Chapter 1
Introduction to the Claims Process and Research Tools

I. Filing the claim and adjudication by the District Director

The adjudication process begins when the claimant files an application for black lung benefits at the nearest Social Security office, or with the Department of Labor's District Director at the local Office of Workers' Compensation Programs. The Form CM-911 (miner's application) and Form CM-912 (survivor's application) request general information (date of birth, marital status, and so on) about the miner and/or survivor. The form is usually accompanied by a Form CM 911-a, which contains a statement of the miner's overall coal mine employment history as well as a Form CM-913, which contains a detailed description of the duties required of his coal mining jobs.

A claim is considered "filed" on the date the District Director's office date-stamps the CM-911 or CM-912 (as opposed to the date the claimant signs or mails the form). The record in the claim is then initially developed under the supervision of the District Director.

A. The Director, OWCP and District Director

The District Director (formerly called a "deputy commissioner") is the first adjudication officer at the Department of Labor to decide the claim. The District Director should not be confused with the Director, Office of Workers' Compensation Programs (also known as "Director" or "Director, OWCP"), who is a party-in-interest in every claim. The Director, OWCP is represented by the Department's Solicitor's Office and protects the interests of the Black Lung Disability Trust Fund, which may be held responsible for the payment of benefits in the event that there is no named responsible operator (employer), or the named operator is not financially able to pay the benefits. *See Boggs v. Falcon Coal Co.*, 17 B.L.R. 1-62 (1992).

For further discussion of the designation of a responsible operator, *see* Chapter 7.

B. Development of the record and the 20 C.F.R. § 725.406 examination

Once a *miner* files an original claim, or a subsequent claim under 20 C.F.R. § 725.309, the District Director must provide him/her with a complete medical evaluation. This medical evaluation is provided at no cost to the miner. 20 C.F.R. § 725.406).[1] Moreover, the amended regulations provide that the miner may select the physician who will conduct the examination from a list provided by the District Director and the results of the evaluation "shall not be counted as evidence submitted by the miner under § 725.414." 20 C.F.R. § 725.406(b). As you will learn, however, a miner is *not* entitled to this free examination where a petition for modification has been filed under 20 C.F.R. § 725.310.

Usually this independent medical evaluation will be reported by the physician on a Form CM-787. If the physician's opinion is not credible or is incomplete, then the District Director has not complied with the requirements of 20 C.F.R. § 725.406 and the case must be remanded for a complete medical evaluation. *Pettry v. Director, OWCP*, 14 B.L.R. 1-98 (1990); *Hall v. Director, OWCP*, 14 B.L.R. 1-51 (1990) (Administrative Law Judge may require District Director to provide complete pulmonary evaluation to miner who files a duplicate claim). *See also Cline v. Director, OWCP,* 917 F.2d 9 (8th Cir. 1990) (case remanded to the Administrative Law Judge for hearing wherein the Department's physician would be asked to comment on the etiology of the miner's pneumoconiosis); *Newman v. Director, OWCP, 745* F.2d 1162 (8th Cir. 1984).

For additional discussion of the Department's obligation to provide a complete pulmonary evaluation under 20 C.F.R. § 725.406, and the Administrative Law Judge's authority to remand a claim based on a deficient examination, *see* Chapter 26.

C. The evidentiary limitations at 20 C.F.R. § 725.414

The evidentiary limitations regulation at 20 C.F.R. § 725.414 is found in editions of the Code of Federal Regulations that post-date 2000. These limitations are applicable to any miner's or survivor's claim filed *after* January 19, 2001. 20 C.F.R. § 725.2. And, for petitions for modification, it is the date of filing the underlying claim, not the date the petition was filed, which controls applicability of the evidence limitations. 20 C.F.R. § 725.2(c).

[1] Formerly 20 C.F.R. § 725.405(b) (2000). *See also Hodges v. Bethenergy Mines, Inc.*, 18 B.L.R. 1-84 (1994).

During processing of the claim at the District Director and Administrative Law Judge levels, a miner may be evaluated by physicians of his/her choice as well as physicians designated by the responsible operator. Medical evidence constitutes the core of a black lung claim and, therefore, the record will normally contain a number of analog chest x-rays, pulmonary function studies, blood gas studies, and physicians' reports. Many claim files also contain autopsy or biopsy reports as well as "other evidence" under 20 C.F.R. § 718.107, such as CT-scans and digital x-rays.

For black lung claims filed on or before January 19, 2001, there were very few restrictions on the admission of medical evidence. However, as previously noted, under the amended regulations (which apply to claims filed after January 19, 2001), the submission of medical evidence is restricted. 20 C.F.R. § 725.414(a). These restrictions, along with most of the other regulatory amendments, were upheld in *National Mining Ass'n., et al. v. Dep't. of Labor*, 292 F.3d 849 (D.C. Cir. 2002).

For a discussion of these evidentiary limitations, *see* Chapter 4.

D. Adjudication by the District Director

In addition to the institution of evidentiary limitations, the amended regulations significantly altered the processing of claims at the District Director's level.[2] The primary focus of the District Director under the amended regulations is to ensure that the proper responsible operator is named. This is because, unlike regulations applicable to claims filed on or before January 19, 2001 where the District Director could name multiple potentially liable operators, only one operator may be named under the amended regulations.

So, in claims filed by a miner or survivor, the District Director reviews the miner's Social Security records and any other probative evidence to identify the *last* mine operator for which the miner worked for *at least a period of one year*, or multiple periods of time that add up to one year. This potentially liable operator will receive a written notice from the District Director that a claim for benefits has been filed. 20 C.F.R. § 725.407.

2 For claims filed on or before January 19, 2001, refer to the applicable regulations regarding processing of claims by the District Director located in the Code of Federal Regulations (2000 or earlier edition). Two major distinctions between the old and new regulations are: (1) under the old regulations the District Director was not limited in the number of operators that could be named as potentially responsible for the payment of benefits; and (2) the old regulations contain no evidentiary limitations.

The named operator has an opportunity to present evidence that it was not the last employer of the miner for a period of at least one year, or that it is financially incapable of paying benefits. Here, it is not uncommon for the named employer to have the miner or survivor deposed in an attempt to resolve the issue. Importantly, an employer *must* present any evidence challenging its designation to the District Director. No additional evidence on this issue may be accepted by the Administrative Law Judge absent a finding of "extraordinary circumstances."

During this same time period that the claim is pending before the District Director, both parties will receive a Schedule for the Submission of Additional Evidence (SSAE). 20 C.F.R. § 725.410. This presents an opportunity for the parties to proffer medical evidence in support or, or opposition to, entitlement to benefits. Additionally, the named operator has 30 days to "specifically indicate whether (it) agrees or disagrees with the district director's designation." 20 C.F.R. § 725.412. Failure of the named employer to timely respond to the SSAE results in the following: (1) the operator shall be deemed to have accepted the District Director's designation; and (2) the operator shall be deemed to have contested the claimant's entitlement to benefits.

During the processing of the claim, the District Director may elect to hold an informal conference with the parties in an effort to resolve certain issues in the claim. In the end, the District Director will issue a *proposed decision and order*. 20 C.F.R. § 725.418. The decision is "proposed" because, only after passage of 30 days from the time it is issued will the decision become "final" and "effective." Within that 30-day timeframe, any party who is dissatisfied with the proposed decision may request a formal hearing before the Administrative Law Judge, or may request that the District Director "revise" the proposed decision. 20 C.F.R. § 725.419.

If a hearing is requested, the District Director compiles the formal record for referral to the Office of Administrative Law Judges. 20 C.F.R. § 725.421. Each document received by the District Director while the claim is pending at that level is assigned a "Director's Exhibit" number. These documents will include the application for benefits, Social Security records, marriage and/or birth records, correspondence to and from the parties, the report and testing from the 20 C.F.R. § 725.406 examination, and any medical evidence submitted by the parties. It is important to bear in mind that, even though medical evidence submitted by the parties while the claim is pending before the District Director will receive a "Director's Exhibit" number, this evidence still belongs to the party that submitted it for purposes of the evidentiary limitations at 20 C.F.R. § 725.414.

The formal record generally is organized by date-chronology; that is, the application for benefits is located at the bottom of the formal record and an index of exhibits, transmittal letter, and Form CM-1025 (containing a list of contested issues) will be found at the top of the file.

E. Determination of the responsible operator

Under the amended regulations, the District Director must determine the one employer that would be responsible for the payment of benefits if the claim is ultimately awarded.

1. Claims filed on or before January 19, 2001

If there are multiple employers listed, the District Director should make a factual determination as to the single employer, which is responsible for the payment of benefits. Occasionally, a case filed on or before January 19, 2001 will reach the Administrative Law Judge with multiple employers listed. This is because the Benefits Review Board held that, where one employer is designated by the District Director as the responsible operator and is subsequently dismissed by the Administrative Law Judge who determines that another operator should have been so designated, the Black Lung Disability Trust Fund becomes responsible for the payment of benefits. *Crabtree v. Bethlehem Steel Corp.*, 7 B.L.R. 1-354 (1984). *See also Director, OWCP v. Trace Fork Coal Co. [Matney]*, 67 F.3d 503 (4th Cir. 1995), *rev'g. in part sub nom.*, *Matney v. Trace Fork Coal Co.*, 17 B.L.R. 1-145 (1993) (on appeal to the Fourth Circuit, Case No. 93-2379); *England v. Island Creek Coal Co.*, 17 B.L.R. 1-141 (1993); *Sisko v. Helen Mining Co.*, 8 B.L.R. 1-272 (1985); *Director, OWCP v. Oglebay Norton*, 877 F.2d 1300 (6th Cir. 1989) (the Sixth Circuit modified the application of *Crabtree* to permit a redetermination of the responsible operator at any time prior to a hearing by the judge).

The rationale underlying the Board's holding in *Crabtree* is that the employer who should have been designated was prejudiced in that it did not have notice and an opportunity to be heard at the level of the District Director and Administrative Law Judge and, therefore, did not participate in the development of the record.

For a discussion regarding naming the proper responsible operator, *see* Chapter 7.

2. Claims filed after January 19, 2001

Under the amended regulations, the provisions at 20 C.F.R. § 725.418(c) require that the District Director name a single responsible

operator, which is potentially liable for the payment of benefits. All other potentially responsible operators are dismissed by the District Director. Therefore, a claim that is referred to an Administrative Law Judge under the amended regulations will have only one operator named. If there is no responsible operator, or the named operator is financially incapable of paying benefits, then the Black Lung Disability Trust Fund may be held liable for the payment of benefits.

Of particular importance is, under the amended regulations at 20 C.F.R. § 725.465(b), "[t]he Administrative Law Judge shall not dismiss the operator designated as the responsible operator by the District Director, except upon the motion or written agreement of the Director." Therefore, if the Administrative Law Judge awards benefits and finds the named operator was not properly designated, then s/he would order payment of benefits by the Black Lung Disability Trust Fund.

F. The District Director's proposed decision and order

Upon receipt of any additional evidence, the District Director will issue a proposed decision and order awarding or denying benefits (*i.e.*, the Form CM-1098 for an Award of Benefits), which constitutes the District Director's final adjudication of the matter. 20 C.F.R. § 725.418. Once the District Director issues this proposed decision, the unsuccessful party has 30 days in which to request a formal hearing before an Administrative Law Judge. 20 C.F.R. § 725.419(a).[3] In those cases where the employer requests a formal hearing and continues to dispute the claimant's entitlement to benefits or its designation as the responsible operator, then the Director, OWCP will make payments from the Black Lung Disability Trust Fund until the claim is finally adjudicated. 20 C.F.R. § 725.420(c).

II. The request for a formal hearing

A. Generally

If an employer or claimant is dissatisfied with the District Director's proposed decision and order, a request for a formal hearing may be made. 20 C.F.R. § 725.419(a). If the request is timely filed, then the District Director will transmit the file to the Office of Administrative Law Judges with

3 Under the amended regulations at 20 C.F.R. § 725.419(a), the dissatisfied party may also request a "revision" of the proposed decision and order. In essence, the party is asking the District Director to reconsider one or more of the findings in the proposed decision. Here, the District Director may modify the proposed decision and issue it, or s/he may elect to reaffirm the findings and conclusions of the proposed decision. At that point, any dissatisfied party again has 30 days to request a hearing before an Administrative Law Judge.

a list of parties on the Form CM-1025a and a list of contested issues on a Form CM-1025. 20 C.F.R. § 725.421.

Given the informal nature of the black lung claims process, considerable latitude is afforded claimants in construing hearing requests. Almost any informal communication submitted to the District Director at any point during the pendency of the claim at that level may be considered a hearing request. In *Plesh v. Director, OWCP*, 71 F.3d 103 (3rd Cir. 1995), the Third Circuit held a letter, wherein the miner stated, "I am appealing this as of now," constituted a formal hearing request thus, triggering the District Director's duty to refer all contested issues to the Office of Administrative Law Judges for resolution. This is so, according to the court, even where the hearing request is "premature." In *Plesh*, the hearing request was filed after issuance of an order to show cause, but prior to entry of the District Director's proposed decision and order. The court found the letter preserved Claimant's right to a hearing such that it was unnecessary for him to file a second request.

The amended regulations at 20 C.F.R. § 725.418(c) have codified the *Plesh* decision to make clear that any premature hearing request will be considered valid, and the District Director will forward the claim to the Office of Administrative Law Judges. 20 C.F.R. § 725.418(c).

Once a claim file is received by the Office of Administrative Law Judges, it is assigned a docket number based on the fiscal year and sequential order in which it was received. Claims assigned sequential numbers from 0 to 4,999 are governed by the pre-2000 regulations, whereas claims governed by the 2000 regulatory amendments receive sequential numbers from 5,000 and over. For example, the 201st miner's or survivor's black lung benefits claim received in fiscal year 2013, and which is governed by the 2000 regulatory amendments, would be docketed as "2013-BLA-5201." The case is then assigned to an Administrative Law Judge who schedules the case for a hearing, and issues a decision and order after conducting a *de novo* review of the record and deciding all questions of fact and law.

The issues listed on the Form CM-1025 may be amended within the discretion of the Administrative Law Judge, provided the opposing party is given adequate notice and an opportunity to develop evidence with regard to the issues. *Perry v. Director, OWCP*, BRB No. 91-1197 BLA (Apr. 28, 1993)(unpub.) (citing *Carpenter v. Eastern Assoc. Coal Corp.*, 6 B.L.R. 1-784 (1984)).

For a discussion regarding amending issues listed on the Form CM-1025, *see* Chapter 26.

B. The parties have 30 days to request a hearing

As previously-noted, the parties have 30 days from the date of issuance of the District Director's proposed decision and order to request a hearing before the Administrative Law Judge. Calculation of this 30 day timeframe was the subject of the Board's decision in *W.L. v. Director, OWCP*, 24 B.L.R. 1-99 (2008). Under the facts of that case, the District Director's service sheet stated his proposed decision and order denying benefits was mailed to the parties on October 14, 2005. However, the envelope containing the proposed decision was postmarked October 19, 2005, and Claimant filed a hearing request on November 18, 2005.

The claim was forwarded to the Office of Administrative Law Judges at which point counsel for the Director, OWCP argued Claimant's hearing request was untimely. The Administrative Law Judge agreed. Claimant appealed this decision and, as noted by the Board, the Director, OWCP changed its position regarding the timeliness of claimant's hearing request:

> The Director notes that he took a contrary position before the administrative law judge as to the timeliness of the hearing request 'without fully considering the ramifications of the district director's late service of the proposed decision and order . . . which renders the hearing request timely.

Citing to 20 C.F.R. § 725.419(a), the Board noted the hearing must be requested within 30 days of the "date of issuance of a proposed decision and order . . .." 20 C.F.R. § 725.419(a). Here, although the service sheet of the *Proposed Decision and Order* indicated it was mailed on October 14, 2005, the postmark date on the envelope was October 19, 2005. The Board concluded the postmark date was controlling and, therefore, Claimant's November 18, 2005 hearing request was timely.

C. How decisions are captioned

Given privacy concerns regarding publishing the names of miners and survivors on final decisions and orders issued by Administrative Law Judges, there was a period of time where only the initials of the names of the miners and survivors were used in the captions of cases. However, this practice was short-lived when, in *National Assoc. of Waterfront Employers v. Solis*, 665 F.Supp.2d 10 (D.D.C. 2009), the district judge held the "Rule requiring the use of claimants' initials in ALJ decisions and orders under the Longshore Act and the Black Lung Act will be set aside and its enforcement will be enjoined."

D. Party qualified to pursue the claim

On occasion, the miner or survivor will die during pendency of a claim for benefits. This does not, however, mean the claim is automatically finished. A representative of the estate of the claimant may elect to enter an appearance and continue pursuit of the claim. 20 C.F.R. §§ 725.360 and 725.545. Often, it is the widow of a miner who elects to pursue the miner's claim while, at the same time, filing a survivor's claim for benefits.

In *Spangler v. Donna Kay Coal Co.*, 24 B.L.R. 1-183 (2010), where the miner died during pendency of the claim, the Board held it was not proper to substitute the miner's daughter-in-law as a party to the claim without adequate consideration of the factors at 20 C.F.R. § 725.545(e). Under the facts of the case, the Administrative Law Judge held Employer failed to present "any evidence that claimant was not acting on behalf of the miner's estate" such that the daughter-in-law was permitted to proceed with the miner's claim for benefits. The Board cited to 20 C.F.R. §§ 725.360 and 725.545 to hold:

> Because the administrative law judge did not properly consider whether claimant qualified as a legal representative under 20 C.F.R. § 725.545(e), we must vacate the administrative law judge's determination that claimant is a proper party to these proceedings.
>
> . . .
>
> Whether claimant is a proper party is a question of fact for the administrative law judge to resolve based upon the application of the regulations.

The Board noted, on remand, the "administrative law judge may reopen the record for the submission of evidence relevant to this issue, or entertain motions from any other person who claims the right to proceed on behalf of the miner or his estate."

Similarly, in *F.L. v. Zeigler Coal Co.*, BRB No. 08-0302 BLA (Jan. 29, 2009) (unpub.), Employer moved to dismiss the black lung claim because there was no "proper party-in-interest to proceed with its adjudication." Counsel for Claimant maintained the "miner's grandson ha[d] an interest in protecting the award of benefits because there were costs incurred by the miner in pursuing the claim, there could be outstanding benefits due the miner's estate, and there could be a claim against the miner's estate for the overpayment of benefits." Counsel also

asserted that Illinois law did not require probate of the miner's estate such that the grandson "did not have letters of administration to submit to the administrative law judge."

Nonetheless, the Administrative Law Judge subsequently "advised claimant's counsel to provide her with a copy of the death certificate and the letters of administration that authorized the miner's grandson to represent the miner's estate." In response, the Administrative Law Judge noted receipt of the death certificate, obituary, and "a letter from a law firm that referenced a trust agreement that was not in the record." In particular, the law firm's letter provided there "was no probate administration of the miner's estate because all of the miner's assets at the time of his death were held by his grandson as the trustee of a revocable living trust agreement."

The Board noted, "[a]lthough the administrative law judge determined that this documentation was lacking in some respects regarding the authority of the miner's grandson to represent the miner's estate, she found that the miner's estate would remain the named party in the case." The Board upheld the Administrative Law Judge's finding and concluded, under 20 C.F.R. § 725.360, "it was not unreasonable for the administrative law judge to find that the miner's estate qualified as a party to the claim . . .."

III. The appellate process

A. Circuit court jurisdiction

In *Shupe v. Director, OWCP,* 12 B.L.R. 1-200, 1-202 (1989)(en banc), the location of the miner's last coal mine employment is determinative of the circuit court jurisdiction. Similarly, *Broyles v. Director, OWCP*, 143 F.3d 1348 (10th Cir. 1998), the Tenth Circuit held that a survivor's appeal must be filed in the jurisdiction where the miner's coal mine employment, and therefore his harmful exposure to coal dust, occurred. In so holding, the Tenth Circuit cited to *Kopp v. Director, OWCP*, 877 F.2d 307, 309 (4th Cir. 1989), wherein the Fourth Circuit held that "jurisdiction is appropriate only in the circuit where the miner's coal mine employment, and consequently his harmful exposure to coal dust, occurred." The *Kopp* court found, based on the record before it, the miner's "only exposure to coal dust occurred in the Seventh Circuit" such that the case would be transferred to that court for adjudication pursuant to 28 U.S.C. § 1631.

The circuit courts of appeals have accepted cases where the miner was engaged in coal mine employment in their jurisdiction, even if he last worked in the mines in another jurisdiction. For example, in *Hon v. Director, OWCP*, 699 F.2d 441 (8th Cir. 1983), the Eighth Circuit held "black lung disease is a 'cumulative' injury," which is "caused by extensive exposure to

coal dust, and it is impossible to say that any one exposure 'caused' the miner to get black lung." Consequently, the court rejected the "'last injurious contact'" rule stating the "appeal lies in any circuit in which claimant worked and was exposed to the danger, prior to manifestation of the injury." *See also Consolidation Coal Co. v. Director, OWCP [Kramer]*, 305 F.3d 203 (3d Cir. 2002) (appeal accepted where the miner last worked in the mines in West Virginia, but he had previous coal mine employment in Pennsylvania).

B. Appeal to the U.S. Circuit Court of Appeals

Once the Benefits Review Board (Board) issues a decision affirming or reversing the decision of the Administrative Law Judge, any dissatisfied party has a right to appeal the Board's decision within 60 days of the date of its issuance. In *Mining Energy, Inc. v. Director, OWCP [Powers]*, 391 F.3d 571 (4th Cir. 2004), the court dismissed Employer's appeal as untimely. Employer filed a petition for review with the court on October 28, 2002, which was 151 days after the Board denied relief requested by Employer on reconsideration by order dated May 30, 2002.

The court noted, under 33 U.S.C. § 921(c), a petition for review must be filed within 60 days of the date the Board issues its decision. Employer maintained it did not have *actual* notice of the May 2002 order until September 23, 2002, "when it received notification from the Department of Labor . . . regarding payment of benefits." The court agreed Employer was not properly served with the Board's May 2002 order. Employer argued a Board decision is not properly served under Section 921(c) "until and unless it has been both filed with the Board *and* properly served on the parties via certified mail, or until the party has received actual notice." (italics in original).

Citing to the plain language of the regulations at 20 C.F.R. § 802.410(a), the court held the 60 day period for filing a petition for review commences to run "when a Board decision is *filed* with the Clerk of the Board," without regard to whether the parties receive *actual* notice of the decision. As a result, the appeal was dismissed as untimely. However, in so holding, the court stated, "Our conclusion on this point does not negate the seriousness of the Board's failure to properly conduct its affairs, nor our disapproval of it."

C. Claims processing

Writ of certiorari to the United States Supreme Court
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Appeal to United States Circuit Court of Appeals
for the circuit in which the miner last engaged in coal mine work
(substantial evidence review)
^
Appeal to the Benefits Review Board
(substantial evidence review)
^
Hearing and *de novo* record review
at the Office of Administrative Law Judges
^
Timely request for hearing
^
Proposed decision and order by the District Director

If Claimant is **finally adjudicated** to be entitled to benefits, then the designated employer must commence the payment of benefits. In those cases where interim benefits payments were made by the Black Lung Disability Trust Fund (Trust Fund) (*i.e.* where the District Director issued a proposed decision awarding benefits that was appealed), then Employer is required to reimburse the Trust Fund for all such monies paid with interest. If there is no designated employer, or the designated employer is financially incapable of paying the benefits, then benefits will continue to be paid from the Trust Fund. Finally, where the Director, OWCP, or an employer made interim payments to a claimant whose claim is finally denied, then proceedings to recover the overpayment are instituted before the District Director. *See* Chapter 17 for a discussion of overpayment claims.

IV. Research tools

The following is a list of research tools to assist in the adjudication of black lung claims. Many of these tools are available through the Office of Administrative Law Judge's website at http://oalj.dol.gov/.

- The Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §§ 901 - 962 (commonly referred to as the "Black Lung Benefits Act").

- The implementing regulations at 20 C.F.R. Parts 410, 718, 725, and 727. Most claims presented for adjudication were filed after 1982 such that the procedural provisions at 29 C.F.R. Part

18 and 20 C.F.R. Part 725 as well as the entitlement provisions at 20 C.F.R. Part 718 will be applicable. These regulatory provisions are available on the website. For a discussion of applicability of the amended regulations, *see* Chapters 4 and 5.

- The *Black Lung Reporter* is a multi-volume set of binders issued by Juris Publishing, and it constitutes the official reporter for published decisions of the Benefits Review Board. The *Reporter* also contains published Supreme Court and circuit court of appeals decisions as well as select decisions from Administrative Law Judges.

- WESTLAW is an on-line research tool used for researching published (and some unpublished) Supreme Court, circuit court, and Benefits Review Board decisions in black lung. To research published black lung and longshore decisions of the Benefits Review Board using WESTLAW, you must access the "FWC-BRB" database.

- The *Judges' Benchbook: Black Lung Benefits Act* contains a summary of important statutory and regulatory provisions as well as case law. A supplement to the *Benchbook* is updated almost monthly, and is available on the website.

- The "Black Lung" library at www.oalj.dol.gov includes a "Standardized Evidence Summary Form," which may be downloaded and used for claims filed under the amended regulations. The website also contains a subpoena form for parties to download.

In addition, the website has links to other databases that provide information on physicians' qualifications. One link is the NIOSH B-reader list for chest x-ray readers that is prepared, and updated, by NIOSH.

There are two approaches for using the NIOSH B-reader list, and similar website sources of information. Some Administrative Law Judges only consider evidence presented in the four corners of the record. For example, if evidence regarding a physician's qualifications has not been submitted, then the Administrative Law Judge will not look at website (or other extrajudicial) sources of information; rather, s/he will conclude that the physician's qualifications are unknown.

Other Administrative Law Judges will look outside the formal record to ascertain physicians' qualifications. In such instances, the Administrative Law Judge must give notice of his or her intention to look outside the record

for this information in the hearing notice, or other appropriate document. Moreover, a copy of the relevant portion of the source of information must be attached to the Administrative Law Judge's decision and order. *Maddaleni v. The Pittsburgh and Midway Coal Mining Co.*, 14 B.L.R. 1-135 (1990); *Pruitt v. Amax Coal Co.*, 7 B.L.R. 1-544, 1-546 (1984).

V. Audio-visual coverage of hearings

The regulatory provisions at 29 C.F.R. § 2.13(c) provide, upon objection by any party, the Department "shall not permit audiovisual coverage" of "[a]dversary hearings under the Longshoremen's and Harbor Workers' Compensation Act . . . and related Acts, which determine an employee's right to compensation."