**U.S. Department of Labor**

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

BRB No. 21-0064 BLA

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| LARRY KEITH SIMPKINS | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | |
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| UNIVERSAL COAL SERVICES INCORPORATED | ) | |
| | ) | |
| | ) | |
| and | ) | |
| | ) | DATE ISSUED: 11/09/2021 |
| LIBERTY MUTUAL INSURANCE GROUP | ) | |
| | ) | |
| 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 Denying Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2019-BLA-05502) rendered

on a subsequent claim filed on April 10, 2018,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Employer is the properly designated responsible operator. She found Claimant established twenty-two years of underground coal mine employment, but did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). Because total disability is a requisite element of entitlement, she also found Claimant is not entitled to benefits under 20 C.F.R. Part 718, and denied benefits.

On appeal, Employer argues the ALJ erred in finding it is the responsible operator. Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

We dismiss Employer's appeal on the grounds that it lacks standing. Any party or party in interest "*adversely affected* by a decision or order issued pursuant to one of the Acts over which the [Benefits Review] Board has appellate jurisdiction may appeal a decision or order of an [ALJ] or [district director] to the Board." 20 C.F.R. §802.201(a) (emphasis added). Employer is not "adversely affected" by the ALJ's Decision and Order and therefore lacks standing to appeal. *Id*.

In finding Claimant not entitled to benefits, the ALJ ruled favorably for Employer. A party cannot appeal from a decision in which it has prevailed absent prejudicial error. *Angelo v. Bethlehem Mines Corp.*, 6 BLR 1-593, 594 (1983). An "appealing litigant must demonstrate that it has suffered an actual or imminent injury that is fairly traceable to the judgment below and that could be redressed by a favorable ruling." *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. , 139 S. Ct. 2356, 2362. A party has an appealable interest only when the party's "property may be diminished, . . . burden increased, or . . . rights detrimentally affected by the order sought to be reviewed." *In re Michigan-Ohio Building Corp. v. Townsend*, 117 F.2d 191, 193 (7th Cir. 1941). Further, a party has prevailed, as in the instant case, if judgment has given the party full exoneration from the claim against it. *Angelo*, 6 BLR at 594.

Employer argues it has standing because the district director "will be forced to

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[1] The district director denied Claimant's first claim, filed on June 28, 2000, because Claimant failed to establish any element of entitlement. Director's Exhibit 1.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

accept any factual determinations by the ALJ that are not contested on appeal," including the ALJ's finding that it is the properly designated responsible operator. Employer's Brief at 4. This argument has no merit. Employer is not collaterally estopped from challenging its designation as responsible operator in future proceedings. Collateral estoppel bars relitigation of an issue that was previously litigated only when, among other requirements, the determination of that issue was necessary to the outcome of the prior proceedings. *See Ark. Coals, Inc. v. Lawson*, 739 F.3d 309, 320-21 (6th Cir. 2014). Identification of the responsible operator is not necessary to the denial of benefits. *Lawson*, 739 F.3d at 321. Because of the well-established policy against issuing advisory opinions, we decline to hold as a matter of law that Employer cannot be designated as the responsible operator. *See, e.g., Andrews v. Petroleum Helicopters, Inc.*, 15 BRBS 166 (1982). Insofar as Employer is not a party "adversely affected by a decision or order under the Act," we conclude it lacks the requisite standing to bring this appeal. 20 C.F.R. §802.201(a)(1); *see Angelo*, 6 BLR at 594.

Accordingly, this appeal is dismissed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge