

Chapter 20

Medical Treatment Dispute (BTD)

I. Generally

In some cases, an employer will dispute payment for certain medical services, asserting that the treatment was unauthorized or unrelated to the miner's black lung condition. Medical treatment dispute cases commence with the district director who "shall attempt to informally resolve such dispute." 20 C.F.R. §§ 725.707(a) (2000) and 725.708 (2008). The sole province of the administrative law judge in these cases is to determine whether certain medical expenses are related to the miner's black lung condition. Thus, if the Director, OWCP has not calculated the amount for reimbursement, the case should be remanded.

Payments for medical treatment commence 30 days after the initial determination of liability by the district director. 20 C.F.R. § 725.522 (2000) and (2008).

A. Reimbursement of Trust Fund, no jurisdiction

In *Balaban v. Duquesne Light Co.*, 16 B.L.R. 1-120 (1992), the Board held that neither it nor the administrative law judge has jurisdiction to order that an employer reimburse the Trust Fund for a paid medical bill. Citing the Sixth Circuit's holding in *The Youghiogheny and Ohio Coal Co. v. Vahalik*, 970 F.2d 161 (6th Cir. 1992), the Board concluded that the sole issue of reimbursement "requires no administrative expertise" and, therefore, should be decided by the federal district court of appropriate jurisdiction. As a result, the administrative law judge should determine only whether certain medical expenses are related to the miner's black lung condition.

B. Concession, effect of

In *Lewis Coal Co. v. Director, OWCP [McCoy]*, 373 F.3d 570 (4th Cir. 2004), the court upheld the presumption set forth in *Doris Coal Co. v. Director, OWCP*, 938 F.2d 492, 494 (4th Cir. 1991)¹. Moreover, the court affirmed the administrative law judge's finding that the company was responsible for medical expenses related to treatment of the miner's coal-dust-related chronic bronchitis. The miner was diagnosed with chronic bronchitis in 1971, and was

¹ This presumption is codified in the amended regulations at 20 C.F.R. § 725.701(e) and (f) (2008), as discussed *infra*.

awarded monthly black lung benefits by the Social Security Administration under Part B of the Act in 1973. The miner later applied for Part C medical benefits under the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, § 11, 92 Stat. 95, 101 (1978), and in 1981 the company waived its right to contest the claim and conceded that the miner was entitled to medical benefits. Years later, however, the company refused to pay for treatment of the miner's chronic bronchitis, arguing that the disease was not pneumoconiosis. In rejecting the company's argument, the court held that the company's 1981 concession precluded it from asserting that the miner's chronic bronchitis did not constitute compensable pneumoconiosis.

II. Entitlement to a hearing and scope of consideration

Under the regulations, any party may request a hearing by the administrative law judge, including an interested medical provider (if appropriate). 20 C.F.R. §§ 725.707(b) and (d) (2000) and 725.708(b) and (d) (2008). The scope of consideration is limited to the dispute of particular medical treatment and not to the re-adjudication of entitlement to benefits.

The Board has held that, where liability for medical benefits is at issue as in a medical benefits only case, the hearing process is bifurcated pursuant to 20 C.F.R. § 725.701A (2000) and § 725.708 (2008) of the regulations whereby liability for medical benefits is determined prior to reimbursement for particular medical treatment or the resolution of any medical treatment disputes. *Stiltner v. Doris Coal Co.*, 14 B.L.R. 1-116 (1990)(*en banc*), *aff'd in part sub nom, Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492 (4th Cir. 1991); *Lute v. Split Vein Coal Co.*, 11 B.L.R. 1-82, 1-84 (1987)(*en banc*).

For further discussion of medical benefits only proceedings, see Chapter 19.

III. Treatment related to the miner's black lung condition

A. Burden of persuasion/production

1. Prior to applicability of 20 C.F.R. Part 725 (2008)

Because information is within the control of the claimant, it is the claimant's burden to provide documentation that the treatment was "for such periods as the nature of the miner's pneumoconiosis and ancillary pulmonary conditions and disability require." Prior to promulgation of the January 2001 amendments to the regulations, there was a split of authority that developed between the Fourth and Sixth Circuits in adjudicating medical treatment disputes. The Fourth Circuit's position was adopted by the Board and was ultimately codified in the amended regulations.

a. Benefits Review Board

In *Allen v. Island Creek Coal Co.*, 21 B.L.R. 1-1 (1996), *aff'g. on recon.*, 15 B.L.R. 1-32 (1991), the employer sought reconsideration on grounds that it should not be required to pay medical bills related to treatment of chronic bronchitis and chronic obstructive pulmonary disease, as these "conditions do not fall within the regulatory definition of pneumoconiosis." The Board held to the contrary that, because the claimant is entitled to a presumption that his chronic bronchitis and chronic obstructive pulmonary disease are substantially related to, or aggravated by, the presence of pneumoconiosis, the employer is liable for the medical costs associated with Claimant's treatment. The "presumption" is derived from the Fourth Circuit's decision in *Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492 (4th Cir. 1991) wherein the court held that because "most pulmonary disorders are going to be related or at least aggravated by the presence of pneumoconiosis, when a miner receives treatment for a pulmonary disorder, a presumption arises that the disorder was caused or at least aggravated by the miner's pneumoconiosis, making the employer liable for the medical costs."

b. Fourth Circuit

In *Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492, 496-97 (4th Cir. 1991), the Fourth Circuit held that because "most pulmonary disorders are going to be related or at least aggravated by the presence of pneumconiosis, when a miner receives treatment for a pulmonary disorder, a presumption arises that the disorder was caused or at least aggravated by the miner's pneumoconiosis, making the employer liable for the medical costs."

Subsequent to the Sixth Circuit's *Seals* decision, which is discussed *infra*, the Fourth Circuit revisited the issue and reaffirmed its *Doris Coal* holding. In *Gulf & Western Industries v. Ling*, 176 F.3d 226 (4th Cir. 1999), the miner sought payment for medical treatment which he argued was the result of his pneumoconiosis. Employer maintained that the miner was being treated for an obstructive lung disorder related to his cigarette smoking history and not associated with pneumoconiosis. The employer argued that the miner's pneumoconiosis was not severe enough to necessitate the medical treatments for which he sought payment.

The administrative law judge concluded that the miner's treatments for shortness of breath were to be paid by the employer as "[s]hortness of breath is a primary symptom of pneumoconiosis." In declining to overrule its prior holding in *Doris Coal*, the court stated the following:

It by no means distorts the truth to postulate that, in the great majority of cases, the disorders and symptoms associated with the

miner's disability will closely correspond to those for which he later receives treatment. Even where there is less than perfect identity, however, the threshold creating the entitlement to benefits—that the pulmonary condition treated be merely aggravated by the miner's pneumoconiosis—is low enough to permit a rational conclusion that a particular respiratory infirmity will likely be covered.

Hence, rather than compel the miner to exhaustively document his claim for medical benefits, *i.e.*, requiring him to again laboriously obtain all the evidence that he can that his shortness of breath, wheezing, and coughing are still the result of his pneumoconiosis, we have fashioned the Doris Coal presumption as a shorthand method of proving the same thing. The proof needed is a medical bill for the treatment of a pulmonary or respiratory disorder and/or associated symptoms.

Though the miner's burden of proving his claim is not onerous, it does not follow that it is non-existent or that it has somehow been shifted to the employer or its insurer.

The court concluded that it disagreed with the Sixth Circuit's holding in *Seals*. It found that the miner had presented medical bills for treatment of respiratory ailments. Moreover, the breathing difficulties were attributed by the physician to the miner's chronic obstructive pulmonary disease and clinical pneumoconiosis. As a result, the court concluded that the *Doris Coal* presumption was properly invoked. The court stated that the presumption "remains a valid, rational evidentiary device that serves the important public purpose of facilitating the administrative processing of medical benefit claims by coal miners previously adjudged entitled to disability payments under the BLBA."

Similarly, in *General Trucking Corp. v. Salyers*, 175 F.3d 322 (4th Cir. 1999), the Fourth Circuit held that the *Doris Coal* presumption may be rebutted if the employer demonstrates that: (1) the expenses claimed exceed those necessary to treat a covered pulmonary disorder; (2) the treatment was not for a pulmonary disorder; or (3) the treatment is for a pulmonary disorder unrelated to the coal dust induced disease.

c. Sixth Circuit

Before the Sixth Circuit had addressed the issue, the Board applied the Fourth Circuit's *Doris Coal*'s presumption in *Seals v. Glen Coal Co.*, 19 B.L.R. 1-80 (1995)(en banc). In particular, the Board held that the "claimant must establish that his medical expenses were necessary to treat his pneumoconiosis and ancillary pulmonary conditions and disability." It was

then determined that a physician who concluded that the miner did not have occupational pneumoconiosis, was "contrary to the spirit of the Act in that a final determination of entitlement to medical benefits precluded raising the basic issues of entitlement." The Board concluded that, under the *Doris Coal's* presumption, the party opposing entitlement carries the burden of establishing that the miner's pulmonary-related medical bills were not for the treatment of his pneumoconiosis.

On appeal, in *Glen Coal Co. v. Seals*, 147 F.3d 502 (6th Cir. 1998), the Sixth Circuit overruled the Board decision to hold that the claimant is not entitled to a rebuttable presumption that his pulmonary or respiratory medical treatment is related to his coal workers' pneumoconiosis. The Sixth Circuit acknowledged its departure from the Fourth Circuit's holding on the issue in *Doris Coal Co. v. Director, OWCP*, 938 F.2d 492 (4th Cir. 1991) (a miner who is found totally disabled due to pneumoconiosis is entitled to a rebuttable presumption that his pulmonary and respiratory medical treatment is related to this condition). The Sixth Circuit stated the following:

We hold that the *Doris Coal* presumption (does not violate § 7 because it) merely reallocates the burden of production, and does not affect the burden of proof. The effect of the *Doris Coal* presumption is to find that where there is a stage one determination that the claimant is totally disabled due to pneumoconiosis, then in stage two the claimant does not have to come forward with any additional evidence to provide that his medical bills are related to his pneumoconiosis; instead, the employer/carrier must come forward with evidence to prove that his medical bills are not related to his pneumoconiosis.

. . .

The claimant still must satisfy the trier of fact that the bills are related, but the claimant is relieved of the requirement of producing additional evidence of this relationship.

The court concluded, however, that the rebuttable presumption created in *Doris Coal* is not consistent with the purpose of the Black Lung Benefits Act. Citing to the Supreme Court's decision in *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267 (1994), the circuit court found that the decision "suggest[ed]" that the Act "was intended to be applied with uniformity which could be destroyed if the door is suddenly opened to the creation of judicial presumptions." The court further noted that such a presumption may "open the door to fraud in the preparation of medical bills."

2. After applicability of 20 C.F.R. Part 725 (2008)

Subsections 725.701(e) and (f) have been added under the amended regulations codifying the Fourth Circuit's *Doris Coal* presumption:

(e) If a miner receives a medical service or supply, as described in this section, for any pulmonary disorder, there shall be a rebuttable presumption that the disorder is caused or aggravated by the miner's pneumoconiosis. The party liable for the payment of benefits may rebut the presumption by producing credible evidence that the medical service or supply provided was for a pulmonary disorder apart from those previously associated with the miner's disability, or was beyond that necessary to effectively treat a covered disorder, or was not for a pulmonary disorder at all.

(f) Evidence that the miner does not have pneumoconiosis or is not totally disabled by pneumoconiosis arising out of coal mine employment is insufficient to defeat a request for coverage of any medical service or supply under this subpart. In determining whether treatment is compensable, the opinion of the miner's treating physician may be entitled to controlling weight pursuant to § 718.104(d). A finding that a medical service or supply is not covered under this subpart shall not otherwise affect the miner's entitlement to benefits.

20 C.F.R. § 725.701(e) and (f) (2008).

a. Amendment applied in Sixth Circuit

In *Cornett v. Arch of Kentucky, Inc.*, BRB No. 01-0276 BLA (Nov. 28, 2001) (unpub.), a case arising in the Sixth Circuit, the Board upheld retroactive application of the amended medical treatment dispute regulations at 20 C.F.R. § 725.101(e) to determine whether the miner's medical bills were related to his respiratory impairment arising from coal dust exposure. Employer argued that the regulations adopted the Fourth Circuit's presumption set forth in *Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492 (4th Cir. 1991), which was specifically rejected by the Sixth Circuit in *Seals v. Glen Coal Co.*, 147 F.3d 502 (6th Cir. 1998).

Citing to the district court's ruling in *United Mining Ass'n. v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001), the Board upheld the validity of the revised regulation at 20 C.F.R. § 725.701 (2008). The Board further noted that

Employer's burden to defend against the "compensability of the disputed expenses" has not been altered.

Turning to the merits of the case, the judge properly found that the miner's hospitalization was related to his coal dust induced lung disease notwithstanding the fact that the medical records did not specifically "reflect treatment for pneumoconiosis." The judge noted that the miner's chronic obstructive pulmonary disease and chronic bronchitis were related to coal dust exposure and, therefore, because his hospitalization records reflected treatment for such conditions, the costs were compensable. Moreover, it was proper to give little weight to Dr. Branscomb's opinion that the medical expenses were not compensable as the opinion was premised on a finding that the miner did not suffer from legal pneumoconiosis.

b. Lung transplant

In *Kenner v. Tennessee Consolidated Coal Co.*, 22 B.L.R. 1-287 (2003), the administrative law judge concluded that the miner was entitled to reimbursement for costs associated with a lung transplant. The Board upheld the judge's ruling that statutory and regulatory provisions, which require that Employer furnish all medical treatment for conditions arising out of coal mine employment, are controlling over the Department of Labor's Provider Manual that excluded organ transplants from coverage. The Board concluded that the Manual does not "rise to the level of interpretive rules or formal policy." Rather, the Manual contains "informal, instructional guidelines" that do not have the "force and effect of law, and the fact-finder has discretion to determine based on the facts of each case, whether or not a lung transplant constitutes a covered procedure under the Act and the regulations."

However, the Board remanded the case holding that Employer was entitled to a hearing "on the contested issue of whether the miner's lung transplant was reasonable and necessary to treat the miner's pneumoconiosis pursuant to the standard enunciated in *Glen Coal Co. v. Seals*, 147 F.3d 502 (6th Cir. 1998) since the case arose in the Sixth Circuit.

B. Treatment of respiratory and non-respiratory conditions

With regard to separating items of a respiratory, as opposed to a non-respiratory, nature, the Board in *Stiltner* held that it was within the administrative law judge's discretion as the trier-of-fact to evaluate the evidence and conclude that it was "impractical to apportion the time spent by the physician in treating respiratory, as opposed to non-respiratory, conditions" since it is already determined that the miner is totally disabled due to pneumoconiosis. *Id.* at 1-119. However, on appeal in *Doris Coal Co. v. Director, OWCP [Stiltner]*, 938 F.2d 492, 498 (4th Cir. 1991), the Fourth Circuit overruled the Board on this point to hold that the administrative law judge, as

trier-of-fact, must specifically determine those medical services and charges are related to pneumoconiosis which, in turn, requires that the treating physician itemize his or her bill so as to clearly reflect those charges related to the miner's black lung condition.