

## PART I

### INTRODUCTION

#### **C. STRUCTURE AND APPLICABILITY OF THE REGULATIONS**

Section 411(b) of the Act, 30 U.S.C. §921(b), provides authority for the Secretary of Health, Education, and Welfare and the Secretary of Labor to promulgate regulations implementing the purposes of the Act. Since the Secretary of Health, Education and Welfare was initially responsible for all claims filed under Part B of the Act, SSA regulations were the first to be duly promulgated. They are located at 20 C.F.R. §§410.101-410.490 and may be briefly summarized as follows:

Subpart A (including Sections 410.101 through 410.130) - Introduction, General Provisions and Definitions.

Subpart B (including Sections 410.200 through 410.250) - Requirements for Entitlement; Duration of Entitlement; Filing of Claims, and Evidence.

Subpart C (including Sections 410.300 through 410.395) - Relationship and Dependency.

Subpart D (including Sections 410.401 through 410.490) - Total Disability or Death Due to Pneumoconiosis.

Subpart E (including Sections 410.501 through 410.590) - Payment of Benefits.

Subpart F (including Sections 410.601 through 410.699) - Determinations, Administrative Review, Finality of Decisions, and Representation of Parties.

The original regulations promulgated by the Secretary of Labor implementing the 1972 Amendments were found at 20 C.F.R. §715.1 *et seq.*, briefly summarized as follows:

Part 715 (including Sections 715.1 through 715.217) - General Provisions.

Part 717 (including Sections 717.1 through 717.125) - Filing and Preliminary Processing of Claims For Black Lung Benefits after June 30, 1973.

Part 718 (including Sections 718.1 and 718.2) - Standards for Determining Coal Miner's Total Disability or Death Due to Pneumoconiosis.

Part 720 (including Sections 720.100 through 720.444) - Determination of Black Lung Claims under Section 415 (30 U.S.C. §925) of the Act and Payment of Benefits.

Part 722 (including Sections 721.101 through 722.152) - Criteria for Determining whether State Workmen's Compensation Laws Provide Adequate Coverage for Pneumoconiosis and Listing of Approved State Laws.

Part 725 (old Part 725)(including Sections 725.1 through 725.552) - Claims for Black Lung Benefits Payable under Part C of Title IV.

Part 726 (including Sections 726.1 through 726.213) -Requirements for Coal Mine Operator's Insurance.

Prior to March 31, 1980, Part 718, 20 C.F.R. §718.2, incorporated Subpart D of the regulations, 20 C.F.R. §§410.401-through 410.476, promulgated by the Secretary of Health, Education and Welfare as the applicable standards for all claims filed under Sections 415 or 422 of the Act, 30 U.S.C. §§925, 932, for the purpose of determining whether a coal miner is totally disabled due to pneumoconiosis, was totally disabled due to pneumoconiosis at the time of his death, or died from pneumoconiosis. Section 410.490, the "interim criteria," was excluded from this incorporation.

Subsequent to the passage of the Reform Act, the Secretary of Labor undertook an extensive redrafting of the regulations governing Department of Labor adjudication. The structure of the regulations has been modified as follows:

Parts 715, 717, and 720 - repealed.

Part 718 - Note that extensive changes to the prior incorporation by reference of 20 C.F.R. §§410.401-410.476 were made.

Part 722 - unchanged.

Part 725 (New Part 725)(including Sections 725.1 through 725.711) - Claims for benefits under Part C of Title IV. Extensive procedural changes were made.

Part 726 - unchanged.

Part 727 (including Sections 727.1 through 727.405) -Review of Pending and Denied claims under the Reform Act. These regulations were promulgated pursuant to Section 402(f)(2) of the Act as amended by the Reform Act, which requires criteria for adjudication "not more restrictive than" 20 C.F.R. §410.490.

The regulations promulgated by the Secretary of Labor at 20 C.F.R. Parts 722, 725 and 726 generally apply to all claims within the Board's jurisdiction. The other regulations promulgated by the Secretary of Labor, 20 C.F.R. Parts 718 and 727, as well as some of the regulations issued by the Social Security Administration of the Department of Health and Human Services, 20 C.F.R. Part 410, Subpart D and 20 C.F.R. §410.490, apply to Board adjudications in more limited instances. The following chart is intended to provide a broad overview of the applicability of these regulations. For more specific information see Part III of the Desk Book.

<u>CLAIM FILED</u>	<u>YEARS OF COAL MINE EMPLOYMENT</u>	<u>REGULATION</u>
Jan. 1, 1970 - Mar. 1, 1978	[Any Number]	Part 410 (excluding Section 410.410) claimant meets these filing dates, requests an onset of disability date prior to Jan. 1, 1974 and has not had the claim revived pursuant to Section 435 of the Act, a claimant can have the matter resolved under the 1972 Act. See, e.g., <b>Mismash v Director, OWCP</b> , 6 BLR 1-1240 (1984). If a claim is denied under the 1972 Act, claimant can have the claim reviewed under Part 727.
Jan. 1, 1970 - Mar. 31, 1980	[Any Number]	Part 410, Subpart D and Section 410.490. A claim denied under Part 410, can be considered under Section 410.490. <b>Pittston Coal Group v. Sebben</b> , 109 S.Ct. 414, 12 BLR 2-89 (1988).
Jan. 1, 1970 - Mar. 31, 1980	[10 or more yrs.]	Part 727. A claim denied under Part 727 must be considered also under Section 410.490 and Part 410, Subpart D. <b>Sebben</b> .
Apr. 1, 1980 - Dec. 31, 1981	[Any Number]	Part 718, including all presumptions.

Post Dec. 31, 1981 [Any Number]

Part 718 with many presumptions deleted.

## CASE LISTINGS

### DIGESTS

The Board applied the decision of the United States Supreme Court in ***Pittston Coal Group v. Sebben***, 109 S.Ct. 414, 12 BLR 2-89 (1988), and held that in cases involving miners with less than ten years of coal mine employment that were filed on or before March 31, 1980, claimants are entitled to an interim presumption of total disability due to pneumoconiosis where claimants can establish, pursuant to Section 410.490(b), the existence of pneumoconiosis by x-ray, autopsy or biopsy, and that this pneumoconiosis arose out of coal mine employment. ***Phipps v. Director, OWCP***, 17 BLR 1-39 (1992) (en banc)(Smith, J., concurring; McGranery, J., concurring and dissenting).

In cases involving miners with less than ten years of coal mine employment that were filed on or before March 31, 1980, the Board held that, in light of the Supreme Court decision in ***Pauley v. Bethenergy Mines, Inc.***, 111 S.Ct. 2524, 15 BLR 2-155 (1991), where claimants have established a presumption of total disability due to pneumoconiosis pursuant to Section 410.490(b) by establishing the existence of pneumoconiosis by x-ray, autopsy or biopsy, and that pneumoconiosis arose out of coal mine employment, the party opposing entitlement may establish rebuttal of this presumption by any one of the methods contained at Section 727.203(b). ***Phipps***.

5/95