U.S. Department of Labor

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

BRB No. 21-0620 BLA

DORIS LYNN ADKINS (Widow of STEPHEN E. ADKINS)	)	
Claimant-Respondent	)	
v.	)	
PINE RIDGE COAL COMPANY	)	
and	)	DATE ISSUED: 01/24/2023
PEABODY ENERGY CORPORATION	)	
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.

Paul E. Frampton and Fazal A. Shere (Bowles Rice LLP), Charleston, West Virginia, for Employer.

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, GRESH 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 (2020-BLA-05316) rendered on a survivor's claim filed on June 12, 2018,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Pine Ridge Coal Company (Pine Ridge) is the responsible operator and Peabody Energy Corporation (Peabody Energy) is the responsible carrier. She accepted the parties' stipulation that the Miner had twenty-two years of underground coal mine employment and found Claimant established complicated pneumoconiosis. Thus, she found Claimant invoked the irrebuttable presumption that the Miner's death was due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. Further finding the Miner's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), the ALJ awarded benefits.

On appeal, Employer argues the ALJ erred in finding Peabody Energy is the liable carrier.[2] Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to affirm the ALJ's determination that Peabody Energy is liable 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

[1] Claimant is the widow of the Miner, who died on February 14, 2017. Director's Exhibits 2; 12.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the irrebuttable presumption that the Miner's death was due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3)(2018), and therefore the award of benefits. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 20-21.

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).

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Pine Ridge is the correct responsible operator and that it was self-insured by Peabody Energy on the last day Pine Ridge employed Claimant; thus, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 6-12. 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 (the Trust Fund).

Patriot was initially another Peabody Energy subsidiary. In 2007, after Claimant ceased his coal mine employment with Pine Ridge, Peabody Energy transferred a number of its other subsidiaries, including Pine Ridge, to Patriot. Director's Exhibit 22. That same year, Patriot was spun off as an independent company. *Id.* On March 4, 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to 1973. *Id*. Although Patriot's self-insurance authorization made it retroactively liable for claims of miners who worked for Pine Ridge, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibit 29. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for paying benefits to miners last employed by Pine Ridge when Peabody Energy owned and provided self-insurance to that company, as the ALJ held. Decision and Order at 6-12.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated the self-insured carrier in this claim and thus the Trust Fund is responsible for the payment of benefits following Patriot's bankruptcy: (1) the Director failed to present any evidence that Peabody Energy self-insured Pine Ridge; (2) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (3) the Department of Labor (the DOL) released Peabody Energy from liability; (4) the Director is equitably estopped from imposing liability on Peabody Energy; (5) 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; and (6) because Patriot cannot pay benefits, Black Lung Benefits Act Bulletin Nos. 12-07 and 14-02 place liability on the Trust Fund. Employer's Brief at 5-17. Employer maintains that a separation agreement—a private

[3] This case arises within 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); Hearing Transcript at 25.

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.[4] *Id.* at 9-10, 13-14.

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.*, 25 BLR 1-289,1-295-99 (2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments. Thus, we affirm the ALJ's determination that Pine Ridge and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

[4] Employer also alleges the ALJ erred in failing to require the Director to name the Black Lung Disability Trust Fund (the Trust Fund) as a party to this claim, and that the district director failed to take any action on its request to dismiss Peabody Energy. Employer's Brief at 4-5. The Director represents the Trust Fund's interests and is a party to all claims under the Act. 30 U.S.C. §932(k); *see also Boggs v. Falcon Coal Co.*, 17 BLR 1-62, 1-65-66 (1992); *Truitt v. N. Am. Coal Corp.*, 2 BLR 1-199, 1-202 (1979); Director's Brief at 6 n.4. Further, while Employer requested dismissal of Peabody Energy as the responsible carrier in response to the Notice of Claim, it requested in response to the Proposed Decision and Order that the district director forward the claim for a hearing before the Office of Administrative Law Judges (OALJ). Director's Exhibits 33, 53. The district director forwarded the claim to the OALJ as Employer requested. Director's Exhibit 56.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge