U.S. Department of Labor

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

BRB No. 23-0012 BLA

LAWRENCE D. STEWART	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PINE RIDGE COAL COMPANY c/o PEABODY ENERGY CORPORATION	)	
	)	DATE ISSUED: 7/20/2023
Self-Insured Employer-Petitioner	)	
	)	
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 Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

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

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

William M. Bush (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Awarding Benefits (2022-BLA-05423) rendered on a subsequent claim[1] filed on March 1, 2019, 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 credited Claimant with at least twenty years of underground coal mine employment. Further, she found he established complicated pneumoconiosis and thus invoked the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act and established a change in an applicable condition of entitlement.[2] 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §§718.304, 725.309. Finally, she found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203.

On appeal, Employer argues the ALJ erred in finding Peabody Energy liable for benefits.[3] Claimant responds in support of the award. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to

[1] This is Claimant's third claim for benefits. On June 9, 2008, the district director denied his prior claim, filed on October 30, 2007, for failure to establish any element of entitlement. Decision and Order at 2; Director's Exhibit 2.

[2] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c)(1); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied his prior claim for failure to establish any element of entitlement, Claimant had to submit evidence establishing at least one element of entitlement to obtain review of the merits of his current claim. *White*, 23 BLR at 1-3.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the Section 411(c)(3) presumption and therefore the award of benefits. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8.

reject Employer's liability arguments and 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 with applicable law.[4] 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 prior to its acquisition by Patriot Coal Corporation (Patriot);[5] 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 10-11. Rather it alleges 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). *Id*.

Claimant last worked in coal mine employment for Peabody Coal Company in 1991. Director's Exhibit 8. Peabody Coal Company transferred its assets and liabilities to Pine Ridge in 1994,[6] which was self-insured through Peabody Energy. Director's Exhibits 8, 55.

[4] This case arises within 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); Decision and Order at 4 n.3; Hearing Transcript at 12.

[5] Employer argues that there is no evidence of record that Peabody Energy Corporation (Peabody Energy) was the self-insurer of Pine Ridge Coal Company (Pine Ridge). Employer's Brief at 5-6. However, the Notice of Claim specifically identifies Peabody Energy as Pine Ridge's self-insurer, Director's Exhibit 30, and Employer's other arguments tend to acknowledge that Peabody Energy was the self-insurer of Pine Ridge prior to its transference to Patriot Coal Corporation. *See, e.g.*, Employer's January 8, 2020 Appeal ("Peabody Energy as a predecessor self-insurer was no longer the self-insurer for these claims" and "Peabody Energy as a predecessor self-insurer was released").

[6] Employer did not challenge Pine Ridge's status as a successor operator to Peabody Coal Company. Decision and Order at 10 n.9.

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 29. 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. *Id*. 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 10-16.

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; (6) because Patriot cannot pay benefits, Black Lung Benefits Act Bulletin Nos. 12-07 and 14-02 place liability on the Trust Fund; and (7) the ALJ erred in finding the responsible self-insurer is the insurer on the date of the Miner's last coal mine employment with the responsible operator. Employer's Brief at 5-23. Employer 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.[7] *Id.* at 10-14.

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.*, 25 BLR 1-301, 1-312-18 (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*,

[7] 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 3-4. But 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 7.

Howard, and *Graham*, we reject Employer's arguments.[8] 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.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[8] To the extent Employer argues that the district director erred in not responding to its motion for reconsideration, we reject this argument. Employer's Brief at 2-3. While Employer requested reconsideration of Peabody Energy's designation as the responsible carrier, it alternatively requested that the case be forwarded to the Office of Administrative Law Judges. Director's Exhibit 54.