

WEST VIRGINIA CODE: §23-4-6A

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability is determined by the degree of medical impairment that is found by the occupational pneumoconiosis board. The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall enter an order setting forth the findings of the occupational pneumoconiosis board with regard to whether the claimant has occupational pneumoconiosis and the degree of medical impairment, if any, resulting therefrom. That order is the final decision of the commission for purposes of section one, article five of this chapter. If a decision is objected to, the office of judges shall affirm the decision of the Occupational Pneumoconiosis Board made following hearing unless the decision is clearly wrong in view of the reliable, probative and substantial evidence on the whole record. Compensation is paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n), section six of this article: Provided, That for any employee who applies for occupational pneumoconiosis benefits whose award was granted on or after the effective date of the amendment and reenactment of this section during the year two thousand three, there shall be no permanent partial disability awarded based solely upon a diagnosis of occupational pneumoconiosis, it being the intent of the Legislature to eliminate any permanent partial disability awards for occupational pneumoconiosis without a specific finding of measurable impairment.

If the employee dies from occupational pneumoconiosis, the benefits shall be as provided for in section ten of this article; as to the benefits, sections eleven to fourteen, inclusive, of this article apply.

In cases of permanent disability or death due to occupational pneumoconiosis, as defined in section one of this article, accompanied by active tuberculosis of the lungs, compensation shall be payable as for disability or death due to occupational pneumoconiosis alone.

The provisions of section sixteen of this article and sections two, three, four and five, article five of this chapter providing for the further adjustment of claims are applicable to the claim of any claimant who receives a permanent partial disability award for occupational pneumoconiosis.