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BLACK LUNG BENEFITS REFORM ACT OF 1975

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HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR STANDARDS

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, D.C.
SEPTEMBER 10, 1975

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CARL D. PERKINS, *Chairman*



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BLACK LUNG BENEFITS REFORM ACT OF 1975

WEDNESDAY, SEPTEMBER 10, 1975

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

The subcommittee met, pursuant to notice, at 11:05 a.m. in room 2257, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Members present: Representatives Dent, Risenhoover, Simon, Zeferetti, Ashbrook, Erlenborn, and Goodling.

Staff members present: Robert E. Vagley, staff director; Adrienne Fields, clerk; Edith Baum, minority counsel for labor.

Mr. DENT. The subcommittee will come to order.

As an adjunct to our previous hearings on the black lung benefits reform legislation, we are here today to hear testimony from the Honorable Daniel J. Flood, Member of Congress from the 11th District of Pennsylvania, known as the anthracite district of the United States and of the world, I guess.

Dan Flood is a long-time Member of Congress, has been a resident of that area all his life. I believe he knows more than any man I have known here in Congress about the anthracite region and its problems.

Mr. Flood, we welcome you here as always.

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

Mr. FLOOD. Thank you, Mr. Chairman.

Mr. Chairman, members of this distinguished committee, ladies and gentlemen, it is a special privilege for me today to be able to appear before this committee chaired by a legislator who has become a legend in his time, a legend because he has been in the forefront on every piece of social and labor legislation before this Congress for the past 25 years.

I refer, of course, to the one and only, the Honorable John Dent, the gentleman from Jeannette, whose leadership imprint rests upon some of the most widely acclaimed laws to be passed by the Congress in modern times.

Now, I share a special feeling on this occasion because it was John Dent and myself who introduced jointly the original black lung law which became the Coal Mine Health and Safety Act of 1969, an historic piece of legislation indeed.

I was privileged to work with your chairman once again in 1972 in enacting urgently needed amendments to the original law.

And so, Mr. Chairman and members of the committee, may I extend to you at the outset my sincere congratulations for a continuous job well done.

And permit me, if you will, to thank you on behalf of the coal miners of this Nation, on behalf of their families and their descendants, for it is your dedicated work which has transformed the job of coal miner from a death-defying profession that it was to the safer, saner, more secure profession it is today.

Well, Mr. Chairman, this marks the third time I have appeared before this committee to testify on the subject of coal workers' pneumoconiosis or CWP—black lung. Back in 1969 when your chairman, Mr. Dent, and I started this, we were amongst the very few who could even pronounce that word, pneumoconiosis. We have all come a long way since then.

In the anthracite fields we called it miner's asthma or anthrasilicosis but today everyone calls it black lung.

Here in Washington and in the coal fields it is black lung. But in the coal fields I represent, there is a basic, fundamental, and a critical difference from the coal workings elsewhere. In my district, as you know, we have anthracite coal, not bituminous. We have hard coal. Thereby hangs the tale. That dust and those particles are hard.

You know, in Washington many times they can't even spell anthracite. There are a lot of reasons for that. Anthracite is mined in eight counties in northeastern Pennsylvania, just a little cluster of eight counties there, and accounts for under 6 million tons annually in production, and—this isn't generally known—is found very rarely anywhere else in the world. It is geographically and geologically unique.

Anthracite is a more deadly form of coal to the miner than bituminous. This is an undisputed medical fact. An undisputed medical fact. Anthracite coal produces a higher incidence of disease over a shorter period of time than bituminous. This will be documented fully a bit later.

For now though, it is critical for this committee to recognize that we are talking about anthracite and not bituminous coal. These are two entirely different kinds of coal with differing effects on the miner. Make no mistake about that.

Both this year and last, the Congress recognized these differences with the passage of an entirely separate and distinct section of the surface mine stripping bill devoted to anthracite. A separate and distinct section, passed by both the House and the Senate twice in 2 years.

So, you see, we have already come down this road before, but not before this committee.

I am therefore proposing to this committee the addition to your final black lung amendments bill of 1975 the following section—and let me quote it:

If a miner was employed for 25 years or more in one or more anthracite mines, there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis.

That is the end of the quotation.

Mr. Chairman, you shall all have a copy of this before you. As you can see, you are being urged to adopt a presumption based upon a certain number of years of mining employment to establish that a miner is totally disabled or that his death was caused by pneumoconiosis.

This approach is both equitable and makes good sense. It will prevent the endless medical testing and retesting, the indecisiveness, and ultimately the frustration attendant to claims involving miners with long years of hard coal mine employment.

You know, I have cases in my files that are shocking. Oh, dear Lord, shocking. You know, in the summer up there, you walk down the street, through an alley. The windows are open. There is a screen. And you can hear that labored breathing.

There are men sitting in those kitchen windows who worked underground for 40 years. They receive their black lung benefits, some of them. Oh, you don't need to be a doctor.

And across the street there lives a widow whose husband worked 40 years in the mines. I am just thinking of one mine for an example, the Dorrance in Wilkes-Barre, almost up in my backyard.

Forty years in the Dorrance, and you need a doctor or a certificate or an X-ray or something to establish that that guy has anthrasicosis? Good heavens. Just take a look at him. Listen.

Well, her husband worked in that mine 40 years, and she can't get the widows' black lung benefits because her husband is dead, her husband's doctor is dead, and there is no evidence of any kind. The doctors didn't keep those records or statistics. They didn't even keep records or statistics of how much feed they bought for their horse when they rode around in that little black buggy. Hospitals don't have the records. There is no proof.

She can hear those sounds coming through those kitchen windows, the same sounds of tortured breathing she heard from her own husband for so many years before his death.

Now, there is the case of Catherine K., 68 years old in 1971 when she first wrote to me from her home in Edwardsville, Pa. She said then: "Dan, my husband Stanley worked in the mines 45 years, and now I went twice for the black lung and I can't get it because he was killed in the mines." A rock fall or a coal car jumped the tracks or something. "They told me it was a natural death. My husband was a very sick man, but he worked because we had a girl going to school".

This woman's doctor and a friend of her husband who worked with him—a lot of them—both signed affidavits attesting to his disability—and you can imagine after 45 years in the mines—but to this day she has been refused. They say he died a natural death.

Oh, boy, these bureaucrats are grand.

Then there is the case of Cornelius G., who writes on behalf of his father who worked 33 years in the mines, who was dragged dead out of the mines at age 50, whose widow was denied black lung benefits even though seven fellow workers testified at the hearing that the man was obviously suffering from severe black lung disability.

Oh, God, can't that examiner see or hear? Look at him. Listen to him. A widow whose husband worked a job at the entrance to the mine instead of underground for the last 2 years of his life because his rotted lungs couldn't stand the dusty air from below.

There are scores of cases of denial of benefits because of such lack of evidence, and I am a trial lawyer. Those things are sitting on my desk today.

Mr. Chairman, these denials are unjust and inequitable since a mere quirk of administrative technicality prevents the awards of benefits to widows whose husbands obviously—as plain as the nose on your face, and you have got a lot of nose and so have I—had black lung disease.

I say “obviously” with no hesitation whatsoever since the medical data is absolutely conclusive that an anthracite coal miner will have black lung disease after 25 or more years in the mines, at a quicker rate than the bituminous coal miner.

On February 27, 1975, Dr. Leroy Lapp of the West Virginia Medical Center testified before this committee. Chairman Dent asked:

Is there a heavier incidence in the anthracite miners than in the bituminous miners of pneumoconiosis?” Dr. Lapp: “Yes, there is a higher prevalence of abnormal respiratory function in anthracite miners than in the bituminous miners.

On that same date, Dr. Keith Morgan of West Virginia Medical Center testified in response to a question from Mr. Erlenborn that: “* * * in the anthracite area of Pennsylvania 14 percent of working coal miners had complicated pneumoconiosis. In Utah and Colorado it was around 0.1 percent,” over the same period of time.

Complicated pneumoconiosis is PMF, pulmonary massive fibrosis—black lung in its most severe form. PMF occurs most severely, at a higher rate, and much sooner, after exposure in the anthracite regions as contrasted to bituminous.

Dr. Murray B. Hunter, medical director of the Fairmont Clinic at Fairmont, W. Va., testified before this committee on March 12, 1975, and he posed his own question as follows:

Do coal miners have an increased prevalence of potentially disabling respiratory disease as compared to the general population.

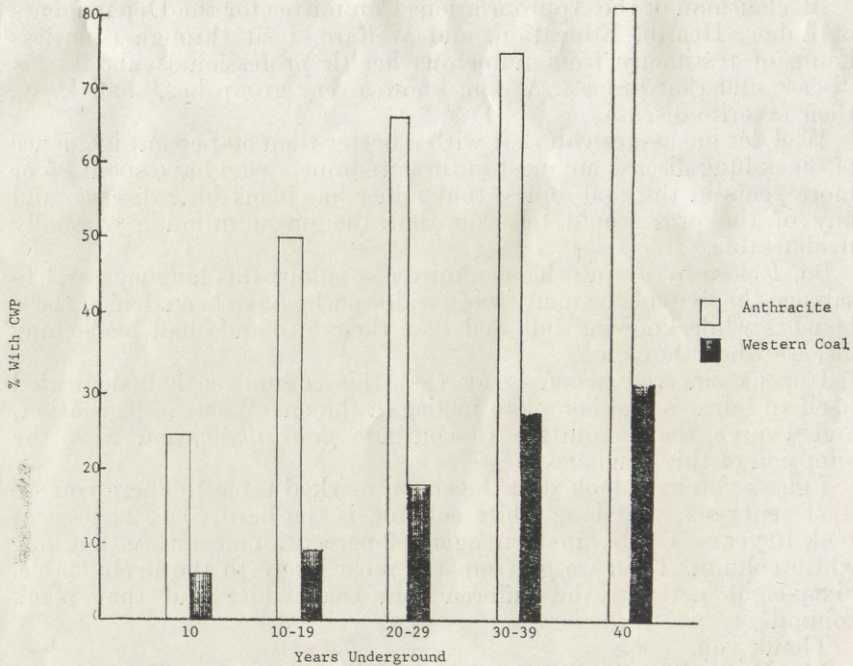
The answer is unequivocally yes. The issue is one of the magnitudes of difference. This difference is highest for anthracite miners, least for miners in the Western States.

After this convincing testimony from witnesses, all experts in their field, before this committee supporting the view that anthracite coal produces a more deadly hazard than bituminous, I refer you to a chart you have labeled table 1, which is the table with the light and dark bars there.

This table is reproduced from a study conducted under the direction of the National Institute of Occupational Safety and Health of the U.S. Public Health Service.

The study is entitled: “The Prevalence of Coal Workers’ Pneumoconiosis—CWP—in U.S. Coal Miners,” and this appeared in the Archives of Environmental Health, a publication of the American Medical Association in October, 1973.

The table clearly and unequivocally demonstrates the finding that anthracite coal miners consistently risk a greater chance of contracting a more severe form of black lung disease after a shorter period of exposure to coal dust than do bituminous coal miners.



Relationship of prevalence of CWP by region to years of underground exposure.

TABLE 1

Table 2 demonstrates the same proof, showing, for example, that, while only 1.7 percent of bituminous miners in the study contracted pulmonary massive fibrosis, over 14 percent of the anthracite miners had this most severe lung disease. The balance of table 2 demonstrates this clear difference between the two types of coal in every single category.

TABLE 2.—REGIONAL PREVALENCE OF CWP ROENTGENOGRAPHIC CATEGORY

Region	Category										Total
	0		1		2		3		PMF		
	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	
Eastern Pennsylv- ania (anthracite)	209	40.0	123	23.5	93	17.8	23	4.4	75	14.3	523
Bituminous, national	6,154	72.0	1,799	21.0	418	4.9	33	0.4	149	1.7	8,553

Mr. Chairman and members of this committee, as bad as black lung disease is in the soft coal or bituminous areas—and it is bad—we in the anthracite region have it much worse. The medical evidence is overwhelming.

The human toll from black lung disease is overwhelming, be it in the soft coal or hard coal regions, but the medical evidence is completely conclusive that we in the anthracite region have a higher incidence of the disease over a shorter period of time.

As chairman of the Appropriations Committee for the Departments of Labor, Health, Education, and Welfare, I sit through countless hours of testimony from numerous health professionals about this disease and that disease. As you know, every group has, shall I say, their favorite disease.

Well, let me assure you that with a better than 60-percent incidence of black lung disease amongst anthracite miners who have spent 25 or more years in the coal mines, that miner has black lung disease, and any of the pros would tell you that the presumption is virtually irrefutable.

So, I close by urging this committee to adopt this language and to salvage the lives of the many score widows who have been denied these benefits while knowing full well that their husbands had black lung disease when they died.

I speak sincerely when I say that this committee had dedicated itself to fairness and complete justice in the enactment of legislation, and I urge the committee to continue your dedication with the adoption of this language.

I guess you have looked at the chart, marked table 1. There you see it. Twenty-six, that long white column, is the hard coal; 26 percent took 10 years. Ten to nineteen, again 52 percent. You can see that long white column. Then we go from the most likely to the irrefutable. Sixty-eight percent, the difference in that white and that black column.

Thank you.

Mr. DENT. Thank you, Congressman Flood. During our early consideration of the coal mine health and safety legislation, we were apprised of the higher incidences of black lung disease in the anthracite region. This phenomenon was attributable not only to the difference in the size of coal dust particle, but also the less advanced rock dusting and ventilation methods employed in anthracite mining. As you graphically pointed out, anthracite miners have been forced to inhale dust particles that are as hard as diamonds.

With the modern dust control methods, and strict enforcement of the mandated dust standards, I am confident we can look toward a future with few if any new cases of black lung disease. But as you so eloquently stated, our major concern here today is the men who have labored for 20, 30 or more years in the mines who are suffering an agonizing existence with their lungs ravaged by an insidious disease, and the widows of those men who cannot substantiate the fact that their husbands suffered or died from the disease because medical records are nonexistent and the treating physicians have long since died.

The plight of some widows is particularly tragic. We find that in too many cases widows are being denied benefits while other widows whose husbands had identical work experiences are receiving benefits. In some communities this has caused serious social as well as economic problems.

I personally believe the time has come to establish a benchmark by enacting an irrefutable presumption of disability.

I am sure your testimony will receive the committee's serious consideration because we recognize you as an authority in this matter, not only as a Member of Congress, but as a longtime resident of the anthracite region who has represented these families.

I am sure the committee will benefit, as I have said, from your testimony, and I personally thank you for taking time this morning to come here and give us this testimony.

Mr. FLOOD. Thank you, Mr. Chairman.

Mr. DENT. Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman. I too want to thank you, Congressman Flood, for your testimony. You have been this morning, as you have been before, an excellent witness before this committee.

I am particularly intrigued by the table of incidence of coal worker's pneumoconiosis that you furnished the committee. Looking at this table and bearing in mind some of the proposals before this committee, I found it quite interesting.

As an example, one of the bills before this committee would have an irrebuttable presumption that anyone who worked in a coal mine for 15 years has completely, totally disabling pneumoconiosis.

Your table indicates that less than 10 percent of those who have worked in bituminous for 10 to 19 years have any stage of the disease. In other words, fewer than 10 percent would have disabling pneumoconiosis. If we were to enact legislation granting benefits to everyone who has worked for 15 years or more in the coal mines, we would be taking care of the entire universe, 100 percent, when less than 10 percent actually will be suffering disabling pneumoconiosis.

Even if we were to go to some of the less ambitious proposals before the committee, those who would say 25 or 30 years, if you look at table 1 again, of those working 20 to 29 years, less than 20 percent in the bituminous areas would have any stage of the disease. Again, a fewer number would have disabling stages of the disease, and, yet, these proposals would have us give benefits to the entire universe, 100 percent.

I think, on the basis of what you have given us today, it appears quite clear, that if we were to enact any irrebuttable presumption, what we would really be doing is changing this compensation program to a retirement program.

This subcommittee is the one that produced the Employees' Retirement Income Security Act of 1974. We were trying to protect people who would be the beneficiaries of private pension plans, and one of the things that we did there was to make certain that these benefit plans were properly funded.

It appears to me here we are creating a Federal retirement program for one segment of private industry; that is, the coal industry, that would not be really financed by the industry, but rather out of the Federal Treasury.

Do you think this is really fair?

Mr. FLOOD. Well, "fair" is a very elastic term. The way you are using it, there is no doubt in the world that you must have a demarcation line drawn, but there is also no doubt that many of these cases indicated by the chairman and by some of my remarks—I happen to have several cases, just like your chairman. Here we have a number of men working exactly in the same place. I am speaking of one particular mine, the Dorrance so-called.

If the law is going to be this way, the way you have the law, then you are clearly producing in the administration a problem. This is an attempt not to strike at the roots of the veracity of your law, but to

equalize and to make fair to everybody so effected. There must be a demarcating line, a matter of fact.

There is no doubt in my opinion in the hard coal fields—I say here 25 years—I tell you very sincerely in my mind that any man who works underground in that Dorrance mine on the face of that slope for 15 years—he has miners' asthma as sure as God made little green apples. There is no question about it.

But there has to be the rule of reason. It has to apply. That is why I say 25 years. The difference between the soft coal—I think you are talking about 30 years, something like that—is because of the scientific data and the evidence as between the hard and the soft coal. It is like night and day. That is the only reason.

Now, the philosophy of the law is an entirely different thing. It is a matter of opinion as to what kind of a law you are talking about. I happen to disagree with you insofar as whether you are setting up a separate—a special breed. No.

What the Congress would do with this, I don't know, but I find, if you are going to make these awards under all those circumstances under the system we have set up—and it is a difficult problem—you know, the backlog of these cases and these hearing examiners, but there you have a problem. You can't handle that, I am sure, but I had a hearing examiner appear in Wilkes-Barre, the center of my district. There they had—and here they sent in a hearing examiner and they had to have somebody to translate English to the hearing examiner. He couldn't even understand English.

There you have problems. You can't administer anything like that.

The philosophy of the law is entirely different. We would differ basically only on the fairness of having so many groups—if those seven miners on that slope are there 25 years, then the idea—it is beyond the rule of reason, not science, to say five of those widows get pensions and the other three do not. This is beyond the intent and purpose of any act of Congress.

You either do it or you don't do it. It is a matter of philosophy. I see your position very clearly.

Mr. ERLNBORN. I would note on your—

Mr. FLOOD. If the gentleman will yield, we run into this time and time again. I remember when this bill was on the floor. Well, you were there when the bill was on the floor. I was in the Chair, you remember, the Committee of the Whole House, presiding.

Somebody—your Chairman was speaking and somebody said—very fair question—said: "Well, will the gentleman yield?" Maybe it was you. I don't know. "How much will this cost?" Well, nobody had any idea under those circumstances, and that is part of the philosophy that you have indicated.

Of course, they couldn't possibly say. They just don't know for the very things that I am objecting to. They can't tell you now how much this will cost next year.

Mr. ERLNBORN. I notice in your table that even among those who work for 40 years, which is a full working lifetime, in bituminous mines, less than 30 percent or approximately 30 percent have any stage of the disease. Those who would be totally disabled would be an even fewer number.

Yet, if we were to enact this legislation, we would say there is an irrebuttable presumption that 100 percent of these miners are totally disabled or have died as a result of their exposure for 40 years in the coal mines.

This reminds me of something that the Indiana Legislature did a few years ago. The legislature passed a bill which said the value of pi in mathematics—that is p-i, not p-i-e—the value of pi is 3.14. You don't go any farther.

Now, that didn't really change the value of pi, you see. The mathematicians still had to use all those numbers.

So we can enact legislation that says something is this when it really isn't, but you don't create medical fact by legislation.

Mr. FLOOD. I certainly don't want to—I don't want you to confuse me with mathematics. I would have been a Phi Beta Kappa in my junior year, except I couldn't add. That is why I am on the Appropriations Committee. I can't add very well.

[Laughter.]

Let me tell you from my experience as chairman of Labor, HEW—Let us take the health part of HEW. We find out—and this is a pretty strong answer for you here. When you get beyond 50 percent, what about 80 percent? You still have 20 percent left over. What are you going to do there?

We have found out in the medical profession, in the field of medicine rather, no matter what the disease is, whether it be a toothache or something beyond, the minute you reach a certain percentage of conditions, in many cases or diseases it will be 70 percent, 60 percent, but the minute that diagnosis reached 50 to 60 to 70 percent, automatically—it—once that is recognized, no matter what it might be, the minute that diagnosis is there, that is the rule they are applying here.

If and when you reach that point in the field of medicine, if it is 70 percent, if it is 55 percent, without more, that is it. They will no longer debate that 30 percent. They don't take any chances. Pretty close analogy in the field of medicine of the diagnosis of disease to the situation here.

Mr. ERLNBORN. Your arguments don't do much good then for the bituminous mines because they don't even get up above 30 percent after 40 years.

Mr. FLOOD. The bituminous mines have in John Dent an advocate with whom I would rest their case without much hesitation.

Mr. ERLNBORN. Thank you, Mr. Chairman.

Mr. DENT. I want to state one thing for the record right now. We are dealing with Western coal, which has less silica in it than bituminous in the East.

Mr. FLOOD. If the gentleman will yield, on my chart, instead of the four classifications of anthracite, Western, so on, and bituminous, I just took anthracite as against all the others. That is why I put it that way.

Mr. DENT. You did it right, because it makes you look much better, makes us look much worse.

Mr. FLOOD. I am a special pleader.

Mr. DENT. In the four main Western deep mine coal areas, the total number of approved claims is less than about 7,000, out of 356,000 claims nationwide that have been approved for black lung

compensation payments. We have to consider that disparity just as we consider anthracite because of the peculiarities of the coal itself and the methods used to mine it.

We have the figures here for the payments in each State of the Union. In the Eastern coal mines pneumoconiosis might not be a disease that strikes as early as it does in the anthracite, but it does strike about the same percentage of miners who become afflicted if they work an appreciable amount of time in the mine.

We are happy to note, I think, that because of the work of this committee and the Congress that this is no longer going to be a problem in this country. I think we have begun to eradicate the disease because we have made new law that regulates the conditions under which the miners work. Those who have gone before, however, are entitled to the same consideration, whether it be in bituminous, anthracite, or even in the western mines, because proof of pneumoconiosis has been found even in strip mines, depending upon the nature of the stripping, whether in a low humidity or a high humidity, differences in the movement of the air or whether the dust stays close to the ground or drifts off the workplace. All of these things have been given consideration.

We will try to get a draft that will show the incidence in the so-called eastern mines. However, at this point, I agree with John that every precaution must be taken by this committee that the legislation we do pass is fair, equitable, and sound, and we will do that, I am sure.

I think the next member would be Mr. Zeferetti.

Mr. ZEFERETTI. No questions.

Mr. DENT. Mr. Ashbrook?

Mr. ASHBROOK. Just one question. I was listening to your statement regarding the situation where eight coal miners died, five widows get benefits, and three do not get benefits. You asked: What is the fairness of that?

In the situation where the five husbands who were deceased had pneumoconiosis and the three did not, do you think it would still be unfair that the three widows did not get some benefits?

Mr. FLOOD. Oh, no. No.

Mr. ASHBROOK. You are assuming that all of them had, even though it wasn't proved?

Mr. FLOOD. That is why I say it is the purpose of this kind of legislation. We who know this business, who know the coal fields—I just simply can't understand how in the world it couldn't happen.

Mr. ASHBROOK. It could happen that three don't have?

Mr. FLOOD. Anybody who worked for 25 years in the same place alongside of each other, where I have been and seen—it would be beyond the realm of reason. That is why I say "beyond the realm of reason", and this kind of law with reason of some kind—how any human being could work 25 years at that place, knowing what the dust is, knowing what happens to your lungs, and hearing them come out and listening to them and see them—I don't need a doctor. This fellow walks into my office and sits there. I go by his home. He says: "Hi, Dan," and he is sitting on the front porch. Now, he has been before examiners and they have had hearings, and I have known this fellow for years, and he is sitting in that chair and he is rocking back and forth. He has been denied—he worked for 25 years with

the three fellows across the street on the same slope, on the same pitch, the same face, They have been granted for some reason.

I look at him, and he is breathing heavily. I need a doctor to tell me that that man who can't get out of the chair—he has been denied.

Mr. ASHBROOK. What if he doesn't have it though. You are saying he absolutely does?

Mr. FLOOD. Period. Exclamation mark.

Mr. ASHBROOK. You mean 100 percent of the cases? You are absolutely sure they all do?

Mr. FLOOD. Under those circumstances. Now, between the 10 and 15 years, there is always somebody—how in the world—there is always somebody. Oh, yes. But under the rule, when you apply—when you act under this kind of legislation, the purpose of the intent of this law as such, the burden of proof should shift to the Government, not to somebody else, and that you have done.

If a certain series of circumstances arise that are so obvious, then the burden of proof you have shifted to the Government under certain circumstances because it is so transparent.

Mr. ASHBROOK. This would appear to be a little bit like that Western law that built up, the trappers' law. Anything caught in your trap is yours, and I guess what we are saying here indirectly is that anybody who has worked in the coal mine has it.

Mr. FLOOD. Nothing of the sort. Only beyond a certain number of years in a certain kind of condition. Yes. I don't say this is peculiar. Maybe the same thing is true of somebody who works in an asbestos mine or wherever it might be. I am talking about a coal mine. As Mr. Erlenborn indicated, that may very well be. I don't know, but I know the hard coal.

Mr. ASHBROOK. I am sure you do, and you are a very, fine advocate, and I appreciate your response.

Mr. DENT. You might have said, Mr. Flood, that the widow is not denied because her husband did not have pneumoconiosis because they cannot prove he didn't have it. The best benchmark to establish is a presumption that after prolonged inhalation of coal dust a miner contracts pneumoconiosis and becomes disabled.

Many of the mines were out in the hills. I know. I was born in one of those isolated towns. The doctor got there when I was 3 days old. He was a company doctor with seven mines. He didn't even get around to having anything to do with it except get his \$2 fee.

For many, many claimants the medical evidence is not available; the witnesses are all gone; the doctor is gone.

Mr. FLOOD. If the gentleman will yield, let me point out another analogy to you under the first law that we passed. The condition precedent to the proof is an X-ray. That was the condition. You had to have an X-ray. Exhibit A had to be the X-ray. This patient had to be X-rayed in the hospital or someplace, the doctor's office. Now, you had to have the X-ray.

Now then, this became soon ridiculous for the reasons I state here. These men—anybody, even the examiner, saw this man sitting there—and, if he didn't have black lung, I am the Prince of Wales. There is no difference of opinion about that. Something was wrong.

So we went to Germany and to England and we found out and the medical science proved the X-ray does not show this condition necessarily, and we finally—then you in your wisdom amended your act to meet that condition.

The X-ray—now this can be established. You must not show an X-ray. The X-rays didn't show this condition, and it took quite some time before we ever found that out. The British and the Germans established that for us, and we adopted that.

Mr. ASHBROOK. Thank you.

Mr. DENT. Mr. Simon?

Mr. SIMON. Yes. Just a few comments. I would like to underline that exclamation point that you added to the statement in response to my colleague from Illinois on the bituminous. Incidentally one of the problems, they tell me is that it is sometimes more difficult on X-rays to get the evidence from bituminous mines.

I had a case just recently where a man has to have an oxygen tent in his home every night to sleep. He has been turned down on black lung benefits. He was told—or he told me that his doctor said that, if he worked in an anthracite area, it would show up more on the X-ray. I frankly don't know.

I do know that in my area anyone—and this is in response to the gentleman from Ohio—anyone who has been 20 years in a deep shaft mine—I am not talking about surface mining—has breathing difficulties. There is no question about it.

It does seem to me that instead of going through all this rigamarole we do now, even if the awards are made, 97 percent are appealed by coal operators, that we have to change this.

I agree with my colleague from Illinois that we should not create a Federal indebtedness here and a Federal problem, and my answer here would be very simply that we have to tack on a small fee on every ton of coal mined and establish a trust fund, separate from the Federal Treasury, to pay claims. That, it seems to me, is the simple, logical answer for that particular problem.

On the matter of retirement, an automatic retirement that we are creating, I think what we ought to say is that after so many years—let us just say it is 20 years—and, incidentally, I would fight, with all due respects to my colleague from Pennsylvania, any differentiation between anthracite and bituminous. We have no such differentiation in the law right now and I would oppose such differentiation.

But just as we do now for the military, we say, if you retire after so many years, you can get so many benefits. If you stay on, you can get more.

There are people whose breathing is not so bad, that they want to continue on in the mines and earn some more, but there are an awful lot who absolutely should not be down there, or they are forced by economic circumstance to be down in the mines and are killing themselves, and we have to stop it, and there is only one way to stop it, and that is to move in the direction I hope this subcommittee will move.

Mr. FLOOD. Thank you, Mr. Chairman.

Mr. GOODLING. I have a question.

Mr. DENT. Mr. Goodling, from that great coal mining area in Pennsylvania.

Mr. GOODLING. I want to make sure that I understand what your amendment says. I gather it is past tense only.

Mr. FLOOD. That is right.

Mr. GOODLING. You are not talking about people who are working in coal mines now?

Mr. FLOOD. I am talking about the cases that are—only on record cases that we have. Yes.

Mr. GOODLING. It is all past tense.

Mr. FLOOD. As of now. Of course, if a man 15 or 20 or 30 years from now would have the same condition whatever the mines might be—now, what you do about the operation of the mines or what OSHA would do and the Department of Labor or the various States—certainly conditions in the mines today are a lot different than the ones I am talking about 40 years ago.

Mr. GOODLING. I asked that question because, if it isn't past tense, it wouldn't be consistent with your second paragraph on page 8.

I wouldn't want to get the military confused with this at all because we create the military here as the U.S. Government. We don't create anything else along the lines we are studying at this particular time, but this is all past tense.

Mr. FLOOD. Yes.

Mr. SIMON. If the gentleman from Pennsylvania will yield, one of the points you make—and I think it is an important point, and that is, there is a benchmark here of 1971 when the new dust standards apply, when there is a differentiation.

Mr. FLOOD. This is so.

Mr. GOODLING. And also, when you are able to go back to the owners of the mines—

Mr. DENT. Tracing.

Mr. FLOOD. Yes, that is so.

Mr. DENT. We all know that after passage of this bill, the coal industry will assume the entire cost of future black lung benefits claims.

Mr. FLOOD. That was the intention from the very first day this act was mentioned. There was never any doubt about that at all.

Mr. GOODLING. We don't produce coal, but we sure do pay taxes.

Mr. DENT. We sure do. The only trouble is up there they produce coal, pay taxes, and get sick, too.

Mr. FLOOD. Everybody is saying to me: "Flood, where is that coal? We need coal. We need coal. Where is the coal?" The energy people—I say: "Well, if you go across the street and tell those fellows who are taking my railroads away from me—how am I going to get coal? By carrier pigeon?"

So you have two things.

Mr. DENT. Thank you very kindly, Mr. Flood.

Our next witness is a colleague who has assisted us with our work on black lung legislation, and who is a hardworking Member of the House, and a true friend of the coal miner—Tom Bevill of Alabama.

Mr. Bevill, welcome to the committee and please proceed.

STATEMENT OF HON. TOM BEVILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. BEVILL. Mr. Chairman, as the son of a coal miner and as the representative of the coal-rich Fourth Congressional District of Alabama, it is with great pleasure that I cosponsored H.R. 8, the Black Lung Benefits Reform Act of 1975 at the beginning of the 93d Congress.

A long-overdue program to compensate black lung victims and their families was adopted by Congress in 1969. This program was the first plan adopted to officially recognize black lung as a compensable occupational disease.

For awhile the program served its purpose and for the most part did what was intended of it.

But like the plight of so many governmental programs, the black lung benefits plan fell prey to bureaucracy.

As a result, today we see the program as one of the most bogged-down and utterly confused programs in our Government.

It is with this deplorable state of the black lung program in mind that I am cosponsoring H.R. 8. Something must be done soon to alleviate this situation.

Therefore, I strongly urge this committee to issue a favorable report concerning the Black Lung Benefits Reform Act of 1975. It is my belief that this proposal can be a first step in turning the black lung program around and getting benefits out of Government bureaucracy and into the hands of deserving miners.

The bill before your committee is designed to transfer the responsibility of benefit payments from the Federal Government to the coal industry. This move, in my opinion, will greatly expedite the hundreds of black lung cases which are bogged down in governmental bureaucracy under the present benefits program.

I strongly believe the Congress must enact some sort of legislation aimed at getting the black lung benefits program back on sound footing. In my opinion, H.R. 8 is a step in the right direction.

Again, let me urge you to give favorable consideration to this bill which is so important to thousands of coal miners throughout our country who have been stricken with the horrible effects of black lung.

Mr. DENT. Are there any questions for Congressman Bevill? If not, the committee will adjourn at this point.

[Whereupon, at 12:05 p.m., the subcommittee adjourned.]

