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**RELEASED** COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FEB 16 1973

Dear Senator Byrd:

Your letter of November 1, 1972, requested that we investigate an anonymous letter addressed to you from Ridgeview, West Virginia.

Essentially, the letter stated that a Mr. Owen L. Kinder of Ridgeview was receiving black lung benefits, although the people in his community did not recall his ever working in the coal mines. The letter indicated also that Mr. Kinder received a retroactive benefits check of \$9,976 in October 1972.

Because our examination of this case has raised several questions concerning Mr. Kinder's eligibility for benefits, this letter will serve as an interim report on the matter. The following summarizes the findings we discussed with your office on December 1, 1972, and the agreement reached as to our future course of action.

SOCIAL SECURITY ADMINISTRATION'S BASIS FOR ALLOWING BENEFITS 26

Black lung (pneumoconiosis) is a chronic lung disease. For a miner to be eligible for black lung benefits, title IV, part B, of the Federal Coal Mine Health and Safety Act (30 U.S.C. 901), as amended, requires that he be totally disabled due to black lung and that the black lung must have arisen out of employment in the Nation's coal mines.

On October 11, 1972, the Social Security Administration (SSA) awarded benefits to Mr. Kinder on the basis of eligibility criteria established in section 410.490 of the Department of Health, Education, and Welfare (HEW) regulations dated September 30, 1972, implementing the act (20 CFR Part 410). This section provides that a miner with pneumoconiosis may be presumed to be totally disabled due to the disease if he has at least 10 years' coal mine employment. This presumption may be rebutted only when there is evidence that the miner is doing or is able to do his usual coal mine work or comparable and gainful work.

Under section 410.490 the cause of pneumoconiosis is determined according to the following criteria of section 410.416 of the HEW regulations.

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"(a) If a miner was employed for 10 or more years in the Nation's coal mines, and is suffering or suffered from pneumoconiosis, it will be presumed, in the absence of persuasive evidence to the contrary, that the pneumoconiosis arose out of such employment.

"(b) In any other case, a miner who is suffering or suffered from pneumoconiosis, must submit the evidence necessary to establish that the pneumoconiosis arose out of employment in the Nation's coal mines."

The claims adjudicator indicated that Mr. Kinder had at least 10 years' coal mine employment and was eligible for benefits on the basis of the above two presumptions which are applicable only when a claimant has had such mining experience.

Accordingly, in October 1972, SSA paid Mr. Kinder \$9,046.10 in retroactive benefits. Another \$1,000 due Mr. Kinder was paid to Avis & Schlaegel, Attorneys at Law, Madison, West Virginia, who represented him. These payments represented the cumulative black lung benefits due Mr. Kinder for the period January 1970--when he first filed--through September 1972.

INCONCLUSIVE EVIDENCE USED TO  
SUPPORT ALLOWANCE OF BENEFITS

Mr. Kinder's claim files indicated that he had worked as a coal miner; however, the evidence in the files was inconclusive as to the duration of such employment.

For example, in 1966--several years prior to enactment of the black lung benefits program--Mr. Kinder filed for regular SSA disability insurance benefits and reportedly told an SSA caseworker that he worked as a coal loader and machine helper for about 5 years; on his 1970 application for black lung benefits, Mr. Kinder stated that he worked as a coal miner for 10 years. Evidence showed that Mr. Kinder did not work in the coal mines between 1966 and 1970.

In 1969 the SSA hearing examiner who considered another claim of Mr. Kinder for regular SSA disability insurance benefits stated that Mr. Kinder had 16 years of coal mine employment; a record of Mr. Kinder's lifetime earnings compiled by SSA indicated that he may have worked as a coal

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miner for only the equivalent of 2 years or less. Various other file records also conflicted as to whether Mr. Kinder had the requisite 10 years of coal mine employment to be eligible for benefits under the presumptions provided for in the HEW regulations.

Because the extent of a claimant's coal mine employment is potentially critical in determining if he is allowed or denied black lung benefits, we were unable to determine Mr. Kinder's eligibility. There was no evidence in the files to show that his pneumoconiosis arose from his coal mine employment or that his pneumoconiosis was the cause of his disability--two requirements of the law.

DISCUSSIONS WITH SSA OFFICIALS  
AND WITH YOUR OFFICE

In November 1972 we notified SSA officials that we were informally questioning SSA's decision to award benefits to Mr. Kinder. The officials agreed that the case was questionable and that further development of employment evidence, and possibly medical evidence, was necessary before Mr. Kinder's eligibility could be determined.

In our discussion with your office on December 1, it was agreed that because SSA has the experience and resources for developing employment and medical histories, the General Accounting Office would transfer the case to it for development of such evidence and for a proper determination of Mr. Kinder's eligibility. Subsequently, we will review SSA's evidence and decision concerning Mr. Kinder's eligibility and will send you a final report on the case.

As you requested, we have not and will not divulge your name in this case.

We trust the above information and our indicated course of action will be satisfactory to you.

Sincerely yours,



Comptroller General  
of the United States

*cl + R*  
The Honorable Robert C. Byrd  
United States Senate