

U.S. Department of Labor

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



BRB No. 21-0543 BLA

BILLY O. CRESONG)	
)	
Claimant-Respondent)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL, LLC)	
)	
and)	
)	
PEABODY ENERGY CORPORATION)	DATE ISSUED: 10/26/2022
)	
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 Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

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), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2020-BLA-05592) rendered on a subsequent claim filed on May 13, 2019,¹ 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. She also found Claimant established thirty-three years of coal mine employment and determined he suffers from complicated pneumoconiosis arising out of that employment. 20 C.F.R. §§718.304, 718.203. Thus, the ALJ found Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act and thereby established a change in an applicable condition of entitlement since the prior denial, and she therefore awarded benefits. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §725.309.

On appeal, Employer argues the ALJ erred in finding Peabody Energy is the liable carrier.² The Director, Office of Workers' Compensation Programs (the Director), responds, urging rejection of Employer's arguments. Claimant has not filed a response.

The Benefits Review 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'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

¹ Claimant previously filed claims in 2013 and 2016, which were both denied. Director's Exhibits 1-2, 4. The district director denied Claimant's 2016 claim on May 25, 2017, for failure to establish total disability. See Claimant's Closing Argument at 6 (unpaginated).

² We affirm, as unchallenged on appeal, the ALJ's findings that Claimant has thirty-three years of coal mine employment, he invoked the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304, his complicated pneumoconiosis arose out of coal mine employment, and he established a change in an applicable condition of entitlement. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §§718.203, 718.304, 725.309; Decision and Order at 29-30.

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

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Eastern is the correct responsible operator and it was self-insured by Peabody Energy on the last day Eastern employed Claimant; thus we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 6, 16. Patriot Coal Corporation (Patriot) was initially another Peabody Energy subsidiary. Director's Exhibit 33. In 2007, after Claimant ceased his coal mine employment with Eastern, Peabody Energy transferred a number of its other subsidiaries, including Eastern, to Patriot. Director's Exhibits 5, 7-8, 33. That same year, Patriot was spun off as an independent company. Director's Exhibit 33. 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 the claims of miners who worked for Eastern, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibit 26. 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 and Order at 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 Black Lung Disability Trust Fund (the Trust Fund), not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy. Employer's Brief at 3-15. It argues the ALJ erred in finding Peabody Energy liable for benefits because: (1) the Department of Labor (the DOL) released Peabody Energy from liability; (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 Director is equitably estopped from imposing liability on the company; and (5) because Patriot cannot pay benefits, Black Lung Benefits Act Bulletin Nos. 12-07 and 14-02 place liability on the Trust Fund. 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.⁴ Employer's Brief at 7-9.

Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit at 5; Hearing Transcript at 18, 20, 24.

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 an action on its request for reconsideration of the Proposed

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 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.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

Decision and Order (PDO). Employer’s Brief at 2-3. 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 n.7. Further, while Employer requested reconsideration of Peabody Energy’s designation as the responsible carrier in the district director’s PDO, it also requested that the district director forward the claim for a hearing before the Office of Administrative Law Judges (OALJ). Director’s Exhibit 69. The district director forwarded the claim to the OALJ as requested. Director’s Exhibits 70, 72.