

U.S. Department of Labor

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



BRB No. 22-0480 BLA

ROBERT W. PETTYPIECE)
)
 Claimant-Respondent)
)
 v.)
)
 ENTERPRISE MINING COMPANY, LLC,)
 c/o ANR INCORPORATED)
)
 and)
)
 SUMMITPOINT INSURANCE COMPANY)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

DATE ISSUED: 8/24/2023

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and Order Denying Employer's Motion for Reconsideration of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for Claimant.

Joseph D. Halbert and Jarrod R. Portwood (Shelton, Branham, & Halbert PLLC), Lexington, Kentucky, 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: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order Awarding Benefits and Order Denying Employer's Motion for Reconsideration (2020-BLA-06072) rendered on a claim filed on June 27, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

Based on the parties' stipulations, the ALJ determined Enterprise Mining Company, LLC (Enterprise) is the responsible operator and Claimant suffers from complicated pneumoconiosis arising out of his coal mine employment. The ALJ found Summitpoint Insurance Company (Summitpoint) is the responsible carrier and the miner's claim was timely filed.¹ Thus he awarded benefits.

On appeal, Employer argues the ALJ abused his discretion in excluding its liability evidence and failing to adequately address its arguments that extraordinary circumstances existed to admit such evidence.² 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 Summitpoint is the liable carrier. The Director further asserts the ALJ acted within his discretion in excluding Employer's untimely liability evidence.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order Awarding Benefits and Order Denying Employer's Motion for Reconsideration if they are rational, supported by substantial evidence, and in accordance

¹ The ALJ noted that Employer was no longer contesting timeliness. Decision and Order at 3-4; Employer's Closing Brief at 2.

² As Employer is not contesting any element of entitlement, we affirm the ALJ's determination that Claimant is entitled to benefits. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7.

with applicable law.³ 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).

Proceedings Before the District Director

The district director issued a Notice of Claim on August 23, 2017, identifying Enterprise as the potentially liable operator and Summitpoint as the potentially liable carrier. Director’s Exhibits 17. This notice gave Employer thirty days to respond and ninety days to submit liability evidence. *Id.* Employer responded on September 1, 2017, denying liability but did not submit any liability evidence at that time. Director’s Exhibit 20.

On September 8, 2017, Claimant completed his responses to interrogatories from Employer.⁴ Director’s Exhibit 15. The district director received a copy of Claimant’s responses on September 25, 2017. *Id.* In his responses, Claimant checked “Yes” when asked if he had ever been x-rayed by the National Institute of Occupational Safety and Health (NIOSH). *Id.* at 5. He did not provide any information in response to questions regarding his medical condition, any prior diagnoses, or prior claims for benefits based on any alleged occupational disease. *Id.* at 5-9.

On February 1, 2018, the district director issued a Schedule for the Submission of Additional Evidence (SSAE), designating Enterprise as the responsible operator and Summitpoint as its insurer. Director’s Exhibit 24. The SSAE gave “any party that wishes to submit liability evidence or identify liability witnesses” until April 2, 2018, to do so and

³ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 13; Director’s Exhibit 3.

⁴ When it sent Claimant the interrogatories, Employer also requested that he sign a medical authorization so it could obtain his medical records and asked him to provide his medical history. Exhibit B to Employer’s November 24, 2020 Motion to Remand (Employer’s September 1, 2017 Letter to Claimant). On September 25, 2017, Employer confirmed that it had received Claimant’s completed interrogatories but that it had not received Claimant’s medical authorization release or his medical history, and it renewed its request. Exhibit B to Employer’s November 24, 2020 Motion to Remand (Employer’s September 25, 2017 Letter to Claimant). On June 15, 2018, Employer again requested that Claimant sign the medical release and provide his medical history. Exhibit B to Employer’s November 24, 2020 Motion to Remand (Employer’s June 15, 2018 Letter to Claimant).

provided that the date could be extended for good cause. *Id.* at 3. The district director further advised that, “[a]bsent a showing of extraordinary circumstances, no documentary evidence relevant to liability . . . may be admitted into the record once a case is referred to the Office of Administrative Law Judges [(OALJ)].” *Id.*, citing 20 C.F.R. §725.456(b)(1). On February 6, 2018, Employer contested Enterprise’s designation as the responsible operator and Claimant’s entitlement to benefits, but it did not submit any liability evidence or request an extension of the deadline to submit evidence. Director’s Exhibit 25.

At his March 6, 2018 deposition, Claimant testified Dr. Alam diagnosed him with complicated pneumoconiosis in 2017 and that he believed it was the first time he had been diagnosed with the disease. Director’s Exhibit 16 at 21, 24, 29-30. Claimant also testified to having a computed tomography (CT) scan of his lungs and a diagnosis of chronic obstructive pulmonary disease (COPD) in 2013. *Id.* at 27. He further stated that he had annual chest x-rays done by NIOSH and chest x-rays at pulmonary lung clinics for black lung litigation. *Id.* at 24, 28-29.

The district director issued a Proposed Decision and Order (PDO) on June 5, 2018, awarding benefits and designating Enterprise and Summitpoint as the responsible operator and carrier, respectively. Director’s Exhibit 27. On June 14, 2018, Employer requested a hearing, and on August 1, 2018, the case was transferred to the OALJ. Director’s Exhibits 33, 37. On June 29, 2018, Claimant provided Employer with a signed medical authorization and his medical history. Exhibit C to Employer’s November 24, 2020 Motion to Remand (Claimant’s June 29, 2018 Letter to Employer).

Proceedings before the ALJ

On September 4, 2018, when the case was pending before the OALJ, Summitpoint filed with the district director a Motion to be Dismissed as the Responsible Carrier, asserting Claimant’s initial diagnosis of complicated pneumoconiosis predated its coverage of Enterprise. Summitpoint’s September 4, 2018 Motion to be Dismissed as the Responsible Carrier (Motion to Dismiss). Summitpoint attached an exhibit indicating its insurance policy coverage period began December 13, 2012, and an exhibit indicating a June 20, 2012 NIOSH x-ray had been interpreted as positive for complicated pneumoconiosis. *Id.* at 2. The ALJ noted Employer alleged that it filed this motion with

the district director but that no motion was included in the record transferred from the district director.⁵ Decision and Order at 5 n.8.

On November 24, 2020, Employer filed a Motion to Remand with the ALJ, seeking to remand the case to the district director for development of liability evidence or, in the alternative, for the admission of the 2012 NIOSH x-ray evidence, which it alleged showed Claimant suffered from complicated pneumoconiosis prior to Summitpoint's coverage of Enterprise.⁶ Employer's November 24, 2020 Motion to Remand. Employer contended that extraordinary circumstances existed for the admission of the 2012 NIOSH x-ray evidence because it had requested medical authorizations from Claimant on September 1, 2017, September 25, 2017, and June 15, 2018 and that Claimant did not respond until June 29, 2018, which was after the district director issued the June 5, 2018 PDO. *Id.* at 2.

The Director opposed Employer's motion, asserting the district director had already designated a responsible carrier and, because the case had already been referred to the OALJ, the district director did not have the authority to designate a different responsible carrier. Director's December 2, 2020 Response to Employer's Motion to Remand at 1-2. The Director further asserted Employer failed to establish extraordinary circumstances to warrant admission of liability evidence that had not been submitted before the district director.⁷ *Id.* at 3-4.

On December 8, 2020, the ALJ denied Employer's motion, declining to remand the case to the district director for further development of liability evidence. December 8, 2020 Order Denying Motion to Remand at 3 (unpaginated). The ALJ also found that Employer did not meet its burden to establish extraordinary circumstances for admitting liability evidence that had not been submitted to the district director. *Id.* He explained Employer

⁵ Summitpoint's Motion to Dismiss was attached as Exhibit A to Employer's Motion to Remand, which was filed with the ALJ. Employer's November 24, 2020 Motion to Remand.

⁶ Employer attached as Exhibits A, B, and C: Summitpoint's Motion to Dismiss, which included its insurance policy coverage period and the 2012 NIOSH x-ray evidence; its three requests for Claimant to sign his medical authorization and provide his medical history; and Claimant's June 29, 2018 signed medical authorization and medical history. Employer's November 24, 2020 Motion to Remand.

⁷ Employer filed a Reply in Favor of Remand responding to the Director's opposition, but the ALJ did not consider Employer's reply because he did not give Employer permission to file it. December 8, 2020 Order Denying Motion to Remand at 2 (unpaginated).

was “on notice” of a potential diagnosis of complicated pneumoconiosis and that additional NIOSH x-ray evidence may have existed prior to the April 2, 2018 deadline to submit liability evidence. *Id.* He therefore excluded the interpretations of the June 20, 2012 x-ray for liability purposes. *Id.*

On December 17, 2020, Employer filed a motion for reconsideration, and on December 30, 2020, the ALJ denied Employer’s motion. Employer’s December 17, 2020 Motion for Reconsideration of Remand Request; December 30, 2020 Order Denying Motion for Reconsideration of Remand Request. At the hearing, Employer submitted the 2012 x-ray evidence as Employer’s Exhibit 1, and the ALJ did not admit it.⁸ Hearing Transcript at 9-11.

In his February 23, 2022 Decision and Order, the ALJ noted that Employer did not contest that Claimant was entitled to benefits or that Enterprise was the responsible operator. Decision and Order at 3, 7. The ALJ determined Summitpoint was correctly designated as the responsible carrier.⁹ *Id.* at 4-7. On March 25, 2022, Employer filed a Motion to Reconsider, and on August 12, 2022, the ALJ denied Employer’s motion. Employer’s March 25, 2022 Motion to Reconsider; August 12, 2022 Order Denying Employer’s Motion for Reconsideration.

Responsible Carrier

Employer argues that the ALJ abused his discretion by failing to consider the merits of its arguments regarding extraordinary circumstances and by improperly denying its repeated requests to submit liability evidence.¹⁰ Employer’s Brief at 4-11. In challenging the ALJ’s findings, Employer contends it did not have “actual or constructive knowledge”

⁸ The ALJ noted that Claimant also submitted the 2012 x-ray evidence, and the ALJ admitted it solely for the purpose of determining entitlement, not carrier liability. Decision and Order at 2 n.2; *see* Claimant’s Exhibits 1, 2.

⁹ The ALJ noted that Employer did not attempt to submit the documentation regarding the period of Summitpoint’s coverage of Enterprise as evidence. Decision and Order at 6 n.11. Thus the ALJ found Employer failed to timely submit the policy and did not establish extraordinary circumstances. *Id.* The policy information was, however, attached as an exhibit to Employer’s Motion to Dismiss, Motion to Remand, and Motion for Reconsideration.

¹⁰ The Board has held the insurance carrier on the risk as of the time a miner is first credibly diagnosed with complicated pneumoconiosis is responsible for the payment of benefits. *See Swanson v. R.G. Johnson Co.*, 15 BLR 1-49, 1-51 (1991).

of the 2012 diagnosis of complicated pneumoconiosis before the district director's PDO was issued, and it raises several arguments about the impossibility of locating the medical evidence based on Claimant's unresponsiveness during discovery. *Id.* at 5-8. The Director responds that the ALJ acted within his discretion in excluding Employer's liability evidence and that the ALJ properly determined Summitpoint is the responsible carrier. Director's Brief at 4-6. We agree with the Director's position.

It is Employer's responsibility to submit evidence relevant to its disputed liability by the deadline set forth in the SSAE. 20 C.F.R. §§725.410, 725.412(a), 725.456(b)(1). Liability evidence pertaining to the responsible operator or carrier must be timely submitted to the district director and may not be first admitted to the ALJ absent extraordinary circumstances. 20 C.F.R. §§725.414(d), 725.456(b)(1) ("Documentary evidence pertaining to the liability of a potentially liable operator and/or the identification of a responsible operator which was not submitted to the district director shall not be admitted into the hearing record in the absence of extraordinary circumstances.").

Further, an ALJ exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Thus, a party seeking to overturn an ALJ's disposition of a procedural or evidentiary issue must establish that the ALJ's action represented an abuse of discretion. *See V.B. [Blake] v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

The ALJ acknowledged Employer did not receive Claimant's medical authorization before the district director issued the PDO. December 8, 2020 Order Denying Motion to Remand at 3 (unpaginated); Decision and Order at 4-5. The ALJ nevertheless found Employer was "on notice" of a potential diagnosis of complicated pneumoconiosis as early as September 2017, when it received Claimant's Department of Labor sponsored examination results, and Employer should have been aware that additional NIOSH x-ray evidence may have existed prior to the deadline to submit liability evidence based on Claimant's March 6, 2018 deposition testimony. December 8, 2020 Order Denying Motion to Remand at 3 (unpaginated). The ALJ further noted that despite knowing Claimant had not responded to its discovery requests and being on notice of Claimant's diagnosis and the possibility of earlier evidence, Employer failed to request an extension of the April 2, 2018 deadline to submit liability evidence.¹¹ *Id.*; Decision and Order at 4-5. Thus based

¹¹ Additionally, as the Director points out, Employer did not ask the district director to compel Claimant to cooperate with discovery or to deny the claim based on Claimant's unresponsiveness. Director's Brief at 6; Director's December 2, 2020 Response to the Employer's Motion to Remand at 3, *citing* 20 C.F.R. §725.414(a)(3)(i).

on the facts and circumstances surrounding the case, and after consideration of Employer's arguments, the ALJ permissibly concluded that extraordinary circumstances did not exist to allow for the untimely submission of the 2012 x-ray readings for liability purposes or the documentation regarding Summitpoint's coverage period.¹² See 20 C.F.R. §725.456(b)(1); *Weis v. Marfork Coal Co.*, 23 BLR 1-182, 1-191-92 (2006) (en banc), *aff'd Marfork Coal Co. v. Weis*, 251 Fed. App'x 229, 236 (4th Cir. 2007) (no extraordinary circumstances for the untimely admission of liability evidence when the employer was on notice that the claimant may have developed complicated pneumoconiosis before the date he was hired, but the employer failed to investigate until after the claim was referred to the OALJ); Decision and Order at 4-6; December 8, 2020 Order Denying Motion to Remand at 3 (unpaginated).

Because the ALJ acted within his discretion, we conclude the ALJ properly excluded Employer's liability evidence. 20 C.F.R. §725.456(b)(1); see *Blake*, 24 BLR at 1-113; *Clark*, 12 BLR at 1-153; December 8, 2020 Order Denying Motion to Remand at 3 (unpaginated); Decision and Order at 4-5. Consequently, we also affirm the ALJ's designation of Summitpoint as the responsible carrier.¹³ Decision and Order at 7.

¹² We are not persuaded by Employer's citation to *Sturgill v. Earnest Cook & Sons Mining*, OALJ No. 2004-BLA-06471 (May 30, 2006). Employer's Brief at 9-10; Employer's Motion to Reconsider at 6-7. ALJ decisions are of no precedential value and, as previously stated, ALJs exercise broad discretion in resolving procedural and evidentiary matters in cases before them. See *Dempsey*, 23 BLR at 1-63; *Clark*, 12 BLR at 1-153.

¹³ As Employer does not raise any specific challenge to the ALJ's August 12, 2022 Order Denying Employer's Motion for Reconsideration, we affirm the ALJ's denial of the motion. See *Skrack*, 6 BLR at 1-711; August 12, 2022 Order Denying Employer's Motion for Reconsideration.

Accordingly, the ALJ's Decision and Order Awarding Benefits and Order Denying Employer's Motion for Reconsideration are affirmed.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge