BRB Nos. 01-0164 BLA
and
01-0164 BLA-A

DEWEY K. HOWERTON	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL COMPANY, INCORPORATED	)	
	)	
Employer-Respondent	)	
Cross-Petitioner	)	
	)	
and	)	DATE ISSUED:
	)	
HERNDON PROCESSING COMPANY	)	
	)	
Employer	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Carrier	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Cross-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

W. William Prochot (Greenberg Traurig LLP), Washington, D.C., for employer, Eastern Associated Coal Company, Incorporated.

Jennifer U. Toth (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order - Denying Benefits (1999-BLA-1285) of Administrative Law Judge Robert J. Lesnick on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).[1] This claim has been before

[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725, 726 (2001).

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board issued an order on April 24, 2001 requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary

the Board previously.[2] The administrative law judge determined that Eastern Associated

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injunction. *National Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001). On August 10, 2001, the Board issued an Order rescinding its April 24, 2001 order.

[2]Claimant filed his first claim for benefits on November 9, 1973, which was denied on July 18, 1980 for failure to establish coal workers' pneumoconiosis arising out of coal mine employment and total disability due to pneumoconiosis. Director's Exhibit 34.

On September 8, 1989, claimant filed his second application for benefits. Director's Exhibit 1. The district director notified claimant's last two employers that employed him for over a year, Benafuels and Eastern Associated Coal Company, Incorporated (EACC), of their potential liability. Director's Exhibits 20, 22-32. The district director then denied benefits. Director's Exhibit 19. Claimant requested a hearing, and the case was transferred to the Office of Administrative Law Judges (OALJ). Administrative Law Judge Stuart A. Levin remanded the case to the district director for further investigation to determine whether any other operator other than Benafuels may be the responsible operator. Director's Exhibits 21, 48, 49.

On remand, on August 5, 1991, the district director issued a proposed decision and order naming EACC as the responsible operator. Director's Exhibit 63. By letter dated August 9, 1991, EACC sought further elaboration of the district director's proposed decision and order. The district director found that EACC's letter was a request to reconsider the proposed decision and order, and referred the case to the OALJ without ruling on EACC's reconsideration request.

On August 23, 1993, Administrative Law Judge Samuel Smith awarded benefits and held EACC liable for payment of benefits. Director's Exhibit 77. EACC appealed to the Board, which dismissed the appeal as premature because EACC's reconsideration request remained pending before the district director. *Howerton v. Eastern Associated Coal Corp.*, BRB No. 93-2445 BLA (Aug. 31, 1994)(unpub.).

The district director issued a second proposed decision and order, finding that Panther Colliers, Incorporated and/or Herndon Processing Company and/or Eastern Associated Coal Corporation and/or Kennie R. Childers and/or Old Republic Insurance Company and/or West Virginia Coal workers' Pneumoconiosis Fund are liable for the payment of benefits and medical expenses. Director's Exhibit 116. A hearing was held before Administrative Law Judge James Kerr, who found that EACC is the responsible operator but denied benefits on January 29, 1998. Director's Exhibit 145.

On January 4, 1999, claimant filed a request for modification. Director's Exhibit 158. The district director awarded benefits and named EACC and

Coal Company, which employed the miner from 1966 to 1986, is the last operator to have employed the miner for at least a year that is capable of assuming liability for benefits, and was therefore the responsible operator in this case. After noting that this claim involves a request for modification, the administrative law judge considered the newly submitted evidence to determine whether a change in conditions or a mistake in fact was established pursuant to 20 C.F.R. §725.310 (2000). The administrative law judge determined that claimant did not establish that he was entitled to the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304 (2000). The administrative law judge further determined that the newly submitted evidence failed to establish total disability pursuant to 20 C.F.R.§718.204(c)(2000).[3] Lastly, the administrative law judge found that claimant did not establish a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge's findings pursuant to Section 718.304 are erroneous.[4] Eastern Associated Coal Company, Incorporated,

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Herndon Processing Company and its insurance carrier, the West Virginia Coal Workers' Pneumoconiosis Fund as putative responsible operators. The award was controverted and the case forwarded for a hearing before an administrative law judge. Director's Exhibit 173.

[3]The administrative law judge applied the total disability regulation set forth at 20 C.F.R. §718.204(c)(2000). After revision of the regulations, the total disability regulation is now set forth at 20 C.F.R. §718.204(b)(2)(2001).

[4]The administrative law judge's findings pursuant to Section 718.204(c)(2000) are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

(EACC) responds, appealing the administrative law judge's designation of EACC as the responsible operator, but urging affirmance of the administrative law judge's findings on the merits. The Director, Office of Workers' Compensation Programs (the Director), responds to Eastern's appeal, urging the Board to affirm the administrative law judge's finding that Eastern is responsible for payment of any benefits awarded in this case.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204 (2001). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, issued *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993), holding that the administrative law judge must determine whether a change in conditions or a mistake of fact has been made even where no specific allegation of either has been made by claimant. Furthermore, in determining whether claimant has established modification pursuant to 20 C.F.R. §725.310 (2000), the administrative law judge is obligated to perform an independent assessment of the newly submitted evidence, considered in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish the element or elements of entitlement which defeated entitlement in the prior decision. *Nataloni v. Director, OWCP* , 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971).

On appeal, claimant contends that the administrative law judge's findings on the issue of complicated pneumoconiosis do not comport with the Fourth Circuit's holding in *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000). Claimant contends that pursuant to *Scarbro*, the administrative law judge erred in finding that the other relevant medical evidence of record outweighed the x-ray evidence submitted on modification, which objectively establishes claimant's

entitlement to the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304.

In determining whether the existence of complicated pneumoconiosis has been established, the administrative law judge shall first determine whether the relevant evidence in each category under Section 718.304(a)-(c) tends to establish the existence of complicated pneumoconiosis, and then must weigh together the evidence at subsections (a), (b) and (c) before determining whether invocation of the irrebuttable presumption pursuant to Section 718.304 has been established.[5] *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*).

In considering the newly submitted x-ray evidence, the administrative law judge found that there were multiple readings of a February 13, 1998 x-ray film which conclude that claimant has a large opacity, type A. Decision and Order at 10. The administrative law judge found that these readings are outweighed by the biopsy reports, CT scans reports and deposition testimony of two highly qualified pulmonary specialists. The physicians who examined the biopsy material found evidence of simple pneumoconiosis but found it insufficient to establish complicated pneumoconiosis. Decision and Order at 10. The administrative law judge found that Dr. Perper was the only physician who stated that the biopsy findings might be indicative of a lesion of complicated pneumoconiosis but that Dr. Perper also noted that the sample was not of sufficient size to make a specific determination. The administrative law judge found that Dr. Perper's statement was equivocal and outweighed by the contrary statements of the original biopsy physician[6] and Dr. Hutchins, a board-certified pathologist.

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[5] The irrebuttable presumption under Section 411(c)(3) of the Act does not refer to the triggering condition for invocation of the presumption as "complicated pneumoconiosis," nor does it incorporate a purely medical definition of "complicated pneumoconiosis," but rather, the presumption is triggered by the application of congressionally defined criteria. *Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 256, 22 BLR 2-93 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, BLR (4th Cir. 1999).

[6] On March 9, 1999, claimant underwent a right upper lung biopsy. Director's Exhibit 160. Based upon macro-examination and microscopic examination, Drs. Pardasaui and Pia determined that the findings were compatible with coal workers' pneumoconiosis. Director's Exhibits 160, 167.

The administrative law judge then found that all of the physicians who read the CT scans concluded that they showed evidence of only simple pneumoconiosis. Decision and Order at 10. Drs. Tuteur and Fino found that the CT scan evidence indicated a coalescence of pneumoconiosis in the right upper lung lobes, but stated that the CT scans demonstrated that the nodules had not merged into a large opacity. The administrative law judge also noted that Dr. Tuteur explained that CT scans are the best method of resolving differences in chest x-ray interpretations. The administrative law judge, relying on deposition testimony by Drs. Tuteur and Fino, found that claimant does not have large opacities as required by Section 718.304(a).

Claimant contends that the tissue sample obtained by the biopsy prosector was insufficient to document the presence of complicated pneumoconiosis and was obtained only for the purpose of determining whether the miner suffered from cancer; thus, claimant contends that the administrative law judge erred in crediting the opinions by Dr. Hutchins and the biopsy prosectors. Contrary to claimant's assertion, the administrative law judge noted that "[t]he biopsy was apparently conducted to determine whether or not cancer was present, and it ruled out the presence of cancer while indicating that pneumoconiosis was present." Decision and Order at 10. The administrative law judge further found that although Dr. Hutchins noted that the biopsy sample did not include sufficient material to identify lesions of progressive massive fibrosis, the sample was not consistent with a massive lesion or large opacity of pneumoconiosis.[7] Decision and Order at 10; Employer's Exhibit 7. Despite the limitations of the biopsy evidence, the administrative law judge, in a rational exercise of his discretion, permissibly accorded great weight to the opinion of Dr. Hutchins based on his qualifications as a board-certified pathologist. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). Therefore, we affirm the administrative law judge's determination that the biopsy evidence does not support a finding of complicated pneumoconiosis. *See* 20 C.F.R. §718.304(b).

We also disagree with claimant that the administrative law judge erred in relying upon the CT scan evidence to determine that claimant did not establish the existence of

[7]Dr. Hutchins stated that the biopsy slides revealed an area of very dense fibrous tissue surrounded by some deposit of coal dust pigment predominantly in macrophages and within the tissues around the dense fibrous area of scarring. Dr. Hutchins opined that this most probably represented part of a healed granulomatous lesion. Employer's Exhibit 7 at 4-5.

complicated pneumoconiosis. Contrary to claimant's assertions, *Scarbro* does not permit x-ray evidence of complicated pneumoconiosis to override all other relevant evidence. The Fourth Circuit court has explained that although there are, "three different ways to establish the existence of statutory complicated pneumoconiosis for purposes of invoking the irrebuttable presumption, these clauses are intended to describe a single, objective condition." Moreover, " '[b]ecause prong (A) set out an entirely objective scientific standard' -- *i.e.* an opacity on an x-ray greater than one centimeter-- x-ray evidence provides the benchmark for determining what under prong (B) is a 'massive lesion' and what under prong (C) is an equivalent diagnostic result reached by other means." *Scarbro*, 220 F.3d at 256, 22 BLR at 2-100 (4th Cir. 2000), *citing Double B. Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999). The Fourth Circuit court further held, however, that:

> [E]ven where some x-ray evidence indicates opacities that would satisfy the requirements of prong (A), if other x-ray evidence is available or if evidence is available that is relevant to an analysis under prong (B) or prong (C), then all of the evidence must be considered and evaluated to determine whether the evidence as a whole indicates a condition of such severity that it would produce opacities greater than one centimeter in diameter on an x-ray.
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> *...[T]he x-ray evidence can lose force only if other evidence affirmatively shows that the opacities are not there or are not what they seem to be, perhaps because of an intervening pathology, some technical problem with the equipment used, or incompetence of the reader.*

Scarbro, 220 F.3d at 256, 22 BLR at 2-101; *see Blankenship*, 177 F.3d at 243-44 (emphasis supplied).

In discussing Dr. Fino's opinion, that the CT scans revealed a mass less than one centimeter, Employer's Exhibit 6 at 6, and Dr. Tuteur's opinion, that the CT scans indicate multiple small nodules of low profusion with no coalescence of the nodules into a progressive massive fibrosis, Employer's Exhibit 5 at 6, the administrative law judge properly considered evidence which undermined the February 13, 1998 x-ray evidence of complicated pneumoconiosis. *See Scarbro, supra*. Moreover, the administrative law judge permissibly relied upon Dr. Tuteur's statement that CT scans are the best method to resolve the difference of opinions on chest x-rays, based upon the physician's credentials as a highly qualified pulmonary specialist.[8] *See Hicks, supra*; *Akers, supra*. Weighing all

[8]Dr. Tuteur explained that a CT scan is a far better test than a chest x-ray because one is viewing computerized slices of the lung which are unobstructed

the evidence, the administrative law judge permissibly found that the x-ray evidence of record was insufficient to establish the existence of complicated pneumoconiosis in light of the fact that the biopsy and CT scan evidence and medical opinions by Drs. Tuteur and Fino countered such a finding. [9] *See* Decision and Order at 10; *Scarbro, supra*; *see generally Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). The administrative law judge, therefore, rationally concluded that claimant was not entitled to the irrebuttable presumption of totally disabling pneumoconiosis at Section 718.304.

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1988) *supra*; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's finding that claimant failed to establish the existence of a totally disabling respiratory impairment, and thus, a change in conditions pursuant to Section 725.310. *See Jessee, supra*. Moreover, we affirm the administrative law judge's determination that claimant did not establish that a mistake in fact exists pursuant to

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by views of the heart, skin, chest wall, heart, pleura, subcutaneous fat, bone, tissues and muscle. Employer's Exhibit 5 at 9.

[9]The record also contains x-rays dated March 10, 1993, February 26, 1999, March 9, 1999, and November 17, 1999 submitted on modification which do not support a finding of complicated pneumoconiosis. The administrative law judge noted these x-rays, but did not discuss them pursuant to Section 718.304(a). This error is harmless, however, as the x-rays support the administrative law judge's ultimate finding in this case that the evidence as a whole fails to establish complicated pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Section 725.310 as this finding is supported by substantial evidence. *Id*. Inasmuch as claimant failed to establish a basis for modification, we affirm the denial of benefits.

On cross-appeal, EACC contends that even if the denial of benefits is affirmed, the responsible operator issue must be addressed to prevent it from having to defend itself if claimant seeks modification. EACC contends that DOL failed to properly develop evidence to determine whether any of the entities after Benafuels qualified as a subsequent responsible operator.[10] Thus, EACC argues, it must be dismissed as a responsible operator pursuant to *Director, OWCP v. Trace Fork Coal Co.* [*Matney*], 67 F.3d 503, 19 BLR 2-290 (4th Cir. 1995). EACC further argues that DOL should have developed evidence establishing that Benafuels' officers, directors, and insurance carriers

[10]The record indicates that EACC employed the miner from December 1966 to February 1986. Genoa Coal Company employed the miner from November 7, 1986 until June 14, 1987, and Benafuels employed him from October 1987 to June 1989. Director's Exhibit 63. Genoa employed claimant for less than one year and Benafuels is incapable of assuming liability as it is bankrupt and was not insured against black lung claims on the last day of claimant's employment. Director's Exhibit 63. During Benafuels' bankruptcy proceedings, the mine site and preparation plant were transferred from Pocahontas Land Corporation to Herndon Coal and Land Company. Director's Exhibit 113. Herndon Coal and Land Company leased the right to mine coal and operate the processing plant to Herndon Processing Company. Director's Exhibits 107, 113. The right to mine coal was transferred to Panther Colliers, Incorporated, which ceased operations in 1992 and filed for bankruptcy in May 1994. Director's Exhibits 112, 122.

are liable. Alternatively, EACC contends that Panther Colliers or a Benafuels' subsidiary should have been designated as the successor operators.

The administrative law judge found that Benafuels is the employer with whom the miner had the last recent cumulative employment of not less than one year pursuant to 20 C.F.R. §725.491-493 (2000). Decision and Order at 3. However, the administrative law judge further found that Benafuels is bankrupt, its assets have been liquidated, and it does not have the financial ability to pay. *Id.* The administrative law judge then considered the Director's brief submitted after the hearing in this case. Based upon the evidence outlined in the Director's brief, the administrative law judge concluded that after Panther Colliers's bankruptcy in 1994, the right to operate the Keystone #2 underground coal mine, where claimant last worked, reverted back to Herndon Processing Company, but that the fact that Herndon Processing had the right to mine the coal does not establish that it had or has control over the daily mining operations. *See* Decision and Order at 4-5. The administrative law judge then found that EACC was the most recent operator capable of assuming liability pursuant to Sections 725.492 and 725.493 (2000). Decision and Order at 5.

Employer contends that the Department of Labor erred in failing to determine whether Benafuels' officers and directors had the ability to assume liability in this claim before naming employer as the most recent operator capable of assuming liability. Contrary to employer's contention, the Director is not required to consider whether the corporate officers of a potential responsible operator are financially capable of assuming liability and can be held liable as responsible operators pursuant to 20 C.F.R. §725.491(a). *See Mitchem v. Bailey Energy, Inc.*, 21 BLR 1-162 (1999)(*en banc*)(Hall, C.J., and Nelson, J., concurring and dissenting), *aff'd on recon.*, 22 BLR 1-24 (1999)(*en banc*)(Hall, C.J., and Nelson, J., concurring and dissenting); *Lester v. Mack Coal Co.*, 21 BLR 1-126 (1999)(*on recon.*)(*en banc*).

Regarding employer's alternative argument that either Panther's insurance carrier or a Benafuels subsidiary should be held liable, the administrative law judge agreed with the previous findings in this case by Administrative Law Judge Kerr that the evidence was insufficient to determine who had control of the daily mining operations at the mine site.[11] Contrary to claimant's contention, the administrative law judge acted within his

[11]Administrative Law Judge Kerr found "that the Director has discharged his duties to the extent required by law, that is, the investigation is thorough, although no conclusion had been reached as a matter of law." Director's Exhibit 145. The administrative law judge additionally found that the district director properly named and served all named parties with notice, that the evidence developed is extensive, and that adequate notice was given to the named parties.

discretion in determining that DOL had met its obligation to develop the evidence with respect to responsible operator status. *See Matney, supra.* Thus, as the evidence failed to establish that Panther had any relationship with Benafuels, the administrative law judge properly declined to name it as a successor operator. Moreover, Benafuels' subsidiaries did not receive mining assets from the bankruptcy estate, and were therefore properly omitted as successor operators. 20 C.F.R. §725.493 (2000). Therefore, we affirm the administrative law judge's finding that EACC is the responsible operator in this case. 20 C.F.R. 725.491-725.493.

Accordingly, the administrative law judge's Decision and Order-Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

Id. The administrative law judge further found that Herndon Processing Company and Panther Colliers are not the responsible operators as either purchasers of bankruptcy assets of Benafuels, Inc., or successor operators. The administrative law judge found that there is insufficient evidence to make an assumption that either party had control of the daily mining operations. The administrative law judge additionally found that there is insufficient evidence to establish that Benafuels, Inc. is a reorganized company which is capable of assuming financial liability for previous black lung claims. *Id*.