U.S. Department of Labor

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

BRB No. 24-0305 BLA

TIMOTHY L. PAYNE Claimant-Respondent v. SAN JUAN COAL COMPANY c/o BHP HOLDINGS USA, INCORPORATED and BHP HOLDINGS INTERNATIONAL LLC and TRANSPORTATION INSURANCE COMPANY c/o CNA INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 08/06/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and Order Denying Employer's Motion to Dismiss of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

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

H. Brett Stonecipher and Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

William M. Bush (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE, Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer and its Carrier appeal Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Awarding Benefits and Order Denying Employer's Motion to Dismiss (2020-BLA-05987) rendered on a claim filed on April 26, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

In the ALJ's Order Denying Employer's Motion to Dismiss, he took official notice that Employer, San Juan Coal Company c/o BHP Holdings USA Inc. and BHP Holdings International LLC, filed for bankruptcy, and he admitted documents concerning the bankruptcy proceedings. However, he excluded other liability documents Employer submitted as untimely filed. He then concluded that Employer's bankruptcy did not discharge the obligation of its insurer, Transportation Insurance Company c/o CNA Insurance Company (CNA). In his Decision and Order Awarding Benefits, the ALJ credited Claimant with more than fifteen years of qualifying coal mine employment and found he has a totally disabling pulmonary or respiratory impairment based on the parties' stipulation. 20 C.F.R §718.204(b)(2). Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C.

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has 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) (2018); *see* 20 C.F.R. §718.305.

§921(c)(4) (2018); *see* 20 C.F.R. §718.305. The ALJ further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in excluding relevant liability evidence it submitted in denying its motion to dismiss and therefore also erred in not transferring liability to the Black Lung Disability Trust Fund (Trust Fund).[2] Claimant and the Acting Director, Office of Workers' Compensation Programs (the Director), respond, urging the Benefits Review Board to affirm the ALJ's determination that CNA is liable for 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.[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).

Responsible Insurance Carrier

Employer alleges liability for the claim should transfer to the Trust Fund because it entered into an agreement with the Department of Labor (DOL) discharging it from liability from claims under the Act. Employer's Brief at 6-11. It states that because the agreement, not the bankruptcy proceedings, discharged its liability, the ALJ erred in applying 30 U.S.C. §933(a), (b)(2). *Id.* at 7-11. Further, it contends the ALJ erred by excluding one of its submitted documents because it "is integral to understanding the full scope of what the [agreement] intended." *Id.* at 2-6. Claimant urges the Board to affirm the ALJ's denial of Employer's motion to dismiss. Claimant's Brief at 4-5. The Director asserts that because CNA was not a party to Employer's bankruptcy or the agreement releasing Employer from black lung claims that Employer insured, the Board should affirm the ALJ's finding that Employer is liable for Claimant's benefits. Director's Brief at 3-5.

[2] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption and that Employer failed to rebut it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4. We therefore affirm the award of benefits. *See Skrack*, 6 BLR at 1-711; Decision and Order at 11.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Tenth Circuit because Claimant performed his coal mine employment in New Mexico. *See Shupe v. Director*, *OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 15; Director's Exhibit 5.

District Director Proceedings

The district director issued a Notice of Claim to Employer and CNA on August 15, 2018, noting that CNA's policy number covered Employer for purposes of this claim. Director's Exhibit 28. Employer responded to the Notice of Claim, denying its liability. Director's Exhibit 34. On September 20, 2019, the district director issued a schedule for the submission of additional evidence (SSAE), naming Employer as the responsible operator and CNA as the responsible carrier, and setting November 19, 2019, as the due date for the submission of evidence relevant to Employer's defense against either its liability or Claimant's entitlement to benefits. Director's Exhibit 36. On April 23, 2020, the district director issued a proposed decision and order (PDO) again designating Employer as the responsible operator and CNA as the responsible carrier, noting that Employer had not timely submitted any liability evidence. Director's Exhibit 48 at 11. The PDO declared that on Claimant's last date of employment with Employer, it was covered by a commercial insurance policy issued by CNA[4] and that CNA is financially capable of assuming liability in this claim. *Id.*

ALJ Proceedings

Employer requested a hearing before the Office of Administrative Law Judges (OALJ), and the case was transferred to the OALJ on July 21, 2020. Director's Exhibit 55. On October 18, 2022, Employer filed a motion to dismiss, arguing liability should be transferred to the Trust Fund because the Bankruptcy Court for the Southern District of Texas entered an Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates (the "Confirmation Order") approving the discharge of liability for black lung claims against Employer on March 2, 2019. Employer's Motion to Dismiss at 1-3. Employer attached several documents to its motion as evidence of the bankruptcy. *See* Employer's Motion to Dismiss, Exhibits A though F.

The Director responded, arguing Employer had commercial insurance through CNA covering its black lung claims on Claimant's last date of employment with it, and is financially capable of paying benefits, and thus CNA is responsible for payment regardless of Employer's bankruptcy. Director's Opposition to Employer's Motion to Dismiss at 1 (unpaginated). Further, the Director asserted the exhibits attached to Employer's motion should be excluded because it failed to timely submit the liability evidence to the district director, and no extraordinary circumstances exist for its late submission as all the exhibits are dated between October 9, 2018 to March 27, 2019, before the SSAE was issued on

[4] Claimant stopped working for Employer in March 2003. Director's Exhibit 2.

September 20, 2019. *Id.* at 1-2; *see* 20 C.F.R. §§725.410(b), 725.456(b)(1), 725.408(b)(2), 725.457(c), 725.414(c).

Employer replied, arguing a Stipulation and Agreed Order Between the WLB Debtors, the WMLP Debtors,[5] and the United States Regarding the Black Lung Claims (the "Stipulation") dated March 24, 2021, provided that the DOL would receive a near-eighteen-million-dollar payment to release Employer from its black lung claims obligations. Employer's Reply in Support of Motion to Dismiss at 2-3. It further argued 33 U.S.C. §935 and 20 C.F.R. §726.207 provide that an insurance carrier is liable only if the operator is found liable, and because the bankruptcy discharged Employer from liability, CNA is not liable for its black lung claims obligations. *Id.* at 6. Employer also asserted the bankruptcy documents it submitted do not constitute liability evidence subject to timeliness limitations in the regulations because they instead address the separate issue of res judicata. *Id.* at 3-5. Thus, Employer moved for the ALJ to take judicial notice of the bankruptcy documents. *Id.* at 7.

The Director provided a supplemental brief responding to Employer's reply and reiterating his arguments; he attached a proof of claim that the DOL filed in the bankruptcy court on April 5, 2019, and noted the Stipulation specifically excepted claims covered by commercial insurance. Director's Supplemental Brief at 2-3. Further, the Director objected to Employer's request for the ALJ to take judicial notice of evidence it submitted relevant to its liability in its motion but stated "the Director has no objection to the Court taking judicial notice of the fact of [Employer's] bankruptcy, as that is not a fact that is in reasonable dispute." Director's Opposition to Employer's Request for Judicial Notice at 1 (unpaginated).

The ALJ denied Employer's Motion to Dismiss. He excluded all the documents Employer submitted relevant to the bankruptcy proceedings except for (1) the voluntary bankruptcy petition filed on October 9, 2018 (Exhibit A) and an Order Directing Joint Administration of Chapter 11 Cases (Exhibit B), finding those documents established that Employer was bankrupt and were thus not objected to by the Director, and (2) the Stipulation, finding extraordinary circumstances existed to admit that document since it was filed eleven months after the case was forwarded to the OALJ and was necessary to assess the bankruptcy issues. Order Denying Employer's Motion to Dismiss (Order) at 3.

[5] "WLB Debtors" refers to Westmoreland Coal Company and its subsidiaries and debtor affiliates, including Employer, San Juan Coal Company. "WMLP Debtors" refers to Westmoreland Resource Partners, LP and its subsidiaries. Employer's Motion to Dismiss, Exhibit C, Annex 1 Term Sheet.

He excluded the rest of the documents as untimely filed pursuant to 20 C.F.R. §725.456(b)(1). *Id.*

In considering the issue of liability, the ALJ found Employer's bankruptcy did not discharge liability in this claim because 30 U.S.C. §933(b)(2) provides that any commercial insurance policy for black lung claims must contain a provision that the carrier remains liable in case of the operator's bankruptcy. Order at 4. He found the record reflects that on Claimant's last day of employment with Employer, CNA insured Employer's liability and was financially capable of paying benefits, and thus liable despite Employer's bankruptcy. *Id.*

Issues on Appeal

The responsible operator is the potentially liable operator that most recently employed Claimant.[6] 20 C.F.R. §725.495(a)(1). An operator will be deemed capable of assuming its liability for a claim if it obtained a policy or contract of insurance, unless the insurance company has been declared insolvent and its obligations for the claim are not otherwise guaranteed. 20 C.F.R. §725.494(e)(1). An insurance carrier is liable if coverage was effective "the last day of the last exposure [to coal mine dust] in the employment of the insured . . . ." 20 C.F.R. §726.203(a). 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 designated 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 that it is financially incapable of assuming liability for benefits or that another potentially liable operator that is financially capable of assuming liability more recently employed Claimant for at least one year. 20 C.F.R. §725.495(c)(2).

Employer does not challenge its designation as the responsible operator and CNA as the responsible carrier on the last day that it employed Claimant; thus, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983); 20 C.F.R.

[6] 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 Claimant'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 Claimant 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).

§§725.494(e), 725.495, 726.203(a); Decision and Order at 3; Hearing Transcript at 10-11. It also does not challenge, and we therefore affirm, the ALJ's finding that the Act does not relieve an insurer of liability in the case of the insured's bankruptcy. *See Skrack*, 6 BLR at 1-711; Employer's Brief at 7-11; Order at 4. Nor does Employer allege that CNA's policy does not cover this claim. Further, nothing in the Stipulation releases CNA from liability as the responsible carrier in this claim. In the Stipulation, the DOL released the WLB Debtors, including Employer, from liability for claims arising under the Act in exchange for approximately eighteen million dollars from the debtors' assets. *See* Stipulation at 2-3. Employer does not provide any evidence showing the document considered CNA as one of the debtors that was a party to the agreement or otherwise released the insurer from liability.

In addition, the Stipulation exempts claims against companies other than the listed WLB debtors. *See* Stipulation at 3-4. In fact, the Stipulation specifically excludes claims against insurers in its scope,[7] and CNA is Employer's insurer. *Id.* Thus, we reject Employer's argument that the Stipulation releases CNA from liability[8] in this claim.[9]

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[7] The Stipulation provides, in part:

> The United States reserves, and this Stipulation is without prejudice to, all claims, demands, and causes of action . . . against any Persons or Entities (including, without limitation, any insurers or sureties) other than the WLB Parties . . . [provided that] the foregoing does not alter the orders confirming the chapter 11 plans of the WLB Debtors . . . . including but not limited to the releases set forth therein, the exceptions to those releases, and/or the opt-outs from those releases.

Stipulation at 4; Employer's Brief at 9.

[8] Contrary to Employer's contention, we find any error by the ALJ in relying on 30 U.S.C. §933(a), (b)(2), is harmless, as we have held that even when applying the Stipulation, and not pursuant to the bankruptcy proceedings, CNA is not released from liability. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 7-11

[9] Even if, as Employer argues, the Confirmation Order is integral to understanding the full scope of what the Stipulation intends, Employer does not demonstrate why the ALJ erred in finding extraordinary circumstances did not excuse its failure to timely submit the document as, unlike the Stipulation, it was available to submit as liability evidence before the district director. *See* Order at 3; *see also* 20 C.F.R. §725.456(b)(1); Employer's Brief at 2-6. Further, even if it were to be admitted, Employer fails to show how the document

Because CNA is not insolvent and is the carrier that insured Employer on Claimant's last day of employment with it, we affirm the ALJ's finding that CNA is the responsible carrier liable for the payment of benefits in this case. *See* 20 C.F.R. §725.494(e); Order at 4.

by itself, or in conjunction with the Stipulation, releases CNA from liability in this claim. Thus, we reject Employer's argument that the ALJ erred in excluding the Confirmation Order. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); Employer's Brief at 2-6.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits and Order Denying Employer's Motion to Dismiss.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge