U.S. Department of Labor

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

BRB No. 22-0256 BLA

JOHN R. FRAME	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL, LLC	)	
	)	
and	)	
	)	
PEABODY ENERGY CORPORATION	)	DATE ISSUED: 02/27/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Awarding Benefits of Sean M. Ramaley, 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.

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals),

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

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2019-BLA-05874) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on April 29, 2016.[1]

The ALJ found Eastern Associated Coal, LLC (Eastern), self-insured through Peabody Energy Corporation (Peabody Energy), is the responsible operator liable for the payment of benefits. He also credited Claimant with 28.42 years of underground coal mine employment and found he established complicated pneumoconiosis. 20 C.F.R. §718.304. Therefore, he found 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) (2018); 20 C.F.R. §718.304, and established a change in an applicable condition of entitlement.[2] 20 C.F.R. §725.309. Further, he found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), and therefore awarded benefits.

[1] Claimant filed six claims for benefits. The ALJ noted the district director denied his most recent prior claim, filed on February 26, 2014, because he did not establish total disability. Decision and Order at 1-2. Claimant took no further action until filing the current claim. Director's Exhibit 7.

[2] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant did not establish total disability in his prior claim, he had to submit new evidence establishing this element of entitlement to obtain review of the merits of his current claim. *White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c); Decision and Order at 2, 22.

On appeal, Employer argues the ALJ erred in finding Peabody Energy liable for the payment of benefits.[3] 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.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assoc., Inc.*, 380 U.S. 359 (1965).

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Eastern is the correct responsible operator and was self-insured by Peabody Energy on the last day it employed Claimant; thus we affirm these findings. *See* 20 C.F.R. §§725.494, 725.495, 726.203(a); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14, 21. 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).[5]

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the irrebuttable presumption that his total disability is due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3)(2018), and therefore the award of benefits. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 28, 33, 35.

[4] 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); Hearing Tr. at 23-24; Director's Exhibits 8, 11.

[5] We reject Employer's arguments that the district director erred in failing to put the Black Lung Disability Trust Fund (the Trust Fund) on notice of this claim as a potentially responsible party and act on its request for reconsideration of the district director's Proposed Decision and Order (PDO). Employer's Brief at 2-3. The Act provides that the Director is a party in all black lung claims and represents the interests of the Trust Fund. 30 U.S.C. §932(k); *see Betty B. Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 502 n.5 (4th Cir. 1999) (Director is a party in all black lung claims); *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 Response Brief at 9 n.5. Further, while Employer requested

Patriot was initially another Peabody Energy subsidiary. Director's Exhibit 62. In 2007, after Claimant ceased his coal mine employment with Eastern, Peabody Energy transferred a number of its subsidiaries, including Eastern, to Patriot. Director's Exhibits 8, 10, 11, 62. That same year, Patriot was spun off as an independent company. Director's Exhibit 62. 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.* 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 14-21.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated as the self-insured carrier in this claim and thus the Trust Fund is responsible for the payment of benefits: (1) the Director failed to present evidence that Peabody Energy self-insured Eastern; (2) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (3) because Patriot cannot pay benefits, Black Lung Benefits Act Bulletin Nos. 12-07 and 14-02 place liability on the Trust Fund; (4) before transferring liability to Peabody Energy, the Department of Labor (DOL) must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (5) the DOL released Peabody Energy from liability; and (6) the Director is equitably estopped from imposing liability on Peabody Energy. Employer's Brief at 2-16. Moreover, it 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. *Id.* at 14-16.

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.

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reconsideration of Peabody Energy Corporation's designation as the responsible carrier in the district director's PDO, it also requested the district director to forward the claim for a hearing before the Office of Administrative Law Judges (OALJ). Director's Exhibit 62. The district director forwarded the claim to the OALJ as requested. Director's Exhibit 65.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge