

§ 923. Filing of notice of claim**(a) Promulgation of regulations; time requirement**

Except as otherwise provided in section 924 of this title, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1973, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) Utilization of personnel and procedures; evidence required to establish claim; medical evidence; affidavits; autopsy reports; reimbursement of expenses

No claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials. Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits, from persons not eligible for benefits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his or her death was due to pneumoconiosis. In any case, other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981, in which there is other evidence that a miner has a pulmonary or respiratory impairment, the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this subchapter if such roentgenogram has been taken by a radiologist or qualified technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. Unless the Secretary has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b),

(c), (d), and (g) of section 221 of such Act [42 U.S.C. 421(a) to (d), (g)] shall be applicable. The provisions of sections 204, 205(a), (b), (d), (e), (g), (h), (j), (k), (l), and (n), 206, 207, and 208 of the Social Security Act [42 U.S.C. 404, 405(a), (b), (d), (e), (g), (h), (j), (k), (l), and (n), 406, 407, 408] shall be applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act [42 U.S.C. 401 et seq.]. Each miner who files a claim for benefits under this subchapter shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.

(c) Filing of claim for workmen's compensation; necessity; exceptions

No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

(d) Employment termination and benefits entitlement

No miner who is engaged in coal mine employment shall (except as provided in section 921(c)(3) of this title) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date such determination becomes final.

(Pub. L. 91-173, title IV, §413, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92-303, §§1(c)(5)(A), 4(f), 5(2), May 19, 1972, 86 Stat. 152, 154, 155; Pub. L. 95-239, §5, Mar. 1, 1978, 92 Stat. 97; Pub. L. 97-119, title II, §202(a), (c), Dec. 29, 1981, 95 Stat. 1643; Pub. L. 103-296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107-275, §2(a), (b)(2), Nov. 2, 2002, 116 Stat. 1925.)

REFERENCES IN TEXT

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsec. (b), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97-119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of this Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-275, §2(a), substituted "Secretary" for "Commissioner of Social Security".

Subsec. (b). Pub. L. 107-275, §2(b)(2), substituted "No" for "In carrying out the provisions of this part, the Commissioner of Social Security shall to the maximum

extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act, but no”.

Pub. L. 107-275, §2(a), substituted “Secretary has” for “Commissioner of Social Security has” in two places and “Secretary shall” for “Commissioner of Social Security shall” in two places.

Subsec. (c). Pub. L. 107-275, §2(a), substituted “Secretary” for “Commissioner of Social Security”.

1994—Subsecs. (a) to (c). Pub. L. 103-296 substituted “Commissioner of Social Security” for “Secretary” wherever appearing, except in reference to Secretary of Labor.

1981—Subsec. (b). Pub. L. 97-119, §202(a), (c), inserted “, from persons not eligible for benefits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981,” after “such affidavits” and “, other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981,” after “In any case”.

1978—Subsec. (b). Pub. L. 95-239, §5(a), (b), (c), provided that, in the case of a deceased miner where there is no medical or other relevant evidence, the affidavits be considered sufficient to establish that the miner was totally disabled due to pneumoconiosis or that death was due to pneumoconiosis, directed the Secretary to accept a board certified or board eligible radiologist’s interpretation of a chest roentgenogram in cases in which there is other evidence that a miner has a pulmonary or respiratory impairment, provided for regulations covering roentgenogram techniques, provided for acceptance by the Secretary of an autopsy report concerning the presence of pneumoconiosis and the stage of advancement of that pneumoconiosis, directed that each miner who files a claim for benefits under this subchapter be provided upon request an opportunity to substantiate the claim by means of a complete pulmonary evaluation, and, in the reference to the various subsections of section 405 of Title 42, struck out reference to subsec. (f) and inserted reference to subsec. (n).

Subsec. (d). Pub. L. 95-239, §5(d), added subsec. (d).

1972—Subsec. (a). Pub. L. 92-303, §5(2), substituted “1973” for “1972”.

Subsec. (b). Pub. L. 92-303, §§1(c)(5)(A), 4(f), inserted provisions making sections 404 to 408 of title 42 applicable, and for a more liberal consideration of claims for benefits.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendments by Pub. L. 107-275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107-275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97-119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95-239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 4(f) of Pub. L. 92-303 effective Dec. 30, 1969, see section 4(g) of Pub. L. 92-303, set out as a note under section 921 of this title.

EFFECTIVE DATE FOR THE APPLICATION OF SECTION 405 OF TITLE 42

Pub. L. 92-303, §1(c)(5)(B), May 19, 1972, 86 Stat. 152, provided that: “Only section 205(b), (g), and (h) of those sections of the Social Security Act [section 405(b), (g), and (h) of Title 42, The Public Health and Welfare] recited in subparagraph (A) of this paragraph [amending this section] shall be effective as of the date provided in subsection (d) of this section.”

[There is no subsec. (d) in section 1 of Pub. L. 92-303 as it was enacted. However, Senate Report No. 92-743, at page 30, refers to such a subsec. (d) applying the provisions of section of Pub. L. 92-303 retroactively to Dec. 30, 1969.]

§ 924. Time for filing claims

(a) Claims filed before December 31, 1973

(1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1973, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, 1973, whichever is the later.

(2) In the case of a claim by a child this paragraph shall apply, notwithstanding any other provision of this part.

(A) If such claim is filed within six months following May 1972, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 922(a)(3) of this title been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(B) If such claim is filed after six months following May 1972, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 922(a)(3) of this title been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1973, whichever is the later.

(D) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.