U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 20-0442 BLA

PAUL W. VANCE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL LLC	)	
	)	
and	)	
	)	
PEABODY ENERGY CORPORATION	)	DATE ISSUED: 12/20/2022
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

H. Brett Stonecipher and Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

Ann Marie Scarpino (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2018-BLA-05432) rendered on a claim filed on April 15, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Eastern Associated Coal LLC (Eastern) is the responsible operator and Peabody Energy Corporation (Peabody Energy) is the responsible carrier. On the merits of entitlement, the ALJ found Claimant had twenty-four years of underground coal mine employment and suffers from complicated pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.304, 718.203. Thus, he found Claimant invoked the irrebuttable presumption that he is totally disabled due to pneumoconiosis at Section 411(c)(3) of the Act and awarded benefits. 30 U.S.C. §921(c)(3) (2018).

On appeal, Employer contends the district director, the Department of Labor (DOL) official who initially processes claims, is an inferior officer who was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[1] Further, it argues the ALJ erred in finding it liable for the payment of benefits.[2] Claimant did not file a response. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to reject Employer's constitutional challenges and to affirm the ALJ's finding Employer is responsible for payment of benefits.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance

[1] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. Art. II, § 2, cl. 2.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the irrebuttable presumption that he is totally disabled due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3) (2018). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 24.

with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 362 (1965).

Due Process Challenge

Employer generally asserts the regulatory scheme whereby the district director must determine the liability of a responsible operator and its carrier, while also administering the Black Lung Disability Trust Fund (Trust Fund), creates a conflict of interest that violates its due process right to a fair hearing. Employer's Brief at 31-35 (unpaginated). For the reasons set forth in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 18-19 (Oct. 25, 2022) (en banc), we reject Employer's argument.

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Eastern is the correct responsible operator and was self-insured by Peabody Energy on the last day Eastern employed Claimant; thus, we affirm these findings. 20 C.F.R. §§725.494(e), 725.495, 726.203(a); *see Skrack*, 6 BLR at 711; Decision and Order at 11, Employer's Brief at 1-2 (unpaginated). Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Trust Fund.

Patriot was initially a Peabody Energy subsidiary. Director's Exhibit 35. In 2007, after Claimant ceased his coal mine employment with Eastern, Peabody Energy transferred a number of its other subsidiaries, including Eastern, to Patriot. *Id.* That same year, Patriot became an independent company. *Id.* On March 4, 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to 1973. *Id.* at 59-60. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Peabody Coal, Patriot later went bankrupt and can no longer provide for those benefits. Director's Brief at 2. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for paying benefits to miners who were last employed by Eastern when Peabody Energy owned and provided self-insurance to that company, as the ALJ held. Decision and Order at 13; Director's Brief at 2.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated as the self-insured carrier in this claim and thus the Trust Fund,

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 14.

not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy. Employer's Brief at 2-45 (unpaginated). It argues the ALJ erred in finding Peabody Energy liable for benefits because: (1) the district director is an inferior officer not properly appointed under the Appointments Clause;[4] (2) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (3) before transferring liability to Peabody Energy, the DOL must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (4) the DOL released Peabody Energy from liability; (5) the Director is equitably estopped from imposing liability on the company; (6) DOL's issuance of, and adherence to, Black Lung Benefits Act (BLBA) Bulletin No. 16-01[5] reflects a change in policy under which DOL bypassed traditional rulemaking to retroactively impose new liability on self-insured mine operators; and (7) the DOL violated its due process rights by not maintaining adequate records with respect to Patriot's bond and failing to monitor Patriot's financial health. *Id.* It maintains that a separation agreement – a private contract between Peabody Energy and Patriot – released it from liability and the DOL endorsed this shift of complete liability when it authorized Patriot to self-insure.[6] *Id.*

The Board has previously addressed these arguments and rejected them in *Bailey*, BRB No. 20-0094 BLA, slip op. at 3-19; *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 5-17 (Oct. 18, 2022); and *Graham v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0221 BLA, slip op. at 7-8 (June 23, 2022). Thus, for the reasons set forth in *Bailey*, *Howard* and *Graham*, we reject Employer's arguments.

Thus, we affirm the ALJ's determination that Peabody Coal and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

[4] Employer first contested the district director's appointment in its closing brief to the ALJ. Employer Closing Brief at 9.

[5] BLBA Bulletin No. 16-01 is a memorandum the Director of the Division of Coal Mine Workers' Compensation issued on November 12, 2015 to "provide guidance for district office staff in adjudicating claims" affected by Patriot's bankruptcy.

[6] Employer states it intends to preserve the issue of whether discovery was cut off prematurely, but it does not ask the Board to address the issue. Employer's Brief at 30-31 (unpaginated).

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge