

U.S. Department of Labor

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



BRB Nos. 19-0337 BLA  
and 19-0338 BLA

GAYLE C. GREGORY (Widow of and o/b/o )  
BOBBY E. GREGORY) )

Claimant-Respondent )

v. )

HERITAGE COAL COMPANY, LLC )

and )

UNDERWRITERS SAFETY CLAIMS )

Employer/Carrier- )  
Petitioners )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )

Party-in-Interest )

DATE ISSUED: 10/27/2022

ORDER

The Director, Office of Workers' Compensation Programs (the Director), has filed a motion to publish the Benefits Review Board's decision issued on September 30, 2020, in the captioned case. Employer subsequently filed a timely motion for reconsideration. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. It also responded to the Director's motion to publish, stating the decision is not final due to the outstanding request for consideration and generally opposing the motion. Claimant responded to Employer's motion for reconsideration, asserting Employer failed to state with particularity its grounds for seeking the motion. The Director did not respond to Employer's motion.

As no member of the panel has affirmatively voted to vacate or modify the Board's decision, Employer's motion for reconsideration is denied. 33 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(c), 802.409.

Further, the Board has published decisions in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA (Oct. 25, 2022) and *Graham v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0221 BLA (June 23, 2022), which rejected each of Employer's arguments that Peabody Energy Corporation (Peabody Energy) was improperly designated the self-insured carrier in these cases and thus the Black Lung Disability Trust Fund, not Peabody Energy, was responsible for the payment of benefits following Patriot Coal Corporation's bankruptcy. Because the Board has previously published decisions covering each of the liability arguments raised in this case, the Board denies the Director's motion.

By Order of the Board:

Thomas O. Shepherd, Jr.  
Clerk of the Appellate Boards