

1 AN ACT relating to coal workers' pneumoconiosis and occupational disease in
2 workers' compensation.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 342.316 is amended to read as follows:

- 5 (1) (a) The employer liable for compensation for occupational disease shall be the
6 employer in whose employment the employee was last exposed to the hazard
7 of the occupational disease. During any period in which this section is
8 applicable to a coal mine, an operator who acquired it or substantially all of its
9 assets from a person who was its operator on and after January 1, 1973, shall
10 be liable for, and secure the payment of, the benefits which would have been
11 payable by the prior operator under this section with respect to miners
12 previously employed in the mine if it had not been acquired by such later
13 operator. At the same time, however, this subsection does not relieve the prior
14 operator of any liability under this section. Also, it does not affect whatever
15 rights the later operator might have against the prior operator.
- 16 (b) The time of the beginning of compensation payments shall be the date of the
17 employee's last injurious exposure to the cause of the disease, or the date of
18 actual disability, whichever is later.
- 19 (2) The procedure with respect to the giving of notice and determination of claims in
20 occupational disease cases and the compensation and medical benefits payable for
21 disability or death due to the disease shall be the same as in cases of accidental
22 injury or death under the general provisions of this chapter, except that notice of
23 claim shall be given to the employer as soon as practicable after the employee first
24 experiences a distinct manifestation of an occupational disease in the form of
25 symptoms reasonably sufficient to apprise the employee that he or she has
26 contracted the disease, or a diagnosis of the disease is first communicated to him or
27 her, whichever shall first occur.

- 1 (3) The procedure for filing occupational disease claims shall be as follows:
- 2 (a) The application for resolution of claim shall set forth the complete work
3 history of the employee with a concise description of injurious exposure to a
4 specific occupational disease, together with the name and addresses of the
5 employer or employers with the approximate dates of employment. The
6 application shall also include at least one (1) written medical report supporting
7 his or her claim. This medical report shall be made on the basis of clinical or
8 X-ray examination performed in accordance with accepted medical standards
9 and shall contain full and complete statements of all examinations performed
10 and the results thereof. ~~[The report shall be made by a duly licensed~~
11 ~~physician.]~~ The commissioner shall promulgate administrative regulations
12 which prescribe the format of the medical report required by this section and
13 the manner in which the report shall be completed.
- 14 ~~[1.] For ~~[coal-related]~~ occupational pneumoconiosis claims, each clinical~~
15 ~~examination shall include a chest X-ray interpretation by a National~~
16 ~~Institute of Occupational Safety and Health (NIOSH) certified "B"~~
17 ~~reader who is also a pulmonary specialist. The chest X-ray upon which~~
18 ~~the report is made shall be filed with the application as well as~~
19 ~~spirometric tests when pulmonary dysfunction is alleged.~~
- 20 ~~[2. For other compensable occupational pneumoconiosis claims, each~~
21 ~~clinical examination shall include a chest X-ray examination and~~
22 ~~appropriate pulmonary function tests.]~~
- 23 (b) Except for all examinations performed pursuant to subparagraph 4.b. of
24 this paragraph, to be admissible, medical evidence offered in any proceeding
25 under this chapter for determining a claim for occupational pneumoconiosis
26 ~~[resulting from exposure to coal dust]~~ shall comply with accepted medical
27 standards as follows:

- 1 1. Chest X-rays shall be of acceptable quality with respect to exposure and
2 development and shall be indelibly labeled with the date of the X-ray
3 and the name and **additional appropriately designated**~~[Social Security]~~
4 number **identifying**~~[of]~~ the claimant. Physicians' reports of X-ray
5 interpretations shall: identify the claimant by name and **appropriate**
6 **identifying**~~[Social Security]~~ number; include the date of the X-ray and
7 the date of the report; classify the X-ray interpretation using the latest
8 ILO Classification and be accompanied by a completed copy of the latest
9 ILO Classification report. Only interpretations by National Institute of
10 Occupational Safety and Health (NIOSH) certified "B" readers **with a**
11 **pulmonary specialty** shall be admissible.
- 12 2. Spirometric testing shall be conducted in accordance with the standards
13 recommended in the "Guides to the Evaluation of Permanent
14 Impairment" and the 1978 ATS epidemiology standardization project
15 with the exception that the predicted normal values for lung function
16 shall not be adjusted based upon the race of the subject. The FVC or the
17 FEV1 values shall represent the largest of such values obtained from
18 three (3) acceptable forced expiratory volume maneuvers as corrected to
19 BTPS (body temperature, ambient pressure and saturated with water
20 vapor at these conditions) and the variance between the two (2) largest
21 acceptable FVC values shall be either less than five percent (5%) of the
22 largest FVC value or less than one hundred (100) milliliters, whichever
23 is greater. The variance between the two (2) largest acceptable FEV1
24 values shall be either less than five percent (5%) of the largest FEV1
25 value or less than one hundred (100) milliliters, whichever is greater.
26 Reports of spirometric testing shall include a description by the
27 physician of the procedures utilized in conducting such spirometric

1 testing and a copy of the spirometric chart and tracings from which
2 spirometric values submitted as evidence were taken.

3 3. The commissioner shall promulgate administrative regulations pursuant
4 to KRS Chapter 13A as necessary to effectuate the purposes of this
5 section. The commissioner shall periodically review the applicability of
6 the spirometric test values contained in the "Guides to the Evaluation of
7 Permanent Impairment" and may by administrative regulation substitute
8 other spirometric test values~~[which are found to be more closely~~
9 ~~representative of the normal pulmonary function of the coal mining~~
10 ~~population].~~

11 4. The procedure for determination of occupational disease claims shall be
12 as follows:

13 a. Immediately upon receipt of an application for resolution of claim,
14 the commissioner shall notify the responsible employer and all
15 other interested parties and shall furnish them with a full and
16 complete copy of the application.

17 b. The commissioner shall assign the claim to an administrative law
18 judge and~~[, except for coal workers' pneumoconiosis claims,]~~ shall
19 promptly refer the employee to **the University of Kentucky or the**
20 **University of Louisville medical schools**~~[such physician]~~ or **other**
21 **accredited** medical facility as the commissioner may select for **the**
22 **taking of a history and the performing of a physical** examination,
23 **chest X-ray film, and spirometric testing, if pulmonary function**
24 **is alleged**. The **data**~~[report]~~ from this examination, **including a**
25 **summary of the history taken of the employee, findings from the**
26 **physical examination, results of any spirometric testing, and a**
27 **copy of the chest X-ray,** shall be provided to all parties of record.

1 *However, the medical facility shall not include an X-ray*
 2 *interpretation and shall not comment on impairment or*
 3 *causation of impairment.* The employee shall not be referred by
 4 the commissioner for examination within two (2) years following
 5 any prior referral for examination for the same disease.

6 c. ~~[Except for coal workers' pneumoconiosis claims,]~~Within forty-
 7 five (45) days following the notice of filing an application for
 8 resolution of claim, the employer or carrier shall notify the
 9 commissioner and all parties of record of its acceptance or denial
 10 of the claim. A denial shall be in writing and shall state the
 11 specific basis for the denial. In ~~[coal workers']~~pneumoconiosis
 12 claims,~~[the employer's notice of claim denial or acceptance shall~~
 13 ~~be filed within thirty (30) days of the issuance by the~~
 14 ~~commissioner of the notice of the consensus reading unless the~~
 15 ~~consensus is that the miner has not developed coal workers'~~
 16 ~~pneumoconiosis category 1/0 or greater.]~~ in the event the
 17 consensus procedure is exhausted without consensus being
 18 established, the employer's notice of claim denial or acceptance
 19 shall be filed within thirty (30) days of the commissioner
 20 notification to the administrative law judge that consensus has not
 21 been reached.

22 d. *During the pendency of a pneumoconiosis claim*~~[Within forty-~~
 23 ~~five (45) days of assignment of a coal workers' pneumoconiosis~~
 24 ~~claim to an administrative law judge],~~ the employer *may*
 25 *also*~~[shall]~~ cause the employee to be examined by a ~~[physician of~~
 26 ~~the employer's choice and shall provide to all other parties and file~~
 27 ~~with the commissioner the X-ray interpretation by a]~~"B" reader

1 who is also a pulmonary specialist. ~~The examination of the~~
2 ~~employee shall include spirometric testing if pulmonary~~
3 ~~dysfunction is alleged by the employee in the application for~~
4 ~~resolution of a claim. The commissioner shall determine whether~~
5 ~~the X-ray interpretations filed by the parties are in consensus.~~

6 e. ~~[If the readings are not in consensus,]~~The commissioner shall
7 forward all diagnostic studies and data from the examination
8 performed pursuant to subdivision b. of this subparagraph,
9 along with all other evidence of record ~~[both films, masking~~
10 ~~information identifying the facility where the X-ray was obtained~~
11 ~~and the referring physician],~~ consecutively to three (3) "B" readers
12 who are pulmonary specialists selected randomly from a list
13 maintained by the commissioner ~~[for interpretation].~~ The results
14 from the examiner's review and interpretation of the data shall
15 be duly set out in a report format as prescribed in administrative
16 regulations promulgated by the commissioner. Each
17 reviewer ~~["B" reader]~~ shall ~~[select the highest quality film and~~
18 ~~]report only the interpretation of~~ the highest quality ~~[that]~~ film.
19 The commissioner shall determine if two (2) of the ~~[X-ray~~
20 ~~]interpretations~~ of evidence ~~[filed by the three (3) "B" readers~~
21 ~~selected randomly]~~ are in consensus. If consensus is reached, the
22 commissioner shall forward copies of the reports ~~[report]~~ to all
23 parties as well as notice of the consensus ~~[reading which shall be~~
24 ~~considered as evidence].~~ If consensus is not reached, the
25 administrative law judge shall decide the claim on the evidence
26 submitted.

27 f. "Consensus" is reached between two (2) chest X-ray interpreters

1 when their classifications meet one (1) of the following criteria:
 2 each finds either category A, B, or C progressive massive fibrosis;
 3 or findings with regard to simple pneumoconiosis are both in the
 4 same major category ~~and within one (1) minor category (ILO~~
 5 ~~category twelve (12) point scale) of each other~~.

6 g. **If the consensus is a finding of progressive massive fibrosis, the**
 7 **commissioner shall refer the employee to the medical facility to**
 8 **which the employee was previously evaluated to undergo a**
 9 **computerized tomography scan in order to verify the finding.**
 10 **The scan shall be interpreted at that facility and a report shall be**
 11 **filed with the commissioner. The administrative law judge may**
 12 **rely on these results, the provisions of KRS 342.732**
 13 **notwithstanding.**

14 h. The administrative law judge shall conduct such proceedings as
 15 are necessary to resolve the claim and shall have authority to grant
 16 or deny any relief, including interlocutory relief, to order additional
 17 proof, to conduct a benefit review conference, or to take such other
 18 action as may be appropriate to resolve the claim.

19 ~~i[h]~~. Unless a voluntary settlement is reached by the parties, or the
 20 parties agree otherwise, the administrative law judge shall issue a
 21 written determination within sixty (60) days following a hearing.
 22 The written determination shall address all contested issues and
 23 shall be enforceable under KRS 342.305.

24 5. The procedure for appeal from a determination of an administrative law
 25 judge shall be as set forth in KRS 342.285.

26 (4) (a) The right to compensation under this chapter resulting from an occupational
 27 disease shall be forever barred unless a claim is filed with the commissioner

1 within three (3) years after the last injurious exposure to the occupational
2 hazard or after the employee first experiences a distinct manifestation of an
3 occupational disease in the form of symptoms reasonably sufficient to apprise
4 the employee that he or she has contracted the disease, whichever shall last
5 occur; and if death results from the occupational disease within that period,
6 unless a claim therefor be filed with the commissioner within three (3) years
7 after the death; but that notice of claim shall be deemed waived in case of
8 disability or death where the employer, or its insurance carrier, voluntarily
9 makes payment therefor, or if the incurrence of the disease or the death of the
10 employee and its cause was known to the employer. However, the right to
11 compensation for any occupational disease shall be forever barred, unless a
12 claim is filed with the commissioner within five (5) years from the last
13 injurious exposure to the occupational hazard, except that, in cases of
14 radiation disease or asbestos-related disease, a claim must be filed within
15 twenty (20) years from the last injurious exposure to the occupational hazard.

16 (b) Income benefits for the disease of pneumoconiosis resulting from exposure to
17 ~~coal~~ dust or death therefrom shall not be payable unless the employee has
18 been exposed to the hazards of such pneumoconiosis in the Commonwealth of
19 Kentucky over a continuous period of not less than two (2) years during the
20 ten (10) years immediately preceding the date of his or her last exposure to
21 such hazard, or for any five (5) of the fifteen (15) years immediately preceding
22 the date of such last exposure.

23 (5) The amount of compensation payable for disability due to occupational disease or
24 for death from the disease, and the time and manner of its payment, shall be as
25 provided for under the general provisions of the Workers' Compensation Act, but:

26 (a) In no event shall the payment exceed the amounts that were in effect at the
27 time of the last injurious exposure;

- 1 (b) The time of the beginning of compensation payments shall be the date of the
2 employee's last injurious exposure to the cause of the disease, or the date of
3 actual disability, whichever is later; and
- 4 (c) In case of death where the employee has been awarded compensation or made
5 timely claim within the period provided for in this section, and an employee
6 has suffered continuous disability to the date of his or her death occurring at
7 any time within twenty (20) years from the date of disability, his or her
8 dependents, if any, shall be awarded compensation for his or her death as
9 provided for under the general provisions of the Workers' Compensation Act
10 and in this section, except as provided in KRS 342.750(6).
- 11 (6) If an autopsy has been performed, no testimony relative thereto shall be admitted
12 unless the employer or its representative has available findings and reports of the
13 pathologist or doctor who performed the autopsy examination.
- 14 (7) No compensation shall be payable for occupational disease if the employee at the
15 time of entering the employment of the employer by whom compensation would
16 otherwise be payable, falsely represented himself or herself, in writing, as not
17 having been previously disabled, laid-off, or compensated in damages or otherwise,
18 because of the occupational disease, or failed or omitted truthfully to state to the
19 best of his or her knowledge, in answer to written inquiry made by the employer, the
20 place, duration, and nature of previous employment, or, to the best of his or her
21 knowledge, the previous state of his or her health.
- 22 (8) No compensation for death from occupational disease shall be payable to any
23 person whose relationship to the deceased, which under the provisions of this
24 chapter would give right to compensation, arose subsequent to the beginning of the
25 first compensable disability, except only for after-born children of a marriage
26 existing at the beginning of such disability.
- 27 (9) Whenever any claimant misconceives his or her remedy and files an application for

1 adjustment of claim under the general provisions of this chapter and it is
2 subsequently discovered, at any time before the final disposition of the cause, that
3 the claim for injury, disability, or death which was the basis for his or her
4 application should properly have been made under the provisions of this section,
5 then the application so filed may be amended in form or substance, or both, to assert
6 a claim for injury, disability, or death under the provisions of this section, and it
7 shall be deemed to have been so filed as amended on the date of the original filing
8 thereof, and compensation may be awarded that is warranted by the whole evidence
9 pursuant to the provisions of this chapter. When amendment of this type is
10 submitted, further or additional evidence may be heard when deemed necessary.
11 Nothing this section contains shall be construed to be or permit a waiver of any of
12 the provisions of this chapter with reference to notice of time for filing of a claim,
13 but notice of filing a claim, if given or done, shall be deemed to be a notice of filing
14 of a claim under provisions of this chapter, if given or done within the time required
15 by this subsection.

16 (10) When an employee has an occupational disease that is covered by this chapter, the
17 employer in whose employment he or she was last injuriously exposed to the hazard
18 of the disease, and the employer's insurance carrier, if any, at the time of the
19 exposure, shall alone be liable therefor, without right to contribution from any prior
20 employer or insurance carrier, except as otherwise provided in this chapter.

21 (11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid
22 fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as
23 established in KRS 342.1242 and fifty percent (50%) by the employer in
24 whose employment the employee was last exposed to the hazard of that
25 occupational disease.

26 (b) Compensation for all other occupational disease shall be paid by the employer
27 in whose employment the employee was last exposed to the hazards of the

1 occupational disease.

2 (12) A concluded claim for benefits by reason of contraction of ~~coal workers'~~
 3 ~~pneumoconiosis [in the severance or processing of coal]~~ shall bar any subsequent
 4 claim for benefits by reason of contraction of ~~coal workers'~~ pneumoconiosis,
 5 unless there has occurred in the interim between the conclusion of the first claim
 6 and the filing of the second claim at least two (2) years of employment wherein the
 7 employee was continuously exposed to the hazards of the disease in the
 8 Commonwealth.

9 (13) For ~~coal-related~~ occupational pneumoconiosis claims, the consensus procedure
 10 shall apply to all claims which have not been assigned to an administrative law
 11 judge prior to July 15, 2017~~[2002]~~. The consensus findings~~[classification]~~ shall be
 12 *afforded presumptive weight by an administrative law judge and the burden to*
 13 *overcome such findings and opinions shall fall on the opponent of that*
 14 *evidence*~~[presumed to be the correct classification of the employee's condition~~
 15 ~~unless overcome by clear and convincing evidence]~~. If an administrative law judge
 16 *rejects the consensus findings*~~[finds that the presumption of correctness of the~~
 17 ~~consensus reading has been overcome]~~, the reasons shall be specifically~~[specially]~~
 18 stated in the administrative law judge's order.

19 ➔Section 2. KRS 342.270 is amended to read as follows:

20 (1) If the parties fail to reach an agreement in regard to compensation under this
 21 chapter, either party may make written application for resolution of claim. The
 22 application must be filed within two (2) years after the accident, or, in case of death,
 23 within two (2) years after the death, or within two (2) years after the cessation of
 24 voluntary payments, if any have been made. When the application is filed by the
 25 employee or during the pendency of that claim, he or she shall join all causes of
 26 action against the named employer which have accrued and which are known, or
 27 should reasonably be known, to him or her. Failure to join all accrued causes of

1 action will result in such claims being barred under this chapter as waived by the
2 employee.

3 (2) Except with respect to claims for benefits by reason of ~~{coal workers'}~~
4 pneumoconiosis, the commissioner shall issue notice of the filing to all parties and
5 shall promptly assign the claim to an administrative law judge. The administrative
6 law judge shall facilitate the exchange of information pertinent to the claim
7 pursuant to administrative regulations promulgated by the commissioner. Within
8 forty-five (45) days of the date of issuance of the notice required by this section, the
9 employer or carrier shall file notice of claim denial or acceptance, setting forth
10 specifically those material matters which are admitted, those which are denied, and
11 the basis of any denial of the claim.

12 (3) Within one hundred twenty (120) days of the effective date of this Act~~{July 14,~~
13 ~~2000}~~, the commissioner shall promulgate or amend existing administrative
14 regulations establishing procedures for the resolution of claims. The administrative
15 regulations promulgated pursuant to the provisions of this subsection shall be
16 effective on an emergency basis and be applied to all pending claims.

17 ➔Section 3. KRS 342.794 is amended to read as follows:

18 (1) The commissioner shall maintain a list of duly qualified "B" reader physicians who
19 are pulmonary specialists and are licensed in the Commonwealth. The list shall
20 include "B" reader physicians at the university medical schools and other "B" reader
21 physicians certified by the National Institute of Occupational Safety and Health
22 (NIOSH) who have agreed to interpret chest X-rays and other medical evidence
23 pursuant to KRS 342.316 for a fee to be fixed by the commissioner and paid by the
24 Kentucky coal workers' pneumoconiosis fund or carrier, whichever is the
25 appropriate payment obligor, the provisions of KRS 342.1242 notwithstanding.

26 (2) ~~{Physicians from the "B" reader list shall be utilized as necessary to obtain~~
27 ~~consensus classifications of chest films in coal workers' pneumoconiosis claims.~~

1]The consensus findings~~[classification]~~ shall be presumed to be ~~[the]~~ correct
2 ~~[classification of the employee's condition]~~ unless overcome by clear and
3 convincing evidence. If an administrative law judge finds that the presumption of
4 correctness of the consensus findings~~[reading]~~ has been overcome, the reasons shall
5 be specifically~~[specially]~~ stated in the administrative law judge's order.

6 (3) "B" reader" means a physician who has demonstrated proficiency in evaluating
7 chest roentgenograms for roentgenographic quality and in the use of the ILO
8 classification for interpreting chest roentgenograms for pneumoconiosis and other
9 diseases by taking and passing a specially designed proficiency examination given
10 on behalf of the National Institute of Occupational Safety and Health (NIOSH) or
11 by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or
12 successors.

13 (4) The commissioner ~~[university medical schools]~~ in consultation with the university
14 medical schools~~[commissioner]~~ shall jointly develop a procedure to annually report
15 the performance of physicians on the "B" reader list who have participated in the
16 consensus procedure established in KRS 342.316. The physicians shall be evaluated
17 with respect to the timeliness and completeness of their reports, as well as the
18 frequency at which the physician's classification of X-rays differs from the
19 consensus reading. The commissioner shall remove a physician from the "B" reader
20 list if the physician consistently renders incomplete or untimely reports, or if the
21 physician's interpretations of X-rays are not in conformity with the consensus
22 reading fifty percent (50%) of the time. The report required under this subsection
23 shall be provided to the Interim Joint Committee on Labor and Industry ~~[beginning~~
24 ~~in July 1, 2003 and]~~ by July 1 of each year~~[thereafter]~~.