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HEARING ON BLACK LUNG BENEFITS ACT, PART B
OF TITLE IV

DOCUMENTS

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HEARING
BEFORE THE
SUBCOMMITTEE ON LABOR STANDARDS
OF THE
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 5785

A BILL TO AMEND THE BLACK LUNG BENEFITS ACT TO PRO-
VIDE THAT CERTAIN BENEFITS PAID TO MINERS WHO ORIG-
INALLY FILED CLAIMS UNDER PART B OF TITLE IV OF SUCH
ACT SHALL NOT BE CONSIDERED WORKMEN'S COMPENSA-
TION BENEFITS FOR PURPOSES OF THE SOCIAL SECURITY
ACT

HEARING HELD IN WILLIAMSON, W. VA., ON OCTOBER 13, 1980

Printed for the use of the Committee on Education and Labor



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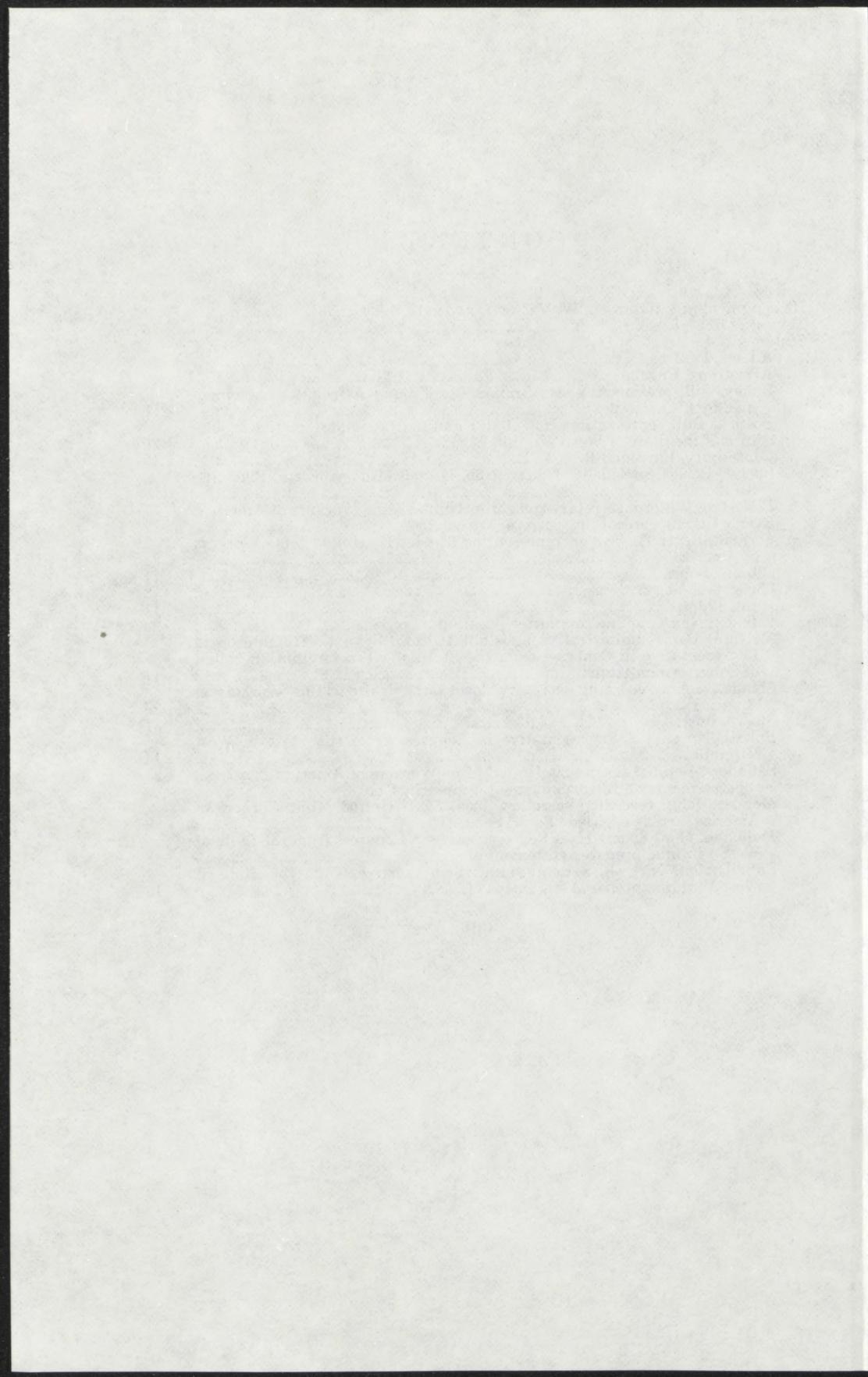
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HEARING ON BLACK LUNG BENEFITS ACT, PART B OF TITLE IV

MONDAY, OCTOBER 13, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR STANDARDS,
COMMITTEE ON EDUCATION AND LABOR,
Williamson, W. Va.

The subcommittee met, pursuant to notice, at 9:35 a.m., in the Field House, Williamson, W. Va., Hon. Carl D. Perkins, presiding.

Members present: Representatives Perkins, Kildee, and Rahall.

Staff present: Earl F. Pasbach, staff director; Karen Vagley, assistant general counsel; Edith Baum, minority counsel for labor.

Chairman PERKINS. Ladies and gentlemen, if you will all take seats, we will start. I have a heavy day ahead of me today. I go from here to my Ashland office, and then we have a Democratic rally in the Steelworkers Hall in Ashland this afternoon, commencing at 6 o'clock; so I have got a pretty heavy day ahead of me.

I am delighted to welcome all of you here today, and am delighted to have Congressman Kildee, from Michigan, who is here with me. He is a member of the House Committee on Education and Labor which has jurisdiction over all black lung legislation, and has from the start stayed with me in enacting all the legislation trying to help the coal miners of this Nation who really were suffering so much, and at the time you needed the assistance, he rushed to your aid in Washington.

My interest and deep concern for the coal miner and his family has been lifelong. I, like many of my dedicated colleagues, have spent many long years in an effort to provide some recompense for the suffering inflicted on these individuals. I grew up in a coal-mining community with coal mines all around me, and one of the first funerals that I ever attended as far back as I could remember was my father's nephew that got mashed up in the mines and stayed in our home at the time.

With the enactment of the Black Lung Benefits Act of 1969 and its subsequent amendments we made great strides in giving the miner his due benefit but, my friends, inequities persist—inequities which have arisen both from a prior erroneous application of the law as well as by legislative omission. We are here today to consider legislation designed to correct one of these inequities.

The problem is simply stated: The Social Security Act provides that disability benefits to a disabled worker and his family must be reduced if that worker is also receiving benefits under a worker's compensation program, and if these combined benefits exceed 80 percent of the worker's average predisability earnings.

When the black lung program was first enacted in 1969, the Social Security Administration regarded black lung benefits under part B as worker's compensation, and therefore applied the social security 80 percent rule to a worker entitled both to social security disability benefits and to black lung part B benefits.

With forceful statements that the Social Security Administration has erred in treating part B black-lung benefits as worker's compensation, the Congress changed the law in 1972 so that part B black-lung beneficiaries who were also receiving social security disability were no longer subject to the offset.

I bought that provision out on the floor of the House, and won it where a person had social security disability, to make sure that his black lung benefits could not be offset against social security disability.

I know the leadership of the House didn't want me to try, thought I was going to lose it. I thought I would try, and we were able to win that on the floor of the House, to get that one particular aspect removed, social security disability, and you draw social security disability and black-lung benefits, there is no offset applied.

The 1977 amendments to the Black Lung Benefits Act afforded previously denied or pending claimants the opportunity for reconsideration. In the course of developing these amendments, and thereby giving relief to deserving claimants who had for so long been wrongfully denied, the law failed to affirmatively state that these re-reviewed part B claimants were, except for payment purposes, to retain their part B status and, as B's, not subject to the social security disability offset.

As a result of this omission, the Social Security Administration began and continues, as to this class of recipients, to treat these black lung benefits as worker's compensation and because of such characterization reduces their social security disability payments accordingly.

Clearly, an injustice is being done. Segregating this small group of individuals from the rest of their class of beneficiaries and then to not only treat them differently but foist upon them a severe financial hardship not suffered by the rest of the class is a travesty we cannot ignore. It is a wrong that must be corrected.

H.R. 5785 and similar legislation, as introduced by myself and my good friend and colleague, Congressman Rahall, would provide the remedy. Specifically, H.R. 5785 amends the Black Lung Benefits Act to provide that social security disability benefits paid to miners who originally filed claims under part B shall not be considered worker's compensation for the purposes of the Social Security Act.

In other words, those re-reviewed part B claimants who are also receiving social security disability benefits would no longer be subject to the offsetting provision. In essence, this legislation would reaffirm the intent of Congress that all part B claimants, including those subject to rereview, be accorded equal treatment. Equity and fundamental fairness demand we do no less.

[Text of H.R. 5785 follows:]

96TH CONGRESS
1ST SESSION

H. R. 5785

To amend the Black Lung Benefits Act to provide that certain benefits paid to miners who originally filed claims under part B of title IV of such Act shall not be considered workmen's compensation benefits for purposes of the Social Security Act.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 1979

Mr. PERKINS introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Black Lung Benefits Act to provide that certain benefits paid to miners who originally filed claims under part B of title IV of such Act shall not be considered workmen's compensation benefits for purposes of the Social Security Act.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 435(a) of the Black Lung Benefits Act (30
- 4 U.S.C. 945(a)) is amended by adding at the end thereof the
- 5 following new paragraph:

1 “(5) Any payment of benefits under a claim which is
2 reviewed and approved under this subsection shall not be
3 considered to be a payment pursuant to a workmen’s com-
4 pensation law or plan for purposes of section 224 of the
5 Social Security Act.”.

Chairman PERKINS. I welcome all my friends here today and look forward to their informative comments.

I want to thank the United Mine Workers of America, who are represented here today. They are more responsible for this hearing than anyone else. They have been deeply concerned about this legislation, and we are delighted to work with them and work with all the coal miners in every way possible to try to get this law administered the way that we intended.

Now, I am going to call on Congressman Kildee, a great friend of the miners from this State. Many of you have gone into his district in Michigan after you have left West Virginia and Kentucky to find jobs when you were unable to find any employment in the coal fields. It is a great pleasure for me to call on Congressman Kildee to make a few remarks.

I do want to state that a quorum is present for the purpose of taking these hearings today.

Mr. KILDEE. Thank you very much, Mr. Chairman. It is good to be here in West Virginia.

My expert on black lung is my Chairman, Carl Perkins. He has educated me very well. He has asked me to come down here and talk to the experts who taught him; that is, the coal miners. I think that this bill introduced by Mr. Perkins and Congressman Rahall is a very just bill, a bill that will eliminate a real inequity and injustice. I join with Mr. Perkins in trying to convince the rest of Congress of this bill's importance.

What we establish here on the record today will assist us, in getting a bill passed to give you that justice.

Thank you very much, Mr. Chairman.

Chairman PERKINS. Congressman Mollohan really wanted to be with us today, but he had previous appointments before this hearing was set, and he says in a letter dated October 10:

Dear Carl: I regret that it will not be possible for me to be with you personally on Monday, October 13, in Williamson, W. Va., to testify before the subcommittee in support of H.R. 5785.

Attached is a brief statement I would appreciate your presenting for me at the beginning of the hearing.

Sincerely, Robert H. Mollohan.

He has a statement here, making a great argument for the modifications in this legislation, and, without objection, I would like for the statement to be inserted in the record that will be read by the other members of the committee in Washington; so that everyone can have the benefit of Congressman Mollohan's viewpoints.

[Prepared statement of Congressman Robert H. Mollohan follows:]

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

Mr. Chairman, as your Subcommittee begins its hearings on H.R. 5785, I would like to briefly comment on this legislation which is vitally important to hundreds of Americans, many of whom are West Virginians.

As you know, there are two groups of recipients under Part B of Title IV of the Black Lung Benefits Act—those who were initially approved and those who were approved upon re-review provided for by the Black Lung Amendments of 1977. It is unjust and unfair that all recipients under Part B are not treated alike. Those approved upon re-review are incurring an offset of benefits from the Social Security

Administration while those originally approved under Part B are not. It is therefore unthinkable and unconscionable that this injustice exists.

I wholeheartedly support H.R. 5785, and I earnestly hope that this bill will be acted upon by this Congress in the remaining days of the session. This inequity and discrimination must not continue.

Chairman PERKINS. We have present this morning Bill Bailey, including a panel. Bill Bailey is president of the West Virginia Black Lung Association. He is accompanied by Eugene Armstrong, James F. Gibson, Raymond R. Canterbury, Frank Rapczyk, and Ralph Hunt.

Come on around, the entire panel. Bill Bailey is present with the panel. Go right ahead, Mr. Bailey, and introduce the witnesses that you want to call.

We are delighted to see you here this morning, and I want to welcome all of you gentlemen here. I know you have a tremendous interest in this legislation. We want to thank you for all of the assistance that you have given us in the past.

Go right ahead.

**STATEMENT OF BILL BAILEY, PRESIDENT, WEST VIRGINIA
BLACK LUNG ASSOCIATION, ACCOMPANIED BY FRANK RAP-
CZYK**

Mr. BAILEY. Thank you, Mr. Chairman.

I can say that what you have forged ahead for the black lung recipients that are receiving black lung, the coal miners, as you did long ago, we have been with you all along.

Chairman PERKINS. Excuse me just a minute. Let's have it as quiet as we can have it. I know that these gentlemen are all entitled to be heard. You go right ahead. Try and keep it as quiet as possible. You may need to talk just a little bit louder.

Mr. BAILEY. All right, sir.

As I said, we followed you in helping as much with this legislation as possible, because we know the needs of the coal miners, as we have seen them die without being awarded, and the widows coming along behind, not getting the benefits. This disease, being a progressive disease, as we have seen it through our hospitals and our homes.

I sit here today representing the State of West Virginia, but the coal miners as a whole, because I am president of the West Virginia Black Lung Association. I stay on top of the legislation that you have pushed through and helped us miners with.

These people that are with us today, they are the ones immediately affected by this offset legislation, and no later than March of this year, as we stood before you in Washington, and as strong language as you could put to us coal miners, which we understand, you said this is not the intent of the law that you had to go through to be passed, so we sit here today to try to convince the Congressmen, the panel, the gentlemen.

It is a privilege to be here to represent black lung recipients. We ask that you give it all the consideration that you can when you get back and make this report. You only see what we consider as one little handful of people here today, because our people are so sick with this affliction that they are not able to come around these mountains on these roads without their medication, so it is impossible for the people that are affected, but let your minds go

out there in the field, and look at the thousands of people that we have that are affected by this offset, but, beyond that, they are affected to the point that if a man receiving his disability social security, and then he gets his black lung award, they then follow it up with a letter, after he has made maybe a new porch or something on his home that he really needs, because he doesn't have the finances to afford it.

Now, this compensation for his lung disease has given him a little bit of leeway to do some of the things that he could do, and then it is followed up, saying you are not allowed to have this; we are going to take it back from you, and taking it back from his social security disability.

Look, I can take you to Beckley, W. Va, in Raleigh County, and I have names already on a petition here that I have canvassed personally with the United Mine Workers' representatives, and we have personal reports from people who can't be here on this panel today because it is so far away from this area. They are sick people, but I can give them to you, and show you the moneys that they are losing, people that should be drawing something like \$500, \$600, \$700, and this is below poverty.

Now, social security comes along and says we have got to take this back here, because you are drawing a little bit too much money. It is pathetic to see the people that are going through winters, hardships, on \$950 a month income.

I know people, and I can take you to their home. As I asked a Congressman one time lobbying in Washington, I said, let me take you down to the hospitals. You have no reason to not vote in our favor, if I take you into the hospitals, and you see our people dying with black lung. But now in this offset I asked him to go with me, and I will show homes that have five and six rooms, if you can call that a home, five and six rooms in it, and part of that is partitioned off, so they might have sufficient heat and money to pay these heat bills and other things in the wintertime.

They have part of those rooms partitioned off. Some of them have three, four and two children besides their wives and families.

Mr. Esselstyn, our United Mine Workers representative, is going to talk a little bit on facts and figures which he has compiled, and he wants to say this, but, if I may, after these things are said, if I might, I would like to have the privilege, maybe, through their chain of thoughts, that I might not have right now, I would like to come back and say maybe a few more things about this, but, gentlemen, this inequity that has plagued these miners after they receive a little bit more income to sustain their livelihood, which is below probably—I don't know what the poverty level for income is now that the Government considers, but I am sure this is somewhat below it. Yet they want some of that money back.

I think it is an ungodly thing: A man sacrifices his health, which is his life. Not only that, but for his family.

It is hard for some of our miner men to stand up and have smiles on their faces when a boy or girl asks for maybe enough money to go to a ballgame in the middle of the week when the junior high has it. I know these kinds of people. I am acquainted with it.

Every week, I see these kinds of people, but yet the Government wants to ask back some of that little bit of an income that he has sacrificed his life for.

Well, if they need it in Cuba or if they need it in some of these other places like this by the millions, why can't they give what is due these miners in the little bit of a dollar bill to sustain their lives?

I would like to yield, Mr. Chairman, but have the privilege to say something later on.

Chairman PERKINS. You will have that opportunity, and let me now inform you that if you later have statements that you want to send to Washington to be placed in the record, you will have that opportunity.

Mr. BAILEY. I didn't have time to make copies.

Chairman PERKINS. Go ahead. Do you have any other witnesses there with you that would like to make a statement?

Mr. BAILEY. Why don't we just start at the end?

Chairman PERKINS. Any way you want to handle it. Go ahead.

Mr. BAILEY. If either of you gentlemen would like to give them the amount of money that you were getting before and what you are losing?

Chairman PERKINS. Let them state their names and residences, because the court reporter won't know who they are.

STATEMENT OF IVOL HICKS

Mr. HICKS. Congressman Perkins and counsel, my name is Ivool Hicks. I live in Warrior Mines, W. Va., a little town. I have some files here with me, showing how I had to battle with the Social Security Board after I received black lung payments. They had taken every penny of my social security, which was only \$443 a month to begin with.

They pulled me out of the mines in 1969 and put me on disability social security and never would allow me to go back to work. I filed for black lung and fought them up until 1979, until this new bill was passed, and never had to have any more medical evidence or anything, and under the new bill it was automatically approved.

As soon as it was approved, 3 months later, they stopped my social security. I didn't understand why. At the time, I didn't understand the law.

Chairman PERKINS. But after you first commenced to draw your black lung, you had drawn it, and you also drew your social security disability without any cutback anywhere, until after the 1977 or 1978 act was passed, and then they began to cut you back; is that correct?

Mr. HICKS. The black lung was approved, and I received a check in January of 1979, and, 3 months later, I drew black lung and social security, both. This was for 3 months after I had received my black lung in 1979.

Chairman PERKINS. I can see your point. Your black lung was not approved until 1979?

Mr. HICKS. That is right.

Chairman PERKINS. And if your black lung had been approved in 1972 or 1973, you would have drawn both your black lung and your social security disability without any cutback or offset anywhere?

Mr. HICKS. That is right.

Chairman PERKINS. Until this new law passed?

Mr. HICKS. That is right.

Chairman PERKINS. And this was an oversight. You thought the other provision carried over and that is why we are here today. Go right ahead.

Mr. HICKS. That is right. In my opinion, I could never understand why it wasn't approved under the old law, but under the new Labor Law Act it was automatically approved, liberalized under this new law, but I couldn't understand even under the old law why it wasn't approved. We couldn't understand why we were losing our social security.

I listened at some of the meetings before the black lung law was approved under the new law, but I had never gotten any information where it would affect your social security; so we go ahead, and we pay our bills and try to catch up on some old bills and things with the amount of money that we first received in back pay.

In 3 months' time, we had already paid off our bills and done away with the money we had on hand, and here they come along and take the social security, and, boy, we are in a hard place now trying to live with seven of us in the family, five children, two in high school, five children at home and going to school, my wife and myself, on \$600 a month.

We went back, and I got a lawyer checking into my social security. They checked back and found out that they owed me some more social security. I have a paper here, if I can find it, the second month, fifth day of 1980, where we were getting part of our social security back. They were paying us part of it back when they found out they owed us some from way back in some way or another.

Now, we get \$100 a month social security, \$508 a month black lung, and with payments and expenses and other things that we have, trying to put our children through school, there is just no way.

My wife worked the whole time from 1969 up to 1979 in a grocery store as a clerk, until they sold the store and she was out of a job. She is looking for work now, to see if she can get enough money so we can get by. We have to do something. It is going to be awful hard on us this winter. I can say that.

Chairman PERKINS. All right. Go ahead with your next witness.

STATEMENT OF EUGENE ARMSTRONG

Mr. ARMSTRONG. My name is Eugene Armstrong, Ashford, Boon County. I got my black lung, I believe it was, in May. I got a letter right after that, cutting off my social security completely. I went down to Charleston and asked the girl up there why this was. She said it is on account of your age. I am just 50 years old. I had 17 years and 3 months in the mine.

I have been disabled on social security since 1974. I signed up on black lung in 1972, I believe, the last part of it. My social security amount I got in 6 months, \$559.70. There was a little more to start because I have more kids, but \$559.70, and my son and daughter was \$71.80. That was \$490.50. That was \$731.50, excuse me.

When I got my black lung, they paid my black lung. I got a letter telling me they were going to cut off my social security. They cut it off completely. I get \$444.50 black lung benefits now. I have to use oxygen in my cart, and I have got it in the house. I use several kinds of medication.

My income now is \$444.50, and I get a miner's pension of \$137.50. That is \$582 a month. I have got two kids at home and my wife and myself. That is all.

STATEMENT OF RAYMOND R. CANTERBURY

Mr. CANTERBURY. I am Raymond R. Canterbury. I live in Whitman, W. Va.

I was awarded workmen's compensation on injuries in February of 1980. They notified social security—my attorney did—and in July I got my checks, and they were cut. My black lung was completely gone. They took all my Federal black lung, and they took all of my social security but \$171. I am living on \$671.

They tried to charge me again where I had paid them \$13,000 in 1973 on workmen's compensation on injuries. They are trying to charge me again—social security is—and I can't get it straightened out. They can't explain it to me. All they say is 80 percent. The only thing you are allowed to draw is 80 percent.

I don't know what to do. I have got an attorney, and they keep writing—social security does. I got a letter for September, and this month they cut my cost of living. That is not right. They are not supposed to cut that. They took \$61 out of my cost of living.

I have asked them, social security, about my Federal black lung, and my award under workmen's compensation, which was on an injury. It wasn't on lungs, and they took it. They held it out. They said I was overpaid.

I did get a lump sum from workmen's compensation, which I understand, only 80 percent, but they don't say anything about my black lung; they won't notify me on black lung what they are going to do.

I just turned it over to my lawyer to let him handle it. I don't know what to do. They cut me down. All I draw is \$171 social security. I don't draw any Federal black lung.

STATEMENT OF PAUL ADAMS

Mr. ADAMS. My name is Paul Adams, and I live in Whitman, W. Va.

I was awarded black lung in 1972, and I also received total disability on workmen's compensation. They paid me about \$70 for black lung for about 3 months, and then they took it away from me.

I have a wife and child. They draw \$270 from social security. I have four children under social security. Then, in this past January, I received a letter from them, saying they owed me \$15.90 a month for black lung. Well, it went on, and this past month I got a check for \$15.90, the first I received on black lung since about 1973.

When I started out, I had five children on social security. Maybe in a month or two, they raise it and then cut it back down. I had a large family to take care of.

STATEMENT OF RALPH HUNT

Mr. HUNT. My name is Ralph Hunt. I live in Panther, W. Va. I became disabled in April 1969, for social security. In April 1970, I filed for black lung. I was turned down about five times until 1979, and I definitely had medical evidence all the time up until that, because I have proof of it now, and they used the medical evidence then to put it under this new law, to make sure that we were beat out of our benefits. An 8-year-old kid knows about it. My social security was \$678, and the black lung was \$508. They offset the black lung, the social security. That left me \$170.20 social security, and at the same time I was drawing \$114 in food stamps with the social security.

After that, why the total amount of my income was \$769.20, and I lost \$114 in food stamps, which I cannot get back because I bought a truck. Until this day in 1980, I am still losing \$66 after the raise in social security in 1980. I am drawing \$726 now, and in 1979, I was drawing \$792.20 at that time.

Chairman PERKINS. When was your black lung first awarded you?

Mr. HUNT. It was awarded me in August 1979.

Chairman PERKINS. That is the first black lung payments that you got in August 1979?

Mr. HUNT. That was when it was approved. The first black lung check was September 9, 1979.

Chairman PERKINS. When did you file?

Mr. HUNT. I filed about April, I believe about April 6, 1970.

Chairman PERKINS. There was no offset in your first checks?

Mr. HUNT. No, sir. Well, they didn't notify me. I had to find out from an individual. I filed at the social security office to see if there was going to be offset. Three months later, they notified me, I believe it was about 3 months. Then they said I was \$1,500 back to the social security office, and they said they were going to take \$45 off of my \$170 until I continued paying the \$1,500 back that I owed.

I paid \$400-some off. I didn't receive the letters all at the same time. I received three letters for my wife and kids, and the \$1,000 I still owe. Of course, I protested I had already paid \$400-some back. And I haven't paid it off yet. I guess that is about all, unless there are questions.

Chairman PERKINS. Will the next witness go right ahead?

STATEMENT OF JAMES F. GIBSON

Mr. GIBSON. My name is James Gibson. I am from Logan, W. Va. I get my mail Mount Gay.

I signed up for social security and black lung. I signed on for black lung the 12th month of 1972, the 12th month—the first day of 1972. I got the black lung right on up through the years until 1978, when there were changes, and all these new laws. They granted my black lung to me. During the time my social security was granted to me in 1975, and after these new laws were passed, they granted my black lung to me.

Then they turned it over to the Department of Labor for payments. When it went through the Department of Labor, they offset

my social security \$444. What they did, they just took off the black lung from my social security.

That is about all I know.

Mr. ADAMS. Why are we out the 80 percent under the social security law? In 1965, people that were disabled could draw 100 percent. People disabled after that are held to 80 percent. That is what we don't understand. There are two different laws there. One can draw 100 and another just 80 percent.

Chairman PERKINS. We do not have any jurisdiction over the Social Security Act, as such. The House Committee on Ways and Means does. What we have is jurisdiction where the social security tries to interfere with black lung payments, and in 1972, when the social security disability provision was being offset, and black lung benefits were being offset against the social security disability and cutting you back, I led the fight on the floor of the House in Washington and won it in 1972.

Up until that time, there were social security disability benefits, and we eliminated everything unless you were drawing workmen's compensation for a black lung injury from the State, and that was the only thing at that time in the way of social security that could be offset if you were drawing social security disability, that is, black lung payments from the State.

Then they could be offset; but when we wrote the new act in 1977 and 1978, we all felt, and never intended, that the Government would carry over that provision of the law permitting this offset that we repealed back in 1972. In fact, we didn't amend that provision. We thought it was still the law. We didn't repeal it, but here we are today, and we have got to fight this whole thing over again.

Mr. ADAMS. There is something else I want to say. When you go into the social security offices, and we put it in there, we are treated like it is their money and they have to pay it out.

That is the way you feel when you walk into the social security office, Mr. Chairman. I paid this money back in 1973. I have receipts here for \$3,000, and they deducted \$100. This was on the mine injury, and so much of a percentage on my lungs.

I understand you can't pay twice for the lungs, but they took the money from my mine injury and my back injury, and when I went in there and tried to explain, the lady told me, "We will take it one way or the other." That is how she talked.

I got the benefits of social security at that time and coming out there, I said this woman told me she would take my checks. They don't even notify you. They hadn't even notified me until 5 or 10 days later, when I get my checks, I was cut. They sent the letter 5 or 10 days later.

They don't notify you or call you in and say we will cut your check. They do it and then notify you about 10 days later. You don't have a chance. My bills are over \$800 a month, and I guess if my wife didn't work, we couldn't live. We couldn't exist.

Social security thinks coal miners don't count because they are disabled. I would rather be working right today, but the doctor stopped me because I was covered up under a slag fall. I went back to work two times and tried to work. The doctor bawled me out and

said, no more. What are you going to do? I was a young man at that time.

I was turned down five times for social security, and I finally had to turn it over a lawyer, on account of my age. I went back three times to try it. I would rather be working today than being aggravated by social security over my benefits.

Chairman PERKINS. How much would you be making if you were working today?

Mr. ADAMS. I don't know. I don't know what the rates are that they are paying now. I don't know. If I was able, I would be glad to go back to work, because it is aggravating when you have to go sit down with them and argue and try to explain. They bring a book out on you. They don't use the law the way it is written. They use it the way they see it.

That is all I have got to say. Thank you.

Chairman PERKINS. Let me thank all of you gentlemen. If you have anything else to say, Mr. Bailey, in conclusion, you can go ahead and say it.

Mr. Kildee, you have a question?

Mr. KILDEE. I would like to ask three additional questions of Mr. Bailey here for the record.

How much would a person be drawing without the offset, say, on the average, and

How much would a person be receiving with the offset, say, on the average, and

How much would a person be making if that person still had his health and could be working regularly?

Could you explain that for us?

Mr. BAILEY. I sure will.

I happen to have before me an instance just like that on one, but on many of these people I could give you for each one of them what they could have been drawing if they were healthy and working and what they are drawing now, but I have one.

I would just like to give you this as a for-instance here. This was before. This is a man with a wife and two children in the family. He, himself, was drawing \$471.70 in social security. Each one of the dependents, including his wife, were drawing \$124.40. This is his social security.

Now, after the offset, we find that the man, himself, will be only getting \$426. Each one of the dependents draws \$11.20 since the offset. This is social security.

Now, social security benefits should have been to this man and his family \$844.90. When he was awarded his black lung, he should have been receiving \$508 in black lung benefits. This would have given him \$1,032.90, but it only gives him \$968. They offset this man and his family \$394, just because he was awarded his black lung. He didn't ask to be put on it.

He was willing to work if he had had his health, but they awarded him social security under the strictest examinations, as you people may know from other individuals, but when a man is awarded his social security, brother, he is not here for long unless he has a good wife who is a nurse, somebody to take care of him to prolong his life a little bit, and more especially when he is drawing black lung benefits and it has been proven that he has this disease,

that even makes one leg a little bit shorter on a banana peel and the other on a grape. This comes after the social security award.

They figure he is about dead then, but after this black lung is contracted by a man, then they don't figure he has got very much life left in him. Then they take away such a penalty against a man because he is not able to work.

I have several of these examples, Congressmen, that I can give you the earnings for if they had been working today, what he had in earnings and what they took from him. I would be glad to forward it to you for the record.

Mr. KILDEE. If you could do that for the record, it would be helpful to us.

Mr. BAILEY. All right, sir. I sure will.

Mr. KILDEE. So you have three categories. I am interested in knowing, the amount of money the average person who still has his health would be making, what that person would be making if he were not offset, and what he would be making with the offset.

I think those are very telling figures, because I am sure most of these men would prefer to be working. They get double damages by having an offset which takes away from their lesser compensation than they would get if they were working.

Those figures will be very helpful to us in trying to persuade the rest of Congress to bring equity here.

Mr. HICKS. I could tell you what I would be making. I was a roof bolter in the mines when the doctor pulled me out of the mines. At that time, my bring-home pay was about \$500 or \$550 a month, but today, if I was working, I could make around \$80 a day, and you can count up what that would be in a month.

Mr. KILDEE. What are you drawing now with the offset?

Mr. HICKS. With the offset I draw \$100 social security, \$508 black lung.

Mr. KILDEE. Thank you very much.

Chairman PERKINS. Come around, Congressman Rahall. Congressman Rahall is on the other side of the river from Carl Perkins. We work hand-in-glove together. He is making you an outstanding representation and Representative. We want you to continue coming back to Washington. He is very energetic. Not only do we have black lung problems, but we have a lot of flood control problems on both sides of this river that we have to work out. Go ahead.

STATEMENT OF HON. NICK J. RAHALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RAHALL. Thank you, Chairman Perkins.

I want to first commend the distinguished chairman of the Education and Labor Committee, my good friend, and a man with whom I have enjoyed working closely during my 4 years in Congress, and a man from whom I have learned a great deal about, not only the legislative process in the Congress of the United States, but how things move through that process.

And, Chairman Perkins, I want to thank you very much for holding these hearings this morning in Williamson, for coming into the southern part of West Virginia, the Fourth Congressional District, and giving our coal miners the honor of having you present.

I want to also welcome with a very warm heart my distinguished colleague from the State of Michigan, a State where perhaps there is not a great deal of coal mining, but Dale Kildee, in coming here this morning, has shown his interest on behalf of our coal miners, and his knowledge as to exactly what they have gone through in mining underground the resource to which this country is turning more and more for our energy independence.

I want to welcome Chairman Perkins and Congressman Kildee. I do have some prepared testimony, Mr. Chairman, but in the interests of time and in the interests of hearing from these individuals who are directly affected by the inequities in the black lung law that we are trying to correct, I am going to ask that my testimony merely be inserted in the record, and that I talk very generally.

Chairman PERKINS. Without objection, it will be inserted in the record, all of the prepared statements.

[Prepared statement of Congressman Nick J. Rahall follows:]

PREPARED STATEMENT OF HON. NICK J. RAHALL, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WEST VIRGINIA

Good morning, Chairman Perkins, Congressman Kildee. I take this opportunity to welcome you to the Fourth Congressional District of West Virginia, and to thank you for allowing me the opportunity to testify on behalf of this black lung offset bill you are now considering.

On July 31, 1979, I introduced into the Congress H.R. 5038, a bill identical to Chairman Perkins' legislation which we are discussing here today. I hope you will permit me to comment freely on the intentions of this bill, as Chairman Perkins and I seem to be in accord on this matter.

When the black lung benefits program was transferred from the Social Security Administration to the Department of Labor in 1974, the nature of the entire program was changed somewhat. Those claims filed under the jurisdiction of the Social Security Administration, or part "B", are not now considered to be workers' compensation benefits, because they are paid by social security revenue funds. However, part "C", or Department of Labor filed claims, are compensation, as those benefits are paid by the coal operators, either directly or through the black lung trust fund. This distinction is important, as it is the crux of the problem addressed by H.R. 5785 and H.R. 5038. Any type of compensation benefits are offset against social security disability benefits, including part C black lung.

Under the Black Lung Amendment of 1977, provision was made for all denied claims, no matter whether they were originally part B or part C claims, to be reviewed under the changed standards of the new law. Part B applicants who are now being reviewed, however, and approved under the provisions of the 1977 amendments are being treated as part C claims, both for the purpose of payment and for the purpose of offsets against the disability benefits of the recipients. The legislation we discuss today would correct that problem.

Mr. Chairman, the first point I want to make about this legislation is that it does not affect anyone who was approved for benefits by the Social Security Administration before passage of the 1977 amendments. The group of claimants that H.R. 5785 will touch is those who originally filed under part B, but were not approved. In addition, it will not affect anyone who has filed under part C, with the Labor Department. The bill itself clearly states its purpose is "to amend the Black Lung Benefits Act to provide that certain benefits paid to miners who originally filed claims under part B of title 4 of such act shall not be considered workmen's compensation benefits for purposes of the Social Security Act." It says nothing about those who filed under part C.

It was my intention in introducing H.R. 5038, which matches this bill word for word, to remove the disability offset on the claims which were originally filed under part B, but are only now being approved under the new law. The money to pay these claims will come from the social security disability trust fund, and by letter, former Social Security Commissioner Stanford Ross indicated that the cost to the trust fund, if the bill has gone into effect September 1979, would have been \$1 million the first year. I know we are all extremely budget conscious these days, and I want to make clear the point that this would be one of the few times the cost of a program would decrease each year. Part B claims embrace only those miners who retired before 1974. Although this is not a pleasant thought, the passage of time will

cause this group of people to reduce each year. The offset provision is not applicable whatsoever after the claimant reaches the age of 62 years, and increasing age and mortality will cause the cost of this program to drop, until eventually it will phase itself out. There is absolutely no way to increase the base group of affected individuals.

Mr. Chairman, it is not the fault of the claimant that he was not approved when he originally filed his claim. It is most difficult to explain to my constituents why two people who live on the same street in the same town and who filed their claims for black lung benefits on the same day do not receive the same amount of money, simply because their claims were not approved at the same time. These miners are being penalized for something that is beyond their control. All other part B beneficiaries are treated in a specific manner, but these claimants have been excepted from that treatment. There is no logical reason to make exception for the ones who have waited the longest period of time—some as long as 10 or 11 years—simply because their claim was not approved to start with. When they applied, part C did not even exist, so their claims should not be thoughtlessly shuffled into another and quite different arena of consideration.

This bill serves to clarify the intent of Congress. It will decisively affect many men and their families who have given up great portions of their lives in service to the Nation through her coal mines.

Thank you.

Mr. RAHALL. Thank you, Mr. Chairman.

I want to discuss this generally. I know we have been discussing the details, and that is good. I think the legislation that we are discussing this morning, the bills that you and I have introduced separately and together, is an effort to clarify the original intent of Congress in passage of the black lung amendments.

It is hard for me to explain to my constituents, Mr. Chairman, as I know it is to you, just why it is that people who live on the same street in the same town, and who have filed their claims for black lung benefits on the same day, do not receive the same amount of money, merely because their claims were not approved at the same time.

It is difficult to explain, and I hope that through the testimony this morning and through the experiences that we are hearing from the coal miners, themselves, we can go back to Washington, we can show our fellow colleagues in the Congress, and we can show the people in the Federal agencies in Washington, exactly what the inequities are and how, together, we can work to solve these inequities.

As I said, our bill clarifies the intent of Congress. It is important when we talk about increased coal production that we consider most importantly our No. 1 resource in this country, our human resource, our coal miner—the individual who has to go and who has to mine our coal.

Again, in conclusion, I want to commend Chairman Perkins, a man for whom I have a great deal of respect, and my colleague from Michigan, Dale Kildee, and the coal miners and all that are here this morning.

I know we will gain here from each of you, one on one, and that is what I want to do in listening to my good friend, Bill Bailey, with the West Virginia Black Lung Association. For that reason, I am going to cut my remarks now and listen further to testimony.

Chairman PERKINS. Thank you very much, Mr. Rahall. We are delighted that you are here. You have introduced the legislation. You and I, along with Congressman Kildee and many others, are working together, and we hope that we can find the opportune time in this Congress.

I know that you realize that we had some trouble the other day with the provision in the black lung bill. We wanted to repeal the so-called responsible operator provision. Everybody was backing it except a few of our friends in the Congress that were against the black lung law in the first place, but we will do our best to get these good people some relief at the earliest possible date.

Dan McGinn, administrative aide, assistant to Congressman Hutchinson. Congressman Hutchinson, I take it, was unable to be here this morning, and he sent his administrative aide, and we are delighted to welcome you this morning.

STATEMENT BY DAN MCGINN, ADMINISTRATIVE ASSISTANT TO HON. JOHN G. HUTCHINSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA, IN BEHALF OF CONGRESSMAN HUTCHINSON

Mr. MCGINN. I am Dan McGinn.

Chairman Perkins, Congressman Rahall, Mr. Kildee, Mr. Esselstyn, miners, and friends, I am here today to represent John Hutchinson. Mr. Hutchinson had a number of previous engagements in the third district today, but because he is keenly interested in this bill and the problems of miners throughout West Virginia, he directed me to attend in his stead.

As you know, this compensation problem predates by many years Mr. Hutchinson's arrival in the Congress, but don't misunderstand me. Just because he is a new Member of Congress, doesn't mean he cannot and will not be of help in this problem.

We have distinguished Members in the Congress, in the House and the Senate. We have a very distinguished Member here today in Mr. Perkins. Mr. Hutchinson asked me to come today, not to speak, but to listen. I want to hear about the problems. I want to hear about the individual problems. I promise to give him a full report.

He will work closely with Mr. Rahall and Mr. Perkins, and if we cannot get this legislation through in the followup session, starting November 12, I promise Mr. Hutchinson will work closely, starting in January, to see that this problem, which has lingered for many years, would at least be solved in the coming Congress.

Thank you.

Chairman PERKINS. Thank you very much. We are delighted to welcome you here today.

We have Bill Esselstyn representing the United Mine Workers. Come around, Mr. Esselstyn, and identify yourself for the record. Go ahead and identify yourself for the record.

STATEMENT OF WILLARD ESSELSTYN, SECRETARY-TREASURER, UNITED MINE WORKERS OF AMERICA

Mr. ESSELSTYN. I am Willard Esselstyn, international secretary-treasurer of the United Mine Workers of America.

I would like to thank the committee for coming to West Virginia to hear testimony on the very important problem of the black lung offset of social security disability benefits.

Before I go further, I would like to answer the one question that Congressman Kildee had in reference to an average of a year if an

individual was still working. We are talking roughly \$20,000-plus a year.

There are today nearly 345,000 persons receiving black lung benefits nationwide. That figure represents both the Social Security Administration and the Department of Labor programs. Of that total, over 90,000 live in the State of West Virginia.

These people, who have had their health permanently damaged by coal mining, have been able to improve their lives with the benefits provided by these programs. They have been able to live out their lives with pride and integrity instead of the degradation that too often accompanies the sick who are also poor.

Many members of this committee enjoy the respect and admiration of all coal miners for their efforts to create a just program for black lung victims. You may be certain that your efforts have resulted in a better life for them. But we come here today not only to thank the committee, but to ask for the remedy of an inequity that currently exists in the black lung benefits program.

When the black lung program was transferred, in 1974, from the Social Security Administration to the Department of Labor, a significant change occurred in the program. Part B claims, or those filed under social security, were not considered to be worker's compensation.

Rereviewed B claims are incorrectly being considered worker's compensation. This distinction is very important because the social security law limits the benefits an individual can receive from social security disability benefits and compensation benefits of any kind. Thus, many people, like these gentlemen, upon receiving their long-awaited black lung award, find that their disability checks are offset by the amount of the black lung check.

Under the 1977 amendments to the black lung law, provision was made for all claims, part B and part C, to be reviewed. The problem occurs because part B applicants who are being reviewed and approved under the new law are being treated as part C claimants, both for the purpose of payment and for the purpose of offsets against disability benefits.

The consequence of this treatment is that an individual who applied for benefits between 1969 and 1974, and, through no fault of his own was not approved until after the new law was enacted, is discriminated against. Those who were approved before the new law took effect are allowed to receive both black lung and disability benefits.

Mr. Chairman, I can see no logical reason why these people should be discriminated against. Especially when one considers that these people are the ones who have waited longest for approval of their claims.

Mr. Canterbury waited 4 years for his claim to be approved. Mr. Gibson waited for over 7 years. In some cases people have waited as long as 10 years. It is unfair to treat them differently simply because the system could not or would not process their claims. Part C of the program did not exist at the time that their applications were submitted, and it makes no sense to penalize them for something that was totally out of their hands.

Chairman PERKINS. Let me interrupt to state that I agree with everything you are stating about penalizing these people. The fact

that it took so long a time to get these applications approved was because, when they enacted the first law in 1969, the administration, the Social Security Administration, did not believe in the program, and unless an individual had one foot in the grave and was spitting up coal dust right in their sight, you couldn't get anybody approved, and that was the reason for the 1972 amendments, which greatly liberalized the law.

Then, after that, we felt that there were thousands and thousands of cases wrongfully denied, even after we enacted the 1972 law.

So, in 1977-78, we again provided that all those cases that had been denied under the Social Security Administration would be rereviewed by the Social Security Administration. After they had been rereviewed after 1978 by the Social Security Administration, we provided that the Department of Labor again could review all of those claims that had been denied, all of those original B claims; so your representatives in the Congress have done their dead-level best.

I agree with you that it took far too long, but we have tried to cope with the circumstances and do the best we could under the circumstances.

Mr. ESSELSTYN. Mr. Chairman, you can rest assured I agree with you totally, and there is no way that I want this to be derogatory whatsoever to the Chair or anybody on the panel. I agree with you totally, and it has been a hard battle. My only suggestion for the record, I would like to take some of the bureaucrats in Washington and bring them right down here to see these black lung people, and they may well understand better—but to continue.

All of us have felt the bite of inflation over the past several years, Mr. Chairman. Last year's rate of 13 percent severely eroded our buying power and this year's projected rate of 18 to 20 percent will place additional burdens on all of us. But we must remember that those on fixed incomes are suffering the most.

Is it right for the government to withhold money to which these people are entitled? Part B benefits, under which these gentlemen applied, are not defined as "compensation," so there is no offset. Because these men's claims were not approved until years after they applied, however, theirs are considered part C benefits which are defined as "compensation."

So the government feels compelled to offset a sizable portion of the black lung benefit from the disability check. It's a catch 22 situation because even though it was out of their control and not their fault, that definition in the law denied them hundreds of desperately needed dollars a month.

A decent society demands that those who suffer the most must be the ones upon whom we bestow the most compassion. That is the reason we appear before this committee today, Mr. Chairman—to ask for compassion and justice for those whose health has been ruined by their employment.

Mr. Chairman, we ask for a favorable reporting of H.R. 5785 by this committee and expeditious consideration by the Congress.

That completes my written statement. I would be happy to answer any questions that the committee may have.

Chairman PERKINS. Mr. Rahall, do you have any questions?

Mr. RAHALL. I want to thank Bill, first of all, for his testimony this morning, and I think he put it very well when he explained the "Catch-22" situation in which so many miners find themselves today.

I cannot elaborate or paint a better picture than he has. I certainly thank him for his testimony, and express appreciation of all of us here this morning for the details which you have provided.

I have no questions, Mr. Chairman.

Chairman PERKINS. Let me thank you very much for your testimony. You have been very helpful to the committee.

Mr. ESSELSTYN. Thank you, Mr. Chairman.

Chairman PERKINS. Our next witness is Mr. Robert Carter, president of district 30, UMW, Pikeville, Ky. I want to compliment both Mr. Church and Mr. Carter, and all of the leadership here in West Virginia. You are giving your groups great leadership, outstanding leadership, and everybody appreciates you.

I am glad to welcome you here, being my own representative.

Will you proceed in any way you prefer, Mr. Carter, and make any statement you want?

Go right ahead.

**STATEMENT OF ROBERT CARTER, PRESIDENT OF DISTRICT 30,
UNITED MINE WORKERS, PIKEVILLE, KY**

Mr. CARTER. Thank you, Congressman Perkins.

I would like to say this: There is no use in me trying to repeat what has already been said.

First, I would like to thank the committee for coming into Williamson, into the heart of the coal fields, to listen to the miners that are affected by the social security offset.

As far as myself, as president of district 30, there are hundreds of the members that have worked in the mines that are affected by this offset, which I am totally against, because I think that a man, if he is totally disabled, then he should draw social security, and he should also draw his black lung benefits, and not be penalized by social security because he has a mine injury, which, in itself, is an injury, because it is an occupational hazard of the mining industry; so I think the social security offset should be done away with in its entirety, period.

If a man is entitled to disability social security, he should draw it, plus his black lung benefits.

That is about all I have to say, Mr. Perkins. Thank you.

Chairman PERKINS. Thank you very much, Mr. Carter.

Mr. Kildee wants to ask a question.

Mr. KILDEE. First of all, just a comment, since you are an official of the UMW. I personally feel very grateful to the UMW, because back in the 1930s, when I was a small child, my father joined the CIO, founded by John L. Lewis, your great leader. John L. Lewis, I can recall, was a great hero in my home. My father, when he worked, worked hard at substandard wages. John L. Lewis helped him secure justice.

You mentioned the figure \$20,000 a year, which a worker, if he is healthy and is able to work, can expect to make. That is about what a worker in Flint, Mich., can make when he or she is working in good economic times.

Unfortunately, we have many people who are now unemployed in Flint, but the CIO, which gave birth to the UAW, really has helped to improve the conditions there. I want to take this occasion to go back to my childhood memories and thank the United Mine Workers for being missionaries to Michigan in the labor movement. I hope, now that I have come down to West Virginia, that I shall, in turn, go back and help you in your cause. The United Mine Workers through the years has found out that the two places to get justice are at the bargaining table, and in the legislative halls, both at the State level and in Washington, D.C.

I appreciate the great history of your union and see that you are still fighting on both battlegrounds.

Thank you very much.

Mr. CARTER. Thank you, sir. [Applause.]

Chairman PERKINS. Mr. Rahall, do you wish to add anything?

Mr. RAHALL. I want to thank Mr. Carter for his testimony this morning and all of the officials of the United Mine Workers. We have found through the legislative representation of the UMWA office in Washington, D.C., a very close working relationship, and a relationship that has helped us a great deal not only on this particular legislation we are considering today, but on other legislation that does come up in Washington that affects the rank-and-file membership of the United Mine Workers.

Under President Church's leadership, and I know that he has several of his legislative representatives with us this morning, we have developed a framework that is improving the legislative representation of the rank-and-file members in the Halls of Congress.

So to all of the UMW officials this morning, I commend you for your representation of your membership, and hope that we can continue this beneficial relationship.

Thank you.

Chairman PERKINS. I think the entire Congress recognizes the dynamic leadership of the United Mine Workers at the present time. I have recognized the changes over in my area under Mr. Church in the last year or 2 years. I have recognized the changes here in this area of West Virginia, and I have recognized the changes at the national level. I am very proud of your leadership.

Our next witness is Roger Forman, representing district 17, United Mine Workers. Come around, Mr. Forman.

Without objection, your prepared statement will be inserted in the record, but proceed in any manner you prefer.

**STATEMENT OF ROGER D. FORMAN, LAWYER, REPRESENTING
DISTRICT 17, UNITED MINE WORKERS OF AMERICA**

Mr. FORMAN. I prefer to read my prepared statement.

Chairman PERKINS. Go ahead.

Mr. FORMAN. Mr. Chairman and members of the committee, I speak to you on behalf of the approximately 25,000 members of district 17, United Mine Workers of America, and on behalf of their president, Mr. Jack Perry.

We strongly support H.R. 5785 and H.R. 5038. These proposals which you consider at this hearing today are progressive and necessary measures.

Our membership works hard mining and producing coal, and many miners do, as a result of their exposure to dust and gas, become disabled by pneumoconiosis—black lung disease. It is for this reason that you in Congress have had the foresight to pass the Black Lung Benefits Act.

Our members have been extremely angered and frustrated by the offset of black lung benefits against disability benefits which occur. As one disabled miner said to me recently, "I guess they feel I'm no longer disabled now that I have black lung."

Black lung is a painful and often crippling disease. It cuts down many of our men and women. The Black Lung Act creates a special class of benefits to compensate people for these problems.

A person who gets disability and black lung should be rightfully entitled to collect both benefits. This allows a person who labors hard in the mines—and mine work is hard—to survive financially when he or she becomes too disabled to work.

Mine workers are proud people, and hard-working people, and more often than not, they work until their lungs and their bodies quit. Most people do not quit working to collect benefits. They quit because they can't go on any longer.

It is not easy to get black lung or social security disability benefits. Our men and women need lawyers to help them because social security will issue denials. Mine owners and operators will contest the granting of benefits. It is frustrating enough to fight as hard as our people have to do for benefits, but then when they win and are made to feel like losers because one benefit or the other is cut off, or because they are denied the essentials of life due to huge overpayments, it is cruel and awful.

One other action that you ought to consider taking is requiring the mine owners and operators to pay back the black lung trust fund at a level higher than 6 percent. I believe that many cases are contested, and many of the holdups that people talk about in getting lung occur because it is economically possible for owners to make money not paying immediately, and relying on the black lung trust funds.

I have seen some pretty ridiculous appeals so far pursued.

In conclusion, we strongly urge you to act favorably on H.R. 5785 and/or H.R. 5038, as it is a rational and sensible approach which you propose which will allow black lung benefits not to be counted any longer as offsets against social security disability benefits.

Thank you.

I am prepared to answer any questions that you might have.

Chairman PERKINS. Let me thank you very much for your statement, and all of the prepared statements will go into the record.

Do any of you gentlemen that have already testified wish to make any further statements? Identify yourself for the record. Go ahead and make a further statement.

Mr. CANTERBURY. You are talking about offsets. It was on black lung. That is what you are talking about. My benefits were cut for me because I was awarded workmen's compensation on a mine-related accident. They are taking my social security and black lung, both.

It is just two different things. Workmen's compensation from the State is paid for that benefit, and there has got to be something

done about that, because we don't have a chance. That is why my benefits are being cut, because my workmen's compensation was awarded on the mine injury. That is why my benefits were cut.

Chairman PERKINS. There are many inequities in the law that we are going to certainly look at. I will tell you that right now. Of course, in the States' workmen's compensation laws, we have no jurisdiction over that. We have jurisdiction over offset provisions and other inequities that are in the Federal law.

Mr. HUNT. I don't know about the other members here.

Chairman PERKINS. Identify yourself.

Mr. HUNT. Ralph Hunt, Panther, W.Va. On this offset, when you receive your pay from the Department of Labor, sometimes it is as much as 10 days late, and you never know when you are going to get your check. It is just a difference in time, and I called Pennsylvania, and they told me there wasn't any money, and they hadn't received their pay, either.

On several occasions, you can receive it anywhere from 3 to 10 days late.

Chairman PERKINS. That was a problem with the supplemental appropriation, but now that has been taken care of.

Mr. HUNT. Thank you.

Mr. CANTERBURY. Can we be excused now? I want to thank you all. I appreciate visiting with you.

Mr. HICKS. Congressman Perkins, I am Ivol Hicks, from Warrior Mines, W.Va. I want to thank you for the privilege of being here to testify. We are praying that something will take place in Congress, that this law will be stricken, this clause from this labor law bill that was passed previously.

I want to say that I appreciate everything that all of the Congressmen are doing here today. I would like to ask a question about payments we are receiving for black lung. We have a lot of problems about the time that we receive our checks, too. I do. I don't know about the other miners.

They tell us we are supposed to receive them on the 15th, and sometimes we get them on the 18th; sometimes the 20th or 22d; and it does make a little difference. It looks like they could regulate it a little better than that.

As I have said, myself, I would like to be working if I could work.

Chairman PERKINS. Let me inform you that I have written letters to both the Social Security Administration and the Department of Labor in Washington and discussed it with them on numerous occasions, about trying to expedite these payments, and we are doing everything that we can possibly do in that connection.

I agree with you wholeheartedly. It is far too slow. We will just continue to be on their backs to see if we can't remedy the situation.

Mr. HICKS. We sure appreciate it. My thanks to all of you here.

Mr. BAILEY. I would just like to say that we appreciate the privilege of letting us come here to testify and give you this proof. Even though we only represent just a segment of the public out there that is receiving these black lung awards, but he is unable to be here, and I want to emphasize that again, because of his sickness, his disability, he can't make these trips like the younger or

maybe some who are even sick here today, but they thought it was important enough to be here.

To Mr. Kildee, I would like to just make reference to about three that I ran through here while the others were testifying. That was Mr. Edward Pokusa, from Pennsylvania. He would have been in the Beckley hearing if it would have been that you could have had the hearing in Beckley, but being this far south, he was unable to attend the meeting.

I just wanted to say that he was receiving \$655 in disability social security. Because of his black lung award, he only receives now a portion of that. Four hundred five dollars was deducted because of his black lung award. That leaves him with very little income that he has, because of his black lung award.

I would like to refer to another one here, Mr. Surface. He was receiving \$2,770.80 in social security. Let me say here many of these people that have testified, these are recorded that we have dug out; these are people that worked in the late sixties, not into the good money or the high money that is being paid since the contract went up to \$80.90. We are talking about people that had something like \$6,000 to \$12,000 income a year in the time that they worked, and worked hard for it at that time, but because they weren't drawing the money that the people are drawing today, then they get this little bit of income for survival, and then come along and get black lung award because of their contraction of the disease, and then they say, well, it looks like you got just a little bit too much money here; we had better take some back from you.

This is what we have been trying to say. It is not the people that have good incomes or high incomes, but regardless of what their income might have been, they are due what they are due, and they worked for it to get it.

Then we have people, bureaucrats—I will use a word that some of the panel used—bureaucrats have taken it away from us, but with people like you working with Congressman Perkins and Congressman Rahall, in 1975, when we were there in the balconies, we could see your efforts being put forth by the honesty of these Congressmen wanting to take care of the people who were affected by it, who appreciate you.

We might not be acquainted with you, but we surely appreciate the work that you did for these people and backed them up. That is why we have that amendment, and that is why we got the support. I daresay if Congressman Kildee—I was trying to think of the one that buffaloed us and killed this.

Chairman PERKINS. Erlenborn?

Mr. BAILEY. Erlenborn. That is who it is. I know him. I know him when I see him, but if we had people like that instead of people like you helping these and seeing the insights of the miners' disease, we would have been defeated.

Thank God, we had people like you up there helping Congress in their efforts.

I would like to say here from the southern part of West Virginia to this part of Kentucky that borders on West Virginia, they were instrumental in getting this bill in Congress in the beginning, and you miners are the ones that did this, taking it to these two people

in this area. Then we had help from other parts of the country, the coalmining industry.

Let me give you this about Mr. Surface. He was receiving \$277.80 in social security. At that time, black lung was only \$381 for a man receiving black lung in that year, but he received \$381 in black lung. Then he was cut from that \$277.80 down to only \$55.80, because, like I said before, being repetitious, but to emphasize, because his income was low in those years of his mining work, where it was between \$6,000 and \$12,000 a year, this is why Social Security says 80 percent is all you can draw out of your total amount, which, if you have been working, you can only draw 80 percent of the amount. This is ungodly.

Anyway, he lost down to \$55.80 as social security income.

Let me give you one more, and I will send the others. Mr. Paul Adams, from White, W. Va., filed in 1971. Again, it was low income back even then, his earnings. He was drawing \$306.10, but, because he got his black lung award, they cut \$219 from that.

You see, gentlemen, this 80 percent of the total amount of money that the man could have made if he had been working, and I daresay most or all of them would have wanted to work right on, but due to this—

Chairman PERKINS. Let me get the remainder of your answer to the question that Congressman Kildee did ask you, and get it in the record. Put that statement in the record.

Mr. BAILEY. Thank you. I appreciate the opportunity.

Chairman PERKINS. Thank you very much.

Dennis Saunders, we are glad to welcome you here this morning. Make your statement.

STATEMENT OF DENNIS SAUNDERS, DISTRICT 29, UNITED MINE WORKERS OF AMERICA

Mr. SAUNDERS. I am Dennis Saunders, district 29, United Mine Workers of America. I don't have a prepared text, but I would like to thank Congressman Perkins and Congressman Rahall and Congressman Kildee from Michigan for being here today.

I regret to say that I don't know why some of the other members of this committee are not here. I would like to see some here that are fighting the coal miners' rights, to be sitting here and listening to this testimony and looking at these fellows eyeball-to-eyeball.

In district 29, which comprises this county and part of southern West Virginia, I have figures which show 42 percent of all the black lung recipients in the State of West Virginia live and work and are dying in district 29. Forty-two percent of them—of your black lung recipients—are in our district.

If you go by percentages, I would say that the offset is hurting more of our membership than it is of any other area possibly within the continental United States, and if this Congress that we have presently, and I am quite sure we will have you three gentlemen back next year, if you can vote on millions or billions of dollars for overseas aid, which I am not against—I am not against helping the needy wherever they are—but if you can sit there and vote billions of dollars for overseas aid, who in the world can vote against a man who has lost his health so that others in the country can live a good life? If it wasn't for the coal miners during the war

years, we would have possibly lost World War II, and our children and grandchildren would be speaking Japanese or German, and those coal miners have seen to it that this great country did win World War II, and they are the ones now in this hall who are being penalized.

Thank you. [Applause.]

Chairman PERKINS. Thank you very much for a good statement.

Our next witness is Bill Bostick, representing State Senator Hamilton.

Come around, Mr. Bostick.

STATEMENT OF BILL BOSTICK, REPRESENTING HON. PAT HAMILTON, A SENATOR IN THE LEGISLATURE OF THE STATE OF WEST VIRGINIA

Mr. BOSTICK. My name is Bill Bostick, from Greenbrier County, in Quinwood, W. Va.

Senator Hamilton has been unavoidably detained, and I would like to read a statement on his behalf.

Three hundred forty-five thousand persons nationally currently receive black lung benefits under the Social Security Administration and Department of Labor programs—90,000 in West Virginia.

Since 1974, claims filed under Social Security Part B claims were not considered to be workmen's compensation. They are incorrectly being considered workers' compensation, which limits all compensation benefits. Thus, many people find their disability checks offset by the amount of the black lung check.

Review of applications under the 1977 amendments to the black lung law has led to part B claimants being treated as part C claimants, and thus being discriminated against. Those approved earlier can receive both black lung and disability benefits.

The difference is due to the system's inability to process the claims quickly, and applicants should not be penalized for this.

The disabled who are forced to exist on fixed income in years of double-digit inflation already suffer the most. The slowness of the review procedure has created a "Catch-22" situation, in which applicants are denied benefits through no fault of their own.

I urge the adoption of Congressman Rahall's and Congressman Perkins' amendment.

Thank you.

Chairman PERKINS. Are there any questions, Mr. Rahall?

Mr. RAHALL. I thank Bill for his testimony this morning on behalf of Senator Hamilton. I know that the chairman has letters bringing this problem to our attention from our other colleagues in the Congress from West Virginia who were detained elsewhere this morning or had other commitments.

Congressman Mollohan submitted a statement. I know he has an interest in this legislation, but because of schedules and previous commitments, he could not be here this morning.

We thank you for your statement, Bill.

Chairman PERKINS. Mr. Kildee, any statements?

Mr. KILDEE. Not at this time.

Chairman PERKINS. It has been suggested that the committee go to Beckley, W. Va., for additional hearings. As much as I would like to

have done so on this occasion, time prohibits such a hearing at this time. I hope that we will be able to do so in the near future.

I really consider Williamson part of my district, Mr. Rahall. It is vice versa with you. We are on each side of the river, and we have mutual problems here, and we want to work with these people in any way we possibly can, so I felt that Williamson would be a good place for the hearing today.

We will go up to Beckley and other places in West Virginia later on.

I want to give everybody a chance to speak today, and if there is anybody back there in the audience that wants to make a statement, please come up here, and you now have that opportunity. Identify yourself for the record.

**STATEMENT OF CLARENCE EVANS, RECORDING SECRETARY,
LOCAL 5869**

Mr. EVANS. My name is Clarence Evans, recording secretary, local 5869.

Some of the retired membership from our local and other people within the subdistrict 3 of 17, which I am a member of, have called me recently concerning black-lung benefits. They are very upset because the Labor Department—they get a letter from the Labor Department stating that they are eligible and will be receiving black-lung benefits, but at the same time they get a letter from the coal company that they work for, saying that they have their black-lung benefits.

They can't understand what the situation is that is going on about the black-lung benefits, and so I have been informed by some of the retired people and some of the men that are disabled and have applied for black lung, that if something is not done about this, there will be a labor dispute among the members in district 17 and possibly throughout West Virginia and all of the coal fields.

As a local union officer, I always try to keep our membership informed of what is going on with legislation. I am also a member out of our local union, and I would like to be in touch, and I would hate to see anything like this come up; but I have been informed by some of the members that are trying to get their benefits that this is a possibility.

Chairman PERKINS. Mr. Kildee, from Michigan, is here on the committee, and let me inform you as to the statement that you made, we are trying to take care of it in another bill in Washington, and that is to eliminate the so-called responsible operator altogether. I was always against that provision being put in the law in the first place, but we just did not have the votes to stop it.

The effect of the provision that you are talking about, when the coal miners notified the Department of Labor that he is entitled to black lung, if there happens to be a so-called responsible operator, even though that miner never contracted the black-lung disease from that coal operator that he last worked for; he may only work 1 month, and where he may have put in 50 years with companies where he actually contracted the disease, the provision in the law permits that coal operator to appeal that decision, because they are holding him responsible, and I personally feel that we should

knock that provision out of the law, and we passed the bill through our committee doing just that.

We did it about 3 weeks or a month ago. We tried to bring it up under suspension of the rules in Washington without opening up the whole black lung bill.

We were afraid if we opened the black-lung bill up in the climate in Washington, that we would get a lot of other bad provisions that we did not want, so they objected to us passing the bill under suspension of the rules, and I felt that we could get two-thirds if we could get it to the floor. That is what we are working on now in Washington to solve that problem.

Thank you.

Mr. EVANS. Thank you, Mr. Perkins.

Mr. Perkins, also just recently I read a report of one of the members from our local concerning social security. From what I understand, according to the definition of total disability, according to the Social Security Administration, the way that I read it, and the way that I can understand the meaning of total disability, a man has to be ready to have dirt thrown in his face, 6 feet under.

Chairman PERKINS. I have worked on that for 30 years, since we first enacted the disability provision about 1958. They wouldn't give anyone a disability unless he was ready to go to his grave, and we have got that improved considerably, but this past year the Ways and Means Committee decided to tighten up the definition of social security disability, and they were able—I went to the Ways and Means Committee and protested the language that they were suggesting, but they were able to get that bill through the House of Representatives over the objections and over our votes up there, and we are doing the very best we can. I know your problems, and we will continue to work on them.

Thank you very much.

Mr. EVANS. Thank you, sir.

Chairman PERKINS. Mr. John Mendez? Give your name.

**STATEMENT OF JOHN MENDEZ, RECORDING SECRETARY,
LOCAL 5921, UNITED MINE WORKERS OF AMERICA**

Mr. MENDEZ. Congressman, my name is John Mendez.

I am recording secretary local 5921 of the United Mine Workers of America. I am a disabled miner. I have been totally disabled under the black lung program administered by the Department of Labor.

I am also here because I am concerned with the offsets and the way that the coal miners of this country have been treated by the Social Security Administration, and also by the way that the coal operators have refused to respond to their responsibilities and their obligations under the 1977 Reform Act of the Black Lung.

Mr. Congressman, I don't know whether you will recall, but I had the honor of working with you in 1969 whenever the black lung first came up on the Federal level.

I worked with you I think around September 1969, when the first consideration was being given which resulted in December 1969, in the Federal Coal Mine Health and Safety Act of 1969.

We, the coal miners, feel very strongly that we have been deprived and discriminated against by the rules and regulations that

have been adopted by the Social Security Administration, such as Mr. Evans talked about a minute ago.

You mentioned that this was a case where you practically had to be dead in order to receive social security. Well, that still remains today. No later than just a week ago I went to the social security office with a question about my social security benefits.

I have been diagnosed by a doctor that I have gout, sugar, circulation, arthritis, and I have been totally disabled by black lung, and they said that is not enough, so I feel that there is only one thing left that they want, and that is a death certificate, but it's unfortunate I can't get it for them because I am still breathing.

Congressman, there was an article in the local paper which you may not be familiar with in Washington, but it's a record of the social security programs, and I only want to make reference to one section of this.

It states:

Before October, a non-citizen of the U.S. could qualify for SSI payments 30 days after entering this country, even if he or she had a sponsor (a person who agreed to financially help the non-citizen). Now, a non-citizen is considered to have the sponsor's income and assets available for his or her support for a period of 3 years unless he or she becomes disabled or blind after entering this country. This provision does not apply to a person considered a refugee or who has been granted political asylum.

[The article referred to follows:]

SOCIAL SECURITY

Several important changes in the supplemental security income (SSI) program that were a part of legislation enacted in June, become effective this month (October).

Under the old law, part of a parent's income and assets were considered, or deemed, to belong to a disabled or blind child who lived at home until the child reached 18, or until 21 if the child was in school. Under the new law all deeming will stop when the child reaches 18 unless it is to the child's advantage to continue deeming.

Another change concerns the money paid to an SSI beneficiary working in a sheltered workshop. Under the old law, all but \$20 a month counted against the SSI payment. Starting this month, these payments are considered earned income. As a result, the first \$65 in a month does not count at all and only half of the amount above \$65 will count against the payment.

Before October, a non-citizen of the U.S. could qualify for SSI payments 30 days after entering this country, even if he or she had a sponsor (a person who agreed to financially help the non-citizen). Now, a non-citizen is considered to have the sponsor's income and assets available for his or her support for a period of 3 years unless he or she becomes disabled or blind after entering this country. This provision does not apply to a person considered a refugee or who has been granted political asylum.

More information about these changes in the SSI program can be obtained at the Logan social security office. The people there will be glad to answer any questions. The office is located at 511 Dingess St., Logan, and the telephone number is 752-4512.

Mr. MENDEZ. Now, this tells me, Congressman, that coming here prior to October, after 30 days he can start receiving some kind of benefits through the Social Security Administration, and now he has to wait 3 years and he starts receiving benefits from the Social Security Administration, or if he becomes disabled or blind he can get them immediately, or if he is a refugee or comes here seeking asylum he can get the benefits immediately.

Yet a man like myself with 38 years in the industry has to practically be dead in order to be entitled to benefits. There is no justification for these things.

I am aware, Congressman, and I know that you as an individual and as a Representative representing the State of Kentucky, that you are a wonderful Representative. You have always listened to us and you have always worked with us. Another Congressman such as John Dent, who I understand is no longer supporting our cause, and others.

You have the young gentleman next to you whom I have never had the opportunity to work with because I haven't been active in the last few years.

But, Congressman, I am sure that after listening to testimony that you have heard here today, that there is no question, and I am pretty sure there has been no question in your mind as an individual, but we do need the Social Security Administration to meet those rules and regulations to comply with the mandate in the Congress as it was passed, not as they wish to change it, but as it was passed.

Also, on the black lung law, rules and regulations supersede the intent of the Congress. That is the way I understand it.

I want to take this opportunity again to express my sincere appreciation to you for the way that you have supported our cause, and I know you will continue to support our cause, and I am looking forward to Congressman Rahall, sitting next to you, but also participating very strongly in behalf of the constituents that he represents.

I am one of his constituents. I am very grateful to this opportunity. I do think that Congress, when they come back into session, should just start looking at the problems that we have down here in the coal industry.

We have problems all over the world, but those are problems that belong to the rest of the world. We have problems right here at home. I myself am not able to go out and work. I would be earning if I was rightly on the job, this year, around \$25,000 to \$30,000. There is no way in anyone's imagination that anyone could say that after 38 years of dedicated labor that I am going to get lazy and settle for \$700 a month. No, sir, there is no way that I could do that.

If I could return back to work now I would be glad to return back to work and earn \$30,000, but my physical condition will not let me, so on behalf of those who are disabled and on behalf of the black lung program, I ask that you, as Members of Congress, Congressman Rahall and all those who are here who have any influence with the Members of Congress or your colleagues, that you take every step to try to preserve the health and well-being of one of the most important elements of human beings in this country, the coal miners of this Nation. [Applause.]

Chairman PERKINS. Thank you very much for that statement. Congressman Rahall has just been informed that Governor Rockefeller is unable to be present and he has been asked to make a statement on behalf of Governor Rockefeller.

Mr. RAHALL. Thank you, Mr. Chairman.

I was just in touch with the Governor's office, and he has called to inform me that he is unable to be here this morning. He is in the area and had hoped that he would be able to stop by.

The Governor is taking a tour of Route 52 throughout the southern part of West Virginia this morning, and I know there is a great deal of interest in Route 52 in this room, so each of you will be happy to know that that particular road is receiving the Governor's personal attention this morning.

I will be seeing the Governor this afternoon, and relaying to him the testimony and certainly a copy of the written record will be made available to him.

He did express his interest in this regard, and I know that I don't have to tell each of you the work that the Governor has done on behalf of the coal miners of West Virginia.

I express his interest and his concern, to all of you and his regrets for not being able to be with you this morning.

Chairman PERKINS. Thank you very much, Congressman Rahall.

I understand that Burnis Moore of Wheelwright, Ky., wants to come around and make a statement.

Go ahead.

STATEMENT OF BURNIS MOORE

Mr. MOORE. Hon. Carl Perkins, Nick Rahall, ladies and gentlemen, we have been hung up on this thing for quite a while.

I will stand if you don't mind. I am more comfortable.

I have heard the debates over and over concerning this offset. I am one of the victims of that, and thanks to the Honorable Carl Perkins I am not hurting as bad now as I was at first.

They were completely stripping me of my social security and also black lung. Now the way I see this thing, I really don't believe that our Government has any business or any point in taking this money from its working men.

We have been penalized all the way through. Now this money is paid to us as most of you know by the employer for the employees. That is the compensation I am talking about.

Then because we have worked and been decent about it and have earned ourselves a small pension for our retirement days, then they come up and take it until you can scarcely squeeze through.

Now for some of you as well as myself, I know it's pretty hard going. We set a pace of living and our standards of living are higher than most people, us working men that have worked all of our lives, so actually when they cut it down we have got nothing left.

Actually like I said before, I don't think the money should be taken out, the offset, because if anyone deserves it, it was paid in for us and if anyone gets it back it should be us instead of the Government taking it. It's our money; we earned it and we should have it.

That is about all I have to say. I don't think they are hearing us in the back here.

Thank you for listening. I thank all of you.

Chairman PERKINS. Thank you very much, Mr. Moore.

Did you want to say something else, Mr. Kitchen?

STATEMENT OF NAMAN KITCHEN, MINE COMMITTEE, LOCAL
UNION 5869

Mr. KITCHEN. I am from Local Union 5869 on the mine committee.

What I don't understand about the black lung is why we had 60 days where the Labor Department said you were eligible, 60 days to protest and give you black lung, but it doesn't work that way.

The simply reason why, it has been 13 months since my coal company protested my case, and I haven't heard anything from the Labor Department.

I haven't heard anything from the company until about 4 weeks ago they sent a letter asking a lawyer to send the doctor's report where I went in Charles Town.

I don't understand, 12 months later they haven't got anything from the lawyer that protested the case.

Somewhere along the line somebody is letting it stand.

Another factor is that there are people being turned down by the Labor Department; they come to me and ask about it. Before they get through going through this examination for the Labor Department, say for instance like in the hospital here in Logan, but before their examination is over they are sending them papers telling them they are disqualified, that they are not going to receive black lung, even though they haven't been through the examination yet.

To me if they have 30 to 60 days to go to a law judge or a law court or something, now the union lawyer told me they could hold you off for an indefinite period of time, which I don't understand.

Chairman PERKINS. Mr. Kitchen, you write us a letter and let us see if we can take up your problem privately while we are trying to get the law straightened out and make some corrections in the law.

Mr. KITCHEN. You made the statement there about how long you have been with the company. You have been 31 years with the same company, but yet they protested 13 months ago and I have been there 31 years and for 10 years the doctor has been trying to get me to come out of the mines.

Chairman PERKINS. I think you have a good case myself.

Send us the letters, Mr. Rahall and myself, and we will see what we can do with it. We will try to get it straightened up.

Does anybody else want to make a statement?

If not, the hearings are concluded.

I think we have had a good hearing here this morning, and this transcript will be available to all the members of the Committee on Education and Labor in Washington.

We are going to have other hearings, and we are going to try to approve the law as rapidly as possible. I know you realize that we have a political climate in Washington presently. We will judge the situation and do the very best we can at all times.

Let us thank you for your attendance, and we thank all the witnesses for appearing here today and helping us.

Do you want to make any statement, Mr. Rahall?

Mr. RAHALL. Thank you, Mr. Chairman.

In conclusion, I just want to once again express our appreciation to you, to Congressman Kildee from Michigan, for coming into southern West Virginia and having these hearings.

One other point. I know a great many of you have individual problems. The last gentleman who spoke did. Because of my schedule I am going to have to leave this morning, but I do have an office in Logan and would hope that you can bring those problems there and discuss it with my staff and together we will try to be of help.

As Chairman Perkins has so well put it, we will together try to help you on your individual problems while we are trying to change the law at the same time.

Chairman PERKINS. Mr. Kildee, do you want to make a statement?

Mr. KILDEE. I appreciate very much the very fine testimony this morning. It gives me even more enthusiasm to go back to Washington and secure justice now.

Thank you very much. [Applause.]

Chairman PERKINS. The committee will now adjourn.

[Whereupon, at 11:40 a.m. the Subcommittee on Labor Standards of the Committee on Education and Labor adjourned.]



