

Table of Contents

Chapter 1

Introduction to the Claims Process and Research Tools

I.	Filing the claim and adjudication by the district director	1.1
A.	The Director, OWCP and district director	1.1
B.	Development of the record	1.1
C.	The notice of initial finding	1.3
1.	Prior to applicability of 20 C.F.R. Part 725 (2008)	1.3
2.	After applicability of 20 C.F.R. Part 725 (2008)	1.3
D.	Determination of the responsible operator	1.3
1.	Before applicability of 20 C.F.R. Part 725 (2008)	1.3
2.	After applicability of 20 C.F.R. Part 725 (2008)	1.4
E.	The notice of an award/denial of benefits	1.4
II.	The request for a formal hearing	1.5
III.	The appellate process.	1.6
A.	Circuit court jurisdiction	1.6
B.	Appeal is untimely	1.6
C.	Claims processing	1.7
IV.	Research tools	1.8
V.	Use of claimants' initials in final orders and decisions	1.9
VI.	Audio-visual coverage of hearings	1.10

Chapter 2

Introduction to the Medical Evidence

I.	Generally	2.1
II.	The chest roentgenogram or x-ray	2.1
A.	Generally	2.1
B.	Elements of the x-ray report	2.5
1.	Date of the x-ray study and date of the reading	2.5
2.	Qualifications of the physician	2.5
a.	The C-reader	2.5
b.	The B-reader	2.6
c.	The Board-certified radiologist	2.6
d.	The A-reader	2.6
e.	The Board-eligible radiologist	2.7
3.	Film quality	2.7

4.	The quantity of opacities	2.7
5.	The size and type of opacities	2.8
III.	The pulmonary function (ventilatory) study	2.8
A.	Generally	2.8
B.	Height, age, and gender of the miner	2.9
C.	The forced expiratory volume (FEV ₁)	2.9
D.	The forced vital capacity (FVC) and the maximum voluntary volume (MVV)	2.10
E.	The use of bronchodilators	2.10
IV.	The blood gas studies	2.10

Chapter 3

General Principles of Weighing Medical Evidence

I.	An introduction	3.1
A.	Burdens, generally	3.1
B.	Claims adjudicated under Part 727 or § 410.490.....	3.2
C.	Claims adjudicated under Part 718.....	3.2
II.	Rules of general application	3.2
A.	The “true doubt” rule.....	3.2
1.	Prior to applicability of 20 C.F.R. Part 718 (2008)	3.2
2.	After applicability of 20 C.F.R. Part 718 (2008)	3.3
B.	The “later evidence” rule.....	3.4
1.	The Benefits Review Board and circuit courts, generally	3.4
a.	Benefits Review Board	3.4
b.	Fourth Circuit.....	3.5
c.	Sixth Circuit	3.6
d.	Seventh Circuit	3.6
2.	Chest x-rays	3.7
a.	Date of study relevant	3.7
b.	Length of time between studies, qualifications of readers relevant.....	3.7
3.	Ventilatory studies.....	3.7
4.	Blood gas studies	3.8
5.	Medical opinions	3.8
C.	The “hostile-to-the-Act” rule.....	3.8
1.	Coal mine employment preserves lung function.....	3.9
2.	Simple pneumoconiosis cannot be totally disabling	3.9
3.	No pneumoconiosis based solely on negative x-ray	3.9
4.	Pneumoconiosis does not cause obstructive impairments	3.10

5.	Pneumoconiosis “not expected” to cause pulmonary impairment.....	3.13
6.	Pneumoconiosis does not progress after exposure to dust ceases.....	3.13
D.	Numerical superiority	3.13
1.	Chest x-rays	3.14
a.	Generally	3.14
b.	Fourth Circuit.....	3.14
c.	Sixth Circuit	3.14
d.	Seventh Circuit	3.15
2.	Blood gas studies	3.15
3.	Medical opinions	3.15
E.	Quality standards.....	3.16
1.	Prior to applicability of 20 C.F.R. Part 718 (2008)	3.16
a.	Quality standards under Part 718	3.16
b.	Quality standards under Parts 410 and 727	3.16
c.	Applicability of Part 718 standards to Part 727 claims.....	3.16
2.	After applicability of 20 C.F.R. Part 718 (2008)	3.17
a.	Quality standards, generally	3.17
b.	Chest x-rays.....	3.18
c.	Pulmonary function studies.....	3.19
d.	Blood gas studies	3.20
e.	Autopsy and biopsy evidence.....	3.20
f.	Medical opinion evidence.....	3.21
g.	Hospitalization and treatment records.....	3.22
3.	Challenging quality of evidence, burdens for	3.22
F.	Party affiliation	3.22
1.	Allegations of bias based on adverse opinion or party affiliation	3.22
2.	Department of Labor sponsored examination	3.24
G.	Cumulative, repetitious, or immaterial evidence.....	3.24
III.	Chest roentgenogram evidence	3.25
A.	Physicians' qualifications.....	3.25
1.	Dually qualified physicians	3.25
a.	Over a board-certified radiologist	3.25
b.	Over a B-reader	3.25
2.	Board-certified and board-eligible radiologists	3.26
3.	C-readers and B-readers	3.26
4.	B-readers and A-readers	3.26
5.	Credentials unknown.....	3.26
6.	Taking official notice of credentials	3.26
B.	Format of the x-ray report	3.27
1.	Use of ILO form not required.....	3.27

2.	Use of the official ILO form, generally	3.27
a.	Alternative diagnosis	3.28
b.	Additional diagnosis.....	3.28
C.	Interpretation that is silent regarding pneumoconiosis.....	3.28
D.	Film quality	3.29
F.	Digital x-rays and CT-scans considered separately from chest x-ray evidence	3.29
IV.	Pulmonary function (ventilatory) studies	3.30
A.	Resolving height discrepancies	3.30
B.	Qualifying test results.....	3.30
C.	Determination of reliability or conformity	3.31
1.	Conformity issues.....	3.32
a.	“Poor” cooperation or comprehension	3.32
b.	“Fair” cooperation or comprehension	3.32
c.	Non-conforming, non-qualifying study probative	3.32
2.	Requirement of three tracings and flow-volume loop...	3.33
3.	Testing conducted during hospitalization	3.33
D.	Miners over 71 years of age	3.33
V.	Blood gas studies	3.34
A.	Cannot “round-up” or “round-down” values.....	3.34
B.	Determination of reliability or conformity	3.35
1.	Validation by medical opinion.....	3.35
a.	Factors to consider, generally	3.35
b.	Technical validation of study, value of.....	3.35
2.	Test conducted during hospitalization.....	3.36
a.	Prior to applicability of 20 C.F.R. Part 718 (2008).....	3.36
b.	After applicability of 20 C.F.R. Part 718 (2008).....	3.36
VI.	Medical reports	3.37
A.	Well-documented, well-reasoned opinion defined	3.37
B.	Undocumented and unreasoned opinion, little or no probative value.....	3.37
1.	Generally.....	3.37
2.	Separation of probative, non-probative components of report.....	3.38
3.	Unsupported medical conclusion.....	3.38
4.	Basis for opinion unclear	3.38
5.	Opinion based on generalities	3.39
6.	Reliance on unreliable study, subjective complaints	3.39
7.	Inaccurate coal mine employment or smoking history	3.39
8.	Inadequate reasoning	3.39

a.	Reliance on negative x-ray alone.....	3.39
b.	Reversibility on pulmonary function testing with residual disability	3.40
9.	Medical opinion cannot be based on chest x-ray alone	3.40
C.	Physicians' qualifications.....	3.41
1.	Treating physician	3.41
a.	Prior to applicability of 20 C.F.R. Part 718 (2008).....	3.41
b.	After applicability of 20 C.F.R. Part 718 (2008).....	3.44
2.	Examining physicians.....	3.47
3.	Non-examining or consultative physician	3.47
4.	Criminal conviction of the physician	3.48
D.	Equivocal or vague conclusions.....	3.48
1.	Generally.....	3.48
2.	Inadvisability of return to coal mine employment	3.48
3.	Unable to assess impairment	3.49
4.	Should work in "dust-free environment" too vague	3.49
5.	Finding of "Class II" impairment too vague	3.49
6.	Presumption at 20 C.F.R. § 718.203, effect of.....	3.50
E.	Physician's opinion based on premises contrary to judge's findings	3.50
1.	Benefits Review Board.....	3.51
2.	Third Circuit.....	3.51
3.	Fourth Circuit.....	3.52
4.	Seventh Circuit	3.53
F.	Silent opinion	3.53
G.	Inconsistent reports	3.53
H.	Better supported by objective medical data.....	3.54
1.	In general.....	3.54
2.	Premise contrary to regulations, report not probative	3.54
I.	Reliance on non-qualifying or non-conforming testing.....	3.56
1.	Generally.....	3.56
2.	Benefits Review Board.....	3.57
3.	Fourth Circuit.....	3.57
4.	Sixth Circuit.....	3.58
5.	Seventh Circuit	3.58
J.	Extensive medical data versus limited data	3.58
1.	Extensive data considered, report probative.....	3.59
2.	Incomplete data considered, report less probative	3.59
K.	Physical limitations contained in medical report	3.59
L.	Death certificates.....	3.60

M.	Determinations by other agencies	3.61
N.	Medical literature and studies	3.61
1.	Medical opinion supported by literature may be probative.....	3.61
2.	Articles contrary to regulations, not probative	3.62
3.	Surgeon General’s report contrary to regulations, not probative	3.62
4.	Pneumoconiosis does not cause obstruction, not probative.....	3.63
5.	Use of AMA Guidelines upheld	3.63
O.	Weighing “other evidence” under 20 C.F.R. § 718.107.....	3.64
1.	CT-scans	3.64
a.	Should not be weighed under 20 C.F.R. § 718.202(a)(1) (2008)	3.64
b.	Not <i>per se</i> more probative than chest x-ray evidence	3.64
2.	Digital x-rays	3.65
a.	Should not be weighed under 20 C.F.R. § 718.202(a)(1) (2008)	3.65
b.	Admissibility issues.....	3.65
VII.	Autopsy reports	3.65
A.	Principles of weighing autopsy evidence.....	3.66
1.	Performing the autopsy versus review of the slides.....	3.66
a.	Greater weight to prosector’s report, held proper	3.66
b.	Greater weight to prosector’s report, held improper.....	3.67
2.	Opinion of autopsy prosector versus review of findings.....	3.68
B.	Quality standards.....	3.68

Chapter 4

Limitations on Admission of Evidence and the “Good Cause” Standard in Black Lung Claims

I.	Limitation of documentary medical evidence.....	4.1
A.	Limitations are mandatory	4.1
1.	Cannot be waived by the parties.....	4.1
2.	Parties must designate evidence.....	4.1
a.	Substitution of evidence.....	4.1

b.	Judge not required to retain excluded evidence	4.2
c.	Special circumstances.....	4.2
B.	An original claim or a claim filed pursuant to 20 C.F.R. § 725.309 (2008)	4.3
1.	In support of claimant's position.....	4.3
2.	In support of responsible operator's or Trust Fund's position	4.4
3.	The Department of Labor sponsored examination, special circumstances.....	4.6
4.	The Director, OWCP	4.7
C.	On modification	4.7
1.	The regulation.....	4.7
2.	Parties allowed to "back-fill" slots	4.7
3.	Rebuttal provisions from 20 C.F.R. § 725.414 incorporated into 20 C.F.R. § 725.310.....	4.8
D.	Hospitalization and treatment records unaffected.....	4.8
1.	The regulation.....	4.8
2.	Treatment records	4.8
a.	Rebuttal of	4.8
b.	"Affirmative" evidence allowed.....	4.9
c.	"Medical report" versus treatment record	4.9
E.	"Other evidence" under 20 C.F.R. § 718.107 (2008).....	4.9
1.	No quality standards, evidence of reliability under 20 C.F.R. § 718.107(b) (2008) required	4.9
2.	Limitations on admission of.....	4.10
F.	Medical reports under 20 C.F.R. § 725.414 (2008).....	4.11
1.	Defined in the regulation	4.11
2.	Separate physical examination by same physician, may be deemed two separate reports	4.11
3.	Distinction between treatment note and medical report	4.12
4.	Expert's consideration of inadmissible evidence, consequences of.....	4.13
G.	Autopsy and biopsy reports.....	4.14
1.	Report of autopsy, defined.....	4.14
2.	Rebuttal of report of autopsy	4.15
3.	Report of biopsy, defined.....	4.15
H.	"Good cause" standard for admitting evidence over limitations.....	4.15
1.	Prior to the regulatory amendments.....	4.16
a.	Introduction	4.16
b.	National Mining Association Litigation	4.17
c.	"Good cause" and <i>Shedlock</i>	4.17

d.	"Good cause," examples of.....	4.21
e.	"Good cause" not established, examples of.....	4.22
f.	"Good cause" established, examples of	4.23
g.	Quality over quantity, the emphasis	4.23
2.	"Good cause," interpretations of 20 C.F.R. § 725.456(b)(1) (2008)	4.24
a.	Waiver.....	4.24
b.	Relevance not constitute "good cause".....	4.24
I.	Referral of claim by district director; not required to include all medical evidence	4.25
II.	Responsible operator designation	4.26
A.	Limitations on testimony.....	4.26
B.	Evidence related to responsible operator excluded absent "extraordinary circumstances"	4.27
1.	The regulation.....	4.27
2.	Case law	4.27
C.	Dismissal by administrative law judge not permitted	4.28
D.	Remand by administrative law judge	4.29
E.	On modification	4.29
F.	Filing a subsequent claim under 20 C.F.R. § 725.309 (2008)	4.30
III.	Witness testimony.....	4.31
A.	Limitations on expert medical testimony	4.31
1.	Must provide one of two "medical reports"	4.31
2.	Testimony of radiologist inadmissible except as related to 20 C.F.R. § 718.107(b).....	4.31
3.	Testimony of treating physician not automatically admissible	4.32
B.	Must be based on admissible evidence.....	4.32
C.	At the hearing	4.32
D.	By deposition	4.33
E.	Notice to opposing party	4.34
F.	Expert witness fees, apportionment of.....	4.34

Chapter 5

What Is the Applicable Law

I.	Overview of the Black Lung Benefits Act.....	5.1
A.	Generally	5.1
B.	Regulatory amendments at 20 C.F.R. Part 718 (2008), effective dates of	5.2
II.	Types of claims.....	5.5

A.	The living miner's claim (BLA)	5.5
B.	The survivor's claim (BLA)	5.5
C.	Medical Benefits Only (BMO)	5.5
D.	Medical Treatment Dispute (BTD).....	5.6
E.	Medical Interest (BMI)	5.6
F.	Overpayment (BLO)	5.6
G.	Black Lung Civil Money Penalty (BCP).....	5.6
H.	Black Lung Part B Claim (BLB).....	5.6
III.	Department of Labor jurisdiction	5.7
IV.	The applicable regulatory scheme.....	5.8
V.	Circuit court jurisdiction	5.8
VI.	Addresses and phone numbers of Circuit Courts; jurisdiction	5.10

Chapter 6

Definition of Coal Miner and Length of Coal Mine Employment

I.	Coal miner defined under 20 C.F.R. Part 410 and §410.490.....	6.1
II.	Coal miner defined under Parts 718 and 727	6.1
A.	Generally	6.1
1.	Prior to applicability of 20 C.F.R. Part 725 (2008)	6.1
2.	After applicability of 20 C.F.R. Part 725 (2008)	6.2
a.	Coke oven workers excluded	6.2
b.	Rebuttable presumption of "miner" status	6.2
B.	The three-prong test	6.3
1.	Generally.....	6.3
2.	Merger of "status" and "function" prongs in some circuits	6.3
a.	Third Circuit	6.4
b.	Fourth Circuit.....	6.4
c.	Sixth and Seventh Circuits	6.4
d.	Eleventh Circuit.....	6.4
3.	Status of the coal	6.4
4.	Function of the miner.....	6.5
a.	Integral to the process.....	6.5
b.	Construction workers.....	6.5
c.	Consumer coal handler – ore mine power plant	6.7
d.	Federal mine inspector.....	6.7
e.	Inventory work	6.7
f.	Transportation workers	6.8
5.	Situs of the work performed.....	6.9
C.	"Coal dust" versus "coal mine dust".....	6.10

1.	Prior to applicability of 20 C.F.R. Part 725 (2008)	6.10
a.	Benefits Review Board and Third Circuit	6.10
b.	Tenth and Eleventh Circuits	6.11
2.	After applicability of 20 C.F.R. Part 725 (2008)	6.11
III.	Length of coal mine employment.....	6.11
A.	Use of the 125-day rule, generally inapplicable.....	6.12
B.	Calculations prior to applicability of 20 C.F.R. Part 718 (2008).....	6.14
1.	Burden of production/persuasion on claimant.....	6.15
2.	Any reasonable method of computation acceptable	6.15
C.	Calculations after applicability of 20 C.F.R. Part 725 (2008).....	6.15
1.	The regulatory requirements.....	6.15
2.	Bureau of Labor Statistics table – Exhibit 609, “Wage Base History”	6.16
D.	Documentation supporting length of coal mine employment.....	6.17
1.	Social Security earnings records	6.17
2.	Affidavits.....	6.19
3.	Coal mine employment form completed by the miner	6.19
4.	Claimant's testimony	6.20
5.	Other evidence.....	6.20
E.	Periods included in computing length of coal mine employment.....	6.20
1.	Vacation time.....	6.20
a.	Prior to applicability of 20 C.F.R. Parts 718 and 725 (2008).....	6.20
b.	After applicability of 20 C.F.R. Parts 718 and 725 (2008).....	6.20
2.	Injury or sick time	6.21
a.	Prior to applicability of 20 C.F.R. Parts 718 and 725 (2008).....	6.21
b.	After applicability of 20 C.F.R. Parts 718 and 725 (2008).....	6.22
3.	Seasonal employment.....	6.23
F.	Periods not included in computing length of coal mine employment.....	6.24
1.	Seniority time	6.24
2.	Voluntary strike time	6.24
3.	Laid off.....	6.24

Chapter 7

Designation of Responsible Operator

I.	Generally	7.1
II.	“Operator” defined	7.1
III.	Most recent operator liable	7.1
	A. Prior to applicability of 20 C.F.R. Part 725 (2008)	7.2
	B. After applicability of 20 C.F.R. Part 725 (2008)	7.2
IV.	Identifying the proper operator; burden of production/persuasion	7.3
	A. Director's burden to investigate and assess liability	7.3
	1. Prior to applicability of 20 C.F.R. Part 725 (2008)	7.3
	2. After applicability of 20 C.F.R. Part 725 (2008)	7.4
	B. Proceeding against the potential operator at every stage of litigation	7.4
	1. Prior to applicability of 20 C.F.R. Part 725 (2008)	7.4
	2. After applicability of 20 C.F.R. Part 725 (2008)	7.5
V.	Requirements for responsible operator designation	7.6
	A. Powers of supervision and control	7.6
	1. Independent contractors	7.6
	a. Prior to applicability of 20 C.F.R. Part 725 (2008)	7.6
	b. After applicability of 20 C.F.R. Part 725 (2008)	7.7
	2. Franchised equipment dealer	7.7
	3. Lessors	7.7
	a. Prior to applicability of 20 C.F.R. Part 725 (2008)	7.7
	b. After applicability of 20 C.F.R. Part 725 (2008)	7.8
	4. The parent company	7.9
	a. Prior to applicability of 20 C.F.R. Part 725 (2008)	7.9
	b. After applicability of 20 C.F.R. Part 725 (2008)	7.10
	5. The self-employed miner	7.10
	a. Prior to applicability of 20 C.F.R. Part 725 (2008)	7.10
	b. After applicability of 20 C.F.R. Part 725 (2008)	7.10
	6. Successor liability	7.11

a.	Prior to applicability of 20 C.F.R. Part 725 (2008)	7.11
b.	After applicability of 20 C.F.R. Part 725 (2008)	7.12
7.	The federal government	7.13
a.	Prior to applicability of 20 C.F.R. Part 725 (2008)	7.13
b.	After applicability of 20 C.F.R. Part 725 (2008)	7.13
8.	Partnerships	7.14
a.	Prior to applicability of 20 C.F.R. Part 725 (2008)	7.14
b.	After applicability of 20 C.F.R. Part 725 (2008)	7.14
9.	A “reorganized” company	7.14
a.	Prior to applicability of 20 C.F.R. Part 725 (2008)	7.14
b.	After applicability of 20 C.F.R. Part 725 (2008)	7.15
10.	State government.....	7.15
a.	Prior to applicability of 20 C.F.R. Part 725 (2008)	7.15
b.	After applicability of 20 C.F.R. Part 725 (2008)	7.15
B.	Situs of the work performed.....	7.15
C.	Miner's disability or death arose out of coal mine employment with the operator.....	7.16
1.	Generally.....	7.16
2.	Rebuttable presumptions.....	7.16
a.	Presumption that the miner was regularly and continuously exposed to coal dust.....	7.17
b.	Presumption that the miner’s pneumoconiosis arose out of coal mine employment with the operator.....	7.17
D.	Operation of a coal mine after June 30, 1973	7.18
E.	Employment after December 31, 1969	7.18
1.	Generally.....	7.18
2.	“Working day” defined.....	7.19
F.	Cumulative employment of one year or more and the 125-day rule	7.19
1.	Generally.....	7.19
2.	Case law examples	7.20
a.	Benefits Review Board	7.20
b.	Sixth Circuit	7.22

3.	Use of the 125-day rule prior to applicability of 20 C.F.R. Part 725 (2008)	7.23
a.	Constitutes one year of cumulative employment for operator	7.23
b.	Does not constitute one year of cumulative employment for operator	7.23
4.	Use of the 125-day rule after applicability of 20 C.F.R. Part 725 (2008)	7.26
a.	Generally	7.26
b.	Source of the 125-day rule	7.27
c.	Bureau of Labor Statistics table	7.27
d.	Exhibit 610 provides guidance only	7.30
5.	Employment for fewer than 125 days	7.30
6.	Intermittent employment, effect of	7.30
G.	Ability to pay	7.31
1.	Prior to applicability of 20 C.F.R. Part 725 (2008)	7.31
a.	Employer's burden to establish inability to pay	7.32
b.	The federal government	7.32
c.	Period of bond coverage	7.32
d.	Mine owner insured notwithstanding failure to pay	7.32
e.	Bankruptcy of the employer	7.33
2.	After applicability of 20 C.F.R. Part 725 (2008)	7.38
a.	Generally	7.38
b.	Employer insolvent; intervention of surety or carrier	7.40
H.	Insurance carrier as a named party	7.41
1.	Generally	7.41
2.	Insolvent carrier, liability of guaranty association	7.42
I.	Liability of corporate officers	7.43
1.	Prior to applicability of 20 C.F.R. Part 725 (2008)	7.43
2.	After applicability of 20 C.F.R. Part 725 (2008)	7.44
J.	Due process rights of the employer violated; Trust Fund held liable for payment of benefits	7.44
1.	Lost records	7.44
2.	Delay in notice of claim	7.45

Chapter 8

Living Miners' Claims: Entitlement Under Part 410

I.	Applicability of Part 410, generally	8.1
II.	Elements of entitlement	8.1
III.	The existence of pneumoconiosis	8.2
A.	“Pneumoconiosis” defined	8.2
B.	Chest roentgenogram evidence.....	8.2
C.	Autopsy or biopsy	8.2
D.	Rebuttable presumptions regarding the existence of pneumoconiosis	8.3
1.	Fifteen years or more of coal mine employment	8.3
a.	“Substantially similar” working conditions.....	8.3
b.	Medical evidence	8.3
c.	Rebuttal of the presumption	8.4
2.	The “many years” presumption	8.4
a.	“Many years” defined.....	8.4
b.	Severe lung impairment required	8.4
E.	Other relevant evidence.....	8.5
1.	Elements to be considered	8.5
2.	Totally disabling respiratory condition	8.5
IV.	Etiology of the pneumoconiosis	8.6
V.	Total disability and its etiology	8.6
A.	“Total disability” defined	8.6
1.	Methods of establishing total disability	8.7
2.	Rebuttal	8.7
B.	Pneumoconiosis is the impairment involved.....	8.7
1.	Complicated pneumoconiosis	8.8
2.	Multiple disabling conditions.....	8.8
C.	Establishing total disability; medical evidence listed in the Appendix.....	8.8
D.	Total disability established; factors not in the Appendix	8.9
E.	Other relevant evidence.....	8.10
1.	Burden of proof	8.10
2.	Use of lay testimony	8.11
3.	Pulmonary function studies	8.11
4.	Physical performance tests	8.12
F.	Irrebuttable presumption; complicated pneumoconiosis.....	8.12
1.	Conflicting evidence	8.12
2.	Autopsy evidence	8.13
VI.	Applicability of § 410.490 and Parts 727 and 718	8.13

Chapter 9

Living Miners' Claims: Entitlement Under Section 410.490

I.	Applicability of 20 C.F.R. § 410.490, generally	9.1
A.	Applies to Part B claims (claims filed prior to July 1, 1973).....	9.1
B.	Applies to Part 727 claims where miner has fewer than 10 years employment	9.1
II.	Invocation of presumption of total disability due to pneumoconiosis	9.2
III.	Etiology of the pneumoconiosis	9.2
IV.	Rebuttal of the presumption of total disability due to pneumoconiosis	9.3
A.	Comparison with rebuttal at Part 727	9.3
B.	Incorporation of rebuttal at § 727.203(b)(3) and (b)(4).....	9.3
C.	Physical capability versus vocational capability	9.4
V.	Applicability of Parts 410, 727, and 718	9.4

Chapter 10

Living Miners' Claims: Entitlement Under Part 727

I.	Applicability of Part 727, generally	10.1
II.	The interim presumptions.....	10.2
A.	Generally	10.2
B.	"Pneumoconiosis" defined	10.3
C.	Invocation of the rebuttable presumption of total disability due to pneumoconiosis	10.3
1.	Chest roentgenogram evidence	10.4
a.	Generally	10.4
b.	The "Tobias rule" and rereading chest x-rays	10.4
2.	An autopsy or biopsy	10.5
3.	Pulmonary function (ventilatory) studies	10.5
4.	Blood gas studies	10.6
5.	Reasoned medical opinions	10.6
a.	Generally	10.6
b.	All evidence weighed before invoking the presumptions.....	10.6
c.	Parsing probative and non-probative portions of a medical opinion	10.6
6.	Lay evidence.....	10.7

	a.	Evaluation of	10.7
	b.	Benefits Review Board and Sixth Circuit	10.7
	c.	Third, Fourth, and Seventh Circuits	10.8
III.		Rebuttal of the interim presumption of total disability due to pneumoconiosis	10.8
	A.	Generally	10.8
		1. Burden on party opposing entitlement.....	10.8
		2. All evidence must be considered.....	10.8
		3. One method of rebuttal established, entitlement to benefits precluded	10.9
	B.	Total disability; weighing the medical opinion evidence.....	10.9
		1. Exertional requirements; claimant's burden	10.9
		2. Specific medical opinion of severity of impairment required	10.9
		3. Medical assessment versus subjective narration of limitations	10.9
		a. Benefits Review Board	10.9
		b. Third, Fourth, and Eleventh Circuits.....	10.10
		4. Exertional requirements versus physical limitations	10.10
		5. No respiratory or pulmonary impairment supports rebuttal	10.11
	C.	Means of rebuttal.....	10.11
		1. Miner is engaged in usual coal mine work or comparable and gainful work	10.11
		a. Generally	10.11
		b. "Usual coal mine work" under subsection (b)(1)	10.11
		c. "Comparable and gainful work" under subsection (b)(1)	10.12
		2. Miner is <i>able</i> to perform usual coal mine work or comparable and gainful work	10.13
		a. Standard for subsection (b)(2) rebuttal.....	10.13
		b. "Usual coal mine work" under subsection (b)(2)	10.15
		c. "Comparable and gainful work" under subsection (b)(2)	10.16
		3. Total disability did not arise in whole or in part out of coal mine employment	10.17
		a. Evolution of the "rule out" standard.....	10.18
		b. Standards for establishing subsection (b)(3) rebuttal.....	10.18
		c. Specific principles of weighing evidence under § 727.203(b)(3).....	10.22

d.	A finding of “no impairment”	10.24
4.	The miner does not suffer from pneumoconiosis	10.26
a.	Rebuttal under subsection (b)(4) precluded if invoked under subsection (a)(1)	10.26
b.	Specific principles of weighing evidence under subsection (b)(4)	10.26
IV.	Applicability of Parts 410 and 718 and § 410.490	10.28

Chapter 11

Living Miners’ Claims: Entitlement Under Part 718, Judicial Notice, Stipulations, and the Statute of Limitations at 20 C.F.R. § 725.308

I.	Applicability of Part 718, generally	11.1
II.	Judicial notice and stipulations	11.2
A.	Judicial notice	11.2
1.	Procedure used	11.2
2.	Taking official notice of one expert but not another expert constitutes error	11.2
3.	Examples of judicial/official notice	11.3
a.	Medical opinion; no judicial notice	11.3
b.	Unreliability of early Social Security records	11.3
c.	Dictionary of Occupational Titles	11.3
d.	Directory of Medical Specialists	11.3
e.	Criminal conviction of a physician	11.4
B.	Stipulations	11.4
1.	Binding regardless of underlying evidence	11.4
2.	Stipulation against <i>pro se</i> claimant’s interest; not binding	11.5
3.	Stipulation of pneumoconiosis in miner’s claim binding in survivor’s claim	11.5
4.	Stipulation of pneumoconiosis does not constitute stipulation of impairment	11.5
5.	Legal effect of stipulation of fact decided by trier-of-fact	11.6
6.	Stipulation that claim timely filed, binding on Employer	11.6
III.	Elements of entitlement under Part 718	11.6
A.	Prior to application of 20 C.F.R. Part 718 (2008)	11.6
B.	After application of 20 C.F.R. Part 718 (2008)	11.6
IV.	The existence of pneumoconiosis	11.7
A.	“Pneumoconiosis” defined	11.7

1.	The regulatory provisions	11.7
a.	Prior to applicability of 20 C.F.R. Part 718 (2008)	11.7
b.	After applicability of 20 C.F.R. Part 718 (2008)	11.7
2.	"Clinical" versus "legal" pneumoconiosis, a critical distinction.....	11.8
a.	Pneumoconiosis is progressive	11.10
b.	Latency and development after exposure to coal mine dust ceases.....	11.11
3.	"Legal" coal workers' pneumoconiosis	11.12
a.	Established.....	11.12
b.	Not established	11.12
4.	"Clinical" or "medical" pneumoconiosis on autopsy or biopsy under § 718.202(a)(2)	11.13
a.	Pigment with associated fibrosis, required	11.13
b.	Anthracosis in lymph nodes must be considered	11.14
c.	Finding of no pneumoconiosis on biopsy not preclude finding through other means.....	11.15
5.	Use of blood gas and pulmonary function testing	11.15
a.	Blood gas testing	11.15
b.	Pulmonary function testing	11.15
6.	Admission against interest.....	11.16
B.	Regulatory methods of establishing pneumoconiosis.....	11.17
1.	The "Tobias rule" and re-reading chest x-rays	11.18
a.	No other evidence of impairment at time of hearing needed.....	11.18
b.	No prohibition on re-reading study interpreted as negative	11.18
c.	Initial interpretation must be made by board-certified radiologist.....	11.19
d.	The "Tobias" rule does not apply to employer.....	11.19
e.	The "Tobias" rule does not apply to claims filed after January 1, 1982	11.19
2.	Weighing evidence together versus weighing evidence separately	11.19
a.	Benefits Review Board	11.19
b.	Third Circuit	11.20
c.	Fourth Circuit.....	11.21
d.	Eleventh Circuit.....	11.22
C.	Presumption at 20 C.F.R. § 718.304 (2008), complicated pneumoconiosis	11.22

1.	Chest x-ray evidence	11.23
a.	Use of the ILO form, must find A, B, or C opacity	11.23
b.	Cause of the opacities.....	11.24
2.	Autopsy or biopsy evidence.....	11.26
a.	Equivalency determination	11.26
b.	Benefits Review Board, equivalency required ...	11.26
c.	Third Circuit, equivalency required	11.27
d.	Fourth Circuit, equivalency required	11.27
e.	Sixth Circuit, equivalency required	11.29
c.	Eleventh Circuit, equivalency not required	11.30
3.	Medical opinion evidence	11.31
4.	"Other evidence" under § 718.107, consideration of.....	11.32
D.	Fifteen-year presumption at 20 C.F.R. § 718.305 (2008) ...	11.33
1.	Applicability	11.33
2.	Miner must have 15 years of underground coal mine employment or similar.....	11.33
3.	Rebuttal of the presumption.....	11.34
E.	Presumption at 20 C.F.R. § 718.306 (2008), survivors' claims	11.35
F.	Reasoned medical opinions	11.35
V.	Etiology of the pneumoconiosis	11.36
A.	Applicability	11.36
1.	Applies to "clinical" pneumoconiosis	11.36
2.	Applies to complicated pneumoconiosis	11.36
3.	Inapplicable to finding of "legal" pneumoconiosis.....	11.37
B.	Ten years or more coal mine employment.....	11.37
C.	Fewer than ten years of coal mine employment	11.37
1.	Claimant's burden.....	11.37
2.	Case law	11.37
a.	Benefits Review Board	11.37
b.	Third Circuit	11.37
c.	Sixth and Seventh Circuits	11.38
3.	Medical evidence required.....	11.38
4.	Inaccurate employment history, opinion less probative.....	11.38
VI.	Establishing total disability	11.38
A.	Prior to applicability of 20 C.F.R. Part 718 (2008)	11.38
B.	After applicability of 20 C.F.R. Part 718 (2008).....	11.39
C.	Methods of demonstrating total disability	11.40
1.	Pulmonary function (ventilatory) studies	11.41
2.	Blood gas studies	11.41

3.	Cor pulmonale with right-sided congestive heart failure	11.42
4.	Reasoned medical opinions	11.42
a.	Burden of proof.....	11.42
b.	Physician's knowledge of duties important.....	11.43
c.	Non-respiratory, non-pulmonary impairments irrelevant.....	11.43
5.	Lay testimony	11.44
VII.	Etiology of total disability	11.45
A.	"Contributing cause" standard	11.45
1.	Prior to applicability of 20 C.F.R. Part 718 (2008)	11.45
a.	Benefits Review Board	11.46
b.	Third Circuit	11.46
c.	Fourth Circuit.....	11.46
d.	Sixth Circuit	11.46
e.	Seventh Circuit	11.47
f.	Tenth Circuit.....	11.47
g.	Eleventh Circuit.....	11.48
2.	After applicability of 20 C.F.R. Part 718 (2008)	11.48
a.	The regulation	11.48
b.	Pre-existing, non-coal-dust-related disability does not preclude entitlement.....	11.49
c.	Apportionment of multiple causes not required.....	11.49
B.	Blood gas and ventilatory studies not determinative.....	11.50
C.	Weighing medical opinion evidence	11.51
VIII.	Applicability of Parts 410 and 727 and § 410.490	11.51
IX.	Applicability of 20 C.F.R. § 718.308, statute of limitations for filing a miner's claim.....	11.52
A.	The statute and regulation	11.52
B.	Waiver or tolling of the statute, "extraordinary circumstances" required	11.53
1.	Waiver of challenge to timeliness.....	11.53
a.	Withdrawal of contest at hearing.....	11.53
b.	Stipulation of timeliness at hearing.....	11.53
2.	"Tolling" of statute, considerations for.....	11.54
C.	Applicability to initial claim.....	11.54
1.	Generally.....	11.54
2.	Applicable to second claim where first claim denied as untimely	11.54
D.	Applicability to subsequent claim under 20 C.F.R. § 725.309.....	11.55
1.	Held applicable.....	11.55
2.	Held inapplicable	11.63

E.	Hearing required prior to dismissal for untimeliness where issue of fact exists.....	11.64
F.	Commencement of the three-year period.....	11.64
1.	Written communication required.....	11.64
2.	Written communication not required	11.65

Chapter 12

Introduction to Survivors' Claims

I.	Generally	12.1
A.	Distinction between survivor and augmentee.....	12.1
B.	Survivor and miner claims – consolidated for hearing, adjudicated independently	12.1
C.	Entitlement precluded, special circumstances	12.2
II.	Qualifying for benefits.....	12.2
A.	Surviving spouse and surviving divorced spouse	12.2
1.	Spouse – relationship to the miner	12.2
a.	Surviving spouse.....	12.2
b.	Surviving divorced spouse.....	12.3
2.	Spouse and divorced spouse, dependency on the miner.....	12.3
a.	The regulation	12.3
b.	“Support,” defined.....	12.4
3.	Spouse and divorced spouse, each entitled to full share of benefits	12.5
B.	Child	12.6
1.	Relationship to the miner.....	12.6
a.	Paternity issues, state law controls.....	12.7
b.	Adoption	12.8
2.	Dependency on the miner.....	12.8
a.	Generally	12.8
b.	Dependency status as “augmentee” not determinative	12.8
3.	Disabled child, special issues.....	12.8
a.	“Disabled” child, defined	12.8
b.	Distinction between “augmentee” and “survivor”.....	12.9
c.	Retroactive benefit award.....	12.9
d.	Remarriage of disabled child, effect of	12.10
C.	Parent, brother, or sister	12.11
D.	Multiple survivors.....	12.11
III.	Entitlement to survivors' benefits – considerations beyond relationship and dependency	12.12

A.	Surviving spouse or surviving divorced spouse	12.12
1.	Period of entitlement.....	12.13
2.	Subsequent remarriage, effect of.....	12.13
3.	Predeceasing the miner	12.14
B.	Child	12.14
1.	Period of entitlement.....	12.14
2.	Status as student	12.15
3.	Disabled child, gainful employment precludes entitlement	12.16
IV.	Automatic entitlement to survivors' benefits	12.16

Chapter 13

Survivors' Claims: Entitlement Under Part 410

I.	Applicability	13.1
II.	The regulation	13.1
III.	Presumptions available to certain survivors	13.1
A.	Ten years or more coal mine employment.....	13.1
B.	Ten years or more coal mine employment; death from respirable disease	13.2
1.	General burdens.....	13.2
2.	Invoking the presumption.....	13.2
3.	Death due to multiple causes.	13.3
4.	Medically infeasible to distinguish cause of death.....	13.3
5.	Total disability due to pneumoconiosis at the time of death.	13.3
C.	The 15-year and "many years" presumptions	13.4
1.	The 15-year presumption.	13.4
2.	The "many years" presumption.	13.4
D.	Complicated pneumoconiosis.....	13.4

Chapter 14

Survivors' Claims: Entitlement Under § 410.490

I.	Applicability	14.1
II.	Invocation of the interim presumptions.....	14.1
III.	Rebuttal of the interim presumptions.....	14.2
A.	Physical versus vocational capability.....	14.2
B.	Rebuttal methods under Part 727 incorporated into § 410.490.....	14.2