B b U.S. Department of Labor
Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB Nos. 23-0390 BLA
and 24-0220 BLA

LINDA HAYDEN
(o/b/o and Widow of Raymond L. Hayden)

Claimant-Respondent

v.

ENERGY COAL CORPORATION

and

AMERICAN BUSINESS & MERCANTILE INSURANCE

Employer/Carrier-
Petitioners

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 10/30/2024

DECISION and ORDER

Appeals of the Decision and Order on Remand of John P. Sellers, III, and the Decision and Order Awarding Benefits Based on Automatic Entitlement of Theresa C. Timlin, Administrative Law Judges, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer and its Carrier.

Amanda Torres and Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Jennifer Feldman Jones, Deputy 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, BOGGS and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order on Remand (2019-BLA-05036) and ALJ Theresa C. Timlin's Decision and Order Awarding Benefits Based on Automatic Entitlement (2023-BLA-05847) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on August 3, 2016, that is before the Benefits Review Board for the second time, and a survivor's claim filed on February 8, 2023.

In his initial Decision and Order Awarding Benefits, ALJ Sellers (the ALJ) determined Energy Coal Corporation (Energy Coal) is the properly designated responsible operator in the miner's claim. He credited the Miner with 14.64 years of coal mine employment and thus found he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found the evidence established legal pneumoconiosis, but not clinical pneumoconiosis,[2] and determined the Miner was

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if the evidence establishes at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

[2] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions

totally disabled due to legal pneumoconiosis. 20 C.F.R. §§718.202(a)(4), 718.204(b), (c). Consequently, he awarded benefits in the miner's claim.

Pursuant to Employer's appeal, the Board affirmed the award of benefits in the miner's claim. *Hayden v. Energy Coal Corp*., BRB No. 20-0072 BLA, slip op. at 14 (Feb. 24, 2021) (unpub.). The Board held, however, that the ALJ erred in evaluating the Miner's testimony in finding Energy Coal was the responsible operator. *Id.* at 16. It therefore vacated the ALJ's responsible operator determination and remanded the case for him to reevaluate the relationship between Energy Coal and Prater Creek Processing Company (Prater Creek).[3] *Id*. at 16-17.

On remand, the ALJ found the Miner's testimony was inconsistent and vague and, therefore, the evidence did not establish Energy Coal had a successor operator relationship with any subsequent coal mine employer. Thus, the ALJ concluded that Energy Coal is the properly designated responsible operator.[4]

---

characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[3] The Board also rejected Employer's arguments that the ALJ's appointment violates the Appointments Clause, U.S. Const. art. II, § 2, cl. 2, and that his removal protections are unconstitutional. *Hayden v. Energy Coal Corp*., BRB No. 20-0072 BLA, slip op. at 3-6 (Feb. 24, 2021) (unpub.).

[4] Employer filed a Motion for Reconsideration asserting the ALJ erred by failing to set a briefing schedule allowing the parties to submit briefs on remand. Employer's Motion for Reconsideration (Jan. 27, 2022). On February 28, 2022, the ALJ issued an Order Denying Motion for Reconsideration rejecting Employer's arguments and denying its motion. Employer subsequently filed a Motion to Vacate for Lack of Service on September 26, 2022, and a Renewed Motion to Vacate on November 3, 2022. In both motions, Employer asserted its counsel had timely entered its appearance with the ALJ but that service of the ALJ's Order Denying Motion for Reconsideration was erroneously sent to Employer's previous counsel and not to Employer or its current counsel. On June 7, 2023, the ALJ issued an Order Granting Employer's Motion to Vacate and Reissuing Order Denying Motion for Reconsideration (Order Granting and Denying) noting Employer filed an appearance with the Board but that its only notice to the ALJ was a single sentence in the cover letter to its Motion for Reconsideration and that it had failed to use the Office of Administrative Law Judge's Notice of Appearance Form. Order Granting and Denying at

On December 7, 2022, the Miner died. Survivor's Claim (SC) Director's Exhibit 8. Claimant subsequently filed a survivor's claim.[5] ALJ Timlin found Claimant is derivatively entitled to benefits under Section 422(*l*) of the Act.[6] 30 U.S.C. §932(*l*); Decision and Order Awarding Benefits Based on Automatic Entitlement (SC Decision and Order) at 2 (unpaginated).

On appeal in the miner's claim, Employer argues the ALJ erred in finding Energy Coal is the responsible operator. Claimant did not respond to Employer's appeal in the miner's claim. The Director, Office of Workers Compensation Programs (the Director), responds urging the Board to reject Employer's arguments. Employer submitted a reply brief reiterating its arguments.

On appeal in the survivor's claim, Employer asserts ALJ Timlin lacked authority to hear and decide the case because she was not appointed in a manner consistent with the Appointments Clause of the U.S. Constitution.[7] It further contends the removal provisions applicable to Department of Labor (DOL) ALJs violate the separation of powers doctrine and render her appointment unconstitutional. In addition, Employer argues ALJ Timlin's

---

2 (June 7, 2023). "In the interest of judicial fairness," however, the ALJ granted Employer's Motion to Vacate and reissued the Order Denying Reconsideration. *Id.* at 3.

[5] Claimant is the widow of the Miner. SC Director's Exhibits 8, 11. She is pursuing the miner's claim on behalf of his estate and her own survivor's claim. SC Director's Exhibit 6.

[6] Section 422(*l*) of the Act provides the survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*).

[7] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

decision in the survivor's claim was premature because the ALJ's decision in the miner's claim was not yet final. It thus moved that the Board vacate ALJ Timlin's Decision and Order Awarding Benefits in the survivor's claim as premature or, in the alternative, hold the appeal of ALJ Timlin's decision in abeyance pending resolution of the appeal in the miner's claim.[8] Claimant responds in favor of the award of benefits. The Director responds urging rejection of Employer's arguments. Employer submitted a consolidated reply brief reiterating its arguments in response to Claimant's and the Director's briefs.

The Board's scope of review is defined by statute. We must affirm the Decisions and Orders of the ALJs if they are rational, supported by substantial evidence, and in accordance with applicable law.[9] 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, 361-62 (1965).

Survivor's Claim

Based on the award of benefits in the miner's claim, ALJ Timlin found Claimant satisfied her burden to establish each fact necessary to demonstrate entitlement under Section 422(*l*) of the Act: she filed her claim after January 1, 2005; she is an eligible survivor of the Miner; her claim was pending on or after March 23, 2010; and the Miner was determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(*l*); SC Decision and Order at 1-2 (unpaginated).

Employer urges the Board to vacate ALJ Timlin's decision and remand the case to be heard by a different, constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. 237 (2018).[10] Employer's SC Brief at 5-11; Employer's SC Combined Reply Brief at 1-2.

[8] Employer also moved to consolidate the claims for appellate purposes. Employer's Motion to Consolidate and for Abeyance or, Alternatively, Petition for Review (Employer's SC Brief) at 2. By Order dated August 13, 2024, the Board rejected Employer's arguments that ALJ Timlin's Decision and Order Awarding Benefits should be vacated as premature and granted Employer's motion to consolidate the claims for purposes of appeal only. *Hayden v. Energy Coal Corp.*, BRB No. 24-0220 BLA (Aug. 13, 2024) (Order) (unpub.).

[9] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 33.

[10] *Lucia* involved an Appointments Clause challenge to the appointment of an ALJ at the Securities and Exchange Commission (SEC). In *Lucia*, the United States Supreme Court held that, similar to the Special Trial Judges at the Tax Court, SEC ALJs are "inferior

It acknowledges the Secretary of Labor (Secretary) ratified the prior appointments of all sitting DOL ALJs on December 21, 2017,[11] but maintains the ratification was insufficient to cure the constitutional defect in ALJ Timlin's prior appointment. Employer's SC Brief at 5-8: Employer's SC Combined Reply Brief at 1-2. It also generally challenges the constitutionality of the removal protections afforded DOL ALJs. Employer's SC Brief at 8-11; Employer's SC Reply Brief at 2. We reject Employer's arguments for the reasons set forth in *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-5-7 (2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023), and *Howard v. Apogee Coal Co*., 25 BLR 1-301, 1-307-08 (2022).

Employer also contends the ALJ erred in determining that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*) because the award of benefits in the miner's claim was not yet effective. Employer's SC Brief at 11-17. The Board has previously rejected this argument, holding an award of benefits in a miner's claim need not be final or effective for a claimant to receive benefits under Section 422(*l*), as the ALJ correctly noted. *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141, 1-145-47 (2014); SC Decision and Order at 2 (unpaginated). For the reasons set forth in *Rothwell*, we reject Employer's argument. We further decline Employer's request to reconsider the Board's holding in *Rothwell*. Employer's SC Brief at 12-17. Because we have affirmed the award of benefits in the miner's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*). 30 U.S.C. §932(*l*); *Hayden*, BRB No. 20-0072 BLA, slip op. at 14; *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

---

officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. 237, 251 (2018) (citing *Freytag v. Comm'r*, 501 U.S. 868 (1991)). The DOL has conceded that the Supreme Court's holding applies to its ALJs. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

[11] The Secretary issued a letter to ALJ Timlin on December 21, 2017, stating:

> In my capacity as head of the [DOL], and after due consideration, I hereby ratify the Department's prior appointment of you as an [ALJ]. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, [ALJs] of the U.S. [DOL] violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to ALJ Timlin.

Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner.[12] 20 C.F.R. §725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits, and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates a responsible operator, that operator may be relieved of liability only if it shows either it is financially incapable of assuming liability for benefits or another potentially liable operator that is financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c)(2).

A "successor operator" is "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such prior operator, or substantially all of the assets thereof[.]" 20 C.F.R. §725.492(a). Successor liability also is created when an operator ceases to exist due to a reorganization, a liquidation into a parent or successor corporation, or a sale of substantially all its assets, or as a result of merger, consolidation, or division. 20 C.F.R. §725.492(b)(1)-(3). When an operator is considered a successor operator, any employment with a prior operator "is deemed to be employment with the successor." 20 C.F.R. §725.493(b)(1). If the successor operator independently employed the miner after the transaction that gave rise to the successor operator's liability, it is primarily liable for the payment of benefits. *Id.*

On remand, the ALJ considered the Miner's hearing and deposition testimony as well as his Social Security Administration (SSA) earnings records to determine whether the evidence demonstrates a successor operator relationship between Tightrope,

[12] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) 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). As the Board previously noted, Employer does not contest that Energy Coal qualifies as a potentially liable operator. *Hayden*, BRB No. 20-0072 BLA, slip op. at 15 n.21.

Incorporated (Tightrope),[13] Laurel Creek Coal Company (Laurel Creek), or Prater Creek Processing Company (Prater Creek) and Energy Coal.[14] Decision and Order on Remand at 5-6; Hearing Transcript at Hearing Transcript at 26, 30-32; MC Director's Exhibits 6 at 2-3; 31 at 8-11, 13-14. He initially found the Miner did not work for Tightrope, Laurel Creek, or Prater Creek for one full year and thus, absent a successor operator relationship with Energy Coal, none could qualify as a potentially liable operator.[15] *See* 20 C.F.R. §725.495(c); Decision and Order on Remand at 3.

The ALJ next considered whether the Miner's testimony that Western Coal Corporation (Western Coal), Tightrope, Laurel Creek, and Prater Creek were "all the same company," owned by the same people, and that the companies simply "changed names," is sufficient to establish a successor operator relationship.[16] Decision and Order on Remand at 4 (citing Hearing Transcript at 26, 30-31, 32, Director's Exhibit 31 at 10, 12. 15). He determined, however, that the Miner's testimony "is too inconsistent and vague to establish

[13] The Miner testified that after he left Energy Coal, he worked for a coal mine employer named "Highwire," and that "Highwire" was the same company as Laurel Coal. Hearing Transcript at 31-32; *see* Director's Exhibit 6 at 2. As the ALJ observed, the Miner's SSA earnings records do not document an employer named "Highwire," but do document that the Miner worked for Tightrope Coal after he left Employer. Decision and Order at 3 n.7 (citing MC Director's Exhibit 6 at 4). Thus, the Board will refer to this employer as Tightrope.

[14] The ALJ further observed Western Coal Corporation employed the Miner as a coal miner prior to his employment with Energy Coal. Decision and Order at 6-9; MC Director's Exhibit 6 at 2.

[15] We affirm, as unchallenged on appeal, the ALJ's finding in his initial decision that the Miner worked for Tightrope for 74.41 days, as well as his finding in his Decision and Order on Remand that the Miner worked for Laurel Creek for 83.59 days. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 3; Decision and Order at 8; MC Director's Exhibit 6 at 2. The Board previously affirmed the ALJ's finding that the Miner worked for Prater Creek for 116.38 days. *Hayden*, BRB No. 20-0072 BLA, slip op. at 15.

[16] At his deposition, the Miner testified Western Coal "went into Energy Coal which went into [Tightrope] which went into Prater [Creek]." MC Director's Exhibit 31 at 13-14. At the hearing, the Miner testified Laurel Creek "was part of Western Coal," that he went "from Western Coal to Energy Coal to something else and Laurel Creek," and that they were "all the same company." Hearing Transcript at 26.

common ownership or a successor relationship between Energy [Coal] and any subsequent coal mine employer." *Id.* at 6. Further, he found the record does not contain sufficient documentary evidence to affirmatively establish that the companies shared ownership, equipment, or locations. *Id.* Thus, the ALJ found neither Tightrope, Laurel Creek, nor Prater Creek are successor operators to Energy Coal and that Energy Coal is, therefore, the responsible operator. *Id.* at 6; *see* 20 C.F.R. §§725.492(a), (b)(1)-(3), 725.495(a).

Employer asserts that, in finding no successor operator relationship exists between Energy Coal and Prater Coal, the ALJ erred in discrediting the Miner's testimony because he required too high of a "level of detail and explanation." Employer's MC Brief at 10. We disagree.

As the ALJ observed, while the Miner testified Energy Coal, Tightrope, Laurel Creek, and Prater Creek were all the same company, he did not identify any specific owner or ownership group except to note "[t]hey brought in a John Smith," between his employment with Energy Coal and with Tightrope, who made Tightrope a non-union mine whereas Energy Coal owned a union mine. Decision and Order on Remand at 5; MC Director's Exhibit 31 at 14. He further testified the mine Energy Coal operated was in Martin County while the mine Prater Creek operated was in Floyd County, and that his truck when he worked for Prater Creek was not air conditioned, unlike with his previous employers. MC Director's Exhibit 31 at 11-14. The ALJ further correctly observed the Miner's SSA earnings records show Energy Coal did not share a corporate address with Laurel Creek or Prater Creek. MC Director's Exhibit 6 at 2-3.

We reject Employer's arguments as they are simply requests to reweigh the Miner's testimony. The ALJ specifically addressed the Miner's responses about the relationship between Energy Coal and Prater Creek and permissibly found his testimony too inconsistent and vague to establish a successor relationship. Decision and Order at 5-6. The ALJ evaluates the credibility and weight of the evidence, including witness testimony. *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony); *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989). The Board will not disturb an ALJ's credibility findings unless they are inherently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc). Thus, we affirm the ALJ's finding that neither Tightrope, Laurel Creek, nor Prater Coal is a successor operator to Energy Coal. Decision and Order on Remand at 6.

We likewise reject Employer's assertion that Energy Coal should be dismissed as the responsible operator because the district director conducted a "deficient investigation"

and failed to name later employers as potentially liable operators. Employer's MC Brief at 12-15; Employer's MC Reply Brief at 5-7. Employer forfeited this argument by failing to raise it in its initial appeal to the Board.[17] *Edd Potter Coal Co. v. Dir., OWCP* [*Salmons*], 39 F.4th 202, 210 (4th Cir. 2022) ("On remand, parties may not raise whatever new issues they would like if they have previously failed to bring those issues to the attention of the ALJ and the Board. The mere fact of remand does not wipe the whole slate clean.").

We agree, however, with Employer's argument that the ALJ erred by not considering whether a successor operator relationship exists between Western Coal and Tightrope, Laurel Creek, or Prater Creek.[18] Employer's MC Brief at 7-9; Employer's MC Reply Brief at 2-3.

The ALJ observed the Miner testified that Western Coal, Tightrope, Laurel Creek, and Prater Creek were "all the same company," owned by the same people, and that the companies simply "changed names." Decision and Order on Remand at 4 (citing Hearing Transcript at 26, 30-31, 32, Director's Exhibit 31 at 10, 12. 15). But the ALJ noted inconsistencies between this assertion and other specific aspects of the Miner's testimony, including that some of the mines were unionized while others were not, that Prater Creek appeared to use different equipment than the other companies, that some companies shared a mailing address while others did not, and that Prater Creek's and Energy Coal's mines were in a different county than the other mines. Decision and Order on Remand at 4-6.

[17] Likewise, because he did not raise it when this case was previously before the Board, we similarly reject as forfeited the Director's assertion that Employer should be disallowed "from relying on [the Miner's] deposition transcript as liability evidence" because it did not identify the Miner as a liability witness. *Edd Potter Coal Co. v. Dir., OWCP* [*Salmons*], 39 F.4th 202, 208 (4th Cir. 2022); Director's MC Response Brief at 6-8; *see* 20 C.F.R. §§725.414(c), 725.457(c).

[18] Employer further contends the ALJ failed to comply with the Board's remand instructions by limiting his consideration to only whether Tightrope, Laurel Creek, or Prater Creek had a successor operator relationship with Energy Coal. Employer's MC Brief at 6-7. In fact, the Board's remand order specifically "vacate[d] the [ALJ's] finding that Employer and Prater Creek are the same company, and remand[ed] for further consideration of whether they share a successor operator relationship, common enterprise relationship, or no relationship." *Hayden*, BRB No. 20-0072 BLA, slip op. at 16. Because the ALJ considered more than just the relationship between Energy Coal and Prater Coal, and thereby rendered findings in excess of those required by the Board's remand order, we review his entire responsible operator determination rather than only those questions he was previously instructed to reconsider. *See* 20 C.F.R. §§725.463, 802.405(a).

The ALJ thus concluded that the evidence is insufficient to establish a successor operator relationship between Energy Coal and any subsequent coal mine employer. *Id.* at 6.

As Employer correctly asserts, however, the ALJ failed to address whether a subsequent operator relationship exists between Western Coal and Tightrope, Laurel Creek, or Prater Creek. Employer's MC Brief at 7-9; Employer's MC Reply Brief at 2-3. Moreover, contrary to the Director's assertions, the ALJ's rationale does not sufficiently eliminate "a theory of successor operator liability" with respect to these employers. As the ALJ noted, the Miner testified that the mines owned by Western and Tightrope were in the same county, and the Miner's SSA earnings records demonstrate Western Coal, Tightrope, and Laurel Creek shared an address. Decision and Order on Remand at 5-6; MC Director's Exhibits 6 at 1-3; 31 at 10-14. The Miner further specifically testified that Laurel Creek "was part of Western Coal." Hearing Transcript at 25-26. The ALJ's analysis thus did not identify and consider the discrepancies in the Miner's testimony or the broader record that address whether Western Coal, Tightrope, or Laurel Creek shared a successor operator relationship.[19] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *see also Director, OWCP v. Congleton*, 743 F.2d 428, 430 (6th Cir. 1984) (finding which does not encompass discussion of contrary evidence does not warrant affirmance).

We therefore vacate the ALJ's determination that Energy Coal is the responsible operator and remand for further consideration of whether Western Coal shares a successor operator relationship, common enterprise relationship, or no relationship with Tightrope, Laurel Creek, or Prater Creek. On remand, the ALJ must set forth his findings in detail, including the underlying rationale for his decision, as the Administrative Procedure Act requires.[20] *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165.

[19] Employer asserts the ALJ should have taken official notice of records from the Kentucky Secretary of State that it asserts support its arguments that Western Coal, Tightrope, and Laurel Creek all shared ownership. Employer's MC Brief at 8 n.4. However, as the Director notes, the ALJ has discretion as to whether to take official notice of public records and is not required to do so, and the ALJ exercised his discretion to decline to take such notice in the present case. Director's MC Response Brief at 5 (citing Order Denying Reconsideration (Order) (unpub.) (Feb. 28, 2022)).

[20] The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Accordingly, ALJ Sellers's Decision and Order on Remand and ALJ Timlin's Decision and Order are affirmed in part and vacated in part, and the cases are remanded for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge