

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 3(a) of Pub. L. 92-303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92-303, set out as a note under section 901 of this title.

Pub. L. 92-303, §4(g), May 19, 1972, 86 Stat. 154, provided that: "The amendments made by this section [amending this section and sections 901, 902, 923, and 931 of this title] shall be effective as of December 30, 1969."

TRANSITIONAL PROVISIONS

Pub. L. 107-275, §3, Nov. 2, 2002, 116 Stat. 1926, provided that:

"(a) **APPLICABILITY.**—This section shall apply to the transfer of all functions relating to the administration of part B of subchapter IV (30 U.S.C. 901 et seq.) [probably means 30 U.S.C. 921 et seq.] from the Commissioner of Social Security (hereinafter in this section referred to as the 'Commissioner') to the Secretary of Labor, as provided by this Act [see Short Title of 2002 Amendment note set out under section 801 of this title].

"(b) **TRANSFER OF ASSETS, LIABILITIES, ETC.**—

"(1) The Commissioner shall transfer to the Secretary of Labor all property and records that the Director of the Office of Management and Budget determines relate to the functions transferred to the Secretary of Labor by this Act or amendments made by this Act.

"(2) Section 1531 of title 31, United States Code, shall apply in carrying out this Act and amendments made by this Act, except that, for purposes of carrying out this Act and amendments made by this Act, the functions of the President under section 1531(b) shall be performed by the Director of the Office of Management and Budget unless otherwise directed by the President.

"(c) **CONTINUATION OF ORDERS, DETERMINATIONS, ETC.**—

"(1) This Act shall not affect the validity of any order, determination, rule, regulation, operating procedure (to the extent applicable to the Secretary of Labor), or contract that—

"(A) relates to a function transferred by this Act; and

"(B) is in effect on the date this Act takes effect [see Effective Date of 2002 Amendment note set out under section 902 of this title].

"(2) Any order, determination, rule, regulation, operating procedure, or contract described in paragraph (1) shall—

"(A) apply on and after the effective date of this Act to the Secretary of Labor; and

"(B) continue in effect, according to its terms, until it is modified, superseded, terminated, or otherwise deprived of legal effect by the Secretary of Labor, a court of competent jurisdiction, or operation of law.

"(d) **CONTINUATION OF ADMINISTRATIVE PROCEEDINGS.**—

"(1) Any proceeding before the Commissioner involving the functions transferred by this Act that is pending on the date this Act takes effect shall continue before the Secretary of Labor, except as provided in paragraph (2).

"(2) Any proceeding pending before an Administrative Law Judge or the Appeals Council pursuant to part B and the applicable regulations of the Secretary of Health and Human Services shall continue before the Commissioner consistent with the following provisions:

"(A) Any proceeding described in this paragraph shall continue as if this Act had not been enacted,

and shall include all rights to hearing, administrative review, and judicial review available under part B and the applicable regulations of the Secretary of Health and Human Services.

"(B) Any decision, order, or other determination issued in any proceeding described in this subsection shall apply to the Secretary of Labor and continue in effect, according to its terms, until it is modified, superseded, terminated, or otherwise deprived of legal effect by the Secretary of Labor, a court of competent jurisdiction, or operation of law.

"(C) Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

"(3) Any proceeding before the Secretary of Labor involving the functions transferred by this Act shall be subject to the statutory requirements for notice, hearing, action upon the record, administrative review, and judicial review that apply to similar proceedings before the Commissioner conducted prior to the enactment of this Act.

"(e) **CONTINUATION OF ACTIONS AND CAUSES OF ACTION.**—

"(1) Except as provided in paragraphs (2) and (3), this Act shall not abrogate, terminate, or otherwise affect any action or cause of action, that—

"(A) relates to a function transferred by this Act; and

"(B) is pending or otherwise in existence on the date this Act takes effect [see Effective Date of 2002 Amendment note set out under section 902 of this title].

"(2) Any action pending before the Commissioner or any court on the date this Act takes effect that involves a function transferred by this Act shall continue before the Commissioner or court consistent with the following provisions:

"(A) Any proceeding described in this paragraph shall continue as if this Act had not been enacted.

"(B) Any decision, order, or other determination issued in any proceeding subject to this paragraph shall apply to the Secretary of Labor and continue in effect, according to its terms, until it is modified, superseded, terminated, or otherwise deprived of legal effect by the Secretary of Labor, a court of competent jurisdiction, or operation of law.

"(3) Any cause of action by or against the Commissioner that exists on the date this Act takes effect and involves any function transferred by this Act may be asserted by or against the Secretary of Labor or the United States.

"(f) **CONTINUATION OF ACTIONS AGAINST OFFICERS.**—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Social Security Administration, and relating to a function transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against the Social Security Administration, or by or against any officer thereof in his official capacity, relating to a function transferred by this Act, shall abate by reason of enactment of this Act.

"(g) **PRESERVATION OF PENALTIES, ETC.**—The transfer of functions under this Act shall not release or extinguish any penalty, forfeiture, liability, prosecution, investigation, or right to initiate a future investigation or prosecution involving any function transferred by this Act."

§ 922. Payment of benefits

(a) Schedules

Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall

be paid benefits during the disability at a rate equal to 37½ per centum of the monthly pay rate for Federal employees in grade GS-2, step 1.

(2) In the case of death of a miner due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of his death, in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: *Provided*, That benefits shall only be paid to a child for so long as he meets the criteria for the term "child" contained in section 902(g) of this title: *And provided further*, That no entitlement to benefits as a child shall be established under this paragraph (3) for any month for which entitlement to benefits as a widow is established under paragraph (2).

(4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, in the case of the dependent parent or parents of a miner (who is not survived at the time of his or her death by a widow or a child) who are entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, or in

the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of his or her death by a widow, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act [42 U.S.C. 401 et seq.]. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a brother only if he is—

(1)(A) under eighteen years of age, or

(B) under a disability as defined in section 223(d) of the Social Security Act [42 U.S.C. 423(d)] which began before the age specified in section 202(d)(1)(B)(ii) of such Act [42 U.S.C. 402(d)(1)(B)(ii)], or in the case of a student, before he ceased to be a student, or

(C) a student as defined in section 902(g) of this title; or

(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act [42 U.S.C. 423(d)], during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit 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 months. As used in this paragraph, "dependent" means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after May 1972, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes "living in the miner's household", "totally dependent upon the miner for support," and "good cause," shall for purposes of this paragraph be made in accordance with regulations of the Secretary. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)-(1) of the Social Security Act [42 U.S.C. 403(b)-(1)], as if the benefit under this paragraph were a benefit under section 202 of such Act [42 U.S.C. 402].

(6) If an individual's benefits would be increased under paragraph (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this subchapter, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

(b) Reduction of benefits

Notwithstanding subsection (a), benefit payments under this section to a miner or his widow, child, parent, brother, or sister shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner due to pneumoconiosis, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (l) of the Social Security Act [42 U.S.C. 403(b) to (l)] if the amount paid were a benefit payable under section 202 of such Act [42 U.S.C. 402]. This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act [42 U.S.C. 424a].

(c) Reporting of income

Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1986.

(Pub. L. 91-173, title IV, §412, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92-303, §§1(b)(1), (2), (c)(1), 2(a), May 19, 1972, 86 Stat. 150, 151, 153; Pub. L. 95-239, §§3(b)(1), 4, Mar. 1, 1978, 92 Stat. 96, 97; Pub. L. 97-119, title II, §203(a)(1)-(3), (d), Dec. 29, 1981, 95 Stat. 1643, 1644; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107-275, §2(a), Nov. 2, 2002, 116 Stat. 1925.)

REFERENCES IN TEXT

Grade GS-2, referred to in subsec. (a)(1), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsec. (a)(2), (3), and (5), 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. (a)(5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of that 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.

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified to Title 26, Internal Revenue Code.

AMENDMENTS

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

1994—Subsec. (a). Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary" wherever appearing.

1986—Subsec. (c). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1981—Subsec. (a)(1). Pub. L. 97-119, §203(d), substituted "37½ per centum of the monthly pay rate for Federal employees in grade GS-2, step 1" for "50 per centum of the minimum monthly payment to which a Federal employee in grade GS-2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5".

Subsec. (a)(2). Pub. L. 97-119, §203(a)(1), inserted "except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Amendments of 1981," after "pneumoconiosis or".

Subsec. (a)(3). Pub. L. 97-119, §203(a)(2), inserted "except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981," after "pneumoconiosis or" and substituted "time of his death or" for "time of his death, or".

Subsec. (a)(5). Pub. L. 97-119, §203(a)(3), inserted "except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981," after "pneumoconiosis, or" and substituted "time of his death or who was totally" for "time of his death, or of a miner who was totally".

1978—Subsec. (a)(3). Pub. L. 95-239, §3(b)(1)(A), inserted reference to any child or children entitled to the payment of benefits under paragraph (5) of section 921(c) of this title.

Subsec. (a)(5). Pub. L. 95-239, §3(b)(1)(B), inserted references to the payment of benefits under par. (5) of section 921(c) of this title.

Subsec. (b). Pub. L. 95-239, §4, substituted "on account of the disability of such miner due to pneumoconiosis" for "on account of the disability of such miner".

1972—Subsec. (a)(3), (4). Pub. L. 92-303, §1(b)(1), added par. (3) and redesignated former par. (3) as par. (4).

Subsec. (a)(5), (6). Pub. L. 92-303, §1(b)(2), added pars. (5) and (6).

Subsec. (b). Pub. L. 92-303, §§1(c)(1), 2(a), substituted "widow, child, parent, brother, or sister" for "widow" wherever appearing, and inserted provision that this part would not be considered as a workmen's compensation law or plan for purposes of section 224 of such Act.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment 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

Pub. L. 92-303, §2(b), May 19, 1972, 86 Stat. 153, provided that: "The amendment made by this section

[amending this section] shall be effective as of December 30, 1969.”

CALCULATION OF MONTHLY BENEFIT PAYMENTS

Pub. L. 103-333, title V, §512, Sept. 30, 1994, 108 Stat. 2573, provided that: “Notwithstanding any other provision of law, monthly benefit rates during fiscal year 1995 and thereafter under part B or part C of the Black Lung Benefits Act [30 U.S.C. 921 et seq., 931 et seq.] shall continue to be based on the benefit rates in effect in September, 1994 and be paid in accordance with the Act, until exceeded by the benefit rate specified in section 412(a)(1) of the Act [30 U.S.C. 922(a)(1)].”

Pub. L. 103-112, title V, §508(a), Oct. 21, 1993, 107 Stat. 1113, provided that: “Notwithstanding any other provision of law, monthly benefit payments under part B or part C of the Black Lung Benefits Act [30 U.S.C. 921 et seq., 931 et seq.] for months after December 1993 and before October 1994 shall be calculated as though the provisions of Federal law prescribing pay rates for Federal employees continued in effect, without amendment to or limitation of such provisions, after January 1993.”

§ 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.