England, disabling and make that compensable if the person was in fact disabled and had evidence of complicated pneumoconiosis. And then a very strange thing happened between the passage in the House and the Senate.

In the conference committee any reference to complicated pneumoconiosis was taken out and, in contradiction to the rules of the House, we made any pneumoconiosis, even simple pneumoconiosis, compensable.

Now the medical testimony that we had—and I have never heard it really controverted—was that there is no way of identifying coal miners' or coal workers' pneumoconiosis without an X-ray; that you cannot distinguish it from other diseases without an X-ray in the living miner, short of an autopsy, of I suppose an autopsy would be the only other way.

So that is why the X-ray is included in the test. It does not make the sole test, but to exclude the X-ray as a test makes it impossible, really, I think, to diagnose pneumoconiosis.

Mr. GOLDEN. Can I ask one more question? When a guy goes and has an X-ray made and he is turned down on black lung, and the Social Security sends him back the second time or even the third time, does he have to pay for his medical reports and X-rays the second and third time?

Mr. ERLNBORN. I think that as long as he has a valid application pending or an appeal from a denial, under the law that Congressman Burton has already referred to, his reasonable medical expenses are to be reimbursed.

Mr. GOLDEN. Even for the second and third time?

Mr. ERLNBORN. As long as there is a valid claim pending.

Mr. BURTON. As long as there is a reasonable basis for it. It doesn't have to be a valid claim. You don't do it ad infinitum, obviously.

Mr. ERLNBORN. The law says reasonable medical expenses and that would leave it to their judgment.

Mr. HAWKINS. Thank you, Mr. Miller.

The chairman would like to commend you and the witnesses for your presentation. I think they have been most helpful. And I want to assure them the full consideration of this legislation by this subcommittee. I think that your mere presence has certainly given weight to the importance of this subject. This committee will surely give every possible consideration to all of the requests that have been made.

I see that you do have a statement which will be entered into the record at this point.

(The statement follows:)

STATEMENT OF ARNOLD MILLER, PRESIDENT OF THE BLACK LUNG ASSOCIATION

I thank this committee for inviting us here today. Our organization has active chapters in four states. We have worked long and hard to insure that coal miners receive their just due.

Gentlemen: This program is not being administered in the way that Congress intended. The facts speak for themselves: The percentage of people paid in Pennsylvania is twice as large as in West Virginia and three times as large as in Kentucky.

Why are West Virginia coal miners receiving 2nd class treatment?

Why are Kentucky coal miners receiving 3rd class treatment?

Several reasons are quite apparent to us: Miners in West Virginia and Kentucky are *not* receiving complete and impartial examinations.

(a) Properly equipped clinics that have the ability to administer fair and complete test are virtually non-existent. The only clinic in the area is located in Beckley Appalachian Regional Hospital.

(b) The major medical examination now employed by Social Security is the x-ray. In addition to the inconclusive diagnosis that this provides the actual administration of the test, in many cases in mobile units, is not adequate to provide a competent diagnosis.

(c) The evaluation of the applicant's claim now based on one x-ray is not only unfair but unjust.

(d) Cracker box breathing tests used in cases of simple pneumoconiosis measure only blockages to breathing and not as proper tests for black lung.

(e) We can document a number of doctors who have been in the employ or who themselves are stock holders in coal companies who are being used by Social Security to conduct examinations. There's an obvious conflict of interest.

Gentlemen: If we lived in Pennsylvania our chances for payment would be doubled. Because Pennsylvania has had a good Workmen's Compensation law, doctors there adequately provide the technical medical analysis and information on a claimant. In our area (West Virginia and Kentucky) this is not the case. The way this program is being run must reflect our regional problems so that we in Kentucky and West Virginia will receive proper consideration.

In addition to shoddy medical administration of the program by the Social Security Administration the local staffs of Social Security have not, we feel, treated us fairly or courteously.

We have not received proper assistance in filing and processing claims:

(a) Only through pressure on local offices have we been able to examine our claim file. In some local offices miners who request to see their files are given a run-around or refused.

(b) The denial letter sent to us does not explain in terms we can understand what evidence is needed for us to prove our claim.

(c) The program is grossly underadministered. Social Security admits that their administrative costs are running at 4 & ½% (this compares with a 5 & ½% rate for the Social Security Disability Program.) Many applicant have waited over one year for a decision, while existing on little or no income.

(d) Social Security is not paying for additional medical evidence from doctors of our choice that the applicant needs to prove his claim. The majority of claimants are disabled and retired miners who cannot afford to feed their families let alone pay for additional medical evidence.

(e) Many decisions in the program are being made on incomplete information. Many of our Association's members when reviewing claim files find them to be incomplete. There are no guidelines that we know of to insure that a file is complete before a decision is rendered.

Gentlemen: The law states that payments will be made to claimants who suffer from Black Lung. In order for a man to prove his claim he must deal with unsympathetic bureaucracy that treats him like a dog rather than a human being.

We know that we have Black Lung. We have to stop often when we climb a set of stairs, we cough up black phlegm in our sleep and we fear colds the way you fear cancer—a simple cold can kill us.

We support the amendment now before the committee and ask your consideration of our testimony.

STATEMENT OF THE APPALACHIAN RESEARCH AND DEFENSE FUND, INC.¹ ON BEHALF OF THE BLACK LUNG ASSOCIATION CONCERNING INEQUITIES IN THE ADMINISTRATION OF THE FEDERAL BLACK LUNG PROGRAM²

The meager allowance rate and the high denial rates applicants for Federal Black Lung benefits from Kentucky and West Virginia experience, as compared to applicants from Pennsylvania, may be explained by two factors particularly related to the circumstances of disabled coal miners and the widows of disabled coal miners from Kentucky and West Virginia.

I. Development of the difficult or close Black Lung case requires a degree of sophistication in dealing with government and an ability to maneuver which many hard working coal miners and widows from West Virginia and Kentucky do not possess. The procedures of the Social Security Administration are not designed to provide the kind of service that these cases require.

II. Regulations enacted by the Secretary of Health Education and Welfare require "objective" testing procedures such as chest X-ray and certain limited breathing tests. The facilities where these tests can be administered and the supply of physicians in West Virginia and Kentucky to administer these tests is very limited.

The Social Security Administration has advanced reasons for the disparity in the treatment for Kentuckians and West Virginians as compared to Pennsylvanians, which reasons relate primarily to the age of applicants and the length and nature of their exposure to coal dust.³ Regardless of the validity of that position, it is contended that the above two factors are much more significant in creating the disparity.

Procedures of the Social Security Administration are not adapted to a fair and full consideration of difficult or close black lung case

Many of the Black Lung claims which have been denied present "close" and difficult questions of eligibility which require more counseling, analysis, and gathering of evidence than the Social Security Administration is apparently providing to such claimants. The competence or good faith of the Social Security local office personnel or their training is not necessarily here questioned, rather the problem is the non-recognition by the Social Security Administration of the great difficulty many claimants with close cases face in recognizing the fine points of proof of "Black Lung," and "total disability."⁴

The eligibility criteria and procedures for effectuating claims determination adopted by the Social Security Administration are apparently well adopted for deciding on a mass basis the types of cases where the eligibility or non-eligibility relatively clear. However, such procedures are not well adapted where the question of eligibility is not clear or is close. Disabled miners and widows of disabled miners who have confronted the hard realities of supporting families on the earnings from dangerous, disabling, and frequently unsteady employment in coal mines in many cases cannot reasonably be expected to grapple with concepts and problems such as:

The fact that it is the claimant who must prove his case (He has the "burden of proof");

The varying weight accorded to different forms of medical evidence;

¹ The ARDF staff has represented numerous low income persons in obtaining Federal Black Lung and closely related Social Security disability benefits.

² Benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 901 *et seq.*, ("The Act").

³ Statement of Mr. William Rivers, Executive Officer, Bureau of Disability Insurance, Social Security Administration on April 29, 1971, to representatives of the Black Lung Association at Charleston, West Virginia, to the effect that the higher allowance rate and lower denial rate in Pennsylvania as compared to Kentucky and West Virginia could be explained by: 1) the age, coal mining experience, and exposure to hard coal of applicants from Pennsylvania; 2) the fact that since Pennsylvania had its own compensation program which was more liberal and enacted earlier than other state programs, many applicants who did not benefit under the state program may have been discouraged and did not apply under the federal program.

⁴ 20 C.F.R. 410.403(b) and 403(a) and Appendix to sub-part (d). The position of the Social Security Administration that their work is efficient and helpful as seen in the high rate of allowances, especially widows' allowances, does not in any way respond to the problem of the "close" case. See Haviland and Glomb, "The Disability Insurance Benefits Program and Low Income Claimants in Appalachia," West Virginia Law Review (1971) (to be published June 1971).

The need to maneuver in obtaining favorable medical evidence and in securing payment by the Social Security Administration for favorable medical evidence; and

The bureaucratic jumble claimants must go through in enforcing simple rights, such as their right to see their own claim files; and so forth.

That these cases are not receiving adequate attention can be seen in the fact that the Administration has allocated a smaller percentage of the total costs of the Black Lung program for administrative overhead, $4\frac{1}{4}$ per cent than it pays for administrative overhead in the already established disability insurance benefits program, $5\frac{1}{2}$ per cent. In view of the fact that the scheme of federal compensation for Black Lung is one of limited duration, that the program started up quickly, and particularly in view of the special class of beneficiaries, it would seem that the administrative costs of the Federal Black Lung Program would be considerably higher than those of the on-going Social Security Disability program which applies to all classes of workers.

II. The chest X-ray and simple breathing tests required by regulations of the Secretary of Health, Education and Welfare make the claims of many miners and their widows difficult or impossible to prove

While the Federal Coal Mine Health and Safety Act does require that the existence of Black Lung be "medically determinable,"⁵ there is no requirement in the Act that Black Lung must be proven exclusively by chest X-ray evidence.⁶ Regulations adopted by the Secretary of Health, Education and Welfare under authority of the Act require as a practical matter that the existence of Black Lung be established by chest X-ray evidence,⁷ and that requirement has caused, to a significant degree, the higher denial rate in Kentucky and West Virginia. Some of the reasons for this higher denial rate merit discussion: (1) The facilities for adequately testing so many miners on a mass basis do not exist in the Southern Appalachian Mountains; (2) Many of the physicians who administer and interpret the X-ray films were in the forefront in opposing the reform of 1969 of the West Virginia Workmen's Compensation law, due to their non-recognition of Black Lung as being either a disease entity, as being occupationally related, or as being diagnosable.⁸ (3) The procedure for administering X-rays is loaded against claimants. The Social Security Administration is requiring that only one film be taken and in most cases only one film is used to decide a case; however, few physicians would disagree that as a technical matter Black Lung is very difficult to detect in a single X-ray film.

The requirements of proof of Black Lung by chest X-ray instead of laying to rest the problems of medical proof which created the need for the federal program in the first place, simply raise again the thorny medical problems of diagnosis at the expense of the disabled coal miner. The liberal provisions of the Federal Black Lung Program have demonstrated in the clear intent of Congress that questions of medical science and testing procedure should not stand in the way of compensation has been frustrated by the regulations enacted by the Secretary of Health, Education and Welfare which require evaluation of practically every case by chest X-ray and then evaluation of the question of disability in many cases by breathing tests.⁹

⁵ The Act, rather than defining proof requirements for the all-important term, "total disability," delegates this crucial problem to the definition and proof requirements of "total disability" of the Social Security Disability Insurance Benefits Program of Section 223(d) of the Social Security Act, 42 U.S.C.A. 423(d); Section 411(a) and Section 402(f) of the Act.

⁶ The Federal Coal Mine Health and Safety Act on its face did not require the proof of Black Lung (pneumoconiosis) exclusively by chest X-ray evidence, or by any other exclusive means.

⁷ Under Section 411(b) of the Act, the Secretary of Health, Education and Welfare has the authority to adopt regulations defining the methods of proof, and in regulations adopted pursuant thereto, he has as a practical matter required that pneumoconiosis be established in living miners by the existence of X-ray evidence. The regulations also permit proof of pneumoconiosis by tissue sample (biopsy in the case of living miners) but as a practical matter tissue samples are not taken due to the severity of the procedure. 20 CFR Section 410.404 (a) and (b).

⁸ That is not to impugn the qualifications, professional competence, or good faith of any physician. However, it is quite significant that the Social Security Administration is, in effect, asking many of the physicians to perform examinations, which physicians have previously denied the existence of Black Lung or its occupational relationship.

⁹ See Sections 401 and 411(c) of the Act.

FEDERAL BLACK LUNG STATISTICS AS OF MAR. 10, 1971—FIGURES ROUNDED OFF

	Claims filed	Allowed	Denied	Pending
Pennsylvania---	92, 069	52,460 (miners—29,415, widows—23,045).	20,715	19,894.
West Virginia---	59, 300	55 percent of all filed 17,108 (miners—10,789, widows—6,319).	22 percent of all filed 18,540	23 percent of all filed. 23,652.
Kentucky-----	34, 695	29 percent of all filed 6,657 (miners—3,960, widows—2,697).	31 percent of all filed 15,900	30 percent of all filed. 12,138.
National-----	268, 224	16 percent of all filed 109,960 (miners—63,700, widows—46,260).	46 percent of all filed 96,780	38 percent of all filed. 61,484.
		41 percent of all filed	36 percent of all filed	23 percent of all filed.

RED TAPE AND INJUSTICE STRIKE AGAIN

Almost two years ago, Congress made compensation for Black Lung a law. Ever since then people have had to struggle every inch of the way to get what is their's by right and law. One of the chief problems has been the regulations that HEW sent down and which the Social Security Administration has complicated even more through red tape and stalling. We have met with Social Security officials and presented our problems—but they refuse to change. We have come to Congress to ask that these matters be investigated *at once*.

The Black Lung Association has received hundreds of letters from across the American coalfields that testify to these injustices. We would like for some of these letters from miners and widows to be put into the records as evidence of the disservices we are getting from HEW and the Social Security Administration.

From Hinton, West Virginia, a miner writes, "Dear Sir & Brother, To night I am writing you in regards to being turn down on my Black Lung Application, I have been advised to write to you all for a appointment to see you people. I am sending you a copy of my denial letter. I have x-rays showing definitely that my lungs are black. My Doctor also told me that I had the worse case he doesn't allow me to even do anything at all on the account of I can't breathe. I never was given a breathing test to start with. . . .

From Hazard, Kentucky, ". . . I am writting you about my Black Lung I got turned down on it Jan. 12th and I have got papers from two doctors saying I have got it. I would like you to write and tell me what to do about it. . . .

From Big Stone Gap, Virginia, a widow writes, ". . . My husband worked in the mines 42 years. . . . He dug coal all his life. He had an x-ray made 2 years prior to his death. They have been misplaced—there should be a reading of it at the General Hospital. . . . I took them to there and they seem to have gotten lost. . . . I have been denied the Black Lung benefits. The only report they have is an heart attack. Which is right, but the black lung caused the attack. He died in the year of 1952. . . . If there is anyway I could get the pension I need it so badly. I am 78 years old, and still working for a living.

From Rowe, Virginia. . . . "I need assistance help about my Black Lung claim. I filed my claim in Jan. 1970 was turned down in Nov. 1970. I have took a re-determination on my claim and sent x-ray reports Feb. 15, 1971 that I had the Black Lung in both lungs also enlargement of the heart caused by this. I am in bad condition don't look like I am going to be able to make it long the condition I'm in I wish that they wood make up their mind to pay me while I can use a little of my pay. I sure do need it I worked in underground coal mines 39 years then was beat out of my pension and Hospital card from miners welfare I think us old miners have been treated unfair We was the one that got the union started. . . . now we are kicked out no pay no Hospital and looks like trying to beat us out of our Black Lung pay. I sure wish you would help me I haven't heard anything since I filed the last time in Feb. 15, 1971 please help. . . .

From Fimball, West Virginia, ". . . . I have silicosis and my breathing is so bad I had to quit working Christmas 1959 I was paid for silocosis but the federal government say I am not completely disabled I tried to get them to get my record from Va. hospital they send me medicine all the time for my lungs and I don't have TB can you get my record for me please. . . .

From Barboursville, Ky. ". . . I am a miner and at present disabled I have been injured in the mines and have a lung condition which impairs my breathing

unable to walk any distance or do any kind of work I am seventy six years old. And have been denied black lung benefits for miners passed by the law of 1969. . . . any information received will be gratefully appreciated. . . ."

From Crumpler, West Virginia, ". . . I would like to know if you can help me get an appointment with the State Compensation Commission at Charleston for an examination for Black Lung. Two doctors have told me that I have Black Lung and asthma. Mr. Neal at Beckley said that it would take nine months before I could get an appointment, would it be possible for me to get it sooner. I would like to know all the steps that it would take in getting my examination. Anything that you can do will be appreciated. . . ."

From Welch, West Virginia, ". . . Wodd send contribution but sir I only get \$154.50 a month disabled S.S total disability can't breath at all 30 years work in these Dusty Dangerous mines in McDowell County. Haven't collected no Black Lung benefits as yet. Looking to be turned down after the Nov. 3 election because I was turned down for silicosis 9 years ago. . . ."

ASHLAND, KY., March 26, 1971.

BLACK LUNG ASSOCIATION,
Charleston, W. Va.:

Thank you so very much for sending me the Black Lung Bulletin, the Black Lung is a great concern of mine, due to the fact that my husband had BL.

I have filed for B.L. Benefits but I know I will not receive this Benefit. My husband passed away 1 year ago leaving me a widow at 31 with 2 boys 14 and 5 and a daughter 21 months old to raise alone. On my husband's autopsy his lungs were found to be black on cut section with granular anthracotic pigments embedded in the main lobes of his lungs. However, our Doctor cannot pinpoint exactly how much of a factor this had in causing his other problems, he had shortness of breath his last month of life he lived in the hospital under oxygen he coughed large blackish clots of blood, had chest pains, weakness and could not work, he developed a viral pneumonia, had 3 blood clots go into his heart and died of a Myocardial Infarction. However my husband had less than 6 years in the mines so I knew I will be denied but I hope some how I can in some way contribute to helping some one else left in my position to obtain the Benefits. If I can help by contacting my Congressman Carl D. Perkins in any way I will do so.

Please mail me a copy of the "Black Lung Bill Battles Social Security" and I have enclosed check also to cover my subscription to B.L. Bulletin.

Any way I may assist in the fight for B.L. please notify me and I will do so in any manner and seek assistance from my many friends.

Thank you,

BERWIND, W. VA., March 22, 1971.

(Attention Mr. Arnold Miller).

DEAR SIR: I receive your letter and I answer the questions you sent. I sign up on Black Lung 1-5-70. I did not here anything from them until the 7-8-70 and they sent me to Bluefield to a Mobile Unit. Then six weeks later I was called to Doctor Memorial Hospital for one more X-Ray.

Then the 26th day of November I received a letter saying that I was not eligible for Black Lung Benefits. I went back to the Social Security Board on the 12-22-70 and appeal my case. Then I went to Beckley to the Appalachian Regional Hospital on my own expense.

And took 5 X-Rays and five days later I got my reports back and any reports show that I had Pneumoconiosis Black Lung.

Then I took that report back to the Social Security Board. And that has been 3 months today I have not heard one thing from them. I have been Total Disable for 10 years and In 1943 I was turn down from Military Service because I had Black Dust than. When I signed up on Social Security I took one Breathing test at Bluefield Sanatorium and then took one more Breathing Test at Doctor Memorial Hospital in Welch. And I was not able to take it. The Doctor said that he would put me through the breathing test the best he could. That I was not able to take anymore Breathing Test.

And that could be the reason that they have never called me up for a Breathing test. I am Short of Breath and my Chest hurts all the time. I have no Medicine to take and no way to get any.

And it looks like a coal miner should be paid the best in the state. But it looks like the Disable Miner's is best thought of than anybody. We will notified you if we think we need a Lawyer.

Thank you,

Dec. 23

Dear Sir: I am 52 yrs. old and was a coal miner for about 25 years. I was cut off from my job as a loader operator in 1968 because I collected 20% for Silicosis. That was what they paid me for but my records showed I had pneumoconiosis.

I took two tests from Dr. Rasmussen, one in 1966 that showed I had 45% pneumoconiosis and the other in 1969, showing 60-65%. All my records from him show I have "black lung." I also have a heart murmur that Dr. Harold D. Warren said was caused by my difficulty in breathing. I had to hire a lawyer to get on disabled social security even though I had black lung, a heart murmur and arthritis of the neck and spine that was caused by a mine injury.

I applied for Black Lung benefits from the Federal government after the recent bill was passed. I was turned down by them because they said I wasn't totally disabled. I immediately appealed at the Social Security office. I found out at that time they had failed to get my report from Dr. Rasmussen. I had given them permission when I applied to get my records but all they had was Dr. Warren's report. After I appealed I gave them permission to get them again. I believe a big factor in the failure of some miners to get their rightful benefits is caused by the Social Security office not getting their records.

I talked to Dr. Rasmussen and he suggested I write to you and send you a copy of my records. I am also sending a copy of their denial of my claim. He also said I should have no trouble getting my benefits. He said you may be able to help speed things along for me.

I can't do any work even if I am still young. It seems so unfair to see men in a lot better physical condition than I am getting their benefits when I was turned down and have to fight for mine.

I have been taking breathing medicine since 1966 and carry nitro glycerine tablets everywhere I go.

I would appreciate anything you could do for me.

Thank you

BLUEFIELD, W. VA., October 6, 1970.

THE BLACK LUNG ASSOCIATION,
Charleston, W. Va.

Sir I'm sending to your Office A copy of the Letter That I sent to this Mr. Elliot Richardson in Washington D.C. Corning My Black Lung Claim that I did File with the Social Security Benefits for This Much Dreaded Disease that I. Has Now here it is to you in full as I sentit to him in A nother Letter on the 26th of Last Month. this is it in full ((I worked for the Gary Company at Gary West Virginia, for 22. Years and The Doctors at the Grace Hospital Told Me at

This Time on may. the 2 nd. that the shape of my Lungs was so Bad with this Disease That I would be better of to go on and retire on My Disability of the Lungs so I started out on the filing of same the next Day so on october the 14th. My Claim had gone through the proper Channels for my to Collect My Social First Disabilty Check for the Social security Check for the sum of \$8.05.00 And was told that the rest of my life I would get the sum of \$1.15.00 Per month For the rest of my Life but as you and I know that these things get change since That time and so as to me getting any other Benefits form any other Plan but just the U.M.W.A. Retirement funds I hasent gotten any thing else and so when this Law was passed in December of 1969. I was so Very glad for I made sure that this Would give me A better Chance to live some better then I had been so I filed for The Black Lung Benefits on January 5th. 1970 and at this social security Office In Bluefield West Virginia, and Since October the 14th. 1962 I had been Drawing My disability Benefits form this Pay Center in Baltimore Maryland and this Mr. Ball The Commissioner There Know All About this Matter and as he has all the Proof on This Matter I know that there is no use of him giving no such thing as I do need Any more Proof for me to get this claim comeing my way, and any way I'M giving You A completely Picture of this thing as it is of now, so one more thing is

that I want call your Attention to is this, there is some of the Miners all around me Here that thay filed thay Claims the same date of the same month that I did and Thay was payed for thay Claims and didn have to go no where to Get no Proof of Eligibilty for to get it coming to them So I'M saying right here that this Mr. Robert M. Ball Knows All About these Matters as he has the records right There At his Finger tips for to check so this makes Me feel like that I'M being given Some Discrimination on getting my Claim Settled, and too on the same date that Given Me A write up here at this Office in Bluefield was July the 16th 1970 so With the Out Lined Information I has given to you and to mr. Elliot Richardson, In Washington D. C. I know it time that some one should be leting my Know Some Think About this Claim and To my Patience has Worren completely out on this thing, And I want some Actions as these other mens has gotten here in my Town, I could Give you the Names and Addresses of same but that no use of that, so let me hear From you on this Matter as soon as possible thank you so Very Much for same I'M

Sign yours,

Very sincerely,

APRIL 6, 1971.

BLACK LUNG ASSOCIATION,
Charleston, W. Va.

DEAR SIR: I need some advice concerning Black Lung. I made application for Black Lung through Social Security. They sent me to have X rays made which showed positive. They stated that it had not developed to a state of total disability. The X ray was the only test I was given. Even though I am working I do have a breathing problem. I have no choice but to work or starve. Would you advise me where to have additional test made and the doctors who I should see. Also, the correct procedure to use in appealing this denial. I am enclosing a photo copy of the decision that I received from Baltimore. I will appreciate any advice and if there is any cost for your help please advise and I will mail you whatever the cost.

P.S. Enclosed is a dollar money order mailing cost.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md.

NOTICE OF DETERMINATION ON CLAIM FOR BENEFITS
UNDER THE FEDERAL COAL MINE HEALTH AND
SAFETY ACT

Name and Address of Claimant: _____

Social Security Number: **XXXXXXXX** LM.

THE DECISION

After carefully studying the evidence we have received in your case, we have determined that you are not entitled to black lung benefits under the Federal Coal Mine Health and Safety Act, because you do not meet the requirements of the law.

THE REQUIREMENTS

The law provides for the payment of benefits to a miner if

1. He has pneumoconiosis, and
2. His pneumoconiosis arose out of employment as a miner in the Nation's underground coal mines; and
3. He is totally disabled because of pneumoconiosis. (See other side for further information about this requirement.)

REASON FOR DENIAL

Under the law, a miner who is working in substantial gainful activity may not be found totally disabled unless he has pneumoconiosis which is shown medically to have reached an advanced stage commonly referred to as "complicated pneumoconiosis." In your case the evidence we received, including

chest X-ray, shows that while you have a lung condition it has not advanced to the stage specified under the law. In addition, the work you are doing shows you are able to engage in substantial gainful activity. Since you do not meet the requirements of the law, your claim must be denied.

YOUR RIGHT TO QUESTION THE DECISION

If you have any questions about this determination they can be discussed with any social security office by telephone. When you telephone, please have this notice nearby so you may refer to it. Please take this notice with you if you visit an office.

If you believe this decision is not correct, you may request that your claim be reconsidered. Such a request must be made in writing not later than six months from the date of this notice. You may make your request through any social security office.

Issued by: Division of Evaluation and Authorization, Bureau of Disability Insurance.

Authority: Federal Coal Mine Health and Safety Act of 1969, Sections 402, 411, 413(b), 426(a) and 508; Subpart D of Social Security Administration Regulations No. 10.

March 24, 1971.

RAMAGE, W. VA.

BLACK LUNG ASSOCIATION,
Charleston, W. Va.

DEAR SIR: I have received the Black Lung Bulletin that you sent to me and am very glad to get it.

Yes I am enclosing \$2.00 for the paper each 12 months period. I am sorry that I do not have money to send you to help in your good work, but I do send my prayers and best wishes to you and to yours.

I only draw \$127.50 from the S.S. and the D.P.A now gives me \$32.00 that gives me A total of \$159.00 to keep A family of 5 on so you see I am just not able to help with money. I signed up for Black Lung in Feb, this year and then filled out the papers that the S.S. asked me to in Aug. 21 this year.

So far I have heard nothing from them, I am expecting to hear at anytime. There is so many people in the same boat as I am in, I only hope that it don't sink with us.

I received my S.S. on my lungs, and can't understand why that I have not heard from them yet.

I have already been through the clinic in Beckley at hospital there; Dr. Rassmussion was the Doctor that give me the test, Also Doctor Buff had me under his care for some time other Doctors has turned me down for any kind of work.

I did have A Lawyer to help me get the S.S. and he has my records there, I asked for them one time but they would not give them to me.

His name is Franklin Kerns of Charleston, maybe you could help me to get them for this case if I have to have them.

May God bless you in this work that you are doing and give the wisdom to overcome them that would try and stop the good work that you are doing.

O.D

CARRETTA, W. VA., December 14, 1970.

BLACK LUNG ASSOCIATION:

I am writing this letter. To see if you can help me, or tell me why I haven't received my Black Lung Benefits. I am a widow. My husband died May 14, 1970 and I sign up for Black Lung May about the last part of May. He spent 23 yrs. in the mines working under ground.

The papers were sign for attosipoty. As of now I haven't heard anything. I get a small check of 75.00 dollars a month. Widow & S. Benefit, its been 7 mos now and haven't heard anything. Please write back and let me know whats the hold up and what must I do.

HARRISVILLE, W. VA., *January 11, 1971.*

I am writing you in regard to the Black Lung disease which concerns Buster Blankenship.

The first time he was pronounced having this disease was in 1960. He went to Charleston for X-Rays. To the Medical Arts Center. He was paid one thousand dollars. He has followed up this with X-Rays at the Health Department at Harrisville, W. Va. located in Ritchie County. In the beginning he went once a year for these X-Rays. And now he has to take them every six months. And he also has to send sputum test to Charleston twice a year.

The Dr. who comes from Charleston to the Health Department in Harrisville told my husband that he was eligible for the Black Lung Benefits. He also told the Health Department to furnish any papers or information that would help Buster in any way. And they did. We turned all of these papers over to the Social Security Board in Parkersburg, West Virginia.

Along with the papers from the Health Department we also sent the papers we had gotten from the Medical Arts Center in Charleston. They sent him to Fairmont, W. Va. in September for a "breathing test." And this was all they did. They didn't call him in for any X-Rays or anything else. And he signed up for this in January of 1970. According to all the other Drs. who have taken X-Rays and talked to Buster they don't see how it is possible to deny him these benefits.

But we got a letter from Baltimore, Maryland denying him these benefits. These papers stated that we had 6 months to do something about this. Now it stands to reason Buster was paid one thousand dollars in the beginning of 1960 for this disease. You know your self this disease doesn't get better it gets worse with your age. So it has been 11 years. And we know from the X-Rays and Dr. he still has this. The Drs. have told him to keep going although he is a very sick man. When he walks he has to walk slow and when he walks up a hill he has to take it slow. He takes muscle spasms and can't move. Dr. Hatfield at Harrisville, W. Va. has to give him shots to get his muscles to work again.

We are not rich people. We need this money very much. Because he isn't able to work any more after spending between 22 and 24 years in the Coal Mines. I am working myself because there isn't any other way.

In 1963 he went to Charleston for an operation on his back. He went to the Dr. and got a slip to go back to work. And the Superintendent wrote on the back of this slip "which we still have" that he had no work for this man nor never would have any work for this man in the condition he was in.

If there is anything you can do for us, or anything else we can do for ourselves. It would be deeply and very Sincerely appreciated by both of us. If you would let us know at once. So we can start doing what ever you tell us too.

We would like to attend some of your meetings but we live so far away we can't. But our hearts are with this organization we know you are trying to help the people that no longer can help themselves because of their conditions.

Mr. HAWKINS. Again, I would like to thank you and all of your witnesses for having appeared.

Mr. MILLER. Mr. Chairman, on behalf of the witnesses I want to thank you and the members of this committee for having us here.

Mr. HAWKINS. Thank you. Without objection, the statement will be inserted into the record.

(The statement follows:)

STATEMENT OF STEVEN CLARK ON BEHALF OF THE KNOX COUNTY BLACK LUNG ASSOCIATION, KENTUCKY MOUNTAIN BLACK LUNG ASSOCIATION, AND DISABLED WORKER'S ASSOCIATION OF CLAY COUNTY

I am an attorney working with Mountain People's Rights, Inc., a nonprofit legal program near Barbourville in Knox County, Kentucky. For the last two years I have been engaged in a project representing coal miners in disability claims before the Social Security Administration as well as the State welfare agency. I had hoped I would also be handling claims for Black Lung Benefits. But the magnitude of denials makes this seem a futile gesture.

We have little hope for meaningful change through representation in individual cases when our State has a denial rate nearly twice the national average, three times that of Pennsylvania. In our State only 25% of the claims were paid as of April 24, 1971, while 43% were paid on the national average, and Congressman Flood says 82% were paid in his district in Pennsylvania. We have 19,000 miners and widows who have been denied and 5,195 more who have not even received an initial decision on claims filed as long ago as January, 1970. As I sat in my office listening to the stories of miners who had been denied, my impression was that the situation was grave. The statistics confirm that we do indeed have a crisis on our hands in Kentucky.

What factors have brought about this crisis whereby miners in Kentucky end up with less than one third the chance of getting benefits of a miner in Pennsylvania, with only half the chance of miners on the national average? Social Security sources have "leaked" findings to the press in an attempt to explain the disparity of denials in Kentucky (*The Mountain Eagle*, May 6, 1971, p. 1; *The Courier Journal*, May 13, 1971, p. 1). These findings suggest Kentucky miners have less substantial cases and refuse to recognize any failures by the Social Security Administration. An effort has been made to preserve the image of the Social Security Administration, to suggest it has done all it can to help miners in Kentucky. We feel this attitude, the attempt to belittle claims of Kentucky miners, indicates an effort to remain complacent about a crisis. Social Security has chosen to talk about the relative youth, clean working conditions, and poverty of the average miner in Kentucky. No mention was made to the press of the results of studies of quality of X-rays in Kentucky, nor are we aware of any admission to your Committee that procedural problems or lack of medical facilities are hindering claims in Kentucky. Therefore, I feel it behooves us to detail some of the real factors responsible for the disparate number of denials in our State.

First, miners face numerous procedural problems in obtaining adequate assistance at our Social Security Local District Offices. The first problem I will discuss involves payment for medical expenses. The law provides for reasonable medical costs incurred in establishing a claim, but miners have been systematically channeled to consultants selected by Social Security and not informed of their right to reimbursement to see a consultant of their own choice. The claims manual used at local offices gives a directive to caution miners about gathering their own evidence unless requested to do so by the local office, because they might not be reimbursed if they do it on their own. If the miner is so rash as to see a doctor without permission, then the local office is told to accept a copy of any bill. Whatever justification for allowing use of the physician of a miner's choice only as a last resort, we find it has been very effective in keeping Kentucky miners from benefitting under the salutary provision for reimbursement. We find many miners who have incurred expenses and are unaware of their reimbursement rights. We did not know of any who were given examinations at a doctor of their own choice until I returned from Washington and saw the first authorization sitting on my desk. The consequences of this practice must not be underestimated since it may be critical to full case development and have a substantial impact on denial rates. The miner has the burden to produce adequate medical proof of disability. But the Administration tells him what doctor to see, what tests he will get, and tells him if he does anything further he cannot be assured of reimbursement. So the miner is given the burden of proof without the freedom to meet it in the way most advantageous to his claim.

The second procedural problem I wish to discuss involves withdrawal of claims. Mr. Golden has told you in oral testimony how miners enrolled in the Mainstream Program have been denied because participation in the program has been deemed "work," hence disqualifying the claim. But the men are often in fact disabled and are given extremely light tasks to justify their welfare level stipends. Courts have held that mere enrollment in these programs is not evidence of work ability under the Disability Insurance Benefits program, yet it is being used to deny Black Lung Benefits claims. But the problem does not end with this substantive error. Substantial numbers of men in these programs have been contacted and asked to withdraw their claims because of the futility of pursuing a claim while "working." The withdrawal is not necessarily at the written request of a miner. I was contacted by one miner who was denied because he allegedly withdrew his claim. Yet he still has the unsigned withdrawal request the District Office prepared for him. Not only does Social Security solicit withdrawals, but they seem to be approving them without full explanations,

without adequate confirmation of the miner's intent to withdraw, and even without a simple X-ray which might show the miner is entitled despite work activity. Certain types of cases are being singled out for inadequate development and withdrawal. The claims manual itself provides for "curtailing development" and the experience of miners as related to me confirms the withdrawal practice. I have been waiting six weeks to see the file in one of the withdrawal cases, and I expect I would ordinarily have to wait six more to see the file in order to be able to fully document any abuse.

This brings me to the third problem I wish to discuss, disclosure of files. Miners are not informed that they are entitled to see the medical reports in their claims files. If they do request a look, they have to wait substantial periods before the file will be made available at the local office, and when it arrives they may be told they cannot examine records gathered as part of their file for Disability Insurance Benefits. It is no answer to say miners cannot understand complex medical data in their files—they can tell when their own doctor's report is missing, and with proper assistance they will understand what type of reports they will need to establish their claim.

Lawyers face similar disclosure problems. I requested a copy of the claims manual and was told I could see it at the Local District Office and copy pages at 50¢ a page. It would cost me about \$150.00 to obtain the full manual I had requested. Public Assistance agencies furnish their corresponding documents without cost. Why is the veil of secrecy so difficult to pierce when it comes to Social Security?

Whatever steps are taken to assure adequate assistance from local Social Security offices, Kentucky miners are still hindered by the lack of adequate medical facilities in their State, particularly in the eastern part where most miners live. Congressman Flood stated that Pennsylvania provides free facilities for evaluating Black Lung. The situation in Kentucky is markedly different.

We have one State Hospital in our area, but it has refrained from performing Black Lung evaluations and the State has talked about closing it completely. So a principal source of X-rays for our miners has been eliminated. Instead of using the State facility miners are sent to private hospitals which had not always been concerned with this disease previously. We find alarming numbers of miners are asked for repeat films apparently because the first film was of such poor quality. This is not surprising in view of the assembly line procedures discussed by Congressman Perkins and Mr. Lane in oral testimony. We have been told that lack of quality X-rays is a substantial reason for our disparate share of denials by sources within the Social Security Administration, but we have not seen the results of any quality surveys which I am sure they must have conducted with their panel of specialists in Baltimore.

If a miner cannot establish his claim by X-ray, existing standards permit use of a test called the Blood Gas Study. According to a recent survey, more miners could qualify this way than by X-ray alone. However, we do not know any miners given this test at government expense in the absence of a specific request. This is not surprising. To our knowledge, there is only one facility in our area which offers this test. We do not know of any facility here which gives this test with sufficient exercise to meet standards acceptable to Social Security medical staff.

We do not intend to quarrel with the doctors and hospital administrators over how they run their treatment facilities. They have accepted overwhelming case-loads. Until recently they had no critical need for a testing facility because there was no benefit program geared to it. Social Security created this need. Social Security requires miners to generate numbers on medical tests to get benefits. Social Security has failed to supply facilities capable of generating the essential numbers. Social Security has chosen to clog existing facilities and cut corners on its administrative budget in making new facilities available. Instead of responding to our needs, it has stood by and profited while denigrating the claims of Kentucky miners. So it is Social Security whom we blame.

Social Security has attempted to justify Kentucky denial rates with theories that fewer Kentucky applicants are disabled by Black Lung. One theory is that since unemployment is high in Kentucky, the miners there are forced to apply because they are unemployed instead of disabled. I resent, both individually and in behalf of the Black Lung Associations I represent, this use of

the claim that Kentucky miners have less substantial cases because they have the misfortune of living in a region of low employment. Kentucky miners are poor. They have few job opportunities. Black Lung Benefits do hold out the only hope for survival for many Kentucky miners. Otherwise there would be no Black Lung Associations. But to seize upon these conditions as a justification is to remain complacent about eligibility tests which refuse to recognize these conditions and discriminate against the Kentucky miner.

Present eligibility tests require miners to prove they are disabled not only from jobs in the region where they live but also from jobs available elsewhere in the national economy. Parking lot attendants, elevator operators, night watchmen—these jobs, like so many others, are virtually non-existent in areas where Kentucky miners reside. Since the jobs do not exist in the realm of the miner's experience, he cannot try them out and thereby demonstrate his disability. Instead he is expected to disprove his ability to do jobs conjured up by expert witnesses. This theoretical framework overwhelms many lawyers, much less miners. The miner may be denied no matter how unrealistic his employment potential. He can't turn to the jobs he is deemed capable of if he is denied. By definition these jobs do not even exist where he lives. Standards assure miners will get neither benefits nor jobs. Mr. Popick wants to make it more profitable to work than to receive benefits—but some miners cannot get either work or benefits. The rules compel this result, I'm not talking about errors, but what happens when present criteria are applied.

How can we avoid complacency about denial rates by the Social Security Administration? Mr. Popick said in the hallway after the hearings that he hopes he could visit us in Kentucky. This might be fruitful. Members of our staff have met with his staff before with no perceivable change in results. Miners have held public hearings and invited his central office staff, but Social Security officials would not come to such a meeting despite requests from Congressmen that they do so. Instead of coming, the Administration responded with press releases informing miners of the vast expenditures the Administration had made on Black Lung Benefits. If Mr. Popick were to come to Kentucky with members of your honorable committee, perhaps a fuller understanding of the problems miners are facing could be obtained. As I hope I have made clear, denial rates reveal only the surface of a very human struggle.

Mr. HAWKINS. The next witness is Dr. Donald Rasmussen, Appalachian Regional Hospital, Beckley, W. Va.

The Chair is trying to take the witnesses in the order in which they appear from geographical distances and my understanding is that Dr. Rasmussen is one of the out-of-State witnesses.

We would like to hear from you at this time, Doctor.

Do you have a prepared statement?

STATEMENT OF DR. DONALD RASMUSSEN, APPALACHIAN REGIONAL HOSPITAL, BECKLEY, W. VA.

Dr. RASMUSSEN. Yes, sir, I submitted a prepared statement.

Mr. HAWKINS. Without objection that statement will be entered in the record at this point.

(The statement follows:)

PREPARED STATEMENT OF DONALD L. RASMUSSEN, M.D.

The Coal Mine Health and Safety Act of 1969 was a long overdue measure which came into being because there were concerned members of the Congress of the United States. The compensation provision for disabling "black lung" diseases has brought much needed relief to many miners and widows of miners in the coal fields. Some recipients have been saved from virtual destitution and a measure of dignity has been restored to all recipients.

Although it is gratifying to note the effects of these benefits, there is a parallel sense of concern for the large numbers of miners whose claims for federal black lung compensation have been denied. Were it obvious that those receiving benefits

were more severely disabled than those denied, and if those denied benefits had no significant disability from lung disease, there would be little reason for this concern. The fact is, however, that *there is no relationship between the severity of the lung disease and the granting of awards*. Some miners with little or no impairment are receiving payments, while many of the most severely incapacitated miners have been excluded from benefits. Many many miners have been unjustly deprived of compensation.

The Social Security Administration has functioned under the premise that its methods of evaluation of claimants separated those with occupational from those with non-occupational respiratory insufficiency. To be more specific, they have presumed to separate those patients with disabling coalworkers pneumoconiosis from those without pneumoconiosis, or from those with non-disabling pneumoconiosis.

While this is a laudable endeavor and one which is quite desirable, the current state of medical knowledge does not permit such distinctions, even with the most careful evaluation and sophisticated techniques. By contrast, the Social Security Administration has employed only the simplest and least costly testing procedures in its approach to this very complicated problem. It has, however, adopted certain practices and made assumptions which are often employed by industry-dominated state workman's compensation commissions. The SSA unfortunately has not matched the enlightened progressive and humanitarian efforts of the Congress.

The most unfortunate regulation adopted by the SSA and adhered to in an unaccountably tenacious manner, is the requirement of x-ray evidence of simple pneumoconiosis. By far, this requirement has eliminated the greatest number of applicants from benefits. Among those denied for this reason are many miners who previously had x-ray evidence of pneumoconiosis, and many who are severely disabled. The SSA has experienced many of the technical problems which mark the x-ray as an unreliable diagnostic tool in determining the presence or absence of pneumoconiosis. They have encountered large numbers of films which are technically of too poor quality to allow interpretation, and they have seen the differences of opinion of individual radiologists in interpretations of the same films. Reason would seemingly induce a down-grading of the importance of the x-ray findings in administering of the compensation provision, in light of this experience. To the contrary, the SSA has actually increased its emphasis on x-ray findings. A panel of radiologists, mostly from the Baltimore area, have now begun to re-read x-rays previously interpreted by radiologists from the coal mining areas. These Baltimore "experts" apparently are considered superior to specialists with equal training (and considerably more experience) from the coal mining areas.

Aside from the technical difficulties in obtaining the needed quality and precise exposure for adequate visualization, and the differences of interpretation from radiologist to radiologist, it should be noted that impairment in function is unrelated to x-ray findings, and severe pulmonary disability may be present in miners with less than clear-cut evidence of pneumoconiosis.

The SSA has, to date, almost exclusively employed the forced vital capacity as the pulmonary function test to determine the presence of disability, in those subjects whose chest x-ray revealed simple pneumoconiosis. This test has a number of advantages for determining the capacity to ventilate the lungs. It is of little value in assessing the effects of coal workers pneumoconiosis on the respiratory function of coal miners. It is most useful in detecting and evaluating the presence and severity of chronic bronchitis. It can be reasonably stated that those subjects who have been granted federal black lung compensation on the basis of this test have been compensated largely for bronchitis, not from the specific effects of pneumoconiosis. This has been done, however, only in patients whose x-rays reveal simple pneumoconiosis. Those miners with equally disabling bronchitis but without x-ray evidence of pneumoconiosis have been denied benefits. This seems hardly justifiable, since the presence of visible pneumoconiosis had nothing to do with the results of the forced vital capacity test.

Other tests, such as those designed to measure the capacity to transfer oxygen from the lung to the blood during exercise are far more sensitive and show much closer relationship to disabling shortness of breath. These tests are more difficult and do require much more time. Unfortunately, there are too few facilities in the coal mining regions where these studies can be obtained. However, if a realistic evaluation of the lung function of applicants for federal black lung compensation is to be required, these tests are essential. The SSA may plan to employ

some test of this nature, but only on patients who have been denied and have asked for reconsideration. There is some reluctance on the part of the SSA to consider such tests in subjects whose ventilatory functions are entirely normal. This reluctance is the result of their adherence to the concept that disabling shortness of breath does not occur in the presence of normal ventilatory capacity. This concept is based only on opinion and is unsupported by medical proof.

The standards set by HEW are the same as for Social Security disability. These standards are unrealistically severe, not only for federal black lung claimants, but social security as well. Although the requirements are the same for federal black lung compensation as for disability under the SS program, the black lung applicant is not provided the same opportunities nor given the same consideration as the SS disability applicant.

The current regulations under which the SSA is operating are grossly unsatisfactory. Any thought of making these the "model" for future state compensation measures is intolerable. The administration of the federal compensation program must be improved measurably before it can be considered even barely adequate.

Compensation for miners disabled by pneumoconiosis will continue to be a problem or even increase over the next 5 to 10 years because of the large numbers of working miners who are now impaired.

Considering our present state of medical knowledge regarding the lung disease of coal miners, a number of changes must be made in the administration of the federal compensation program. The first change should be to recognize that we do not possess the knowledge enabling us to distinguish those lung diseases of occupational from non-occupational origin. With the possible exception of specific infections and cancer, it is impossible to prove that *any* type of lung disease did not either arise from or was not aggravated by the miners occupation. The full spectrum of coalworkers pneumoconiosis has not been completely outlined and our ability to diagnose this condition is limited. Any disabling respiratory disease of a coal miner should, therefore, be considered to have arisen from his occupation.

The requirements for determining "total disability" should be made more realistic. Any miner who is rendered incapable of performing his usual mining job should be considered "disabled," under the federal black lung compensation provision.

These recommendations, if put into effect, would result in a considerable increase in costs. This increased cost, however, would be fully justified. It would also more accurately reflect the true magnitude of the problem of lung disease among this country's coal miners. This might also serve to stimulate the continued and careful control of working conditions within the coal mines.

Mr. HAWKINS. Would you care to summarize your statement, Doctor?

Dr. RASMUSSEN. In my prepared statement I gave some of the reasons that I object quite strongly to the regulations under which the Social Security Administration has administered the Federal black lung compensation provisions.

Now, my full-time job for the past several years has been doing pulmonary functions, evaluation of coal miners, coal miners with varying degrees of shortness of breath.

The very reason that my job exists and that this is a full-time job is primarily because the test which has been used by the Social Security Administration as the means of distinguishing those who are disabled from those who are not, simply has no bearing on coal workers pneumoconiosis.

We encountered many, many coal miners with shortness of breath that was so severe that these men were incapable of anything but sedentary activities and in spite of this, the test for breathing ability or the ability to move air in and out of the chest might be entirely normal, or only minimally abnormal. Many of these miners had only simple pneumoconiosis by X-ray and there were certain numbers of them in whom definite pneumoconiosis could not be seen by the X-ray. It soon became quite apparent that what we were seeing was not what was

described in the textbooks, that somehow the problem was entirely different.

When we proceeded to do additional kinds of studies in these men, we did find very clear-cut abnormalities in lung functions by proceeding along other more time-consuming lines. We found that, without regard to X-ray findings, we could find distinct abnormalities in at least 98 percent of those men who presented symptoms of shortness of breath.

In our opinion, then, the use of these tests alone is inadequate. Our experience with the chest X-ray leaves us to conclude, again, that pneumoconiosis of coal workers is difficult to identify. There is so much variation dependent upon the quality of the X-ray and even beyond just quality, the actual very slight variations in voltage and so forth can obliterate or make the pneumoconiosis visible.

Mr. BURTON. Doctor, would you, for the record, establish your credentials? Where did you receive your degree? How long have you been practicing? How much time have you spent in the coal field areas?

Dr. RASMUSSEN. Yes, sir. I graduated from the University of Utah College of Medicine in 1952. I had internship in internal medicine at the University of Minnesota. I had residency training in internal medicine at the University of Utah hospitals, and at Letterman General Hospital in San Francisco, and pulmonary diseases residency at Fitzsimons General Hospital in Denver, Colo. I was subsequently assistant chief of tuberculosis section at Fitzsimons and later chief of the chest disease service at Brook General Hospital at Fort Sam Houston, Tex.

I arrived in Beckley, W. Va., in 1962 and since 1963 and 1964 I have been engaged primarily in physiologic testing of coal miners. I was the chief medical officer of the Appalachian Coal Miner Research Unit of what was then the Division of Occupational Health for the U.S. Public Health Service for 2 years between 1964 and 1966. And since 1966 I have operated the cardiopulmonary laboratory at the Appalachian Regional Hospital in Beckley.

We have to date evaluated something in the neighborhood of 5,000 coal miners.

Mr. BURTON. Doctor, have you had occasion to visit your counterparts in Great Britain?

Dr. RASMUSSEN. I have not visited Great Britain. I have had a number of discussions with the British observers.

Mr. BURTON. Here is the heart of the issue, as I view it. It wasn't so long ago people were unaware of this phenomenon called complicated pneumoconiosis, or at least its causes. The representations made, as I understand them, by the Social Security Administration are that there isn't credible medical expertise that can justify a practice differing from the one they are utilizing. No one on this subcommittee could qualify by any standard as a medical expert. I desperately would like to believe you are right. Your counterparts in times past, when this dreaded diseases was in effect, discovered or identified. Given the time frame of this it is going to be a little late for somebody from Social Security to tell us 3 years from now, "We are surprised. Rasmussen was right." Because the time frame would have passed unless they file a claim before the end of 1971 or they die and their widows afterward file a claim as the bill provides.

What tests would you invite to challenge the procedures or the yardsticks utilized by the Social Security Administration? You get our dilemma. You appear to be a rational man.

What tests would you invite, because we have only got 7 months to win this fight? What forum would be sufficiently objective for one to admit that not that a majority of those practicing in this area would concur that the admission would have to be made that this is sufficiently defensible from a viewpoint of medical or physiological analysis that it cannot be denied.

Dr. RASMUSSEN. Well, I think it depends on how precise you want to be in terms of the kinds of medical proof that you are requiring. Now the thing which lung disease does which causes the inability of a person to engage in normal activity or to work is shortness of breath. And I think I would certainly begin with some assessment of the degree of shortness of breath that an individual might complain of.

This is a thing which is done by the average physician in his taking of a medical history. And there are certain clues in medical history which can lead you to feel very confident that this man does indeed suffer from severe shortness of breath.

Now this, of course, would not give any kind of objective evidence of disability. But it might be as accurate in the long run as most anything else that we show you in terms of testing.

Mr. BURTON. Has there been a test by any scientifically objective standards or any objective forum of your assertions? Have you been permitted, if you will, to have your point of view brought to bear, vis-a-vis, the medical adviser or advisers of the Social Security Administration in some objective forum, or have they been proceeding at one level and you at a parallel but different level and the two lines have never had the opportunity to join with one another?

Dr. RASMUSSEN. I have had the opportunity to present my views to the Social Security Administration and to the medical profession in general, as well. And the findings of pulmonary function studies that we have obtained have been published in the medical literature. And I must say the data that is there is pretty solid data.

Mr. BURTON. How many men in the practice of medicine have the kind of expertise that you would think useful to you? Is this a very limited number or percentage of professionals or isn't this an area of significant specialty?

Dr. RASMUSSEN. Very definitely. The type of, well, setup that I have and even what I do is probably fairly unique. But it certainly is not available to the average clinician, the average practitioner, or the average specialist.

Mr. BURTON. Do you have in your area of specialty a subgrouping in the AMA or is there an organization, if you will, of medical men in this specialized area?

Dr. RASMUSSEN. Not a complete organization limited so strictly. There are a number of specialty groups concerned with lung diseases, for example, but not specifically with the type of physiologic studies that we perform.

Mr. BURTON. It is very important that there be something better than a majority vote in this respect and we never intended it to be a majority of those who are M.D.'s that are going to make this judgment.

On the other hand, how could any Congressman on an objective basis say that your viewpoint is not a solitary one? I don't think the point of view that you take has to be a majority one, nor a dominant one, nor a 42-percent one, if you will. But the Social Security Administration would probably be ill-advised, all things being considered, to take a single opinion. You see—and I am probing—because we have got 7 months and 10 days or thereabouts to lick this thing. What mechanism could we urge upon the Social Security Administration to review their standards?

You needn't come up with this this second, but if you have got one you would be very well advised to let enough members of this committee be aware of it so that we can at least pursue that.

Dr. RASMUSSEN. I think that the Social Security Administration has available sufficient backlog of actual studies that they could certainly review these and compare them with, let's say, the X-ray evidence in the case, the cases, and others, whatever other criteria they wish to employ, to certainly point to the fact that there are large numbers of miners who have disabling lung diseases that just don't happen to fit into the pattern that the British have described. And the Social Security Administration, I am sure, has an ample number of these on hand at the present time.

Mr. BURTON. Is there any other recognized authority in Great Britain that either concur with you or say that they cannot reject your conclusions?

Dr. RASMUSSEN. Well, I don't know any who can say flatly that they reject my conclusions, because I think if you examined carefully the basis on which they have formed their conclusions, you would find that this was a very limited study, a single study. It wouldn't be difficult to make some observations about the validity of that particular study.

Mr. BURTON. Do you agree with the notion that a death certificate saying in effect heart failure is hardly worth the paper it is printed on for purposes of rejecting the claim of a widow whose husband worked in the mines for 20, 25 years?

Dr. RASMUSSEN. Well, if it said heart failure, that would lead me to ask whether it was right ventricular or left ventricular failure.

Mr. BURTON. Part of my point is that I suspect a significant reason why in Pennsylvania you have a higher rate of approval was that there were a reason for examining men more carefully; there was a reason for preserving the record, because there were benefits that might be triggered off as a result. That was not an operative situation in Kentucky and West Virginia and there was no need to indulge at what might be abstract research. I do not know, but I heard some testimony today that left me with the impression that if the medical report said heart failure is the cause of death that might be a basis for overcoming the rebuttable presumption which is built into the law and I can't see how that can be the case at all, particularly anything related to the heart function.

Isn't a lung function and heart function so interrelated that such a reason for death has to be taken, if you will, can't be used to refute a presumption running in support of a claimant if the miners worked in the field for a number of years?

Dr. RASMUSSEN. I think this, that there are certain conditions, fatal conditions, of the heart which so far as anybody knows have no bearing on the lung itself. On the other hand, the lung disease can cause heart failure of one particular type.

The only trouble with the death certificate is while a man may, for example, have died of a coronary artery occlusion which we think would be unrelated to the lung disease, this does not tell us how much impairment in lung function or how much disability from lung disease the man had before he died. He may have been totally disabled as a result of lung disease but then died of this coronary artery occlusion. The death certificate in most instances does not reflect his disabling lung disease. I don't think that this is any different in Pennsylvania than it would be in Kentucky. I think that the Social Security Administration has made efforts to look deeper into the history besides just the death certificate. These efforts, I think, not through, necessarily, the fault of the Social Security Administration, have not really been adequate.

I have observed, for example, in our own hospital the way in which the records are searched. They are not searched by qualified people who know what they are reading about. They are seeking only very limited bits of information. So that many of the records that do exist have been inadequately evaluated.

But, again, as I say, this is not what the Social Security Administration has done, but this is the way it has been carried out in different hospitals.

Mr. HAWKINS. Mr. Burton, we do have another witness, but time will be running out on the other witness, I am afraid, if we don't try to move along.

Mr. BURTON. If I have to stay here until midnight, at least one member will stay here.

Mr. HAWKINS. Could I interrupt just 1 minute to have Mr. Landgrebe introduce his group. I see another colleague of ours on the committee is present with a group. It seems to be an afternoon for visiting.

Mr. LANDGREBE. Thank you, Mr. Chairman. I have some newlyweds here from my district. Mr. and Mrs. Ron Culp; and also Attorney and Mrs. Joseph Bumbleburg, also good friends of ours.

Mr. HAWKINS. Very pleased to have you visit us, Mr. Landgrebe.

Mr. LANDGREBE. Thank you very much.

Mr. BURTON. This suggestion won't be very useful until we get to around the 1st of November, but from that point on I would encourage you to induce every coal miner that comes within the range of your voice to file a claim, because this law is constructed that a claim can be filed now and that claim, is then on the records for purpose of preserving his and his widow's rights under the first section of this bill. It would be counterproductive now because the Social Security Office would be flooded with claims, it may not be at this point, where they are ripe. To preserve their interest and their rights I would urge starting about November 1 you get on your horse and see that everybody has complied with this condition precedent to them either receiving benefits under the lifetime payment provision of this law or for that matter their widows.

It is another part of what I thought was a very carefully drafted piece of legislation that I think is very important that it be understood.

We have not mentioned this yet publicly because we have not wanted to, if you will, have the currently rip claims lumped in with these others and therefore slow down, if you will, the process of the filings in the determination of eligibility. But please do remember that.

Dr. RASMUSSEN. I will do so. And I appreciate that comment because there are many, many, many miners who are now working who, while not totally disabled, will become so over the next 5 to 10 years regardless of how clean the mines are made.

Mr. BURTON. (presiding). That really is the point to preserve their right and then that determination can be made. They could make it once and then they can appeal it, but it is our understanding that once you filed that claim you have protected your right for the rest of your life. It was the only way out.

Is there anything else you would like to tell the subcommittee apart from another suggestion that you do communicate with us if there is some way that you can think of that will cause, if you will, an adjustment of how the Social Security defines its yardsticks?

Dr. RASMUSSEN. I want to make one comment about the X-ray criteria. I am certainly not alone in criticizing the X-ray for being the imperfect tool that it is. This is well known and statements have been made by expert radiologists regarding the requirements, the high requirements for the technical excellence and so forth. And also you can find many witnesses who will concur that while the X-ray may not be positive, the likelihood of an autopsy or biopsy data showing definite pneumoconiosis is very high.

Mr. BURTON. One final point that occurs to me because it is also important. I think there is some misunderstanding at the executive level of the Social Security Administration. It is obviously very possible for a person to be totally disabled and still working. I am reminded of a woman who could do little more than move her chin about a quarter of an inch, a paraplegic, who was disabled but ineligible for benefits under our State public assistance laws because she was a telephone operator. So the finding of disability is not precluded by the mere fact that you happened, by some inordinate dint of effort or will, to be putting in a substantially full workweek. It was to anticipate that problem and eliminate it that we geared these earnings as a mechanism to bring you down to zero benefit level, but we did not view the fact that you were working as any evidence, per se, that you didn't come within the total disability parameters. It is a subtlety but it is really quite important.

Dr. RASMUSSEN. I am aware that claims of those who are working are not completed. They are not given the same, let's say, even limited testing that the nonworking miner is. However, I understand that people with complicated pneumoconiosis may be allowed to continue working.

Mr. BURTON. Yes, but there is a wage offset to that. In other words, you can earn all of the first \$1,650 a year, and half of the next \$1,200. And half of the next \$1,200 is deducted from your black-lung payment. And beyond that every dollar you earn there is a dollar-for-dollar reduction for your black-lung payment.

Dr. RASMUSSEN. But I point out here that this business of automatic assumption of disability in the case of complicated pneumoconiosis, which is a synonym for progressive massive fibrosis, they are not sepa-

rate diseases as Mr. Erlenborn had suggested, this holding so firmly to the British concept about this is one of the major reasons for the dissatisfaction in the coalfields because many of those with complicated pneumoconiosis are not significantly impaired and as a consequence of this—

Mr. BURTON. We made the judgment there that that was an absolutely automatically qualifying situation. There were others in addition. We did that, given the nature as we understood it, that this was a one-way street, once you had progressive or once you had complicated pneumoconiosis.

Dr. RASMUSSEN. This, of course, again you might have to look at it in a longitudinal fashion. In other words, this man may be severely disabled in 10 years or something like that. But my point, too, is that given coal miners with qualitatively and quantitatively identical physiologic derangements, it makes no sense to compensate the one with a small lump, let's say, as big as your thumb, and deny compensation to the one who has no lump of that size. This is illogical. While it may be the majority of medical opinion, this is, by and large a result of convention and not actual medical knowledge. This, of course, is the base with the whole concept of the X-ray diagnosis and the clinging to this in industrial medicine.

Mr. BURTON. Well, I think the coal miners are indebted to you. We in the Congress are. You did much to induce and keep alive our interests.

And if you have got this mechanism, please come forward, because it is not going to do much good to argue along parallel lines. We will not pass a law, I don't think, that will substantially change this picture. Maybe we will be lucky enough to do so. But we might possibly, by dint of the validity of what I would hope to be the situation if we can find some forum or arbiter, if you will, that could at least say that your position cannot be rejected immediately, hopefully we could take a little stronger position than that.

Thank you very much, Doctor.

Dr. RASMUSSEN. Thank you.

Mr. BURTON. We have Dr. Kerr, the director of the Department of Occupational Health of the United Mine Workers of America.

Dr. Kerr.

STATEMENT OF DR. LORIN E. KERR, DIRECTOR, DEPARTMENT OF OCCUPATIONAL HEALTH, UNITED MINE WORKERS OF AMERICA; ACCOMPANIED BY BEDFORD W. BIRD, DEPUTY DIRECTOR, DEPARTMENT OF OCCUPATIONAL HEALTH, UNITED MINE WORKERS OF AMERICA

Mr. BURTON. Identify yourself, Doctor, and the gentleman you have with you, and proceed as best suits your fancy.

Dr. KERR. My name is Dr. Lorin E. Kerr. I am director, Department of Occupational Health, United Mine Workers of America, and visiting professor of public health at Howard University College of Medicine.

I have with me my deputy, Mr. Bedford W. Bird.

I wish to express the union's appreciation to this subcommittee for holding these hearings on bills to amend title IV of the Federal Coal

Mine Health and Safety Act of 1969. It is appropriate that this subcommittee should hold the first hearings to amend this historic act and that this initial attention is focused on title IV.

Mr. Chairman, you and the other members of the subcommittee played a major role in assuring the provision of benefits for black-lung victims as well as the ultimate passage of the law. We are also mindful of the precedence this law established in your highly successful endeavors to protect the on-the-job health of all workers which culminated with the passage of the Occupational Health and Safety Act of 1970. Although the 1970 act is not concerned with the prevention and control of the health hazards plaguing the Nation's coal miners, the administration of the 1970 act does have an immediate and direct effect on the Federal Coal Mine Health and Safety Act of 1969 and the UMWA shares with all of organized labor a deep concern about the matter on which I will elaborate later in my testimony.

As you know, the authority and responsibility for the enforcement and compliance with the health standards in the Coal Mine Act is delegated by Congress to three Federal departments.

Mr. BURTON. For the benefit of the reporter, we are going to insert here your whole statement in the record at this point, which will make the compiling of the hearing a little easier and may perhaps reduce a little bit of the workload of our diligent reporter.

Please proceed.

(The statement follows:)

STATEMENT BY LORIN E. KERR, M.D., M.P.H.

My name is Doctor Lorin E. Kerr. I am Director, Department of Occupational Health, United Mine Workers of America and Visiting Professor of Public Health, Howard University College of Medicine.

I wish to express the union's appreciation to this subcommittee for holding these hearings on H.R. 18; H.R. 42; H.R. 43; and H.R. 5702, bills to amend title IV (black lung benefits) of the Federal Coal Mine Health and Safety Act of 1969. It is appropriate that this subcommittee should hold the first hearings to amend this historic act and that this initial attention is focused on title IV. Mr. Chairman, you and the other members of the subcommittee played a major role in assuring the provision of benefits for black lung victims as well as the ultimate passage of the law. We are also mindful of the precedence this law established in your highly successful endeavors to protect the on-the-job health of all workers which culminated with the passage of the Occupational Health and Safety Act of 1970. Although the 1970 act is not concerned with the prevention and control of the health hazards plaguing the nation's coal miners, the administration of the 1970 act does have an immediate and direct effect on the Federal Coal Mine Health and Safety Act of 1969 and the UMWA shares with all of organized labor a deep concern about the matter on which I will elaborate later in my testimony.

As you know, the authority and responsibility for the enforcement and compliance with the health standards in the coal mine act is delegated by Congress to three federal departments. There are none of these, however, that can successfully achieve its assigned responsibilities by independent action. In each instance all interested parties, but in particular the union, must and have played an active and aggressive role. During the seventeen months since the law was enacted the union's Department of Occupational Health has conducted an intensive campaign to help coal miners disabled by coal workers' pneumoconiosis and widows of miners killed by the disease receive black lung benefits. More than 50 articles, most of which contained detailed information concerning title IV, have appeared in the United Mine Workers Journal which is mailed to every member of the union. These included such items as a black lung application form; the rules and regulations for black lung benefits which appeared in the Federal Register April 7, 1970; a continuing black lung questions and answers column; and a listing of the name and address of each union district office rehabilitation counselor ap-

pointed by President Boyle to assist black lung victims. The federal black lung rules and regulations were also mailed to every local union. Mr. Chairman, sample copies of these items appear as appendix A at the end of this statement and I respectfully request they be inserted with my statement in the record of these hearings.

Beginning in May 1970 the department conducted two series of meetings throughout the coal fields with the union district rehabilitation counselors and representatives of the Social Security Bureau of Disability Insurance and the UMW Welfare and Retirement Fund. The first meetings were designed to facilitate and hasten all applications while the second were concerned with immediate implementation of the reconsideration if all applicants denied benefits. During June 1971 a third series of meetings will be devoted to the activation of the Social Security Administration appeals procedure for those receiving a negative response to an application for reconsideration. In the union districts these regional meetings are followed by continual local group and individual meetings.

The Department, since December 30, 1969, when the bill was signed into law, has received each day more than fifty written requests for help and information on black lung benefits. Replies to these and innumerable telephone inquiries are never delayed more than forty-eight hours. In addition, there have been almost daily conversations and many personal meetings with the Bureau of Disability Insurance in an effort to resolve individual applications, policies and issues.

Finally, I am sure you are aware of our role in the National Conference on Medicine and the Federal Coal Mine Health and Safety Act of 1969 held here in Washington, June 15-18, 1970. This was the first public review of the numerous health aspects of the act and of necessity considerable time was devoted to title IV and its administrative problems. The conference was supported by a grant from the Bureau of Occupational Safety and Health, Department of Health, Education, and Welfare; the coal industry and the United Mine Workers of America. Mr. Chairman, I have a copy of the papers and proceedings of that conference for each member of the subcommittee because I believe this report will be a standard reference on the diagnosis, prevention and control of coal workers' pneumoconiosis for some time to come. I think you will also find the contents helpful to you in your deliberations on the proposed amendments. Additional copies are available at no cost to anyone requesting them.

We have been impressed with Congressional wisdom in assigning the administrative responsibilities for title IV to the Social Security Administration. The concern for people manifested by the Social Security Bureau of Disability Insurance has been a refreshing contrast to the usual adversary attitude encountered in most state workmen's compensation agencies. It was this attitude which motivated the Bureau to implement the act the same day the President signed the bill, instead of waiting one and one-half days for the beginning of the new calendar year. This action did, in fact, provide a number of applicants with an extra month of benefits. There are many other significant actions which further substantiate the Bureau's capability to handle the black lung program. We are, however, deeply concerned about the restrictions we constantly encounter which are attributed by the Bureau to the absence of Congressional authority or the lack of clarity in the legislative intent. We think the passage of these amendments will eliminate some of these restrictions.

We heartily endorse H.R. 18. This amendment will help to rectify the serious problem surrounding the overly long delayed publication of the criteria for determining the adequacy of state workmen's compensation coverage for pneumoconiosis by the Department of Labor. The proposed rules were published in the Federal Register on October 9, 1970, with a 30-day proviso for comments. However, the final rules and regulations were not published in the Federal Register until March 17, 1971. As you know, by that time a number of legislatures had adjourned and, lacking federal criteria, they took no steps to amend their compensation laws. In fact, they resisted the importuning of UMW district presidents to at least take the six initial steps spelled out in the act. Detailed information essential for implementing these requirements was developed early in January 1971 by the Department of Occupation Health and sent to each district president by President Boyle with a memorandum insisting on immediate action. Thus far only two states, Montana and West Virginia have made essential legislative changes. Some states opined that the lack of federal criteria indicated that P.L. 91-173 would be repealed by 1973, thus obviating the need to amend state laws. The passage of H.R. 18 will correct misconceptions and permit the orderly passage of state laws without penalizing black lung victims for whom the benefits were intended.

The union also endorses H.R. 42. On March 26, 1971, President Boyle addressed a letter to Commissioner Robert M. Ball regarding the proposed rule making concerning black lung benefits published in the Federal Register on March 4, 1971 with a 30-day proviso. A copy of this letter is attached and labeled appendix B. The first point in that letter deplored the absence in the proposed rules of any provision for the payment of benefits to dependent survivors other than widows. President Boyle noted this was a serious deficiency in P.L. 91-173 and strongly recommended that "... the Department of Health, Education, and Welfare take action to have legislation introduced at an early date to rectify this grievous oversight." Precedent for the passage of H.R. 42 exists in other sections of Social Security legislation where payment is made to orphans.

The UMWA strongly supports H.R. 43. We have disagreed many times with the Social Security administrative decision which permits the reduction of black lung benefits by any payments for a distinct and separate disability regardless of the source of such not be construed as workmen's compensation would remove the administrative subterfuge which Social Security Administration has used to support its decision. President Boyle, in his letter of March 26, 1971 to Commissioner Ball, noted above, vigorously protested this administrative decision as it appears in the proposed rule making of March 4, 1971. His letter states:

"There is nothing in the law to support your deduction of workmen's compensation payments of *any* disability. The context in which this is covered in the law clearly indicates that the disability under consideration is one produced by black lung. Moreover it is contrary to the purported concern for people expounded by the Social Security Administration to reduce the benefit for a coal miner disabled by black lung by the amount paid by state workmen's compensation for a totally unrelated disability such as an above-the-knee double amputation."

The same statement is also applicable to the Social Security Administration reduction of black lung benefits by an amount equal to OASDI benefits paid for a separate disability. The passage of H.R. 43 would correct this defect.

The UMWA heartily endorses H.R. 5702. The passage of this amendment will rectify a serious inequity in P.L. 91-173. At present it is impossible for a coal miner with pulmonary impairment, regardless of the severity of the resultant disability, to receive black lung benefits unless his chest X-ray shows dust opacities thought to be characteristic of coal workers' pneumoconiosis. This restriction unjustly penalizes many miners who are totally disabled because of a protracted occupational dust exposure. Moreover, the X-ray, good as it may be, should not be used as *the sole determining test* of an occupational pulmonary disability. The adequate interpretation of a chest x-ray requires an experienced, well trained and skilled radiologist. The chest x-ray, however, is only one piece of the medical armamentarium which the physician uses to arrive at a correct diagnosis. In this instance the physician must at least combine information from the x-ray with the results of pulmonary function tests and occupational and clinical history. Numerous physicians and miners have complained bitterly to me because the present law does not recognize the man who is totally disabled but has a negative chest x-ray. The passage of H.R. 5702 would recognize the total man and his disability which in turn would necessitate the development of adequate diagnostic criteria dependent on a number of factors.

While these hearings are concerned primarily with four proposed amendments. I am certain you share our concern about a number of other closely related health matters effecting P.L. 91-173 and its administration which should also be subjects for additional amendments. Again, I refer you to President Boyle's letter to Commissioner Ball (appendix B) wherein he reiterates his earlier denunciations of the administrative decision expressed in 410.555(a)(3) and 410.520 of the March 4, 1971 proposed rule making which condones the reduction of black lung benefits paid Pennsylvania miners and widows' by an amount equal to state benefits which they are entitled to receive from general tax revenues. President Boyle's letter elaborates a little more on this matter but stresses the fact that it is an administrative decision in conflict with both the letter and intent of P.L. 91-173.

The same letter also voices the union's continuing opposition to the reduction of black lung benefit payments by the 1965 Social Security "offset provision." This has caused untold hardships among disabled miners who have suffered reductions of \$50 to \$200 per month in social security benefits.

A final item in that letter recommends that a wife or widow be qualified as a legal representative in the March 4, 1971 proposed rule making. In the absence

of such a regulation the wife or widow is presently required to pursue the legal process of qualifying as legal representative. In such instances lawyers' fees may be as high as twenty-five percent of the total black lung benefits payable. Acceptance of this recommendation will prevent further diminution of the already meager resources of the wife or widow.

Another matter concerning the administration of black lung benefits is covered in President Boyle's letter of April 13, 1971 to Commissioner Ball, attached as appendix C. This letter urges the Bureau of Disability Insurance to adopt the same criteria for the diagnosis of black lung as the one formulated by the Bureau of Occupational Safety and Health published in the Federal Register of August 19, 1970. Contrary to the arguments presented by Social Security Administration, there is good reason to believe that the adoption of these criteria would hasten decision making on black lung applications and reconsideration of denials. The present dual system also raises unnecessary questions concerning the validity of two standards for the same diagnostic procedure within one federal department, particularly when one standard has acknowledged superiority over the other.

Finally, I must draw your attention to the apparent decimation of the Bureau of Occupational Safety and Health by the Secretary of Health, Education, and Welfare. On April 27, 1971 President Boyle sent a telegram and confirming letter to Secretary Richardson deploring his violation of the Occupational Safety and Health Act of 1970 and stressing the destructive effect his inaction would have on the Federal Coal Mine Health and Safety Act of 1969. This telegram is attached as appendix D. The 1970 law requires the designation of a National Institute of Occupational Safety and Health on April 28, 1971. To date this pronouncement has not been made. On April 16, 1971 the Federal Register indicated the Bureau of Occupational Safety and Health was to have immediate and direct administrative responsibility to the Assistant Secretary for Health and Scientific Affairs. Contrary to this formulation, we understand it is planned to make the Bureau administratively responsible to the Assistant Secretary via the Surgeon General then the Director of Health Service and Mental Health Administration and possibly the Director of the Communicable Disease Center. This extraordinarily long chain of command for a Bureau charged with major responsibilities by both P.L. 91-173 and P.L. 91-596 would confirm suspicions that such laws are a sham and will never be enforced.

Organized labor, until recently, has given top priority to programs designed to provide medical security because of the preeminence given this need by the workers themselves. There is now sufficient public attention focused on this subject that it is safe to conclude we are not far removed from a national health program which, hopefully, will remove the financial barriers and provide a planned approach to comprehensive, readily accessible medical care.

Consequently, organized labor is able to direct its attention to the grisly toll of job-related death and disability. This is rapidly gaining acceptance as the next major health problem confronting the workers and they will not tolerate current administrative tinkering with bills designed to eliminate the needless slaughter on-the-job.

After nearly 18 months of operating experience with the federal coal mine act the UMW feels that it is inconceivable that Secretary Richardson would even consider destroying both the letter and intent of P.L. 91-173. This experience has also convinced the union that the present director of the Bureau of Occupational Safety and Health has established himself as a thoroughly competent individual fully capable of assuming the responsibilities of the National Institute of Occupational Safety and Health and the implementation of the Occupational Safety and Health Act of 1970.

The nation's coal miners who fought so hard for the 1969 legislation have unsuccessfully petitioned Secretary Richardson not to subvert the National Institute or the 1969 and 1970 Acts. We now turn to Congress with a request to stop the impending chaos.

Thank you.

APPENDIX A

[From the United Mine Workers Journal, Jan. 15, 1970]

20,000 MINERS APPLY FOR "BLACK LUNG" AID

More than 20,000 coal miners in the United States have already applied for "black lung" benefits from the Federal government under provisions of the new Federal Coal Mine Health and Safety Act of 1969. The Act was signed into law on December 30 by President Richard M. Nixon. It is expected that the Social Security Administration will be able to start Federal "black lung" payments to disabled coal miners about February 1.

Meanwhile, the UMWA was pushing in three major coal states for new or revised workmen's compensation laws that would pay state benefits to coal worker victims of pneumoconiosis.

Leaders of the UMWA in West Virginia are preparing for vigorous lobbying efforts before the State Legislature, which meets for 30 days beginning January 14. Leaders of the four UMWA Districts with members in the Mountain State—Thomas Williams, District 6, R. R. Humphreys, District 17, Larkin Philpott, District 29 and L. J. Pnakovich, District 31—have informed their members of formation of the "UMWA Committee for Coal Mine Health and Safety." This Committee is made up of elected safety committeemen, appropriate District officials and other local union officials. The sole purpose of this committee at the present is to lobby for a better "black lung" law in West Virginia.

Officials of this committee have drafted a bill which will be submitted to the state legislature which is meeting in its 30-day budget session. Under the West Virginia constitution this session can only consider budget matters plus other items placed in the call by Gov. Arch Moore, Jr. Included in the call at the request of UMWA President W. A. Boyle is revision of "black lung" legislation. The UMWA bill incorporates the eight points of requested improvements in the law sent by telegram earlier this year from President Boyle to Governor Moore.

Another item in the call could result in a bill that would give the West Virginia Department of Mines the authority to make up-to-date rules and regulations on its own. UMWA officials will probably support this measure because there is no time during this 30-day session to completely revamp West Virginia mining laws.

In Kentucky hearings are under way in the state legislature for a "black lung" law in that state. *Grant Knuckles*, a UMWA attorney, reported that similar bills have been introduced in the Kentucky House of Representative and Senate.

FORM FOR COAL MINERS TO FILE FOR 'BLACK LUNG' BENEFITS

EDITOR'S NOTE.—The form below is published in this issue of the *Journal* to assist coal miner victims of coal workers' pneumoconiosis—"black lung"—in applying for Federal benefits under the new Federal Coal Mine Health and Safety Act. To apply for benefits under the new law fill out this form. Take it to the nearest Social Security office or mail it as soon as possible. Any delay in filing could cause a loss of benefits. If you think you are eligible for benefits file this form. Payments will start as of the date you file. If it is determined that you are eligible. The law does not permit back payments earlier than the date you, yourself, file.

Name of the Coal Miner_____

Social Security Number_____

"I _____ hereby apply for any benefits due me (and my family) under the Federal Coal Mine Health and Safety Act."

Signature of person making the statement

Signature_____Mailing Address_____

(name)

City_____State_____Zip Code_____Date_____Telephone No._____

Witnesses

If this statement has been signed by mark (X), two witnesses who know the person making this statement must sign below, giving their full addresses.

1. Signature_____Address_____

2. Signature_____Address_____

[From the United Mine Workers Journal, Jan. 15, 1970]

FULL TEXT OF 1969 ACT—NEW COAL MINE SAFETY LAW

EDITOR'S NOTE.—On December 30, 1969, Public Law 91-173, the Federal Coal Mine Health and Safety Act of 1969, became law. The full text of this historic piece of legislation is printed below. An analysis by Safety Director Lewis E. Evans will appear in a future issue of the Journal.

AN ACT To provide for the protection of the health and safety of persons working in the coal mining industry of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, (That this Act may be cited as the "Federal Coal Mine Health and Safety Act of 1969".

FINDINGS AND PURPOSE

SEC. 2. Congress declares that—

(a) the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the miner;

(b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal mines cause grief and suffering to the miners and to their families;

(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal mines is a serious impediment to the future growth of the coal mining industry and cannot be tolerated;

(e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;

(f) the disruption of production and the loss of income to operators and miners as a result of coal mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(g) it is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health, Education, and Welfare and the Secretary of the Interior to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal miners; (2) to require that each operator of a coal mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to, the States in the development and enforcement of effective State coal mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal mining industry, research and development and training programs aimed at preventing coal mine accidents and occupationally caused diseases in the industry.

DEFINITIONS

SEC. 3. For the purpose of this Act the term—

(a) "Secretary" means the Secretary of the Interior or his delegate;

(b) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and any place outside thereof, or within the District of Columbia or a possession of the United States, or between points in the same State but through a point outside thereof;

(c) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands;

(d) "operator" means any owner, leasee, or other person who operates, controls, or supervises a coal mine;

(e) "agent" means any person charged with responsibility for the operation of all or a part of a coal mine or the supervision of the miners in a coal mine;

(f) "persons" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) "miner" means any individual working in a coal mine;

(h) "coal mine" means and area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

(i) "work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of the coal mine.

(j) "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated;

(k) "accident" includes a mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of, any persons;

(l) "mandatory health or safety standard" means the interim mandatory health or safety standards established by titles II and III of this Act, and the standards promulgated pursuant to title I of this Act; and

(m) "Panel" means the Interim Compliance Panel established by this Act.

MINES SUBJECT TO ACT

SEC. 4. Each coal mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of this Act.

INTERIM COMPLIANCE PANEL

SEC. 5. (a) There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the Bureau of Standards, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, or his delegate;

(4) Director of the Bureau of Mines, Department of the Interior, or his delegate; and

(5) Director of the National Science Foundation, or his delegate.

(b) Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

(c) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, the Secretary of Labor, and the Secretary, shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this Act.

(d) Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof.

(e) Notwithstanding any other provision of law, the Secretary of Health, necessary for proceedings required to be conducted in accordance with the provisions of this Act.

[From the United Mine Workers Journal, Feb. 1, 1970]

EXPLANATION OF HEALTH ASPECTS OF NEW FEDERAL SAFETY LAW

(By Lorin E. Kerr, M.D., *Director UMWA Department of Occupational Health*)

Workmen's compensation payments for "black lung" disability have been so widely publicized by newspapers reporting on the new Federal Coal Mine Health and Safety Act of 1969 that even coal miners are tempted to overlook the more far reaching health provision of this historic legislation. The new law is much more than a belated, short-run attempt to "compensate" coal miners and their

families for suffering and death—at so many dollars per month. More importantly, it is the first big break through in our long battle to control and eventually eliminate the “black lung” menace from the coal industry.

The health sections of the Federal Coal Mine Health and Safety Act of 1969 attack coal workers' pneumoconiosis from three directions: detection, control and prevention. Each approach goes beyond anything the Congress has done before now with regard to an occupational disease in a major industry. It is indeed historic occupational health legislation.

Before 1972, according to the law, each man working in the mines will have a physical examination, including chest X-rays and pulmonary function tests. The examination will determine whether he already has “black lung” and, if so, how far the disease has advanced. Follow-up examinations are required three years later and then at intervals not to exceed five years. Each new worker in the coal fields must be given the same examination when he starts to work and again three years later. The Department of Health, Education, and Welfare is responsible for seeing to it that these examinations are given and that the records of tests are in good order.

LUNG EXAMS SERVE PURPOSE

Periodic lung examinations of all coal miners will serve several purposes. Early detection and proper medical care will go a long way toward reducing the crippling effects of the disease. They will also provide a useful tool for determining the adequacy of the campaign to lower the levels of coal dust (eventually eliminate dust) in the mines. If follow-up examinations show new cases of coal workers' pneumoconiosis are developing—or miners who previously showed only a small amount of lung changes due to coal dust begin showing greater accumulations of coal in their lungs—the new standards for permissible dust levels could not be adequate. As an immediate protection, the law provides that the affected miner can transfer to another, less dusty operation at no loss of his regular rate of pay received immediately prior to his transfer.

Coal miners, engineers and industrial hygiene specialists will provide the know-how needed to realize the preventive aspects of the new law. The goal is to reduce to “safe” limits the amount of coal dust in the mines. The new Act establishes that six months after becoming the law (that is, before July, 1970) dust standards in the nation's coal mines shall be 3 milligrams of respirable dust per cubic meter of air. Extensions of time to comply with this standard may be granted. However, three years after enactment the law reduces this standard to 2 milligrams of respirable dust per cubic meter of air. While non-compliance exceptions may be extended for three years, the law clearly states that at the end of six years the standards must be no more than 2 milligrams. Beginning in 1971, the Secretary of Health, Education, and Welfare has the continuing authority to further reduce the dust standards below those established by the Act, thus advancing the timetable required by the law if stricter health protection measures are needed before 1976.

The new Coal Mine Health and Safety Act also protects the hearing of the miner. This is done by requiring that the noise standards prescribed under the Walsh-Healy Act will be observed in the coal mines. The new Act further directs that the Secretary of HEW shall improve upon these standards and recommend further hearing safeguards when indicated.

Never before have such measures to protect the health of workers on the job been incorporated into national legislation. Eventually workers in other industries will benefit from this first national move to improve occupational health. The Bureau of Occupational Safety and Health within the Department of Health, Education, and Welfare is the agency most equipped by training and experience to assume this responsibility. This leads me to the second reason for stating that this is truly historic legislation.

HEALTH PROGRAM STARTED IN 1914

Following the Triangle Shirtwaist fire in New York in 1910 which needlessly claimed the lives of 175 young women, outstanding public leaders recommended that the U.S. Public Health Service establish a program designed to protect the health of workers on the job. This was done in 1914 with the formation of what became the Division of Industrial Hygiene. This Division conducted many outstanding studies designed to detect, prevent, and control numerous occupational

diseases. The program of this Division was particularly effective during World War I and World War II. During wartime, at least, necessary precautions to protect the health of the workers on the job were considered of national importance.

Between the World Wars there were numerous outstanding studies on the toxicity of various products. These were always followed by recommendations to correct the hazards. At no time, however, did the U.S. Public Health Service nor the state health departments have the authority to do more than recommend the correction of hazards. Federal Funds were made available during World War II to expand the Division of Occupational Health by adding necessary manpower at both the national and the state level. Federal grants were made to state health departments and some outstanding programs were developed.

[From the United Mine Workers Journal, Feb. 1, 1970]

Q. AND A. ON "BLACK LUNG" COMPENSATION

EDITOR'S NOTE.—The UMW's Department of Occupational Health, headed by Dr. Lorin E. Kerr, has received hundreds of letters asking questions about the new Federal "Black Lung" compensation law. As of January 21, the Social Security Administration had received 60,000 applications for the Federal compensation under the new law. By the time you read this they expect to have over 70,000. Listed below are the questions most frequently received by the Department of Occupational Health. The answers are correct on the basis of the best information available at the present time.

1. *Where should I file for black lung benefits?*

Answer. At your nearest Social Security office. It is important to apply now, because benefits are effective only with the date of application. If you are unable to visit the office, write as soon as possible. The address can be found in the telephone directory or obtained from your post office.

2. *How much will be the benefits be?*

Answer. For single miners, \$136 per month; it goes up to \$272 per month for a miner with three or more dependents.

3. *How much money will I have to spend for medical reports to prove my claim?*

Answer. You may not have to spend any since the evidence needed to support your claim may already be available. However, the law provides that claimants will be reimbursed for reasonable medical expenses incurred in establishing their claims.

4. *Are benefits payable to widows?*

Answer. Yes, *regardless* of when the miner died provided that he was disabled by or died from pneumoconiosis. Such a widow must not have remarried and must have been living with or dependent for support on the deceased miner at the time of his death, or, if living apart, it must have been for reasonable cause or because of miner's desertion. Once a miner starts drawing these benefits his widow will become entitled to benefits at his death, if she meets the other requirements. The widow will receive the basic monthly amount (\$136) plus any allowance due for children up to the family maximum of \$272.

5. *How about payment to a wife or child?*

Answer. There is no provision for direct payment to a wife or child, but if a wife or child qualifies as a dependent, this will result in a higher benefit rate payable to the disabled miner. (Benefits to a widow are also increased if she has dependent children.) The maximum family benefit is twice the basic benefit payable to a disabled miner (about \$272 a month at the present time).

6. *Is a miner who retired many years ago because of pneumoconiosis due to his employment in an underground coal mine eligible for benefits?*

Answer. Yes, the law sets no time limit on when the disability must have begun. Similarly, if the miner is deceased it does not matter how long ago he died for his widow to qualify.

7. *What coal miners are eligible?*

Answer. Any individual who has worked underground or on the surface in preparing coal who has pneumoconiosis as prescribed by the law or is found by the Social Security Administration to be incapacitated by the disease to a degree that they are totally disabled. The criteria may not be more restrictive than those for determining entitlement to social security disability benefits.

8. *What is pneumoconiosis?*

Answer. The law defines pneumoconiosis as a "chronic dust disease of the lung arising out of employment in an underground coal mine."

9. *Are other chronic dust diseases of the lung included in the law for purposes of "black lung benefits"?*

Answer. Yes. A partial list of chronic dust diseases of the lung that may have arisen out of employment in an underground coal mine includes pneumoconiosis, anthracosilicosis and silicosis.

10. *What benefits must be reduced because of entitlement to workmen's compensation, unemployment compensation, or disability insurance benefits under State law on account of disability of the miner?*

Answer. Either miner's or widow's benefits but only if the workmen's compensation, unemployment compensation, or disability insurance benefit is on account of the disability of the miner.

11. *If an individual becomes entitled to miner's black lung benefits, may he work without losing benefits?*

Answer. A totally disabled miner beneficiary may earn up to \$1,680 a year without any reduction in his black lung benefits. There is a \$1.00 reduction in benefits for every \$2.00 earned between \$1,680 and \$2,880, and a dollar-for-dollar reduction thereafter for earnings over \$2,880. Work deductions do not apply to widows or dependents.

12. *Should an individual also apply for State workmen's compensation benefits?*

Answer. The law requires that you must also file a claim under the State workmen's compensation law unless you have already done so or the filing of such a claim would be futile because you would clearly not be eligible. Your Union District office can help answer this question for you on State workmen's compensation.

13. *Should miners receiving state workmen's compensation benefits for "black lung" also apply for Social Security "black lung" benefits?*

Answer. Yes.

NEW HEW BROCHURE IS AVAILABLE

There is a new brochure out entitled, *A Look at the Bureau of Occupational Safety and Health*. It is published by the U.S. Department of Health, Education, and Welfare.

It briefly describes the Bureau's programs in several areas including coal miners' "black lung" diseases. Readers interested in receiving a copy should write the UMWA Department of Occupational Health, 1437 K Street, N.W., Washington, D.C. 20005.

[From the United Mine Workers Journal, Mar. 1, 1970]

NEW UMWA "BLACK LUNG" BOOKLET

The new "black lung" booklet published by your *Department of Occupational Health* has a great deal of information which every coal miner and pensioner should have. Write to the department at the address below for your copy. This edition has more material than the previous one which many of you have already received.

Ten of the 36 pages in the new booklet are given over to reproductions in color showing sections of lungs in various stages of damage from coal workers' pneumoconiosis. For contrast, two other pages show sections of healthy lungs.

More eloquent than words, these illustrations in color were an important part of the testimony presented to Congressional Committees last year in support of the bill which is now the Federal Coal Mine Health and Safety Act of 1969. They are the work of Jethro Gough, Esq., M.D., Professor and Head, Department of Pathology and Bacteriology, The Welsh National School of Medicine, Cardiff, Wales. Excerpts from Dr. Gough's oral testimony are in the booklet, also. A world-renowned expert on coal workers' pneumoconiosis, Dr. Gough came to the United States as a guest of the United Mine Workers of America.

This edition of the *Black Lung* booklet includes medical and legislative facts, current and historical. The story of what the British have done to control and prevent black lung is there. So also are brief reviews of the struggles we have had to get physicians to be aware of the true nature of the disease and to get coal mining states to recognize their responsibility to pay workmen's compen-

sation for coal workers' pneumoconiosis. The last chapter summarizes the health and compensation provisions of the Federal Coal Mine Health and Safety Act of 1969.

"It has been the UMWA which has led the fight to secure recognition of and action to prevent the occurrence of coal-related dust diseases," *International President W. A. Boyle* reminds us in his introduction to *Black Lung*.

As to why the UMWA Department of Occupational Health prepared the booklet and is distributing it widely, President Boyle says, "We hope that this publication will serve to stimulate those people with an interest in the subject to work with us and eventually eliminate coal workers' pneumoconiosis among the nation's coal miners. We also hope that it will help to secure passage of adequate state compensation laws in the coal mining states to provide security for victims of the disease."

He points to elimination of coal workers' pneumoconiosis as our true goal and declares, "to this end we pledge the full resources of our Union!"

It will not take long to read *Black Lung* but you may want to keep it for reference. Members of your family should also read it, including high school students, if you have any. Doctors, newspaper writers, legislators, mine foremen and superintendents should read it. We can send extra copies if you want to present them personally where you think they will do some good. Send your request to: Lorin E. Kerr, M.D., Director, Department of Occupational Health, United Mine Workers of America, 1437 K Street, N.W., Washington, D.C. 20005. Please *print* your name and address and include your zip code. Include your Local Union number, too.

FINCH THANKS UMWA FOR HELP

EDITOR'S NOTE.—On January 27, Secretary of Health, Education, and Welfare Robert H. Finch wrote a letter to *UMWA President W. A. Boyle* thanking him for the assistance of the *UMWA* in starting to implement the new Federal Coal Mine Health and Safety Act. Secretary Finch's letter is printed below.

Thank you for the offer of assistance and cooperation in relation to the implementation of the Coal Mine Health and Safety Legislation as expressed in your letter of December 1, 1969. We are in the process of placing in final form the implementation plans to be followed within the Department now that this legislation has become law. It is our intention to undertake this implementation in an orderly, planned, expeditious manner.

Your staff has been most helpful in developing recommendations and assisting us in implementing our coal mine health research activities. As you may know, our main point of communication has been with *Dr. Lorin Kerr, Director of your Department of Occupational Health*. We intend to continue and improve upon this excellent working relationship.

You may rest assured that we will contact you further regarding *UMWA* representation on appropriate advisory committees, and on other areas of implementation of the law of mutual interest and concern. We look forward to continuing cooperation with you and your staff in the future as in the past.

110,000 APPLY FOR U.S. "BLACK LUNG" BENEFITS

As we went to press, *Dr. Lorin E. Kerr, Director of the UMWA's Department of Occupational Health*, told the *Journal* that the Social Security Administration received over 110,000 applications for compensation under the new Federal "black lung" law.

The SSA estimates that 75 percent of the applicants may be getting one of three different kinds of Social Security benefits. These applications will be checked first, and those who are already receiving disability benefits for lung ailments might be declared eligible for compensation without physical exams being necessary. Hopefully, some of these people might be paid during the month of March.

Dr. Kerr points out that some of the 100,000 applications might be duplicates because the SSA has run into instances where people have mailed in applications and also have applied at the local field office just to make sure that the application has been received by the Government. In other cases applicants have mailed in the SSA form and also the form printed in the *UMW Journal*.

[From the United Mine Workers Journal, Apr. 1, 1970]

NEW GOVERNMENT BLACK LUNG PAMPHLET

EDITOR'S NOTE.—The Social Security Administration has published a pamphlet titled "The New Coal Miners Black Lung Benefits." It is printed in full below. Dr. Lorin E. Kerr, Director of the UMWA Department of Occupational Health, recommends that this be saved for future reference.

If you are a coal miner disabled
by black lung disease—
If you are the widow of a coal miner
who had this disease—
you may get
monthly cash benefits.

MINERS

A miner who is disabled by black lung disease may be eligible for benefits even if he has been out of the mines many years.

WIDOWS

A widow of a coal miner may be eligible for benefits if her husband was disabled by or died from black lung disease. It does not matter how long ago he died.

Apply now

If you think you may be eligible for these benefits and have not already applied, you should do so now. Even though payments cannot begin until a claim has been approved, benefits will be paid going back to the time of application. But no benefits can be paid for the time before you file your claim.

Apply at your nearest social security office. Phone or write the office if you can't visit in person. You can find the address of the office in the telephone directory under "Social Security Administration" or ask at your local post office.

The people at your Social Security office will help you with your application. There is no charge for this service. It is not necessary to have someone represent you when you apply for benefits—but it is your right to have a representative if you want.

The medical evidence needed to support your claim for black lung benefits may be available in existing records. You will be notified of any additional information or evidence you need to furnish. You will be reimbursed for any reasonable medical expenses you might have in establishing your claim.

Amount of benefits

The benefits amount to about \$136 a month for a miner or his widow. Payments are higher if there are dependents (wife or children), ranging up to about \$272 a month for a family of four or more.

What Is Black Lung Disease?

Black lung disease is the commonly used name for coal workers' pneumoconiosis, a chronic lung disease caused by breathing dust in underground coal mines. Sometimes black lung disease is called miner's asthma, silicosis or anthracosilicosis.

What If I Have Already Applied For Social Security?

You should apply for black lung benefits even if you have filed for social security payments. You may be entitled to additional benefits.

If you think you are disabled by black lung disease, you should apply even though you have been turned down for social security disability benefits. The rules are different and you might qualify for black lung benefits even if you aren't eligible for social security disability payments.

Reductions In Benefits

If a miner or his widow is getting workmen's compensation, unemployment compensation, or disability insurance benefits under state law, black lung benefits may be reduced in the amount being paid under those programs.

If a miner is getting social security disability benefits, under some circumstances there may be a reduction in these payments if a claim for black lung benefits is approved.

If a miner qualifies for black lung benefits but earns more than \$1,680 a year, his benefit checks will be reduced (unless he is 72 or older). Benefits are reduced \$1 for every dollar carried between \$1,680 and \$2,880. Benefits are further reduced by \$1 for every \$1 earned over \$2,880. Earnings by a miner's wife or widow, or by dependent children, do not affect the benefit amount. The social security office can explain this in more detail.

Help Spread The Word

If you know people who may be eligible for black lung benefits and have not yet applied, tell them about this new program. Suggest a visit to the nearest Social Security office. The people there will be glad to help in every way.

[From the United Mine Workers Journal, May 15, 1970]

U.S. BLACK LUNG BENEFIT REGULATIONS

EDITOR'S NOTE.—On April 7 the Federal Register published regulations covering payments of black lung benefits under the new Federal Coal Mine Health and Safety Act. The text of these regulations is printed in full below:

[F.R. Doc. 70-4171 ; Filed, Apr. 6, 1970 ; 8:48 a.m.]

TITLE 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 10 added]

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV— BLACK LUNG BENEFITS (1969 —)

Title IV, Part B of the Federal Coal Mine Health and Safety Act of 1969, Public Law 91-173, provides for payment of benefits to coal miners who have contracted pneumoconiosis from work in the Nation's underground coal mines and are disabled thereby, and to the widows of such miners. Section 411(b) of the Act provides that the Secretary of Health, Education, and Welfare shall by regulation prescribe standards for determining whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. There are, accordingly, promulgated below, Regulations No. 10 of the Social Security Administration, 20 CFR Part 410, which at the present time contain two subparts: Subpart A (Introduction, General Provisions, and Definitions) and Subpart D (Total Disability or Death Due to Pneumoconiosis).

Because of the provision in section 411(b) of the Act requiring that such standards be promulgated and published in the *Federal Register* not later than the end of the third month following the month in which title IV was enacted, the Secretary of Health, Education, and Welfare finds that notice of rule making and public procedure thereon are impracticable. Therefore, these regulations will be effective upon their filing with the Office of the Federal Register.

Consideration will be given, however, to any data, views, or arguments pertaining to said regulations for the purpose of suggesting modifications or additions thereto, which are submitted in writing in triplicate not later than May 15, 1970, with the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue, S.W., Washington, D.C. 20201.

Subpart A—Introduction, General Provisions, and Definitions

Sec.

410.101 Introduction.

410.110 General definitions and use of terms.

Subpart D—Total Disability or Death Due to Pneumoconiosis

410.401 Basis for total disability standards.

410.402 Total disability defined.

410.403 Evaluating total disability under § 410.402(b).

410.404 Evidence of pneumoconiosis.

- 410.405 Determining medical equivalence.
- 410.406 Evidence of origin of pneumoconiosis.
- 410.407 Cessation of disability.
- 410.415 Death due to pneumoconiosis.
- 410.421 Provisions incorporated by reference.

AUTHORITY: The provisions of this Part 410 issued under secs. 402(f), 411(b) of Public Law 91-173; 83 Stat. 793.

SUBPART A—INTRODUCTION, GENERAL PROVISIONS, AND DEFINITIONS

§ 410.101 Introduction.

The regulations in this Part 410 (Regulations No. 10 of the Social Security Administration), relate to the provisions of part B (Black Lung Benefits) of title IV of the Federal Coal Mine Health and Safety Act of 1969, as enacted December 30, 1969, and as may hereafter be amended. The regulations in this part are divided into the following subparts according to subject content:

(a) This Subpart A contains provisions relating to definitions and the use of terms.

(b) Subpart B of this part relates to the requirements for benefits, filing of claims for benefits, and duration of benefits.

(c) Subpart C of this part contains provisions regarding dependents of entitled miners and widows.

(d) Subpart D of this part provides standards for determining total disability and death due to pneumoconiosis.

(e) Subpart E of this part relates to the payment of benefits, benefit rates, adjustment of benefits, and overpayments and underpayments.

(f) Subpart F of this part relates to procedures for determinations and review of determinations with respect to benefits, and representation of parties.

§ 410.110 General definitions and use of terms.

For purposes of this part, except where the context clearly indicates otherwise, the following definitions apply:

(a) "The Act," means the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), as enacted December 30, 1969, and as may hereafter be amended.

(b) "Benefit" means the black lung benefit provided under part B of title IV of the Act to coal miners and to surviving widows of miners.

(c) "Secretary" means the Secretary of Health, Education, and Welfare.

(d) "Commissioner" means the Commissioner of Social Security.

(e) "Administration" means the Social Security Administration in the Department of Health, Education, and Welfare.

(f) "Appeals Council" means the Appeals Council of the Bureau of Hearings and Appeals in the Social Security Administration or above the surface of such land by any person, used in, or to be Chairman.

[From the United Mine Workers Journal, June 1, 1970]

NATIONAL MEETING ON MEDICAL ASPECTS OF SAFETY LAW JUNE 15

A National Conference on Medicine and the Federal Coal Mine Health and Safety Act of 1969 is scheduled to be held June 15-18 in the Mayflower Hotel, Washington, D.C. Sponsors are the Division of Environmental Health Sciences, School of Public Health, University of California at Berkeley and the Department of Community Health Practice, Howard University College of Medicine.

The conference is being called to—

Present and discuss current information on the etiology, diagnostic criteria and clinical as well as occupational management of miners who have coal workers' pneumoconiosis;

Exchange information and ideas based upon the latest research on coal workers' pneumoconiosis;

Describe the intent and requirements of the Federal Coal Mine Health and Safety Act of 1969 as they relate to medical matters;

Summarize the impact of the health criteria, standards and procedures established by the Act;

Develop new ideas on the physician's role in the implementation of the Act and improved control and prevention of all occupational diseases occurring among coal miners.

The conference is partially supported by a grant from the Bureau of Occupational Safety and Health, Department of Health, Education, and Welfare.

The planning committee for the conference includes Dr. Lorin E. Kerr, Director, UMW Department of Occupational Health. The co-chairmen are Dr. Paul B. Cornely of Howard University and Dr. Irving Tabershaw, of the University of California. Others on the committee are Merle Bundy, M.D., Terence E. Carroll, Henry N. Doyle, B. G. Giel, M.D., Lorin E. Kerr, M.D., William Roemmich, M.D., and Alan D. Stevens, D.V.M.

Among the participants in the conference will be the Department of Health, Education and Welfare, the Department of Interior and the Department of Labor.

Featured luncheon speakers will be Dr. Merle Bundy, president, Industrial Medical Association; Robert Murray, president-elect, British Society of Occupational Medicine; Merton Bernstein, professor of law, Ohio State University.

Other participants in the programs will be:

Anderson, William H., M.D., chief, Pulmonary Diseases Section, University of Louisville School of Medicine, Louisville, Ky.; Berkowitz, Monroe, Ph.D.; chairman, Department of Economics, Rutgers University, New Brunswick, N.J.; Botsford, James H., noise control engineer, Environmental Quality Control Division, Industrial Relations Department, Bethlehem Steel Corporation, Bethlehem, Pa.; Brennan, Joseph P., director, Department of Research and Marketing, United Mine Workers of America, Washington, D.C.; Cander, Leon, M.D.; chairman, Department of Physiology and Internal Medicine, South Texas Medical School, San Antonio, Tex.; Cooper, W. Clark, M.D., professor of occupational health, Division of Environmental Health Sciences, School of Public Health, University of California, Berkeley, Calif.; Evans, Lewis E., director, Safety Division, United Mine Workers of America, Washington, D.C.; Garvey, James R., president, Bituminous Coal Research, Inc., Monroeville, Pa.; Guenther, George C., director, Bureau of Labor Standards, Department of Labor, Washington, D.C.; Hunter, Murray B., M.D., Medical Director, Fairmont Clinic, Fairmont, W. Va.; Hyatt, Robert E., M.D., Associate professor of physiology, Mayo Graduate School of Medicine, University of Minnesota, Rochester, Minn.; Jacobson, George, M.D., head, Department of Radiology, School of Medicine, University of Southern California, Los Angeles, Calif.; Jacobson, Murray, acting chief, Pittsburgh Field Health Group, Bureau of Mines, Department of the Interior, Pittsburgh, Pa.; Key, Marcus M., M.D., director, Bureau of Occupational Safety and Health, Public Health Service, Department of Health, Education, and Welfare, Washington, D.C.;

Morgan, W. Keith C., M.D., chief, Appalachian Laboratory for Occupational Respiratory Diseases, Department of Health, Education, and Welfare, Morgantown, W. Va.; Nacye, Richard L., M.D., chairman, Department of Pathology, College of Medicine, The Milton S. Hershey Medical Center, Hershey, Pa.; Nelson Norton, Ph.D., professor and chairman, New York University Medical Center Institute of Environmental Medicine, New York, N.Y.; O'Connor, Robert B., M.D., vice-president—Health Services, United States Steel Corporation, Pittsburgh, Pa.; Peterson, Paul Q., M.D., acting deputy surgeon general, Public Health Service, Department of Health, Education and Welfare, Washington, D.C.; Plesset, Marvin R., M.D., clinical assistant professor of psychiatry, School of Medicine, University of Pittsburgh, Pittsburgh, Pa.; Pohlmann, Kenneth E., rehabilitation consultant, United Mine Workers of America Welfare and Retirement Fund, Washington, D.C.; Rasmussen, Donald L., M.D., Chief, Cardio-Pulmonary Laboratory Appalachian Regional Hospital, Beckley, W. Va.; Ross, M. H., administrator, Fairmont Clinic, Fairmont, W. Va.; Schwartz, Robert, M.D., medical director, Centerville Clinic, Fredericktown Pa.;

Steinfeld, Jesse L., M.D., surgeon general, Public Health Service, Department of Health, Education, and Welfare, Washington, D.C.; Tebbens, Bernard D., Sc.D., head, Division of Environmental Health Sciences, School of Public Health University of California, Berkeley, Calif.; Wheeler, Henry P., deputy director, Health and Safety, Bureau of Mines, Department of the Interior, Washington, D.C.; Whitaker, Paul J., M.D., medical director, Bethlehem Steel Corporation, Bethlehem, Pa.; Weill, Hans, M.D., associate professor of medicine, Tulane University School of Medicine, New Orleans, La.; Wyatt, John P., M.D., chair-

man, Department of Pathology, University of Manitoba School of Medicine, Winnipeg, Manitoba, Canada; Yaffe, Charles D., Division of Environmental Health Sciences, School of Public Health, University of California, Berkeley, Calif.; Ziskind, Morton M., M.D., professor, College of Medicine, Tulane University, New Orleans, La.

[From the United Mine Workers Journal, Aug. 1, 1970]

L. U. 7327 SPEAKS ON DISSENTERS

EDITORS NOTE.—At a picnic attended by 1,500 District 28 members and their families at Rocky Point, Bland County, Va., a resolution was adopted unanimously which is printed in full below.

Whereas, upon hearing the message brought to us at our annual picnic by International Representative Ray Thornsby, wherein he so ably described the dangers and harm that could result from outside interests by methods of illegal and unauthorized interference with United Mine Workers of America working members; also the sowing of dissention among our union ranks by untruth and distortion of facts; and

Whereas, it was again brought to our attention the remarkable gains that have come to the membership of our great union as a result of the untiring efforts of our International President, W. A. "Tony" Boyle, and his associate officers, such as our present wage agreement, the national health and safety act and the increase in pension benefits; Now, therefore, be it

Resolved, that the officers and the 1,500 member, families, and friends at this annual picnic of Local Union 7327 go on record condemning the actions of the dissenters and the minority group who are going about using illegal and unauthorized methods to create chaos and turmoil among the ranks of the United Mine Workers of America.

Adopted on the 10th day of July 1970 by the officers and members of Local Union 7327.

Signed by: John Kennedy, President; Auto Wilson, Financial Secretary, Recording Secretary; Lee Childress, Treasurer; Paul Childress, Willie Smith, Vice President.

PHYSICIANS TO BE BRIEFED ON COAL MINERS' X-RAY PROGRAM

Five weekend conferences to qualify physicians for participation in the chest X-ray examination program required for coal miners by the 1969 coal mine safety act have been scheduled by the American College of Radiology.

The two-day sessions on identification and classification of coal workers' pneumoconiosis were devised by the College to assist the Public Health Service Bureau of Occupational Safety and Health in obtaining chest X-rays on some 100,000 underground coal miners before next July, as required by the law. Few radiologists and other physicians are familiar with the classification on systems specified by the law.

The sessions are:

September 11, 12, 13, Heart-of-Town and Daniel Boone Hotels Meeting rooms—Heart-of-Town, Charlestown, W. Va.

October 10, 11, 12*, Chase Park Plaza Hotel, St. Louis, Mo.

November 13, 14, 15, Andrew Jackson Hotel, Knoxville, Tenn.

December 12, 13, 14*, Brown Place Hotel, Denver, Colo.

January 15, 16, 17, Pittsburgh Hilton Hotel, Pittsburgh, Pa.

Dust retention disease, such as pneumoconiosis, presents much subtler X-ray signs in early stages than do many other diseases commonly diagnosed by chest X-ray. Thus both the Public Health Service agency and the College felt it important to help physicians in the mining regions to improve their recognition of pneumoconiosis and their use of the International Labor Organization and Union International Contre Cancer/Cincinnati classification systems.

The Public Health Service will require attendance at an approved course or the submission of six properly classified chest films as alternate criteria for qualifying to participate in the program. In the initial round, the chest X-ray will be used as the basic method of assessing the miner. Later, the PHS hopes to add pulmonary function tests and other procedures.

*St. Louis and Denver meetings are in a different sequence. They are planned to be Saturday, Sunday and Monday.

An ACR task force headed by Dr. Edgar L. Dessen, of Hazleton, Pa., has worked with BOSH director Dr. Marcus M. Key of Washington and deputy director Dr. William S. Lainhart of Cincinnati in setting up the seminars and a proposed home study project.

Among the faculty members for the conferences are Drs. Eugene P. Pendergrass of Philadelphia, George Jacobson of Los Angeles, Benjamin Felson and Jerome Wiot of Cincinnati, Leonard Bristol of Saranac Lake, N.Y., Howard Van Ordstrand of Cleveland, Oscar Sander of Milwaukee, E. Dale Trout of Corvallis, Ore., and others.

The presentations are arranged so that each participant has the opportunity to work with his own set of films and other materials. Each conference is limited to 200 active participants.

Requests for enrollment for any of the five conferences should be made by letter from a physician to the Washington Office, American College of Radiology, 6900 Wisconsin Avenue, Chevy Chase, Maryland 20015.

[From the United Mine Workers Journal, Aug. 1, 1970]

YOUR HEALTH

EDITOR'S NOTE.—Printed below is another installment of the regular Journal column "Your Health," written by Dr. Lorin E. Kerr, Director of the UMW Department of Occupational Health. Dr. Kerr is an outstanding authority on general health problems and the outstanding expert on coal miners' diseases. This installment is of general interest and concerns "Breathing." Dr. Kerr welcomes your comments and questions. Please do not address your letters to the Journal but to: Dr. Lorin E. Kerr, UMW Department of Occupational Health, 1437 K St., N.W., Washington, D.C. 20005.

BREATHING

Each of us is born with an intricate and efficient air conditioning apparatus which takes more abuse than we would ever expect from a man-made machine. It works night and day from before the moment of birth to the moment of death, whatever span of time that turns out to be. Even when parts are damaged or worn out, your body air/conditioner keeps on trying—as best it can to filter and circulate the air you need to stay alive. As it wears out it becomes less and less useful until, finally, it breaks down completely. There are no replacement parts nor synthetic substitutes for your lungs.

The whole air filtering process, which begins in your nose, ends in millions of tiny air sacs in your lungs. Outgoing air reverses the route. The accompanying drawings show in simplified form the principal parts of the human respiratory system. If the air you take into your body includes coal dust, automobile dust or other fine particles of waste, the filters in your breathing system will become seriously overloaded. When that happens your lungs function less and less efficiently. What you breathe and what you are as a healthy, physically active human being are never far apart. You can live for some time without eating but not for long without breathing.

HOT AIR IS COOLED

Air too hot for your body to tolerate is cooled as well as filtered when you breathe. If the air is too cold, it is warmed. Your lungs also have a mechanism for maintaining the right amount of moisture in the air your body uses. Damage to any of these synchronized parts not only interferes with your breathing system but also causes the blood circulation system to get out of tune.

Your heart and lungs are very dependent upon each other. Oxygen which your blood must have is picked up from the tiny air sacs in your lungs. But if the air sacs—the technical name is alveoli—are clogged with coal dust or other foreign matter, it becomes more difficult for the blood to get oxygen. The result is that the heart must work harder to pump blood through the lungs and the whole body. An overworked heart is not a healthy heart. That is why black lung victims also have heart problems.

An informative and not too technical booklet, *Breathing . . . What You Need To Know*, was published by the National Tuberculosis and Respiratory Disease Association in 1968. Besides giving more detail than is possible in this column

about how your lungs work, there are chapters on oxygen and your blood, the rhythm of breathing, diseases (including the common cold, varieties of influenza and pneumonia, tuberculosis, hay fever, asthma, bronchitis, emphysema, lung cancer), and major hazards to your breathing system. While it does not deal directly with the coal miner's occupational disease of black lung, the booklet does contain basic information useful to you and all members of your family.

Free copies of the publication are available in many communities from local chapters of the Tuberculosis and Respiratory Disease Association, often referred to as the "Christmas Seal Association" or the "TB Society." If you do not have a nearby local chapter of the association, send your request for a copy to me: Lorin E. Kerr, M.D., Director, Department of Occupational Health, 1437 K St., N.W., Washington, D.C. 20005.

[From the United Mine Workers Journal, Aug. 1, 1970]

SURGEON-GENERAL EXPLAINS PLAN FOR X-RAY STUDIES OF MINERS

EDITOR'S NOTE.—Some of this program has started since this article was written.

The Surgeon-General of the U.S. Public Health Service has pledged the full effort of his agency to making the new Federal Coal Mine Health and Safety Law work. Dr. Jesse L. Steinfeld told the June 15 meeting of the National Conference on Medicine and the Federal Coal Mine Health and Safety Act of 1969 that the nation will no longer tolerate unsafe and unhealthy conditions in the nation's coal mines.

The Department of Health, Education, and Welfare, of which the Public Health Service is a part, already has held meetings on the new law with the UMWA, the Welfare Fund, the American Medical Association, the American College of Radiology, the Industrial Medical Association, the American Osteopathy Association, The National Tuberculosis and Respiratory Disease Association, representatives of state health departments from the coal producing states and the coal operators' associations.

The Public Health Service is moving now to get chest X-rays of coal miners and to give pulmonary function tests. Tests will be standardized and criteria will be developed for determining whether coal miners should be transferred to less dusty areas in coal mines if there is evidence of "black lung."

COAL OPERATORS PAY

Coal operators must pay for the X-ray examinations, but written approvals must be obtained from the Public Health Service.

The Service already has sponsored a course in chest X-ray examination of coal miners, conducted by the American College of Radiology and other courses for coal mining areas and home study courses are being planned.

It is expected that a number of state health departments will participate in the chest X-ray examinations of coal miners when the program becomes operative.

About 10-15 percent of the underground coal miners will be examined in mobile units operated by the Bureau of Occupational Safety and Health through its Appalachian Laboratory of Occupational Respiratory Diseases in Morgantown, W. Va.

The examinations conducted directly by the Bureau will include pulmonary function tests in addition to X-ray examinations.

A Receiving Center will be established in Morgantown, W. Va., where program staff will work closely with personnel from a nearby Computer facility. All documents generated by the medical examination program, including the Miner Identification Document, chest roentgenogram, and Roentgenographic Interpretation Form will be reviewed at the Receiving Center prior to machine processing and storage at the Computer Facility. The program staff at the Receiving Center will check on the accuracy and completeness of all data resulting from the program and will take action to resolve discrepancies and to insure conformity with established program specifications. The Computer Facility will assist this effort by developing and maintaining a series of programs to generate a variety of prescribed reports. In addition to all certification documents, coal miner identification information and X-ray classification in accordance with the ILO or UICC classification system will be maintained on the computer record.

ACCURATE IDENTIFICATION

The plan provides for accurate identification of each coal miner who participates in the medical examination program. Each X-ray will contain the miner's Social Security number and date of X-ray, which will be compared with similar information on the "Miner Identification Document." The entries on this document will be made by the miner and an X-ray facility representative where the chest roentgenogram is made. This information will form the basis for establishing a coal miner information file and provide the data to insure that all information generated by the medical examination program is assigned accurately.

The basic system has been designed to minimize the delay between the production of a chest X-ray and the distribution of the report of findings to authorize physicians and the miner himself. This includes both the findings related to pneumoconiosis as well as other abnormalities noted on a film which may require immediate medical care. Therefore, it is essential that Receiving Center activities and Computer Facility processing react as quickly as possible upon receipt of documents and information pertinent to this phase of the program.

After initial reading of the chest X-ray and after records review by Receiving Center personnel, the completed Interpretation Form will be sent to the Computer Facility for processing. The X-ray will be forwarded to a member of one of the Public Health Service Panel of Consultant Radiologists for an independent interpretation. The results of the second reading will be recorded on the Interpretation Form, forwarded to the Receiving Center, and then to the Computer Facility for processing and comparison with the first reading. In the event of "disagreement" or the recording of significant "positive" findings by either the first or second reader, the roentgenogram will be interpreted a third time by one or more senior members of the PHS Consultant Panel of Radiologists. This reading will also be recorded on the Interpretation Form and entered into the data processing system. An appropriate report of findings will then be generated and transmitted to specifically authorized individuals.

INFORMATION COORDINATED

The basic system design is intended to accommodate information from several other sources and provides for the incorporation of data from these sources into one or more of the established files. The design also provides for information from currently undesignated sources to be added at some time in the future. Among the known sources of related information are the Bureau of Mines, coal mine identification lists and environmental data; Interim Compliance Panel information, which includes characteristics of coal mines pertinent to the basic legislation; and National Coal Study data resulting from a related Bureau of Occupational Safety and Health activity.

What then will happen when the chest roentgenogram shows one of the various categories of pneumoconiosis? For category 1 simple pneumoconiosis, the miner's designated physician will be notified by the Public Health Service of the findings, and the miner will subsequently receive a letter from the Department of the Interior, indicating that (1) he has minimum X-ray finding of dust retention in the lungs, (2) a repeat chest X-ray is recommended in three years to evaluate his health status, and (3) his designated physician should be consulted if he has questions regarding the findings.

TRANSFER PROCEDURE

For category 2 or 3 simple pneumoconiosis, the miner's designated physician will be notified by the Public Health Service and the miner will subsequently receive a letter from the Department of the Interior indicating that (1) he has X-ray findings of simple coal workers' pneumoconiosis, (2) that health questions should be directed to his designated physician, and (3) that he may request transfer from his present position to another position in any area of the mine where the concentration of respirable dust is not more than 2 milligrams per cubic meter of air. Effective December 31, 1972, the transfer shall be to an area in the mine where the concentration or respirable coal mine dust is not more than 1 milligram. Any miner so transferred shall receive compensation for such work at not less than the regular rate of pay received by him immediately prior to his transfer.

When the chest X-ray shows progressive massive fibrosis or complicated pneumoconiosis, the miner's designated physician will be so informed and the miner's letter from the Department of the Interior will indicate that:

(1) he has findings of complicated coal workers' pneumoconiosis and should consult his designated physician for further questions about the disease.

(2) he is eligible for transfer to a less dusty area, and

(3) alternately, he is eligible for "black lung" benefits and could apply for these benefits at the nearest office of the Social Security Administration.

Dr. Steinfeld said specifications for the medical examinations are not final and that suggestions for improvement are welcome. Comments should be submitted to the Bureau of Occupational Safety and Health, Environmental Health Service, 5600 Fishers Lane, Rockville, Maryland 20852.

[From the United Mine Workers Journal, Sept. 1, 1970]

U.S. "DRAGS FEET" ON HEALTH PARTS OF NEW COAL MINE SAFETY LAW: KERR

The Federal government is dragging its feet on enforcement of the health sections of the new Federal Coal Mine Health and Safety Act as well as on mine safety, Dr. Lorin E. Kerr, Director of the UMWA's Occupational Health Department, charges.

Dr. Kerr was present at the hearings conducted by the Senate Labor Subcommittee on August 6 and 7 at which UMWA spokesmen were heard on enforcement problems of the new law. But the subcommittee concentrated on the Safety aspects of the law and Dr. Kerr was heard only briefly by the subcommittee. He filed a statement with the subcommittee on August 21.

Among other things, Dr. Kerr told the Senate unit, the Department of Health, Education, and Welfare has failed, so far, to name an advisory committee on coal mine health research. The deadline for the naming of this committee under the law was March 30.

DELAY IN PUBLISHING

Dr. Kerr also was critical of the delay by the government in publishing the methods, locations and intervals for taking accurate samples of the amount of respirable coal dust in the mines. He said the regulations finally were published in *The Federal Register* on April 3 but that so far only "a very limited dust sampling campaign is under way."

Dr. Kerr noted that because of other delays it probably will be October before any X-rays of coal miners are taken to determine if they have "black lung." He pointed out that the law requires that all working coal miners shall be X-rayed by June 30, 1971—a nine-month period.

Another criticism voiced by Dr. Kerr mentioned the "complete lack of confidentiality of the X-rays and related records and reports." He said the government plan thus far permits the X-rays and medical reports to "remain in the hands of physicians employed by the operators or company-oriented physicians."

The UMWA, Dr. Kerr said, should be able to assure each miner that "he need have no fear of losing his job as a result of having the X-ray." Unless there is complete confidentiality of these medical records, this will not be possible, Dr. Kerr said.

Dr. Kerr said that unless he is assured that there will be complete confidentiality of medical records "it will be impossible for me to recommend that the coal miners participate in the program."

In contrast, Dr. Kerr said he was "favorably impressed with the speed and clarity with which the Bureau of Disability Insurance, Social Security Administration, has been proceeding." But the UMWA opposes "a number of administrative decisions" of the agency.

OPPOSED PA. ACTION

Most important of these latter was the decision to subtract the Pennsylvania occupational disease award of \$100 a month from the Federal "black lung" disability benefits. The UMWA is vigorously opposed to this decision.

Kerr said it is also his opinion that the Bureau of Disability Insurance "is incorrectly deleting non-pulmonary OASDI benefits from "black lung" disability benefits. Dr. Kerr said this permits offsetting the "black lung" benefits with OASDI payments for a totally different disability such as paraplegia.

Dr. Kerr said the Bureau of Disability Insurance ought to adopt the Public Health Service X-ray criteria for diagnosing "black lung."

Dr. Kerr noted that on March 9, 1970, a statement of cooperation was signed by the UMWA and the Social and Rehabilitation Service of HEW. He said this is the first time such an agreement has been signed by SRS and an international union. Purpose of the statement is to rehabilitate miners disabled by coal workers' pneumoconiosis. The UMWA, he noted, has implemented the statement of cooperation by naming a rehabilitation counsellor in every UMWA District office. These counsellors will handle compensation and assist the members and widows with "black lung" disability benefits.

Dr. Kerr said there has been disquieting reports that the Bureau of Occupational Health and Safety of HEW is going to be "dismembered."

The new coal mine health and safety act, Dr. Kerr said "should so strengthen the program and direction of the Bureau of Occupational Safety and Health that it would soon be required to take similar measures for the protection of the on-the-job health of all workers."

Dr. Kerr concluded:

"Over the years the miners and their Union have seen their fellow workers suffering the ravages of disability and death which are the daily penalties paid for allowing conditions to prevail which produce coal workers' pneumoconiosis. At last, they have secured the enactment of Federal legislation essential for wiping out this manmade plague. They will be highly intolerant of any attempts to delay or subvert enforcement and compliance. I strongly urge that the Federal Coal Mine Health and Safety Act of 1969 be considered a portent of the future and immediate action be taken to strengthen and expand its impact."

UMWA APPEALS DIST. 50 RULING

The UMWA announced August 28 that it will appeal a decision of the United States Court of Appeals for the District of Columbia denying the Union \$8 million owed to it by its former affiliate, District 50, Allied and Technical Workers.

"We are in total disagreement with the finding of the Court of Appeals. The advances made by the UMWA to organize District 50 were clearly in the form of a loan, and District 50 officers agreed that this was the case when it became an autonomous affiliate of the UMWA in 1962. This agreement continued in effect under the present leadership of District 50 until those leaders unilaterally repudiated the agreement.

"The UMWA has pledged that it will use these funds for supplementary pension and other benefits for disabled miners and miners' widows when the money is returned to the UMWA treasury. For this reason, above all else, we intend to take the matter to the highest court of the land," UMWA International President W. A. Boyle said.

Bedford Bird, who has been assistant area administrator of the UMWA Welfare and Retirement Fund at Knoxville, Tenn., assumed new duties as Deputy Director of the UMWA Department of Occupational Health on September 1. He will assist Dr. Lorin E. Kerr.

Bird was assistant area administrator with the Fund in Knoxville from 1952. Prior to that he served with the National Farmers Union, the American Cancer Society and the United States Department of Agriculture. From 1937-1939 he was principal of the junior high school at Soda Springs, Idaho.

Bird is active in a number of organizations including the American Public Health Association, the Tennessee Heart Association, and has served on the National Advisory Committee of the Appalachian Regional Commission.

As assistant area administrator for the Fund in Knoxville, Bird's duties included supervision of the office personnel and field service, negotiation of all fiscal arrangements with vendor hospitals, supervision of establishment of 12 medical clinics in the coal mining areas, inspection and recommendations for utilizing new hospitals and out-patient specialist services, coordination of the administration and business relationships with the Fund services and the Miners Memorial Hospital Association (now Appalachian Regional Hospitals), coordination of all field services of public health, state and Federal agencies for benefit services for all Fund beneficiaries, counseling with UMWA officials.

[From the United Mine Workers Journal, Sept. 15, 1971]

IF TURNED DOWN FOR "BLACK LUNG" BENEFITS, HERE'S WHAT TO DO

EDITOR'S NOTE.—The following information from the Department of Health, Education and Welfare is for the information of all American coal miners. It concerns your right to question the decision made on any claim you may file or have filed for "black lung" benefits under the Federal Coal Mine Health and Safety Act of 1969. Read it carefully. If there are further questions you should get in touch with your local Social Security office and/or with the Rehabilitation Counselor in your UMWA District office.

WHAT ASKING FOR RECONSIDERATION MEANS TO YOU

When you apply for benefits under the provisions of the Federal Coal Mine Health and Safety Act, your application and the evidence submitted are given careful consideration. If the requirements for benefits are met, your claim is approved. If it is determined that you do not meet the requirements of the Act, your claim is disallowed. The following steps may be taken if you feel that the decision made on your claim is not correct.

RECONSIDERATION OF YOUR CLAIM

A reconsideration is a complete review of your claim to determine whether the original decision was correct. It is a thorough examination of all the evidence submitted when the original decision was made plus any additional evidence which can be obtained. This review is made by persons other than those who made the original determination to insure that you receive a new and independent decision. The request must be filed within six months of the date the notice of initial determination is mailed. If you still disagree with the decision after the claim has been reconsidered, you may ask for a hearing before a hearing examiner.

HEARING BEFORE A HEARING EXAMINER

A hearing examiner is an officer of the Bureau of Hearings and Appeals of the Social Security Administration. He had no part in the initial or reconsidered determination. A hearing is usually held in the city where the Social Security office that handles your claim is located so that you may conveniently attend the hearing and present your case in person. At the hearing, the hearing examiner reviews what has gone before in the case, states exactly what issues must be decided, and asks questions of you and your witnesses present. All testimony is taken under oath. You and your representative may question the witnesses, present new evidence, and may examine the evidence on which the hearing examiner will base his decision.

If you prefer, you may request that the hearing examiner review the case without your personal appearance. In that event, the hearing examiner will base his decision on the evidence which was previously submitted in the case plus any additional evidence or statements which you submit. A request for a hearing must be filed within six months of the date the notice of the reconsidered determination is mailed.

A copy of the hearing examiner's written decision will be sent to you. If you disagree with this decision, you may request a review by the Appeals Council.

WHAT TO DO

This article explains what you may do if you feel the decision on your claim under the Federal Coal Mine Health and Safety Act is not correct and you want to have the decision re-examined.

1. First you may ask that the decision be *reconsidered*.
2. You may next ask for a *hearing before a hearing examiner* if you disagree with the results of that reconsideration.
3. If you disagree with the decision of the hearing examiner, you may then ask for a review of that decision by the *Appeals Council*.
4. If you disagree with the Appeals Council decision or if the Appeals Council declines to review your case, you may bring a *civil action in a Federal court*.

REVIEW OF THE HEARING EXAMINER'S DECISION BY THE APPEALS COUNCIL

Whether your request for a review of a hearing examiner's decision will be granted is up to the Appeals Council. If the Appeals Council decides to review the case, you have a right to appear and present new evidence before the Appeals Council and to file a written statement. A request for Appeals Council review must be filed within 60 days of the date that the hearing examiner's decision or dismissal of the hearing request is mailed. The Appeals Council meets in Washington, D.C. When the Appeals Council decides your case, a copy of the written decision is sent to you. If you feel that the decision is not correct or if the Appeals Council has declined to review the hearing examiner's decision, you may bring a suit in a Federal District Court.

HOW TO REQUEST A RECONSIDERATION, A HEARING, OR A REVIEW

A request for a reconsideration, a hearing, or an Appeals Council review must be in writing and filed with an office of the Social Security Administration. The request may be made by you or your representative. A special form for making the request may be obtained from your Social Security office. The people there will also be glad to assist in completing the forms. A request may also be made by letter.

TIME LIMITS

If you wish to question any decision made on your claim, there are, as mentioned before, specific time limits within which the request must be made:

Reconsideration—Your request must be made within six months of the date of mailing of the notice of the initial determination.

Hearing Before A Hearing Examiner—Your request must be made within six months of the date of mailing of the notice of reconsidered determination.

Appeals Council Review—Your request must be made within 60 days of the date of the mailing of the hearing examiner's decision or dismissal of the hearing request.

Court Action—Your complaint must be filed in a District Court of the United States within 60 days of the date of mailing of the notice of the Appeals Council's decision or denial of review.

When the last day of the period for requesting any of the actions falls on a non-workday (Saturday, Sunday, or national holiday), the period is extended to the next full workday.

If you fail to request the appropriate review within the time specified, you may lose your right to that review and be ineligible to take advantage of the next step in the review process. However, for good cause, such time limits may be extended. Of course, a person does not have to go through all the review steps if he does not want to. For example, a person may have a reconsideration and decide not to ask for any further review.

RIGHT TO BE REPRESENTED

You have a right to be represented by a qualified person of your choice in dealing with the Social Security Administration at any stage of your claim for black lung benefits. You and your representative will receive notices of the decisions. Payment of any fee to your representative for his services before the Social Security Administration must be made by you. For further information about your right to have someone represent you, get in touch with your Social Security office.

WHERE TO GO FOR INFORMATION

If you have any questions about the decision made on your claim for benefits under the Federal Coal Mine Health and Safety Act, get in touch with your Social Security office. The people there will be glad to discuss your claim with you and assist you in any way they can. They will also be glad to discuss any social security matter with you.

[From the United Mine Workers Journal, Oct. 1, 1970]

40,000 GETTING BENEFITS; 200,000 APPLY—UMWA—SOCIAL SECURITY MEETINGS STUDY BLACK LUNG PROGRAM

PITTSBURGH, PA.—UMWA rehabilitation counsellors from all of the Union's Pennsylvania Districts met here September 17 with top officials of the Social Security Administration's Bureau of Disability Insurance for a no-holds-barred question-and-answer session on Federal "black lung" payments.

Also attending the all-day sessions in the Federal Building here were representatives of the UMWA Department of Occupational Health, the UMWA Welfare and Retirement Fund and the *Journal*.

This was the last of a series of four similar regional meetings designed to brief representatives of working and retired coal miners on the "black lung" sections of the 1969 Federal Coal Mine Health and Safety Act.

The meeting was jointly chaired by Dr. Lorin E. Kerr, UMWA Occupational Health Director, and Bernard Popick, director of Social Security's Bureau of Disability Insurance.

Popick told the meeting that Social Security already is paying out monthly "black lung" benefits to approximately 40,000 coal miners plus their dependents. He said 25,000 dependents, wives and minor children, are beneficiaries of the program. He said approximately 200,000 coal miners, former coal miners and widows have applied for the Federal benefits under the 1969 law and he assured the UMWA representatives that Social Security has no "adversary interest" in carrying out the terms of the benefit program and that any one legitimately entitled to "black lung" benefits under the new law can be assured of receiving benefits.

"We want to see that everyone who is entitled to these Federal benefits under the law gets them," Popick said.

Popick said local Social Security offices will do everything possible to cooperate with coal miners and UMWA rehabilitation counselors in the various Union Districts in helping the men to prove disability that will entitle them to the Federal benefits.

Dr. Kerr told the UMWA rehabilitation counselors that coal miners should be advised that it is not necessary to retain legal assistance to apply for the Federal benefits. Dr. Kerr advised against retaining lawyers who would then charge legal fees that probably would have to be paid out of any benefits forthcoming.

"Union coal miners, working and retired should be advised that President W. A. Boyle (of the UMWA) has named rehabilitation counselors for every U. M. W. A. District in the United States and it will be part of the duties of these counselors to assist coal miners in obtaining any Federal benefits under the "black lung" program to which they may be entitled."

Basically a coal miner who believes that he is permanently and totally disabled because of coal workers' pneumoconiosis must show that he has worked for underground coal mines for at least ten years and must have medical records to show the existence of "black lung," Popick said. Social Security will do everything possible to help coal miners find and produce appropriate records.

In the case of denials of benefits because of inadequate medical records, Popick said Social Security will help coal miners who do not agree with the denial of benefits to obtain medical examinations that may help to prove the case.

Both Popick and Hugh A. Meade, Jr., also of the Bureau of Disability Insurance, advised that all coal miners in the United States who believe that they may have legitimate claims for benefits should file claims for the present and future protection of both themselves and their wives and minor children.

The Social Security officials also strongly advised widows of coal miners who believe their husbands may have died due to occupational respiratory disease to file claims for "black lung" benefits.

Dr. Kerr also advised the UMWA representatives that once coal miners' eligibility for benefits have been established not to get involved in further medical examinations such as autopsies in the case of the coal miner's death. If a coal miner's death is due to respiratory disease his widow probably will be entitled to "black lung" benefits, Dr. Kerr advised.

Monthly Federal payments now being made to 40,000 beneficiaries (on a lifetime basis) are as follows: Miner with no dependents, \$144.50; miner with one dependent, \$216.70; miner with two dependents, \$252.80. and miner with three or more dependents, \$288.90. These payments are higher than they were when the program was initiated because of cost-of-living increases allowed under the law.

Dr. Kerr also told UMWA rehabilitation counselors to advise coal miners not to permit lung biopsies in efforts to determine the existence of coal workers' pneumoconiosis. He said such biopsies may be useless if the tissue taken from the lung turns out to be normal tissue from a lung section not yet affected.

Both Popick and Kerr said the regional joint Social Security-UMWA meetings have been so successful in getting questions answered about the unprecedented "black lung" benefit program that they would urge similar meetings between local Social Security officials and Local Unions of the UMWA.

[From the United Mine Workers Journal, Oct. 15, 1970]

BLACK LUNG—QUESTIONS AND ANSWERS

EDITOR'S NOTE.—With this column the *Journal* begins publication of a question and answer column on the Federal "black lung" benefits program for coal miners and widows of coal miners. This is your column. The answers are provided to the *Journal* by the Social Security Administration which administers the benefits program. If you have questions send them to Dr. Lorin E. Kerr, Director, UMWA Department of Occupational Health, 1437 K Street, N.W., Washington, D.C. 20005.

Q. I am a widow of a coal miner who died of a lung condition over 30 years ago. Can I get black lung benefits?

A. Yes. It does not matter how long ago he died. However, your husband must have been employed in an underground coal mine; his death must have been due to pneumoconiosis (a chronic dust disease of the lungs) arising from that employment; you must meet certain requirements that qualify you as his dependent at the time of his death, and you must not have remarried. If you believe you may be entitled to benefits, it is important you file a claim promptly. No benefits can be paid for any month before the month your claim is filed. To file a claim, call or visit your Social Security office as soon as possible so you won't miss out on monthly benefits.

Q. I am planning to apply for "black lung" benefits on account of my disability. What kind of papers should I bring with me when I go to the Social Security office?

A. It would be helpful if you would bring with you any information that is readily available that shows the names of your employers and the dates you worked in an underground coal mine. Examples of records you may have that show this information include: your miner's certificate, your Union card, a copy of an award of a miner's pension, a copy of your tax return, etc.

You should also bring along the names and addresses of physicians and hospitals that recently treated you. If you have a wife or children you should also bring your marriage certificate and the birth certificates for your children.

Appointments for X-rays and/or breathing tests are being made only when absolutely necessary. Do not hesitate to notify the Social Security office—by telephone if convenient—if you have any special problem in furnishing any requested information.

WIDOWS' BENEFITS

Q. My husband was receiving "black lung" benefits before he died. Can I get black lung benefits as his widow?

A. Yes, if you qualify as his dependent and have not remarried. Since your husband was receiving "black lung" benefits, you can become entitled to benefits without the need for any additional medical evidence or proof of the cause of your husband's death. All you need to do is file an application at your Social Security office.

Q. I have a wife and daughter and have applied for "black lung" benefits. If my claim is allowed, how much will we get?

A. The basic benefit a disabled miner can get is \$144.50.

If you are found eligible for "black lung" benefits and your wife and daughter are qualified dependents under the law, you will get \$252.80. This is figured by adding to your basic benefit of \$144.50 the amount of \$108.30 for the two qualified family dependents. Your benefit will be reduced if you are receiving workmen's compensation (including occupational disease compensation), unemployment compensation or state disability benefits on account of your disability. Your benefit amount will also be reduced if you are working and earning more than \$1680 a year.

AN OPEN LETTER TO THE NATION'S UNDERGROUND COAL MINERS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,

PUBLIC HEALTH SERVICE,

Washington, D.C.

The X-ray examination program required by the Federal Coal Mine Health and Safety Act will begin during the Fall of 1970 and must be completed by June 30, 1971. I encourage all underground coal miners to participate in this voluntary program which is designed to detect the development of coal workers' pneumoconiosis (Black Lung) and to prevent or minimize further progression of the disease.

Miners with certain categories of pneumoconiosis will be eligible for job transfer, and a number of active miners may alternately qualify for Black Lung benefits. In most instances the examinations will be performed by hospitals, clinics and physicians in your area. Some of the examinations will be performed by the Public Health Service in its own mobile examining units and by State health departments and private medical facilities through government contract. In all cases examinations will be conducted under a plan approved by the Public Health Service. Operators who have arranged for X-ray examination under such a plan must have included in the plan a statement of the steps that have been taken to assure confidentiality of medical records and X-ray examinations. The Act provides severe penalties for those who make false statements or representations in any document or plan filed pursuant to the Act (Sec. 109(d)). In addition, the Act specifically guarantees that miners transferred to less dusty work areas within the mine will receive their regular rate of pay (Sec. 203(b)(3)).

The Public Health Service has taken steps to ensure that medical confidentiality is maintained throughout the examination program, and no information will be disclosed by the Service except as provided for by the Act. The Federal Coal Mine Health and Safety Act was passed for your benefit and I urge you to take advantage of the medical examination program.

Sincerely yours,

JESSE L. STEINFELD,
Surgeon General.

[From the United Mine Workers Journal, Nov. 1, 1970]

LABOR DEPARTMENT TO SET CRITERIA ON 'BLACK LUNG' COMPENSATION

EDITOR'S NOTE.—On October 9, 1970, the *Federal Register* published a notice of proposed rule making by the Bureau of Labor Statistics of the U.S. Department of Labor concerning the new Federal Coal Mine Health and Safety Act of 1969. The question concerns criteria for determining whether state workmen's compensation laws provide adequate coverage for pneumoconiosis. For the information of our readers, the *Journal* publishes herewith the text of this notice.

Department of Labor, Bureau of Labor Standards

[29 CFR Part 1520]

CRITERIA FOR DETERMINING WHETHER STATE WORKMEN'S COMPENSATION LAWS PROVIDE ADEQUATE COVERAGE FOR PNEUMOCONIOSIS

Notice of Proposed Rule Making

Pursuant to authority contained in Part C of Title IV of the Federal Mine Health and Safety Act of 1969 (83 Stat. 795), it is proposed to amend 29 CFR Chapter XIII by adding thereto a new Part 1520, to read as set forth below.

Interested persons are invited to submit written data, views, or arguments concerning the proposed regulation to the Bureau of Labor Statistics, U.S. Department of Labor, Washington, D.C. 20210, within 30 days after the publication of this notice in the *Federal Register*.

The proposed Part 1520 reads as follows:

PART 1520—CRITERIA FOR DETERMINING WHETHER STATE WORKMEN'S COMPENSATION LAWS PROVIDE ADEQUATE COVERAGE FOR PNEUMOCONIOSIS

Sec.

1520.1 Purpose and scope.

1520.2 Definitions.

1520.3 Provisions of State workmen's compensation laws necessary to provide adequate coverage for pneumoconiosis.

AUTHORITY: The provisions of this Part 1520 issued under secs. 421, 426, 83 Stat. 795, 798.

§ 1520.1 Purpose and scope.

(a) Section 421(a) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 795) provides that on and after January 1, 1973, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners of their surviving widows are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis they shall be entitled to claim benefits under the Act. Section 421(b)(1) provides that a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary of Labor to provide adequate coverage for pneumoconiosis during such period. Section 421(b)(2) provides that the Secretary of Labor shall include a State workmen's compensation law in such list during any period only if he finds that during such period there are in effect under such law certain provisions specified in the Act, and other provisions as may be prescribed by the Secretary of Labor.

(b) The purpose of this part is to set forth the criteria which the Secretary of Labor and his delegates will use in determining whether a State workmen's compensation law will be included in the list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis during any period.

§ 1520.2 Definitions.

For purposes of this part, except where the context clearly indicates otherwise:

(a) "Act" means the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742);

(b) "Benefit" means benefits for death or total disability of a miner, due to pneumoconiosis;

(c) "Miner" or "coal miner" means any individual who is working or has worked as an employee in an underground coal mine, whether he works under the surface performing functions in extracting the coal or above the surface at the mine preparing the coal so extracted;

(d) "Widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion, who has not remarried;

(e) "Dependent" means—

(1) A wife, if—

(i) She is a member of the same household as the employee; or

(ii) She is receiving regular contributions from the employee for her support;

or

(iii) The employee has been ordered by a court to contribute to her support; and

(2) An unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is—

(i) Under 18 years of age; or

(ii) Over 18 years of age and incapable of self-support because of physical or mental disability; or

(iii) If he is a student as defined by 5 U.S.C. 8101 (and as applied in 20 C.F.A. 1.14(c)) at the time he reaches 18 years of age, for so long as he continues to be such a student;

(f) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(g) "Underground coal mine" means a coal mine in which the earth and other materials which lie above the natural deposit of coal (overburden) is not removed in mining, including the natural deposits of coal in the earth and all lands, buildings, and equipment appurtenant thereto;

(h) "The Nation's underground coal mines" means all underground coal mines as defined in paragraph (g) of this section, located in a State as defined in paragraph (k) of this section;

(i) "Employee" means every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and any helper or assistant of an employee whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(j) "Pneumoconiosis" means a chronic dust disease of the lung arising out of employment in the Nation's underground coal mines, and includes anthracosis, silicosis, or anthracosilicosis arising out of such employment;

(k) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands;

(l) "State agency" means the agency or officer designated by the workmen's compensation law of a State to administer such law;

(m) "Workmen's compensation law" means a law providing for payment of compensation by employers to employees and their dependents for injury, occupational disease, or death, suffered in connection with employment.

(n) The definitions contained in this section shall not be considered to derogate from the terms of the Coal Mine Health and Safety Act of 1969.

§ 1520.3 Provisions of State workmen's compensation laws necessary to provide adequate coverage for pneumoconiosis.

The Secretary of Labor will find that a State workmen's compensation law provides adequate coverage for pneumoconiosis during any period, and will include the State law in the list of State

[From the United Mine Workers Journal, Dec. 1, 1970]

JMWA DISTRICTS URGED TO SEEK COAL STATE "BLACK LUNG" BENEFITS

The UMWA is instructing all UMW Districts in the United States to seek state workmen's compensation laws that will provide benefits for victims of coal workers' pneumoconiosis comparable to or better than the benefits provided in the Federal Coal Mine Health and Safety Act of 1969.

Details of the Federal criteria for determining whether state laws provide adequate coverage for "black lung" victims were published in the November 1 Journal on Pages 18-19.

The UMWA memorandum to District Presidents from UMWA President W. A. Boyle, which was accompanied by a copy of the criteria, and a letter to the Secretary of Labor follows:

"Attached is a copy of the criteria on the above-named subject published by the Department of Labor in the Federal Register. Also attached is a copy of my letter to the Secretary of Labor indicating certain deficiencies in the criteria.

"The Federal Coal Mine Health and Safety Act of 1969 requires that all state workmen's compensation laws provide benefits comparable to or better than the Federal law by 1973. This means that all states will have to make certain changes in their present law to comply with the Federal requirements. Many coal mining states have legislative sessions beginning early in 1971.

"Preparing legislation for introduction in the state legislature is a time-consuming task. The international officers urge you to start drafting legislation in compliance with the federal mandate. In those states where more than one UMWA District has jurisdiction, early meetings of the district officers should be scheduled to combine their efforts in this endeavor.

"If you encounter problems or questions arising during the course of this work, the UMWA Department of Occupational Health will lend whatever assistance it can.

Hon. JAMES D. HODGSON,
U.S. Secretary of Labor, Washington, D.C.

DEAR MR. SECRETARY: On October 9, 1970 the *Federal Register*, under the heading of Proposed Rule Making contained criteria for determining whether state workmen's compensation laws provide adequate coverage for pneumo-

coniosis. The notice invited interested persons to submit written data, views, or arguments concerning the proposed regulation to the U.S. Department of Labor within 30 days after publication.

The United Mine Workers of America has carefully reviewed these regulations and we wish to register the following objections to the proposed criteria:

1. The criteria should clearly indicate in the title as well as the text that the regulations are concerned with coal workers' pneumoconiosis, rather than "pneumoconiosis." As you know, the word pneumoconiosis is a generic term meaning any one of a number of dust diseases of the lungs. This lack of specificity is confusing and can too easily be misinterpreted to mean the pneumoconiosis known technically as byssinosis, bagassosis or even silicosis. The documented long standing resistance to the correct identification of the clinical entity known as coal workers' pneumoconiosis must not interfere at this late date with the need for scientific specificity in the criteria. This is even more pertinent where "pneumoconiosis" is defined on page 15934 and coal workers' pneumoconiosis is not listed on one of the included diseases.

SHOULD SPECIFY C.W.P.

Some may contend that reference throughout the criteria to those sections of P.L. 91-173 appearing in title IV of the act is sufficient to clarify this issue. This point rests primarily on the title IV caption which reads: "Black Lung Disability Benefits." This caption in the context of the act is not inappropriate but even then the wording correctly should specify coal workers' pneumoconiosis rather than resort to the use of a term ("black lung") which can describe the pathological appearance of a lung discolored by inhalants other than coal.

2. There is no provision in P.L. 91-173 for the discharge of compensation liability by payment of a lump sum and it should not be permitted to occur in state workmen's compensation legislation. Such payments originated as a technique for settling occupational injury claims for a lesser amount than might otherwise prevail. The uncertainties in coal workers' pneumoconiosis, including the progressive nature of the disease, are such that no miner totally disabled by coal workers' pneumoconiosis should be subjected to the exigencies of lump sum settlements.

MEDICAL PAYMENTS

3. While P.L. 91-173 makes no provision for the medical treatment of coal workers' pneumoconiosis, this should not deter the inclusion of payment for such services in the criteria. Some states have recently amended their compensation statutes to provide payments or medical care including hospitalization for workers receiving awards for coal workers' pneumoconiosis. It is likely that those state provisions would be deleted in the absence of such a requirement in the Federal regulations. Rather, these states, as well as all other coal mining states, should be encouraged to expand their recognition of the need for workmen's compensation to pay for the medical care of an occupational disease. The lack of medical care payments for an occupational illness should be terminated. In the absence of such payments the miner disabled by coal workers' pneumoconiosis is the subject of a discriminatory practice. None can argue the fact that he did not choose to be afflicted with this job-inflicted plague. Finally, the payment of these medical care costs would be a long-overdue recognition of the subsidization of state workmen's compensation agencies by the UMW Welfare and Retirement Fund which, during the last 22 years, has paid tens of millions of dollars for the diagnosis and treatment of coal workers' pneumoconiosis.

4. Title IV of the act makes no provision for payment of survivors benefits to dependents other than the miner's spouse. State workmen's compensation laws, in contrast, do contain such a provision. To avoid confusion and conflict the criteria should contain assurance that this will be retained for coal workers' pneumoconiosis. Both the letter and intent of the law clearly indicate that Congress wanted to prevent this disease as well as partially recompense the victims of the disease. There is nothing to indicate a desire to delete any benefit currently available. In fact, the reverse is clearly spelled out in the law and the legislative history of the act.

5. Currently P.L. 91-173 makes no provision for surface coal miners. However, section 101(i) does require the promulgation of health and safety standards for surface mines by the end of 1970. It would therefore appear that favorable consideration should be given to providing coverage for both surface coal miners and underground coal miners.

[From the United Mine Workers Journal, Dec. 15, 1970]

BLACK LUNG QUESTIONS AND ANSWERS

EDITOR'S NOTE.—The *Journal* presents herewith the third question and answer column on the Federal "black lung" benefits program for coal miners and widows of coal miners. This is your column. The answers are provided to the *Journal* by the Social Security Administration which administers the benefits program. If you have questions send them to Dr. Lorin E. Kerr, Director, UMWA Department of Occupational Health, 1437 K Street, N.W., Washington, D.C. 20005.

Q. What do you mean when you say a coal miner must be totally disabled by pneumoconiosis?

A. Total disability means the coal miner has a severe physical condition caused by employment in an underground coal mine that prevents him from working. An individual is considered totally disabled if he has "complicated" pneumoconiosis—an advanced stage of the disease. An individual whose pneumoconiosis has not reached the "complicated" stage may still qualify for benefits if he has a breathing loss or related heart condition severe enough to prevent him from doing coal mining or any other substantial gainful work. In making this determination, consideration is given not only to his medical condition, but also to his age, education, and work experience.

Q. I am getting an increased "black lung" benefit for my wife. She just started working and will make more than \$1680 this year. How will this affect my check?

A. The amount of your "black lung" benefit will not be affected because of your wife's work. A miner's "black lung" benefit is reduced if he works and earns more than \$1680 a year.

Q. I am now receiving a monthly "black lung benefit." Is there a limit on how long I can get checks?

A. Your benefit will continue as long as you are disabled. Your benefit will terminate only if you are no longer total disabled because of pneumoconiosis.

Q. If I don't get my "black lung" benefit check on the third of the month, what should I do?

A. If you have been getting your checks regularly and you know of no reason why the check should be late, notify your Social Security office after the sixth of the month. This allows time for you to get the check if it was delayed in the mail. If there might be another reason for the delay, such as a recent change in your address or other adjustments in your records, wait about two weeks; then let your Social Security office know that you have not received your check.

Q. I am the widow of a miner who worked more than ten years in a mine. He stopped work because of a lung condition, but was killed in an auto accident. Can I get "black lung" benefits as his widow?

A. Yes, if you can prove he had "complicated" pneumoconiosis before his accidental death, or if he was receiving "black lung" benefits before he died.

"BLACK LUNG" AID IS \$90 MILLION

More than 100,000 American coal miners and their dependent wives and children are now receiving Federal "black lung" benefits under the terms of the Federal Coal Mine Health and Safety Law of 1969, according to the latest report of the Social Security Administration which administers the program.

The agency reported that about 90,000 claims nationally have been completed and the applicants notified of the decision.

Direct beneficiaries—coal miners and widows of coal miners—number about 65,000.

The agency said that about 25,000 claims have thus far been denied for failure to meet the requirements of the new law.

Total cumulative amount of benefits paid since January 1, 1970, is more than \$90 million.

A total of 230,000 claims have been received to date with new claims continuing at the rate of more than 3,000 a week.

Rep. James Kee (D., W. Va.), a principal sponsor of the Federal "black lung" benefit program, told the *Journal* he has received a most satisfactory report on the new benefit program in a letter from Robert M. Ball Commissioner of Social Security. The letter, in addition to reporting on the number of beneficiaries and the money paid out stated:

"I can reassure you that every thing possible is being done to expedite handling of the remaining claims. As a result of these efforts we expect a very substantial additional number of claims to be completed within the next several weeks."

[From the United Mine Workers Journal, Feb. 1, 1971]

BLACK LUNG' BENEFITS? ASK FOR RECONSIDERATION!

The UMWA's Department of Occupational Health is currently engaged in a series of meetings with UMWA rehabilitation counsellors and representatives of the Social Security Administration in coal areas looking toward ironing out difficulties encountered in administration of the Federal "black lung" benefits program.

Dr. Lorin E. Kerr, Department Director, reports that the meetings are very successful and are resulting in better understanding of the problems being encountered.

The *Journal* has reported that Social Security has processed more than 150,000 "black lung" claims for miners and widows. Benefits have been awarded to more than 90,000 applicants, including 35,000 widows.

SOME CLAIMS HAVE BEEN DENIED

Of course, as in any such program, there have been denials of claims. Many of these denials undoubtedly are not justified. The Department of Occupational Health recommends and urges all applicants for "black lung" benefits to request reconsideration of their claims if there have been denials.

It is simply not true that Social Security is systematically denying benefits or is using a "gimmick" to deprive applicants of benefits to which they may be entitled. We say this because some uninformed persons have made such charges and the charges have been published in coal area newspapers.

Our impression, having talked to Social Security representatives, is that every effort has been made and will be made to give applicant any and all benefits to which they are entitled under the law.

If for any reason you have been denied benefits to which you think you are entitled you should immediately request reconsideration. This should be done in person or by letter to your local Social Security office.

It is not necessary to employ an attorney to handle any of these matters. There is no evidence that any reconsideration review or appeal is hastened or a decision changed by the employment of an attorney by a coal miner or widow. The UMWA has designated a rehabilitation counsellor in every one of the UMWA District offices in the United States. The District offices are listed on the Official Roster page in each issue of the *Journal*. If you need help get in touch with the rehabilitation counsellor.

The *Journal* plans to report in more detail on the meetings between UMWA rehabilitation counsellors and Social Security representatives in a later issue.

UMWA REHABILITATION COUNSELLORS

Following are the names of the UMWA rehabilitation counsellors in the UMWA Districts in the United States. They are the men to whom applicants for Federal "black lung" benefits should present their problems if they have any questions about denials or other problems:

	District No.		District No.
Bruno Telk	2	Kenneth R. Combs	19
Bruno B. Olmizzi	3	Samuel E. Littlefield	20
Walter Suba	4	Donald E. Lawley	21
John Wusels	5	H. A. "Dell" Brownfield	22
John Pollack	6	Lee Roy Patterson	23
James Procarione	8	Daniel M. Kopeza	25
Sam Nicholls	10	Antoinette Boyle	27
James Procarione	11	William F. Hogan	28
Kenneth F. Wells	12	Robert Forren and	
Henry Allai	14	Charles H. Phillips	29
Arthur Biggs	15	Tom Raney	30
Robert L. Hutcherson	17	William L. Marsh	31

[From the United Mine Workers Journal, Feb. 15, 1971]

BLACK LUNG QUESTIONS AND ANSWERS

EDITOR'S NOTE.—The *Journal* presents herewith the fifth question and answer column of the Federal "black lung" benefits program for coal miners and widows of coal miners. This is your column. The answers are provided to the *Journal* by the Social Security Administration which administers the benefits program. If you have questions send them to Dr. Lorin E. Kerr, Director, UMWA Department of Occupational Health, 1437 K Street, NW., Washington, D.C. 20005.

Q. My husband worked in the mines all his life and died several years ago with a lung condition. Since then I have had to work full-time. If I am entitled to black lung benefits as his widow, will my work be counted against me?

A. No. Your earnings will not affect the amount of any black lung benefit you may receive as the widow of a miner who died as a result of pneumoconiosis. Under the law only the miner's black lung benefit is reduced if he works and earns more than \$1680 a year.

Q. I have been receiving social security disability benefits since 1964. If I am entitled to black lung benefits will I continue to receive my social security disability benefits?

A. Yes. If you are found eligible for black lung benefits you will continue to receive your full social security disability benefits. This is so because you were receiving disability insurance benefits before the social security law was changed in 1965.

The change in the social security law in 1965 limits the amount of combined income a person under age 62 can receive from social security disability benefits and workmen's compensation benefits if his disability occurred after June 1, 1965. However, only a small percentage of black lung beneficiaries are affected by this reduction.

Q. I heard that the black lung benefits were increased recently. If so, what is the new rate?

A. The black lung benefit amount is tied to the minimum pay rate for Federal employees in grade GS-2. Recent legislation raising Federal employees pay resulted in an increase in the black lung benefit amounts.

The monthly benefit for a disabled coal miner, or his widow, is now \$153.10 up from \$144.50. The maximum benefit payable when there are three dependents (a miner with a wife and two young children, for example) amounts to \$306.10—an increase of \$17.20. A miner or widow with one dependent will now get \$229.60 and a miner or widow with two dependents will get \$267.90.

SUPPORT OFFICERS

The Editors of the *Journal* recently received a letter from James H. McKnight of Dayton, Ohio. A retired member of UMWA Local Union 8771, District 19.

In his letter, McKnight writes: "Just a few lines, to thank the UMWA for all they have done for me, as I am a disabled coal miner. I thank the UMWA for the fine pension, and their support in getting the black lung funds from the government for all the miners that are eligible for this type of Federal aid.

"I would like to tell all my fellow UMWA members, both young and old, to support their International Officers, not the outsiders that want to divide and destroy the UMWA.

"In summary, if Tony Boyle was good enough for John L. Lewis, I am sure he is good for all the members of the UMWA."

[From the United Mine Workers Journal, Mar. 1, 1971]

PERKINS FIGHTS FOR ALL "BLACK LUNG" AND DISABILITY PAYMENTS

The practice of the Department of Health, Education and Welfare of "off-setting" benefits paid under the "black lung" program against Social Security disability payments has come under sharp attack in the 92d Congress. An excellent statement on the matter was made February 17 by Rep. Carl D. Perkins (D., Ky.) in the House of Representatives and published in the *Congressional Record*. It is reprinted here for the information of UMWA members.

Mr. Speaker, it is just over a year ago that the Congress enacted the Coal Mine Health and Safety Act. That Act had as its principal purpose a reduction of the death, the pain, and the suffering that have been inflicted on our coal miners as the price of earning their daily bread. No longer, we in the Congress said, shall you have to work under conditions in which disaster is a daily likelihood or in an atmosphere in which your lungs are destined for destruction. The recent disaster of Hayden (Ky.) shows how far we still are from implementing that promise.

NATION'S DEBT

But we did not just legislate for the future; we also expressed in concrete terms the nation's debt to those miners who have supplied our vital coal at a cost that no man should have to bear by himself. The Congress recognized that miners had contracted pneumoconiosis in the service of the nation—and that the nation should compensate them for it. That is why we passed a special program of Federal benefits for victims of "black lung." We expected the program to be administered in the spirit in which it was passed—but it has not been so administered. Instead of compassion for the suffering, a Scroogelike disregard of the plight of the disabled has marked the administration of the program—an attitude entirely inconsistent with the Congressional purpose in enacting the program.

Congress entrusted the administration of the "black lung" benefit program to the Department of Health, Education, and Welfare—the Department that was established to serve as the focal point for the nation's concern for alleviating the distress of the afflicted. But the Department's administration of this program has emphasized saving the dollar, rather than the human being. I have introduced amendments to the "black lung" program to insure that the Department of Health, Education and Welfare administers it in the way that it was intended—so as to provide benefits for disabled miners not cost savings for the administration.

Let me be specific. The Department is setting off "black lung" benefits against Social Security disability payments. What does this mean? Let me give an actual example of a constituent of mine. He was drawing \$257 a month in Social Security disability payments before he was found entitled to "black lung" disability payments of \$98.30. HEW deducted his "black lung" benefits from his disability entitlement and he actually wound up with 50 cents a month less than he had before he got "black lung" benefits. Is it any wonder that he thinks something must be wrong?

By setting off "black lung" against disability payments, the Department of Health, Education, and Welfare is taking away with the left hand what Congress granted with the right.

Is this what Congress had in mind? Surely, no such absurd result should be reached unless compelled by some express provision of law. Is it conceivable that Congress would grant disability benefits for "black lung" just in order to reduce disability payments under Social Security?

Of course we in the Congress did not intend that—and there is no justification for HEW's actions. The Social Security Act provides for a reduction in disability payments when a worker receives workmen's compensation payments—but "black lung" benefits are not workmen's compensation. Workmen's compensation is an insurance program in which the employer pays premiums and the worker draws benefits based on his prior earnings. Nobody pays insurance premiums for "black lung"—in fact we wrote the law just because workmen's compensation did not cover thousands of miners who had contracted it through their working life. If the matter were not clear enough on its face, let me just quote from the committee report on the "black lung" program. The report says:

"This program of payments . . . is not a workman's compensation plan. It is not intended to be so and it contains none of the characteristic features which mark any workmen's compensation plan.

POINT REPEATED BY BOTH HOUSES

This point was also constantly repeated by members of both parties during the debate in the House of Representatives. I held the conference report up for several weeks in order to agree on language to make sure of this point.

The law is plain; the legislative history is plain; yet the Department of Health, Education, and Welfare continues to treat "black lung" benefits as though they were workmen's compensation and, therefore, deducts them from disability pay-

ments. The Department is frustrating the will of Congress—it is saving dollars instead of looking after human needs. The amendments that I have introduced will make clear that the Department can no longer continue this inequitable and illegal practice.

[From the United Mine Workers Journal, Mar. 1, 1971]

WERE YOU DENIED "BLACK LUNG" BENEFITS? ASK SOCIAL SECURITY FOR RECONSIDERATION

If you have been denied "black lung" benefits under the Federal Coal Mine Health and Safety Act of 1969 and feel you are entitled to such benefits here are the procedures you should follow.

1. The first step in protesting a denial of benefits is to request reconsideration of the claim. It should be submitted immediately on a special form available at your Social Security office. If this is not possible then a letter asking for the claim to be reconsidered should be mailed to your Social Security office.

2. The local Social Security office will, at this time, explain the reasons for denial of the application. Some of the more usual reasons are lack of ten years employment in underground coal mines, lack of X-ray evidence of "black lung," the absence of total disability and a disability not caused by "black lung." Should these or other reasons be unsatisfactory to the miner or widow, the Social Security office will provide all possible assistance in completing the request for reconsideration. The request is then mailed to the national office of the Social Security Administration where all records are filed.

3. Upon receipt of the reconsideration request in Baltimore the file is completely reviewed by a group of individuals including a physician who has never before seen the file or any of its contents. This review includes a reevaluation of all the medical evidence submitted and when indicated a rereading of the chest X-ray by another radiologists. The applicant is advised of the results of this rereading of the X-ray or any change of the earlier Social Security decision.

4. The entire file is now sent to the local Social Security office by the Baltimore office. The applicant is notified to come to the local office to review the file and be advised of the medical evidence on which the denial was based. The local office will answer questions and assist the applicant in presenting additional medical evidence not in the file when the claim was denied.

If the X-ray is more than two years old, or if there is any other reason to question the X-ray reports, the applicant should insist that a new X-ray be taken by the Social Security Administration. If the X-ray report seems to indicate "black lung" and there is a real breathing problem, the Social Security Administration should be requested to provide a pulmonary function (breathing) test. The Federal law makes no provision for performing these tests when the X-ray is negative.

5. The file, following this local review, is returned to Baltimore where it is again reviewed if additional medical evidence has been obtained locally. Should this new evidence enable Social Security to make a favorable decision, the applicant will be so notified. However, should the application still not meet the requirements of the law the file will be returned to the local Social Security office for a second review with the applicant. Every effort will be made to fully explain the second denial and to make certain there is no other medical information that has not been considered. Following this denial the applicant has the right to request a formal hearing within six months from the date of the denial appearing on the notice.

There is absolutely no evidence to indicate that any reconsideration, review, or appeal is hastened or a decision changed by the use of any attorney by the miner or widow.

183,000 GET CWP HELP

A total of 183,000 coal miners, widows and wives and children of coal miners are now receiving benefits under the Federal coal workers' pneumoconiosis (CWP)—"black lung"—program, the Social Security Administration reported on March 26. The benefits are provided under the Federal Coal Mine Health and Safety Act of 1969. Applicants may continue to apply for Federal help through 1972. After that the payments of benefits will be up to the several coal mining states under their workmen's compensation law.

Social Security told the *Journal* that claims are continuing at an average rate of 2500 a week. More than 273,000 claims have been received by Social Security since the Federal "black lung" program began 15 months ago.

Awards have been made in 114,000 cases—66,000 coal miners and 48,000 widows of coal miners. Adding benefits to dependent wives and children, the total number of beneficiaries is 183,000.

Total benefits paid to date exceed \$214 million and are continuing at the rate of more than \$22 million a month.

About 103,000 claims have been denied generally because of lack of evidence showing total disability or death from "black lung." A number of these whose claims were denied have taken steps with their local Social Security offices to have their cases reviewed.

Social Security says it has taken special steps to give priority handling to remaining cases with first attention to those who filed earlier.

[From the United Mine Workers Journal, Apr. 1, 1971]

BLACK LUNG—QUESTIONS AND ANSWERS

The following information for coal miners and widows of coal miners was prepared by the UMWA Department of Occupational Health and will be useful to those seeking or already receiving Federal 'Black Lung' benefits from the Social Security Administration.

Q. Who is eligible?

A. Miners and Widows.

Q. What are the requirements?

A. Total disability or death due to "black lung" disease; disease must have been caused by work in underground coal mines; Claim must be filed for state workmens' compensation if last work in the mines was less than five years ago.

Q. How much are the benefits?

A. Minor or widow only—\$153.10; with one dependent—\$229.70; with two dependents—\$267.90; with three or more—\$306.20.

Q. Who are dependents?

A. Wife: Children (unmarried)—1.) Under age 18; 2.) Disabled; 3.) Student (under 23 or four years college). All dependents must either be living with the miner or widow or be receiving regular contributions.

Q. What causes the Black Lung benefits to be reduced?

A. Workmen's compensation—1 for \$1; unemployment compensation—\$1 for \$1; earnings of over \$1680 per year—1.) \$1 for \$2 up to \$2880; \$1 for \$1 over \$2880.

Q. When will the "black lung" benefit affect Social Security benefits?

A. Only if all three of the below conditions are met—

1. Affects disability benefits only

2. Affects it only if person is under age 62

3. Affects it only if person's disability for Social Security entitlement began after June 1, 1965

If all three of the above conditions are met, then the Social Security benefit plus the "black lung" benefit cannot exceed 80 percent of the person's average monthly earnings at the time he became disabled.

Examples:

1. Miner age 47 with three dependents receives \$300 disability Social Security. He has been disabled since July 1, 1969.

2. His average monthly earnings were \$500. His Social Security plus "black lung" benefits can be no more than 80 percent of \$500 which is \$400.

3. If he becomes entitled to "black lung" benefits of \$306.20, then his Social Security benefits will be reduced to \$99.80.

4. \$306.30 plus \$99.80 equals \$406.10.

DUST SAMPLING COVERS 70 PERCENT

Coal dust samplings required by Federal law are now being made in more than 59 percent of the nation's underground coal mines, Dr. Lorin E. Kerr, Director, UMWA Department of Occupational Health, told the UMWA International Executive Board on March 17.

These mines employ about 70 percent of the men working in underground coal mines in the United States, Dr. Kerr said. He said the samplings show that about 45 percent of the underground workers, mostly in the large mines, are working in air that contains two milligrams or less of respirable dust, which is

the goal set for all underground mines by the Federal Coal Mine Health and Safety Act of 1969 for July 1, 1971.

Dr. Kerr said he felt this was an encouraging progress report considering that the dust suppression program has been in effect less than a year.

LACK OF EQUIPMENT

The Bureau of Mines reported to the UMWA on March 5 that the dust sampling program was hindered initially by lack of approved sampling equipment and qualified mine personnel to conduct or supervise the program.

By the end of 1970, the Bureau had issued 1,600 notices of violation of the law to coal companies which had not by then established a respirable dust sampling program.

The Bureau on January 22 also instructed its field offices to issue withdrawal orders when it was found that a coal company had not implemented a sampling program and could not show a valid order for purchasing the necessary equipment to take the samplings.

Hollis M. Dole, Assistant Secretary of the Interior, told the UMWA in a letter that "the majority of the nation's coal mines have registered remarkably low respirable dust concentrations."

This would indicate that the initial outcry from the coal industry to the effect that it was impossible to meet the coal dust standards established in the 1969 law simply was not true.

Dole, in his letter to UMWA President W. A. Boyle, said the Bureau appreciated "the concern of the United Mine Workers of America to ensure an effective respirable dust sampling program."

[From the United Mine Workers Journal, Apr. 15, 1971]

BLACK LUNG—QUESTIONS AND ANSWERS

EDITOR'S NOTE.—The *Journal* presents herewith the seventh question and answer column on the Federal "black lung" benefits program for coal miners and widows of coal miners. This is your column. The answers are provided to the *Journal* by the Social Security Administration which administers the benefits program. If you have questions send them to Dr. Lorin E. Kerr, Director, UMWA Department of Occupational Health, 1473 K Street, N.W., Washington, D.C. 20005.

Q. I am getting married. When will I get the larger "black lung" benefit for my new wife?

A. Your "black lung" benefit will be increased beginning with the month of your marriage. You should receive this increase back to the month of your marriage as soon as you report your marriage to your Social Security office and this information has been entered in your file.

Q. My husband was receiving "black lung" benefits when he died. How soon can I receive benefits as his widow?

A. Your benefit will start as soon as your application for widow's benefits has been received and your entitlement has been decided. Because your husband was entitled to "black lung" benefits before he died, you will not have to submit any medical records.

If your husband filed a protective statement before he died you will receive benefits back to the month of his death. If he did not file this statement, you will receive benefits back to the month you filed application.

Q. I am getting "black lung" benefits as a widow of a miner. What happens if I get married again?

A. Your "black lung" benefits will stop. A widow cannot get benefits under the "black lung" law if she has remarried.

Q. Why is it "black lung" benefits cannot be paid to a widow of a miner who could hardly breathe but died of a heart attack or cancer?

A. The "black lung" law provides benefits to the widow of a miner if "black lung" disease, caused by the miner's underground mine employment, contributed to his death. The fact that he died of cancer or a heart attack is not enough. The evidence must also show "black lung" disease contributed to his death.

The widow will get benefits in most cases when a miner had "black lung" disease but died of cancer. If a miner has "black lung" disease and dies of a heart attack all of the evidence must be considered to determine if his "black lung" disease contributed to his death.

UNITED MINE WORKERS OF AMERICA

DEPARTMENT OF OCCUPATIONAL HEALTH

REQUEST FOR RECONSIDERATION OF BLACK LUNG BENEFIT APPLICATION

UMWA District Rehabilitation Counselor _____

NAME _____

DISTRICT _____

ADDRESS _____

NAME OF MINER OR WIDOW _____

SOCIAL SECURITY NUMBER _____

ADDRESS _____

I do not agree with the determination made on the above claim and request reconsideration.

My reasons are: ☐ I disagree with the X-ray reports☐ I disagree with the report of the breathing tests☐ You do not have all of my medical history☐ Other (please specify) _____

_____**NOTE: If the date of the notice of the determination on this claim was more than six months ago include your reason for not making this request earlier.**

Additional medical information should be obtained from: (please give names of doctors, hospitals and clinics, and if possible dates you received X-rays and breathing tests.)

I will sign releases for the Social Security Administration to secure reports ☐ yes ☐ no.I request the Social Security Administration to provide me with a new X-ray of my lungs ☐ yes ☐ no.

I want this X-ray taken by Doctor _____

I request the Social Security Administration to provide me with the new breathing test ☐ yes ☐ no.I want this breathing test performed by Doctor _____

SIGNATURE (WRITE IN INK—FIRST, MIDDLE INITIAL, LAST NAME) _____

MAILING ADDRESS (NUMBER AND STREET, P. O. BOX OR ROUTE) _____

CITY AND STATE _____

ZIP CODE _____

DATE (MONTH, DAY, AND YEAR) _____

TELEPHONE NUMBER _____

NOTE: THIS IS NOT AN OFFICIAL SOCIAL SECURITY FORM.

ORIGINAL—SEND TO SOCIAL SECURITY ADMINISTRATION OFFICE

FORM-UMWADOH-SSA 4-77

Appendix B

MARCH 26, 1971.

Mr. ROBERT M. BALL,
*Commissioner of Social Security,
 Department of Health, Education, and Welfare,
 Baltimore, Md.*

DEAR MR. BALL: In accordance with the proposed rule making published in the Federal Register on March 4, 1971 concerning black lung benefits, we submit the following comments:

1) There is no provision for benefits for dependent survivors other than widows. Failure of the Federal Coal Mine Health and Safety Act to provide for orphans is a serious deficiency and we strongly recommend that the Department of Health, Education and Welfare take action to have legislation introduced at an early date to rectify this grievous oversight.

2) The second sentence of 410.226 needs clarification. The sentence can easily be determined to mean the claimant can be paid benefits for the months of filing only if all the requirements for entitlement are met in the same calendar month. It is my understanding that this is not the actual practice. Therefore, we urge you to change the wording to avoid possible contrary action at a later date.

3) There are three typographical errors in the printed text. Line 4 of 410.230 "field" should be "filed." Line 8 of 410.231 (c) "edath" should be "death." Line 1 of 410.320 (c) "low" should be "law."

4) Section 410.515 states and section 410.520 delineates the reduction of black lung benefits upon receipt by a beneficiary of payments made "on account of any disability of the miner" by state workmen's compensation. We vigorously protest this administrative decision. There is nothing in the law to support your deduction of workmen's compensation payments for "any" disability. The context in which this is covered in the law clearly indicates that the disability under consideration is the one produced by black lung. Moreover, it is contrary to the purported "concern for people" expounded by the Social Security Administration to reduce the benefit for a coal miner disabled by black lung by the amount paid by state workmen's compensation for a totally unrelated disability such as an above-the-knee double amputee.

5) I reiterate my denunciation of the administrative decision as expressed in 410.515(a) (3) and 410.520 which condones the reduction of black lung benefits paid Pennsylvania miners and widows by an amount equal to state benefits which they are entitled to receive from general tax revenues. The case for non-deduction of these state benefits is clearly set forth in the report of the Joint House-Senate Conference Committee on P.L. No. 91-173. As I have stated before, the law does not support this administrative decision. In fact, it is acknowledged by those familiar with the law and its legislative history that this is an inhuman misinterpretation of both the letter and intent of the law. We will continue to vigorously protest this decision until it is rescinded.

6) The United Mine Workers of America again voices its opposition to the reduction of black lung benefit payments by the 1965 Social Security "offset" provision as proposed in 410.515(a) (1) and 410.530. This amendment with its 80% proviso sorely affects those with meager income. It has caused untold hardships among disabled miners who have suffered reductions of \$50 to \$200 per month in Social Security benefits. The union will continue its diligent efforts to have this section of the law repealed.

7) We recommend that a wife or widow as defined in 410.310 and 410.320 be qualified as a legal representative in 410.570(d). In the absence of such a regulation the wife or widow is required to pursue the legal process of qualifying as legal representative. My information is that lawyers' fees in such instances may be as high as 25% of the total black lung benefit payable. Acceptance of my recommendation will prevent further diminution of the already meager resources of the wife or widow.

We share your concern over the need to provide each applicant adequate appeal procedures in the event of denial. However, we fear the administrative detail set forth in the subpart F can serve as a subterfuge to delay further the final decision on many applications. Far too many victims of black lung are still waiting action on claims filed in 1970. We urge you to expedite these decisions.

Sincerely yours,

W. A. BOYLE.

Appendix C

APRIL 13, 1971.

MR. ROBERT M. BALL,
*Commissioner of Social Security,
 Department of Health, Education, and Welfare,
 Baltimore, Md.*

DEAR COMMISSIONER BALL: The Bureau of Disability Insurance has been utilizing Criteria appearing in the regulations published in the Federal Register of April 7, 1970 for diagnosing coal workers' pneumoconiosis and assessing total disability produced by this disease.

The Bureau of Occupational Safety and Health published in the Federal Register of August 19, 1970 standards governing the chest x-ray program for working miners set forth in title II of Pub. L. 91-173. The U.S. Public Health Service in setting these standards sought the advice and assistance of all interested parties including appropriate professional and scientific organizations. As you know, the Public Health Service also sponsored and actively participated in an extensive training program designed to assist radiologists and chest physicians participating in the title II program. We are favorably impressed with the validity of the standards and the methods being utilized to implement them.

In view of the numerous problems BDI and, in turn, the miner is encountering among those making a diagnosis of black lung in accordance with the title IV regulations, we urge you to adopt the title II regulations at an early date.

It is my understanding that BDI has taken preliminary steps in this direction but we are puzzled by the inordinate delay in taking appropriate action. This is only compounding the number of denials for black lung benefits and retarding the decision making process. It is also raising unnecessary questions concerning the validity of having two standards for the same diagnostic procedure within one Federal department, particularly when one standard has acknowledged superiority over the other.

May I have your early response,

Sincerely yours,

W. A. BOYLE, *President,
 United Mine Workers of America.*

Appendix D

APRIL 27, 1971.

HON. ELLIOTT L. RICHARDSON,
*Secretary, Department of Health, Education, and Welfare,
 Washington, D.C.:*

We understand you are contemplating placing the Bureau of Occupational Safety and Health within the administrative structure of the Communicable Disease Center of the Health Service and Mental Health Administration.

Such action would make it utterly impracticable for the Bureau to comply with the authority and responsibility assigned by Congress with the passage of the Federal Coal Mine Health and Safety Act of 1969. It would hamper the Bureau's efforts to comply with the congressional intent of the Occupational Safety and Health Act of 1970.

In accordance with the 1970 act, it is essential that on April 28, 1971 the Bureau be designated by you as the institute of occupational safety and health. It is also essential that the institute have immediate and direct administrative responsibility to the assistant secretary for health and scientific affairs as stated in the Federal Register of April 16, 1971. This is the only way the Institute can adequately protect the workers' health and safety on the job. Any act to subvert the Institute for occupational safety and health or the 1969 and 1970 acts will bring condemnation from the Nation's work force.

In view of the innumerable problems still confronting HEW in seeking enforcement and compliance with the health regulations of the Federal Coal Mine Health and Safety Act of 1969, it is inconceivable that you would even consider administrative action destroying both the letter and intent of the law. The nation's coal miners who fought so hard for this legislation implore you not to make this change.

W. A. BOYLE,
President, United Mine Workers of America.

Dr. KERR. None of these, however, can successfully achieve its assigned responsibilities by independent action. In each instance all interested parties, but in particular the union, must and have played an active and aggressive role. During the 17 months since the law was enacted the union's department of occupational health has conducted an intensive campaign to help coal miners disabled by coal workers' pneumoconiosis and widows of miners killed by the disease receive black lung benefits. More than 50 articles, most of which contained detailed information concerning title IV, have appeared in the United Mine Workers Journal which is mailed to every member of the union. These included such items as a black lung application form; the rules and regulations for black lung benefits which appeared in the Federal Register April 7, 1970; a continuing black lung questions and answers column; and a listing of the name and address of each union district office rehabilitation counselor appointed by President Boyle to assist black lung victims. The Federal black lung rules and regulations were also mailed to every local union. Sample copies of these items appear as appendix A at the end of this statement and I respectfully request they be inserted with my statement in the record of these hearings.

Beginning in May 1970 the department conducted two series of meetings throughout the coalfields with the union district rehabilitation counselors and representatives of the Social Security Bureau of Disability Insurance and the UMA Welfare and Retirement Fund. The first meetings were designed to facilitate and hasten all applications while the second were concerned with immediate implementation of the reconsideration of all applicants denied benefits. During June 1971, a third series of meetings will be devoted to the activation of the Social Security Administration appeals procedure for those receiving a negative response to an application for reconsideration. In the union districts these regional meetings are followed by continual local group and individual meetings.

The department, since December 30, 1969, when the bill was signed into law, has received each day more than 50 written requests for help and information on black lung benefits. Replies to these and innumerable telephone inquiries are never delayed more than 48 hours. In addition, there have been almost daily conversations and many personal meetings with the Bureau of Disability Insurance in an effort to resolve individual applications, policies and issues.

Finally, I am sure you are aware of our role in the National Conference on Medicine and the Federal Coal Mine Health and Safety Act of 1969 held here in Washington, June 15-18, 1970. This was the first public review of the numerous health aspects of the act and of necessity considerable time was devoted to title IV and its administrative problems. The conference was supported by a grant from the Bureau of Occupational Safety and Health, Department of Health, Education, and Welfare; the coal industry, and the United Mine Workers of America.

Mr. Chairman, I am leaving a copy of the papers and proceeding of that conference for each member of the subcommittee, because I believe that this report will be a standard reference on the diagnosis, prevention, and control of coal workers' pneumoconiosis for some time to come. I think you will find the contents helpful in your deliberations on the proposed amendments, and the questions you have asked.

Mr. BURTON. Doctor, I think I knew the answers to the questions before I asked them.

Doctor, may I say at this point, I regret that our distinguished chairman of the subcommittee, Mr. Dent, isn't here. Because the record should reflect that this provision, the black lung payment provision, was inserted in the Coal Mine Health and Safety Act despite vigorous and rather pointed criticism directed to the chairman of the subcommittee, Mr. Dent, and myself, coming from a representative of the United Mine Workers Union.

As I have stated before in private to others, it doesn't take much in the way of courage for someone from San Francisco, a city not known for its coal mining industry, but it showed the courage of a giant and a highly committed individual, Congressman Dent from a coal mining country, who was willing to run the risk of the attacks on him, because he dared to have the vision and the courage to add to the health and safety bill these black lung payments.

We are all in politics and so we understand the inevitable propensity of those who seek the votes of others to view events in their most favored light and to rewrite history.

But as long as I am alive and well and in Washington, I am going to see that the history of this black lung benefit provision is not rewritten. I could have said this much earlier when all the press was here but I didn't. So perhaps the bonafides of my intent are clear. But the fact is, over the determined opposition of the mine workers union leadership, a number of us in the Congress first put this in the subcommittee, then kept this black lung benefit provision in the full committee and encouraged the Senate to adopt a very mincing but vital, for the purpose of concurrence, variant of our proposal.

And all of us, I suspect, recognize we are going to have to live with whatever record we write and none of this, as you know, Doctor, has any relevance insofar as you are personally concerned.

But the literal statement of the record is that the mineworkers union leadership cannot, by any stretch of the imagination, nor by any standards, point to, with any pride whatsoever, in terms of the proposal, much less the inclusion of the black lung benefits provision in the Health and Safety Act that is now part of the law of the land. And some day I hope to be afforded the opportunity to meet face to face, looking at some of these black lung widows and miners in the presence of some of the currently elected leadership of the mineworkers union so we can then maybe expand on this a little bit.

Because it was a shock beyond comprehension to me that here we were making this effort to get this job done with the only vehicle it could be done with, the health and safety bill, and it was shocking to have the chairman of our subcommittee maligned, attacked, his motives impugned, because he had the guts to try something that had never been tried before. And this was the case from the beginning to the end.

I even had one of the leading Members of the Senate say, "What is John Dent trying to do, kill the bill by having black lung benefits provisions in the bill?" We took the heat and if the bill would have lost, we would have paid the price.

But you can bet your shirt, there is going to be no rewriting of history of who did what, where, when, and how, because the record just can't justify that conclusion by any standard on earth.

Now some of the men from the coal mine areas obviously have to be a little more discrete in their observations. I wish the head of your union were here today. I am not going to use specific names in the absence of the person or persons I may be talking about. But I will debate on any forum on earth, not the issue that the mineworkers union helped pass this provision. That would be too easy. Of course we could do this. I would debate the issue whether this provision was put in and kept in the bill over the opposition of the mineworkers union. That is a lamentable but accurate statement of fact.

And I have been there.

You needn't respond, I will stipulate your grave disagreement so that part of the record is protected insofar as you are concerned.

But I remember being denounced to black lung miners as the Chop Suey Congressman who was selling them out. Well, we are responsible for some \$300 million in the pockets of these people—and I am sure it doesn't smell like a sellout to them when they are able to buy a few more groceries. So, so much for that.

And the unfair part of this, and it is why I haven't been looking at you, is because none of this was of your doing, as I know and you know and every Member of Congress knows.

But there will be no successful effort to rewrite the history of this black lung payment. Not as long as I am alive. Too many of us got clobbered too badly and we were taking what we knew, politically, was a modest risk, but we felt it was a risk we had to take because these black lung widows and their kids and these miners wouldn't have had a prayer in your lifetime nor my own if we didn't attach this to the health and safety vehicle. And Ken Hechler joined with us in support of this effort. And he got hell. He was "betraying" the miners. What unmitigated nonsense.

So those are the facts. The less I see of this pointing with pride, then the less I will react in this regard. And the more the United Mine Workers leadership tries to affirm this, to that extent, I affirm it does not square at all with the facts in the record.

Now, I have read your statement. And as it relates to the medical and the procedural suggestions, it is first rate. It reflects a great deal of knowledge and experience in the area. It highlights some of the deficiencies in the current bill and I hope all of my colleagues read it.

Did you have anything more you would like to say?

And it is quite unfair I picked you, but I preferred we didn't have a room full of press and witnesses while I just got this off my chest. And maybe some of the things I have said are a shock to you.

I could cite you names and places, but it wouldn't be that useful.

And while we are at it, why don't we really say something else that will displease a number of people.

As big a single factor in the passage of the black lung benefit bill is embodied in the person of a man named John Corcoran. I seriously doubt, we may have, if we could have obtained the passage of this bill without John Corcoran, who is the head of what I believe is Consolidated Coal. His help was absolutely decisive. That is pretty distasteful stuff, because all coal operators are supposed to be uniformly, I gather, bad guys. I wouldn't have known John Corcoran if I were in a phone booth with him until this bill got underway. And I know whereof I speak. I have lived with this baby from the point of its inception.

And some day John Corcoran will get his just credit for the dramatic and, maybe not decisive, but overwhelmingly important role he played. And I wish that my distinguished colleague from Illinois were here, Mr. Erlenborn, and at least by his failure to disaffirm the validity of that representation, the validity of that representation would have to stand.

It is kind of interesting, if not paradoxical, that we all get blamed for what we have done and a good deal of that which we didn't. And that is true, I am sure, of your union officials. They get blamed for a good deal of that which they don't deserve blame for. But it is probably equally true that many times we don't get credit. And I am sure John Corcoran, who has gotten his fair share of blame as a result of that stinking disaster in West Virginia—I will bet there aren't five people of this 200,000 or so getting this benefit that would even dream of the possibility that John Corcoran, the head of Consolidated Coal, played at least as important role as any human being on this earth to make it possible that this legislation, the black lung benefit provision, be kept in the bill and be held in the bill.

Was that a surprise to you, by the way? Had you ever heard that?

Dr. KERR. Congressman Burton, I find it a little difficult to respond to you. I would remind you that I am a professional person who has spent almost 35 years in the field of public health. The major share of it has been in medical care administration with the union's welfare and retirement fund.

I have been with the union since August 1, 1969. I made the change because I was convinced that occupational health, the health of the worker on the job, was the major issue confronting the Nation. We are on the way to solving the method of paying for and distributing medical services. Occupational health is now the most important health problem confronting the Nation. I accepted the job because this was the only union that had ever moved in this direction. I saw it as a unique opportunity to accomplish some things that I had dreamed about and hoped to accomplish before I reached the end of my professional career.

As a professional person, I find myself a little dismayed to be confronted with the politics of a situation of which I was totally unaware, in which I played no role and about which I did not come up here to discuss.

I came to present constructive comments on four amendments and to indicate the role of this new Department of Occupational Health in implementing Public Law 91-173—a goal to which I thought we were all dedicated. To me, the basic issues that are involved cut across all political lines. They cut across all union problems. I hope that eventually there will be an occupational health program in every labor union. Health is an issue involving all the people. It is far too important to permit it to become embroiled with personal politics. Were I to become involved in the politics of the situation my position would be untenable and I would be unable to do the job for which I have been employed and to which I am totally committed and dedicated.

Mr. BURTON. Doctor, I think it is perfectly clear to all of us that everything you have stated is unassailably valid. And I further state, to eliminate the requirement of you as a witness and certainly not one all that accustomed every day of your life to appearing before a congressional committee, for having found the right words to

adequately respond. I stipulated that you would categorically defend, if you will, the position of those with whom you are now working, and that is absolutely unassailable on all accounts. I did not seek to embarrass you.

But I don't want to have this hearing, which hopefully isn't the last, but may well be concluded without the record being clarified in two very important particulars. And I have done that.

There may be others who disagree with that. I am only giving you one man's perception. But the perception of the guy who had to observe all of this from the time we started on this course of providing black lung benefits. And I have not misstated a word. I will quit public office if I misstated what I believe to be the Gospel truth.

You weren't present, so you have no occasion to know whether or not this story is out of the whole cloth or whether it is accurate. But I will let the record speak for itself in print and if there is any point of disagreement—actually I would welcome the opportunity to debate the matter before any forum on earth.

Is there anything else, Doctor, apart from your prepared statement that you would like to leave with the committee?

Dr. KERR. I would like to draw your attention to another item that the department also developed early in 1970. It is a black lung booklet. I have left a number of copies for the subcommittee. We have utilized the materials presented by Dr. Gough in his testimony before the Senate committee as a means of illustrating the booklet. This enables the union membership to take this information with these pictures to the legislators and other people, and say this is what we are talking about.

Relative to the statement, we endorse all four amendments. I have provided you with our reasoning on this. I have also indicated that there are additional items on which I think your attention should be focused. These are areas in which we are having problems relative to the administration of title IV of the Federal Coal Mine Health and Safety Act. I would trust that you and the rest of the subcommittee would also look into these matters.

I would finally like to turn to page 10 of my testimony. I must draw your attention to the apparent decimation of the Bureau of Occupational Safety and Health by the Secretary of Health, Education, and Welfare. On April 27, 1971, President Boyle sent a telegram and confirming letter to Secretary Richardson deploring his violation of the Occupational Safety and Health Act of 1970 and stressing the destructive effect his inaction would have on the Federal Coal Mine Health and Safety Act of 1969. This telegram is attached as appendix D. The 1970 law requires the designation of a National Institute of Occupational Safety and Health on April 28, 1971. To date this pronouncement has not been made.

On April 16, 1971, the Federal Register indicated the Bureau of Occupational Safety and Health was to have immediate and direct administrative responsibility to the Assistant Secretary for Health and Scientific Affairs. Contrary to this formulation, we understand it is planned to make the Bureau administratively responsible to the Assistant Secretary via the Surgeon General then the Director of Health Service and Mental Health Administration and possibly the Director of the Communicable Disease Center. This extraordinarily

long chain of command for a Bureau charged with major responsibilities by both Public Law 91-173 and Public Law 91-596 would confirm suspicions that such laws are a sham and will never be enforced.

Mr. BURTON. Doctor, may I at this point offer three suggestions to you? As you know, the workmen's compensation offset is being increased or the offset is being decreased because the 80-percent figure is moving to 100 percent in the social security bill reported out of the Ways and Means Committee.

Dr. KERR. Yes, I know that.

Mr. BURTON. Similarly, the rights of the male workers to retire at age 60 with not quite the diminution of benefits is provided for. That leads to one of the three suggestions I have to make. One, it might be useful that you join or your organization send a letter to the Social Security Administration urging that the old 62-age offset provision was constructed at a time when that was the retirement age. Now that is down to 60 and on the effect of that offset ought to be reduced at least to that age. That could be an administrative ruling.

Secondly, when the year 1965 was used, literally read, it was 5 years from 1970 when the regulations were promulgated. If, rather than a fixed year, it were sliding 5 years, that would tend also to significantly ameliorate the workmen's compensation offset.

I suggest those two steps because they lend themselves to administrative determination and aren't beyond the realm of feasibility before this year of the Congress is adjourned.

There is a third and perhaps more important point that I would like you to address yourself to, your organization, rather. In the State legislatures, and more particularly to the Secretary of Labor in the promulgation of the regulations becoming operative in January 1, 1973, our black lung benefit provision, the Federal payment, pays claims from the date of filing. A quick reading of the regulations that you kindly provided us, the regulations promulgated by the Secretary of Labor, appeared to be silent on this point or ambiguously could lend themselves to the interpretation that somehow it is notice to the employer that is the trigger date. There are only a few parts of this part C that I drafted, but one of them was the requirement that the cash benefits can be no less than those provided under the Federal payment portion. We did that for a couple of reasons. One is we want to avoid the problem of the miner with a massive medical cost situation being wiped out of cash benefits, because it would lend itself to the passage of law where that paid on the medical side would offset the cash payment side and that gets self-explanatory. But also cash benefits must be construed obviously in terms of the time when the benefits start to run and the benefits must run from the date the claim is filed not from the date the claim is approved or you are not equating the cash benefits.

An obvious illustration would be the file on January 1, 1973, in the situation that I deem is imperative in terms of the Secretary of Labor, that claim, if approved, must relate back and payments must be paid back, the benefits as in the Federal portion time span to January 1, 1973.

However, if that approval comes in October, I don't find any assurance but that the State workmen's compensation law could then

have that benefit only run from the time the claim is approved and therefore losing, in effect, months of benefits, which would be contrary to the explicit requirements for an approved State plan.

Now, have I misread those promulgated regulations? Are they not silent on when the claim or the benefits are due to run? I do not find anywhere saying the benefits must run from the date the claim is filed. I would hope that is the case, but I can't find it. And it looks a little uncomfortably ambiguous to me.

Dr. KERR. I would have to check that out, Congressman. I couldn't give you an opinion on that at the moment. I don't know for sure.

However, what I am trying to get across to you here are three points: No. 1, we need help in getting changes in title IV as far as social security is concerned. The Social Security Administration has made administrative decisions which we think are incorrect. The only way these can be changed is either to have Congress direct them to be changed or pass an amendment that will take care of them.

The second thing is we are deeply disturbed about the delays that have taken place in the Department of Labor. For instance, those criteria should not have been published on March 17. They should have been published on December 17, 1970. On March 17 many State legislatures had adjourned. In fact, there were State legislators who took the position that because these criteria had not been published, the Federal Coal Mine Act was going to be repealed and there was no need to make these legislative changes. There were many reasons given to us for the heel-dragging on this matter. It didn't matter how active the union's district presidents and their staffs were the State legislators would take no action. There are a few legislatures that are still in session and there is a possibility that maybe two or three of them will do something as far as their laws are concerned. However, we need congressional help to change this situation in the Department of Labor. There is a desperate need to get things speeded up so that we can accomplish what has to be done in a rather short period of time.

And, third, I am even more concerned about what I have detailed on pages 10, 11, and 12 of my prepared testimony. This concerns the whole administration of the U.S. Public Health Service or what is left of it. You may say well, that is only title II, but it has a very serious impact on title IV. To have the Bureau of Occupational Safety and Health essentially wiped out and put down to a level where it is administratively almost impossible to operate cannot help but have a very deleterious effect on both the 1969 and 1970 act. I can visualize chaos coming out of this action. I can assure you we have made many, many attempts within the last few weeks to rectify this situation but to date we have accomplished nothing. Now we are asking for congressional help.

Mr. BURTON. There is one very vital point, that we don't have forever to make up our mind about what we are going to do. And that is the enormous difficulty—and I am sure the staff is making note of this now—of implementing and protecting the claimant during this third year. It is my own judgment that we ought to begin to try to mount political support necessary to, in effect, eliminate that third-year transition phase. By eliminating it, I mean you have a third year of Federal payments rather than this rather murky

situation, including the question I posed earlier about what about the approved claim, where he started January 1, 1973, the first week of 1973? I don't quite know how that miner or widow is going to continue to receive his or her payments. I mean it is not clear in my mind. The simpler, cleaner way to approach this would be to eliminate that third year.

Dr. KERR. You are speaking of 1972 now?

Mr. BURTON. Yes.

Dr. KERR. We are perfectly in agreement with that. We are willing to eliminate it or step it up by 1 year.

Mr. BIRD. I agree heartily, Congressman. You see, the problem we are facing is that many of the legislatures by January 1, 1973, are not going to have State legislation that will meet the criteria and, as you well know, it might run well into summer before anything would be passed at the State level. This has been a great mystery to us as to what would happen during this period of time in many of those States who haven't moved. Even though they may recognize a need for it in this area, there would be nothing done. The area that you are concerned with could be real valid in that these people would be lost in the shuffle. If you could get this extension this year that you are speaking of, it would provide sufficient time to get legislation down at the State level to protect them. We heartily agree.

Mr. BURTON. Not only have we lost them in the shuffle, but this would include the elimination of benefits. I have not sufficiently studied the regulations which you brought us today to see where that person is if he is out of the work force. The workmen's compensation laws can cover those in the work force. I don't know what you do with the guy out of the work force. I don't know that the Constitution of the United States permits paying someone, or requiring an employer to pay workmen's compensation benefits if they are no longer in the work force.

It is my understanding that is a deprivation of property without due process. So I am not even sure whether the State legislatures can pass a law that will cover the guy who claims in 1972 if he is out of the work force. That is one aspect of a quite murky situation and rather than wade through that in suits and countersuits and uncertainty—the logic is going to dictate amending the Coal Mine Health and Safety Act to take care of this bridge year. It just wasn't drafted with all that care. And, frankly, it was forced upon the House conferees in order for us to get the black-lung provision in the bill as a result of the conference. So I just, frankly, gave up. I said, "All right, fine. Put in that third-year protection." That benefit language itself is the Senate's thing. We spent 3 weeks trying to come to grips with this stuff and time was running out, if you remember. So we took it, knowing it had a gap or two, because it was either a gap or two or we ran the risk of not having the black-lung provision in the bill at all.

Dr. KERR. I would even go so far as to suggest that the 1972 year be wiped out, but that it be added to the present 1970 and 1971. And so that 1970-71 period would also include 1972.

Mr. BURTON. That is right.

Dr. KERR. But I think you must also seriously debate whether the State laws would not wait to have them take effect until 1974 because of the fact that there are many of these legislatures that have adjourned that are not going to go back into session again until 1973.

They are not going to come back for special sessions except with very rare exception, just to take care of an amendment to the workmen's compensation legislation to cover coalworkers' pneumoconiosis. The law also requires that the Department of Labor publish by October of 1972 a list of the States which have passed workmen's compensation amendment providing benefits comparable to or better than the Federal legislation. Come October 1972 I think there is only going to be a handful of States which will have their names so listed. That being so there is a very critical need to say this will become effective in January 1974 rather than 1973. I do not see how it can possibly be done before that date.

We have tried to exert tremendous pressures on the State levels. Mr. Boyle has ordered every district president to go whole hog on trying to get these laws changed. It worked in two States, and I think it is going to work in three others. But in the rest of them it was an impossible situation.

Mr. BURTON. I would suggest you address yourself on this question to the distinguished senior Senator from New York, Mr. Javits, and his assistant, Mr. Mittelman. I think you made a perfectly proper and accurate case. There isn't a great deal more time left for whatever reason and I would suspect that they anticipated it, and it is asking too much of a lot of these States to come back in special session and they are not going to do it. And if they are not, then we ought to at least make this law relevant. If we don't we are just going to have a very serious, potentially very disagreeable situation.

Dr. KERR. There is not only that, but there is another point involved here. All of organized labor is looking closely—in fact, I am doing everything I can to keep them informed of the problems that we are encountering with the administration, enforcement, and compliance with the Federal Coal Mine Act because of the fact that it certainly relates to the 1970 legislation. These problems which we are confronting are going to be definitely confronting the rest of labor in enforcing the 1970 legislation. It becomes even more important that we do everything that we can all of us, Congress as well as the unions, as well as management, to make this law a model piece of legislation which can set precedents that will take care of all other workers in the 1970 legislation.

Again, I come back to my last plea: Please look at those last three pages, because that issue is crucial, not only to the administration of the 1970 act but it is crucial as far as the 1969 act is concerned. Without it we are dead in the water. I have gone up this hill too many times and ended up each time with a bureau that was down under the basement. This is exactly what is going to happen again unless there are inordinate pressures placed upon the Department of Health, Education, and Welfare. The reason this problem has arisen is because none of the secretaries and none of the surgeons general, with the possible exception of Surgeon General Parran, knew what to do with occupational health. Congress has now said what has to be done and how to do it but HEW does not know where to put occupational health in the administrative structure. When HEW gives the National Institute of Occupational Safety and Health the authority and responsibility required by both the 1969 and 1970 acts then both laws can begin to function as Congress directed. Until this occurs both laws will be dismal failures.

Mr. BURTON. Thank you again, Doctor, for your and your colleague's most constructive contributions to the hearings.

The chairman of the subcommittee, Mr. Dent, would have been here but for the fact that he had delayed time and time again, because of the press of legislative business, a needed gallbladder operation that had been indicated for some little while and just had reached the point where the doctor said, "Get in the hospital and let's take care of the situation." The operation has been a success and I am sure you will understand, as all of the other witnesses, the inevitable necessity, therefore, of the absence of the chairman, Mr. Dent.

Thank you very much.

Dr. KERR. I would hope that the chairman would feel the comments you directed toward me would suffice for him because we must move ahead.

Mr. BURTON. Thank you.

The subcommittee is adjourned to met at the call of the Chair.

(Whereupon, at 5:10 p.m., the subcommittee adjourned to meet at the call of the Chair.)

(The following material was submitted for the record:)

STATEMENT OF AMERICAN INSURANCE ASSOCIATION

The American Insurance Association is a non-profit organization composed of over 100 stock insurance companies, most of which write workmen's compensation insurance throughout the United States. They are vitally interested in the satisfactory operation of such laws. As a matter of fact, they are presently engaged in cooperation with labor, industry, government officials and all other interested parties in a major effort towards this end.

The Federal Coal Mine Health and Safety Act contains provisions which are likely to have considerable impact on the operation of the workmen's compensation system. We have in mind particularly those provisions of the Act which prescribe standards for the states (Title IV, Part C). While the Act covers only one occupational disease, coal miners' pneumoconiosis, the so-called "black lung," its effect is likely to be much broader. This is the first time that the Federal Government has prescribed state standards in this field. This is the first opportunity persons interested in workmen's compensation have had to express themselves thereon.

Among these mandatory standards is a requirement (Section 421(b)(2)(C)) that the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to those established by Section 411 of the Act and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder.

H.R. 5702, presently before your subcommittee for action, would modify the definition of disability. After 1972, this definition would constitute a mandatory standard for the states. Section 401(f) would be amended to define "total disability" as the "inability of a miner by reason of a medically determinable physical impairment to engage in substantially gainful employment as a miner", regardless of his ability to work at other occupations. It is possible that a physician could indicate to a coal miner that he should not be further exposed to coal dust and, therefore, be unable to work as a coal miner. Yet many other occupations could be open to him. Under the proposed language he would, nevertheless, be entitled to benefits for permanent total disability.

The courts of one state have given a somewhat similar interpretation to the term "disability". In that state, a person is entitled to compensation for permanent total disability if he is unable, as a result of his injury, to do the work he was performing at the time he was injured. Compensation in such cases has been awarded even though he was earning equal or greater wages at another occupation (*Schram v. Lake Charles Ready Mix, Inc.* (1960), La. Court of Appeals, 52 La. 2d 213; *Ranatza v. Higgins Ind., Inc.* 18 S 2d 202; *Butzman v. Delta Shipbuilding Co., Inc.*, 21 S 2d 80). Judgment has been rendered for permanent total disability in case of the fracture of the heel of one foot (*Brown v. Hartford Accident Indemnity Company*, S. 2nd 768 (1960)) and loss of the

first phalange of the middle and ring fingers and a phalange and a half of the little finger (Young v. Central Surety and Insurancy Company (1944) 41 S 2d 700).

This definition has operated very unsatisfactorily in that state in that it has had a very depressing effect on workmen's compensation benefits. Employers are reluctant to agree to benefit increases for individuals who are already receiving full wage. Yet persons who are severely injured and are unable to do any work, of necessity receive the same benefits.

We believe it would be undesirable to have such a standard mandated upon all of the state by federal statute. We, therefore, respectfully urge that the proposed definition in H.R. 5702 be not applicable as a standard for the states to follow after 1972. Distinction could be made in this respect between Part B, relating to payments by the Social Security Administration, and Part C of the Title IV, relating to standards for workmen's compensation.

As a matter of fact, even the present definition of total disability and death contained in the act, coupled as they are with the rebuttable or conclusive presumptions, are already extremely broad in their application, yet they constitute standards for the states to follow after 1972.

Claims made against the Social Security Administration under Part B of Title IV, the pneumoconiosis provisions, have far exceeded expectations. We understand that over 290,000 claims have already been filed with 120,000 claims having so far been held compensable. This may be compared with a total countrywide annual figure of 7101 compensable cases for permanent total disability or death from *all causes* under workmen's compensation in states having competitive insurance. It also may be compared to a total work force of active coal miners today of 121,400 and 454,056 in 1939.* Studies** of the U.S. Public Health Service had indicated an incidence of 3% for complicated pneumoconiosis, the disease intended to be covered by this legislation, for active coal miners and 9.4% for inactive coal miners. The corresponding figure for uncomplicated pneumoconiosis, generally considered to be non-disabling, is 6.5% and 9.2%, respectively. Upper respiratory diseases are one of the major causes of death in this country among the population at large and possibly some of the claims made under this Act have been attributable to this fact.

One has great sympathy for coal miners who are engaged in a very hazardous occupation. A desire to alleviate their plight can be readily understood, however, care should be undertaken lest questionable standards be imposed upon the states.

In considering this subject, we respectfully suggest to the Committee that the presumptions of Section 411 be reconsidered insofar as they constitute standards for future state compliance.

This is also true of the standard for a statute of limitation (Section 421(b)(2)(D)). No state presently has such a provision. Most states run the time for making claims from the date of discovery, but most of them feel that after discovery, which may be many years after exposure, the filing of a claim should be relatively prompt.

Possibly some review of the provisions covering the assumption by a coal mine operator of the liability of his predecessor might also be desirable (Section 421(b)(1)(E) and Section 422(i)). This is also an unusual provision and might possibly prevent a mine which is temporarily closed from reopening with a new operator with a loss of employment opportunities.

As stated above, we also respectfully urge that the proposed definition of total disability in H.R. 5702 not be made a state standard under Part C of Title IV of the Act.

We trust that the foregoing will be of assistance to your Subcommittee in their deliberations.

*"Historical Statistics of the United States, Colonial Times to 1957", U.S. Bureau of the Census, Washington, D.C., p. 349. Table Series M 1-12, Summary of Mineral Operations: 1840 to 1954; Employment and Earnings, Vol. 17, No. 10, April 1971. Bureau of Labor Statistics, U.S. Dept. of Labor, Washington, D.C., p. 50, Table B-2, Employees on non-agricultural payrolls, by industry.

**"Pneumoconiosis in Bituminous Coal Mines", Murray C. Brown, M.D., Chief, Division of Occupational Health, U.S. Public Health Service, August 1965, Mining Congress Journal; incidence of complicated pneumoconiosis among inactive miners 9.4%, simple pneumoconiosis, 9.2%, working miners, complicated 3%, simple 6.5%.

AMERICAN MUTUAL INSURANCE ALLIANCE,
Washington, D.C., May 28, 1971.

Hon. JOHN H. DENT,
Chairman, General Labor Subcommittee, House Committee on Education and
Labor, Rayburn House Office Building, Washington, D.C.

DEAR MR. DENT: The American Mutual Insurance Alliance is a voluntary association of over one hundred mutual property and casualty insurance companies doing business in all the states and the District of Columbia. The Alliance companies write about \$1.5-billion annually in protection against income and medical losses.

We believe that enactment of H.R. 43 will work against the long-range interests of both coal miners and their employers. Enactment of the bill will mean that disabled individuals will receive more money by remaining at home than they would earn by accepting rehabilitation and returning to work. Creating such a counterincentive to rehabilitation would be highly detrimental to injured individuals and to their employers.

In that the Black Lung benefits provided for in the Federal Coal Mine Health and Safety Act were made available because of the inadequacy of state workmen's compensation law, the Social Security Administration was amply justified interpreting these benefits as workmen's compensation benefits, thus falling under Section 224 of the Social Security Act.

Section 224 limits the combination of social security and workmen's compensation benefits that can be paid to a disabled worker. The limit is 80% of current gross earnings—roughly the equivalent of take-home pay because of the tax-free nature of the income.

Proponents of H.R. 43 argue that enactment of this measure is necessary in order to keep combined benefits in line with the increase in the cost of living. This argument ignores the fact that beneficiaries are assured of automatic benefit increases. This is accomplished in two ways:

(a) Every social security benefit increase enacted by Congress is automatically added in full to the benefits paid by social security regardless of the 80% limitation;

(b) The law requires that the average current earnings be redetermined periodically to insure that the base of the beneficiary's combined benefits is updated to the level of current earnings.

Enactment of H.R. 43 would have serious adverse effect on the workmen's compensation system. Some states already feel that even the present 80% limit creates a disincentive to rehabilitation, and have reduced workmen's compensation benefits to avoid this disincentive. Enacting H.R. 43 would greatly aggravate the problem and would retard efforts to keep workmen's compensation benefit levels up to date.

The relationship between workmen's compensation benefits and social security benefits is one of the items to be studied by the National Commission on State Workmen's Compensation Laws, authorized by Congress in 1970. They are to review their findings before considering any action on H.R. 43.

We would very much appreciate it if this letter could be made part of the official record.

Sincerely,

ANDRE MAISONPIERRE,
Vice President.

APPLACHIAN RESEARCH & DEFENSE FUND, INC.,
Prestonsburg, Ky., May 13, 1971.

Hon. JOHN DENT,
U.S. House of Representatives,
Sam Rayburn Office Building,
Washington, D.C.

DEAR CONGRESSMAN DENT: Enclosed, for your information and that of your subcommittee, please find two (2) news releases and a set of recent criticisms which we presented to Social Security in connection with Black Lung procedures.

I am also enclosing a copy of a study done by Dr. Rasmussen in 1970 with

which you may already be familiar, showing the lack of correlation between x-ray evidence of pneumoconiosis and ventilating functions, and the effectiveness of x-ray evidence as a measure of functional capacity.

Sincerely,

JOHN M. ROSENBERG,
Kentucky Director.

Press release

More than one-half of the disabled coal miners and widows living in Pennsylvania who have applied for "federal black lung" benefits have received awards. By contrast, only about one-fourth of the disabled coal miners and widows living in West Virginia (and only 18% of those living in Kentucky) have received awards. While some of the disparity may be explained by easier access in Pennsylvania to medical facilities (medical proof of black lung and disability are crucial to the program), one problem many West Virginians and Kentuckians encounter is in understanding how to make proper application, the precise reason they have been denied, and how to assemble the required types of reports and other information necessary to establish their claim.

Appalachian Research and Defense Fund, a legal services law reform program in Kentucky and West Virginia, has just completed 12 weeks of training to familiarize selected disabled coal miners and their wives and children with the problems of many of the nearly 70,000 persons from West Virginia and Kentucky who have applied for federal black lung benefits and have been denied or whose claims are pending. Sessions were conducted in Charleston by two Charleston ARDF lawyers, James Haviland and Naomi Cohen, who are training a dozen people from West Virginia and Kentucky. Most of the training is geared toward helping retired and disabled former coal miners and their wives to obtain benefits available to them and their neighbors under the Federal Coal Mine Health and Safety Law.

Many of the trainees live too far away to commute, so lodging and meals were provided locally. The training which they are receiving involves learning to recognize a proper claim for benefits and how to establish eligibility to the satisfaction of the Social Security Administration. Trainees were prepared to assist friends and neighbors from their home counties in perfecting their claims.

At the invitation of Mr. Paul Jefferson, District Director of the Charleston Social Security Office, the trainees were invited to inspect the Charleston District Office of the Social Security Administration and after seeing the office, engaged in a lengthy question and answer session with Mr. Jefferson and other staff.

During the first six weeks of training, formal classes were held in the Charleston office of Appalachian Research and Defense Fund. The second six weeks will be taken up with field work with the trainees gaining experience by working in their own home counties with frequent contacts with their teachers.

Future sessions to take place in both states are planned.

FEDERAL BLACK LUNG COMMUNITY AIDE TRAINEES

Bill Worthington, Harlan, Kentucky.
Fred Carter, Kimberly, West Virginia.
(Mrs.) Leona Hall, Cabin Creek, West Virginia.
Paul Davis, Matewan, West Virginia.
Carolyn Buckley, Floyd County, Kentucky.
(Mrs.) Clara Cody, Fayette County, West Virginia.
E. E. Cody, Fayette County, West Virginia.
Joe Malay, Fayette County, West Virginia.
Carl Grubb, Logan County, West Virginia.
Earl Adkins, Pike County, Kentucky.

[Press release]

APPALACHIAN RESEARCH & DEFENSE FUND, INC.,
Charleston, W. Va., April 27, 1971.

Disabled coal miners and widows from West Virginia and Kentucky who apply for Federal Black Lung Benefits have less than half as good a chance of receiving the benefits as do widows and coal miners from Pennsylvania. The Appalachian Research and Defense Fund is deeply concerned about the failure of the Social Security Administration to administer the Federal Black Lung Program in a fair and equitable fashion.

The inequities are due, in part, to the difficulty encountered by residents of West Virginia and Kentucky in obtaining the all-important chest x-rays and the breathing tests frequently required by the Social Security Administration.

The fact that more black lung claims are being granted in Pennsylvania, while the claims are being denied at greater rate in West Virginia and Kentucky also is a reflection of the ability of claimants to recognize and deal with the myriad difficulties of proving Federal Black Lung Claims such as:

1. Being able to evaluate their claims to see if the claim is worth developing further, and, if so, identifying the types of evidence that are needed;
2. Obtaining the chest x-rays and breathing tests from physicians of the claimant's own choice; and
3. Having the Social Security Administration pay for the expensive testing procedures it requires.

In a document recently submitted to the Commissioner of Social Security, A.R.D.F. takes the position that regulations proposed by the Social Security Administration will have the effect of actually aggravating rather than remedying the problems many disabled coal miners and widows have in attempting to establish their black lung claims.

Many claimants do not fully understand the meaning of having to prove their own claim, yet no meaningful attempt is made to inform claimants of the fact that they do carry the "burden of proof." The right of claimants to see their claim files, so that they can determine whether to pursue their claims and if so what kind of evidence they want to gather, is defeated by rules which bury the right in bureaucratic procedures. The intention of Congress that payment for medical reports should not stand in the way of proof of claims is defeated by the non-definition of reimbursement standards and by the reluctance of the Social Security Administration to inform claimants of their rights to apply for reimbursement of medical reports. Finally, rules which allow the Social Security Administration to deny a claim if the applicant does not show up for required medical examinations overlooks the difficulty many people in isolated coal camps have in traveling to distant doctors and their frequent mistrust of people including doctors they do not know.

55% of the approximately 92,000 Pennsylvanians who have applied for Federal Black Lung Benefits have been found eligible; while, only 29% of the 59,000 West Virginians who have applied have been found eligible and only 16% of the 34,000 Kentuckians who have applied have been determined to be eligible. The same statistics, furnished by the Social Security Administration as of March 10, 1971, indicate that more West Virginians and Kentuckians, 31% and 46% respectively, are denied; while, only 22% of all applicants from Pennsylvania have had their claims denied. The Federal Black Lung Program was created by the controversial Federal Coal Mine Health and Safety Act of 1969.

Attached: "Criticisms . . ." submitted to the Commissioner of Social Security by Appalachian Research and Defense Fund on April 15, 1971

CRITICISMS OF REGULATIONS* PROPOSED BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE FOR THE ADMINISTRATION OF THE FEDERAL "BLACK LUNG BENEFITS" PROGRAM ENACTED UNDER TITLE IV OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969 (P.L. 91-173) (HEREINAFTER "TITLE IV")

(Submitted by: Appalachian Research and Defense Fund, Inc.,** 1116-B Kanawha Boulevard, East, Charleston, W. Va. 25301. By James M. Haviland,

INTRODUCTION

A significant number of retired miners and widows of miners, who have applied for the special Federal Black Lung Benefits, do not understand certain concepts essential to the proper development of an administrative claim, such as: the burden of proof and the need for a rational, informed development of

*Regulations No. 10 of the Social Security Administration, 20 CFR Part 410, Subparts A, B, C, D, E, and F, proposed 36 Federal Register 4340 (March 4, 1971) (Part II) (Hereinafter "the regulations").

**Appalachian Research and Defense Fund, Inc., is funded in part, by the Office of Economic Opportunity for the purpose of identifying and developing a law reform approach to problems of a regional dimension within Appalachia. Opinions expressed here are not necessarily those of the Office of Economic Opportunity. The facts and opinions expressed herein are based upon actual experiences of ARDF staff members in assisting numerous retired miners and the widows of miners in establishing their eligibility for disability benefits under the Disability Insurance Benefit Program of Section 223(d) of the Social Security Act and under the Federal Black Lung Benefits Program, *supra*.

claims. The criticisms of the proposed regulations are primarily aimed at suggesting that the Social Security Administration reform its regulations for the handling of claimants to reflect the unfortunate limitations many applicants suffer from. Black Lung claims present complicated questions of medical proof and it has been the experience of the staff of ARDF that unfortunately many claimants do not receive the level of assistance from local Social Security Administration District Offices which is needed and claimed to be rendered. Accordingly, the thrust of the criticisms herein is to make the claims procedures of the Social Security Administration more responsive to the needs of Appalachian coal miner and widow applicants and to the limitations in services offered by the Social Security Administration.

I. The effect of placing a burden of proof on claimants is critical and suggestions are made to either abolish the burden of proof or develop information to assist claimants in recognizing and carrying their burden of proof.

II. Rational claim analysis can be encouraged by effectuating the rights of the claimant to see their claim files.

III. The liberal intentions of Congress, that the payments for and acquisitions of all-important medical evidence be effectuated, is defeated by the lack of specification of this right by the regulations and lack of realistic avenues of the administrative review for denial of such benefits.

The remaining criticisms of the regulations are aimed at provisions which tend to defeat the intention of Congress to provide moderate benefits to disabled miners and to the widows of miners who died from black lung.

IV. The off-set of Federal Black Lung Benefits and State Workmen's Compensation Benefits proposed far exceeds what Congress had in mind.

V. The allowance of the termination of Federal Black Lung Benefits without a hearing violates the procedural due process protection of the Fifth Amendment to the United States Constitution.

VI. The lack of regulation of attorneys' fees overlooks the need as seen by Congress in the Disability Insurance Benefits Program.

VII. The policy of denying claims for failure to submit to examination can have an unnecessary draconian effect on hapless claimants who may be unable to travel or who may trust only certain doctors.

I. BURDEN OF PROOF—SECTION 410.204 (A) AND (F)

The single most important weakness in the Administration of the Federal Black Lung Program, as seen from the ARDF staff experience in handling numerous individual claims and in training Community Aides to assist their neighbors in developing Federal Black Lung Claims, is the fact that significant numbers of applicants do not understand the practical effect of having to prove their claim. Many miners and widows are honestly convinced that they or their husbands have, or had, "black lung." They fail to develop their claims adequately because, in spite of their honestly held conviction (based perhaps on the off-hand assurances of neighbors or family doctors that they have "black lung"), they fail to understand the essence of the burden of proof—that (1) they have the burden of convincing others of their own internally felt and honestly held convictions and (2) they must use certain types of required evidence. District Office personnel are trained to help claimants and most attempt to do so in good faith; however, perhaps due to the burden of federal black lung cases on District Offices in the Appalachian region and to the complexity of proving the existence of disease which has only recently received recognition by the American medical community, needed assistance is not rendered in a substantial number of cases.

Aside from not effectively informing claimants of the fact that they carry the burden of proof, the ostensible helpfulness of the District Office personnel plus informational pamphlets which suggest that all the help that is needed is provided by the Social Security Administration (e.g. *Social Security and Your Right to Representation*, pamphlet SSI-75 states in part "Most people handle their Social Security affairs themselves with the help of the people in the Social Security Office.") create an illusion of security in the claimant's mind. Under this illusion many claimants feel that they are doing all they can, while in fact their claims will be denied due to their failure to recognize their burden of proving their own claim.

To remedy the problem of claimants not understanding that they must prove their own claims, regulation § 410.204 which places the burden of proof on the

claimant, should be modified to place the burden on the Social Security Administration. The fact of application by a claimant (plus perhaps proof of the fact of exposure to coal dust) should raise the presumption of eligibility which would have to be rebutted by the Social Security Administration.

In the alternative, to lessen the effect of the burden of proof on claimants by regulation the Secretary could require claimants to be informed unequivocally of exactly why they have been denied and suggest explicit forms of evidence plaintiffs can submit. (Furthermore, the mechanism provided by Congress for the payment of medical reports should be effectuated rather than defeated. See discussion at III below). At a minimum, claimants should be *effectively* informed of the existence and meaning of the burden of proof.

II. RATIONAL CLAIMS ANALYSIS CAN BE ENCOURAGED BY EFFECTUATING THE RIGHTS OF CLAIMANTS TO SEE THEIR FILES AND BY ENCOURAGING THEM TO EXAMINE THEIR CLAIM FILES IN THE ANALYSIS OF THEIR CLAIM. SECTION 410.102

The Secretary should exercise his regulation making powers to state in positive, rights-of-the-claimant-terms, the unquestioned right of the claimant to see his claim file. Aside from the obvious constitutional right under the procedural due process concept of any claimant to see materials the government will use to adjudicate his rights with, it is necessary for the Social Security Administration to undertake an affirmative effort to inform claimants of their rights to see their files in order to encourage claimants to participate in a rational process of claim analysis and development. Many applicants for Federal Black Lung Benefits, as seen in the extensive experience of the staff of ARDF, do not engage in a process of rational claim analysis and the gathering of needed evidence. Nor, do they receive needed assistance from the Social Security District Office.

The full contents of the Disability Insurance Benefits file should be available for the inspection of Federal Black Lung claimants. Under existing regulations, 20 CFR 401.8(a)(2)(i) it is not entirely clear that Federal Black Lung claimants, who do not have disability insurance benefits claims then pending, do have a right to see the medical reports in their disability insurance benefits claim files. Aside from the obvious right of claimants to see papers of theirs held by the government, it is especially important that claimants' efforts to see that any medical report of any possible relevance contained in their disability insurance benefits file are also included in their Federal Black Lung files, so that their Federal Black Lung claims can receive full consideration. Full consideration means consideration beyond the wooden evaluation process of claims presently being made whereby examiners look for reports detailing only positive or negative chest x-rays or certain findings on breathing tests, and ignore medical reports highly suggestive of the existence of black lung (or in the case of widows, the existence of "respirable disease"). Federal Black Lung program is a special program brought about by the belated recognition of American medical science of the effects of coal dust on the lungs of coal miners. Only the most recent medical reports will discuss the possibility of pneumoconiosis, as the condition has only in the past few years been recognized. Accordingly, disability insurance benefit files must be culled for *any* possible suggestion of respiratory problem (rather than simply searching them for specific x-ray and breathing tests findings as is now being done), which may be valuable in providing a medical history of a respiratory problem for current medical evaluation of the possibility of pneumoconiosis in the case of the living miner, or for providing in the case of widows' claims clues which may be developed to see if the miner's death was due to a "respirable disease" (See § 411(c)(2) of Title IV).

III. THE LIBERAL INTENTION OF CONGRESS, THAT PAYMENT AND ACQUISITION OF ALL-IMPORTANT AND EXPENSIVE MEDICAL EVIDENCE BE EFFECTUATED BY THE PROMISE OF PAYMENT, IS DEFEATED BY THE LACK OF SPECIFICATION IN THE REGULATIONS OF THE RIGHTS OF THE CLAIMANTS TO HAVE THE MEDICAL REPORTS PAID FOR AND BY THE LACK OF CONCRETE AVENUES OF ADMINISTRATIVE REVIEWS OF DENIALS OF REQUESTS TO PAY FOR MEDICAL REPORTS. § 410.615(e) AND 410.670a

Once the claimant understands that he must prove his case to the satisfaction of others, and once he is able to analyze his own claim, the next most important problem for most claimants is in securing and paying for the specific types of medical evidence the Social Security Administration is requiring (See Regulation §§ 410.401 *et seq.*). In § 413(b) of the Act Congress, having been made aware of the problems persons in the Appalachian area face in obtaining and paying for

medical reports, provided that claimants be "reimbursed for reasonable medical expenses incurred by them in establishing their claims." (Section § 413(b)). The Secretary has not seen fit to effectuate this provision by specifying in regulations in rights-of-the-claimant terms the conditions under which claimants will be reimbursed.

Furthermore, the Secretary has specifically ruled out the form of administrative review usually provided by the Social Security Administration for the effectuation of rights administratively. § 410.615(e) limits the rights of claimants to appeal a denial of reimbursement from the normal administrative determination stages to a vague and undefined "administrative review." The basic purpose of adequate administrative review of internal decisions is to encourage the assertion of rights by claimants and to create an effective countervailing pressure on the administrative agency to recognize the rights of its consumers as fully as possible. By failing to define the right of administrative review and by reading the denial of reimbursement for medical expenses out of the normal review channels, § 615(e) goes a long way towards defeating the crucial right of claimant to be reimbursed for his reasonable medical expenses. The implicit denial of the right of judicial review on reimbursement questions by § 410.670a. *a fortiori*, for the reasons stated above, defeats the intention of § 413(b) of Title IV.

The intention of Congress that the payment of medical reports not stand in the way of proof of claims has been further defeated by the form denial notices which could but do not inform claimants of this all-important right.

IV. THE OFF-SET OF FEDERAL BLACK LUNG BENEFITS AND STATE WORKMEN'S COMPENSATION BENEFITS PROPOSED FAR EXCEEDS WHAT CONGRESS INTENDED

§ 410.502 relates to the dollar-for-dollar reduction of Federal Black Lung Benefits by State Workmen's Compensation Benefits "on account of *any* disability of the miner . . . (Emphasis added)." This interpretation of § 412(b) of Title IV arbitrarily and contrary to the remedial purposes of Title IV requires a total dollar-for-dollar off-set between *any* state Workmen's Compensation Benefits and Federal Black Lung Benefits. By contrast, § 412(b) of Title IV only requires an off-set between the two benefit programs "on account of *the* disability of such miner (emphasis added)." "The disability" requires interpretation and means in view of the purposes of Title IV as expressed in § 401 and in view of the scope of Title IV and as expressed in § 411(a), benefits to disabled miners on account of "total disability due to pneumoconiosis." The effect of the Secretary's interpretation of "the disability" is to require an off-setting of benefits even when the Workmen's Compensation Benefits are awarded for purposes totally unrelated to occupational dust diseases.

V. THE ALLOWANCE BY THE REGULATIONS OF THE PRACTICE OF TERMINATING FEDERAL BLACK LUNG BENEFITS PRIOR TO ANY HEARING VIOLATES THE PROCEDURAL DUE PROCESS PROTECTIONS OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The incorporation by §§ 410.610(c) and 410.516(a) of the termination of the Federal Black Lung Benefits without any form of pre-termination hearing or the slightest notice to claimants of this Draconian measure violates the due process clause of the Fifth Amendment. Cf *Goldberg v. Kelly*, — U.S. — (1970).

VI. THE LACK OF REGULATION OF ATTORNEY'S FEES OVERLOOKS THE NEED AS SEEN BY CONGRESS IN A SIMILAR DISABILITY INSURANCE BENEFITS PROGRAM FOR REGULATION OF THE ATTORNEY-CLIENT RELATIONSHIP IN REGARD TO THE AMOUNT OF FEES AN ATTORNEY MAY CHARGE. § 410.684

While the Secretary may lack express authority to regulate attorney's fees, under the first sentence of § 413(b), of Title IV, the Secretary has implied authority to regulate fees. The Secretary at least has the authority to require a simple disclosure of fees charged by the attorney and the basis for such fee, i.e. the nature of the services rendered by the attorney scheduled by hour, appearances or other customary method. The purpose of requiring approval or at least disclosure fees is to protect the claimants who apply for Federal Black Lung Benefits and who, for the most part, are not sophisticated in dealing with attorneys. Congress has seen fit under the Disability Insurance Benefits Program

to regulate the attorney-client relationship only to the extent of the fee charged, § 206(a) of the Social Security Act. Since the Disability Insurance Benefits Program and the Federal Black Lung Benefits Program are very similar in terms of the type of client involved, the type of legal services rendered, and the frequent existence of the enormous back benefits from which indigents may pay an attorney's fee, it would seem that under § 413(b) one procedure of the Disability Insurance Benefits Program which the Secretary should require would be the procedure of approving attorney's fees.

VII. THE POLICY OF DENYING CLAIMS FOR FAILURE TO SUBMIT TO EXAMINATION CAN HAVE AN UNNECESSARY DRACONIAN EFFECT ON HAPLESS CLAIMANTS WHO MAY BE UNABLE TO TRAVEL OR WHO MAY TRUST ONLY CERTAIN DOCTORS

The requirement of §410.240(f) which apparently incorporates through §410.421, the requirement of §404.1530 that a claimant must submit himself for medical examination interferes unnecessarily with the right of claimants to submit all-important medical evidence for doctors of their own choice. The regulation overlooks the obvious fact that many disabled coal miner applicants have a difficult time traveling and may only have the energy and emotional reserve to see one doctor. The interest of the Social Security Administration which §410.240(f) apparently protects, assuring medical evidence of a minimal quality and consistency to the end that evidence adequate for a determination is obtained, could just as easily be protected by denying claims on the merits for failure to submit required types of evidence, § 410.240(f) as it now stands provides an easily bureaucratic "out" for the Social Security Administration (it's easy to deny a claim for failure to appear at an examination) while imposing an unreasonable, draconian sanction on hapless claimants.

At a minimum §410.240(f) should require claimants to be informed of the distinction between (1) having to submit themselves to examination and (2) their unchanged right to submit medical evidence of their choice and apply for reimbursement under Section 413(b) of Title IV.

Respiratory Function in Southern Appalachian Coal Miners¹

D. L. RASMUSSEN and C. W. NELSON

SUMMARY

The results of pulmonary function studies of 368 soft-coal miners from the southern Appalachian coal fields showed no correlation between roentgenographic categories of pneumoconiosis and the results of ventilatory function tests. Impaired oxygen transfer was somewhat greater in subjects with advanced pneumoconiosis (progressive massive fibrosis), although equally severe impairment was found among many miners with simple pneumoconiosis or less definite roentgenographic abnormalities.

Although cigarette smoking might contribute to both ventilatory insufficiency and impairment of oxygen transfer among soft-coal miners, severe pulmonary insufficiency is not unusual among nonsmoking miners.

Disabling respiratory insufficiency occurred in the absence of roentgenographic evidence of progressive massive fibrosis and in the absence of significant ventilatory insufficiency. Impairment of oxygen transfer was commonly associated with disabling symptoms regardless of roentgenographic findings or ventilatory function.

Introduction

Recently, public attention has been focused on the serious problem of respiratory disease among soft-coal miners in the U. S. Legislation to reduce the risk of acquiring lung disease among working miners and provisions for compensation for those so disabled have been enacted. Despite these legislative measures, considerable disagreement among medical authorities regarding the causes and nature of pulmonary diseases among coal miners persists. Most experts of occupational respiratory diseases believe that disabling impairment is almost exclusively limited to

those with roentgenographic evidence of complicated pneumoconiosis (so-called progressive massive fibrosis). The outstanding physiologic defect in such cases is believed to be obstructive ventilatory insufficiency. In this view, simple forms of pneumoconiosis of coal workers is significant only as a precursor to the complicated forms (1-5).

In an earlier publication (6), the writers reported severe functional impairment among coal miners whose roentgenograms revealed only minimal abnormalities and who had essentially normal ventilatory function. In this report, some of the abnormalities of function, especially gas exchange, in a large number of coal miners from the southern Appalachian coal fields are more completely presented. The relationships between roentgenographic abnormalities, ventilatory function, and gas exchange are reviewed, and the effect of cigarette smoking is assessed.

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TABLE 1
AGE, PHYSICAL CHARACTERISTICS, AND EMPLOYMENT
AND SMOKING HISTORIES IN 368 SOFT-COAL MINERS

Roentgenographic Category*	No. of Subjects	Age (years)	Height (inches)	Weight (pounds)	Coal Industry Employment (years)	Cigarette Smoking (pack-years [†])
1	48	53.0 (7.7)**	68.8 (2.6)	175.7 (28.0)	29.8 (9.0)	16.2 (14.6)
2	81	51.7 (7.7)	68.9 (2.5)	166.9 (24.6)	28.7 (8.3)	19.7 (14.7)
3	203	53.2 (7.0)	69.1 (2.7)	167.9 (26.2)	31.6 (8.1)	18.5 (15.9)
4	36	55.0 (4.8)	69.7 (2.3)	160.2 (24.7)	31.9 (6.9)	11.2 (14.6)

*Roentgenographic categories are as follows: 1, normal or abnormal chest films but no definite pneumoconiosis, and suspected pneumoconiosis; 2, category I or II simple pneumoconiosis; 3, category III simple pneumoconiosis; 4, complicated pneumoconiosis A, B, or C.

[†]One pack-year is equivalent to one pack of cigarettes smoked per day for one year. No distinction is made between current and former smokers. **Figures in parentheses are standard deviations.

Materials and Methods

All patients referred to the cardiopulmonary laboratory for physiologic evaluation during a 4.5-month period of mid-1969 who had been employed in the bituminous coal industry for at least five years were considered as subjects. Of 389 subjects, one was excluded because he had worked for many years in another dusty industry; another was excluded because of a partially flail chest wall due to an old gunshot wound; 11 were rejected because a chest roentgenogram was not available for review, and 8 were excluded because they were unable to undergo even minimal exercise because of old musculoskeletal injuries or severe pulmonary insufficiency. The remaining 368 subjects form the basis of this report.

The miners were referred from southern West Virginia, eastern Kentucky, and southwestern Virginia. The reasons for referral differed widely, and the criteria for referral differed among physicians and agencies. Approximately 50 per cent of the subjects sought medical evidence in connection with claims for compensation or other disability benefits. Some with minimal or no symptoms came because they were curious about the status of their respiratory system. Others came because of the incidental finding of pneumoconiosis on a chest roentgenogram. All subjects were ambulatory outpatients. Approximately 60 per cent were currently employed in the mining industry. Among those with symptoms, dyspnea on effort was the primary complaint, ranging from awareness of breathlessness with heavy exercise to marked sensation of respiratory distress with even slight exertion.

The subjects obviously did not form a valid sample of even symptomatic miners in this area of the southern Appalachians. They were, however, representative of the approximately 4,000

miners evaluated in this laboratory to date, and their physiologic abnormalities were typical.

All subjects were evaluated in the same manner, regardless of reason for referral, clinical symptoms, or roentgenographic findings. The forced vital capacity (FVC) and its subdivisions were measured on a standard spirometer (Stead-Wells²). Lung volumes were determined by an open-circuit, nitrogen elimination method. Normal values for FVC and its subdivisions were those of Miller and co-workers (7), and for lung volumes, those of Hepper and associates (8). Distribution of ventilation was assessed by measurement of nitrogen (N_2) concentration during 100 per cent oxygen breathing using an Electro-Med 700 nitrogen analyzer.³ Arterial blood was collected from indwelling radial artery catheters and immediately analyzed for pH, oxygen tension, and carbon dioxide tension in duplicate blood gas systems.⁴ The blood gas analyzers were standardized using tonometered whole blood. Routine calibration prior to each sample analysis was done with gas mixtures containing known concentrations of oxygen and carbon dioxide. Normal values in this laboratory for arterial oxygen tension are 75 mm Hg to 90 mm Hg, and normal alveolar-arterial gradients are 5 mm Hg to 20 mm Hg. Expired air was collected in meter-

² Model P-1400, Warren E. Collins, Inc., Braintree, Massachusetts.

³ Model 700, Electro/Med Instruments, Inc., Houston, Texas.

⁴ Model 113-S1 for pH/Pco₂/PO₂; Instrumentation Laboratory, Inc., Watertown, Massachusetts.

⁵ Model E-2, Beckman Instruments, Inc., Scientific and Process Instruments Division, Fullerton, California.

TABLE 2
VENTILATORY FUNCTION, RESIDUAL VOLUMES, AND SEVEN-MINUTE
ALVEOLAR NITROGEN CONCENTRATION IN 368 SOFT-COAL MINERS

Roentgenographic Category*	FVC (% predicted)	FEV ₁ (liter)	MMEF (liter/sec)	RV (% predicted)	Alveolar N ₂ after 7 Min O ₂ (%)
1	90.0 (13.6) [†]	2.89 (0.74)	2.76 (1.26)	173.0 (52.6)	1.10 (1.09)
2	89.0 (19.5)	2.87 (0.82)	2.70 (1.19)	179.9 (54.5)	1.06 (1.03)
3	89.6 (20.7)	2.96 (0.90)	2.88 (1.32)	169.4 (57.1)	1.33 (1.80)
4	91.6 (18.7)	2.95 (0.82)	2.80 (1.17)	144.4 (56.5)	1.21 (1.03)

*See table 1 for category definitions.

[†]Figures in parentheses are standard deviations.

Key: FVC = forced vital capacity; FEV₁ = one-second forced expiratory volume; MMEF = midexpiratory flow during 25 per cent to 75 per cent of FVC; RV = residual volume.

ologic balloons and analyzed for oxygen, carbon dioxide, and, when appropriate, carbon monoxide (CO), in a paramagnetic oxygen analyzer,⁶ and infrared analyzers for carbon dioxide and CO.^{6,7} Volumes were measured in a Tissot spirometer. Pulmonary shunt-like effect was estimated by analysis of arterial blood during 100 per cent oxygen breathing after the end-tidal nitrogen concentration was less than 0.5 per cent. Carbon monoxide back pressure was estimated using a rebreathing technique (9).

Alveolar ventilation and steady state diffusing capacity were calculated assuming arterial carbon dioxide tension was equal to alveolar carbon dioxide tension. Fractional CO uptake was calculated as $(F_{iCO} - F_{eCO})/F_{iCO}$. Physiologic dead space was corrected for apparatus dead space.

Exercise was performed on a treadmill. Each level was maintained for six minutes; collection of expired air and arterial blood was performed from the fourth minute to the sixth minute. Collections were made at all but the initial one or two "warm-up" levels. Increasing exercise levels were performed until the patient had considerable difficulty or was unable to complete a given level. The highest exercise level completed was usually repeated one to several times. Rest periods generally ranged from 30 minutes to 45 minutes. Continuous electrocardiographic monitoring was accomplished via telemetry.

Radiographs were interpreted in accordance with the International Radiological Classification

of Chest Modified for the United States Public Health Service Chest Studies (10).

Results

For this report, all subjects with normal roentgenograms, those with abnormal chest films but no definite pneumoconiosis, and those with suspected pneumoconiosis were included in roentgenographic category 1. Those with category I or II simple pneumoconiosis were included in roentgenographic category 2; those with category III simple pneumoconiosis were included in roentgenographic category 3; and those with complicated pneumoconiosis A, B, or C were included in roentgenographic category 4.

Although no designation of nodule size was included in this report, it should be noted that the "p" size nodule (i.e., from barely detectable to 1.5 mm in diameter) predominated in the majority of subjects with pneumoconiosis.

Age, physical characteristics, years of employment in the coal industry, and smoking history are summarized in table 1 for each roentgenographic category. Men in category 1 tended to be heavier ($P < 0.01$) than those in category 4. There were no significant differences in age or smoking. Men in category 3 had been employed in the coal industry slightly longer than those in category 2 ($P < 0.01$).

Ventilatory function, residual volume as per cent of predicted, and seven-minute alveolar N₂ concentrations are summarized in table 2 for each roentgenographic category.

⁶Infra-red carbon monoxide analyzer, Godart, Type NC/1C4 Hilger and Watts, London, England.

⁷Intra-red carbon dioxide analyzer, Godart, Hilger and Watts, London, England.

TABLE 3

OXYGEN CONSUMPTION ($\dot{V}O_2$), VENTILATORY EQUIVALENT FOR OXYGEN ($\dot{V}E/\dot{V}O_2$), ALVEOLAR-ARTERIAL OXYGEN TENSION GRADIENT ($AaPO_2$), ARTERIAL OXYGEN TENSION (PaO_2), FRACTIONAL CARBON MONOXIDE (CO) UPTAKE, AND RATIO OF DEAD SPACE TO TIDAL VOLUME (VD/VT) DURING EXERCISE IN 368 SOFT-COAL MINERS

Roentgenographic Category	$\dot{V}O_2$ (ml/min/m ²)	$\dot{V}E/\dot{V}O_2^*$ (ml/ml)	$AaPO_2$ (mm Hg)	PaO_2 (mm Hg)	Fractional CO Uptake†	VD/VT
1	735.4 (126.3)**	35.8 (5.4)	31.3 (7.8)	66.5 (8.1)	0.262 (0.048)	0.356 (0.103)
2	750.3 (143.8)	35.5 (6.4)	31.5 (6.8)	66.4 (8.6)	0.263 (0.051)	0.359 (0.077)
3	719.9 (150.3)	36.6 (7.1)	33.5 (8.6)	64.7 (8.3)	0.258 (0.059)	0.366 (0.088)
4	660.6 (111.6)	37.5 (5.9)	37.2 (7.5)	61.2 (8.4)	0.241 (0.056)	0.375 (0.077)

* $\dot{V}E$ in ml BTPS/min; $\dot{V}O$ in ml STPD/min.

† Fractional CO uptake = $(FICO - FEO)/FICO$.

** Figures in parentheses are standard deviations.

There were no significant differences in FVC, one-second forced expiratory volume (FEV_1), maximal midexpiratory flow (MMEF), or seven-minute alveolar N_2 values. Residual volumes were somewhat smaller in category 4, and the differences were significant between categories 2 and 4 ($P < 0.01$), and categories 3 and 4 ($P < 0.01$), with a less marked difference between categories 1 and 4 ($P < 0.05$).

Men in roentgenographic category 4 had smaller oxygen consumptions than those in categories 1 and 2 ($P < 0.01$) and slightly smaller than those in category 3 ($P < 0.05$) (table 3). Subjects in category 4 hyperventilated more than those in other categories, although the differences were not significant ($P < 0.2$). Impaired oxygen transfer, present in all groups, was greater among subjects in category 4 than in all other groups. (P values for the differences in alveolar-arterial oxygen tension gradients [$AaPO_2$] for categories 1, 2, and 3 compared to category 4, were all < 0.01 .) The mean values for the fractional CO uptake and the ratio of dead space to tidal volume were abnormal in all groups, but there were no significant differences between groups.

Oxygen transfer was impaired in men in all radiographic categories, including those with no definite pneumoconiosis. On the average, this abnormality was greater in subjects with impaired ventilatory capacity, but there was a very wide range of values in all groups, e.g., the range of $AaPO_2$ values during exercise in subjects with normal ventila-

tory capacity and chest films revealing no definite pneumoconiosis was 12.5 mm Hg to 51.7 mm Hg.

To evaluate the impairment in oxygen transfer more fully, subjects were separated according to $AaPO_2$ values obtained during the greatest exercise level attained as follows: less than 19.9 mm Hg; 20 mm Hg to 24.9 mm Hg; 25 mm Hg to 29.9 mm Hg; 30 mm Hg to 34.9 mm Hg; 35 mm Hg to 39.9 mm Hg; and 40 mm Hg or more.

Impairment of oxygen transfer was not clearly related to the years of employment in the coal industry, nor was there an obvious age-related deterioration in oxygen transfer capacity.

In table 4, data for ventilatory function, residual volume, and mixing are summarized. No differences in FVC were apparent between groups. One-second forced expiratory volume and MMEF were lower in subjects with $AaPO_2$ greater than 40 mm Hg. There was no obvious relationship between impaired oxygen transfer and residual volume, or seven-minute alveolar N_2 per cent.

During exercise, hyperventilation was noted in all ranges of $AaPO_2$ but was significantly greater in the over 40 mm Hg group (table 5). There was a clear-cut relationship between $AaPO_2$, fractional uptake of CO, and steady state diffusing capacity. Differences between mean values for diffusing capacity were significant between each succeeding $AaPO_2$ range ($P < 0.01$). Values for the steady state diffusing capacity, however, were normal or greater than normal at every $AaPO_2$ range. A

TABLE 4
VENTILATORY FUNCTION, RESIDUAL VOLUME, AND
INTRAPULMONARY MIXING IN 368 SOFT-COAL MINERS

AaPO ₂ (mm Hg)	No. of Subjects	FVC (% predicted)	FEV ₁ (liter)	MMEF (liter/sec)	RV (% predicted)	Alveolar N ₂ after 7 Min. O ₂ (%)
< 19.9	9	98.7 (26.7)	3.33 (0.87)	3.25 (1.02)	155.6 (37.2)	0.49 (0.26)
20 - 24.9	42	88.9 (21.7)	2.99 (1.06)	3.01 (1.39)	162.2 (56.1)	0.94 (0.85)
25 - 29.9	73	92.3 (21.1)	3.11 (0.87)	2.95 (1.20)	159.7 (50.8)	1.09 (0.99)
30 - 34.9	115	89.2 (17.7)	2.90 (0.78)	2.84 (1.29)	176.9 (57.1)	1.11 (1.28)
35 - 39.9	66	90.3 (17.3)	2.98 (0.85)	2.85 (1.32)	166.1 (67.7)	1.40 (1.63)
> 40	63	84.8 (18.2)	2.65 (0.71)	2.34 (1.05)	180.0 (60.2)	1.71 (2.40)

Key: See table 2.

high degree of correlation was found between the fractional CO uptake and the steady state diffusing capacity for carbon monoxide (DL_{CO}) as per cent of predicted normal ($r = +0.580 \pm 0.009$; $P < 0.01$). There were also high degrees of correlation between AaPO₂ and both fractional uptake of CO and steady state DL_{CO}.

Arterial oxygen tensions during 100 per cent oxygen breathing at rest were lower in subjects with larger exercise AaPO₂. This observation does not necessarily imply that the greater AaPO₂ during exercise was the result of increased "shunt-like" effect. In most subjects with subnormal PaO₂ while breathing oxygen at rest, PaO₂ increased to more than 500 mm Hg while breathing oxygen during exercise.

Subjects were further separated according to the ratio of FEV₁ to predicted normal FVC (table 6) as follows: group 1, 75 per cent

or more; group 2, 60 per cent to 74.9 per cent; group 3, less than 60 per cent. Subjects with greater impairment in oxygen transfer were more numerous among subgroups with more abnormal ventilatory function. Within each ventilatory subgroup, however, there was no correlation between ventilatory capacity and AaPO₂. Mixing of inspired air, as judged by the seven-minute alveolar N₂ concentration (mean values: group 1, 0.74 per cent; group 2, 1.03 per cent; and group 3, 2.11 per cent) correlated poorly with AaPO₂ within each ventilatory subgroup.

Fractional uptake of CO continued to exhibit a high degree of correlation with the AaPO₂, with no obvious relationship to ventilatory capacity.

In an effort to assess the influence of cigarette smoking on respiratory function in these subjects, they were grouped according to total history of cigarette smoking as pack-

TABLE 5
OXYGEN CONSUMPTION, VENTILATORY EQUIVALENT FOR OXYGEN, ARTERIAL
OXYGEN TENSION, FRACTIONAL CARBON MONOXIDE UPTAKE, AND STEADY STATE
DIFFUSING CAPACITY DURING EXERCISE, AND ARTERIAL OXYGEN TENSION DURING
100% OXYGEN BREATHING AT REST IN 368 SOFT-COAL MINERS

AaPO ₂ (mm Hg)	VO ₂ (ml/min/m ₂)	VE/VO ₂ (ml/ml)	PaO ₂ (mm Hg)	Fractional CO Uptake	DL _{CO} (% predicted)	PaO ₂ on Oxygen (mm Hg)
< 19.9	687.3 (93.4)	35.0 (3.7)	78.7 (3.7)	.282 (.033)	152.1 (33.2)	552 (21)
20 - 24.9	783.3 (130.2)	33.6 (6.5)	74.3 (5.3)	.305 (.050)	139.0 (39.1)	549 (14)
25 - 29.9	716.9 (102.7)	35.2 (6.5)	70.0 (5.3)	.276 (.058)	127.7 (31.5)	537 (17)
30 - 34.9	732.2 (130.2)	36.0 (6.0)	65.0 (5.1)	.261 (.045)	118.5 (30.2)	531 (26)
35 - 39.9	710.7 (130.0)	36.4 (6.1)	61.2 (5.7)	.246 (.046)	107.3 (34.1)	522 (20)
> 40	671.0 (100.0)	40.1 (7.4)	53.7 (5.6)	.206 (.046)	90.0 (30.1)	510 (27)

Key: See table 3 for definition of symbols. DL_{CO} = steady state pulmonary diffusing capacity.

TABLE 6
VENTILATORY FUNCTIONS AND VENTILATORY EQUIVALENT
FOR OXYGEN, ARTERIAL OXYGEN TENSION, AND FRACTIONAL
CARBON MONOXIDE UPTAKE DURING EXERCISE IN 368 SOFT-COAL MINERS

AaPO ₂ (mm Hg)	No. of Subjects	FVC (% predicted)	FEV ₁ (liters)	$\dot{V}_E/\dot{V}O_2$ (ml/ml)	PaO ₂ (mm Hg)	Fractional CO Uptake
GROUP I*						
<19.9	7	109.6 (18.2)	3.71 (0.55)	33.6 (2.4)	77.3 (2.9)	0.286 (0.029)
20 - 24.9	21	105.4 (12.2)	3.80 (0.71)	34.7 (7.1)	75.9 (5.8)	0.308 (0.054)
25 - 29.9	40	108.0 (12.6)	3.67 (0.54)	35.0 (7.2)	71.5 (4.7)	0.286 (0.059)
30 - 34.5	49	105.0 (12.4)	3.56 (0.41)	36.6 (7.0)	67.4 (4.6)	0.264 (0.051)
35 - 39.9	31	102.5 (9.3)	3.61 (0.40)	36.3 (7.0)	63.6 (4.6)	0.244 (0.044)
>40	14	101.7 (10.7)	3.54 (0.26)	39.5 (6.4)	56.4 (4.6)	0.203 (0.040)
GROUP II†						
<19.9	0	—	—	—	—	—
20 - 24.9	8	86.3 (5.6)	2.83 (0.20)	34.0 (6.1)	75.1 (3.1)	0.295 (0.051)
25 - 29.9	16	89.4 (7.3)	2.78 (0.33)	35.8 (4.8)	70.3 (3.9)	0.259 (0.050)
30 - 34.5	32	85.8 (6.8)	2.90 (0.32)	35.5 (5.7)	65.6 (4.7)	0.264 (0.046)
35 - 39.9	17	89.1 (7.6)	3.08 (0.32)	37.8 (5.2)	62.3 (3.3)	0.241 (0.044)
>40	19	91.2 (7.6)	2.92 (0.35)	39.4 (7.7)	55.7 (5.1)	0.211 (0.041)
GROUP III**						
<19.9	2	60.5 (13.5)	2.04 (0.46)	40.0 (3.0)	83.5 (1.5)	0.270 (0.040)
20 - 24.9	13	63.8 (13.9)	1.78 (0.47)	31.7 (5.1)	71.4 (4.6)	0.308 (0.044)
25 - 29.9	17	63.4 (9.9)	1.98 (0.49)	35.3 (5.8)	66.0 (6.0)	0.269 (0.057)
30 - 34.9	34	71.4 (12.5)	1.95 (0.42)	35.6 (4.5)	62.9 (5.1)	0.254 (0.039)
35 - 39.9	18	69.5 (15.4)	1.82 (0.50)	35.4 (5.9)	56.5 (6.3)	0.255 (0.049)
>40	30	72.8 (17.5)	2.06 (0.46)	40.8 (7.7)	51.2 (5.2)	0.204 (0.051)

* FEV₁ = 75 per cent or more predicted FVC.

† FEV₁ = 60 per cent — 74.9 per cent of predicted FVC.

** FEV = 59.9 per cent or less of predicted FVC.

Key: See tables 2 and 3 for definition of symbols.

TABLE 7
VENTILATORY FUNCTIONS, VENTILATORY EQUIVALENT FOR OXYGEN,
ALVEOLAR-ARTERIAL OXYGEN GRADIENT, ARTERIAL OXYGEN TENSION, AND
FRACTIONAL UPTAKE OF CARBON MONOXIDE DURING EXERCISE IN 368
SOFT-COAL MINERS AS RELATED TO HISTORY OF SMOKING

Cigarette Smoking (pack-years)	No. of Subjects	FVC (% predicted)	FEV ₁ (liter)	$\dot{V}_E/\dot{V}O_2$ (ml/ml)	AaPO ₂ (mm Hg)	PaO ₂ (mm Hg)	Fractional CO Uptake
0	74	92.7 (21.8)	3.04 (0.83)	35.3 (6.8)	30.7 (6.7)	67.4 (7.5)	0.272 (0.055)
1 - 14.9	96	89.4 (19.4)	3.03 (0.92)	36.2 (7.1)	33.0 (8.5)	65.4 (9.0)	0.259 (0.061)
15 - 29.9	102	88.0 (20.5)	3.01 (0.85)	36.2 (6.3)	33.8 (7.1)	64.4 (8.2)	0.254 (0.054)
30+	96	88.0 (17.7)	2.68 (0.75)	37.3 (6.3)	34.7 (8.2)	63.2 (8.6)	0.249 (0.052)

Key: See tables 2 and 3 for definition of symbols.

years. One pack-year was defined as equivalent to smoking one pack of cigarettes per day for one year, regardless of intensity of smoking. No distinction was made between present and former smokers. Few miners were heavy smokers (i.e., two packs of cigarettes per day).

In table 7, ventilatory function, ventilatory equivalent for oxygen, and gas exchange are summarized for four broad ranges of smoking. Ventilatory capacity, as judged by FEV_1 was reduced in subjects who admitted to 30 or more pack-years ($P < 0.01$). Oxygen transfer impairment was greater in both the 15 pack-year to 29.9 pack-year group and the 30 plus pack-year group than among the life-long nonsmokers ($P < 0.01$). There were no differences in age or years of employment among the smoking groups.

Discussion

Among this group of coal miners, there was almost no correlation between radiographic evidence of pneumoconiosis and either clinical symptoms or respiratory function. It was true that most subjects with progressive massive fibrosis were symptomatic and that oxygen transfer was impaired to a greater degree than in men with less marked radiographic abnormalities. Among the latter, however, were many miners with equally severe symptoms and respiratory function abnormalities, qualitatively and quantitatively identical to those found in cases of progressive massive fibrosis. Included were miners whose chest films revealed no definite pneumoconiosis, although it is doubtful that any such subject had entirely normal roentgenograms.

Ventilatory function, as judged by standard spirometric methods, was not related to roentgenographic findings. In addition, impaired ventilatory capacity of any degree was detected in only 56 per cent of the subjects. Many subjects with normal ventilatory capacity were highly symptomatic. At least moderate impairment of oxygen transfer was present in almost all symptomatic miners. In addition, most exhibited inappropriately increased ventilation during exercise that was often reduced during 100 per cent oxygen breathing, but not to normal levels.

In these miners, impaired oxygen transfer was encountered considerably more frequently than was ventilatory insufficiency. Even among a few subjects who denied dyspnea on effort and exhibited little or no intolerance to exercise, evidence of impaired oxygen transfer was found that usually included mild hypoxia, reduced fractional CO uptake, and occasionally slightly reduced steady state diffusing capacity. Although the number of miners with these findings was insufficient to allow definite conclusions, these abnormalities were regarded as preclinical, functional impairment. It is not believed that the hypoxia itself was responsible for the loss of exercise capacity or the dyspnea on effort.

The normal or supernormal steady state diffusing capacity values in the subjects might have resulted in part from overventilation (11, 12). It is also possible that a systematic error was made in calculating the alveolar carbon monoxide tension. The fractional uptake of CO, especially when corrected for hyperventilation, reflects much more reliably the oxygen transfer capacity. Others have reported reduced diffusing capacities in miners with only simple pneumoconiosis, using either the single breath (13, 14) or steady state diffusing capacity (15).

These observations do not point to the specific pathophysiologic mechanisms responsible for the impaired function. They do, however, demonstrate several important areas of disagreement with the conclusions of Gilson and Hugh-Jones (1). Disabling impairment of respiratory function is more common among miners with complicated pneumoconiosis; however, equally severe impairment, qualitatively and quantitatively, is not uncommon among miners with simple pneumoconiosis or even among miners with less specific radiographic abnormalities. No evidence was found to support the belief that disabling lung disease, even among those with complicated pneumoconiosis, is exclusively related to obstructive ventilatory insufficiency. The present studies consistently demonstrated a lack of correlation between ventilatory function and roentgenographic categories of pneumoconiosis. On the other

hand, impaired oxygen transfer, very commonly associated with disabling impairment, is more often encountered in patients with advanced pneumoconiosis. It seems likely that, in the study by Gilson and Hugh-Jones (1), a significant bias in sample selection existed. The subjects of that study with normal radiographs and those with simple pneumoconiosis were mainly asymptomatic, working miners. Their cases of progressive massive fibrosis were drawn from a separate population group, and in addition, attended a clinic or were hospitalized because of respiratory disease. It is reasonable to conclude that their cases of progressive massive fibrosis included a large proportion of highly symptomatic men and men with severe chronic bronchitis. In an earlier British publication (16), it was concluded that disabling respiratory insufficiency of occupational origin was found in a few coal miners whose chest films revealed only slight abnormalities; however, no physiologic data were presented.

Nonindustrial factors were, no doubt, responsible for some of the abnormalities in the miners in the present study. That cigarette smoking might have played a role is undisputed. The conclusion that cigarette smoking was more important in causing respiratory disease than was occupational exposure (17), however, cannot be accepted. Certainly other less well defined factors are shared by coal miners and the population at large. Much more investigation is required before any estimate of the relative importance of these factors can be weighed.

The writers' experience leads them to conclude, as do others (18), that evaluation of the functional status of coal miners is inadequate when only roentgenographic examination and tests of ventilatory function are used. The roentgenogram is of little or no value in evaluating functional capacity. The absence of abnormalities sufficient to warrant a diagnosis of even simple pneumoconiosis does not exclude the possibility of severe loss of function. Standard tests of ventilatory capacity can remain normal even in the presence of severe respiratory disability. A meaningful evaluation of respiratory func-

tion of coal miners must include assessment of gas exchange.

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