**U.S. Department of Labor**

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

BRB No. 22-0173 BLA

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| RONNIE D. PACK, deceased | ) | |
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| Claimant-Respondent | ) | |
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| v. | ) | |
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| EASTERN ASSOCIATED COAL LLC | ) | |
| | ) | |
| and | ) | |
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| PEABODY ENERGY CORPORATION | ) | DATE ISSUED: 12/16/2022 |
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| 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 on Remand of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe, Brad A. Austin and Donna E. Sonner (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

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

David Casserly (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: BUZZARD, ROLFE, and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order on Remand (2017-BLA-05753) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on February 4, 2014, and is before the Benefits Review Board for the second time.

In her initial Decision and Order Awarding Benefits, the ALJ found Eastern Associated Coal LLC (Eastern), self-insured through its parent company Peabody Energy Corporation (Peabody Energy), is the responsible operator and carrier liable for the payment of benefits. On the merits, she found Claimant[1] established the Miner had complicated pneumoconiosis and therefore invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. She further found the Miner's complicated pneumoconiosis arose out of his coal mine employment and thus awarded benefits. 20 C.F.R. §718.203.

Pursuant to Employer's appeal, the Board affirmed the award of benefits. *Pack v. Eastern Assoc. Coal LLC*, BRB No. 20-0095 BLA, slip op. at 3 n.2 (Sept. 15, 2021) (Rolfe, J., concurring) (unpub.). However, the Board held the ALJ erred in concluding Employer failed to timely identify Steven Breeskin and David Benedict, two former Department of Labor (DOL) Division of Coal Mine Workers' Compensation employees, as potential liability witnesses when the case was before the district director. *Id.* at 14. The Board also held the ALJ erred in concluding Employer did not submit any arguments regarding its designation as the responsible operator, noting it had actually submitted a pre-hearing memorandum addressing Peabody Energy's liability. *Id.* Thus the Board remanded the case for further consideration of the admissibility of Mr. Breeskin's and Mr. Benedict's depositions and Employer's arguments that it was not properly designated the responsible carrier.[2] *Id.* at 14-15. On remand, the ALJ admitted their depositions and again found Eastern is the responsible operator and Peabody Energy is the responsible carrier.

[1] Claimant is the widow of the Miner. Claimant's Reply at 3. She is pursuing her husband's claim on his behalf.

[2] The Board also held Employer waived its argument that the ALJ lacked the authority to decide the case and forfeited its argument that the district director is an inferior officer. *Pack v. Eastern Assoc. Coal LLC*, BRB No. 20-0095 BLA, slip op. at 4-5 (Sept.

On appeal, Employer argues the ALJ erred in finding Peabody Energy is the liable carrier. In response, Claimant and the Director, Office of Workers' Compensation Programs (the Director), assert the ALJ properly determined Employer is responsible for the 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 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 (1965).

Employer does not challenge Eastern's designation as the responsible operator and that it was self-insured by Peabody Energy on the last day it employed the Miner; thus, we affirm these findings.[4] 20 C.F.R. §§725.494(e), 725.495, 726.203(a); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983); Decision on Remand at 7-8. Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Black Lung Disability Trust Fund (Trust Fund). Employer's Brief at 2, 8 (unpaginated).

Patriot was initially another Peabody Energy subsidiary. Director's Exhibit 39. In 2007, after the Miner ceased his coal mine employment with Eastern, Peabody Energy transferred a number of its subsidiaries, including Eastern, to Patriot. Director's Exhibits

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15, 2021) (Rolfe, J., concurring) (unpub.). In addition, the Board concluded the ALJ did not abuse her discretion in finding Employer failed to establish extraordinary circumstances to justify its late submission of certain liability evidence. *Pack*, BRB No. 20-0095 BLA, slip op. at 7-11. Further, the Board held Employer did not demonstrate a due process violation. *Id*. at 11-13.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 5, 6; Hearing Tr. at 17.

[4] Employer states it is "continuing to preserve and raise the issues previously raised on the original Appeal to the Board including whether the exclusion of certain exhibits [as] well as the ALJs (sic) determination on the medical issues which was affirmed by the Board was correct . . . ." Employer's Brief at 2 (unpaginated). It neither asks the Board to address these issues nor sets forth any argument that would permit our review. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b).

3, 39. That same year, Patriot was spun off as an independent company. Director's Exhibit 39. On March 4, 2011, Patriot was authorized to self-insure itself and its subsidiaries, retroactive to 1973. *Id.* Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Eastern, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibit 24; Exhibit B to Director's Post-Hearing Brief on Remand. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for paying benefits to miners last employed by Eastern when Peabody Energy owned and provided self-insurance to that company, as the ALJ held. Decision on Remand at 9-10.

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 is responsible for the payment of benefits following Patriot's bankruptcy.[5] Employer's Brief at 8-31 (unpaginated). It argues the ALJ erred in finding Peabody Energy liable for benefits because: (1) 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; (2) the DOL released Peabody Energy from liability; (3) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (4) the Director is equitably estopped from imposing liability on Peabody Energy; (5) the ALJ's reliance on 20 C.F.R. §§725.495(a)(2)(i) and 725.493(b)(2) is misplaced; and (6) the DOL violated its due process rights by not maintaining adequate records with respect to Patriot's bond. Employer's Brief at 8-31 (unpaginated). 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. *Id.* at 13-14 (unpaginated).

The Board has previously considered and rejected these arguments in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 3-19 (Oct. 25, 2022) (en banc); *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). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments. Thus, we affirm the ALJ's determination that Eastern

[5] Employer argues its due process rights were violated because the ALJ denied it discovery. Employer's Brief at 8 (unpaginated). Its argument is impermissibly vague as it does not identify what evidence it was prevented from obtaining. 20 C.F.R. §802.211(b) (arguments to the Board must include references to transcripts, pieces of evidence, and other parts of the record to which the petitioner wishes the Board to refer). Thus it does not set forth any argument that would permit our review. *See Cox*, 791 F.2d at 446-47; *Sarf*, 10 BLR at 1-120-21.

and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge