

A stylized map of West Virginia is centered in the background. It features a gradient from dark blue on the left to light yellow on the right.

# **Welcome to the West Virginia Workers' Compensation Webinars!**

## **Workers' Compensation Benefits**

**June 13, 2008**



West Virginia  
OFFICES OF THE  
INSURANCE  
COMMISSIONER

# Compensability

- In order for an injury to be compensable in a West Virginia workers' compensation case, three elements must coexist: (1) a personal injury; (2) received in the course of employment; and (3) resulting from the employment. W. Va. Code § 23-4-1(a)
- "Personal injury" includes Occupational Pneumoconiosis (OP) and Occupational Disease (OD) claims. W. Va. Code § 23-4-1(b)
- "In the course of" relates to the time, place, and circumstances of the injury.
- "Resulting from" relates to the origin of the injury.

# Compensability

- Whether the injury occurred so as to be compensable depends upon the particular facts in each case, and may not be resolved by any fixed rule or formula.
- In determining whether an injury resulted from claimant's employment, a causal connection between the injury and the employment must be shown to have existed.

# Compensability

**Occupational Injuries are personal injuries caused by:**

- “[A]n isolated fortuitous event received by an employee in the course of and resulting from his employment with his employer.”

Dickerson v. State Workmen's Comp. Comm'r, 173 S.E.2d 388, 391 (W. Va. 1970).

- An occupational injury may result in disability to more than one part of the body, but is only one injury.

Id.

- Mere negligence or carelessness of the employee, causing his or her injury, does not preclude compensation

Archibald v. Ott, 87 S.E. 791 (W. Va. 1916)

# Compensability

## However:

“An employee who is injured gradually by reason of the duties of employment, and eventually becomes disabled, is no less the recipient of a personal injury than one who suffers a single disabling trauma.”

Lilly v. State Workmen's Comp. Comm.;r, 225 S.E.2d 214 (W. Va. 1976).

# Compensability

## Occupational Diseases are defined by statute:

- For the purposes of West Virginia law, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows as an incident of occupational disease. Except in the case of occupational pneumoconiosis, a disease shall be considered to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances:

# Compensability

- (1) That there is a direct causal connection between the conditions under which work is performed and the occupational disease;
- (2) That it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
- (3) That it can be fairly traced to the employment as the proximate cause;
- (4) That it does not come from a hazard to which workmen would have been equally Exposed outside of the employment;
- (5) That it is incidental to the character of the business and not independent of the relation of employer and employee; and
- (6) That it appears to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

# Compensability

## TIMELINESS

Claims must be filed within the time periods set forth at West Virginia Code § 23-4-15 or the claim is “forever barred.”

### ➤ Occupational Injury:

For occupational injury claims (i.e., all claims for compensation that are not occupational disease or occupational pneumoconiosis claims), the application for compensation must be filed with the private carrier within six (6) months from the date of injury.

### ➤ Occupational Disease:

For occupational disease claims other than occupational pneumoconiosis claims, the application for compensation must be filed with the private carrier within three (3) years from the latter of either:

- 1) the date of last exposure to the occupational hazard causing the disease; or
- 2) the date upon which the claimant knew (by being informed by a physician), or reasonably should have known, of the existence of the occupational disease.

# Compensability

## ➤ Occupational Pneumoconiosis:

Disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of and in the course of the employment.

- Silicosis,
- coal worker's pneumoconiosis
- Asbestosis
- anthrax
- and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated by statute.

# Compensability

## ➤ Occupational Pneumoconiosis:

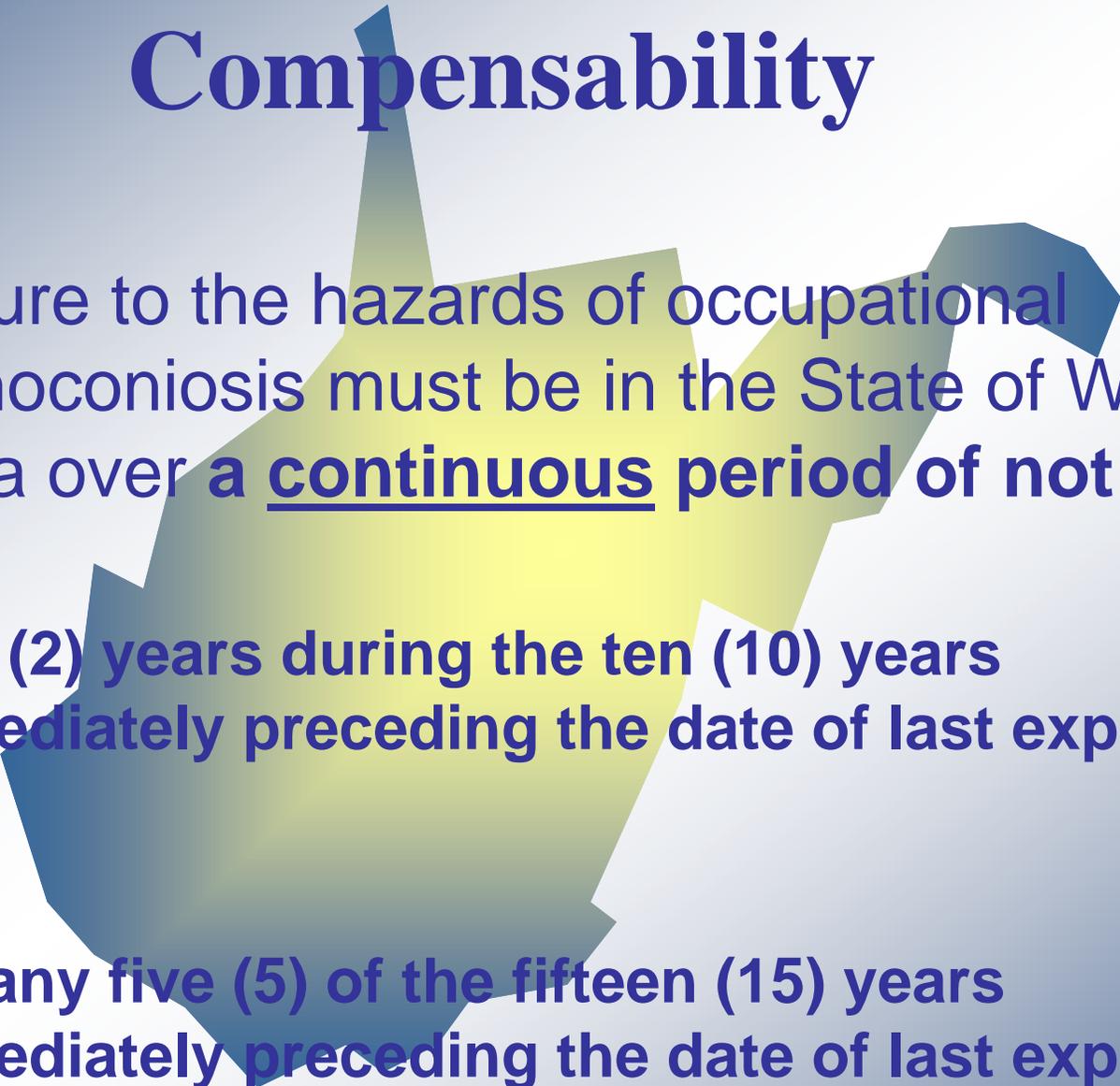
### Statute of Limitations

- Application for benefits must be filed **within three (3) years** from and after the last day of the last continuous period of **sixty (60) days or more** during which the employee was exposed to the hazards of OP; or
- **within three (3) years** from and after a diagnosed impairment due to OP was made known to the employee by a physician.

# Compensability

- Exposure Requirements:
  - Claimant must have been exposed to the hazards of occupational pneumoconiosis.
  - Exposure must have been for a **continuous period of not less than sixty (60) days** while in the employ of the employer **within three (3) years** prior to the filing of his or her claim.

# Compensability

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- Exposure to the hazards of occupational pneumoconiosis must be in the State of West Virginia over a continuous period of not less than:
    - Two (2) years during the ten (10) years immediately preceding the date of last exposure, or
    - For any five (5) of the fifteen (15) years immediately preceding the date of last exposure.

# Compensability

- Finally, pursuant to W. Va. Code § 23-4-1f, no alleged injury or disease is a compensable condition if solely caused by nonphysical means and which do not result in any physical injury or disease. As such, mental/mental claims are not compensable.

# Temporary Total Disability

- Temporary total disability (TTD) benefits are granted during the healing and recovery period after a compensable injury.

# Temporary Total Disability

- TTD benefits are paid for a maximum period not to exceed 104 weeks. W. Va. Code § 23-4-6(c)
- Prospective TTD benefits are to be paid up to 90 days at a time. §23-4-1c(c)
- Pursuant to W. Va. Code § 23-4-7a(f), referral of a claimant for an independent medical examination is contemplated if TTD lasts longer than 120 days from the date of injury or date of last examination.

# Temporary Total Disability

- TTD is not granted if period of disability is **three (3) days** or less.
- If **more than three (3) but less than seven (7) consecutive days**, TTD benefits cannot be granted for the **first three (3) days**.
- If the period of disability is greater than **seven (7) days in a row**, TTD benefits will be granted for all days missed.

# Temporary Total Disability

- A claimant shall not be paid TTD benefits while confined in a state correctional facility or jail for an injury that occurred before such confinement. However, upon release from such confinement, TTD benefits shall be paid if remaining period of TTD is justified by the evidence. W. Va. Code § 23-4-1e

# Temporary Total Disability

- W. Va. Code § 23-4-7a(e) sets forth the criteria necessary to suspend the payment of TTD benefits. Benefits are suspended for any of the following reasons:
  - When the carrier's physician concludes the claimant has reached maximum degree of medical improvement (MDMI)
  - The authorized treating physician concludes the claimant has reached MDMI
  - Other evidence establishes the claimant has reached MDMI
  - When other evidence submitted or otherwise obtained justifies a finding that the claimant has engaged or is engaging in abuse, including, but not limited to, physical activities inconsistent with the claimant's compensable injury.
  - Under no circumstances shall a claimant be entitled to receive TTD benefits either beyond the date the claimant is released to return to work or beyond the date the claimant actually returns to work.

# Temporary Total Disability

- Maximum weekly TTD benefits are, pursuant to W. Va. Code § 23-4-6(b), computed on the basis of 66 and 2/3% of the average weekly wage earnings, wherever earned, of the injured employee, at the date of injury, not to exceed 100% of the average weekly wage in WV.
- Minimum weekly TTD benefits shall not be less than 33 and 1/3% of the average weekly wage in WV. However, the minimum can't exceed the level of benefits determined by the federal minimum hourly wage.

# Temporary Total Disability

- Pursuant to W. Va. Code § 23-4-14(b)(2), average weekly wage earnings, wherever earned, of the injured employee, at the date of injury, is computed on the daily rate of pay at the time of the injury or upon the weekly average derived from the best quarter of wages out of the preceding 4 quarters of wages.
- W. Va. Code § 23-4-14(c) defines the expression “average weekly wage in WV” as the average weekly wage in WV as determined by the Bureau of Employment Programs.

# Temporary Total Disability

- A private carrier has continuing authority to monitor workers' compensation claims and make such modifications or changes to benefits granted in claims (with respect to former findings or orders) as may be justified. W. Va. Code § 23-4-16.
- A private carrier has the authority to review a claimant's petition to reopen a claim for additional benefits filed pursuant to W. Va. Code § 23-5-2.

# Temporary Total Disability

- The claim may be reopened for a consideration of rehabilitation benefits and indemnity benefits if the claimant establishes that he or she is entitled to have the claim reopened.
- To have a claim reopened, a claimant must establish with the petition to reopen that he or she has suffered a progression or aggravation of his or her condition, or must state in the petition some fact not previously considered which would entitle the claimant to greater or additional benefits. W. Va. Code § 23-5-3.

# Temporary Total Disability

- The claimant must establish a progression, aggravation or new fact with “prima facie” evidence. The West Virginia Supreme Court has held that “prima facie” evidence is any evidence which tends to justify, but not compel, an inference that there has been a progression or aggravation of the original injury.
- The claimant must establish a progression, aggravation or new fact with “prima facie” evidence. The West Virginia Supreme Court has held that “prima facie” evidence is any evidence which tends to justify, but not compel, an inference that there has been a progression or aggravation of the original injury.

# Temporary Total Disability

- W. Va. Code §23-4-16(a)(1) provides that in any claim which was **closed** without the entry of an order regarding the degree of permanent disability that a claimant has suffered, **or** in any case where **no award** has been made, any request to reopen must be made **within five (5) years from the date of closure**.
- In addition, in any claim in which a permanent partial disability award is made, W. Va. Code §23-4-16(a)(2) provides that the reopening request must be filed **within five (5) years of the initial permanent partial disability award**.

# Temporary Total Disability

- During that time period, only two requests may be filed. W. Va. Code § 23-4-16(a)(1) and §23-4-16(a)(2).
- In those cases in which you have an occupational disease which is progressive in nature (such as occupational pneumoconiosis), then a new five year period begins upon the date of the subsequent permanent partial disability award.

# Temporary Total Disability

- A private carrier is required to rule upon a reopening petition for temporary total disability benefits **within thirty (30) days of receipt of the petition.** W. Va. Code §23-4-16(b).
- The private carrier, after due notice to the employer, reviews the record and issues a protestable decision, either denying or granting the reopening of the claim.
- If the claim is reopened, temporary total disability benefits should be paid immediately.

# Permanent Partial Disability

- Permanent Partial Disability (PPD) benefits are granted only after the claimant has reached maximum degree of medical improvement. W. Va. Code § 23-4-7a
- PPD awards are based upon whole body medical impairment.
- W. Va. Code § 23-4-6(f) sets forth statutory impairments for certain amputation injuries as well as total loss of sight in one eye or hearing in one ear. Pursuant to W. Va. Code § 23-4-6(m), the loss of both hands, both feet, one hand and one foot, or total loss of sight is considered to be a “total disability.”

# Permanent Partial Disability

- Preexisting impairments and an aggravation thereof shall not be taken into consideration in determining the amount of PPD due to the compensable injury. W. Va. Code § 23-4-9b
- PPD compensation shall be awarded only in the amount that would have been allowable had the claimant not had the preexisting impairment. W. Va. Code § 23-4-9b
- Nothing requires that the degree of the preexisting impairment be ascertained or rated prior to the compensable injury. W. Va. Code § 23-4-9b

# Permanent Partial Disability

- PPD awards are to be computed on the basis of 4 weeks compensation for each percentage of disability. W. Va. Code § 23-4-6(e)(1)
- Maximum PPD benefits are paid at 66 and 2/3% of the average weekly wage earnings, wherever earned, of the injured employee at the date of injury, not to exceed 70% of the average weekly wage in WV.
- Minimum weekly PPD benefits are the same as minimum weekly TTD benefits

# Permanent Partial Disability

- Pursuant to W.Va. Code §23-4-7a(c)(2), if the treating physician examines the claimant before the claim is closed and recommends a PPD award of 15% or less, the adjuster must grant the award.
- The statute does not require a suspension of TTD benefits in these cases.
- However, the claimant's entitlement to TTD benefits cease upon entry of the PPD award.

# Permanent Partial Disability

- Pursuant to W.Va. Code §23-4-7a(c)(2), if the treating physician recommends a PPD award greater than 15% or recommends a PTD award, the claimant must be referred to a physician of the carrier's choice.
- The claim manager must cease payment of TTD benefits. The statute does not require a suspension of TTD benefits in these cases.
- If the claimant has not returned to work, the claimant is entitled to non-awarded partial (NAP) benefits. The NAP benefits will continue until entry of a PPD award or the claimant returns to work.

# Permanent Partial Disability

- Reopening of PPD benefits is to occur if the following are satisfied:
  - If a permanent disability award has not been previously entered, the receipt of the request for reopening must be within 5 years from the date of the order closing the claim. Only 2 requests may be filed during this time period. W. Va. Code § 23-4-16(a)(1)
  - If a permanent disability award has been previously entered, the receipt of the request for reopening must be within 5 years from the date of the initial permanent disability award. Only 2 requests may be filed during this time period. W. Va. Code § 23-4-16(a)(2)
  - An exception to the above concerns OP and OD (any of which are progressive in nature) claims. The time period for receipt of the reopening request must be within 5 years from the date of the subsequent award. W. Va. Code § 23-4-16(a)(2).
- A ruling on the claimant's request for reopening shall be made within 30 days of the receipt of such. W. Va. Code § 23-4-16(b)

# Non-Awarded Partial (“NAP”) Disability Benefits

- Pursuant to the provisions of W. Va. Code § 23-4-7a(c)(2), unless a claimant has returned to work, he or she is eligible to receive non-awarded partial (NAP) disability benefits until the entry of a permanent partial disability award or until the claimant returns to work.
- W. Va. Code § 23-4-7a(e)(4) also directs that unless a claimant has returned to work, he or she is eligible to receive NAP benefits until the entry of a permanent partial disability award or until the claimant returns to work.
- NAP disability benefits will only be payable if the weight of the evidence indicates that a permanent impairment exists.
- NAP disability benefits shall not be payable in a claim that has been re-opened for temporary total disability benefits if a permanent partial disability award was previously made in the claim.

# Non-Awarded Partial (“NAP”) Disability Benefits

- NAP disability benefits paid prior to entry of the permanent disability award are to be deducted from the permanent partial disability award when it is granted.
- If the NAP disability benefits exceed the amount of the award, the injured worker will not be entitled to any further benefits from the award.
- The excess is considered to be an overpayment and shall be collected from any future disability award in the same or any future claim.
- The carrier may cease payment of non-awarded partial disability benefits if they conclude that the amount of NAP disability benefits paid will likely exceed the expected partial disability award.
- As soon as practicable thereafter, the carrier must enter a permanent partial disability award based on the most current information available and the guidelines set forth in 85 C.S.R. § 20.

# Non-Awarded Partial (“NAP”) Disability Benefits

- If Rehabilitation Benefits are being paid, NAP disability benefits shall cease until the rehabilitation process is complete.
- NAP disability benefits shall be immediately suspended if the injured worker fails, without good cause, to present for an examination or rating.
- If suspended with good cause, benefits can be reinstated, without back pay, once the injured worker presents for the examination or rating.
- Rate is the same as the permanent partial disability rate.

# Permanent Total Disability

- In order for a claimant to be considered for a Permanent Total Disability (PTD) award, he or she must not be time-barred, and must meet or exceed the eligibility threshold and the whole person impairment (WPI) threshold.

# Permanent Total Disability

- Reopening of PTD benefits is to occur if the following are satisfied:
  - If a permanent disability award has not been previously entered, the receipt of the request for reopening must be within 5 years from the date of the order closing the claim. Only 2 requests may be filed during this time period. W. Va. Code § 23-4-16(a)(1)
  - If a permanent disability award has been previously entered, the receipt of the request for reopening must be within 5 years from the date of the initial permanent disability award. Only 2 requests may be filed during this time period. W. Va. Code § 23-4-16(a)(2)
  - An exception to the above concerns OP and OD (any of which are progressive in nature) claims. The time period for receipt of the reopening request must be within 5 years from the date of the subsequent award. W. Va. Code § 23-4-16(a)(2)
- A ruling on the claimant's request for reopening shall be made within 30 days of the receipt of such. W. Va. Code § 23-4-16(b)

# Permanent Total Disability

- In order for the claimant to meet or exceed the eligibility threshold, the claimant must meet one of the following three requirements:
  - Have been awarded 50% or more in PPD prior to the date of his PTD application
  - Have sustained a single occupational injury or disease which results **in a finding by the Commission** of a medical impairment of 50% or more.
  - Have sustained a 35% statutory disability pursuant to W. Va. Code § 23-4-6(f)

# Permanent Total Disability

- After meeting the eligibility threshold, the claimant must then satisfy the WPI threshold of 50% or more from a single injury or occupational disease or combination of both. W. Va. Code § 23-4-6(n)(1)

# Permanent Total Disability

- After meeting all necessary thresholds, the claimant can be granted a PTD award if the compensable disability renders the claimant unable to engage in substantial gainful activity requiring skills or abilities which can be acquired or which are comparable to those of any gainful activity in which the claimant has previously engaged with some regularity and over a substantial period of time. W. Va. Code § 23-4-6(n)(2)

# Permanent Total Disability

- Comparability of pre-injury income to post-disability income will not be a factor in determining permanent total disability.
- Geographic availability of gainful employment within a driving distance of 75 miles from the residence of the employee or within the distance from the residence of the employee to his or her pre-injury employment, whichever is greater, will be a factor in determining permanent total disability.

# Permanent Total Disability

- If benefits are granted, the date of onset of the PTD benefits is the date when a properly completed and supported application for PTD benefits was filed.
- Maximum and minimum PTD benefits are the same as TTD benefits.
- All PTD awards granted on or after July 1, 2003, terminate when the claimant reaches 70 years of age.

# Dependents Benefits

- Pursuant to West Virginia Code §23-4-10, there are two classifications of dependents benefits that can be awarded:
  - 1) benefits awarded to the dependents of a deceased employee who was receiving a permanent total disability award at the time of death; or
  - 2) benefits awarded to dependents of a deceased employee who died as a result of a workplace injury or exposure.

# Dependents Benefits

## ➤ **Dependent Benefits/104 weeks:**

- If a person receiving permanent total disability benefits dies from a cause other than a disabling injury leaving any dependents, an award shall be made to the dependents in an amount equal to one hundred four times the weekly benefit the worker was receiving at the time of his or her death.
  - This benefit can be paid either as a lump sum or in periodic payments, at the option of the dependent or dependents. W. Va. Code § 23-4-10(e)
- Only a single 104 week benefit is available to the dependents. Thus, the award shall be prorated if there are multiple dependents.
- Further, this benefit is only available when the employee dies while receiving a permanent total disability award. Accordingly, if the employee was receiving a PTD and benefits ceased at age 70, and dies *after* benefits cease being paid, then this benefit is not payable to the dependents.

# Dependents Benefits

## ➤ Dependents benefits/Fatal

- When a personal injury suffered by an employee in the course of and resulting from his or her employment causes death, and disability is continuous from the date of the injury until the date of death, dependents benefits shall be payable.
- Likewise, when occupational pneumoconiosis or any other occupational disease causes death, benefits are also payable to the decedent's dependents.
- If there are no dependents, the disbursements shall be limited to payment of final medical and funeral expenses. W. Va. Code §§ 23-4-3 and 23-4-4

# Dependents Benefits

- When death is the result of employment, the decedent's dependents shall be paid for as long as their dependency continues in the same amount that was paid or would have been paid to the deceased employee for total disability had he or she lived.

# Dependents Benefits

- The order of preference and length of dependence is as follows:
- A dependent widow or widower until death or remarriage of the widow or widower;
  - Any child or children dependent upon the decedent until each child reaches eighteen years of age or where the child after reaching eighteen years of age continues as a full-time student in an accredited high school, college, university, business or trade school, until the child reaches the age of twenty-five years;
  - If an invalid child, to continue as long as the child remains an invalid. All persons are jointly entitled to the amount of benefits payable as a result of employee's death;
  - A wholly dependent father or mother until death;
  - Any other wholly dependent person for a period of six years after the death of the deceased employee;
  - If the deceased employee leaves no wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be fifty dollars a month to continue for the portion of the period of six years after death.

# Dependents Benefits

- WV Supreme Court held in *Crist v. Cline* (2006), that where dependents' benefits are awarded to a surviving widow or widower pursuant to W. Va. Code § 23-4-10, such benefits may not be terminated prior to the death or remarriage of the widow or widower.

# Dependents Benefits

## ➤ Statute of Limitations

- Death Caused by Work Related Injury
  - Six Months from Date of Death
  - West Virginia Code § 23-4-15(a)
- Death Caused by Occupational Exposure
  - One Year from Date of Death
  - West Virginia Code §§ 23-4-15(b) and 23-4-15(c)

# Dependents Benefits

- Rule 8: Dependent Claims are Derivative of Underlying Claims
  - For claims in which the decedent dies on or after January 1, 2006 shall, for purposes of responsibility and chargeability, be derivative of the decedent's underlying compensable injury or exposure which caused his or her death.
  - The carrier, self-insured employer or other fund responsible for paying the dependent benefits is the private carrier, self-insured employer or other fund providing workers' compensation coverage on the date of injury or last exposure giving rise to such dependent benefits.
  - For all other purposes, including benefit rate and duration, the dependent benefits shall be a new right, separate and apart from the original date of injury or last exposure, to be paid in a manner otherwise consistent with statutory, regulatory and case law applicable to the same.
  - Should the decedent's death result from a work place injury or exposure for which there was no underlying attributable workers' compensation claim during the decedent's lifetime, the carrier, self-insured employer or other fund assigned to the compensable injury or exposure which is proven to have caused the decedent's death is responsible for the payment of the dependents' benefits.

# Dependents Benefits

- Rule 8: Dependent Claims are Derivative of Underlying Claims
  - All “104 weeks awards” payable to a dependent, pursuant to W. Va. Code §23-4-10(e), for claims in which the claimant dies on or after January 1, 2006 shall, for purposes of responsibility and chargeability, be derivative of the deceased claimant’s previously granted permanent total disability award.
  - This means that the carrier, self-insured employer or other fund responsible for paying the 104 weeks award is the private carrier, self-insured employer or other fund providing workers’ compensation coverage for the permanent total disability award giving rise to the 104 weeks award. For all other purposes, including benefit rate and duration, the 104 weeks awards shall be a new right, separate and apart from the original date of injury or last exposure, to be paid in a manner otherwise consistent with statutory, regulatory and case law applicable to the same.

# Rehabilitation Benefits

- Goal is to return an injured worker to employment which is comparable, in both work and pay, to his or her pre-injury work.
- If return to comparable work is not possible, the goal is to return the employee to alternative suitable employment, using all possible alternatives of job modification, restructuring, reassignment, and training, so that the claimant will return to productivity with his or her employer or, if necessary, with another employer.

# Rehabilitation Benefits

- Both physical and vocational rehabilitation can be authorized.
- As such, rehabilitation services include vocational or on-the job training, counseling, and providing crutches, artificial limbs or medicines

# Rehabilitation Benefits

- The total expenditure for vocational rehabilitation cannot exceed \$20,000 for any one injured employee.
- Temporary Total Disability (TTD), Temporary Partial Rehabilitation (TPR), and physical rehabilitation services are not to be included in the \$20,000 dollar limitation

# Rehabilitation Benefits

- The payment for physical rehabilitation, including the purchase of prosthetic devices, and other equipment and training in use of the devices and equipment, are considered expenses within the meaning of W. Va. Code § 23-4-3.

# Rehabilitation Benefits

- Pursuant to W. Va. Code § 23-4-9(b), in every case where an employee has sustained a permanent disability or has sustained an injury likely to result in temporary disability, the private carrier or self-insured employer shall, at the earliest possible time, determine whether the employee would be assisted in returning to remunerative employment with the assistance of rehabilitation services.

# Rehabilitation Benefits

- CSR §85-15-5.2. directs that a self-insured employer or private carrier may authorize a rehabilitation evaluation by a qualified rehabilitation professional to determine whether physical and/or vocational rehabilitation services are appropriate for an injured worker.

# Rehabilitation Benefits

- Ultimately, a rehabilitation plan may be developed and implemented.
- CSR §85-15-5.3.c. notes that the purpose of a rehabilitation plan is to clearly identify the return-to-work objectives and to describe action steps to assist the injured worker in returning to suitable gainful employment.

# Rehabilitation Benefits

- Throughout the rehabilitation process, there are a number of priorities that must be followed.
- No higher-numbered priority may be utilized unless the self-insured employer or private carrier, has determined that all lower number priorities are unlikely to result in placement of the injured worker into suitable gainful employment.

# Rehabilitation Benefits

- If a lower-numbered priority is clearly inappropriate for the injured worker, the next higher-number priority must be considered.
- The rehabilitation plan must explicitly state the reasons and rationale for the rejection of any lower-numbered priority.

# Rehabilitation Benefits

- Pursuant to CSR §85-15-4.1., the priorities are:
- Return to the same employer and pre-injury job.
  - Return to the same employer and pre-injury job with modification.
  - Return to the same employer in a different position.

# Rehabilitation Benefits

- Return to the same employer in a different position with on-the-job-training.
- Employment by a new employer without retraining.
- Employment by a new employer with on-the-job-training.

# Rehabilitation Benefits

- Return to work following enrollment of the injured worker in a retraining program which consists of a goal-oriented period of formal retraining designed to lead to suitable gainful employment in the labor market.

# Rehabilitation Benefits

- TTD benefits can be received during rehabilitation.
- TPR benefits are available if the injured worker returns to work as part of a rehabilitation plan, but at a lower weekly wage.
  - The worker will receive benefits calculated at 70% of the difference between the earnings at the time of the injury and the earnings received as a result of new employment.

# Rehabilitation Benefits

- Injured worker cannot receive both TTD benefits and TPR benefits for the same time period.
- Injured worker is entitled to 52 weeks of TTD rehabilitation benefits and 52 weeks of TPR benefits.
- If payment of TTD benefits is in conjunction with a vocational rehabilitation plan, the injured worker may receive an additional 52 weeks of TTD benefits.

# Medical Benefits

- W. Va. Code §23-4-1(a) directs that workers' compensation benefits shall be provided to those employees who have received personal injuries in the course of and as a result of their covered employment.
- W. Va. Code §23-4-3(a)(1) provides that all private carriers shall disburse and pay for personal injuries to the employees who are entitled to the following benefits: sums for health care services, rehabilitation services, durable medical and other goods, and other supplies and medically related items as may be reasonably required

# Medical Benefits

- Pursuant to W. Va. Code §23-4-16(a)(4), any claim wherein significant medical or any type of rehabilitation service has not been rendered for a period of **five (5) years**, then no payment or request for additional medical benefits shall be granted. Please note that this statutory section does not apply to occupational pneumoconiosis claims.
- The statute does not provide a definition for significant treatment. Significant treatment is more than an office visit, unless such office visit is required because a medication is being monitored

# Medical Benefits

- W. Va. Code §23-4-3(d) provides that private carriers shall **replace** artificial limbs, crutches, hearing aids, eyeglasses, and all other mechanical appliances provided in accordance with this section which later wear out, or which later need to be refitted because of the progression of the injury which caused the same to be originally furnished, or which are broken in the course of and as a result of the employee's employment