WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED

SENATE BILL NO. 544

(By Senator Jackson)

PASSED March 9, 1988
In Effect July 1, 1988
ENROLLED

Senate Bill No. 544

(By Senator Tucker)

[Passed March 9, 1988; to take effect July 1, 1988.]

AN ACT to amend and reenact sections eight-c and fifteen-b, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the period allowed for protests to be filed in occupational pneumoconiosis claims.

Be it enacted by the Legislature of West Virginia:

That sections eight-c and fifteen-b, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. DISABILITY BENEFITS.

§23-4-8c. Occupational pneumoconiosis board—reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.

1 (a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner, of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the
board shall also return to and file with the commissioner all
the evidence as well as all statements under oath, if any, of
the persons who appear 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
employment for a period of ten years during the fifteen
years immediately preceding the date of his last exposure to
such hazard and that such claimant or deceased employee
has sustained a chronic respiratory disability, then it shall
be presumed that such claimant is suffering or such
deceased employee was suffering at the time of his death
from occupational pneumoconiosis which arose out of and
in the course of his employment. This presumption shall not
be conclusive.

(c) The findings and conclusions of the 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.

(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.

If either party objects to the whole or any part of such
findings and conclusions of the board, he shall file with the
commissioner, within thirty days from receipt of such copy
to him, unless for good cause shown, the commissioner
extends such time, his objections thereto in writing,
specifying the particular statements of the board's findings
and conclusions to which he objects. The filing of an
objection within the time specified is hereby declared to be
a condition of the right to litigate such findings and hence
jurisdictional. After the time has expired for the filing of
objections to the findings and conclusions of the board, the commissioner 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 board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof joining in such findings and conclusions shall appear at the time fixed by the commissioner for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing, evidence to support or controvert the findings and conclusions of the 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.

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

1 If a claim for occupational pneumoconiosis benefits be filed by an employee within three years from and after the last day of the last continuous period of sixty days exposure to the hazards of occupational pneumoconiosis, the commissioner shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his 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 ten years immediately preceding the date of his last exposure thereto and whether the claimant was exposed to such hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his last exposure thereto. If a claim for occupational pneumoconiosis benefits be filed by an employee within three years from and after the employee's occupational pneumoconiosis was made known to him by a physician or otherwise should have reasonably been known to him, the commissioner shall determine
whether the claimant filed his application within said period and 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 ten years immediately preceding the date of last exposure thereto and whether the claimant was exposed to such hazard over a period of not less than ten years during the fifteen years immediately preceding the date of last exposure thereto. If a claim for occupational pneumoconiosis benefits be filed by a dependent of a deceased employee, the commissioner shall determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within ten years prior to the filing of the claim, whether in the state of West Virginia the deceased employee was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure thereto and whether the claimant was exposed to such hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his last exposure thereto. The commissioner shall also determine such other nonmedical facts as may in his opinion be pertinent to a decision on the validity of the claim.

The commissioner shall enter an order with respect to such nonmedical findings within ninety days following receipt by the commissioner of both the claimant’s application for occupational pneumoconiosis benefits and the physician’s report filed in connection therewith, and shall give each interested party notice in writing of these findings with respect to all such nonmedical facts and such findings and such actions of the commissioner shall be final unless the employer, employee, claimant or dependent shall, within thirty days after receipt of such notice, object to such findings, and unless an objection is filed within such thirty-day period, such findings shall be forever final, such time limitation being hereby declared to be a condition of the right to litigate such findings and hence jurisdictional. Upon receipt of such objection, the commissioner shall set a hearing as provided in section one, article five of this chapter. In the event of an objection to such findings by the employer, the claim, shall, notwithstanding the fact that one or more hearings may be held with respect to such
objection, mature for reference to the occupational pneumoconiosis board with like effect as if the objection had not been filed. If the commissioner concludes after the protest hearings that the claim should be dismissed, a final order of dismissal shall be entered, which final order shall be subject to appeal in accordance with the provisions of section one, article five of this chapter. If the commissioner concludes after such protest 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce C. Williams  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1988.

Saul C. Wilie  
Clerk of the Senate

Donald L. Yeak  
Clerk of the House of Delegates

Dan Tortorioli  
President of the Senate

Joseph L. Timm  
Speaker House of Delegates

The within bill having been presented this the 25th day of March 1988.

Audra Thayer  
Governor