U.S. Department of Labor

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

BRB No. 22-0412 BLA

THOMAS L. PRUITT, JR. o/b/o the Estate of RUBY PRUITT (Widow of THOMAS PRUITT)	)	
Claimant-Respondent	)	
v.	)	
COMMONWEALTH RESOURCES, INCORPORATED	)	
	)	DATE ISSUED: 02/27/2024
and	)	
OLD REPUBLIC INSURANCE COMPANY	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Order Granting Motions for Summary Decision by Claimant and Director; Denying Employer's Motion for Summary Decision; and Denying Employer's Petition for Modification of Jodeen M. Hobbs, 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.

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

David J. Casserly (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, BOGGS and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jodeen M. Hobbs's Order Granting Motions for Summary Decision by Claimant and Director; Denying Employer's Motion for Summary Decision; and Denying Employer's Petition for Modification (Order) (2021-BLA-05505) rendered on Employer's request for modification of a survivor's claim filed on March 24, 2003,[1] pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for the second time.

Pursuant to Employer's previous appeal, the Board affirmed ALJ Alan L. Bergstrom's January 30, 2017 Decision and Order – Awarding Benefits. ALJ Bergstrom concluded Employer is the responsible operator and that Claimant[2] established that the Miner's death was due to pneumoconiosis.[3] *Pruitt v. Commonwealth Res., Inc.*, BRB No.

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[1] We incorporate the claim's procedural history as set forth in the Benefits Review Board's prior decision. *Pruitt v. Commonwealth Res., Inc.*, BRB No. 17-0253 BLA, slip op. at 4-6 (July 9, 2018) (unpub.), *appeal held in abeyance*, *Old Republic Ins. Co. v. Director, OWCP* [*Pruitt*], No. 18-2046 (4th Cir. Feb. 14, 2019).

[2] Claimant is the son of Thomas Pruitt, the deceased Miner, and Ruby I. Pruitt, the Miner's deceased surviving spouse. The Miner died on November 24, 2002. Director's Exhibit 1 at 811. The Miner's spouse died on February 22, 2012, and Claimant was substituted on behalf of her estate. Director's Exhibit 1 at 260, 268.

[3] Because the Miner's spouse filed this survivor's claim before January 1, 2005, the rebuttable presumption of death due to pneumoconiosis set forth at 30 U.S.C. §921(c)(4) (2018), as implemented by 20 C.F.R. §718.305, and the derivative entitlement provision set forth at 30 U.S.C. §932(*l*) (2018) are not applicable. Pursuant to 30 U.S.C. §932(*l*), in claims filed after January 1, 2005, a survivor of a miner who was eligible to receive benefits

17-0253 BLA, slip op. at 9, 13-16 (July 9, 2018) (unpub.), *appeal held in abeyance*, *Old Republic Ins. Co. v. Director, OWCP* [*Pruitt*], No. 18-2046 (4th Cir. Feb. 14, 2019).

On September 7, 2018, Employer simultaneously appealed the Board's decision to the United States Court of Appeals for the Fourth Circuit and requested modification with the district director. *See* 20 C.F.R. §725.310; Director's Exhibit 2. Thereafter, the Fourth Circuit granted Employer's motion to hold its appeal in abeyance pending resolution of its modification petition. *Old Republic Ins. Co. v. Director, OWCP* [*Pruitt*], No. 18-2046 (4th Cir. Feb. 14, 2019) (Order).

On June 9, 2020, the district director denied Employer's modification request because, at the time of the request, Employer had not reimbursed the Black Lung Disability Trust Fund (Trust Fund) for benefits paid by the Trust Fund after ALJ Bergstrom's award of benefits, as 20 C.F.R. §725.310(e)(2) requires.[4] Director's Exhibit 3. Thereafter, Employer requested its petition be referred to the Office of Administrative Law Judges (OALJ) for a hearing. Director's Exhibit 4.

The case was assigned to ALJ Hobbs (the ALJ), who granted motions for summary decision filed by Claimant and the Director, Office of Workers' Compensation Programs (the Director), and denied Employer's modification petition. She cited as the basis for her denial Employer's failure to reimburse the Trust Fund, as 20 C.F.R. §725.310(e)(2)

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at the time of his death is automatically entitled to survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*); *Mathews v. United Pocahontas Coal Co*., 24 BLR 1-193, 1-200 (2010). Thus, although the Miner received benefits on his claim, his surviving spouse was not able to receive benefits under 30 U.S.C. §932(*l*).

[4] In 2016, the Department of Labor amended the regulations to add paragraph (e) to 20 C.F.R. §725.310. 81 Fed. Reg. 24,464, 24,466 (Apr. 26, 2016). Section 725.310(e)(2) requires that a coal mine operator's modification request be denied "unless the operator proves that at the time of the request" it has paid to the claimant all benefits due under an effective order and has reimbursed the Trust Fund for interim benefits payments made on the operator's behalf under an effective order. 20 C.F.R. §725.310(e)(2). The operator must submit "documentary evidence" that it has "compli[ed] with the requirements of paragraph (e)(2) . . . to the district director concurrently with its request for modification." 20 C.F.R. §725.310(e)(4). Except for cases in which the Board or a court has stayed the payment of benefits, 20 C.F.R. §725.310(e)(3), the requirements of 20 C.F.R. §725.310(e)(2) "apply to all modification requests filed on or after May 26, 2016." 20 C.F.R. §725.310(e)(7).

requires, before filing its petition for modification. Order at 11. Additionally, she found granting Employer's petition for modification would not render justice under the Act. *Id.* at 10-11.

In the current appeal, Employer argues the ALJ erred in denying its modification petition. It challenges the validity of 20 C.F.R. §725.310(e)(2), arguing the regulation is impermissibly retroactive and in violation of applicable law. Further, Employer argues it was improperly named the responsible operator and the Trust Fund should be responsible for the payment of benefits. The Director and Claimant[5] both respond, urging rejection of Employer's arguments. Employer filed reply briefs, reiterating its position.[6]

The Board's scope of review is defined by statute. The ALJ's Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[7] 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).

Section 22 of the Longshore and Harbor Workers' Compensation Act (the Longshore Act), 33 U.S.C. §922, which is incorporated into the Act by 30 U.S.C. §932(a) and implemented by 20 C.F.R. §725.310, authorizes modification of an award or denial of benefits, based on a change in conditions or a mistake in a determination of fact. Under a revision of the regulations promulgated in 2016, any request for modification by an operator must be denied unless the operator proves at the time of its request that it has paid benefits that are due to Claimant and has reimbursed the Trust Fund for benefits paid pursuant to an effective order.[8] 20 C.F.R. §725.310(e)(2).

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[5] After the Board's acknowledgment of Employer's appeal and prior to the deadline for Employer to file its petition for review and brief, Claimant filed a Motion for Summary Judgment. It is unclear what relief Claimant seeks in the motion beyond rejection of Employer's arguments and affirmance of the ALJ's grant of summary decision. Thus, we treat Claimant's motion as part of his response brief urging affirmance of the ALJ's Order.

[6] As the ALJ found, and Employer has conceded, it did not reimburse the Trust Fund prior to requesting modification and thus did not comply with the applicable regulation. Order at 2-4; Employer's Reply to Director at 1-2.

[7] Because the Miner performed his last coal mine employment in Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Order at 3 n.5.

[8] Benefits become due after a district director, an ALJ, the Board, or a court issues an effective order requiring the payment of benefits. 20 C.F.R. §725.502(a)(1). Relevant

Validity of 20 C.F.R. §725.310(e)(2)

The ALJ rejected Employer's arguments that the regulation requiring reimbursement of the interim benefits paid to Claimant is invalid, finding it does not prevent employers from seeking modification and further finding the regulation consistent with "Congressional intent that operators assume responsibility for benefits payments." Order at 8. She further noted Employer's ability to request a stay of payment of benefits, which it did not do; thus, she found the regulation was not inconsistent with the Administrative Procedure Act (APA).[9] *Id.*

On appeal, Employer maintains that 20 C.F.R. §725.310(e)(2) is invalid for multiple reasons. Employer's Brief at 10-12, 15-19. The Director counters that the regulation complies with applicable law and is reasonably related to the purposes underlying the Act. Director's Response at 2-11. For the reasons below, we agree with the Director's responses to Employer's contentions.

Congress has vested the Department of Labor (DOL) with "broad authority to implement the mandate of the [Act]." *Elm Grove Coal Co. v. Director, OWCP* [*Blake*], 480 F.3d 278, 293 (4th Cir. 2007). This authority includes promulgating regulations "appropriate to carry out the provisions" of the Act, 30 U.S.C. §936(a), including those "necessary to provide for the payment of benefits by such [coal mine operators] to persons entitled thereto . . . ." 30 U.S.C. §932(a). The party attempting to demonstrate the invalidity of a regulation promulgated under a statute granting broad rulemaking authority, such as the Act, bears a "heavy burden," as "[s]uch regulations are presumptively valid and will be sustained so long as they are reasonably related to the purposes of the enabling legislation." *Harman Mining Co. v Director, OWCP* [*Stewart*], 826 F.2d 1388, 1390 (4th Cir. 1987) (internal quotes removed).

Employer first contends that 20 C.F.R. §725.310(e)(2) conflicts with Section 559 of the APA, 5 U.S.C. §559,[10] which it asserts "prohibits rules that apply unequally to all parties." Employer's Brief at 9-10. It argues the rules for modification must apply to

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to this claim, ALJ Bergstrom's Decision and Order - Awarding Benefits became effective when it was filed in the office of the district director. 20 C.F.R. §725.502(a)(2).

[9] Certain provisions of the Administrative Procedure Act (APA), 5 U.S.C. §§500-591, are incorporated into the Act by 30 U.S.C. §932(a).

[10] Section 559 of the APA provides, in relevant part, that "[e]xcept as otherwise required by law, requirements or privileges related to evidence or procedure apply equally to agencies and persons." 5 U.S.C. §559.

claimants and employers alike, yet 20 C.F.R. §725.310(e)(2) requires employers to pay benefits prior to seeking modification, while not requiring claimants to reimburse any overpayment of benefits before seeking modification. Employer's Brief at 10-11 (citing *King v. Jericol Mining, Inc.*, 246 F.3d 822, 825 (6th Cir. 2001), and *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 547 (7th Cir. 2002)).

However, as the Director observes, Section 559 of the APA does not apply to claims under the Act. *See* 30 U.S.C. §956 ("Except as otherwise provided in this chapter, the provisions of sections 551 to 559 and sections 701 to 706 of Title 5 shall not apply to the making of any order, notice, or decision made pursuant to this chapter . . . .").[11] While the Act incorporates Section 19 of the Longshore Act, 33 U.S.C. §919(d), thereby making some provisions of the APA applicable to claims under the Act, Section 559 is not among those incorporated provisions.[12] *See* 30 U.S.C. §932(a); Director's Response at 5.

Employer next argues that Section 725.310(e) conflicts with the plain language of the Act, which places no limitation on the modification remedy other than a one-year time limitation. Employer's Brief at 11-12. We disagree.

As the Director argues, the DOL has the discretion to "deviate from the [Longshore Act's] procedures and to prescribe 'such additional provisions, not inconsistent with those specifically excluded by this subsection, as the Secretary deems necessary.'" *Bethenergy Mines Inc. v. Director, OWCP* [*Markovich*], 854 F.2d 632, 634-35 (3d Cir. 1988) (quoting 30 U.S.C. §932(a)). Nothing in the statute explicitly addresses the issue raised in the revised rule; thus, there is no contradiction with the "plain language" of the Act, as Employer alleges. *See* 81 Fed. Reg. 24,464, 24,467 (Apr. 26, 2016).

Further, Section 725.310(e)(2) does not preclude employers from pursuing modification; rather, as the Director states, "it merely requires them to comply with their preexisting obligation to pay benefits owed under effective awards before doing so." Director's Response at 11. In addition, as the ALJ indicated, the regulation provides employers the opportunity to request a stay of an effective order, an option Employer did not pursue. 20 C.F.R. §725.310(e)(3); Order at 7-8. In sum, Section 725.310(e)(2) is

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[11] The Black Lung Benefits Act, 30 U.S.C. §§901-944, is a subchapter of the Federal Mine Safety and Health Act.

[12] Moreover, even if Section 559 were to apply, Employer cites no authority forbidding reasonable distinctions between the parties. The cases Employer cites hold simply that modification is available to both employers and claimants. *King v. Jericol Mining, Inc.*, 246 F.3d 822, 825 (6th Cir. 2001); *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 547 (7th Cir. 2002).

consistent with Section 22 of the Longshore Act and, even if it were not, it falls within the DOL's broad discretion to deviate from the procedures incorporated via the Longshore Act. *See* 30 U.S.C. §932(a).

Employer next challenges the reasonableness of the regulation in light of the bases the DOL provided for promulgating the regulation. Employer's Brief at 15-19. We hold Employer has not met its burden to establish the regulation is not reasonably related to the purposes of the enabling the legislation. *See Stewart*, 826 F.2d at 1390.

As the Director explains, protecting the Trust Fund is one of the DOL's duties in administering the Act. Director's Response at 3 (citing 80 Fed. Reg. 23,743, 23,744-45 (Apr. 29, 2015)); 81 Fed. Reg. at 24,466. Further, the Act authorizes the promulgation of regulations necessary to provide for the payment of benefits by coal mine operators to entitled claimants. 30 U.S.C. §932(a). Congress envisioned the Trust Fund as a payor of "last resort" and intended employers to be liable for claims arising out of their mines to "the maximum extent feasible." 81 Fed. Reg. at 24,466.

When promulgating the revised regulation, the DOL noted that employers and insurers often failed to meet their obligations to pay effective benefits awards while challenging those awards on appeal or modification, citing over 900 claims in which the Trust Fund "paid effective benefits awards in the operator's stead since October 1, 2010." 81 Fed. Reg. at 24,466. Thus, the DOL implemented Section 725.310(e)(2) in an attempt to curb this "unlawful" practice by employers and insurers. *Id.*

Employer argues there is no evidence that the Trust Fund's "insolvency issues" are due to its need to make interim benefits payments; rather, it asserts reports indicate the problems are related to ensuring operators are appropriately insured and to reductions in coal mine production. Employer's Brief at 17. It further contends the support the DOL provided for its position--that the Trust Fund was required to pay benefits in the place of over 900 operators during the specified time period--did not address how many claims were eventually reimbursed by an operator. *Id.* at 16.

Initially, even if there are other issues that endanger the solvency of the Trust Fund, that does not mean the DOL cannot also address the issue it has identified. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency rule cannot be invalidated if it is rational and within the scope of the agency's authority). Further, even assuming that a percentage of the 900 cases the DOL cited ended in eventual reimbursement by the employers, that does not eliminate the fact that, in a significant number of cases, employers are not paying benefits pursuant to effective orders as Congress envisioned and as directed by the regulations. 81 Fed. Reg. at 24,466.

Employer next argues the Act does not require the Trust Fund's payment of these interim benefits; rather, it only "authorized" them, and it was the DOL's rulemaking that mandated the Trust Fund make these payments. Employer's Brief at 17-18. Thus, it argues the DOL created the system, as well as the difficulty in enforcement against employers to make the payments, and it cannot now shift the responsibility. *Id.* As the Director argues, however, Congress required the Trust Fund to pay interim benefits when employers fail to do so. Director's Response at 7-8; *see* 26 U.S.C. §9501(d)(1)(A) ("Amounts in the [Trust Fund] *shall* be available" for the payment of benefits in any case where "the operator liable for the payment of such benefits has not commenced payment" within thirty days of an initial determination of eligibility or within thirty days of when a payment is due.) (emphasis added).

Finally, Employer argues that, contrary to the DOL's contention, there is nothing "unlawful" about an employer's exercise of its right to challenge an award and not pay benefits until the claim is finally resolved. Employer's Brief at 18. Relatedly, it argues there is no incentive or benefit for an employer to delay payment, as employers are required to pay interest; thus, the Trust Fund is not assuming any risk. *Id.* Rather, it asserts the risk is with the employer if there is an overpayment as there is no assurance it will be reimbursed. *Id.*

As discussed, the regulations require employers to pay benefits upon an effective order. 20 C.F.R. §725.502(a)(1). Thus, an employer's failure to do so is "unlawful." 81 Fed. Reg. at 24,466. Further, any difficulty in obtaining reimbursement from claimants would affect the Trust Fund as well as employers, given the regulations allowing waiver of the recovery of an overpayment apply whether the overpayment is owed to an employer or the Trust Fund. 20 C.F.R. §§725.542, 725.547; 81 Fed. Reg at 24,467.

Based on the foregoing, we reject Employer's arguments that Section 725.310(e)(2) is invalid, as the regulation is reasonably related to the purposes underlying the Act and the DOL's duty to protect the Trust Fund.

Whether Section 725.310(e)(2) is Impermissibly Retroactive

The revised regulation makes the rule at issue applicable to all modification requests filed on or after May 26, 2016. 20 C.F.R. §725.310(e)(7). Employer acknowledges that it filed its modification request after that date; however, it argues the regulation is impermissibly retroactive as applied to claims such as this, that were previously filed and pending on that date. Employer's Brief at 13-16. The Director argues the regulation is not impermissibly retroactive. Director's Response at 12-14. We agree with the Director's argument.

An agency may not promulgate retroactive rules unless authorized by Congress. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988); *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 859-60 (D.C. Cir. 2002). Retroactive rules are those that "impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994). The question as to whether a new provision attaches new legal consequences to actions taken before its enactment involves a "commonsense, functional judgment." *Nat'l Mining Ass'n*, 292 F.3d at 859-60.

Initially, Employer argues that the law applicable at the time of the filing of this claim should apply to the case. Employer's Brief at 13-14; Employer's Reply at 2-3. However, a court is required to apply the law at the time the decision is made, unless doing so is impermissibly retroactive.[13] *Frontier-Kemper Constructors v. Director, OWCP* [*Smith*], 876 F.3d 683, 688 (4th Cir. 2017) (quoting *Landgraf*, 511 U.S. at 264).

Employer also argues the date of the initial claim filing, rather than the date of its petition for modification, should apply to the retroactivity analysis; thus, its rights and actions as of 2003 when the claim was filed should apply, not as of 2018 when the modification petition was filed. Employer's Brief at 13-15. It further contends it would have made different litigation and strategic decisions had it known it would be required to pay benefits prior to pursuing modification. Employer's Reply to Director at 4. Employer's arguments are not persuasive.

Whether we address Employer's rights, liabilities, and duties as of 2003 or 2018, in neither circumstance is the regulation rendered impermissibly retroactive as applied. Employer has pointed to no rights it had when Claimant filed this claim that were subsequently taken away due to the revised regulation. *See Smith*, 876 F.3d at 688-89. While Employer may have *expected* to avoid paying benefits and still be permitted to pursue modification at the time the claim was filed, it did not have the right to do so. *See Cox v. Kijakazi*, 77 F.4th 983, 992 (6th Cir. 2023) (law that "merely upsets expectations based in prior law is not retroactive on that basis") (internal cites and quotations omitted).

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[13] Employer's reliance on *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 182 (4th Cir. 1999) is misplaced, as the court there addressed whether 20 C.F.R. Part 727 or Part 718 applied to two merged claims, a determination that must be based on the claims' filing dates. Employer's Brief at 14; Employer's Reply at 2-3.

Further, Employer has not explained how the revised regulation created new consequences or liabilities for any of its prior actions.[14] *Landgraf*, 511 U.S. at 280; *Smith*, 876 F.3d at 688-89. While Employer argues the revised regulation created a new legal responsibility, Employer's Reply to Director at 2, employers have had the obligation to assume payment of benefits upon the issuance of an effective award since at least 2001, when the DOL revised 20 C.F.R. §725.502 to clarify when benefits are due to be paid. *See* 81 Fed. Reg. at 24,467; 65 Fed. Reg. 79,920, 80,009 (Dec. 20, 2000) (explaining that the "changes were designed to make clear to responsible operators their obligations under the terms of an effective award of benefits even though the claim might still be in litigation"). Thus, Employer had the same responsibility to pay benefits under an effective award before Section 725.310(e)(2) was promulgated as it did after.

Moreover, even assuming the revised regulation created a new consequence for failing to pay benefits upon the issuance of an effective award, it was not based on prior actions. Employer did not (and could not) default on its obligations to pay Claimant's benefits until there was an effective order, in this case ALJ Bergstrom's 2017 Decision and Order – Awarding Benefits, which was issued after Section 725.310(e)(2) went into effect in 2016. Thus, no "new" consequences could attach to prior actions.

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[14] Employer argues that *National Mining Ass'n v. Dep't of Labor*, 292 F.3d 849 (D.C. Cir. 2002), invalidated changes to eligibility requirements of survivors and dependents as it "would be unlawfully retroactive to apply the [regulations] to any claims other than those filed on or after the regulations' effective date." Employer's Brief at 14. Contrary to Employer's implication, the court in *National Mining* did not hold that all regulations are impermissibly retroactive as applied to pending claims, but rather addressed several factors to determine whether various rules were impermissibly retroactive. 292 F.3d at 861-67. It held those provisions that added dependents who are eligible for benefits under the Act were impermissibly retroactive for pending claims because they "expand[ed] the scope of coverage." *Id.* at 867; *see also Cox v. Kijakazi*, 77 F.4th 983, 994 (6th Cir. 2023) (explaining that the court in *National Mining* found certain regulations impermissibly retroactive to pending claims as they increased liability for past acts and took away existing defenses). These facts are not present here, as Employer faces no increased liability for any past conduct.

In light of these factors, Section 725.310(e)(2) is not impermissibly retroactive as applied to pending claims.[15] Consequently, we affirm the ALJ's denial of Employer's modification request for failing to comply with 20 C.F.R. §725.310(e)(2).

Responsible Operator and Due Process Claims

Employer next argues that ALJ Bergstrom improperly found it is the responsible operator in the survivor's claim when the Director accepted liability for the payment of benefits in the miner's claim. Employer's Brief at 20-21. Relatedly, it argues its due process rights were violated because it was not initially named the responsible operator and later it was not able to properly defend the claim given the multiple times the case moved between the district director and the OALJ. *Id.* at 22-23.

The Board previously rejected these arguments, and those holdings are now the law of the case. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *Pruitt*, BRB No. 17-0253 BLA, slip op. at 6-9. Employer has provided no argument that the Board's decision was clearly erroneous or set forth any other valid exception to the law of the case doctrine; thus, we decline to disturb the Board's prior disposition.[16] *See Sammons v. Wolf Creek Collieries*, 19 BLR 1-24, 1-28 n.3 (1994); *Brinkley*, 14 BLR at 1-150-51.

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[15] Thus, we need not address Employer's argument that the ALJ erred in finding that granting Employer's modification petition would not render justice under the Act. Order at 10-11; Employer Brief at 7-10.

[16] While Employer contends there is legal error, other than generally arguing that survivors' claims are derivative of miners' claims, it has not explained how the Board erred in rejecting its arguments. Employer's Brief at 20-21.

Accordingly, we affirm the ALJ's Order Granting Motions for Summary Decision by Claimant and Director; Denying Employer's Motion for Summary Decision; and Denying Employer's Petition for Modification.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge