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That 70s Show: Obamacare Takes Federal Black Lung Claims Back in Time

December 3, 2013 by A. Judd Woytek (/author/a-judd-woytek/)

Tucked into amendments to the Patient Protection and Affordable Care Act (PPACA) are two unexpected provisions that put casualty insurance carriers on the hook to pay Black Lung benefits on claims that were closed many years ago.

The Black Lung Benefits Act (BLBA) is Title IV of the Federal Coal Mine Health and Safety Act of 1969 that was passed by Congress to address unsafe and oftentimes deadly working conditions in the nation's coal mines. The stated purpose of the BLBA is to provide specified benefits to coal miners who are totally disabled due to pneumoconiosis, also known as Black Lung—a chronic lung disease caused by the accumulation of coal dust in the lungs.

The BLBA also provides benefits to surviving spouses or dependents of coal miners whose death was caused or hastened by pneumoconiosis.

The BLBA has been amended several times since its enactment:

- Amendments in the 1970s made it easier for claimants to be awarded benefits.
- Amendments in 1981 restricted eligibility by changing several provisions of the act.
- Then, on March 23, 2010, the PPACA was signed by President Obama.

The amendments to the PPACA were proposed by now deceased Senator Robert Byrd of West Virginia. The amendments are applicable to claims for Federal Black Lung benefits filed after Jan. 1, 2005 that were pending on or after March 23, 2010.

The PPACA revived two provisions of the BLBA that had been eliminated in the 1981 amendments to the act. The first provision resuscitated by the PPACA was the provision known as the “15-year presumption.”

Executive Summary

The new health care law has taken casualty insurance carriers back to the past—removing some 1981 restrictions to Black Lung Act benefits and reopening claims that workers compensation carriers thought were finalized long ago.

Under the 15-year presumption provision, a coal miner who has established 15 years of qualifying underground coal mine employment and is able to prove that he suffers from a totally disabling respiratory condition is entitled to a rebuttable presumption that his total disability was caused by coal workers' pneumoconiosis. The miner is entitled to this rebuttable presumption even if the X-ray evidence submitted by the parties is negative for the presence of coal workers' pneumoconiosis.

The burden of proof then shifts to the employer to rebut this presumption by showing that the miner's respiratory disability is not caused by pneumoconiosis. (Section 411(c)(4) of the act, 30 U.S.C. Section 921(c)(4))

The other provision of the BLBA that was revived by the PPACA pertains to survivors' or widows' claims. Prior to the 1981 amendments to the act, a coal miner's surviving spouse or other dependent only had to provide evidence that the deceased miner was collecting Federal Black Lung benefits prior to his death in order to receive an automatic continuation of his benefits. The 1981 amendments changed all that and from 1981 until 2010, a surviving spouse or dependent had to file his or her own claim for survivor's benefits in which he or she would have to prove that coal workers' pneumoconiosis caused, contributed to or hastened the deceased coal miner's death.

In other words, the automatic award to the surviving spouse or dependent was eliminated in 1981.

Hop in your DeLorean, turn on the flux capacitor and time travel forward to 2010 when the PPACA reinstates the automatic award provisions of the act for survivors of deceased coal miners who were collecting Federal Black Lung benefits at the time of their death. (30 U.S.C. Section 932(l))

This reinstatement of the award provisions is not good news for insurance carriers. Since the 2010 PPACA amendments apply retroactively to claims filed after Jan. 1, 2005 that are pending on or after March 23, 2010, it has caused the proverbial floodgates to open. The change has brought about a flood of new claims being filed on behalf of surviving spouses and dependents and has burdened insurance companies with huge benefit payments for claims they thought were closed and finalized years and years ago.

What Has Changed

The BLBA allows a claimant (miner or survivor) to file multiple claims over the years because pneumoconiosis is a progressive disease. So under BLBA, if a claim is denied today, the miner could refile in a few months and allege a worsening of his condition.

However, BLBA's provisions pertaining to survivors' claims indicate that a subsequent survivor's claim shall be denied on the basis of the prior denial because the survivor cannot prove a change in condition since the prior denial. In other words, the miner cannot be more dead than he was before.

Therefore, since 1981, when a widow or other survivor filed a claim and was denied benefits due to an inability to prove that pneumoconiosis caused, contributed to or hastened the miner's death, the insurance carrier could rest assured that the matter was final and that the widow or survivor could never come back to refile and be awarded benefits. The "subsequent" claim would be summarily denied based upon the prior denial.

All that changed under the PPACA.

Recent case law from the United States Court of Appeals for the Third Circuit (*Marmon Coal Co. v. Director, OWCP*, 726 F.3d 387) has held that a survivor/widow whose prior claim had been denied can now pursue a new claim for benefits under the PPACA and be entitled to an automatic award if her husband was collecting Federal Black Lung benefits at the time of his death. The court rejected the employer's argument that res judicata (claim preclusion) would apply.

The court held that the PPACA created a new cause of action by resurrecting the automatic award provisions of the act.

So we are back in the 1970s. Widows or other survivors of coal miners who had previously filed claims for survivor benefits under the act and were denied can now refile for benefits and receive an automatic award of benefits provided that the deceased coal miner was collecting Federal Black Lung benefits at the time of his death. This automatic award of benefits is retroactive to the month after the effective date of the prior denied claim and can result in tens of thousands of dollars in back-due benefits being paid to the survivor of the coal miner even though his death was not in any way caused by pneumoconiosis.

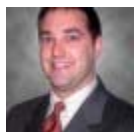
For example, Coal Miner Joe is receiving federal Black Lung benefits. He dies in a car accident in 2002 (death clearly not due to pneumoconiosis). His widow files a survivor's claim. Her claim is denied in July 2003 because she cannot prove that her husband's death was due to pneumoconiosis.

Under the PPACA, the widow can now refile for benefits in 2013 and be entitled to an automatic award of benefits going all the way back to the month after the denial of her prior claim became final. In other words, she is entitled to an automatic award of benefits going back to August 2003.

The United States Courts of Appeals have spoken, and both the Third Circuit and Fourth Circuit have upheld this change to the act. The flood of widows' and survivors' claims will continue. Any surviving spouse or dependent of a coal miner who was collecting benefits at the time of his death is now entitled to an automatic award of benefits.

The PPACA has not taken us back to the future, but back to the past. Coal miners and their surviving widows and dependents have been given an unexpected gift under the new health care law. Employers and insurance carriers are the ones paying the price into the future.

Contributor



(/author/a-judd-woytek/)

A. Judd Woytek, Marshall Dennehey Warner Coleman & Goggin (/author/a-judd-woytek/)

A. Judd Woytek is a shareholder in the Workers Compensation Department at Marshall Dennehey Warner Coleman & Goggin. He focuses his practice on the defense of federal Black Lung claims on behalf of insurance carriers and coal companies. He may be reached at ajwoytek@mdwgc.com.