

with respect to claims filed after such 90th day and to claims pending on such 90th day, and amendment by section 7(b)-(d) of Pub. L. 98-426 effective 90 days after Sept. 28, 1984, see section 28(b), (e)(2) of Pub. L. 98-426, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

CLAIMS FILED UNDER BLACK LUNG BENEFITS ACT

Pub. L. 98-426, §28(h)(1), Sept. 28, 1984, 98 Stat. 1655, provided that: "The amendments made by section 7 of this Act [amending this section] shall not apply to claims filed under the Black Lung Benefits Act (30 U.S.C. 901 et seq.)."

§ 908. Compensation for disability

Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability adjudged to be permanent 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability: In case of disability total in character but temporary in quality 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66⅔ per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subsection (b) or subsection (e) of this section, respectively, and shall be paid to the employee, as follows:

(1) Arm lost, three hundred and twelve weeks' compensation.

(2) Leg lost, two hundred and eighty-eight weeks' compensation.

(3) Hand lost, two hundred and forty-four weeks' compensation.

(4) Foot lost, two hundred and five weeks' compensation.

(5) Eye lost, one hundred and sixty weeks' compensation.

(6) Thumb lost, seventy-five weeks' compensation.

(7) First finger lost, forty-six weeks' compensation.

(8) Great toe lost, thirty-eight weeks' compensation.

(9) Second finger lost, thirty weeks' compensation.

(10) Third finger lost, twenty-five weeks' compensation.

(11) Toe other than great toe lost, sixteen weeks' compensation.

(12) Fourth finger lost, fifteen weeks' compensation.

(13) Loss of hearing:

(A) Compensation for loss of hearing in one ear, fifty-two weeks.

(B) Compensation for loss of hearing in both ears, two-hundred weeks.

(C) An audiogram shall be presumptive evidence of the amount of hearing loss sustained as of the date thereof, only if (i) such audiogram was administered by a licensed or certified audiologist or a physician who is certified in otolaryngology, (ii) such audiogram, with the report thereon, was provided to the employee at the time it was administered, and (iii) no contrary audiogram made at that time is produced.

(D) The time for filing a notice of injury, under section 912 of this title, or a claim for compensation, under section 913 of this title, shall not begin to run in connection with any claim for loss of hearing under this section, until the employee has received an audiogram, with the accompanying report thereon, which indicates that the employee has suffered a loss of hearing.

(E) Determinations of loss of hearing shall be made in accordance with the guides for the evaluation of permanent impairment as promulgated and modified from time to time by the American Medical Association.

(14) Phalanges: Compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half of the compensation for loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot.

(16) Binocular vision or per centum of vision: Compensation for loss of binocular vision or for 80 per centum or more of the vision of an eye shall be the same as for loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(18) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(20) Disfigurement: Proper and equitable compensation not to exceed \$7,500 shall be awarded for serious disfigurement of the face, head, or neck or of other normally exposed areas likely to handicap the employee in securing or maintaining employment.

(21) Other cases: In all other cases in the class of disability, the compensation shall be 66⅔ per centum of the difference between the average weekly wages of the employee and the employee's wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of partial disability.

(22) In any case in which there shall be a loss of, or loss of use of, more than one member or

parts of more than one member set forth in paragraphs (1) to (19) of this subsection, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subsection shall apply.

(23) Notwithstanding paragraphs (1) through (22), with respect to a claim for permanent partial disability for which the average weekly wages are determined under section 910(d)(2) of this title, the compensation shall be 66⅔ per centum of such average weekly wages multiplied by the percentage of permanent impairment, as determined under the guides referred to in section 902(10) of this title, payable during the continuance of such impairment.

(d)(1) If an employee who is receiving compensation for permanent partial disability pursuant to subsection (c)(1)–(20) dies from causes other than the injury, the total amount of the award unpaid at the time of death shall be payable to or for the benefit of his survivors, as follows:

(A) if the employee is survived only by a widow or widower, such unpaid amount of the award shall be payable to such widow or widower,

(B) if the employee is survived only by a child or children, such unpaid amount of the award shall be paid to such child or children in equal shares,

(C) if the employee is survived by a widow or widower and a child or children, such unpaid amount of the award shall be payable to such survivors in equal shares,

(D) if there be no widow or widower and no surviving child or children, such unpaid amount of the award shall be paid to the survivors specified in section 909(d) of this title (other than a wife, husband, or child); and the amount to be paid each such survivor shall be determined by multiplying such unpaid amount of the award by the appropriate percentage specified in section 909(d) of this title, but if the aggregate amount to which all such survivors are entitled, as so determined, is less than such unpaid amount of the award, the excess amount shall be divided among such survivors pro rata according to the amount otherwise payable to each under this subparagraph.

(2) Notwithstanding any other limitation in section 909 of this title, the total amount of any award for permanent partial disability pursuant to subsection (c)(1)–(20) unpaid at time of death shall be payable in full in the appropriate distribution.

(3) An award for disability may be made after the death of the injured employee. Except where compensation is payable under subsection (c)(21) if there be no survivors as prescribed in this section, then the compensation payable under this subsection shall be paid to the special fund established under section 944(a) of this title.

(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be two-thirds of the difference between the

injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

(f) Injury increasing disability:

(1) In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of the injury. If following an injury falling within the provisions of subsection (c)(1)–(20), the employee is totally and permanently disabled, and the disability is found not to be due solely to that injury, the employer shall provide compensation for the applicable prescribed period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater, except that, in the case of an injury falling within the provisions of subsection (c)(13), the employer shall provide compensation for the lesser of such periods. In all other cases of total permanent disability or of death, found not to be due solely to that injury, of an employee having an existing permanent partial disability, the employer shall provide in addition to compensation under subsections (b) and (e) of this section, compensation payments or death benefits for one hundred and four weeks only. If following an injury falling within the provisions of subsection (c)(1)–(20), the employee has a permanent partial disability and the disability is found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide compensation for the applicable period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater, except that, in the case of an injury falling within the provisions of subsection (c)(13), the employer shall provide compensation for the lesser of such periods.

In all other cases in which the employee has a permanent partial disability, found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide in addition to compensation under subsections (b) and (e) of this section, compensation for one hundred and four weeks only.

(2)(A) After cessation of the payments for the period of weeks provided for herein, the employee or his survivor entitled to benefits shall be paid the remainder of the compensation that would be due out of the special fund established in section 944 of this title, except that the special fund shall not assume responsibility with respect to such benefits (and such payments shall not be subject to cessation) in the case of any employer who fails to comply with section 932(a) of this title.

(B) After cessation of payments for the period of weeks provided for in this subsection,

the employer or carrier responsible for payment of compensation shall remain a party to the claim, retain access to all records relating to the claim, and in all other respects retain all rights granted under this chapter prior to cessation of such payments.

(3) Any request, filed after September 28, 1984, for apportionment of liability to the special fund established under section 944 of this title for the payment of compensation benefits, and a statement of the grounds therefore, shall be presented to the deputy commissioner prior to the consideration of the claim by the deputy commissioner. Failure to present such request prior to such consideration shall be an absolute defense to the special fund's liability for the payment of any benefits in connection with such claim, unless the employer could not have reasonably anticipated the liability of the special fund prior to the issuance of a compensation order.

(g) Maintenance for employees undergoing vocational rehabilitation: An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the Secretary as provided by section 939(c) of this title, is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed \$25 a week. The expense shall be paid out of the special fund established in section 944 of this title.

(h) The wage-earning capacity of an injured employee in cases of partial disability under subsection (c)(21) of this section or under subsection (e) of this section shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: *Provided, however,* That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

(i)(1) Whenever the parties to any claim for compensation under this chapter, including survivors benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

(2) If the deputy commissioner disapproves an application for settlement under paragraph (1),

the deputy commissioner shall issue a written statement within thirty days containing the reasons for disapproval. Any party to the settlement may request a hearing before an administrative law judge in the manner prescribed by this chapter. Following such hearing, the administrative law judge shall enter an order approving or rejecting the settlement.

(3) A settlement approved under this section shall discharge the liability of the employer or carrier, or both. Settlements may be agreed upon at any stage of the proceeding including after entry of a final compensation order.

(4) The special fund shall not be liable for reimbursement of any sums paid or payable to an employee or any beneficiary under such settlement, or otherwise voluntarily paid prior to such settlement by the employer or carrier, or both.

(j)(1) The employer may inform a disabled employee of his obligation to report to the employer not less than semiannually any earnings from employment or self-employment, on such forms as the Secretary shall specify in regulations.

(2) An employee who—

(A) fails to report the employee's earnings under paragraph (1) when requested, or

(B) knowingly and willfully omits or understates any part of such earnings,

and who is determined by the deputy commissioner to have violated clause (A) or (B) of this paragraph, forfeits his right to compensation with respect to any period during which the employee was required to file such report.

(3) Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee in any amount and on such schedule as determined by the deputy commissioner.

(Mar. 4, 1927, ch. 509, § 8, 44 Stat. 1427; May 26, 1934, ch. 354, §§ 2, 3, 48 Stat. 806; June 25, 1938, ch. 685, §§ 4, 5, 52 Stat. 1165; June 24, 1948, ch. 623, § 2, 62 Stat. 602; July 26, 1956, ch. 735, §§ 2, 3, 70 Stat. 655; Pub. L. 92-576, §§ 5(c), 7, 9, 20(a), Oct. 27, 1972, 86 Stat. 1253, 1255, 1257, 1264; Pub. L. 98-426, §§ 8, 27(a)(2), Sept. 28, 1984, 98 Stat. 1644, 1654.)

AMENDMENTS

1984—Subsec. (c)(13). Pub. L. 98-426, § 8(a), redesignated compensation for loss of hearing in one ear as subpar. (A) and for loss in both ears as subpar. (B) and added subpars. (C), (D), and (E) respecting establishing proof of hearing loss.

Subsec. (c)(20). Pub. L. 98-426, § 8(b), substituted "\$7,500" for "\$3,500".

Subsec. (c)(21). Pub. L. 98-426, § 8(c)(1), substituted "the average weekly wages of the employee and the employee's" for "his average weekly wages and his"; and struck out " , but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest".

Subsec. (c)(23). Pub. L. 98-426, § 8(c)(2), added par. (23).

Subsec. (d)(3), (4). Pub. L. 98-426, § 8(d), redesignated par. (4) as par. (3). Former par. (3), which provided that if an employee who was receiving compensation for permanent partial disability pursuant to subsection (c)(21) of this section died from causes other than the injury, his survivors would receive death benefits as provided in section 909(b)-(g) of this title, except that the percentage figures therein would be applied to the weekly compensation payable to the employee at the time of

his death multiplied by 1.5, rather than to his average weekly wages, was struck out.

Subsec. (f)(1). Pub. L. 98-426, §8(e)(1), inserted at end of second and fourth sentences “, except that, in the case of an injury falling within the provisions of subsection (c)(13), the employer shall provide compensation for the lesser of such periods”.

Subsec. (f)(2)(A). Pub. L. 98-426, §8(e)(2), designated existing provisions of par. (2) as subpar. (A).

Pub. L. 98-426, §8(e)(3), inserted “, except that the special fund shall not assume responsibility with respect to such benefits (and such payments shall not be subject to cessation) in the case of any employer who fails to comply with section 932(a) of this title”.

Subsec. (f)(2)(B). Pub. L. 98-426, §8(e)(4), added subpar. (B).

Subsec. (f)(3). Pub. L. 98-426, §8(e)(5), added par. (3).

Subsec. (g). Pub. L. 98-426, §27(a)(2), substituted “Secretary” for “commissioner”. See Transfer of Functions note set out under section 902 of this title.

Subsec. (i)(1) to (3). Pub. L. 98-426, §8(f), substituted pars. (1) to (3) respecting procedures for approval of a settlement by the deputy commissioner or administrative law judge for former pars. (A) and (B) respecting settlements approved by the deputy commissioner or Secretary.

Subsec. (i)(4). Pub. L. 98-426, §8(g), added par. (4).

Subsec. (j). Pub. L. 98-426, §8(h), added subsec. (j).

1972—Subsec. (c)(20). Pub. L. 92-576, §7, included compensation for serious disfigurement of the neck and other normally exposed areas likely to handicap the employee in securing or maintaining employment.

Subsec. (d). Pub. L. 92-576, §5(c), in revising provisions substituted par. (1), subpars. (A) to (D) and pars. (2) to (4) for former provisions having an introductory par. and pars. (1) to (5), making the following changes:

Par. (1) incorporated former introductory par. providing for payments to survivors rather than for payments “for the benefit of the persons after”; subpar. (A) incorporated former par. (1) providing for a widower rather than dependent husband;

Subpar. (B) incorporated former par. (4), striking out reference to children under eighteen years, and providing for payment in equal shares;

Subpar. (C) incorporated former par. (2) for payment in equal shares rather than one half to surviving wife or dependent husband and one half to surviving child or children, substituting reference to “widow or widower” for “surviving wife or dependent husband”, and striking out reference to “surviving” before “child or children”;

Subpar. (D) added;

Pars. (2) and (3) added and former par. (3) struck out, such par. making it discretionary with the deputy commissioner to appoint a guardian for receipt of minor child’s compensation; and

Par. (4) incorporated former par. (5), inserting provision for payment of compensation to the special fund except where payable under subsec. (c)(21) of this section.

Subsec. (f)(1). Pub. L. 92-576, §9(a) added par. (1) and struck out former par. (1) which provided that if an employee received an injury which of itself would only cause permanent partial disability but which, combined with a previous disability did in fact cause permanent total disability, the employer should provide compensation only for the disability caused by the subsequent injury, and proviso of such former par. (1) providing that in addition to compensation for the permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee should be paid the remainder of the compensation that would be due for permanent total disability and provision that additional compensation should be paid out of the special fund established in section 944 of this title. See par. (2) of this subsection.

Subsec. (f)(2). Pub. L. 92-576, §9, incorporated proviso of first sentence and second sentence of former par. (1) in provisions designated as par. (2) and struck out former par. (2) which stated that in all other cases in

which, following a previous disability, an employee received an injury which was not covered by former par. (1), the employer should provide compensation only for the disability caused by the subsequent injury, and in determining compensation for the subsequent injury or for death resulting therefrom, the average weekly wages should be such sum as would reasonably represent the earning capacity of the employee at the time of the subsequent injury. See par. (1) of this subsection.

Subsec. (i). Pub. L. 92-576, §20(a), designated existing provisions as subpar. (A), substituted “Whenever” for “In cases under subsection (c)(21) and subsection (e) of this section, whenever”, “he may approve” for “he may, with the approval of the Secretary, approve”, and “deputy commissioner” for “Secretary”, and struck out after “Provided,” where first appearing “That the sum so agreed upon shall be payable in installments as provided in section 914(b) of this title, which installments shall be subject to commutation under section 914(j) of this title; *And provided further.*” and added subpar. (B).

1956—Subsec. (c). Act July 26, 1956, §2, increased periods in schedule of compensation as follows:

Par. (1) Arm lost, increased from two hundred and eighty to three hundred and twelve weeks’ compensation.

Par. (2) Leg lost, increased from two hundred and forty-eight to two hundred and eighty-eight weeks’ compensation.

Par. (3) Hand lost, increased from two hundred and twelve to two hundred and forty-four weeks’ compensation.

Par. (4) Foot lost, increased from one hundred and seventy-three weeks to two hundred and five weeks’ compensation.

Par. (5) Eye lost, increased from one hundred and forty to one hundred and sixty weeks’ compensation.

Par. (6) Thumb lost, increased from fifty-one to seventy-five weeks’ compensation.

Par. (7) First finger lost, increased from twenty-eight to forty-six weeks’ compensation.

Par. (8) Great toe lost, increased from twenty-six to thirty-eight weeks’ compensation.

Par. (9) Second finger lost, increased from eighteen to thirty weeks’ compensation.

Par. (10) Third finger lost, increased from seventeen to twenty-five weeks’ compensation.

Par. (11) Toe other than great toe lost, increased from eight to sixteen weeks’ compensation.

Par. (12) Fourth finger lost, increased from seven to fifteen weeks’ compensation.

Subsec. (g). Act July 26, 1956, §3, substituted “\$25” for “\$10”.

1948—Subsec. (c). Act June 24, 1948, inserted in opening par. “or temporary partial disability”, “or subsection (e)”, and “respectively”.

1938—Subsec. (c). Act June 25, 1938, §4, in par. (22), inserted exception clause.

Subsecs. (h), (i). Act June 25, 1938, §5 added subsecs. (h) and (i).

1934—Subsec. (c). Act May 26, 1934, §2, inserted in opening par. “which shall be in addition to compensation for temporary total disability paid in accordance with subsection (b) of this section” and decreased periods in schedule of compensation of pars. (1) to (12).

Subsec. (c). Act May 26, 1934, §3, substituted new par. (22), providing that “In any case in which there shall be a loss of, or loss of use of, more than one member or parts of more than one member set forth in paragraphs (1) to (19) of this subdivision, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively.”, for former provisions, providing that “In case of temporary total disability and permanent partial disability, both resulting from the same injury, if the temporary total disability continues for a longer period than the number of weeks set forth in the following schedule, the period of temporary total disability in excess of such number of weeks shall be added to the com-

pensation period provided in this subdivision: Arm, thirty-two weeks; leg, forty weeks; hand, thirty-two weeks; foot, thirty-two weeks; eye, twenty weeks; thumb, twenty-four weeks; first finger, eighteen weeks; great toe, twelve weeks; second finger, twelve weeks; third finger, eight weeks; fourth finger, eight weeks; toe other than great toe, eight weeks.

"In any case resulting in loss or partial loss of arm, leg, hand, foot, eye, thumb, finger, or toe, where the temporary total disability does not extend beyond the periods above mentioned for such injury, compensation shall be limited to the schedule contained in this subdivision."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 8(a), (c)(2), (e)(1), (2) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, amendment by section 8(b) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, amendment by sections 8(c)(1), (e)(4), (5), (g), and 27(a)(2) of Pub. L. 98-426 effective Sept. 28, 1984, amendment by section 8(d) of Pub. L. 98-426 applicable with respect to any death after Sept. 28, 1984, amendment by section 8(f) of Pub. L. 98-426 effective 90 days after Sept. 28, 1984, and applicable both with respect to claims filed after such 90th day and to claims pending on such 90th day, and amendment by section 8(h) of Pub. L. 98-426 effective 90 days after Sept. 28, 1984, see section 28(a)-(e) of Pub. L. 98-426, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 26, 1956, applicable only with respect to injuries and death occurring on or after July 26, 1956, see section 9 of act July 26, 1956, set out as a note under section 906 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act June 24, 1948, applicable to death or injuries occurring after June 24, 1948, see section 6 of act June 24, 1948, set out as a note under section 906 of this title.

§ 909. Compensation for death

If the injury causes death, the compensation therefore shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding \$3,000.

(b) If there be a widow or widower and no child of the deceased, to such widow or widower 50 per centum of the average wages of the deceased, during widowhood, or dependent widowhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 16 $\frac{2}{3}$ per centum of such wages for each such child; in case of the death or remarriage of such widow or widower, if there be one surviving child of the deceased employee, such child shall have his compensation increased to 50 per centum of such wages, and if there be more than one surviving child of the deceased employee, to such children, in equal parts, 50 per centum of such wages increased by 16 $\frac{2}{3}$ per centum of such wages for each child in excess of one: *Provided*, That the total amount payable shall in no case exceed 66 $\frac{2}{3}$ per centum of such wages. The de-

uty commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

(c) If there be one surviving child of the deceased, but no widow or widower, then for the support of such child 50 per centum of the wages of the deceased; and if there be more than one surviving child of the deceased, but no widow or dependent husband, then for the support of such children, in equal parts 50 per centum of such wages increased by 16 $\frac{2}{3}$ per centum of such wages for each child in excess of one: *Provided*, That the total amount payable shall in no case exceed 66 $\frac{2}{3}$ per centum of such wages.

(d) If there be no surviving wife or husband or child, or if the amount payable to a surviving wife or husband and to children shall be less in the aggregate than 66 $\frac{2}{3}$ per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, and any other persons who satisfy the definition of the term "dependent" in section 152 of title 26, but are not otherwise eligible under this section, 20 per centum of such wages for the support of each such person during such dependency and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subsection exceed the difference between 66 $\frac{2}{3}$ per centum of such wages and the amount payable as hereinbefore provided to widow or widower and for the support of surviving child or children.

(e) In computing death benefits, the average weekly wages of the deceased shall not be less than the national average weekly wage as prescribed in section 906(b) of this title, but—

(1) the total weekly benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefit which the deceased employee would have been eligible to receive under section 906(b)(1) of this title; and

(2) in the case of a claim based on death due to an occupational disease for which the time of injury (as determined under section 910(i) of this title) occurs after the employee has retired, the total weekly benefits shall not exceed one fifty-second part of the employee's average annual earnings during the 52-week period preceding retirement.

(f) All questions of dependency shall be determined as of the time of the injury.

(g) Aliens: Compensation under this chapter to aliens not residents (or about to become non-residents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the injury, and except that the Secretary may, at his option or upon the application of the