



WEST VIRGINIA INSURANCE BULLETIN

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Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.

► Initial Compensability Determinations on Ambiguous Claims ◀

Insurers and self-insured employers have sole authority to make initial compensability determinations in workers' compensation claims. Specifically, W.Va. Code §23-4-1c(a) provides, in relevant part, that in any claim for benefits, "...the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall determine whether the claimant has sustained a compensable injury within the meaning of [W.Va. Code §23-4-1]." W.Va. Code §23-4-1 defines "injury," and further specifically provides that the terms "injury" and "personal injury" include "occupational pneumoconiosis and any other occupational disease."

However, when a claim for occupational pneumoconiosis alleging any disease defined by W.Va. Code §23-4-1(d) as occupational pneumoconiosis is filed, the insurer or self-insured employer must follow the processing system for occupational pneumoconiosis claims and limit the initial determination to exposure and other non-medical facts as required by W.Va. Code §23-4-15b. When a claim for an occupational disease is filed, the insurer or self-insured employer must follow the usual processing procedure for personal injury claims and, because an occupational disease is alleged, apply the six criteria outlined in W.Va. Code §23-4-1(f) to determine if the alleged disease was "incurred in the course of and resulting from employment." See Syl. Pt. 2, *Newman v. Richardson*, 186 W. Va. 66, 410 S.E.2d 705 (1991).

Additionally, W.Va. Code R. §85-1-13.1 provides, regarding certain permanent partial disability determinations, that:

In any claim involving an occupational disease, other than occupational pneumoconiosis, resulting from inhalation of minute particles of dust over a period of time in the course of and resulting from employment: (1) which is filed as an occupational disease claim (as opposed to being filed as an occupational pneumoconiosis claim); and (2) in which a permanent disability determination is required, the claim shall be referred by the responsible party to the Occupational Pneumoconiosis Board for a determination of whole body medical impairment: Provided, That this subsection in no event affects the applicability of benefits or any other procedures available under the West Virginia Code for occupational disease claims other than occupational pneumoconiosis claims. In the claims described in this subsection, the

Occupational Pneumoconiosis Board's findings and conclusions regarding whole body medical impairment have the same legal force and effect as any other findings and conclusions issued by the Board: Provided, That in such claims, the jurisdiction of the Occupational Pneumoconiosis Board is limited solely to the determination of whole body medical impairment.

If there is any ambiguity or lack of clarity on an application for workers' compensation benefits, or within a narrative statement thereon, received from a claimant, or dependent of a deceased employee, as to whether the claimant or dependent intends to file a claim for occupational pneumoconiosis, or any disease defined by W.Va. Code §23-4-1(d), or for occupational disease and, therefore, subject to the six criteria outlined in W.Va. Code §23-4-1(f), the carrier or self-insured employer should undertake a reasonable and appropriate investigation, including an interview of the claimant, claimant's counsel or the dependent of the deceased employee, to eliminate the ambiguity before making the initial compensability decision.

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