WEST VIRGINIA CODE: §23-4-8C

§23-4-8c. Occupational Pneumoconiosis Board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

(a) The Occupational Pneumoconiosis Board, as soon as practicable after it has completed its investigation, shall make its written report to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, of its findings and conclusions on every medical question in controversy and the board shall send one copy of the report to the employee or claimant and one copy to the employer. The Occupational Pneumoconiosis Board shall also return to and file with the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, all the evidence as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his or her employment for a period of 10 years during the 15 years immediately preceding the date of his or her last exposure to such hazard and that the claimant or deceased employee has sustained a chronic respiratory disability, it shall be presumed that the claimant is suffering or the deceased employee was suffering at the time of his or her death from occupational pneumoconiosis which arose out of and in the course of his or her employment. This presumption is not conclusive.

(c) The findings and conclusions of the Occupational Pneumoconiosis Board shall set forth, among other things, the following:

(1) Whether or not the claimant or the deceased employee has contracted occupational pneumoconiosis and, if so, the percentage of permanent disability resulting therefrom;

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant’s or deceased employee’s occupational pneumoconiosis or to have perceptibly aggravated an existing occupational pneumoconiosis or other occupational disease; and

(3) What, if any, physician appeared before the board on behalf of the claimant or employer and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

(d) If either party objects to the whole or any part of the findings and conclusions of the Occupational Pneumoconiosis Board, the party shall file with the Board of Review, within 60 days from receipt of the copy to that party, unless for good cause shown the Board of Review extends the time, the party’s objections to the findings and conclusions of the Occupational

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Pneumoconiosis Board in writing, specifying the particular statements of the Occupational Pneumoconiosis Board's findings and conclusions to which such party objects. The filing of an objection within the time specified is a condition of the right to litigate the findings and therefore jurisdictional. After the time has expired for the filing of objections to the findings and conclusions of the Occupational Pneumoconiosis Board, the Board of Review shall proceed to act as provided in this chapter. If, after the time has expired for the filing of objections to the findings and conclusions of the Occupational Pneumoconiosis Board, no objections have been filed, the report of a majority of the Occupational Pneumoconiosis Board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions stated in the report. If objection has been filed to the findings and conclusions of the Occupational Pneumoconiosis Board, notice of the objection shall be given to the board. The members of the Occupational Pneumoconiosis Board joining in the findings and conclusions shall appear at the time fixed by the Board of Review for the hearing to submit to examination and cross-examination in respect to the findings and conclusions. At the hearing, evidence to support or controvert the findings and conclusions of the Occupational Pneumoconiosis Board shall be limited to examination and cross-examination of the members of the board and to the taking of testimony of other qualified physicians and roentgenologists.

(e) In the event that a claimant receives a final decision that he or she has no evidence of occupational pneumoconiosis, the claimant is barred for a period of three years from the date of the Occupational Pneumoconiosis Board's decision or until his or her employment with the employer who employed the claimant at the time designated as the claimant's last date of exposure in the denied claim has terminated, whichever is sooner, from filing a new claim or pursuing a previously filed, but unruled upon, claim for occupational pneumoconiosis or requesting a modification of any prior ruling finding him or her not to be suffering from occupational pneumoconiosis. For the purposes of this subsection, a claimant's employment shall be considered to be terminated if, for any reason, he or she has not worked for that employer for a period in excess of 90 days. Any previously filed, but unruled upon, claim shall be consolidated with the claim in which the Occupational Pneumoconiosis Board's decision is made and shall be denied together with the decided claim. The provisions of this subsection shall not be applied in any claim where doing so would, in and of itself, later cause a claimant's claim to be forever barred by the provisions of §23-4-15 of this code.

(f) Effective upon termination of the former workers' compensation commission, the Insurance Commissioner shall assume all administrative powers and responsibilities necessary to administer this section and §23-4-8a and §23-4-8b of this code.

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