

**§ 410.456**

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 death due to pneumoconiosis may be made if other relevant evidence establishes the existence of a totally disabling chronic respiratory or pulmonary impairment, and that such impairment arose out of employment in a coal mine. As used in this paragraph, the term *other relevant evidence* includes medical tests such as blood gas studies, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the miner's physician, his spouse's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the individual's physical condition, and other supportive materials. In any event, no claim for benefits under part B of title IV of the Act shall be denied solely on the basis of a negative chest roentgenogram (X-ray).

**§ 410.456 Determining origin of pneumoconiosis, including statutory presumption—survivor's claim.**

(a) If a miner was employed for 10 years or more in the Nation's coal mines, and suffered from pneumoconiosis, it will be presumed, in the absence of persuasive evidence to the

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contrary, that the pneumoconiosis arose out of such employment.

(b) In any other case, the claimant must submit the evidence necessary to establish that the pneumoconiosis from which the deceased miner suffered, arose out of employment in the Nation's coal mines. (See § 410.110 (h), (i), (j), (k), (l), and (m).)

**§ 410.458 Irrebuttable presumption of death due to pneumoconiosis—survivor's claim.**

There is an irrebuttable presumption that the death of a miner was due to pneumoconiosis if he suffered from a chronic dust disease of the lung which meets the requirements of § 410.418.

**§ 410.462 Presumption relating to respirable disease.**

(a) Even though the existence of pneumoconiosis as defined in § 410.110 (o)(1) is not established as provided in § 410.454(a), if a deceased miner was employed for 10 years or more in the Nation's coal mines and died from a respirable disease, it will be presumed, in the absence of evidence to the contrary, that his death was due to pneumoconiosis arising out of employment in a coal mine.

(b) Death will be found due to a respirable disease when death is medically ascribed to a chronic dust disease, or to another chronic disease of the lung. Death will not be found due to a respirable disease where the disease reported does not suggest a reasonable possibility that death was due to pneumoconiosis. Where the evidence establishes that a deceased miner suffered from pneumoconiosis or a respirable disease and death may have been due to multiple causes, death will be found due to pneumoconiosis if it is not medically feasible to distinguish which disease caused death or specifically how much each disease contributed to causing death.

**§ 410.470 Determination by nongovernmental organization or other governmental agency.**

The decision of any nongovernmental organization or any other governmental agency that an individual is, or is not, disabled for purposes of any contract, schedule, regulation, or law, or

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that his death was or was not due to a particular cause, shall not be determinative of the question of whether or not an individual is totally disabled due to pneumoconiosis, or was totally disabled due to pneumoconiosis. As used in this section, the term *other governmental agency* includes the Administration with respect to a determination or decision relating to entitlement to disability insurance benefits under section 223 of the Social Security Act, since the requirements for entitlement under the latter Act differ from those relating to benefits under this part. However, a final determination or decision that an individual is disabled for purposes of section 223 of the Social Security Act where the cause of such disability is pneumoconiosis, shall be binding on the Administration on the issue of disability with respect to claims under this part.

### **§410.471 Conclusion by physician regarding miner's disability or death.**

The function of deciding whether or not an individual is totally disabled due to pneumoconiosis, or was totally disabled due to pneumoconiosis at the time of his death, or that his death was due to pneumoconiosis, is the responsibility of the Administration. A statement by a physician that an individual is, or is not, *disabled, permanently disabled, totally disabled, totally and permanently disabled, unable to work*, or a statement of similar import, being a conclusion upon the ultimate issue to be decided by the Administration, shall not be determinative of the question of whether or not an individual is under a disability. However, all statements and other evidence (including statements of the miner's physician) shall be considered in adjudicating a claim. In considering statements of the miner's physician, appropriate account shall be taken of the length of time he treated the miner.

### **§410.472 Consultative examinations.**

Upon reasonable notice of the time and place thereof, any individual filing a claim alleging to be totally disabled due to pneumoconiosis shall present himself for and submit to reasonable physical examinations or tests, at the expense of the Administration, by a

physician or other professional or technical source designated by the Administration or the State agency authorized to make determinations as to disability. If any such individual fails or refuses to present himself for any examination or test, such failure or refusal, unless the Administration determines that there is good cause therefor, may be a basis for determining that such individual is not totally disabled. Religious or personal scruples against medical examination or test shall not excuse an individual from presenting himself for a medical examination or test. Any claimant may request that such test be performed by a physician or other professional or technical source of his choice, the reasonable expense of which shall be borne by the Administration (see §410.240(h)). However, granting such request does not preclude the Administration from requiring that additional or supplemental tests be conducted by a physician or other professional or technical source designated by the Administration.

### **§410.473 Evidence of continuation of disability.**

An individual who has been determined to be totally disabled due to pneumoconiosis, upon reasonable notice, shall, if requested to do so (e.g., where there is an issue about the validity of the original adjudication of disability) present himself for and submit to examinations or tests as provided in §410.472, and shall submit medical reports and other evidence necessary for the purposes of determining whether such individual continues to be under a disability.

### **§410.474 Place and manner of submitting evidence.**

Evidence in support of a claim for benefits based on disability shall be filed in the manner and at the place or places prescribed in subpart B of this part, or where appropriate, at the office of a State agency authorized under agreement with the Commissioner to make determinations as to disability under title II of the Social Security Act, or with an employee of such State