



BRB No. 17-0538 BLA

WILLIE ANDERSON CHAPMAN)	
)	
Claimant-Respondent)	
)	
v.)	
)	
RAIDER MINING, INCORPORATED)	
MINE 3)	
)	
and)	
)	DATE ISSUED: 01/31/2018
EMPLOYERS INSURANCE OF WAUSAU)	
)	
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 Steven D. Bell, Administrative Law Judge, United States Department of Labor.

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

Tighe A. Estes (Fogle Keller Walker, PLLC), Lexington, Kentucky, for employer/carrier.

Rita A. Roppolo (Kate S. O'Scannlain, Solicitor of Labor; Maia S. Fisher, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2014-BLA-5374) of Administrative Law Judge Steven D. Bell rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on March 5, 2013.¹

Adjudicating this subsequent claim pursuant to the provisions set forth in 20 C.F.R. Part 718, the administrative law judge credited claimant with twenty-one years of coal mine employment and found that employer is the responsible operator. The administrative law judge also found that the new evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a)-(c). Therefore, the administrative law judge found that claimant 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), and established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Considering the old and new evidence together, the administrative law judge found that claimant established the existence of complicated pneumoconiosis arising out of coal mine employment, pursuant to 20 C.F.R. §§718.203(b), 718.304. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges its designation as the responsible operator. Claimant responds, contending that the administrative law judge properly found him entitled to benefits in this case, notwithstanding the responsible operator issue. The Director, Office of Workers' Compensation Programs (the Director), has filed a motion asking the Board to vacate the administrative law judge's determination that employer is

¹ Claimant's most recent prior claim, filed on June 7, 2010, was finally denied by the district director on December 30, 2010 because claimant failed to establish total respiratory disability. Director's Exhibit 3. Claimant did not further pursue the denial of that claim. Director's Exhibit 5.

the responsible operator and remand this case for further consideration of that issue.² Employer responds to the Director's motion, stating that it has no objection to the Director's request.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Responsible Operator

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner." 20 C.F.R. §725.495(a)(1). A coal mine operator is a "potentially liable operator" if it meets the criteria set forth at 20 C.F.R. §725.494(a)-(e).³ Once a potentially liable operator has been properly identified by the Director, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits, or that another operator more recently employed the miner for at least one year and that operator is financially capable of assuming liability for benefits. *See* 20 C.F.R. §725.495(c).

Before the administrative law judge, employer, Raider Mining, Inc. (employer or Raider Mining), asserted that Desert Mining, Inc. (Desert Mining) should have been named the responsible operator. Employer acknowledged that claimant did not work for Desert Mining for one year, but asserted that based on a successor relationship between the two companies, claimant's employment with Desert Mining and Raider Mining should be combined to equal one year. The administrative law judge rejected employer's

² The Director, Office of Workers' Compensation Programs (the Director), further asserts that, as no party has challenged the administrative law judge's finding that claimant is entitled to benefits, the award of benefits "should not be disturbed." Director's Motion to Vacate at 3.

³ In order for a coal mine operator to meet the regulatory definition of a "potentially liable operator," the miner's disability or death must have arisen at least in part out of employment with the operator, the operator must have been in business after June 30, 1973, the operator must have employed the miner for a cumulative period of not less than one year, the employment must have occurred after December 31, 1969, and the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e). Employer does not contest that it meets these requirements.

argument that Desert Mining is liable for benefits instead of Raider, finding that employer failed to present any evidence that Desert Mining is financially capable of assuming liability, as required by 20 C.F.R. §725.495(c). Decision and Order at 5. Thus, the administrative law judge found that employer was properly named the responsible operator. *Id.* The administrative law judge therefore declined to determine whether Desert Mining can be considered to have employed claimant for at least one year under a successor relationship. *Id.*

In response to employer's appeal, the Director filed a Motion to Vacate the administrative law judge's determination with respect to liability. The Director notes that the regulations provide that in any case in which the designated responsible operator is not the operator that most recently employed the miner, the district director is required to explain the reasons for such designation. Director's Motion to Vacate at 2, *citing* 20 C.F.R. §725.495(d). If the reasons include the most recent employer's failure to meet the conditions of 20 C.F.R. §725.494(e), the district director must also submit a statement that "the Office [of Workers' Compensation Programs] has searched the files it maintains . . . and that [it] has no record of insurance coverage for that employer . . ." *Id.* The regulation further provides, "In the absence of such a statement, it shall be presumed that the most recent employer is financially capable of assuming liability for a claim." *Id.*

The Director concedes that the Office of Workers' Compensation Programs failed to meet its obligations under the regulations. Director's Motion to Vacate at 2. The Director states that while the district director explained why Desert Mining, a more recent employer, was not named as the responsible operator,⁴ it did not state that the Office has no record of insurance coverage for that employer. Director's Motion to Vacate at 2, *referencing* Director's Exhibit 46. Thus, the Director states that, under the regulations, Desert Mining is presumed to be financially capable of assuming liability. Director's

⁴ The district director explained why Desert Mining, Inc. is not the responsible operator:

The fact that Desert Mining, Inc. was operative and insured prior to and then concurrently with Raider Mining, Inc. eliminates it as being a successor operator to Raider Mining, Inc. Even though the two (2) companies operated concurrently and had common ownership, this is inadequate in and of itself to conclude that a successor operator relationship existed since Desert Mining, Inc. was last operative/insured prior to Raider Mining, Inc.

Director's Exhibit 46 at 13.

Motion to Vacate at 2, *referencing* 20 C.F.R. §725.495(d). As the administrative law judge's sole basis for finding that Raider is liable for benefits – employer failed to prove that Desert Mining is financially capable of assuming liability – cannot be affirmed, the Director asks the Board to vacate that determination. Director's Motion to Vacate at 2. The Director further asks that the case be remanded to the administrative law judge for further consideration of the liability issue. *Id.*

In light of the Director's concession that the Office of Workers' Compensation Programs failed to meet its obligations under 20 C.F.R. §725.495(d), and as employer states it has no objection to the Director's motion, we vacate the administrative law judge's finding that employer is the responsible operator. *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843, 845 (1984); *Cadle v. Director, OWCP*, 19 BLR 1-56, 1-62 (1994). On remand, the administrative law judge must consider employer's contention that because Desert Mining is its successor, Raider is not the responsible operator in this case.

As the Director and employer raise no other legal issues, nor any substantive challenge to the administrative law judge's findings on the merits of entitlement, we affirm the award of benefits. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part, and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge