WEST VIRGINIA CODE: §23-4-15B

§23-4-15b. Determination of nonmedical questions; claims for occupational pneumoconiosis; hearing.

If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the last day of the last continuous period of 60 days' exposure to the hazards of occupational pneumoconiosis, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than 60 days while in the employ of the employer within three years prior to the filing of his or her claim, whether in the State of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the 10 years immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than 10 years during the 15 years immediately preceding the date of his or her last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the employee's occupational pneumoconiosis was made known to the employee by a physician, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall determine whether the claimant filed his or her application within that period and whether in the State of West Virginia the claimant was exposed to the hazard over a continuous period of not less than two years during the 10 years immediately preceding the date of last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than 10 years during the 15 years immediately preceding the date of last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by a dependent of a deceased employee, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than 60 days while in the employ of the employer within 10 years prior to the filing of the claim, whether in the State of West Virginia the deceased employee was exposed to the hazard over a continuous period of not less than two years during the 10 years immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than 10 years during the 15 years immediately preceding the date of his or her last exposure to the hazard. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall also determine other nonmedical facts that, in the opinion of the Insurance Commissioner, private carrier, or self-insured employer, are pertinent to a decision on the validity of the claim.

The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall enter an order with respect to nonmedical findings within 90 days following receipt by the Insurance Commissioner, private carrier, or self-insured employer of both the claimant's application for occupational pneumoconiosis benefits and the physician's report

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filed in connection with the claimant's application and shall give each interested party notice in writing of these findings with respect to all the nonmedical facts. The findings and actions of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, are final unless the employer, employee, claimant, or dependent, within 60 days after receipt of the notice, objects to the findings and, unless an objection is filed within the 60-day period, the findings are forever final, the time limitation is a condition of the right to litigate the findings and therefore jurisdictional. Upon receipt of an objection, the Board of Review shall set a hearing as provided in §23-5-9a of this code. In the event of an objection to the findings by the employer, the claim shall, notwithstanding the fact that one or more hearings may be held with respect to the objection, mature for reference to the Occupational Pneumoconiosis Board with like effect as if the objection had not been filed. If the Board of Review concludes after the objection hearings that the claim should be dismissed, a final order of dismissal shall be entered. The final order is subject to appeal in accordance with the provisions of §23-5-10a and §23-5-12a of this code. If the Board of Review concludes after the objection hearings that the claim should be referred to the Occupational Pneumoconiosis Board for its review, the order entered shall be interlocutory only and may be appealed only in conjunction with an appeal from a final order with respect to the findings of the Occupational Pneumoconiosis Board.

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