

## “OUT OF BREATH, OUT OF PATIENCE?”

A sad fact of life continues to exist that Miners and their families are still considered to be labelled “The Enemy Within”, by the “Establishment”. Most of our working lives we have had to rely on an Employer, who was ultimately responsible for our safe return home at the end of the shift, taking that responsibility seriously. This feature is not intended to, frighten, spread false gossip or create ill feeling. What it is intended to do is to educate and enlighten both Officials and Members of this Union which in turn should do the same for our Elected Representatives so as to prove to them that the Rules and Regulations that govern Industrial Injuries Disablement Benefit are grossly unfair and discriminatory especially when administering Prescribed Disease Claims.



I would like to concentrate on the “Pneumoconiosis Group of Dust Diseases”( which includes Asbestosis [with Pleural Thickening] & Silicosis., which has the Prescribed Disease Number D1), as well as C.O.P.D. [Chronic Obstructive Pulmonary Disease formerly known as Chronic Bronchitis & Emphysema, Disease No.D12.] In order to ensure the reader understands the complexities of the issues, this narrative cannot be anything but complicated in its delivery which for a “blunt and to the point Yorkshire-man” provides difficulties in itself !!

There are rules governing length of service that if you do not match, stop you from claiming at the very first hurdle. For D12, an Underground Worker must have completed 20 years full service, it doesn't matter that there are cases of men being retired early from work due to their chest condition or that they regularly worked 10/12 hour shifts ,over a 15 year period, 20 years is strictly adhered to( the DWP are also quick to knock service off for Industrial Dispute stoppages !) For Surface Workers e.g. Screens or Washery, the criteria increases to 40 years service ! This is well nigh impossible as everyone knows but the “Establishment” doesn't seek to justify this archaic and wholly impossible Regulation, it hides behind a “standard letter” when turning a Claimant down and trots out a Medically qualified Practitioner at the Annual Public Meetings hosted by the Government Advisers on Industrial Disease I.I.A.C [Industrial Injuries Advisory Council] to do that for them. The DWP are represented at these events but seldom if ever provide solutions to the problems they themselves create nor do they answer queries sent to them regarding individual cases that can be “mirrored” all over the Coalfields because the DWP do not adhere to their own practices and have even been known to distort the truth ! [“ Heaven forbid I hear you cry ! “]

For example before a “Commissioner”[D.J.May QC 25.08.1994] changed the Regulations governing Pneumoconiosis-eg if you had “Simple Pneumoconiosis” you did not get any benefit award, this was changed to include the fore mentioned condition, when I questioned the DWP at the IIAC Public Meeting in London, as to how many sufferers had been recalled for re-examination, the response was “Nil because we do not possess the software to undertake such an exercise” ! You will by now I hope, be getting a “feel” for the sense of discrimination and unfairness that pervades over the administration of these claims, it isn't enough to have an Employer who paid scant regard to Safety Measures and Protective Equipment in the Coal Industry, but the ultimate insult appears to be in place to deny sufferers the pitiful sums available to compensate those very sufferers and being denied at every turn.

In order to qualify for a % disability and weekly “pension”, for a loss of faculty for the fore-mentioned diseases you must suffer a 1 litre drop in lung function. It doesn't matter that there is no such Regulation in place that demands that this must take place when deciding the disabling effect of D1 diseases. The NHS prefer a Spirometry system, for COPD sufferers, a tried and tested formula known as the ECCS scale, it is commonly used throughout Europe. The DWP in league with IAC (who unbelievably say their own system is the fairer) use a system or formula called COTES. For well over 20 years they have rebuffed the Union's attempts to get it altered [the machine used is the same] but it is the way that the results are processed and the way the FEV1 result is used that is not the same.

In order to assist the reader I will provide a “case study” of Retired Miner “Harry” from Selby

He is 70 years of age and whose height is measured at 1.68cms. Putting this study as simply as possible under the NHS system Harry would be expected to produce a “blow” on the Spirometry test machine =2.70(Predicted value using the above statistics), He actually blows 1.63 FEV1 which under the NHS guidelines =60% which is rated as “Moderate COPD”, [He should be registering 2.70, which when subtracting his own 1.63 would produce a reading of 1.07 = more than a 1 litre drop, HOWEVER the DWP insist his predicted “blow” would be 2.55 therefore subtracting Harry's actual FEV1 reading of 1.63 would =0.92 i.e. NOT a 1 litre drop in lung function = no loss of faculty = NO Claim!!

To add “insult to injury” Harry has been feeling worse lately, so applies for a “change in circumstances” or “worsening of condition”. He cannot complete a Spirometry test because it makes him ill, when he attends for an Assessment with the DWP, however the Medical Practitioner uses his previous NHS Spirometry test( not a CT scan or an X Ray as the DWP state in their “Benefits Guidance”) substitute their COTES Formula and tells him that his Pneumoconiosis has not worsened it is his COPD that has got worse !! Knowing full well that the example I have given you would prevail when looked at by a DWP Decision Maker, also knowing he has no Medical Evidence to support a diagnosis of COPD(D12) only D1!!

I apologise to the Reader for getting “technical” but unless we as a Union understand the complexities of the problem we are not going to be able to illustrate or convince other Trade Unions to support a change in the Regulations or convince politicians to change it either.

Whilst on the subject of “fairness” and payment of Benefit for Industrial Disease, a case was recently won at a Medical Appeal Tribunal in Yorkshire, for back payment of arrears of weekly benefit for an Ex Miner with 40 years service underground. He had previously in 2000, claimed for Pneumoconiosis and was awarded 10% disability for life, this payment was roughly £16 per week. He was that ill, that the Appeal Tribunal after considering the Medical Evidence available, awarded him 60% disability from 2012 to 2014 and 100% disability from the end of 2014 up until he passed away in January 2016 !! This equated to a “substantial payment” however the DWP cited Social Security Law as a “get out” and only paid him(his family) arrears of 3 months for each % rate of disability, as they are “legally bound” to do by these Regulations, what is more the Medical Appeal Tribunal cannot legally enforce their decision !! Where is the Justice and Fairness for workers who succumb to this “deadly disease” that the Government, who were previously the Employer would not only seek to deny a worker's rights in life would also seek to deny them in death ?? This will not be popular but I cite ALL Governments in this accusation because this is not new law and has been around, I firmly believe since April 1997, the Tories however were the

exponents of these major changes that basically discriminate against the “ordinary decent working class man (or woman) in the street”. By this statement I am not seeking to “stereo-type” anyone simply highlight the disparity that exists between people who make the law (and will never be affected by it because they will never have been at risk) and the people who have and will !!!

I have sincerely tried to explain these issues as concisely and plainly as possible, I am of the firm belief that the way forward for the Union is to organise a Conference as quickly as possible with Industrial Injuries Disablement Benefit the main item on the Agenda, to share information and opinion and define a strategy that helps our Life/Ex Members going forward.

**CHRIS SKIDMORE (Yorkshire Area NUM Chairman)**

**COTES Formulae Social Security(Industrial Injuries Prescribed Diseases Regs.SI 1985/967 Sch 1**

**For a man where the measurement is made:**

**Without Back -Extrapolation( $3.62 \times \text{Height in metres}$ )- ( $0.031 \times \text{Age in Years}$ ) -1.41; or where the measurement is made with Back-Extrapolation, ( $3.71 \times \text{Height in metres}$ ) - ( $0.032 \times \text{Age in Years}$ )- 1.44:**

**\*Back Extrapolation purely relates to volume, flow through milliseconds and time etc.**