

Congress of the United States
Washington, DC 20510

May 29, 2014

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
Washington, DC 20210

Dear Secretary Perez:

We are writing to ask the Department to examine steps taken by its Office of Workers' Compensation Programs (OWCP) to ensure that black lung benefits claims are not decided using questionable medical evidence, following the disclosure of questionable, and potentially unethical, practices of Dr. Paul Wheeler in the Pulitzer Prize winning Center for Public Integrity (CPI) and ABC News investigative report "Breathless and Burdened". We also ask the Department to assess options for reopening cases where fraudulent or misleading evidence may have been used in denying claims.

OWCP, through its Division of Coal Mine Workers' Compensation, administers claims filed under the Black Lung Benefits Act at its eight District Offices in Pennsylvania, West Virginia, Kentucky, Ohio, and Colorado. Claims examiners evaluate medical evidence, make determinations on disability, and assess eligibility for compensation and medical benefits. In Fiscal Year 2012 alone, OWCP administered black lung benefits for over 53,000 beneficiaries.

- The October 2013 CPI and ABC News investigation revealed how miners were improperly denied black lung benefits in questionable medical evaluations provided by Dr. Wheeler, a radiologist at Johns Hopkins Medicine. According to this investigation, Dr. Wheeler had not found a single case of complicated black lung in the over 1,500 cases he has reviewed since 2000 and miners have lost over 800 cases based on his X-ray readings, even though other doctors have found black lung in the same X-rays and biopsies or autopsies repeatedly have proven Wheeler wrong.
- CPI and ABC News found that "the criteria Wheeler applies when reading X-rays are at odds with positions taken by government research agencies, textbooks, peer-reviewed scientific literature and the opinions of many doctors who specialize in detecting the disease, including the chair of the American College of Radiology's task force on black lung."

We commend Johns Hopkins Medicine for suspending its black lung diagnosis program on November 1, 2013, less than a week after the CPI and ABC News story broke.

Our staff has had numerous discussions with the Department since the CPI and ABC News report was released. We were pleased to hear the Department's announcement on May 23, 2014

that it plans to issue a new rule to address, in part, recent disclosures that lawyers representing coal companies have withheld medical evidence from miners in black lung benefits cases. However, that rule is not expected to be released until January 2015 and we are concerned that there may not be adequate safeguards in place to immediately address the issues identified in the CPI and ABC News report. Accordingly, we request a response from the Department on the following questions:

1. What criteria does OWCP use to evaluate the credibility of doctors whose medical evaluations, readings, or interpretations are used to decide black lung benefits cases?
2. What steps, if any, has the Acting Director of OWCP taken, in light of the CPI and ABC News investigative reporting on Dr. Wheeler's practices, to ensure that OWCP decisions on black lung benefits claims are based on credible evidence provided by reputable medical experts? If written guidance has been provided, please provide a copy.
3. Has OWCP shared the findings of the CPI and ABC reports with personnel responsible for deciding the fate of black lung benefits cases? If they have not been shared with personnel, please explain the reason for not sharing this information.

While reforms must be made going forward, we must also address the needs of miners and their survivors who have been unjustly denied benefits. As such, we are requesting that the Department assess, based on the new information presented in the investigative report, whether it has the authority to review and, where appropriate, reopen cases where claimants may have been wrongfully denied black lung benefits because the Department was misled by tainted medical evidence. To the extent it is permissible, I am sure you would agree that the claims of these miners and their survivors deserve a second look.

Miner's claims should be timely reviewed using sound medical evidence from professionals respected in their field. Justice delayed is justice denied for those coal miners suffering the debilitating effects of Black Lung disease.

Sincerely,



Senator Robert P. Casey Jr.
Chairman, Subcommittee on
Employment and Workplace Safety



Representative George Miller
Senior Democratic Member
Committee on Education and the Workforce