

§ 410.401

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specified time or for the specified period, and that the amount of such contributions equaled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) *Totally dependent for support* defined. The term *totally dependent on the miner for support* as used in § 410.380(b), means that such miner made regular contributions to the support of his parent, brother, or sister, as the case may be, and that the amount of such contributions at least equaled the total cost of such individual's support.

[37 FR 20641, Sept. 30, 1972]

Subpart D—Total Disability or Death Due to Pneumoconiosis

AUTHORITY: Sec. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)), secs. 401-426, 83 Stat. 792, as amended, 86 Stat. 150; 30 U.S.C. 901 *et. seq.*

SOURCE: 37 FR 20641, Sept. 30, 1972, unless otherwise noted.

§ 410.401 Scope of subpart D.

(a) *General.* This subpart establishes the standards for determining whether a coal miner is totally disabled due to pneumoconiosis, whether he was totally disabled due to pneumoconiosis at the time of his death, or whether his death was due to pneumoconiosis.

(b) *Pneumoconiosis* defined. *Pneumoconiosis* means:

(1) A chronic dust disease of the lung arising out of employment in the Nation's coal mines, and includes coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, progressive massive fibrosis, silicosis, or silicotuberculosis, arising out of such employment. For purposes of this subpart, the term also includes the following conditions that may be the basis for application of the statutory presumption of disability or death due to pneumoconiosis under the circumstances prescribed in section 411 (c) of the Act;

(2) Any other chronic respiratory or pulmonary impairment when the conditions are met for the application of the presumption described in § 410.414(b) or § 410.454(b), and

(3) Any respirable disease when the conditions are met for the application of the presumption described in § 410.462. The provisions for determining that a miner is or was totally disabled due to pneumoconiosis or its sequelae are included in §§ 410.410 through 410.430 and in the appendix following this subpart D. The provisions for determining that a miner's death was due to pneumoconiosis are included in §§ 410.450 through 410.462. Certain related provisions of general application are included in §§ 410.470 through 410.476.

(c) *Relation to the Social Security Act.* Section 402(f) of the Act, as amended, 30 U.S.C. 902(f), provides that regulations defining total disability "shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act." Section 413(b) of the Act, 30 U.S.C. 923(b), also provides, in pertinent part, that in "carrying out the provisions of this part [that is, part B of title IV of the Act], the Commissioner shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the * * * procedures he uses in determining entitlement to disability insurance benefits under section 223 of the Social Security Act * * *."

[37 FR 20641, Sept. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

§ 410.410 Total disability due to pneumoconiosis, including statutory presumption.

(a) Benefits are provided under the Act to coal miners "who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's coal mines," and to the eligible survivors of miners who are determined to have been totally disabled due to pneumoconiosis at the time of their death. (For benefits to the eligible survivors of miners whose deaths are determined to have been due to pneumoconiosis, see § 410.450.)

(b) To establish entitlement to benefits on the basis of a coal miner's total disability due to pneumoconiosis, a claimant must submit the evidence necessary to establish: (1) That he is a coal miner, that he is totally disabled due to pneumoconiosis, and that his

pneumoconiosis arose out of employment in the Nation's coal mines; or (2) that the deceased individual was a miner, that he was totally disabled due to pneumoconiosis at the time of his death, and that his pneumoconiosis arose out of employment in the Nation's coal mines.

(c) Total disability is defined in §410.412; the basic provision on determining the existence of pneumoconiosis is in §410.414; and the requirement that the pneumoconiosis must have arisen out of coal mine employment is in §410.416. The statutory presumptions with respect to the burden of proving the foregoing are in §§410.414(b), 410.416(a), and 410.418, and the provision for determining the existence of total disability when the presumption in §410.418 does not apply is included in §410.422.

§410.412 "Total disability" defined.

(a) A miner shall be considered totally disabled due to pneumoconiosis if:

(1) His pneumoconiosis prevents him from engaging in gainful work in the immediate area of his residence requiring the skills and abilities comparable to those of any work in a mine or mines in which he previously engaged with some regularity and over a substantial period of time (that is, "comparable and gainful work"; see §§410.424 through 410.426); and

(2) His impairment can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months.

(b) A miner shall be considered to have been totally disabled due to pneumoconiosis at the time of his death, if at the time of his death:

(1) His pneumoconiosis prevented him from engaging in gainful work in the immediate area of his residence requiring the skills and abilities comparable to those of any work in a mine or mines in which he previously engaged with some regularity and over a substantial period of time (that is, "comparable and gainful work"; see §§410.424 through 410.426); and

(2) His impairment was expected to result in death, or it lasted or was expected to last for a continuous period of not less than 12 months.

§410.414 Determining the existence of pneumoconiosis, including statutory presumption.

(a) *General.* A finding of the existence of pneumoconiosis as defined in §410.110(o)(1) may be made under the provisions of §410.428 by:

- (1) Chest roentgenogram (X-ray); or
- (2) Biopsy; or
- (3) Autopsy.

(b) *Presumption relating to respiratory or pulmonary impairment.* (1) Even though the existence of pneumoconiosis is not established as provided in paragraph (a) of this section, if other evidence demonstrates the existence of a totally disabling chronic respiratory or pulmonary impairment (see §§410.412, 410.422, and 410.426), it may be presumed, in the absence of evidence to the contrary (see paragraph (b)(2) of this section), that a miner is totally disabled due to pneumoconiosis, or that a miner was totally disabled due to pneumoconiosis at the time of his death.

(2) This presumption may be rebutted only if it is established that the miner does not, or did not, have pneumoconiosis, or that his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(3) The provisions of this paragraph shall apply where a miner was employed for 15 or more years in one or more of the Nation's underground coal mines; in one or more of the Nation's other coal mines where the environmental conditions were substantially similar to those in an underground coal mine; or in any combination of both.

(4) However, where the evidence shows a work history reflecting many years of such coal mine employment (although less than 15), as well as a severe lung impairment, such evidence may be considered, in the exercise of sound judgment, to establish entitlement in such case, provided that a mere showing of a respiratory or pulmonary impairment shall not be sufficient to establish such entitlement.

(c) *Other relevant evidence.* Even though the existence of pneumoconiosis is not established as provided in paragraph (a) or (b) of this section, a finding of total disability due to pneumoconiosis may be made if other