

Public Law 92-303

AN ACT

May 19, 1972
[H. R. 9212]

To amend the provisions of the Federal Coal Mine Health and Safety Act of 1969 to extend black lung benefits to orphans whose fathers die of pneumoconiosis, and for other purposes.

Black Lung
Benefits Act of
1972.

83 Stat. 794.
30 USC 922.

Orphans, bene-
fits.

Post, p. 152.

Dependent
parents, brothers
or sisters.

42 USC 401.

81 Stat. 868.
42 USC 423.
79 Stat. 370.
42 USC 402.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Black Lung Benefits Act of 1972".

(b) (1) Section 412(a) of the Federal Coal Mine Health and Safety Act of 1969 is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or 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, and in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, 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 402(g): *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)."

(2) Section 412(a) of such Act is further amended by adding at the end thereof the following new paragraphs:

"(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or of a miner who is receiving benefits under this part at the time of his death, or of a miner 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, or 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, 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. 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 which began before the age specified in section 202(d) (1) (B) (ii) of such Act, or in the case of a student, before he ceased to be a student, or

“(C) a student as defined in section 402(g); 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, 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 the month in which this amendment is enacted, 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, as if the benefit under this paragraph were a benefit under section 202 of such Act.

Post, p. 152.

81 Stat. 868.
42 USC 423.

“Dependent.”

Proof of support, filing date.

42 USC 403.
42 USC 402.

Augmented benefits, certification.
Ante, p. 150.

“(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 title, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.”

(c) (1) Sections 412(b), 414(e), and 424 of such Act are amended by inserting after “widow” each time it appears the following: “, child, parent, brother, or sister”, and section 421(a) is amended by inserting after “widows” the following: “, children, parents, brothers, or sisters, as the case may be.”

83 Stat. 794,
795, 798.
30 USC 922,
924, 934.
30 USC 931.

30 USC 902.

“Dependent.”
Post, p. 152.

(2) Section 402(a) of such Act is amended to read:

“(a) The term ‘dependent’ means—

“(1) a child as defined in subsection (g) without regard to subparagraph (2) (B) (ii) thereof; or

“(2) a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets the requirements of section 216(b) (1) or (2) of the Social Security Act. The determination of an individual’s status as the ‘wife’ of a miner shall be made in accordance with section 216(h) (1) of the Social Security Act as if such miner were the ‘insured individual’

64 Stat. 510;
74 Stat. 950.
42 USC 416.

71 Stat. 519.

79 Stat. 377.
42 USC 416.

referred to therein. The term 'wife' also includes a 'divorced wife' as defined in section 216(d) (1) of the Social Security Act who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to her support from such miner."

"Widow."
83 Stat. 792.
30 USC 902.

(3) Section 402(e) of such Act is amended to read:

"(e) The term 'widow' includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 216(c) (1), (2), (3), (4), or (5), and section 216(k) of the Social Security Act, who is not married. The determination of an individual's status as the 'widow' of a miner shall be made in accordance with section 216(h) (1) of the Social Security Act as if such miner were the 'insured individual' referred to therein. Such term also includes a 'surviving divorced wife' as defined in section 216(d) (2) of the Social Security Act who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death."

72 Stat. 1027.
81 Stat. 866.

71 Stat. 519;
74 Stat. 951.

(4) Section 402 of such Act is amended by adding at the end thereof the following new subsection:

"Child."

"(g) The term 'child' means a child or a step-child who is—

"(1) unmarried; and

"(2) (A) under eighteen years of age, or

42 USC 423.

"(B) (i) under a disability as defined in section 223(d) of the Social Security Act,

42 USC 402.

"(ii) which began before the age specified in section 202(d) (1) (B) (ii) of the Social Security Act, or, in the case of a student, before he ceased to be a student; or

"(C) a student.

"Student."

79 Stat. 371;
81 Stat. 860.
81 Stat. 209.

The term 'student' means a 'full-time student' as defined in section 202(d) (7) of the Social Security Act, or a 'student' as defined in section 8101(17) of title 5, United States Code. The determination of an individual's status as the 'child' of the miner or widow, as the case may be, shall be made in accordance with section 216(h) (2) or (3) of the Social Security Act as if such miner or widow were the 'insured individual' referred to therein."

79 Stat. 409.

Post, p. 154.

42 USC 404-
408.

(5) (A) Section 413(b) of such Act is amended by adding at the end thereof the following new sentence: "The provisions of sections 204, 205 (a), (b), (d), (e), (f), (g), (h), (j), (k), and (l), 206, 207, and 208 of the Social Security Act 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 USC 401.

Effective date.

(B) Only section 205, (b), (g), and (h) of those sections of the Social Security Act recited in subparagraph (A) of this paragraph shall be effective as of the date provided in subsection (d) of this section.

Claims, filing.
83 Stat. 795.
30 USC 924.

(6) Section 414(a) of such Act is amended by inserting "(1)" after "(a)" and by adding the following new paragraphs at the end thereof:

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

Retroactive entitlement.

"(A) If such claim is filed within six months following the month in which this paragraph is enacted, 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 412(a) (3) 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.

Ante, p. 150.

“(B) If such claim is filed after six months following the month in which this paragraph is enacted, 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 412(a) (3) 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.

“(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later.”

Sec. 2. (a) Section 412(b) of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following: “This part shall not be considered a workmen’s compensation law or plan for purposes of section 224 of such Act.”

(b) The amendment made by this section shall be effective as of December 30, 1969.

Sec. 3. (a) Sections 401, 411(c) (1), 411(c) (2), and 422(h) of the Federal Coal Mine Health and Safety Act of 1969 are each amended by striking out “underground”.

(b) Sections 402(b), 402(d), 422(a), and 423(a) of such Act are each amended by striking out “an underground” and inserting “a” in lieu thereof.

(c) The amendments made by this section shall be effective as of December 30, 1969.

Sec. 4. (a) Section 402(f) of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

“(f) The term ‘total disability’ has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, except that such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time. Such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act.”

Benefit pay-
ment offset,
limitation.
83 Stat. 794.
30 USC 922.
42 USC 424a.
Effective date.

30 USC 901,
921, 932.

30 USC 902,
933.

Effective date.

30 USC 902.

“Total dis-
ability.”

81 Stat. 868.
42 USC 423.

83 Stat. 793.
30 USC 921.

(b) (1) Section 411(a) of such Act is further amended by adding at the end thereof the following: "or who at the time of his death was totally disabled by pneumoconiosis."

30 USC 901.

(2) Section 401 is amended by inserting after the word "disease" each place it appears the following: "or who were totally disabled by this disease at the time of their deaths".

(3) Section 411(c) (3) is amended by inserting after "pneumoconiosis," the following: "or that at the time of his death he was totally disabled by pneumoconiosis."

Rebuttable
presumption.

(c) Section 411(c) of such Act is amended by striking the word "and" at the end of paragraph (2), by striking the period at the end of paragraph (3), inserting "; and", and by adding at the end thereof the following new paragraph:

"(4) if a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this title and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Secretary may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine."

Publication in
Federal Register.

(d) Section 411(b) is amended by inserting immediately after the penultimate sentence thereof the following new sentence: "Final regulations required for implementation of any amendments to this title shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted."

30 USC 931.

(e) Section 421(b) (2) (C) of such Act is amended by striking the word "those" and inserting in lieu thereof "section 402(f) of this title and to those standards", and by substituting for the words "by section 411" the words "under part B of this title".

30 USC 902.

Claims, validity
determination.
83 Stat. 794.
30 USC 923.

(f) The first sentence of section 413(b) of such Act is amended by inserting before the period at the end thereof the following: ", but 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."

Effective date.

(g) The amendments made by this section shall be effective as of December 30, 1969.

SEC. 5. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended—

(1) by striking out “December 31, 1971” where it appears in section 414(b), and inserting in lieu thereof “June 30, 1973”,

(2) by striking out “1972” each place it appears and inserting in lieu thereof “1973”, other than in section 421(b)(1),

(3) by striking out “1973” each time it appears and inserting in lieu thereof “1974”,

(4) by striking out “seven” where it appears in section 422(e) and inserting in lieu thereof “twelve”,

(5) by adding a new subsection (c) to section 421 thereof as follows:

“(c) Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the sixth month following the month in which such amendments are enacted.”,

(6) by inserting immediately after section 426 thereof, the following new section:

“SEC. 427. (a) The Secretary of Health, Education, and Welfare is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.

“(b) The Secretary of Health, Education, and Welfare shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and limitations as the Secretary of Health, Education, and Welfare may deem necessary in the public interest.

“(c) There is hereby authorized to be appropriated for the purpose of subsection (a) of this section \$10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975. There are hereby authorized to be appropriated for the purposes of subsection (b) of this section such sums as are necessary.”,

(7) by adding at the end thereof the following new section:

“SEC. 428. (a) No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis. No person shall cause or attempt to cause an operator to violate this section. For the purposes of this subsection the term ‘miner’ shall not include any person who has been found to be totally disabled.

“(b) Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable

Time extensions.

83 Stat. 792.

30 USC 901.

30 USC 924.

30 USC 931.

30 USC 932.

Publication in
Federal Register.

30 USC 936.

Contract author-
ity.

Research grants.

Appropriation.

Discrimination
prohibition.

“Miner.”

the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Each hearing examiner presiding under this section and under the provisions of titles I, II and III of this Act shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

Penalty.

“(c) Whenever an order is issued under this subsection granting relief to a miner at the request of such miner, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.”

Appropriation.

(8) by adding at the end thereof the following new section:
 “SEC. 429. There is authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out his responsibilities under this title. Such sums shall remain available until expended.”

83 Stat. 796.
30 USC 932.

Applicability.

(9) by striking “7” in section 422(a), and

30 USC 921.
30 USC 931.

(10) by adding at the end thereof the following new section:
 “SEC. 430. The amendments made by the Black Lung Benefits Act of 1972 to part B of this title shall, to the extent appropriate, also apply to part C of this title: *Provided*, That for the purpose of determining the applicability of the presumption established by section 411(c) (4) to claims filed under part C of this title, no period of employment after June 30, 1971, shall be considered in determining whether a miner was employed at least fifteen years in one or more underground mines.”

Ante, p. 154.

Claimants,
notification.
Ante, p. 155.

SEC. 6. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end thereof the following new section:

“SEC. 431. The Secretary of Health, Education, and Welfare shall, upon enactment of the Black Lung Benefits Act of 1972, generally disseminate to all persons who filed claims under this title prior to the date of enactment of such Act the changes in the law created by such Act, and forthwith advise all persons whose claims have been denied for any reason or whose claims are pending, that their claims will be reviewed with respect to the provisions of the Black Lung Benefits Act of 1972.”

Transition
period, administra-
tion.

SEC. 7. Title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by adding at the end of part B thereof the following new section:

“SEC. 415. (a) Notwithstanding any other provision in this title, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed

during the period from July 1, 1973 to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim—

“(1) Such claim shall be determined and, where appropriate under this part or section 424 of this title, benefits shall be paid with respect to such claim by the Secretary of Labor.

83 Stat. 798.
30 USC 934.

“(2) The manner and place of filing such claim shall be in accordance with regulations issued jointly by the Secretary of Health, Education, and Welfare and the Secretary of Labor, which regulations shall provide, among other things, that such claims may be filed in district offices of the Social Security Administration and thereafter transferred to the jurisdiction of the Department of Labor for further consideration.

“(3) The Secretary of Labor shall promptly notify any operator who he believes, on the basis of information contained in the claim, or any other information available to him, may be liable to pay benefits to the claimant under part C of this title for any month after December 31, 1973.

30 USC 931.

“(4) In determining such claims, the Secretary of Labor shall, to the extent appropriate, follow the procedures described in sections 19 (b), (c), and (d) of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended.

33 USC 919.

“(5) Any operator who has been notified of the pendency of a claim under paragraph 4 of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this title and section 422 thereof had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits for any month prior to January 1, 1974.

30 USC 932.

“(b) The Secretary of Labor, after consultation with the Secretary of Health, Education, and Welfare, may issue such regulations as are necessary or appropriate to carry out the purpose of this section.”

Regulations.

SEC. 8. Section 422(f) of title IV of the Federal Coal Mine Health and Safety Act of 1969 is amended by inserting “(1)” after “(f)” and by adding a new paragraph (2) as follows:

Claims, filing.

“(2) Any claim for benefits under this section in the case of a living miner filed on the basis of eligibility under section 411(c) (4) of this title, shall be filed within three years from the date of last exposed employment in a coal mine or, in the case of death from a respiratory or pulmonary impairment for which benefits would be payable under section 411(c) (4) of this title, incurred as the result of employment in a coal mine, shall be filed within fifteen years from the date of last exposed employment in a coal mine.”

Ante, p. 154.

Approved May 19, 1972.

Public Law 92-304

AN ACT

To authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes.

May 19, 1972
[H. R. 14070]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated to the National Aeronautics and Space Administration:

National Aeronautics and Space Administration Authorization Act, 1973.