

The original documents are located in Box 64, folder “10/15/76 HJR1118 Black Lung Hearing Officers” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library

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APPROVED
OCT 15 1976

10/15/76

THE WHITE HOUSE
WASHINGTON
October 13, 1976

ACTION
Last Day: October 18

MEMORANDUM FOR THE PRESIDENT

FROM:

JIM CANNON

J.C. Cannon

SUBJECT:

H.J. Res. 1118 - Black lung hearing officers

Attached for your consideration is H.J. Res. 1118, sponsored by Representative Dent.

The enrolled bill would authorize the Secretary of Labor to appoint qualified individuals who are not administrative law judges to hear and determine benefit claims in black lung cases.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Kilberg) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.J. Res. 1118 at Tab B.



OCT 14 1976



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 12 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.J. Res. 1118 - Black lung
hearing officers
Sponsor - Rep. Dent (D) Pennsylvania

Last Day for Action

October 18, 1976 - Monday

Purpose

Authorizes the Secretary of Labor to appoint qualified individuals to hear and determine benefit claims in black lung cases.

Agency Recommendations

Office of Management and Budget	Approval
Department of Labor	Approval
Civil Service Commission	Approval
Department of Health, Education, and Welfare	Defer to Labor (Informally)
Administrative Conference of the United States	Defers to interested agencies

Discussion

The Federal Coal Mine Health and Safety Act of 1969, established the black lung benefits program and assigned to the Department of Labor (DOL) responsibility for settling post-1972 claims. The law incorporates the hearing provisions of the Longshoremen and Harbor Workers' Compensation Act, which was amended in 1972 to require hearing of contested cases by Administrative Law Judges (ALJs), appointed pursuant to the Administrative Procedure Act. The original 1969 black lung

benefits act contained no provision for formal adjudication of black lung claims by ALJs.

Following enactment of the 1972 Longshoremen's Act amendments, the Department of Labor requested ALJ positions from the Civil Service Commission. CSC denied Labor's request on the grounds that the amendments did not apply to black lung cases. Labor, accordingly, has used a staff of hearing officers who are not appointed under the Administrative Procedure Act. The DOL hearings procedure has been endorsed by the Congress which has included language in Labor's appropriations acts since 1974 giving the Secretary authority to appoint qualified persons who are not ALJs whenever he finds it will promote the processing of black lung claims.

H.J. Res. 1118 provides in substantive law that qualified individuals appointed by the Secretary of Labor may hear appeals from DOL black lung benefits determinations regardless of whether such individuals are ALJs. The joint resolution is intended to preserve the Secretary's discretion to continue using hearing officers.

It also attempts to resolve the problem that was created when the Labor Department's Benefits Review Board, a semi-autonomous appeals board appointed by the Secretary, ruled in February 1976 that black lung hearings must be conducted by ALJs and refused to review appeals in cases initially adjudicated by DOL hearing officers who are not ALJs. Although the Board's decision is being appealed, court decisions have not yet been handed down.

The Administration supported a resolution similar to H.J. Res. 1118, but which would have made clear that all black lung cases adjudicated since 1972 could be heard by DOL's hearing officers. H.J. Res. 1118 applies only to future cases. According to DOL staff, cases currently being adjudicated in the courts would not be affected by the resolution.

Recommendations

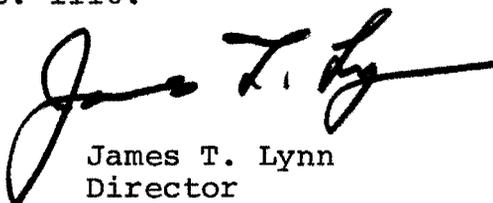
Labor recommends approval of the enrolled bill. In its views letter, Labor states that the resolution makes no substantive change in existing law and that it will eliminate much of the current legal uncertainty surrounding these

matters and allow the Department to reduce its large hearing backlog.

CSC recommends approval of the resolution. CSC states that H.J. Res. 1118 maintains the existing adjudicatory system in the Department of Labor and "is consistent with previous determinations of the Civil Service Commission concerning the ... system of adjudication and personnel required for black lung claims adjudication."

* * * * *

We concur in the view that present law does not require the use of ALJs to hear black lung appeals. While we would have preferred clarification of the adjudicatory process for all black lung cases heard since 1972, we believe H.J. Res. 1118 will remove much of the uncertainty surrounding the black lung claims process. Accordingly, we recommend approval of H.J. Res. 1118.



James T. Lynn
Director

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 18

Date: October 12

Time: 900pm

FOR ACTION: David Lissy *DL* cc (for information):
Ma~~u~~- Friedersdorf *MF*
Bobbie Kilberg *BK*

Jack Marsh
EdmSConnors
SSteve McConahey *SM*

FROM THE STAFF SECRETARY

DUE: Date:

October 13

Time:

530pm

SUBJECT:

H.J. Res. 1118-Black Lung hearing officers

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

pleasè return to judy joh~~h~~stongground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

OCT 7 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

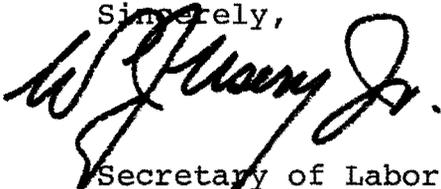
This is in response to your request for the Department of Labor's views on House Joint Resolution 1118, an enrolled enactment that would permit qualified individuals who are not administrative law judges to hear and determine benefit claims under Part C and under section 415 of title IV of the Federal Coal Mine Health and Safety Act. The Department recommends approval of the enactment.

Currently black lung cases are being heard by hearing officers. The Benefits Review Board has ruled that black lung hearings must be conducted by administrative law judges. This decision is now being contested in the courts.

As a result of this dispute, no hearings were held in black lung cases from March 1976 through August 1976. In August, hearings were resumed; however, the coal mine operators are raising, in most cases, the objection that the hearing officer is not eligible to hear the case. This resolution is intended to make clear that in future cases hearing officers will be eligible to hear and determine black lung benefit claims. In our judgment this resolution makes no substantive change in the existing law. It would, however, eliminate much of the current legal uncertainty surrounding these matters and thus allow the Department to eliminate its large hearing backlog. The more expeditious resolution of these cases will facilitate the transfer of benefit costs from the Federal treasury to responsible coal operators.

We recommend Presidential approval of H. J. Resolution 1118.

Sincerely,



Secretary of Labor



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

October 8, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attn: Assistant Director, Legislative Reference

Dear Mr. Lynn:

This is in response to your request of October 5, 1976, for the views and recommendation of the Civil Service Commission on H.J.Res. 1118.

The resolution provides that qualified individuals appointed by the Secretary of Labor may hear and determine claims for black lung benefits regardless of whether such individuals are Hearing Examiners appointed under the provisions of the Administrative Procedure Act (5 U.S.C. 3105).

The Federal Coal Mine Health and Safety Act of 1969 established the black lung benefits program. Responsibility for the program was assigned to the Department of Labor following enactment of the Black Lung Benefits Act of 1972. There was no provision in either of these Acts for the formal adjudication of claims for black lung benefits under the Administrative Procedure Act by Hearing Examiners (now known as Administrative Law Judges).

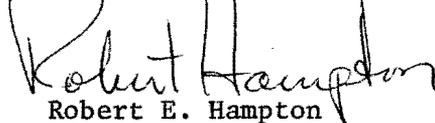
The Civil Service Commission considered requests by the Department of Labor that it furnish Administrative Law Judges appointed under the Administrative Procedure Act to adjudicate black lung cases. However, in the absence of any statutory requirement that these cases be formally adjudicated by Administrative Procedure Act personnel, the Department's requests were denied. Accordingly, the Department employs a staff of hearing officers who are not appointed under the Administrative Procedure Act for the adjudication of these cases.

H.J.Res. 1118 maintains the existing adjudicatory system in the Department. The resolution does not amend the provisions of the Federal Coal Mine Health and Safety Act or the Black Lung Benefits Act, and is consistent with the previous determinations of the Civil Service

Commission concerning the effects of these two Acts in terms of the system of adjudication and personnel required for black lung claims adjudication. Consequently we recommend that the President sign enrolled H.J.Res. 1118.

By direction of the Commission.

Sincerely yours,


Robert E. Hampton
Chairman

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

OFFICE OF
THE CHAIRMAN

October 6, 1976

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Washington, DC 20503

ATTN: Ms. Martha Ramsey
Room 7201

Dear Mr. Frey:

This is in response to your memorandum of October 5, requesting our comments on H.J.R.1118, which would authorize the Secretary of Labor to appoint "qualified individuals" to hear black lung cases, whether or not such individuals are administrative law judges appointed under 5 U.S.C §3105.

We have no comment on this bill and defer to the views of the interested agencies.

Sincerely yours,


Richard K. Berg
Executive Secretary

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 7

Date: October 12

Time: 800pm

FOR ACTION: David Lissy
Max Friedersdorf
Bobbie Kilberg

cc (for information):

Jack Marsh
Ed Schmuls
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date:

October 13

Time:

530pm

SUBJECT:

H.J. Res. 1118-Black Lung hearing officers

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*No objection
K. Lazarus 10/13*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

Date: October 12

Time: 800pm

FOR ACTION: David Lissy ✓
Max Friedersdorf
Bobbie Kilberg

cc (for information):

Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date:

October 13

Time:

530pm

SUBJECT:

H.J. Res. 1118-Black Lung hearing officers

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

APPROVAL
WMDPLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 7

Date: October 12

Time: 800pm

FOR ACTION: David Lissy
Max Friedersdorf
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Jack Marsh
Ed Schmults
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FROM THE STAFF SECRETARY

DUE: Date: October 13

Time: 530pm

SUBJECT:

H.J. Res. 1118-Black Lung hearing officers

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Recommend Approval.

[Signature]

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President