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REPORT TO THE SENATE COMMITTEE ON HUMAN RESOURCES

BY THE COMPTROLLER GENERAL OF THE UNITED STATES



Program To Pay Black Lung Benefits To Coal Miners And Their Survivors-- Improvements Are Needed

AGC 00009
AGC 00022
Departments of Labor and
Health, Education, and Welfare

The Department of Labor is not achieving the results intended by the Black Lung Benefits Act of 1972. Labor has been slow in adjudicating claims, has approved relatively few claims, has paid out little in benefits, and has a large backlog of claims.

Insufficient staff is a major problem contributing to the delays in claims processing. However, many internal administrative problems could be alleviated by improved management controls. GAO is making recommendations to improve staffing and program management. Labor generally concurs with GAO and is undertaking improvements.

GAO is also recommending that the Congress consider amending the act to (1) remove the 3-year filing requirement which denies otherwise eligible miners or their survivors benefits under the act and (2) permit Labor to use "Interim Standards" in adjudicating black lung claims.

HRD-77-77

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-167015

The Honorable Harrison A. Williams, Jr.
Chairman, Committee on Human Resources
United States Senate

SEND 6700

Dear Mr. Chairman:

Pursuant to your request and later agreements with your office, we have reviewed the black lung compensation and benefits program for coal miners and their survivors established under the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801). We primarily reviewed Department of Labor actions in processing claims and the success Labor was achieving in meeting the intent of the 1972 amendments requiring expedited eligibility determinations and benefit payments.

At the time of our review, extremely long periods elapsed between the time claims were filed and when they were finally adjudicated--approved or disapproved. In fiscal year 1975 the average processing time was 256 days for denials and 366 days for approvals. By fiscal year 1976 the average processing time for all claims had increased to 630 days.

From July 1, 1973, when it assumed responsibility for the black lung program, through June 30, 1976, Labor received 92,727 claims. Yet, as of June 30, 1976, it had adjudicated only 42,281 claims and had a backlog of 50,446. As a result, in the first 3 years of the program, Labor obligated about \$22.5 million--out of the \$83 million appropriated--in compensation and medical benefits to disabled miners and their survivors.

According to officials of Labor's Office of Workers' Compensation Programs responsible for administering the program, sufficient staff has not been provided to meet the claims workload. In June 1976, because of its concern with the program, the Congress took the initiative and authorized 30 new staff positions. (However, in fiscal year 1977 Labor allocated 10 positions to the longshoremen's compensation program because that program had a claims backlog.)

We noted internal administrative problems in the black lung program that could be alleviated by improved management controls. These problems included slow claims processing

caused by piecemeal and cumbersome procedures; delays in informal Labor hearings of contested claims and formal hearings by the Office of Administrative Law Judges; lack of effective guidance to claimants; and ineffective action by Labor's national office to alleviate the internal and staffing problems. Also, more claimants could be given a chance to qualify for benefits if Labor revised its processing procedures to have X-rays reread for miners whose X-rays are initially interpreted as negative for pneumoconiosis.

We are recommending that the Secretary of Labor review Labor's allocation of resources. We are also making several recommendations to the Secretaries of Labor and Health, Education, and Welfare to correct management problems. (See pp. 52 and 53.)

Since Labor assumed responsibility for black lung benefits in July 1973, it has not been allowed to use more liberal "Interim Standards" adopted by the Social Security Administration for determining disability and eligibility for benefits. Using the Interim Standards would make more young miners or their survivors eligible for benefits.

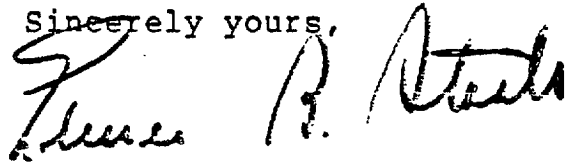
We are recommending that the Congress decide whether the program should be expanded to include these additional miners. If so, Labor should be directed to substantiate by medical evaluation, as intended by the Congress, the degree of functional disability preventing claimants from working. (See p. 54.)

Also, the act's present 3-year filing requirement results in Labor denying many claims for widows and miners who would otherwise be eligible. We are recommending that the Congress consider amending the act to delete the requirements that living miners file claims within 3 years of the date of their last coal mine employment and that widows file within 3 years of the husband's death. (See p. 54.)

Officials of the Departments of Labor and Health, Education, and Welfare generally agreed with our conclusions and recommendations and promised to take corrective action. (See p. 53.)

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We will be in touch with your office soon to arrange for distribution of the report to the Secretaries of Labor and Health, Education, and Welfare; the Director, Office of Management and Budget; and the four Committees to set in motion the requirements of section 236.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas R. Stebbins". The signature is written in a cursive style with a large initial "T" and "S".

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT
TO THE SENATE COMMITTEE
ON HUMAN RESOURCES

PROGRAM TO PAY BLACK LUNG
BENEFITS TO COAL MINERS
AND THEIR SURVIVORS--
IMPROVEMENTS ARE NEEDED
Departments of Labor and
Health, Education, and
Welfare

D I G E S T

How effectively and efficiently does the Department of Labor's Office of Workers' Compensation Programs operate the black lung compensation and benefits program for coal miners and their survivors? In attempting to answer this question, GAO placed particular emphasis on reviewing Labor's actions in processing claims for miners and their survivors and Labor's success in achieving the intent of the 1972 amendments to the act.

Black lung, a chronic disease, has the medical designation coal workers' pneumoconiosis. The Congress, in enacting the Federal Coal Mine Health and Safety Act in 1969, intended to provide benefits to miners disabled by black lung and survivors of miners who died from the disease. Amendments to the act in 1972 increased benefits and coverage and added new standards to ease the burden of proof facing claimants in establishing eligibility for benefits.

However, the law's 3-year filing requirement has resulted in Labor having to deny many claims for living miners and widows who otherwise would be eligible, as shown in this report. Accordingly, if the Congress wishes to provide such claimants with an opportunity to qualify for benefits, it should again amend the act as specified on pages v and 54.

The intent of the amendments was to expedite determinations of eligibility and black lung benefit payments to miners and their survivors. (See p. 2.)

The Labor Department is not achieving the results contemplated by the act and its amendments. Its Office of Workers' Compensation Programs

- has been slow in adjudicating claims,
- has approved few claims,
- has paid out little in benefits, and
- has a large backlog of claims. (See p. 7.)

Labor agreed that GAO has identified many shortcomings in the black lung program and concurs in GAO's basic assessment that it takes too long to process claims. Labor also agreed with GAO's recommendations set forth below and is responding accordingly. (See p. 53 and app. I.)

Labor originally set a goal of 90 days for processing claims and later revised this to 180 days. However, Labor failed to meet either goal. GAO's review of 197 claims approved, disapproved, or in process as of March 31, 1975, showed that average processing time was 256 days for denials and 366 days for approvals. In addition, Labor task force reports showed that in fiscal year 1976 the average processing time for all claims had increased to 630 days. (See p. 8.)

From July 1, 1973, when it assumed responsibility for the black lung program, through June 30, 1976, Labor received 92,727 claims. As of June 30, 1976, it had adjudicated--approved or disapproved--only 42,281 claims and had a backlog of 50,446 claims. (See p. 7.)

As a result of its slow processing rate, Labor in the first 3 years of the program obligated only about \$22.5 million (just over 27 percent)--of the \$83 million appropriated--in compensation and medical benefits to disabled miners and their survivors.

Because of the low benefit payout during fiscal years 1974 and 1975, Labor transferred \$41 million to the Federal Employees' Compensation Program, transferred \$2 million to cover Employment Standards Administration salaries and expenses, and returned \$11.4 million to the U.S. Treasury because the appropriations had lapsed. At the end of fiscal year 1976, Labor carried over \$6.1 million of the \$20 million appropriated into the transitional budget period July to September 1976. (See p. 10.)

Several management problems and other factors contributed to Labor's slow adjudication rate and increased claim backlogs, such as:

- Problems with inadequate development of individual claims by the Social Security Administration. (See ch. 3.)
- Slow claims processing by Labor caused by piecemeal and cumbersome procedures. (See ch. 4.)
- Delays in the informal Labor hearings of contested claims and formal hearings by the Office of Administrative Law Judges. (See ch. 5.)
- Lack of effective assistance by Labor and the Social Security Administration to claimants filing benefit claims. (See ch. 6.)
- Failure of Labor's national office top management to take effective action to alleviate the program's staffing problems. (See ch. 7.)

More claimants could be given a chance to qualify for benefits if Labor revised its processing procedures to have X-rays reread for miners whose X-rays are initially interpreted as negative for pneumoconiosis. A Labor study showed that 5 percent of X-rays reread were upgraded from negative to simple or complicated pneumoconiosis or from simple to complicated pneumoconiosis. (See p. 20.)

According to the Office of Workers' Compensation Programs, it never has received enough staff to handle the workload and backlog of claims. In fact, the Congress in June 1976 took the initiative and, without a request from Labor, authorized 30 new staff positions.

Labor officials suggest that the following other factors contribute to the current adjudication rate and increased claims processing workload.

--Unlike other workers' compensation programs under which evidence is collected by employers or their representatives (for example, insurance companies), Labor has assumed responsibility for collecting virtually all of the claimant's evidence.

--After initial determination and after claims are served upon responsible coal mine operators, who contest about 97 percent of the claims, they often undergo a second investigation including a repeat medical evaluation.

--The act does not provide a means for compensating differences in disputed cases, such as through partial disability benefits or lump sum settlements, and thus disputed claims must be formally litigated to resolve contested issues. (See p. 11.)

According to Labor officials, the rate of claims approval is affected by other factors beyond their control. (See pp. 42 and 47.)

Labor also claims that its approval rate is affected by the Office of Management and Budget's requirement that it not use the more liberal "Interim Standards" adopted by the Social Security Administration for determining disability and eligibility for benefits. (See p. 45.)

RECOMMENDATIONS TO AGENCIES

The Secretary of Labor should allocate adequate resources and staff to effectively carry out Labor's responsibilities under the Federal Coal Mine Health and Safety Act. GAO also recommends that Labor:

- Review its claims-processing system to reduce delays between processing steps.
- Establish timeliness criteria for completing the informal hearing process.
- Determine the feasibility of having all X-rays reread so that claimants whose X-rays are interpreted as negative be given every opportunity to qualify for benefits.
- Establish an effective program to respond promptly to claimant inquiries on the status of their claims. (See p. 52.)

Concurrently, the Secretary of Health, Education, and Welfare should direct or require the Social Security Administration district offices to follow prescribed policies and procedures in processing Labor's black lung claims. GAO recommends further that a feedback procedure be established so that district office personnel will be made aware of deficiencies and problems in their performance. (See p. 53.)

The Social Security Administration also agreed that its district offices have not always followed prescribed procedures in processing black lung claims for Labor. Social Security also has taken or plans to take actions, in consonance with GAO's recommendations, to improve the district offices' claims processing. (See p. 53.)

RECOMMENDATIONS TO THE CONGRESS

Specifically, section 422(f)(2) of the Federal Coal Mine Health and Safety Act

should be amended to delete the requirement that living miners file within 3 years of the date of their last coal mine employment to be eligible under the 15-year rebuttable presumption and section 422(f)(1) should be amended to delete the requirement that widows of miners determined to have been totally disabled from pneumoconiosis file within 3 years of the date of the miner's death.

Also, the Congress should decide whether to amend the act to permit Labor to use the Interim Standards in adjudicating black lung claims. If Labor is authorized to use the Interim Standards, it should be directed to take care to substantiate by medical evaluation the degree of the functional disability inhibiting claimants, especially younger miners, from working. (See p. 54.)

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ABBREVIATIONS

| | |
|-------|--|
| ALJ | administrative law judge |
| CWP | coal workers' pneumoconiosis |
| DCMWC | Division of Coal Mine Workers' Compensation |
| ESA | Employment Standards Administration |
| GAO | General Accounting Office |
| HEW | Department of Health, Education, and Welfare |
| OALJ | Office of Administrative Law Judges |
| OMB | Office of Management and Budget |
| OWCP | Office of Workers' Compensation Programs |
| SSA | Social Security Administration |

CHAPTER 1

INTRODUCTION

The Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) became law on December 30, 1969. The act was amended by the Black Lung Benefits Act of 1972 (30 U.S.C. 901) on May 19, 1972. The amended act provides for monthly cash payments to

--coal miners who are totally disabled due to coal workers' pneumoconiosis (CWP)--commonly called "black lung"--resulting from work in coal mines and

--survivors of coal miners who were entitled to such benefits and who died from black lung or were totally disabled from it at the time of death.

Pneumoconiosis is a generic term referring to a class of diseases caused by inhaling such substances as coal dust, quarry dust, or textile fiber. CWP, caused by inhaling coal dust, is characterized by a chronic fibrous tissue reaction in the lungs which may cause disability or death.

CWP occurs in two forms--simple and complicated. Simple pneumoconiosis is characterized by the profusion of small opacities (lesions) in the lung. Complicated pneumoconiosis, which usually occurs after simple pneumoconiosis, is characterized by conglomerate or massive lesions larger than 1 centimeter in diameter.

The Department of Health, Education, and Welfare (HEW) and the Department of Labor administer the black lung benefits program authorized by the 1969 act. Under the act, HEW is responsible for processing miners' and survivors' claims filed before July 1, 1973, initial survivors' claims filed before January 1, 1974, and certain survivors' claims filed within 6 months of the death of a miner or widow entitled under part B or a miner who died before January 1, 1974. These claims are covered under title IV, part B, of the act. Labor is responsible for all other claims filed under the act. These claims are covered under title IV, part C, of the act.

HEW is also responsible for establishing medical standards to be used in determining whether miners are totally disabled due to CWP and whether the deaths of miners were due to CWP and thus whether the miners or their survivors are eligible for benefits under the act.

This report deals with Labor's administration and processing of claims for black lung benefits filed under title IV, part C, of the act. We have issued eight other reports on other aspects of the black lung benefits program. (See app. II.)

ELIGIBILITY REQUIREMENTS FOR BENEFITS

For a miner or his survivors to be eligible for benefits under title IV, part C

--the miner must have been totally disabled due to CWP or his death must have been due to the disease and

--the CWP must have arisen out of employment in the Nation's coal mines.

Under the 1969 act, only miners who worked in underground coal mines or their widows were eligible for benefits. The 1972 amendments broadened coverage to include miners who worked in surface mines. The amendments also allowed the miners' orphans and the miners' parents, brothers, and sisters who lived in his household and who were totally dependent on him in the year preceding his death to file for benefits.

The act requires the person claiming eligibility for black lung benefits to provide medical evidence to show that the miner is or was totally disabled from pneumoconiosis and evidence that it resulted from coal mine work. The act has three presumptions--one irrebuttable and two rebuttable--in determining eligibility.

Irrebuttable presumption

The act provides that, if a chest X-ray, a biopsy, an autopsy, or another diagnostic procedure shows the existence of complicated CWP, the miner is presumed to be totally disabled or to have died from CWP. Therefore, except for those requiring evidence of coal mine employment, no further evidence is needed to establish eligibility for benefits.

Rebuttable presumptions

The act provides that, for cases in which the medical evidence does not show the existence of complicated CWP, a determination that the miner is totally disabled or died due to CWP be based on criteria and medical standards established by the act and regulations of the Secretary of HEW. For determining eligibility for these cases, the act provides the following presumptions.

Ten-year presumption

The act provides that, if the miner has been employed at least 10 years in the Nation's coal mines, a presumption be made that

--the miner's death was due to CWP if he died from respiratory disease and

---CWP, if present, arose from his mining employment.

Under the act, these two presumptions are rebuttable and additional evidence may be needed to either support or rebut the claim that the miner's CWP arose out of his mining employment or that his death was due to CWP.

Fifteen-year presumption

The 1972 amendments added another rebuttable presumption. It is that miners are totally disabled due to CWP, that their deaths were due to CWP, or that they were totally disabled by CWP at the time of their deaths if they were employed for at least 15 years in underground coal mines or in comparable conditions in surface mines and medical evidence demonstrates the existence of a chronic totally disabling respiratory or pulmonary impairment. This provision may be rebutted only by establishing that the miners do not, or did not, have CWP or that their respiratory or pulmonary impairments did not arise out of their coal mine employment.

The 1972 amendments provide that no claim for black lung benefits will be denied solely on the basis of chest X-rays interpreted as negative for CWP. This act requires that, in addition to X-rays, all relevant evidence, including such medical tests as breathing tests, blood gas studies, electrocardiograms, and physical performance tests and the claimant's medical history, be considered. The amendments provide further that no coal mine employment after June 30, 1971, will be considered in applying the 15-year presumption.

Time limits for filing claims

The 1972 amendments placed certain time limits on black lung claims filed with Labor after January 1, 1974. Claims must be filed within 3 years of the date of discovery of total disability due to CWP if the claimant is a miner. In cases of death due to CWP, the survivor must file within 3 years of the miner's death.

Also, claims filed under the 15-year presumption provision must be filed within 3 years of the miner's last coal mine employment for living workers and within 15 years of a deceased miner's last coal mine work for survivors' claims. Additionally, only mine employment occurring before June 30, 1971, may be counted toward the 15 years of required service.

COMPENSATION AND OTHER BENEFITS

The benefits paid under part C of the Black Lung Benefits Act are 50 percent of the minimum monthly payment to a totally disabled Federal employee in grade GS-2, step 1, under the Federal Employees' Compensation Act (5 U.S.C. 8101). (If the miner or widow has dependents, the benefit amount is increased.) This benefit rate has increased with changes in Federal salary levels. The table below shows the monthly benefit rates paid between October 1973 and September 1977.

| <u>Dependents</u> | <u>10/1/73 through 9/30/74</u> | <u>10/1/74 through 9/30/75</u> | <u>10/1/75 through 9/30/76</u> | <u>10/1/76 through 9/30/77</u> |
|-------------------|--|--|--|--|
| None | \$177.60 | \$187.40 | \$196.80 | \$205.40 |
| One | 266.40 | 281.10 | 295.20 | 308.10 |
| Two | 310.80 | 328.00 | 344.40 | 359.50 |
| Three or more | 355.20 | 374.80 | 393.50 | 410.80 |

Under the 1969 act, Labor also pays for medical services, such as X-rays and other required tests, scheduled when a miner files a claim. The 1972 amendments also allow Labor to pay the costs of medical treatment for CWP for those miners whose claims it has approved.

ADMINISTRATIVE RESPONSIBILITY

The act intended that, beginning on January 1, 1974, claims filed for benefits under part C would be processed and paid through workers' compensation agencies in States that enacted appropriate laws, as determined by the Secretary of Labor, to provide adequate benefits for total disability or death due to CWP. As of December 1976 no State had enacted laws meeting these criteria. Therefore, all claims under part C were being processed by Labor.

The act also provides that, if a State fails to meet the Secretary's standards, the coal mine operator must pay benefits to those miners he employed who became disabled or to their survivors. Labor is required to identify the responsible operator who will be liable for the payments. Labor's criteria define the responsible operator as the last

coal mine operator who employed the miner for 12 cumulative months.

If a coal mine operator fails to pay the benefits required by part C, Labor will pay them and the operator will be liable to the United States for the amount paid. Labor also pays the benefits if no responsible operator is identified.

The 1972 amendments authorized a special benefits fund to pay the compensation benefits due miners and their survivors under part C when no responsible mine operator is identified or the responsible operator fails to pay. The fund is also used to pay miners' medical benefits. The fund is financed through congressional appropriations to Labor. (See p. 10.)

Under the act, the obligation of Labor and mine operators to pay benefits will terminate on December 31, 1981. However, any eligible miners or their survivors will continue to receive compensation benefits in States whose programs are approved by Labor.

PROGRAM ADMINISTRATION

The Secretary of HEW has delegated responsibility for administering black lung claims filed under title IV, part B, of the act to the Social Security Administration (SSA). Labor, under part C of title IV, is responsible for all other black lung claims. The Secretary of Labor delegated responsibility for the black lung benefits program to the Assistant Secretary for Employment Standards Administration. The Office of Workers' Compensation Programs (OWCP), in the Employment Standards Administration (ESA), administers the program through the Division of Coal Mine Workers' Compensation (DCMWC) at the Washington, D.C., headquarters.

Operation of the black lung program is centralized at headquarters. ESA, however, contracts with SSA to have that agency's district offices perform certain initial claims-processing steps. All further processing is handled by DCMWC in Washington.

Appeals process

Under the act, the claimant or a responsible coal mine operator has the right to contest Labor's decision on a claim. Labor attempts to resolve disputes through an informal conference with the parties concerned. If issues cannot be resolved at the informal conference, any of the interested parties

may request a formal hearing before a hearing officer in Labor's Office of Administrative Law Judges (OALJ). In such cases, the hearing officer conducts a formal hearing and issues a decision in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554).

Either party may appeal a hearing officer's decision to the Benefits Review Board, which consists of a chairperson and two other members appointed by the Secretary of Labor. The Board is authorized to hear and decide appeals involving a substantial question of law or fact. The act provides that any person adversely affected by a final order of the Benefits Review Board may appeal the order to a U.S. circuit court of appeals.

PROGRAM ADMINISTRATION EXPENSES

Labor's expenses for administering the black lung program are financed by congressional appropriations. The amounts appropriated since fiscal year 1974 are shown below.

| <u>Fiscal year</u> | <u>Amount</u> |
|--------------------|---------------|
| 1974 | a/\$5,600,000 |
| 1975 | a/9,200,000 |
| 1976 | 6,205,000 |

a/About \$1.3 million in fiscal year 1974 and about \$2.5 million in fiscal year 1975 were not used on the black lung program and were transferred to other ESA programs, such as the Federal Employees' Compensation Program. We were unable to determine how much of the transferred funds were actually spent.

CHAPTER 2

SLOW ADJUDICATION OF CLAIMS

FOR BLACK LUNG BENEFITS

One purpose of the 1972 amendments was to expedite benefit payments to eligible coal miners and their dependents or survivors. However, the Office of Workers' Compensation Programs has been slow in adjudicating claims and a large backlog of claims has resulted.

From July 1, 1973, through June 30, 1976, OWCP received 92,727 claims. As of June 30, 1976, it had adjudicated--approved or disapproved--only 42,281 and had a backlog of 50,446 claims. Of the claims which had been adjudicated, only 8 percent (3,233 claims) had been approved for benefits. The effect of this 92-percent rejection rate has been that the black lung special fund appropriation authorized by the Congress has been used to only a limited extent to pay black lung benefits.

Instead, the money appropriated has served as an alternative source of funds for other ESA programs, such as the Federal Employees' Compensation Program. Of the \$83 million appropriated to OWCP for fiscal years 1974 to 1976, the first 3 fiscal years for which it was responsible for the program, it obligated \$22.5 million in compensation and medical benefits, transferred \$41 million to the Federal Employees' Compensation Program, transferred \$2 million to ESA for its salaries and expenses, and returned \$11.4 million to the Treasury because the appropriations had lapsed. At the end of fiscal year 1976, OWCP also carried over the unobligated \$6.1 million of its \$20 million appropriation for black lung benefits into the transitional budget period.

INCREASE IN CLAIMS BACKLOG

The number of undecided claims has been increasing steadily since OWCP assumed program responsibility on July 1, 1973. For example, in fiscal year 1974 OWCP received 36,856 claims but adjudicated only 1,893 of them. This situation deteriorated during fiscal year 1975, as the 20,664 claims adjudicated did not even offset the 29,820 claims received during the year, much less reduce the backlog from the previous year. As shown in the following table, the backlog of undecided claims had grown to 50,446 by June 30, 1976.

| <u>Fiscal year</u> | <u>Volume of claims</u> | <u>Decision made</u> | <u>Denials</u> | <u>Approvals</u> | <u>Claims backlog</u> |
|--------------------|-------------------------|----------------------|----------------|------------------|-----------------------|
| 1974 | 36,856 | 1,893 | 1,516 | 377 | 34,963 |
| 1975 | 29,820 | 20,664 | 19,477 | 1,187 | 44,119 |
| 1976 | <u>26,051</u> | <u>19,724</u> | <u>18,055</u> | <u>1,669</u> | 50,446 |
| Total | <u>92,727</u> | <u>42,281</u> | <u>39,048</u> | <u>3,233</u> | |

Under its adjudication procedures, OWCP makes an initial determination to approve or deny a claim. A denial is generally based on a lack of sufficient medical evidence to prove total disability from CWP or prove that CWP resulted from coal mine work. When claims are denied, the claimants are notified that the claim has been denied and that they may submit additional medical or employment evidence to support their claims and/or appeal the decisions.

The 39,048 denials shown above were made under OWCP's initial determination procedure. Thus, some of the claims may eventually be approved by OWCP on the basis of additional evidence or on appeal.

Age of backlog

Most of the backlogged claims at June 30, 1976, had remained undecided for over a year. Of the 50,446-claim backlog, about 61 percent (30,692) had been filed before June 30, 1975, and about 31 percent (15,472) had been filed before June 30, 1974. The table below shows the number of months that the 50,446 claims in backlog had been in process at June 30, 1976.

| <u>Months in process</u> | <u>Claims</u> | <u>Percent</u> |
|--------------------------|---------------|----------------|
| Over 24 | 15,472 | 31 |
| Between 13 and 24 | 15,220 | 30 |
| Less than 13 | <u>19,754</u> | <u>39</u> |
| Total | <u>50,446</u> | <u>100</u> |

OWCP SLOW IN PROCESSING CLAIMS

Labor originally set a goal of 90 days for processing claims, and OWCP later revised that goal to 180 days. Yet, OWCP has failed to meet either goal.

To measure OWCP's processing time for black lung claims, we took random statistical samples of 197 claims on file as of March 31, 1975. The claims fell into the following categories:

| <u>Categories</u> | <u>Claims sampled</u> |
|---|-----------------------|
| Claims approved | 53 |
| Claims denied | 96 |
| Claims on which no decision has been made | <u>48</u> |
| | <u>197</u> |

The average processing time for the 149 approved or denied was 256 days for denial and 366 days for approval from the time the claim was filed at the SSA district office to the date benefit payments began.

In some cases, eligible disabled miners or their survivors had to wait as long as 2 years to receive their first benefit check after submitting their claims. Some claimants who were eligible for benefits died before OWCP was able to complete work on their claims. The 48 undecided claims in our sample had been in process from 145 to 698 days from the time they were received from the SSA district offices.

A summary of processing times for the 197 claims in our sample is shown below.

| <u>Number of claims sampled</u> | <u>Filing at SSA to receipt by OWCP</u> | <u>Receipt to initial determination</u> | <u>Initial determination to start to benefit payments</u> | <u>Average processing time</u> |
|---------------------------------|---|---|---|--------------------------------|
| | (days) | | | |
| Approved claims (53): | | | | |
| Average | 36 | 305 | 25 | 366 |
| Range | 6-127 | 50-583 | 0-173 | |
| Denied claims (96): | | | | |
| Average | 39 | 218 | - | 256 |
| Range | 3-230 | 27-540 | | |
| In process (48) (note a): | | | | |
| Average | 33 | 444 | - | 477 |
| Range | 5-127 | 145-698 | | |

a/For these claims, processing time was analyzed from receipt by OWCP to the cutoff date in May 1975 used for our sample.

Several Labor units have noted delays in processing black lung benefits. A July 1976 interim report on the black lung program and the January 1977 final report by an OWCP task force established to study Labor's compensation programs stated that during fiscal year 1976 processing time for all claims had increased to an average of 630 days. Similar processing delays were noted in a November 24, 1976, report on a management review of the black lung program by Labor's Office of Organization and Manpower Utilization.

PAYMENT OF COMPENSATION
AND OTHER BENEFITS

OWCP has obligated about \$22.5 million out of the \$83 million appropriated to the special fund to pay compensation and medical benefits. The table below shows special fund activity since the fund's creation in fiscal year 1974.

| <u>Fiscal year</u> | <u>Appropriations</u> | <u>Compensation benefits</u> | <u>Medical benefits</u> | <u>Total</u> |
|--------------------|-----------------------|------------------------------|-------------------------|---------------------|
| 1974 | \$27,000,000 | \$ 650,000 | \$ 950,000 | \$ 1,600,000 |
| 1975 | 36,000,000 | 5,200,000 | 1,750,000 | 6,950,000 |
| 1976 | <u>20,000,000</u> | <u>11,400,000</u> | <u>2,500,000</u> | <u>13,900,000</u> |
| Total | <u>\$83,000,000</u> | <u>\$17,250,000</u> | <u>\$5,200,000</u> | <u>\$22,450,000</u> |

As the table shows, only \$1.6 million of the \$27 million fiscal year 1974 appropriation was obligated to pay black lung program benefits. Of the remaining \$25.4 million, \$13 million was reprogramed 1/ to pay Federal employees' compensation benefits, \$2 million was transferred to cover ESA's salaries and expenses, and \$10.4 million was returned to the Treasury.

In fiscal year 1975, about \$7 million of the \$36 million appropriated was used for black lung benefit payments. Of the remaining funds, \$28 million was reprogramed 1/ to pay Federal employees' compensation benefits and \$1 million was returned to the Treasury.

The unobligated \$6.1 million of the fiscal year 1976 \$20 million appropriation for black lung benefits was carried over into the transitional budget period--July through September 1976.

1/Reprogramed with the permission of the Chairman, Subcommittee on Labor-HEW, House Committee on Appropriations.

DIGEST

4
LCN 100

PROGRAM TO PAY BLACK LUNG BENEFITS TO
COAL MINERS/AND THEIR SURVIVORS--
IMPROVEMENTS ARE NEEDED/ DEPARTMENTS
OF LABOR AND HEALTH, EDUCATION, AND /
WELFARE /

HRD-77-77

~~Basic 67015~~

7/11/77

70 As requested by the Chairman, Senate Committee on Human Resources, we reviewed Labor's black lung compensation program for coal miners and their survivors. We placed particular emphasis on reviewing Labor's actions in processing claims for miners and their survivors and Labor's success in achieving the intent of the 1972 amendments to the act.

We reported that:

INDENT / The Labor Department is not achieving the results contemplated by the act and its amendments. Its Office of Workers' Compensation Programs

--has been slow in adjudicating claims,

--has approved few claims,

--has paid out little in benefits, and

--has a large backlog in claims.

INDENT 2. Several management problems and other factors contributed to Labor's slow adjudication rate and increased claim backlogs, such as:

--Problems with inadequate development of individual claims by the Social Security Administration.

--Slow claims processing by Labor caused by piecemeal and cumbersome procedures.

--Delays in the informal Labor hearings of contested claims and formal hearings by the Office of Administrative Law Judges.

- Lack of effective assistance by Labor and the Social Security Administration to claimants filing benefit claims.
- Failure of Labor's national office top management to take effective action to alleviate the program's staffing problems.

INDENT

3 Also, more claimants could be given a chance to qualify for benefits if Labor revised its processing procedures to have X-rays reread for miners whose X-rays are initially interpreted as negative for pneumoconiosis.

We are recommending that Labor:

- Allocate adequate resources and staff to effectively manage its program.
- Review its claims-processing system to reduce delays between processing steps.
- Establish timeliness criteria for completing the informal hearing process.
- Determine the feasibility of having all X-rays reread so that claimants whose X-rays are interpreted as negative be given every opportunity to qualify for benefits.
- Establish an effective program to respond promptly to claimant inquiries on the status of their claims.

We are also recommending that HEW direct or require SSA offices to follow prescribed policies and procedures in processing Labor's black lung claims and establish a feedback procedure so that district office personnel will be made aware of deficiencies and problems in their performance.

We are recommending that the Congress amend the Federal Coal Mine Health and Safety Act to delete the requirements that living miners file within 3 years of the date of their last coal mine employment to be eligible under the 15-year rebuttable presumption and that widows of miners determined to have been totally disabled from pneumoconiosis file within 3 years of the date of the miner's death.

Also, the Congress should decide whether to amend the act to permit Labor to use the Interim Standards in adjudicating black lung claims.

INDEX

INCOME SECURITY

Ineffective administration of the black lung compensation and benefits program for coal miners and their survivors under the Federal Coal Mine Health and Safety Act of 1969.

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FACTORS AFFECTING THE PROCESSING
OF BLACK LUNG CLAIMS

Internal factors that have contributed to the delays in claims processing and the increased backlog of claims are:

- OWCP problems with inadequate development of individual claims by SSA district offices.
- Slow claims processing by OWCP caused by piecemeal and cumbersome procedures.
- Delays in the informal hearings of contested claims by OWCP and formal hearings by the Office of Administrative Law Judges.
- Lack of effective assistance by SSA and Labor to claimants filing benefit claims.
- Failure of Labor top management to take effective action to alleviate OWCP's staffing problems.

Labor officials believe that other factors contributing to the current adjudication rate and increased claims processing workload are the fact that (1) unlike other workers' compensation programs under which evidence is collected by employers or their representatives (for example, insurance companies), Labor has assumed responsibility for collecting virtually all of the claimant's evidence, (2) after initial determination and after claims are served upon responsible coal mine operators (who contest about 97 percent of the claims), they often undergo a second investigation including a repeat medical evaluation, and (3) the act does not provide a means for compensating differences in disputed cases, such as through partial disability benefits or lump sum settlements, and thus disputed claims must be formally litigated to resolve contested issues.

Regarding the number of claims approved, Labor officials said that the older miners, who have many years of service and are most likely to either have complicated CWP or be covered by the presumptions on the existence of disabling CWP based on their number of years in coal mine work, had filed with SSA under title IV, part B, of the act. Thus, the claims filed with Labor under title IV, part C, of the act were more often from miners less likely to have complicated CWP or the required number of years of work to come under the act's disability presumptive provisions. Moreover, Labor has not been

allowed to use the more liberal "Interim Standards"-- disability evaluation criteria which HEW adopted in early 1972. HEW established the Interim Standards for adjudicating claims under title IV, part B. They were established as a result of concerns expressed by the Congress when considering the Black Lung Benefits Act of 1972 that fewer than 50 percent of the claims were approved under the 1969 act.

Another factor affecting the number of claims approved by Labor is the legal provision requiring a miner to file for benefits within 3 years of last coal mine employment (for eligibility based on the rebuttable presumption) or the miner's survivors to file within 3 years after the miner's death.

In addition, more claimants would be given a chance to qualify for benefits if OWCP revised its procedures to have X-rays reread for miners whose initial X-rays are interpreted as negative for CWP.

CHAPTER 3

SSA DISTRICT OFFICES NOT ADEQUATELY

DEVELOPING LABOR BLACK LUNG CLAIMS

OWCP officials have estimated that about half of the claims received from SSA were improperly developed. Because of this problem, the OWCP staff had to do additional work to complete processing of the claims.

SSA and Labor have an agreement under which SSA's district offices initially receive claims and are responsible for

- explaining to the claimants the act's requirements and Labor's adjudication process;
- helping claimants to complete Labor application forms and answering their questions; and
- informing claimants of documentary evidence needed to support a claim, directing them to appropriate sources of such evidence, and sometimes helping them to obtain the required evidence.

Immediately after opening the claim, district offices must send a notification card to OWCP so it can schedule a medical diagnostic examination for the claimant.

District offices retain the claim files until required evidence is obtained or until 30 days have elapsed, at which time the claim file is sent to OWCP. When a file is sent without all required evidence, the file should include a memorandum noting what evidence is outstanding and when Labor can expect to receive it. The district office is responsible for securing outstanding evidence.

Labor has encountered problems in SSA's district offices' development of claims since the beginning of Labor's program in July 1973. These problems and attempts to remedy them were identified in a series of internal reviews by both OWCP and SSA in 1973, 1974, and 1975. However, many of the problems still exist.

OWCP AND SSA ANALYSES OF PROBLEMS
AT DISTRICT OFFICES

In October 1973, OWCP, using development quality control criteria established by SSA, reviewed a sample of 928 claim files submitted by SSA district offices. OWCP determined that about half had not been adequately developed. About 329 files did not have adequate evidence of the claimant's coal mine employment. This evidence is crucial to OWCP's adjudication process since it identifies the responsible mine operator for purposes of benefit payment and aids in determining the applicability of disability presumptions.

OWCP also found about 285 of the claims (1) lacked complete evidence for other matters such as number of dependents or (2) had application forms that were not completely filled out. For 187 of the reviewed cases, the SSA offices had not arranged for required medical diagnostic tests of the miners. At that time the SSA offices had this responsibility.

During 1974 officials of OWCP and SSA's Bureau of District Office Operations met regularly to discuss the district offices' problems and proposed solutions. These headquarters-level contacts, however, apparently did not remedy the problems.

In September 1974, SSA's Bureau of District Office Operations made its own study, which found similar problems at the district offices. The study noted that many applications contained unanswered questions, many cases did not have enough information to enable OWCP to contact medical sources, and many claims had incomplete information about coal mine employment. The Director of the Bureau said the problems were serious enough to require special attention by management. As one means of correcting the problems, the Director instructed that, beginning on December 1, 1974, each district office perform a supervisory review of black lung claims before sending them to OWCP.

Also, in September 1974, OWCP relieved the SSA district offices of the responsibility for scheduling appointments for claimants to have required diagnostic tests. Under the revised procedure, when a claim is filed the district office sends a card to OWCP notifying it of the claim. OWCP then arranges for the medical tests.

In December 1975, more than 2 years after the problem was first noted, the Associate Director of the Division of Coal Mine Workers' Compensation said that claims development by SSA district offices was still unsatisfactory.

GAO'S REVIEW AT SSA DISTRICT OFFICES

In late fiscal year 1975 and early fiscal year 1976, to review the effectiveness of the district offices' black lung claims processing, we visited 10 SSA district offices in four States and 3 regional offices having jurisdiction over the district offices. We noted inadequate claims development at 9 of the 10 district offices visited.

Our review of 52 claims showed that 33 were not adequately developed for one or more of the following reasons:

- Coal mine employment evidence was incomplete and pertinent evidence was not obtained (25 claims).
- Application forms were not complete and required data was missing (24 claims).
- The required supervisory review by the SSA district office was not made (3 claims).
- The district offices did not notify OWCP by card that the claim was opened so that OWCP could arrange the medical diagnostic tests (6 claims).

Most officials at these district offices said they had been advised of the SSA and OWCP studies that had noted generally poor claims processing. However, SSA transmitted the studies' results in memorandums which reported the results either generally or by State, but not by individual district office. District office officials felt that this method was unsatisfactory since they had no way of knowing if their own district's claims processing was deficient.

According to SSA headquarters officials, the split jurisdiction in black lung claims processing--with SSA responsible for claims-taking and Labor responsible for claims adjudication--has no doubt caused problems for all parties, including the black lung claimants. In addition, they said that other factors, such as the large workloads in other SSA programs and the problems encountered in obtaining evidence of the claimants' employment because many coal mines are no longer in business, have led to the shortcomings in processing black lung claims at the district offices.

PROPOSAL TO RELIEVE SSA OF ITS DUTIES

In a November 1975 letter to the SSA Commissioner, the Assistant Secretary for ESA proposed that SSA district

offices be relieved of their development responsibilities for black lung claims and that this work be done by OWCP. In March 1975 hearings on the Black Lung Benefits Reform Act of 1975 (House bill 8) before the Subcommittee on Labor Standards, House Committee on Education and Labor, the SSA Commissioner said that he would not object to having the black lung responsibility placed in Labor.

In December 1975 the House Committee on Education and Labor ordered the text of House bill 8, as amended, to be reported out as House bill 10760. On March 2, 1976, the House passed that bill.

In reporting out House bill 10760, the Senate Committee on Labor and Public Welfare 1/ added a provision that would have allowed Labor to establish necessary field offices to help claimants file and process claims or to make arrangements with other Federal agencies to use their field offices to handle the initial claims processing. However, the Congress adjourned before the Senate acted on the legislation.

House bill 4544 and Senate bill 1538, containing a provision similar to that in House bill 10760, as amended by the Senate Committee, were introduced in the 95th Congress. On March 31, 1977, the House Committee on Education and Labor reported 2/ favorably on House bill 4544.

On May 16, 1977, the Senate Committee on Human Resources reported 3/ favorably on Senate bill 1538. Both the Senate and House bills were pending in the Congress at June 15, 1977.

1/See S. Rept. No. 1254, 94th Cong., 2d Sess., 29 (1976).

2/H. Rept. No. 151, 95th Cong., 1st Sess. 49 (1977).

3/S. Rept. No. 209, 95th Cong., 1st Sess. 31 (1977).

CHAPTER 4

OWCP'S PROCESSING PROCEDURES

CONTRIBUTE SIGNIFICANTLY TO DELAYS

IN PROCESSING CLAIMS

In its initial determination to approve or deny a black lung claim, OWCP uses sequential, piecemeal processing procedures that cause claimants' files to be reviewed many times by the claims examiner with long delays between reviews. As a result, an inordinate amount of time passes before the processing is completed.

INITIAL PROCESSING

SSA district offices are to send OWCP's Division of Coal Mine Workers' Compensation the claim file 30 days after the miner or his survivor files the claim. DCMWC has several units that handle the claims processing. The Branch of Program Services handles the initial processing, the Medical Advisory Staff schedules and obtains results of medical diagnostic tests, and the Branch of Entitlement develops and reviews the claimant's medical and nonmedical evidence and makes the initial determination of approval or denial. (See app. III for the charts showing the movement of the claim through DCMWC.)

The claim files from SSA are received in DCMWC's Branch of Program Services, which does such processing as folder preparation and inserting information from the file into DCMWC's claims computer tracking system. In October 1975, OWCP said that on the average it took from 1 to 2 months for the Branch to process a claim and forward it to the Medical Advisory Staff. According to OWCP, by November 1976 this time had been reduced to about 3 weeks.

Scheduling and obtaining medical evidence

SSA district offices are to send a card to DCMWC when a miner files a claim. Upon receiving the card, the Medical Advisory Staff schedules the necessary medical diagnostic tests (X-rays, ventilatory or breathing test, and physical examination) for the miner with a medical facility or physician of the miner's choice or from an OWCP list of facilities and physicians near the miner's home. The latter are called OWCP medical providers. If the SSA district office

does not send the card, this processing step is not done until the Medical Advisory Staff receives the claim file from the Branch of Program Services.

The Medical Advisory Staff normally reviews the results of the medical tests to determine their validity. The staff does not, however, evaluate the medical evidence to determine whether the miner has CWP. This is done later by the claims examiner.

In October 1975 we reviewed 2,197 claims (about 33 percent of the claims handled by the Medical Advisory Staff at that time) to determine how long the claims had been there. Of the claims reviewed, about 30 percent had been in the unit for 4 months or more and about 42 percent had been there for at least 3 months.

Officials of the Medical Advisory Staff said that medical providers often do not send in test results promptly and that, because of the staff's heavy caseload, it is not able to promptly follow up with the medical providers to obtain the evidence.

REVIEW AND EVALUATION OF MEDICAL EVIDENCE

After completing its review, the Medical Advisory Staff submits the file to the Branch of Entitlement for processing by the claims examiners.

Claims examiner's initial review

When a claims examiner receives the claim, it should contain all medical and nonmedical evidence needed to make an initial approval or denial. However, the claims examiner does not completely review and adjudicate the claim at this time. Instead the examiner reviews the accuracy of the data and evidence, prepares a case control card, and places the claim in the regular caseload files. According to claims examiners, a complete review is not done at this time because they already have a large caseload and to do this for new claims would delay processing for claims already months old.

Months elapse from the time of this initial review until the claim is selected for further processing. For example, a claim from one of the miners in our sample was received by the claims examiner in October 1973. The examiner made his initial review at that time and filed it.

But, not until May 1974--7 months later--did the examiner select the claim for a detailed review.

Claims examiner's detailed review

When a file is selected for detailed review, the claims examiner's primary concern is to review the medical evidence--X-rays and results of the breathing tests and the physical examination--submitted by the medical providers to determine whether or not the evidence supports a finding of total disability from CWP.

Chest X-rays show whether the miner has CWP and, if so, whether it is "simple" or "complicated." Breathing tests show whether the miner has a breathing impairment and whether the impairment meets the standards established by HEW for determining total disability. A physical examination is used to obtain the doctor's opinion on the health of the applicant--whether he is totally disabled and whether the total disability is attributable to CWP.

For most black lung claims the key diagnostic test is the X-ray. HEW regulations require that X-rays be of suitable quality for proper classification of the disease and for their reading to conform to accepted medical standards. DCMWC officials believe that most medical providers, not being experienced radiologists, are not trained in interpreting X-rays for CWP. Therefore, DCMWC contracts with expert radiologists referred to as B-readers to reinterpret (reread) positive X-rays obtained from medical providers. Also, the claims examiner usually has breathing test results which meet total disability standards revalidated by the Medical Advisory Staff.

Rereading of X-rays

The practice of waiting until the claims examiner makes his detailed review of the claim before requesting an X-ray rereading adds several months to the claim processing time. For the 84 claims in our sample for which the X-rays were reread, the elapsed time from when examiners requested rereading to when the interpretation was received by DCMWC averaged 42 days.

In addition, in some cases several months elapsed between the time that the B-readers' interpretation was received and another processing step was taken. In one case, more than a year elapsed between when DCMWC received the miner's reread X-ray and when another processing action took place.

We believe that processing time could be shortened if, upon receiving X-rays from the medical providers, the Medical Advisory Staff sent all X-rays directly to the B-readers for rereading and then included the reading in the file sent to the claims examiner. By having the X-rays interpreted immediately by B-readers, the examiner could make a decision on medical evidence upon first receiving the claim. This would also reduce the number of times examiners would have to review claims.

Not all X-rays reread

DCMWC initially had all X-rays reread, but it discontinued this practice in November 1974. DCMWC now generally has X-rays reread only when the medical provider has interpreted the X-ray as being positive for CWP.

The present procedure seems to be biased against claimants whose X-rays are interpreted as negative by the medical providers. OWCP compared the negative X-ray interpretations by the medical providers with those of its B-readers for September 1973 through September 1975. According to OWCP's analysis, 502 (5 percent) of the 10,921 X-rays reread were upgraded by its rereaders from negative to either simple or complicated CWP or from simple to complicated CWP.

Miners whose X-rays have been interpreted either as negative or as showing the existence of simple CWP must also provide other medical and nonmedical evidence to be found totally disabled from CWP and thus be eligible for benefits. However, it would appear that additional miners would be given a chance to qualify for black lung benefits if OWCP returned to its original procedures and had all X-rays reread. For example, regarding one claim in our sample, the miner's X-ray had been interpreted by the medical provider as negative for CWP in September 1974. In July 1975, OWCP had a B-reader reread the X-ray; he interpreted it as positive. The miner's claim was later approved by Labor.

REVIEW OF NONMEDICAL EVIDENCE

The act requires that in addition to proof of the existence of CWP or another totally disabling respiratory disease, there must be proof that the disease results from coal mine employment. To prove this a claimant must provide evidence of the required number of years of coal mine employment. Also, the eligibility of dependents and survivors has to be determined through such evidence as marriage, death, birth, and divorce certificates.

The claimant's employment or nonmedical evidence is to be provided by the SSA district office. However, the claims examiner usually does not verify the adequacy of this evidence until the medical evidence has been validated--usually several months after the claim is filed. Consequently, claimants whose medical evidence is eventually found to meet eligibility criteria may encounter additional delays until coal mine employment and other data is found to be adequately supported. For example, it takes about 60 days for OWCP to receive a report of the employee's earnings from SSA.

Processing time might be shortened for those cases eventually approved if the claims examiner, at the time of initial review of the claims folder, evaluated the adequacy of the nonmedical evidence. If more nonmedical evidence is needed, action could be taken immediately, rather than waiting until the medical evidence has been obtained. Under the present procedures, medical evidence is usually not obtained until several months after the claim is filed when the examiner makes a detailed review.

Labor officials advised us that about 85 percent of the cases require no additional evidence beyond that required for an initial medical determination. If a procedure were adopted whereby medical evidence and nonmedical evidence are developed concurrently, the claims examiners' workload would be increased with minimal benefit gained in only 15 percent of the cases. Therefore, given the limited resources they will continue to obtain nonmedical evidence on an "as needed" basis.

Although we recognize Labor's position, we believe that at the time of the claims examiner's initial review, many claims contain sufficient medical evidence (that is, a positive X-ray) to make a preliminary determination that the claimant is medically qualified. For these claims, we believe that DCMWC should consider immediately initiating action to develop nonmedical evidence.

EXAMPLES OF DELAYS IN OWCP CLAIMS PROCESSING

Presented below are cases illustrating the delays in OWCP processing that occurred in claims we reviewed.

Case illustrating delays
in approving claims

In the following case 21 months passed from the date the miner filed his claim to the date OWCP approved the claim and began making benefit payments.

- July 1973, miner filed claim in SSA district office.
- August 1973, SSA submitted claim file to OWCP.
- September 1973, OWCP requested medical tests, X-ray, and breathing test from claimant.
- October 1973, OWCP received medical test results.
- June 1974, OWCP requested medical provider to submit X-ray film (8 months after X-rays taken).
- October 1974, claims examiner requested that X-rays be reread.
- October 1974, OWCP received reread of X-rays.
- October 1974, claims examiner requested miner to take physical examination.
- January 1975, OWCP received physical examination results, but they were not sufficient to establish disability. Miner asked to take blood gas test.
- February 1975, OWCP received blood gas test results which show miner has complicated CWP.
- March 1975, OWCP began developing nonmedical evidence.
- April 1975, OWCP evaluated coal mine employment and other nonmedical evidence.
- April 1975, OWCP approved claim and awarded benefit payment.

Most of this 21-month lag is attributable to OWCP's sequential claims-processing procedures.

We interviewed 44 claimants from Colorado who had complaints about DCMWC's handling of their black lung claims. The experience of one of the claimants illustrates the effect of slow claims processing.

The miner had originally filed his claim on July 2, 1973. On October 8, 1974--463 days (about 15 months) after the claim was filed--DCMWC approved it. After sending a notice of approval to the miner, DCMWC was told that he had died 2 days before his claim was approved. Subsequently, the miner's widow filed her own claim. DCMWC took an additional 152 days (about 5 months) to approve this claim.

Case illustrating delays
in denying claim

In the case below it took OWCP over 2 years to make an initial determination to deny the claim.

- July 1973, miner filed claim in SSA district office.
- August 1973, OWCP received X-ray.
- November 1973, SSA submitted claim file to OWCP.
- December 1973, OWCP requested miner to obtain breathing test.
- January 1974, OWCP received breathing test results.
- February 1974, OWCP claims examiner requested miner to have physical examination.
- April 1974, miner given physical examination by medical provider.
- June 1974, claims examiner requested more information from medical provider on physical examination.
- July 1974, OWCP received physical examination information requested from medical provider.
- July 1974, OWCP claims examiner discovered evidence of coal mine employment not developed by SSA and initiated action to develop the evidence.
- September 1974, OWCP received coal mine employment evidence.
- October 1974, claims examiner requested that breathing test be validated by Medical Advisory Staff.
- November 1974, claims examiner requested that miner take another physical examination since X-ray was negative and breathing tests positive.

- December 1974, results of physical and new X-ray received.
- January 1975, claims examiner requested that X-ray be reread.
- February 1975, claims examiner requested miner to supply additional evidence to verify coal mine employment.
- March 1975, OWCP received results of X-ray reread.
- June 1975, claims examiner again asked miner for coal mine employment evidence.
- January 1976, claims examiner made initial determination to deny claim because X-ray reread was negative and evidence of coal mine employment was inadequate.
- January 1976, miner notified OWCP he would supply additional evidence to qualify.
- May 1976, OWCP asked miner to supply additional evidence he promised.

The case above illustrates such deficiencies in claims processing as:

- Untimely claim delivery by SSA district office--3 months required rather than the proposed 1 month.
- Poor claim development by SSA district office--breathing test not scheduled before transmittal of claim to OWCP and coal mine employment information not developed.
- Sequential claim development by OWCP and no thorough review when claim initially received--breathing test validation and X-ray rereading performed at different times, and complete medical examination required after initial medical tests were scheduled.
- Long delay before OWCP discovered that coal mine employment information was inadequate.

DELAYS IN INITIATING BENEFIT PAYMENTS

After initially approving a claim and identifying the responsible coal mine operator, DCMWC sends a letter to the operator outlining its liability for the benefit payments. If the operator contests the liability, DCMWC begins interim benefit payments to the claimant. DCMWC said it has adopted this procedure so claimants needing benefits will not have to await the outcome of a lengthy legal process.

At the time of our review, DCMWC began interim payments when it responded to the operator's notice to contest the claim. A DCMWC official said payments usually began within 30 days after the operator was notified. Our review disclosed, however, that the time lag in responding and beginning payment was much greater than 30 days. In 15 of our sample of 53 approved claims, the responsible mine operator identified by Labor contested the claim. For these 15 claims, the time lag from claim approval to date interim benefit payments started averaged 80 days. The time lag ranged from 15 to 173 days.

In September 1975 we discussed the interim payment procedures with DCMWC officials. After our discussion DCMWC issued a policy directive that interim payments should begin immediately after receiving an operator's notice that it will contest the liability for benefits. This revised procedure should result in benefit payments being made shortly after DCMWC's approval of the claim.

CHAPTER 5

DELAYS IN CLAIMS APPEALS PROCESS

Under the act, the claimant or a responsible coal mine operator has the right to contest Labor's decision on a claim. Labor attempts to resolve disputes through an informal conference with the parties concerned. If any issues cannot be resolved at the informal conference, any of the interested parties may request a formal hearing before a hearing officer in Labor's Office of Administrative Law Judges.

Any of the interested parties may also appeal the hearing officer's decision to the Benefits Review Board. The act provides further that the Board's decision can be appealed to a U.S. circuit court of appeals.

Our review of 18 contested claims showed that DCMWC does not always give claims prompt attention during the informal phase of hearing disputed issues. DCMWC usually took 7 months or longer to complete the informal review. OALJ takes an average of 3 months to complete a formal hearing, and the Benefits Review Board takes an average of 130 days to decide an appeal case.

DELAYS BY OWCP IN COMPLETING THE INFORMAL HEARING PROCESS

If the medical or nonmedical findings do not support the claim of total disability due to CWP, DCMWC sends a letter to the claimant stating (1) why the claim was denied, (2) that the denial is not a final determination, and (3) that the claimant may submit additional evidence to support the claim. The claimant is requested to provide, within 10 days, any evidence that may support the claim or notification of an intent to submit such evidence. If no additional evidence is provided, a final letter is sent to the claimant denying the claim.

For claims initially approved, DCMWC notifies the claimant of the benefit payments to be received. It also notifies the responsible coal mine operator, if identified, of its liability for benefit payments and its right to contest the liability. According to DCMWC, about 97 percent of the operators contest their liabilities.

The act does not provide a means for compromising differences in disputed cases informally, such as payment of partial disability benefits or lump sum settlements. However, Labor's regulations state that informal conferences are to be scheduled with the claimant and/or the operator to expedite the handling of contested cases and to avoid the need for a formal hearing. These conferences are conducted by a claims examiner who is a Deputy Commissioner. No more than 20 days after the date of the conference, the Deputy Commissioner must prepare a memorandum on the conference containing recommendations for resolving any disputed issues.

A copy of the memorandum is sent to the interested parties, who have 10 days to agree or disagree in writing. If any party rejects a recommendation or requests a formal hearing, the Deputy Commissioner forwards the case to OALJ. Labor's regulations do not specify how many days should lapse between the date of the informal conference and the date of case referral to OALJ.

DCMWC referred 169 cases to OALJ for formal hearings in fiscal year 1975 and 879 cases in fiscal year 1976. We reviewed 18 of the cases referred in 1975 on which informal conferences had been held and found that:

- 1 to 9 months passed between the time DCMWC made its initial determination and the time it scheduled the informal conference.
- 3 days to 6 weeks passed after the conference before DCMWC prepared and sent the required memorandum on the conference to the interested parties.
- 6 to 10 days generally passed before the coal mine operator or the claimant requested the formal hearing after receiving the memorandum.
- 1 to 16 weeks generally passed before DCMWC referred the case to OALJ after receiving the request for formal hearing.

It took 7 months or more for most of the 18 cases to go through DCMWC's informal review process. One case took 14 months. The longest time lag in processing generally occurred from the time DCMWC made the initial determination to approve or deny the claim until it held the informal conference. In 11 of the 18 cases, this phase took from 5 to 9 months.

According to a DCMWC official, senior claims examiners were originally supposed to conduct informal conferences. However, because of staffing problems the examiners have had to assume claims-processing duties; this has delayed scheduling and holding the informal conferences.

Labor officials said that, although informal conferences have served to narrow issues in contested claims, they have not been successful in resolving disputes, largely because the act does not provide any means for compromising differences between parties.

TIME FRAMES FOR FORMAL HEARINGS BY OALJ

In fiscal year 1975, OALJ took an average of about 2 months to complete a case. In fiscal year 1976 the average time increased to about 3 months.

After receiving a case, OALJ assigns it to a hearing officer, who establishes a date and place for formal hearings in the claimant's area and notifies the parties in the case. After concluding the formal hearings, the hearing officer returns to Washington, D.C., to write a formal decision. Copies of the decision are given to the Deputy Commissioner, who sends copies to the interested parties.

OALJ received the first black lung appeal in fiscal year 1975; through June 30, 1976, it had received 1,048 cases. As shown below, dispositions have been made on 347 cases.

| | <u>Fiscal year</u> | |
|-------------------------------------|--------------------|-------------|
| | <u>1975</u> | <u>1976</u> |
| Carryover from previous fiscal year | 0 | 114 |
| New cases referred | <u>169</u> | <u>879</u> |
| Total caseload | 169 | 993 |
| Final dispositions | <u>55</u> | <u>292</u> |
| Cases pending | <u>114</u> | <u>701</u> |

According to OALJ national statistics, the average time from the date a black lung case was referred to OALJ to the date of a final OALJ decision was 54 days in fiscal year 1975 and 89 days in fiscal year 1976. OALJ had 8 hearing officers during most of fiscal year 1975 and 16 during fiscal year 1976 working on black lung cases.

OALJ's Chief Judge explained that the increased backlog in 1976 resulted from (1) delays in completing appeals and (2) suspending work on appeals from April 8, 1976, through August 23, 1976, pending resolution of a Benefits Review Board decision prohibiting the use of hearing officers on black lung cases. (See p. 30.)

The Chief Judge added that much of the backlog consists of 449 widows claims which may be barred by the statute of limitations. He said OALJ is awaiting motions for summary judgment from the Office of the Solicitor and that litigating these cases on the merits at this time would be unjustified in view of regulations providing for dismissal of untimely claims on motion (before issuance of the regulation, the Benefits Review Board had ruled that hearings were required in all such cases). Thus, hearings might put all parties to needless expense. He said it is hoped that test cases involving dismissal of claims on motion now pending before the Board will resolve this question soon.

The Chief Judge attributed delays in completing cases to requests for postponement by interested parties, including attorneys for claimants; unavailability of witnesses; requests for posthearing delays to take such actions as filing briefs and taking depositions; and loss of experienced hearing officers to other agencies.

He also said that many cases referred to OALJ are not in a proper posture for litigation in that investigations have not been completed and issues have not been defined. Thus, the hearing becomes a vehicle for investigation. According to him, hearings are often interrupted to permit time for further investigation.

Another factor the Chief Judge cited was the act's requirement that hearings be held as close as possible to the claimants' homes. He said OALJ usually waits until enough cases arise in an area to justify the expense of sending a hearing officer to hold hearings. This causes delays in scheduling hearings.

APPEALS TO BENEFITS REVIEW BOARD

If either of the interested parties is not satisfied with the OALJ decision, the case can be appealed to the Benefits Review Board. This Board consists of a chairperson and two other members appointed by the Secretary of Labor. The current Board, appointed April 1974, is composed of two attorneys and a workers' compensation specialist from private industry.

The Board received its first black lung case in May 1975; as of June 30, 1976, it had received 123 cases. By June 30, 1976, it had acted on 57 cases and had a backlog of 66 cases. The table below shows the status of those decisions at that time.

| <u>Decisions</u> | <u>Number</u> |
|------------------|---------------|
| Remanded | 48 |
| Affirmed | 4 |
| Dismissed | 4 |
| Reversed | <u>1</u> |
| | <u>57</u> |

According to a Board official, it took an average of 130 days to decide appeal cases. The range was from 90 to 180 days.

Some of the 48 remanded cases were for action consistent with the Board ruling in the Fields case discussed below.

The Board chairperson stated that since the Board is new, there are no legal precedents to aid in processing the appeals. The official said that the Board has been severely hampered by the limited number of professionals (nine attorneys) it has to deal with the large volume of appeals under the black lung program and under the Longshoremen's and Harbor Workers' Compensation Act. In addition, most of the attorneys are new and unfamiliar with the acts involved.

RULING BY BOARD TEMPORARILY
PROHIBITED USE OF HEARING OFFICERS

OALJ uses hearing officers to conduct formal hearings on appealed black lung claims. However, OALJ does not require that its hearing officers meet the requirements for an administrative law judge (ALJ) under the Administrative Procedure Act (5 U.S.C. 3105). OALJ's practice is based on a Civil Service Commission ruling that the Federal Coal Mine Health and Safety Act does not require the use of ALJs qualified under 5 U.S.C. 3105 to conduct formal hearings on black lung claims and that the absence of a statutory mandate precludes the use of such appointees.

In November 1975 a coal mine operator appealed a ruling by a hearing officer awarding benefits to a miner on

the basis that the act requires that a formal hearing be conducted by a qualified ALJ. On February 26, 1976, the Board ruled 1/ that formal hearings must be conducted by a qualified ALJ.

For Labor the Board's decision presented a difficult and costly dilemma. Since the decision, virtually all coal mine operators, as well as some claimants, have lodged objections to the hearing officers' qualifications, thus slowing the appeals process.

On March 23, 1976, the Secretary of Labor wrote to the Chairman of the Civil Service Commission that:

"* * * During the period pending a decision by the courts of appeals the Department will be responsible for the payment of all black lung benefits (30 U.S.C. 934) which are properly the obligation of individual coal operators. This Government obligation is anticipated to be approximately \$20,000,000, some of which, and the interest on which, the Department will never be able to recoup from a coal operator. In addition many coal operators will refuse to go to a hearing conducted by a hearing officer and none, in light of Fields will pay benefits to a claimant when ordered to do so by a hearing officer. The \$20,000,000 cost described above reflects the latter difficulty. So long as the Fields decision is in force and so long as no duly qualified administrative law judges are permitted to conduct black lung hearings it will be impossible for the Department to effectively administer the Black Lung Benefits Program. If this difficulty is not soon addressed by the Commission it may be years before the Department will be able to pass on the cost of black lung benefits to the coal industry."

In his letter, the Secretary suggested that the Commission allow Labor to convert its 16 hearing officers to ALJs. On July 6, 1976, the Commission responded to the Secretary, stating that, based on its review of pertinent

1/James E. Fields v. A.K.P. Coal Co. Inc. and Old Republic Insurance Co., B.R.B. No. 75-155 B.L.A.

statutes and court decisions, it believes that the Board's decision on the Fields case is in error. It reiterated its 1974 decision that there is no statutory requirement that black lung cases be adjudicated by qualified ALJs.

The Commission also said that under its regulations an ALJ position is defined as one in which any of the duties include those which require the appointment of an ALJ under 5 U.S.C. 3105. Since the act governing the black lung program does not require the appointment of an ALJ, the Commission said it cannot comply with Labor's request to convert its hearing officer positions to ALJ positions.

In the summer of 1976, Labor appealed the Benefits Review Board's decision on the Fields case to the U.S. circuit court of appeals. It also sought a joint congressional resolution to clarify the matter pending outcome of the appeals.

On October 1, 1976, the Senate and House passed a joint resolution which provides that qualified individuals appointed by the Secretary of Labor may hear and determine black lung cases. The term "qualified individuals" includes hearing officers regardless of whether they are appointed under 5 U.S.C. 3105. On October 15, 1976, the joint resolution was approved and became Public Law 94-504.

CHAPTER 6

CLAIMANTS' ASSISTANCE PROGRAM

Labor and HEW regulations implementing the Federal Coal Mine Health and Safety Act state that claimants shall be provided with assistance and information in filing claims and understanding the act's requirements. However, many black lung claimants were not given adequate assistance during their claims processing and were not provided information on eligibility requirements for benefits. In addition, many claimants were frustrated in attempting to find out about the status of their claims.

ASSISTING CLAIMANTS IN FILING CLAIMS

Although Labor is responsible for processing black lung claims under title IV, part C, of the act, claimants are contacted through SSA personnel at district offices. SSA's procedures (20 C.F.R. 725.123), as well as its agreement with Labor, state that the district offices shall assist claimants in obtaining whatever evidence may be necessary to establish eligibility for benefits. This assistance is to include explaining the requirements of the act, OWCP's claims adjudication process, and claimants' rights of appeal under the act and answering any questions.

OWCP prepared pamphlets on the black lung program which contain detailed information on why, how, and where claims are to be filed. OWCP said that copies of the pamphlets were sent to all SSA offices with instructions to distribute them to claimants. Yet, SSA district offices were not giving claimants adequate assistance in filing claims or adequate information on eligibility requirements. For example, 9 of the 10 district offices we visited were not usually providing OWCP's black lung pamphlets to the claimants. Four offices did not even stock the pamphlets.

Claimants have often complained about the lack of adequate assistance. For example, 11 of the 44 claimants we interviewed in Colorado complained that they had not been given information on their rights under the act and on how to appeal OWCP's denial of their claims.

The OWCP task force interim report on the black lung program issued in July 1976 also discussed this problem. The report said Labor was continuously receiving many complaints from the public that SSA district offices either were uncooperative or provided inaccurate information about

the program. The report said individuals complained that the SSA district offices had refused to help them file claims, gave erroneous information about eligibility, and generally were uncooperative.

NO COMMUNICATION ON STATUS OF CLAIMS

Under OWCP's arrangements with SSA, once a district office sends a claimant's file to OWCP the office drops out of the adjudication process and gets no feedback on the further processing of the claim.

Nevertheless, claimants still return to the SSA district offices to seek information on their claims. But, because the district offices lack the information, they are unable to advise claimants on the status of their claims. Claimants therefore generally have no knowledge about their claims until OWCP makes an initial determination to approve or deny the claim or until OWCP asks them to provide evidence it needs to evaluate their claims. As discussed in chapter 4, many months may pass before OWCP would contact the claimant.

A major concern of many claimants interviewed in Colorado was the fact that they received no communication from OWCP about the status of their claims for long periods of time. Our review of the 44 claimants' files showed that their complaints were valid. For example, a widow filed a claim with SSA on January 6, 1974, and OWCP received it on January 29. On December 2, 1974, she asked OWCP about the claim's status. She made a second inquiry in May 1975. OWCP did not respond to either inquiry. OWCP did not contact the claimant until August 15, 1975, when she was requested to submit medical evidence to show that her husband died of CWP.

DCMWC officials said that standard operating procedure is not to answer inquiries on claims because of the added work involved.

CHAPTER 7

LACK OF EFFECTIVE ACTION BY LABOR

TO ALLEVIATE STAFFING PROBLEMS

A factor apparently contributing to the problems we noted is that DCMWC has not had sufficient staff to handle black lung cases. These problems and the lack of sufficient staff were noted early in the program by Labor's internal reviews. However, no effective action was taken to correct the problems.

The Employment Standards Administration in Labor's national office is responsible for supervising and monitoring DCMWC's administration of the black lung program. These responsibilities include providing direction and guidance, establishing and issuing regulations and policies to implement the act, and providing DCMWC with the necessary resources to carry out the program efficiently and effectively.

REQUESTS FOR OWCP STAFFING

The table below shows OWCP staff requests for the black lung program for fiscal years 1973-77 along with the positions approved by Labor and the Office of Management and Budget (OMB), those authorized by the Congress, and those allocated to DCMWC by Labor.

| <u>Fiscal year</u> | <u>Requested by OWCP/ESA</u> | <u>Approved by Labor</u> | <u>Approved by OMB</u> | <u>Approved by the Congress</u> | <u>Positions allocated to DCMWC by Labor (note a)</u> |
|--------------------|------------------------------|--------------------------|------------------------|---------------------------------|---|
| 1973 | 200 | 95 | 95 | 95 | 91 |
| 1974 | 215 | <u>b/327</u> | 154 | 154 | 145 |
| 1975 | 145 | 145 | 145 | 145 | 145 |
| 1976 | 145 | 145 | 145 | 175 | 175 |
| 1977 | 165 | 165 | 165 | 165 | 165 |

a/Table excludes temporary positions.

b/Includes positions for field staff to develop claims.

For fiscal year 1973, OWCP/ESA requested 200 positions to plan Labor's assumption of responsibility for the black lung program. Labor reduced the request to 95, and this request was approved by OMB and by the Congress in the second supplemental appropriation for fiscal year 1973. Labor made

this reduction because of uncertainty about the pending legislative amendments of 1972 and the date the legislation would be enacted.

Fiscal year 1974

In August 1972, OWCP/ESA estimated that DCMWC would need 215 staff positions for the black lung program for fiscal year 1974. Labor, in October 1972, requested its Special Projects Staff to establish Department-wide needs for the black lung program. The Special Projects Staff projected a need in Labor for 511 positions--333 for OWCP/ESA and 178 for OALJ, the Office of the Solicitor, and other Department-level offices involved with the program. The 333 positions allocated to OWCP/ESA included positions for a field staff to handle initial development of claims at the local level.

Labor included 327 of the 333 staff positions projected for OWCP/ESA by the Special Projects Staff in the fiscal year 1974 budget estimates submitted to OMB. However, OMB authorized only 219 positions. Of these 219 positions, Labor assigned 65 to OALJ, the Solicitor's Office, and other support units and 154 to DCMWC.

The Congress approved the 154 positions for OWCP for fiscal year 1974. During the year, however, the Director of OWCP reduced DCMWC's authorized staff from 154 to 145. The Director transferred the nine positions to the longshoremen's program, which was experiencing similar problems in claims backlog. 1/

OMB and Labor officials said that OWCP's initial staffing request was reduced for three reasons. First, OMB believed that SSA had been given enough staff to handle the processing responsibilities for Labor's black lung claims as well as its own. Thus, OMB deleted the request for a field staff and instructed Labor to use SSA field offices. Second, since Labor's program would be new, there was uncertainty about how many claims would be filed. OMB wanted Labor to gain experience with the program to determine how much staff would be needed. And third, Labor estimated that claims filings for the pro-

1/See our report to the Senate Committee on Labor and Public Welfare entitled "Improvements Needed in Administration of Benefits Program for Injured Workers Under the Longshoremen's and Harbor Workers' Compensation Act" (MWD-76-56, Jan. 12, 1976).

gram's later years would decline considerably. OMB was reluctant to approve a large permanent staff which would not be needed later.

Fiscal year 1975

Labor did not request additional positions for fiscal year 1975. In its 1975 budget, Labor stated:

"The Black Lung Program expects to receive 38,000 claims in FY 1975 and should be able to process these in a timely and efficient manner with the resources available."

The Assistant Secretary for ESA also testified in March 1974 at the fiscal year 1975 House appropriation hearings that ESA was not experiencing any problems in operating its black lung program and that it was able to process claims in a timely and efficient manner with the staff available. Thus, the Congress approved the 145 staff positions requested for fiscal year 1975.

Contrary to this testimony, Labor's Office of Internal Audit had reported that administrative weaknesses and problems did exist in DCMWC's claim processing system and that additional staff probably was needed. In their report, the internal auditors noted backlogs in clerical and payment services, as well as claim processing, and concluded that DCMWC's staff was probably too small to handle its workload. The Assistant Secretary for ESA agreed that staffing levels should be assessed.

During fiscal year 1975, other internal reviews and management studies were made of the black lung program problems. A management study made by ESA's Division of Management Systems and Organization concluded in early 1975 that DCMWC had major workload and productivity problems. According to the study report, the trend of receiving claims at three times the rate at which they were adjudicated was causing the backlog to mount at a rate exceeding 1,700 claims per month. The report concluded that the situation clearly was bad and was getting worse. It estimated that DCMWC would need 50 additional staff positions just to meet its incoming workload.

In January 1975, OWCP completed its own study and issued a report to the Assistant Secretary for ESA that again detailed DCMWC's internal weaknesses and problems in claims pro-

cessing. This study also commented on the inadequate resources provided. It cited the fact that DCMWC had received only one-half the resources estimated necessary to operate the program. The report concluded that:

"While we are making every effort to maximize the current DCMWC resources and streamline its operations, it appears inevitable that additional resources will be made available to keep the program afloat."

The only action by Labor during fiscal year 1975 was to grant OWCP authority to hire nine temporary employees and to authorize some overtime to help reduce the backlog. According to a DCMWC official, the claims backlog was not affected much by these actions.

Fiscal year 1976

Labor again did not request any additional positions for fiscal year 1976. According to Labor officials, the black lung workload was declining and the benefits program under the act would terminate by 1981. In its budget submission to the Congress, Labor stated:

"In FY 1976, some 15,000 Black Lung claims are anticipated. At present, each examiner has a backlog of almost 1,500 pending claims. While this is more than double the normal load in a program of this nature, many of the claims on hand are those awaiting adjudication upon settlement of court cases. The reduction in claims inflow will allow the examiners to catch up on their current work and provide timely service to the new claims filed in FY 1976. While all problems will not be resolved by the end of FY 1976, it is likely that by the end of the year, nearly all claims can be processed on a timely basis."

The Congress approved the 145 staff positions requested for fiscal year 1976.

In July 1975 the Assistant Secretary for ESA was again advised of the internal problems caused by inadequate resource allocated to the black lung program in a report prepared by the Associate Director of DCMWC. The report stated that

"As we have discussed on enumerable occasions staff resources continues to be the single most

significant factor causing processing delays and the concomitant congressional interest in the Program * * *.

"Presently each of the 36 claims examiners carries an average caseload of 1,300 claims with the more senior examiners carrying up to 2,000 claims. An optimum caseload per examiner in workers' compensation programs is 500 cases per year. No formal adjustments have been made in resource levels to absorb the additional workloads other than some periods of overtime and the hiring of nine temporary clerks. * * *"

The report further stated that 82 additional temporary staff positions would be needed for from 1 year to 18 months to reduce the workload.

In July 1975 the Assistant Secretary for ESA asked the Secretary of Labor to seek authority from OMB to hire 100 temporary employees for up to 18 months. The Secretary, in October 1975, proposed to OMB that 60 full-time, permanent positions authorized for SSA be shifted to ESA. In response to this proposal, OMB advised Labor to negotiate the matter with SSA. The two agencies entered into negotiations, but the matter could not be resolved. Subsequently, Labor made funds from its appropriations available to DCMWC to hire 18 temporary employees in late summer 1975 and another 22 in January 1976. By the end of fiscal year 1976, DCMWC had received authority to hire 79 temporary employees.

The Congress provides
additional permanent staff

We noted that in the Second Supplemental Appropriations Act, 1976, enacted June 1, 1976, the Congress authorized 30 new permanent positions for the black lung benefits program. Labor had not requested these positions. This increased the total number of permanent positions to 175.

The Congress added the new positions because of concern that personnel deficiencies were a major cause of the large case backlog. The House report 1/ on the appropriations bill stated that:

1/House Rept. No. 1027, 94th Cong., 2d Sess., 46 (1976).

"* * * The Surveys and Investigations Staff of the Committee recently completed a study of the processing of black lung claims and concluded that, among other things, personnel deficiencies were a major cause of the large case backlog in the program (currently about 48,000 cases). The Committee is very concerned about the inadequacy of claims processing in the program and hopes that these new positions will help to improve the situation."

Fiscal year 1977

Labor requested no increase in staff for the black lung program in fiscal year 1977. In fact, Labor called for a reduction in permanent positions from 175 to 165.

In its budget submission to the Congress, Labor said it anticipated that 6,000 new black lung claims would be received in fiscal year 1977 and that the backlog would decline to between 15,000 and 20,000 claims by the end of the fiscal year. Labor stated that, with the projected decrease in claim filings and decline in backlog, only 165 permanent black lung positions would be needed. Labor proposed to allocate 10 positions to the longshoremen's program.

The Congress approved the 165 positions. In addition, Labor received approval to hire 50 temporary employees during fiscal year 1977.

FUTURE STAFF NEEDS

The July 1976 OWCP task force interim report discussed the continuing staffing problem. According to the report, there was little question that not acquiring additional staff contributed to the program's problems. The report said that the appropriate level of resources and staffing for the program had not been determined. It indicated that ESA needed to take action to resolve its resource problems.

In a November 1976 report, Labor's Office of Organization and Manpower Utilization recommended a total of 218 permanent positions for DCMWC. This was felt sufficient to process on-going workloads and preclude further buildup of the backlog.

The report stated that the proposed staffing level and composition was based on (1) improved systems, procedures, and distribution of tasks, (2) an improved organizational structure, and (3) an improved balance of skills, with which to efficiently process claims within an average of 180 days.

The report had concluded that OWCP's fragmented and piecemeal claims processing was contributing to the slow processing and the increase in the backlog.

As of May 18, 1977, ESA said efforts were underway to develop detailed plans for organizational changes, procedural changes, and additional staffing in line with the recommendations in the two reports.

CHAPTER 8

FACTORS AFFECTING THE DENIAL OR APPROVAL OF LABOR BLACK LUNG CLAIMS

According to Labor officials, the low rate of approval of black lung claims is affected by several factors beyond their control. For instance, more of the miners who either do not have complicated CWP or could not meet other eligibility requirements have filed with Labor, and lower dust levels in the coal mines since 1969 have decreased the incidence of CWP. Also, OWCP has had to use more stringent interim medical criteria in adjudicating claims than SSA.

Also, the 3-year filing requirements for certain miners and widows caused some otherwise eligible claimants to be denied benefits because of late filings.

RESIDUAL CLAIMANT POPULATION

OWCP believes that during 1973, the last year of SSA's program, coal mine operators urged miners to file claims under the SSA program because there was no operator liability for benefits. As a result, older miners, who had worked many years in the mines and who were thus more likely to have either complicated CWP or simple CWP and sufficient coal mine employment to meet the act's 15-year disability presumption provisions, had filed with SSA.

An OWCP official said that Labor got residual population claims--from miners who either (1) do not have complicated CWP or have simple CWP but cannot meet other eligibility requirements such as years of mine work and/or the standards for breathing capability that Labor must use or (2) may not have black lung at all but sign up because they may not understand the law's eligibility requirements.

According to Labor officials, the major difference between claimants under the two programs is that SSA's claimants, particularly those who filed in the earliest years of the program, have tended to be more severely disabled than Labor's claimants. Labor added that practically all of its claimants are unable to use the 15-year disability presumption and must establish the existence of the disease by X-ray or other means. Labor said this often requires claimants to undergo a number of different medical tests and evaluations, which adds to the time required to complete action on the cases.

Neither OWCP nor ESA officials were able to estimate how many claims were from miners who had neither the required number of years in the mine nor the disease.

LOWER DUST LEVELS IN COAL MINES

Title II of the 1969 act requires coal mine operators to (1) reduce dust levels to meet Federal standards and (2) provide employees with periodic X-ray examinations so that CWP can be detected early and miners can be afforded adequate protection.

ESA, in March 1974 House hearings on its fiscal year 1975 appropriations, cited the act's dust standard requirements as a reason for the decline in claims approval. The Assistant Secretary for ESA stated:

"* * * It would seem that these mandatory obligations [1969 act] on the part of the coal operators are beginning to show results. Liability for benefits also serves as an incentive for the coal operator to lower dust levels. The suppression of dust levels in the mines is apparently lowering the incidence of the disease and periodic X-ray examinations have reduced its severity. Large number of Department of Labor claims are from individuals with only mild nondisabling stages of the disease who do not meet the standards of total disability. * * *"

Also, the Associate Director of DCMWC said that ESA assumes that dust level control will continue to improve, resulting in a lower incidence of the disease.

MORE STRINGENT MEDICAL STANDARDS USED ON LABOR CLAIMS

OWCP is required to use more stringent medical criteria in adjudicating black lung claims than SSA used under its program. OWCP has estimated that its rate of claim approval would increase by about 7 percent if it used the SSA medical standards.

In considering the Black Lung Benefits Act of 1972, the Congress expressed concern that under the 1969 act less than 50 percent of the black lung claims had been approved. Thus, its intent under the 1972 amendments was to liberalize and expedite eligibility determinations for claimants. A Senate

Committee on Labor and Public Welfare report 1/ directed the Secretary of HEW to establish more liberal disability evaluation criteria. The report stated:

"Accordingly, the Committee expects the Secretary to adopt such interim evidentiary rules and disability evaluation criteria as will permit prompt and vigorous processing of the large backlog of claims consistent with the language and intent of these amendments. Such interim rules and criteria shall give full consideration to the combined employment handicap of disease and age and provide for the adjudication of claims on the basis of medical evidence other than breathing tests when it is not feasible or practicable to provide physical performance tests of the type described in the above cited section from the Secretary's annual report."

In 1972, HEW adopted interim criteria for determining eligibility for black lung benefits in its revision of the regulations to implement the 1972 amendments. These regulations, which became known as the Interim Standards, provide for a more liberal basis of entitlement than the permanent criteria in the following ways:

--They provide a rebuttable presumption for all miners, regardless of age, that simple CWP identified by X-ray, biopsy, or autopsy is totally disabling, whereas under the permanent criteria only complicated CWP is presumed to be totally disabling.

--They apply more liberalized values of the breathing tests to all miners regardless of age.

Based on its interpretation of the 1972 amendments, when HEW published the Interim Standards, it restricted their use to claims filed under SSA's part B black lung program. HEW required OWCP to use the more restrictive permanent standards for its claims.

Labor disagrees with HEW's position, contending that using two sets of standards for the two programs is inequitable

1/S. Rept. No. 743, 92d Cong., 2d Sess., 18 (1972).

and has no basis in law. In a June 26, 1974, letter to HEW's General Counsel, the Chairman of the House Committee on Education and Labor said that the Committee completely agreed with Labor's position and that it was anxious for HEW to resolve the matter. In late 1974, after a joint review by HEW and Labor, HEW changed its position and agreed to extend the Interim Standards to Labor's black lung claims.

In May 1975 Labor requested permission from OMB to adopt the Interim Standards. OMB's permission is necessary because use of these standards will result in additional benefit outlays, which Labor estimates will amount to \$129 million through 1981. According to an OMB official, increased costs were a factor in denying Labor permission to use the Interim Standards.

A 1974 OWCP study revealed that if OWCP were permitted to use the Interim Standards, its black lung claim approval rate would increase by about 7 percent. Also, the Associate Director of DCMWC said that using these standards would improve DCMWC's ability to process claims--and thus help reduce the backlog--because claims examiners could spend less time developing other medical evidence when claimants fail to meet the more restrictive breathing test standards now in use.

GAO REVIEW OF SSA APPLICATION OF INTERIM STANDARDS

At the request of the Subcommittee on Intergovernmental Relations and Human Resources, House Committee on Government Operations, we reviewed and commented on 1/ the use of the Interim Standards on black lung claims filed with SSA. We were asked to look into an allegation that claimants who were not medically or physically disabled due to black lung have been found eligible by SSA and awarded benefits under the Interim Standards. In citing various practices through which black lung benefits have been improperly awarded, the allegation inferred that SSA awards such benefits without regard to age. We reported our belief that SSA ignored the varying effect of age differences in applying the Interim Standards to all miners.

1/See our report to the Subcommittee entitled "Examination of Allegations Concerning Administration of the Black Lung Benefits Program" (MWD-76-72, Jan. 14, 1976).

Senate Report No. 92-743, while indicating that the interim criteria were expected to contain liberalized provisions for adjudicating claims of older miners suffering from black lung, regardless of the degree of functional impairment, refers to certain distinctions in the case of a younger miner. It states that:

"On the other hand, a younger miner might not be so severely handicapped unless the disease had produced sufficient functional limitation that he is unable to meet the work demands of coal mine employment as determined by medical evaluation."

The Interim Standards presume that simple CWP is totally disabling without distinguishing between older and younger miners. The standards provide, however, that the presumption of total disability due to simple CWP may be rebutted if

"* * * other evidence, including physical performance tests (where such tests are available and their administration is not contraindicated), establish that the individual is able to do his usual coal mine work or comparable and gainful work."

According to SSA officials, however, SSA has not routinely sought additional evidence to confirm disability. SSA applied the presumption of total disability due to simple CWP to all miners based on the assumption that a miner of any age with any degree of CWP would find it impossible to secure coal mine or comparable employment because of the potential liability of the employer and the general unavailability of comparable work in areas where most applicants reside.

We concluded that HEW's application of the Interim Standards did not recognize the need to substantiate by medical evaluation a functional disability inhibiting a younger miner from being able to work.

SSA officials agreed that if physical performance test results were made part of the claim file, they could be used to rebut an allowance under the Interim Standards. The officials stated, however, that the extremely limited resources for doing physical performance tests dictated against the routine development of such evidence. They said that the few facilities with the skills necessary to perform the testing were willing to do only one or two tests per week and were often not willing or able to become involved on a full-time basis.

Also according to SSA officials, most of these facilities are located in urban centers removed from coal mine areas or in States without many coal miners. Thus because these limitations existed and all claimants could not be tested within reasonable time frames, such tests were not actively solicited.

The proposed Black Lung Benefits Reform Act of 1975 (House bill 10760) would have required that criteria and standards no more restrictive than HEW's Interim Standards be equally applicable to part C claims filed under Labor's black lung program. In its report 1/ on House bill 10760, the House Committee on Education and Labor concluded that the Congress did not intend, as HEW so unequivocally asserted, that the Interim Standards apply only to part B claims under the SSA program and not to Labor's claims.

The House passed House bill 10760 on March 2, 1976. However, the 94th Congress adjourned before the Senate acted on it.

House bill 4544 and Senate bill 1538, revisions to the black lung program, were introduced in the 95th Congress. These bills contain a provision requiring the use of criteria and standards no more restrictive than HEW's Interim Standards in Labor's black lung program. On March 31, 1977, the House Committee on Education and Labor reported 2/ favorably on the House bill, and on May 16, 1977, the Senate Committee on Human Resources reported 3/ favorably on the Senate bill. Both bills were pending in the Congress at June 15, 1977.

Whether Labor should be authorized to use the more liberal standards is a matter for the Congress to decide. We believe, however, that if Labor is authorized to use the more liberal Interim Standards, care should be taken to substantiate by medical evaluation the degree of functional disability inhibiting the claimants, especially the younger miners, from being able to work.

THREE-YEAR FILING RULES

The act places certain time limits on black lung claims filed with Labor on or after January 1, 1974. The act requires

1/H. Rept. No. 770, 94th Cong., 1st Sess. 13-18 (1976).

2/H. Rept. No. 151, 95th Cong., 1st Sess. 15 (1977).

3/S. Rept. No. 209, 95th Cong., 1st Sess. 13-14-28 (1977).

that living miners file claims within 3 years of the date of their last coal mine employment to be eligible under the 15-year rebuttable presumption. A claimant who is a miner's widow must file within 3 years of her husband's death. Under this provision, claims filed after the required dates would be denied even if the miner or surviving widow met all other eligibility requirements.

Living miners' claims

Under the 1972 amendments, a miner whose X-ray is negative for CWP may still qualify for black lung benefits if other evidence demonstrates the existence of a totally disabling pulmonary or respiratory disease and the miner has 15 years or more of coal mine employment. The act, however, requires that such miners file within 3 years of the date of their last coal mine employment.

OWCP statistics do not list the number of living miners whose claims are denied because of the 3-year provision. However, in our review of 96 claims, 75 were denied and 37 of these were from miners who may have qualified under the 15-year presumption but who had not filed within the 3-year limit.

For example, one miner's X-ray was interpreted by OWCP as negative, but his other medical tests met the total disability standards and he had more than 15 years of coal mine employment. Thus, he would have been eligible for benefits had he filed within the required time. But his claim had to be denied because his last coal mine employment was in 1968 and he filed his claim in 1974.

Widows' claims

The amended act provides that widows of deceased miners may qualify for black lung benefits if the miner is determined to have been totally disabled from CWP. However, section 422 of the act requires that these claims be filed within 3 years of the date of the miner's death. As of February 29, 1976, of 31,314 black lung claims denied by Labor, 6,472 (21 percent) were widows' claims. OWCP officials said that there is an unknown, but probably large number of widows who could have qualified on medical and employment evidence, but the claims had to be denied because they were not filed within 3 years.

The OWCP task force estimates, based on a study of widows' denials in February 1976, that when all survivors' claims are determined, 80 percent of the denials will be

directly attributable to the statute of limitations. Also, in our sample of 96 denied claims, 20 had been filed by widows. Nineteen of these had been denied because they had not been filed within the 3-year statutory limit.

CHAPTER 9
CONCLUSIONS, RECOMMENDATIONS,
AND AGENCY COMMENTS

CONCLUSIONS

The 1972 amendments to the act, in addition to increasing benefits and extending coverage, were intended to liberalize and expedite eligibility determinations for benefit payments. However, claims are not being processed in a timely manner, resulting in a large backlog of claims and long delays in paying benefits to eligible claimants.

As of June 30, 1976, OWCP had received 92,727 claims; it had adjudicated 42,281 and had a backlog of 50,446. Of the 42,281 adjudicated claims, only 8 percent (3,233 claims) were approved for benefits. As a result, only about \$22.5 of the \$83 million appropriated to the special benefits fund for fiscal years 1974, 1975, and 1976 was obligated to pay miners and their survivors compensation and medical benefits.

At the time of our review, long periods elapsed between the time claims were filed and the time they were finally adjudicated. The average processing time was 256 days for denials and 366 days for approvals; the average processing time for all claims had increased to 630 days by fiscal year 1976. During these long periods, claimants often were unable to find out the status of their claims because OWCP, to cope with the backlog, adopted a policy of not interrupting work on claims to answer claimants' inquiries.

A major factor identified by several recent Labor studies as contributing to delays in claims processing and poor program performance is inadequate staffing at OWCP. Labor's efforts to alleviate this problem have been limited to authorizing the hiring of additional temporary staff and paying overtime.

In 1976, because of its concern about the program, the Congress took the initiative and, without a request from Labor, authorized 30 new permanent positions. In fiscal year 1977 Labor allocated 10 positions to the longshoremen's compensation program, which also had a claims backlog. The question remains of whether the staff, even with the addition of

the 20 new permanent positions, will be sufficient to allow for timely processing of claims and reducing the backlog.

Nevertheless, the problem of timeliness could be somewhat alleviated by improved administration and claims-processing procedures. OWCP uses sequential, piecemeal processing procedures that cause claimants' files to be reviewed many times by the claims examiner, with long delays between reviews, resulting in an inordinate amount of time passing before the processing is complete. We believe that OWCP should review its claims-processing procedures with a view toward reducing the delays between processing steps.

Other problems contributing to delays in claims processing which are not directly related to staffing and on which action could be taken are:

- SSA district offices' inadequate development of individual claims.
- Delays in the informal hearings of contested claims by OWCP and formal hearings by the OALJ.
- Lack of effective guidance to claimants when filing their claims.

OWCP also needs to establish a program to give claimants information on the status of their claims.

Regarding the number of claims denied or approved, Labor receives many of its claims from miners who are less likely to have complicated CWP or enough years of coal mine work to come under the disability presumptive provision of the act. Moreover, Labor has not been allowed to use the more liberal Interim Standards adopted by HEW for determining disability and eligibility for benefits. Labor officials have estimated that, if they were allowed to use the more liberal standards, their rate of approval would increase by about 7 percent.

It should be noted, however, that in applying the Interim Standards SSA applied them to all miners and did not substantiate by medical evaluation the degree of functional disability inhibiting a younger miner from working.

During the 94th Congress, legislation was proposed which would have allowed Labor to use the more liberal Interim

Standards. However, the Congress adjourned without enacting the proposed legislation. Should Labor be authorized to use the Interim Standards in the 95th Congress, Labor should be directed to see that the degree of functional disability of the claimant is substantiated by medical evaluation.

Another factor that has affected the denial or approval of claims is the 3-year filing provision. Many claims from miners have been denied because they failed to file for benefits within 3 years of the date of their last coal mine employment. Also, many claims from widows have been denied because they had not filed within 3 years of their husbands' death. OWCP officials believe that many of these claimants would have otherwise qualified for benefits.

Further, our review showed that additional miners might be found eligible if OWCP would adopt a policy of having all X-rays reread. Generally OWCP rereads only those that have been interpreted as positive by the medical provider.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

In view of the increasing backlog of claims and the long delays in claims processing, we recommend that the Secretary allocate adequate resources and staff to effectively and efficiently carry out Labor's responsibilities under the act.

In addition, to improve and strengthen management of the black lung benefits program, we recommend that the Secretary direct the Assistant Secretary for Employment Standards to have OWCP:

- Review and revise claims-processing procedures to reduce the delays between processing steps.
- Establish criteria on the timeliness for completing the informal hearing process.
- Determine the feasibility of having all X-rays reread so that claimants whose X-rays are interpreted as negative be given every opportunity to qualify for benefits.

- Establish an effective program to respond promptly to claimant inquiries on the status of their claims and to provide for more direct communication between OWCP and the district offices after the claim is filed.

RECOMMENDATIONS TO THE SECRETARY OF HEW

To improve the SSA district offices' performance in the black lung program, we recommend that the Secretary take action to:

- Require the SSA district offices to follow prescribed policies and procedures in processing Labor black lung claims, including assisting claimants in filing claims and notifying OWCP immediately after a claim has been filed so diagnostic tests can be scheduled.
- Establish a feedback procedure so that personnel in the district offices will be made aware of the deficiencies and problems in their performance.

AGENCY COMMENTS

Labor officials agreed with our basic assessments and agreed that the time frames in claims processing are too long. (See app. I.) Labor said that our draft report identified many of the shortcomings in the black lung program and that most of these shortcomings, which were also addressed in the 31 recommendations of a recent OWCP task force and in the Office of Organization and Manpower Utilization report, are being corrected.

Labor said ESA is responding to each of our recommendations as follows:

"ESA is reorganizing the Division of Coal Mine Workers' Compensation to have more personnel on case handling. In addition, ESA has contracted for the development of a training package for new and senior Claims Examiners, as well as for the supervisory staff. Moreover, to improve and to strengthen the present management of the Black Lung Program, ESA is carrying out its plan to realize its goal by the end of August to process claims within 225 days, and eventually, we hope to reduce

to 90 days the time needed for initial decision by DCMWC. Issuance of revisions to the Manual is also anticipated by the end of the current Fiscal Year. The establishment of standards for prompt completion of the informal hearing process is under consideration. In addition, OWCP is having all X-rays reread. Finally, we anticipate that OWCP will be able to respond more promptly to claimant inquiries about the status of their claims when the new systems and procedures are in place."

Labor also said that the OWCP task force has completely reviewed the resource needs of the program and has determined an adequate staffing level.

SSA officials agreed that the district offices have not always followed prescribed procedures in processing black lung claims for Labor. They said that SSA was aware of this and has designated a staff member in each regional office to work with the district offices on black lung issues and problems. According to SSA, other steps aimed at improving district office processing included the frequent issuance by the central office of instructions and directives stressing district office responsibilities for obtaining and expediting black lung claims applications.

SSA said further that at Labor's request, it recently drew up a proposed revision of the district offices' responsibilities and procedures for black lung claims. Under this proposal the district offices will be responsible only for completing the black lung claim application. All other developmental work will be done by Labor. The changeover to these new procedures was expected to take place in June 1977.

SSA added that it recognized the importance of a feedback mechanism to alert district offices to errors made and to serve as a tool for training and self-evaluation. SSA said that it had designed a form for this purpose and outlined the necessary procedures to Labor some time ago, but that Labor deferred action on the matter pending the outcome of the above-mentioned proposal to limit district office involvement in black lung cases.

RECOMMENDATIONS TO THE CONGRESS

Since the act's 3-year filing requirement has resulted in Labor having to deny many claims for miners and widows

who otherwise would be eligible, the Congress should consider amending (1) section 422(f)(2) of the act to delete the requirement that living miners file within 3 years of the date of their last coal mine employment to be eligible under the 15-year rebuttable presumption and (2) section 422(f)(1) to delete the requirement that widows of miners determined to have been totally disabled from CWP file within 3 years of the date of the miner's death. Also, the Congress should decide whether to amend the act to permit Labor to use SSA's Interim Standards. However, the Interim Standards, as applied by SSA, are more liberal with regard to younger miners than the Congress intended. Thus, if Labor is authorized to use the Interim Standards, it should be directed to substantiate by medical evaluation the degree of the functional disability inhibiting claimants, especially younger miners, from working.

CHAPTER 10

SCOPE OF REVIEW

Our review was made to determine whether the black lung compensation and benefits program established under the Federal Coal Mine Health and Safety Act, as amended, is being carried out in conformity with the act's intent and whether Labor performs its operations effectively and efficiently. We focused our attention on determining whether:

- Labor is processing and adjudicating black lung claims efficiently to assure prompt payment of compensation and all benefits to eligible recipients, as intended by the 1972 amendments.
- SSA is carrying out its initial development of claims effectively.
- Labor has sufficient resources to effectively administer the program.

We reviewed the act's legislative history; the regulations, policies, and procedures established by Labor and HEW; and pertinent documents and case files. We interviewed Labor and SSA officials at the locations visited, claimants at several of the SSA offices visited, and officials of the United Mine Workers in Washington, D.C.

We did our work primarily at Labor headquarters in Washington, D.C. We took random statistical samples of 197 black lung claims on file as of March 31, 1975. The selected cases were used to determine how long it took to process claims and to analyze the reasons for excessive processing delays.

As part of our review, field visits were made to SSA district offices in Wilkes-Barre and Pottsville, Pennsylvania; Bluefield and Charleston, West Virginia; Hazard and Pikeville, Kentucky; and Lakewood, Boulder, Trinidad, and Colorado Springs, Colorado, and SSA regional offices in Philadelphia, Atlanta, and Denver.

We also obtained information from Labor's Office of Administrative Law Judges and the Benefits Review Board.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

June 16, 1977

Mr. Gregory J. Ahart
Director
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Draft Report on "Program to Pay Black Lung Benefits to Coal Miners and Their Survivors--Improvements are Needed," has been reviewed, and our comments follow:

The Department agrees with GAO's basic assessments and also its recommendations. GAO's draft report has identified many of the shortcomings in the Black Lung Program. Most of these shortcomings, which were also addressed in the 31 recommendations of a recent OWCP Task Force and in the Office of Organization and Manpower Utilization report, are in the process of being corrected (GAO has been furnished copies of the Task Force report and the OOMU report).

ESA is responding positively to each of GAO's five recommendations appearing on pages 85-86 of its draft report. The OWCP Task Force has completely reviewed the resource needs of the program and has determined an adequate staffing level. ESA's program response is as follows: ESA is reorganizing the Division of Coal Mine Workers' Compensation to have more personnel on case handling. In addition, ESA has contracted for the development of a training package for new and senior Claims Examiners, as well as for the supervisory staff. Moreover, to improve and to strengthen the present management of the Black Lung Program, ESA is carrying out its plan to realize its goal by the end of August to process claims within 225 days, and, eventually, we hope, to reduce to 90 days the time needed for initial decision by DCMWC. Issuance of revisions to the Manual is also anticipated by the end of the current Fiscal Year. The establishment of standards for prompt completion of the informal hearing process is under consideration. In addition, OWCP is having all X-rays reread. Finally, we anticipate that OWCP will be able to respond more promptly to claimant inquiries about the status of their claims when the new systems and procedures are in place.

Nonetheless, the Department does have comments on the text of the report which are provided below on a page by page basis by: (1) identifying factors omitted from the language of the draft which we believe have significant program impact, and (2) identifying statements which we believe to be either misleading or in error.

The Department concurs that the time frames in claims processing are entirely too lengthy. However, the report does not recognize certain inherent procedures in the adjudication process.

On page iv of the Digest, and on page 20 of the text, the Department believes that the following reasons should also be listed as factors contributing to the current adjudication rate and increased claims processing workloads.

- DOL has assumed the responsibility for collecting virtually all of the claimant's evidence. Under other workers' compensation programs, such evidence is collected by employers or their representatives, e.g., insurance companies. Thus, actual processing time will always be greater than those in comparable compensation programs.
- Following an initial determination, Part C claims are served upon a responsible coal operator and often undergo a second investigation, including a repeat medical evaluation.
- The Act does not provide a means for compromising differences in disputed cases on an informal basis, such as through the payment of partial disability benefits or lump sum settlements. As a result of this "all or nothing" feature of the Act, disputed claims must be formally litigated to resolve contested issues. In view of this, and the fact that all claims are filed for death or total disability benefits (i.e. involve substantial sums of money), about 97 percent of Part C claims assigned by the coal mine operators are contested by the coal industry.

- Many Part B claimants were able to establish the existence of a pneumoconiosis condition through the use of the 15-year presumption under the Act. Practically all Part C claimants, however, are unable to utilize this presumption under the law and must establish the actual existence of the disease by X-ray or other means. This often requires the claimant to undergo a number of different medical tests and evaluations which add to the time required to complete action on the case.

The Department would also like to note that the overwhelming majority of claims (over 90 percent) now in the Department are not, in all probability, eligible for award under the current law and regulations. The Department has, as a matter of policy, however, endeavored to provide the benefit of the doubt to claimants based on interpretations of Congressional intent. For this reason, we have kept cases open for additional periods of time to enable claimants to provide additional evidence.

On page viii of the Digest, we recommend that the second sentence of the last paragraph or the statement "Labor is receiving claims of many younger miners" be deleted. Statistical studies have shown that there are no significant differences between the claimant age profile of the two groups. While the Part C claimants are younger, the differences are so slight as not to affect such factors as approval rates and claims processing. See infra for the average age of the DOL claimants population, and the percentage of miner claimants who ceased employment prior to 1973. The average age of beneficiaries, under the DOL program, is about 68. The major difference between claimants under the two programs is that Part B claimants, particularly those who filed in the earliest years of the program, have tended to be more severely disabled than Part C claimants.

The draft GAO report does not address the problems faced by DOL in attempting to transfer the cost of the black lung benefit program to the coal industry. It is recommended that a third topic be included following that portion of the text covering PAYMENT OF COMPENSATION AND OTHER BENEFITS, on pages 18-19. The new topic should be titled: COST OF THE PART C PROGRAM REMAINS A FEDERAL RESPONSIBILITY.

Under Part C, the Federal Government pays all claims for which a responsible operator cannot be found. However, it has proven difficult to assess individual operators. The average age of the DOL claimant population is between 60 and 65. Fifty-seven percent of the miner claimants have been out of the mines for 20 years or more. Eighty percent ceased employment prior to 1969 and almost 90 percent ceased employment before 1973. Many of the employment records are incomplete, and many of the coal companies have gone out of business. As a result, the DOL is spending considerable time, effort, and money for evaluation and litigation and is only identifying a responsible operator in 25 to 30 percent of the cases. Fewer than 150 of the 3,800 claims approved by DOL are being paid by coal operators. Thus, the intended purpose of Congress in splitting program jurisdiction between SSA and DOL, to ultimately passing the cost of black lung benefits to the coal industry, has not materialized. The DOL has addressed this problem and has recommended that a government-administered trust fund be established, to pass on the costs of the Part C program to the coal industry.

The following pages in the body of the text require revision or corrections:

Pages 36-37: The discussion on these pages regarding concurrent development does not include the rationale for current development practices. About 85 percent of the cases require no additional development beyond that required for an initial medical determination. If we adopted a procedure whereby medical evidence and non-medical evidence were developed concurrently, such action would increase the Claims Examiner workload with minimal benefit gained in only 15 percent of the cases. Given our limited resources, we have, therefore, decided to obtain non-medical evidence on an "as needed" basis.

In view of these facts, it is requested that the second paragraph on page 37, recommending concurrent development of medical and non-medical evidence, be deleted in its entirety.

The general treatment of issues in Chapter 7 does not fully reflect an understanding of the conditions which existed at the time certain resource decisions were made. Without

excuse or apology, the Department's resource decisions affecting the Black Lung Program were made on the best available information at the time budget decisions had to be finalized. Given the number of claims filed with the Social Security Administration under Part B and the estimated remaining pool of eligibles, the Black Lung operating personnel have projected precipitous reductions in workloads for the outyears. Thus, at that time, there was little basis for the Department to justify adding long term resources to the program. We have continued to evaluate the situation, particularly the basis for estimating the inflow of claims against existing workloads. If our evaluations indicate that the workload trends will continue, the Department will take appropriate action.

Page 63: The report does not mention that, beginning with Fiscal Year 1975 and continuing through FY 1977, the Employment Standards Administration has funded the hiring of significant numbers of employees on temporary assignments to meet the unexpectedly heavy inflow of claims. Using such funds as the Agency had available, up to 80 such positions were maintained through Fiscal Year 1976, and 50 such positions have been carried for FY 1977. Whether or not this was sufficient to meet program need is not at issue. However, we do suggest that, in the interest of accuracy, the report acknowledge the Department's attempts to channel resources into the program.

Page 66: We do not suggest alternative language for the second paragraph, but we do offer this clarification of the actual budget history for FY 1977.

As part of the Fiscal Year 1977 budget process during the Fall of 1975, the Secretary of Labor directed that ESA reprogram 10 positions from the Black Lung program to support the administration of the Longshore and Harbor Workers' Compensation Act, which was experiencing critical workload problems as a result of the 1972 amendments

to that Act. In point of fact, the Administration later amended the FY 1977 budget request to the Longshore program as a result of amendments to the FY 1976 Appropriations Act, which had been vetoed later in Calendar 1975 and required re-enactment early in Calendar 1976. In so doing, the initial budgetary decision to transfer resources from the Black Lung program to the Longshore operations was permitted to stand.

In acting on the FY 1977 Amended Budget, the Congress did add 30 positions to the Department's request for administration of the Black Lung Program. This decision was made some several months after the Budget was submitted to Congress, and represented additions to the Budget as presented which already included the transfer of positions to the Longshore program. Thus, the statement in the report that "Of the 30 new positions authorized in (Calendar Year) 1976 for the Black Lung Program, DOL proposed to allocate 10 positions to the Longshoremen's Program" is not correct. The decisions were made at different times, almost one year apart.

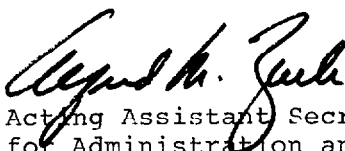
Page 67 - line 12: The 218 permanent positions mentioned in the DOL Manpower Utilization Study refers to a staff sufficient to process ongoing workloads, and to preclude further buildup of backlog.

Additionally, a sentence in that paragraph should indicate that efforts are underway to develop detailed plans for organizational changes, procedural changes, and adequate staffing in concert with recommendations by the OWCP Task Force and the Office of Organization and Manpower Utilization.

Note: [See GAO note 2, p. 65.]

The response of the ALJ is enclosed as Exhibit B.

Sincerely,



Acting Assistant Secretary
for Administration and Management

Enclosures

EXHIBIT A

[See GAO note 2, p. 65.]

EXHIBIT B

U.S. DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

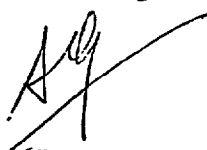
Suite 700-1111 20th Street, N.W.

Washington, D.C. 20036



April 7, 1977

MEMORANDUM FOR: MICHAEL B. ZUZIK, ACTING DIRECTOR
Division of Accountability & Review

FROM: H. STEPHAN GORDON 
Chief Judge

SUBJECT: Draft GAO Report "Program to Pay Black Lung Benefits to Coal Miners and Their Survivors--Improvements are Needed"

We do not read so much of the GAO draft report as concerns the OALJ as requiring any defense of our part in the black lung adjudication system.

Thus, the report states that average time from referral to decision in FY75 was 54 days, and in FY76, 89 days. As is elsewhere explained, this increase was largely due to a BRB decision holding that Hearing Officers were without authority to adjudicate claims. Work was in consequence suspended from April 8, 1976 to August 23, 1976. For the same reason, of course, the backlog of cases unavoidably grew. It should also be noted that a considerable portion of our current backlog consists of some 449 widows claims which involve the question whether they are barred by the statute of limitations. We are presently awaiting motions for summary judgment from the Office of the Solicitor. Litigation of these cases on the merits at this time would be unjustified in view of regulations providing for dismissal of untimely claims on motion (prior to the regulation the BRB had ruled that hearings were required in all such cases). Thus, hearings might very well put all parties to needless expense. Test cases involving dismissal of claims on motion are presently pending before the BRB, which hopefully will resolve the question in the near future.

It should be pointed out that the 54 and 89-day averages may well represent optimum figures, as there exists good reason to believe that figure will increase somewhat. The very nature of the black lung litigation process makes this a likely prospect. Thus, many cases are referred which are

not in a proper posture for litigation. Investigations have not been completed and issues have not been defined. Thus, the hearing becomes a vehicle for investigation. Not infrequently hearings are interrupted to permit time for further investigation. This is particularly troublesome with respect to determinations of responsible operators.

In sum, we are of the belief that this Office has adjudicated cases in a reasonable time frame and remains capable of continuing to do so. We do see difficulties ahead arising both from the nature of the investigatory process below and the uncertainties attending resolution of the mentioned widows' claims by BRB.

- GAO notes:
1. Page references in this appendix may not correspond to page numbers in the final report.
 2. The deleted comments relate to matters which have been revised in the final report.

GAO REPORTS ON REVIEWS OF ADMINISTRATION
OF THE BLACK LUNG BENEFITS PROGRAM
UNDER THE FEDERAL COAL MINE HEALTH
AND SAFETY ACT OF 1969, AS AMENDED

1. Report to the Chairman, Subcommittee on Labor, Senate Committee on Labor and Public Welfare, on problems being encountered by the Bureau of Mines, Department of the Interior, in its implementation of the provisions of the act relating to inspecting coal mines and correcting unsafe and unhealthy conditions (B-170686, May 13, 1971).

2. Report to the Special Subcommittee on Investigations, House Committee on Interstate and Foreign Commerce, on our examination of certain questions regarding the processing of claims for black lung benefits by SSA, HEW (B-170686, Aug. 3, 1971).

3. Report to the Congress on achievements, administrative problems, and costs of paying black lung benefits to coal miners and their widows by SSA, HEW (B-164031(4), Sept. 5, 1972).

4. Report to Senator Marlow Cook on alternatives to the payment of black lung benefits by the coal mining industry (B-164031(4), Mar. 13, 1973).

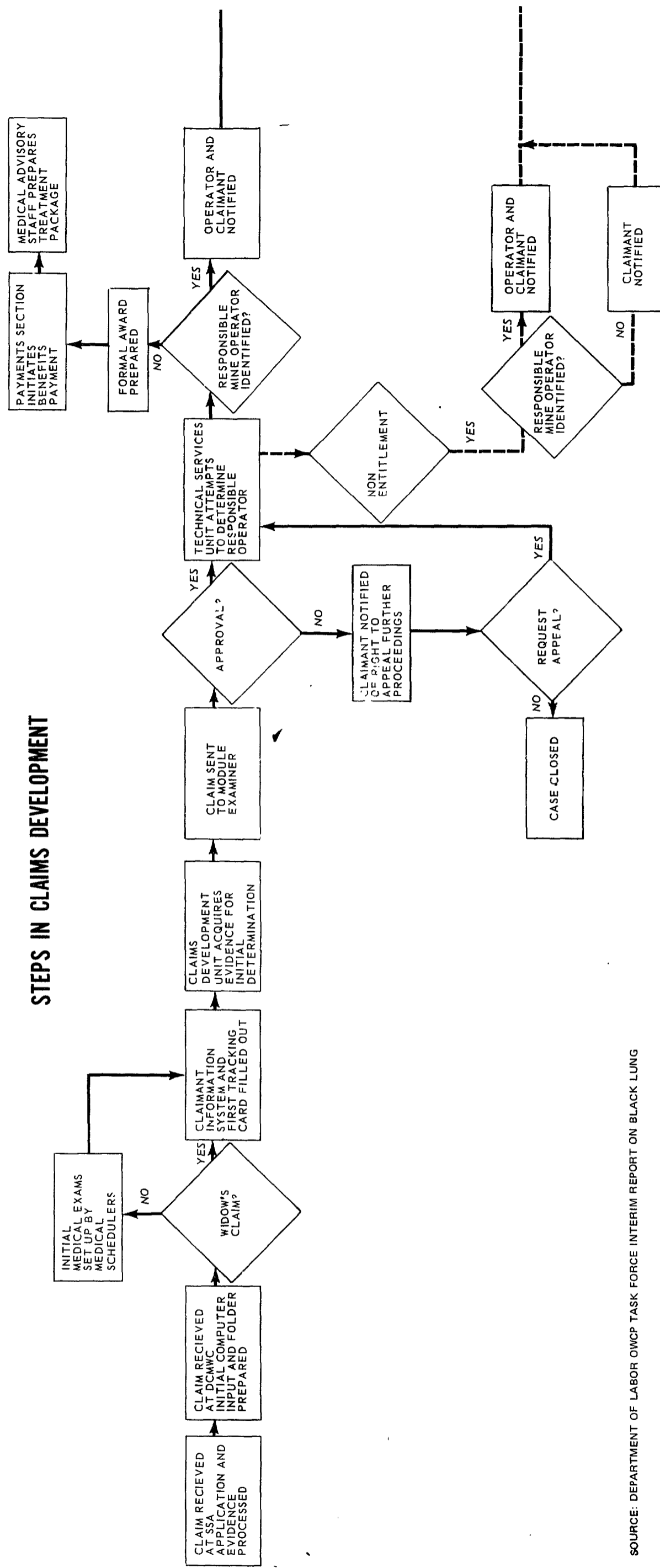
5. Report to Congressman John N. Erlenborn on information on attorney fees paid for State black lung workmen's compensation claims in Kentucky; SSA, HEW (B-164031(4), Jan. 8, 1974).

6. Report to the Special Studies Subcommittee, House Committee on Government Operations, on the need for further improvements in processing of widows' claims for black lung benefits; SSA, HEW (MWD-75-44, Dec. 31, 1974).

7. Report to the Congress on improvements still needed in coal mine dust-sampling program and penalty assessments and collections; Departments of Interior and HEW (RED-76-56, Dec. 31, 1975).

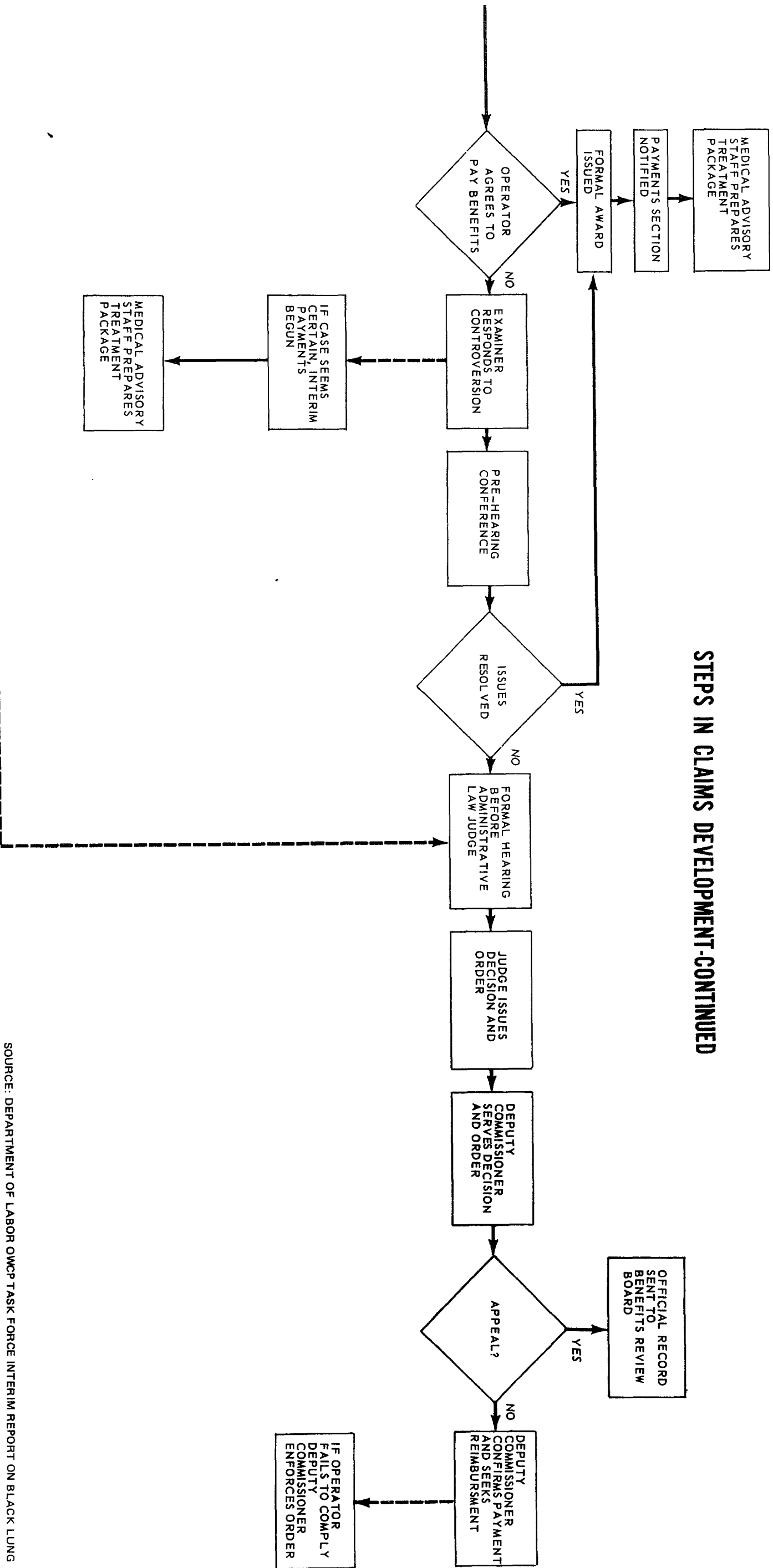
8. Report to the Subcommittee on Intergovernmental Relations and Human Resources, House Committee on Government Operations, on examination of allegations concerning administration of the black lung benefits program (MWD-76-72, Jan. 14, 1976).

STEPS IN CLAIMS DEVELOPMENT



SOURCE: DEPARTMENT OF LABOR OWCP TASK FORCE INTERIM REPORT ON BLACK LUNG

STEPS IN CLAIMS DEVELOPMENT-CONTINUED



SOURCE: DEPARTMENT OF LABOR OWCP TASK FORCE INTERIM REPORT ON BLACK LUNG

PRINCIPAL LABOR AND HEW OFFICIALS
RESPONSIBLE FOR ADMINISTERING
ACTIVITIES DISCUSSED IN THIS REPORT

| | <u>Tenure of office</u> | |
|---|-------------------------|-----------|
| | <u>From</u> | <u>To</u> |
| <u>DEPARTMENT OF LABOR</u> | | |
| SECRETARY OF LABOR: | | |
| Ray Marshall | Jan. 1977 | Present |
| William J. Usery, Jr. | Feb. 1976 | Jan. 1977 |
| John T. Dunlop | Mar. 1975 | Jan. 1976 |
| Peter J. Brennan | Feb. 1973 | Mar. 1975 |
| James D. Hodgson | July 1970 | Feb. 1973 |
| ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS: | | |
| Donald E. Elisburg | Mar. 1977 | Present |
| John Mumford (acting) | Feb. 1977 | Mar. 1977 |
| John C. Read | May 1976 | Jan. 1977 |
| Bernard E. DeLury | May 1973 | Apr. 1976 |
| Vacant | Jan. 1973 | May 1973 |
| Richard J. Gruenwald | Jan. 1972 | Jan. 1973 |
| Horace E. Menasco (acting) | Oct. 1971 | Jan. 1972 |
| Arthur A. Fletcher | May 1969 | Oct. 1971 |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS: | | |
| Everett P. Jennings (acting) | Jan. 1977 | Present |
| Herbert A. Doyle, Jr. | Feb. 1974 | Jan. 1977 |
| Herbert A. Doyle, Jr. (acting) | Sept. 1971 | Feb. 1974 |
| ASSOCIATE DIRECTOR, DIVISION OF COAL MINE WORKERS' COMPENSATION: | | |
| June E. Patron | Oct. 1976 | Present |
| Robert D. Wedemeyer (acting) | Apr. 1976 | Oct. 1976 |
| Nancy Snyder | July 1973 | Apr. 1976 |
| OFFICE OF ADMINISTRATIVE LAW JUDGES: | | |
| H. Stephan Gordon, Chief Judge | Sept. 1971 | Present |

| <u>Tenure of office</u> | | |
|-------------------------|-------------|-----------|
| | <u>From</u> | <u>To</u> |

DEPARTMENT OF LABOR (cont.)

BENEFITS REVIEW BOARD:

| | | |
|------------------------------|-----------|---------|
| Ruth Washington, Chairperson | Apr. 1974 | Present |
| Ralph Hartman | Apr. 1974 | Present |
| Julius Miller | Apr. 1974 | Present |

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SECRETARY OF HEALTH, EDUCATION,
AND WELFARE:

| | | |
|----------------------------|-----------|-----------|
| Joseph A. Califano | Jan. 1977 | Present |
| David Mathews | Aug. 1975 | Jan. 1977 |
| Casper W. Weinberger | Feb. 1973 | Aug. 1975 |
| Frank C. Carlucci (acting) | Jan. 1973 | Feb. 1973 |
| Elliot L. Richardson | June 1970 | Jan. 1973 |

COMMISSIONER OF SOCIAL SECURITY:

| | | |
|-------------------------|------------|------------|
| James B. Cardwell | Sept. 1973 | Present |
| Arthur E. Hess (acting) | Mar. 1973 | Sept. 1973 |
| Robert M. Ball | Apr. 1962 | Mar. 1973 |

DIRECTOR, BUREAU OF DISABILITY
INSURANCE:

| | | |
|---------------------------|------------|-----------|
| William J. Rivers | Jan. 1976 | Present |
| Samuel E. Crouch (acting) | July 1974 | Jan. 1976 |
| Bernard Popick | Sept. 1965 | June 1974 |

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