

U.S. Congressman
Nick Rahall
WORKING FOR WEST VIRGINIANS

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**WEST VIRGINIA'S RAHALL LEADS CHARGE
TO REFORM BLACK LUNG BENEFITS PROGRAM**

WASHINGTON, D.C. -- A comprehensive measure to reform the federal black lung program has been introduced by U.S. Rep. Nick J. Rahall (D-WV).

"This is the legislation being advanced by the National Black Lung Association," Rahall said. "The changes envisioned by this measure reflects the frustration of thousands of miners and their families with the extremely adversarial nature of the current program as administered by the Labor Department."

Since his announcement last November that he would introduce a measure on behalf of black lung organizations, Rahall has been working with the National Black Lung Association on formulating the legislation.

"The original intent of Congress in enacting legislation to compensate victims of black lung disease was for this to be a fairly straightforward program," Rahall explained. "This intent has been defeated by years of administrative maneuverings aggravated by some extremely harmful judicial interpretations. Under this bill, we will return to a program that reflects the statutory commitment Congress, and indeed, the Nation, made to compensate coal miners and their families."

In a letter sent to Rahall, the President of the National Black Lung Association, Allen Hess, wrote: "On behalf of the National Black Lung Association I want to convey our endorsement of the 'Black Lung Benefits Act Amendments of 1991' which you are introducing in Congress." Hess added, "We highly commend you, Congressman Rahall, for listening to the voices of your constituents."

In general, the "Black Lung Benefits Act Amendments of 1991" contains the following proposals:

New Eligibility Standards: A miner would be presumed to be totally disabled by black lung if the miner presents a single piece of qualifying medical evidence such as a positive X-ray, ventilatory or blood gas studies, or a medical opinion. The Secretary of Labor could rebut the presumption of eligibility only if he can show that the miner is doing coal mine work or could actually do coal mine work.

Application of New Eligibility Standards: The new standards would apply to all claims filed after enactment of the "Black Lung Benefits Act of 1991." All pending claims, and claims denied prior to enactment of the "Black Lung Benefits Act of 1991" would be reviewed under the new standards.

MORE

Elimination of Responsible Operators: All claims would be paid out of the coal industry financed Black Lung Disability Trust Fund. The purpose of this provision is to eliminate coal operators as defendants in black lung cases and the advantage they have over claimants by being able to afford to pay legal counsel.

Widows/Dependents: A widow or dependent of a miner would be awarded benefits if the miner worked 25 years or more in the mines; the miner died in whole or in part from black lung; the miner was receiving black lung benefits when he died; or medical evidence offered by the miner before he died satisfies new eligibility standards. Widows who are receiving benefits and who remarry would not be disqualified from continuing to receive the benefits, and, a widow would be entitled to receive benefits without regard to the length of time she was married to the miner.

Offsets: The practice of offsetting a miner's Social Security benefits by the amount of black lung benefits would be discontinued.

Rahall has warned black lung groups that the effort to reform the federal black lung program would be successful only if there was widespread support for legislation. "Those of us from West Virginia want legislative changes, but the fact is, you need 218 votes to win on the Floor of the House of Representatives," he said. For this reason, Rahall was heartened by the letter he received from the National Black Lung Association. "At our January 26 meeting we began to plan our strategy to provide massive grass roots support for this bill in the upcoming session of Congress," the organization's president wrote.

"It will take such a massive grass roots campaign for this bill to meet with success," Rahall concluded. "We have to make people living all across the Nation aware of the crippling effects of black lung disease and the human misery associated with trying to get a claim awarded under the existing program. While I will continue bringing this message to other Congressmen, they need to hear from their constituents as well. This is where the various black lung organizations can be the most effective."

Coal Miners Contend Their Plight Is Worsening

By PETER T. KILBORN

IN the 1960's people learned that the hazards of coal mines were not limited to explosion and collapse. Mines were bad for breathing. Coal dust in underground mines could cause black lung disease, the generic term for any one of several progressive, often fatal respiratory ailments including emphysema and silicosis.

In acknowledging that employers often bore responsibility, Congress in 1969 set up a disability program, financed initially by the Government and later by taxes on the coal industry as well. Half a million black-lung victims have been granted the benefits over the years, and about 260,000 get them now.

But fewer receive the benefits, currently \$387.10 to \$774.10 a month, than otherwise might. Like most welfare aid, the black lung program came under scrutiny for suspected waste and abuse in the Reagan years, and eligibility rules were tightened. As a result, 6 percent of 80,000 applicants from 1983 through 1990 have been granted the benefits, compared with 30 percent over the four preceding years. And some wait five or ten years for approval, so the money goes not to them but to their widows and children.

The decline in the percentage of applicants approved is attributable in part to better mine ventilation, say the Mine Safety and Health Administration and coal companies. "It should be impossible to get black lung disease under current levels of exposure," said Tom Altmayer, a vice president of the National Coal Association, an industry group.

Seeking Easier Eligibility

But the miners, their unions and Eastern coal country Democrats in Congress argue that mine air is often dirtier than regulations allow and that black lung disease is by no means a thing of the past. Representative Nick J. Rahall 2d of West Virginia has written the most comprehensive of several bills addressing the issue. Among other things, it would restore the broader eligibility criteria of earlier years and reopen the cases of people who were denied benefits. Estimates of the annual cost range from tens of millions of dollars up to more than \$1 billion.

In the face of tight budgets, a veto-ready White House and the priority that Congressional Democrats have attached to other issues, Mr. Rahall's and similar proposals face slow going. But new evidence that the air in many of the nation's 4,645 coal mines contains more coal dust than Government standards allow, and that many mine operators have been disguising that fact, is giving the initiatives a boost.

In January the industry's biggest operator, the Peabody Coal Company of St. Louis, paid a fine of \$500,000 after pleading guilty in Federal District Court in Charleston, W. Va., to charges of tampering with Government-provided dust-sampling devices at mines.

The Justice Department and the mine-safety agency say only that they are investigating other companies. But from 1981

A mine dust-sampling device, above; a former miner undergoing a pulmonary function test as part of process of diagnosing black lung disease.

through 1990, the mine safety agency says it collected \$2.9 million in fines for hundreds of dust-sampling violations. Jim Weeks, a health and safety expert at the United Mine Workers of America, says that safety agency technicians have told him of evidence showing tampering at 472 mines from March through September last year.

Companies test air in mines with a device consisting of a battery-powered pump that draws air through a one-inch plastic disk containing a wafer of filter paper. Two or three workers wear the devices on their belts or place them at various locations in mines for five consecutive daily work shifts every two months. After a disk in a miner's air-sampler has been exposed to mine air for eight hours, the disk is sent to an M.S.H.A. office in Pittsburgh. There it is weighed to determine the amount of coal dust accumulated, out of sight, inside the sealed disk.

If the disk contains enough dust to indicate that Federal limits — two milligrams per cubic meter of air — have been exceeded the agency can close the mine until the operator improves the ventilation.

Normally, M.S.H.A. does not open up the disks. But a skeptical technician took apart some disks from Peabody mines and found the filters dust-free. It turned out that Peabody had vacuumed dust out of the disks. J. David McAteer, an executive of the Occupational Safety and Health Law Center, a Washington-based worker-advocacy group, said some companies use Endust, the dust-attracting furniture spray, on the devices so that dust collects outside the disk rather than in its filter. He said others ask compliant miners to keep the devices in their lunch boxes. The industry does not deny these things happen, but spokesmen express doubt such deceit is widespread.

Apart from the implications of the tampering — that miners are exposed to more coal dust than the industry claims — advocates of miners argue that the tougher eligibility standards that Congress adopted in 1981, which require a broader battery of tests to establish eligibility for benefits, are unfair.

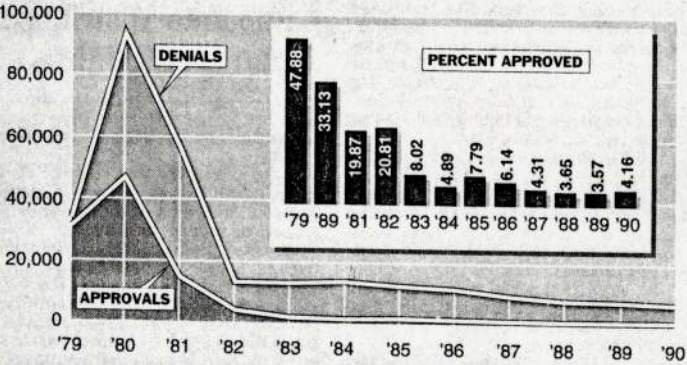
But some experts contend that despite the more stringent requirements, many patently unqualified people, including mine company



Gary T. Truman for The New York Times

Getting help gets harder

Number of people who have applied for black-lung benefits. Applications were disproportionately high in 1979 through 1981 because of legislation in 1978 inviting people who had been denied benefits earlier to reapply.



office personnel, apply for benefits simply because the program exists. "There's a dole mentality in the mines, a sense of feeding at the public trough," said Arthur L. Frank, chairman of the department of preventive and environmental medicine at the University of Kentucky in Lexington.

But others say that some victims of black lung disease are denied benefits to which they are entitled. Diagnosis is based on a chest X-ray, breathing exercises, a blood analysis and a general physical examination. Interpreting results involves judgment calls, so doctors can disagree.

The miner must also be deemed too disabled for mining or comparable work — another judgment call — and he must show that he worked in mines long enough to have contracted the disease. If he worked for a

company that has since gone out of business, that can be hard to document.

The Labor Department ends up rejecting more than 90 percent of the initial claims, but miners who are approved may begin getting checks within six months of their claim. If the miner's last employer can be identified, it is responsible for paying the benefits. Typically companies appeal, which can take years, and they usually win. Miners who lose must repay the benefits received. To keep the benefits miners can try to find sympathetic doctors to conduct still more tests at the miner's or his union's expense.

Whatever the miner's complaints, the Labor Department appears disinclined to make many changes, unless forced by Congress. "We'll have an uphill battle," said Mr. Rahall.

EXTENSION OF REMARKS
HON. NICK J. RAHALL

REFORM OF THE FEDERAL BLACK LUNG PROGRAM

Mr. Speaker. Today, I am reintroducing legislation to reform the federal black lung program.

This legislation reflects the frustration of thousands of miners and their families with the extremely adversarial nature of the current program as administered by the Labor Department.

As it now stands, disabled miners who suffer from the crippling effects of black lung disease are faced with a federal bureaucracy so totally lacking in compassion to their plight, that it appears intent upon harassing their efforts to obtain just compensation at every single step of the claim adjudication process.

Today, according to a recent General Accounting Office report, we are witnessing less than a 10 percent approval rate on claims for black lung benefits.

This figure does not attest to any reasonable and unbiased comportment of the facts.

Rather, it represents nothing less than a cruel hoax being perpetrated against hard working citizens who have dedicated their lives to the energy security and economic well being of this Nation.

The original intent of Congress in enacting legislation to compensate victims of black lung disease was for this to be a fairly straightforward program. This intent has been defeated by years of administrative maneuverings aggravated by some extremely

harmful judicial interpretations. Under this bill, we will return to a program that reflects the statutory commitment Congress, and indeed, the Nation, made to compensate these coal miners and their families.

Make no mistake about it. Victims of black lung disease are not people who are looking for a hand-out.

They are people who worked their lives in one of the most dangerous occupations in this country.

They are people who were promised compensation by their government. And they are people who now see their government break that promise.

It is time, indeed, long past the time that Congress move legislation on behalf of the thousands of miners, their widows and families who are being victimized by this program, the very program that was intended to bring them relief.

In general, this measure contains the following proposals:

I. New Eligibility Standards: A miner would be presumed to be totally disabled by black lung if the miner presents a single piece of qualifying medical evidence such as a positive X-ray, ventilatory or blood gas studies, or a medical opinion. The Secretary of Labor could rebut the presumption of eligibility only if he can show that the miner is doing coal mine work or could actually do coal mine work.

II. Application of New Eligibility Standards: The new standards would apply to all claims filed after enactment of the "Black Lung Benefits Act of 1991." All pending claims, and claims denied prior to enactment of the "Black Lung Benefits Act of 1991" would be reviewed under the new standards.

III. Elimination of Responsible Operators: All claims would be paid out of the coal industry financed Black Lung Disability Trust Fund. The purpose of this provision is to eliminate coal operators as defendants in black lung cases and the advantage they have over claimants by being able to afford to pay legal counsel.

IV. Widows/Dependents: A widow or dependent of a miner would be awarded benefits if the miner worked 25 years or more in the mines; the miner died in whole or in part from black lung; the miner was receiving black lung benefits when he died; or medical evidence offered by the miner before he died satisfies new eligibility standards. Widows who are receiving benefits and who remarry would not be disqualified from continuing to receive the benefits, and, a widow would be entitled to receive benefits without regard to the length of time she was married to the miner.

V. Offsets: The practice of offsetting a miner's Social Security benefits by the amount of black lung benefits would be discontinued.