U.S. Department of Labor

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

BRB No. 22-0140 BLA

MICHAEL H. BALDWIN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL COMPANY	)	
	)	
	)	
and	)	DATE ISSUED: 02/14/2023
	)	
PEABODY ENERGY CORPORATION	)	
	)	
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 Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe, Brad A. Austin, 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), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2020-BLA-05913) rendered on a claim filed on May 22, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Eastern Associated Coal Company (Eastern) is the responsible operator and Peabody Energy Corporation (Peabody Energy) is the responsible carrier. She also found Claimant established at least twenty-two years of coal mine employment based on the parties' stipulation 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 awarded benefits. 30 U.S.C. §921(c)(3) (2018).

On appeal, Employer argues the ALJ erred in finding Peabody Energy is the liable carrier.[1] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to 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.[2] 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).

[1] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant has at least twenty-two 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 thus he is entitled to benefits. *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; Decision and Order at 5, 24-25, 30.

[2] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

Responsible 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.[3] *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 9-10. Rather, it alleges Patriot Coal Corporation (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).

Patriot was initially another Peabody Energy subsidiary. Director's Exhibit 44. In 2007, after Claimant ceased his coal mine employment with Eastern, Peabody Energy transferred a number of its other subsidiaries, including Eastern, to Patriot. *Id*. 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 the claims of miners who worked for Eastern, Patriot later went bankrupt and can no longer provide for those benefits. *Id.*; Employer's Brief at 10. 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 9-10.

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, not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy: (1) the Director failed to present evidence that Peabody Energy self-insured Eastern; (2) the Department of Labor (the DOL) released Peabody Energy from liability; (3) the Director is equitably estopped from imposing liability on Peabody Energy; (4) 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; (5) the DOL did not maintain adequate records with respect to Patriot's bond; (6) because

[3] Employer argues there is no evidence of record that Peabody Energy Corporation (Peabody Energy) was the self-insurer of Eastern Associated Coal Company (Eastern). Employer's Brief at 6-10. However, the Notice of Claim specifically identifies Peabody Energy as Eastern's self-insurer, Director's Exhibit 30, and Employer's other arguments tend to acknowledge that Peabody Energy was the self-insurer of Eastern at the time of Claimant's last date of employment. *See, e.g.*, Employer's Brief at 8, 10 (e.g., framing the decision to name Peabody Energy liable instead of Patriot as involving a choice between Eastern's "insurer on the date of last employment" and Eastern's "last insurer").

Patriot cannot pay benefits, Black Lung Benefits Act Bulletin Nos. 12-07 and 14-02 place liability on the Trust Fund; and (7) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability. Employer's Brief at 6-22. 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] *Id.* at 6-8.

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.*, 25 BLR 1-289, 1-295-99 (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.

[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 act on its request for reconsideration of the Proposed Decision and Order (PDO). Employer's Brief at 5-6. 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). 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 55. The district director forwarded the claim to the OALJ as Employer requested. Director's Exhibit 56.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge