

544

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988




ENROLLED

SENATE BILL NO. 544

(By Senator Jukes)



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
- 2 practicable, after it has completed its investigation, shall
- 3 make its written report, to the commissioner, of its findings
- 4 and conclusions on every medical question in controversy,
- 5 and the commissioner shall send one copy thereof to the
- 6 employee or claimant and one copy to the employer, and the

7 board shall also return to and file with the commissioner all
8 the evidence as well as all statements under oath, if any, of
9 the persons who appear before it on behalf of the employee
10 or claimant, or employer and also all medical reports and
11 x-ray examinations produced by or on behalf of the
12 employee or claimant, or employer.

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

25 (c) The findings and conclusions of the board shall set
26 forth, among other things, the following:

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

31 (2) Whether or not the exposure in the employment was
32 sufficient to have caused the claimant's or deceased
33 employee's occupational pneumoconiosis or to have
34 perceptibly aggravated an existing occupational
35 pneumoconiosis, or other occupational disease.

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

40 If either party objects to the whole or any part of such
41 findings and conclusions of the board, he shall file with the
42 commissioner, within thirty days from receipt of such copy
43 to him, unless for good cause shown, the commissioner
44 extends such time, his objections thereto in writing,
45 specifying the particular statements of the board's findings
46 and conclusions to which he objects. The filing of an
47 objection within the time specified is hereby declared to be
48 a condition of the right to litigate such findings and hence
49 jurisdictional. After the time has expired for the filing of

50 objections to the findings and conclusions of the board, the
51 commissioner shall proceed to act as provided in this
52 chapter. If after the time has expired for the filing of
53 objections to the findings and conclusions of the board no
54 objections have been filed, the report of a majority of the
55 board of its findings and conclusions on any medical
56 question shall be taken to be plenary and conclusive
57 evidence of the findings and conclusions therein stated. If
58 objection has been filed to the findings and conclusions of
59 the board, notice thereof shall be given to the board, and the
60 members thereof joining in such findings and conclusions
61 shall appear at the time fixed by the commissioner for the
62 hearing to submit to examination and cross-examination in
63 respect to such findings and conclusions. At such hearing,
64 evidence to support or controvert the findings and
65 conclusions of the board shall be limited to examination
66 and cross-examination of the members of the board, and to
67 the taking of testimony of other qualified physicians and
68 roentgenologists.

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

1 If a claim for occupational pneumoconiosis benefits be
2 filed by an employee within three years from and after the
3 last day of the last continuous period of sixty days exposure
4 to the hazards of occupational pneumoconiosis, the
5 commissioner shall determine whether the claimant was
6 exposed to the hazards of occupational pneumoconiosis for
7 a continuous period of not less than sixty days while in the
8 employ of the employer within three years prior to the filing
9 of his claim, whether in the state of West Virginia the
10 claimant was exposed to such hazard over a continuous
11 period of not less than two years during the ten years
12 immediately preceding the date of his last exposure thereto
13 and whether the claimant was exposed to such hazard over
14 a period of not less than ten years during the fifteen years
15 immediately preceding the date of his last exposure thereto.
16 If a claim for occupational pneumoconiosis benefits be filed
17 by an employee within three years from and after the
18 employee's occupational pneumoconiosis was made known
19 to him by a physician or otherwise should have reasonably
20 been known to him, the commissioner shall determine

21 whether the claimant filed his application within said
22 period and whether in the state of West Virginia the
23 claimant was exposed to such hazard over a continuous
24 period of not less than two years during the ten years
25 immediately preceding the date of last exposure thereto and
26 whether the claimant was exposed to such hazard over a
27 period of not less than ten years during the fifteen years
28 immediately preceding the date of last exposure thereto. If a
29 claim for occupational pneumoconiosis benefits be filed by
30 a dependent of a deceased employee, the commissioner shall
31 determine whether the deceased employee was exposed to
32 the hazards of occupational pneumoconiosis for a
33 continuous period of not less than sixty days while in the
34 employ of the employer within ten years prior to the filing of
35 the claim, whether in the state of West Virginia the deceased
36 employee was exposed to such hazard over a continuous
37 period of not less than two years during the ten years
38 immediately preceding the date of his last exposure thereto
39 and whether the claimant was exposed to such hazard over
40 a period of not less than ten years during the fifteen years
41 immediately preceding the date of his last exposure thereto.
42 The commissioner shall also determine such other
43 nonmedical facts as may in his opinion be pertinent to a
44 decision on the validity of the claim.

45 The commissioner shall enter an order with respect to
46 such nonmedical findings within ninety days following
47 receipt by the commissioner of both the claimant's
48 application for occupational pneumoconiosis benefits and
49 the physician's report filed in connection therewith, and
50 shall give each interested party notice in writing of these
51 findings with respect to all such nonmedical facts and such
52 findings and such actions of the commissioner shall be final
53 unless the employer, employee, claimant or dependent
54 shall, within thirty days after receipt of such notice, object
55 to such findings, and unless an objection is filed within such
56 thirty-day period, such findings shall be forever final, such
57 time limitation being hereby declared to be a condition of
58 the right to litigate such findings and hence jurisdictional.
59 Upon receipt of such objection, the commissioner shall set a
60 hearing as provided in section one, article five of this
61 chapter. In the event of an objection to such findings by the
62 employer, the claim, shall, notwithstanding the fact that
63 one or more hearings may be held with respect to such

64 objection, mature for reference to the occupational
65 pneumoconiosis board with like effect as if the objection
66 had not been filed. If the commissioner concludes after the
67 protest hearings that the claim should be dismissed, a final
68 order of dismissal shall be entered, which final order shall
69 be subject to appeal in accordance with the provisions of
70 section one, article five of this chapter. If the commissioner
71 concludes after such protest hearings that the claim should
72 be referred to the occupational pneumoconiosis board for
73 its review, the order entered shall be interlocutory only and
74 may be appealed only in conjunction with an appeal from a
75 final order with respect to the findings of the occupational
76 pneumoconiosis board.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Anna O. Williams
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1988.

Judd C. Hillis
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Dan Torheim
.....
President of the Senate

John M. ...
.....
Speaker House of Delegates

The within *appeared* this the *25th*
March day of 1988.

Arba Naray
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/58

Time 3:48 a.m.

RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE