U.S. Department of Labor

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

BRB No. 24-0371 BLA

CHRIS COTTRELL Claimant-Respondent v. THE MONONGALIA COUNTY COAL COMPANY and MURRAY ENERGY CORPORATE TRUST, Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 08/20/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, 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 and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2023-BLA-05896) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on September 4, 2020.[1]

The ALJ found that Employer, as self-insured by the Murray Energy Corporate Trust (Murray), is the properly designated responsible operator. He accepted the parties' stipulation to twenty-two years of coal mine employment, found all this employment was underground, and determined that Claimant has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Consequently, the ALJ found Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309,[2] and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

[1] This is Claimant's second claim for benefits. The district director denied his first claim, filed on July 2, 2008, because Claimant failed to establish the existence of pneumoconiosis or a totally disabling respiratory or pulmonary impairment. Director's Exhibits 1; 81 at 7; Decision and Order at 2.

[2] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co*., 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant's prior claim was denied for failing to establish pneumoconiosis or total disability, he had to submit new evidence establishing either element of entitlement to obtain review of his subsequent claim on the merits. *White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c).

[3] Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially

On appeal, Employer argues the ALJ erred in finding that it failed to rebut the Section 411(c)(4) presumption and that it, as self-insured by Murray, is the responsible operator.[4] Claimant did not file a response. The Acting Director, Office of Workers' Compensation Programs (the Director), filed a limited response, urging the Benefits Review Board to either affirm the ALJ's responsible operator determination despite his errors, or remand the case to the ALJ for further consideration.

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.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc*., 380 U.S. 359 (1965).

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[6] or that "no

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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.

[4] We affirm, as unchallenged on appeal, the ALJ's determinations that Claimant established twenty-two years of underground coal mine employment and total disability and therefore established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. Decision and Order at 23; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[5] The ALJ found the law of the United States Court of Appeals for the Third Circuit applies to this case, as he found Claimant last worked in Pennsylvania. Decision and Order at 7. However, as discussed below, there is conflicting evidence that Claimant may have last worked in West Virginia. In those circumstances, the law of the United States Court of Appeals for the Fourth Circuit would apply. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc). Applying either the law of the Third or Fourth Circuit will not change the outcome of this case. *See id.* (when laws of circuits are compatible, it is unnecessary to determine which law applies).

[6] "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 characterized by permanent deposition of substantial amounts of particulate matter in the

part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to rebut the presumption by either method. Decision and Order at 17, 25-26.

Clinical and Legal Pneumoconiosis

Employer relies on Dr. Fino's opinion to rebut the presumption that Claimant has clinical and legal pneumoconiosis. Decision and Order at 15-17; Employer's Exhibits 3, 4. Dr. Fino opined that Claimant has neither clinical nor legal pneumoconiosis and instead "presents a rather classic picture" of pulmonary disability due to progressive systemic sclerosis, given his combination of interstitial fibrosis, gastroesophageal reflux disease, arthritis, and Raynaud's disease. Employer's Exhibits 3 at 9-10; 4 at 1-2. The ALJ found Dr. Fino's opinion, that Claimant's interstitial lung disease demonstrated radiographically is not related to clinical pneumoconiosis, is contrary to the totality of the radiographic evidence and thus is not well-reasoned.[7] Decision and Order at 15. He also found Dr. Fino failed to provide any reason or explanation as to why Claimant's coal mine dust exposure could not have also contributed to his impairment, in addition to his "connective tissue" disease. *Id.* at 17.

Employer asserts the ALJ erred by according no weight to Dr. Fino's opinion, generally arguing his opinion is well-reasoned and documented and should have been given more weight because Dr. Fino is "uniquely qualified."[8] Employer's Brief at 15-16.

The ALJ addressed the physicians' credentials when weighing the medical opinion evidence. Decision and Order at 14-15, 24-25. However, a medical opinion must be well-reasoned to be credited, and the ALJ found Dr. Fino's opinion was not. *See Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-20 (2003) (ALJ adequately considered the physician's qualifications when he considered the physician's credentials in pulmonary

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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).

[7] We affirm, as unchallenged, the ALJ's finding that the x-ray evidence does not support rebuttal of the presumption of clinical pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 13. As the ALJ notes, there is no pathology evidence. Decision and Order at 13.

[8] Employer argues Dr. Fino should be found to be the best-qualified expert on the issue given the research he conducted during his pulmonary residency regarding pulmonary involvement with progressive systemic sclerosis. Employer's Brief at 16.

medicine but determined the physician's opinion was undermined by defective reasoning); Decision and Order at 15-17. As Employer raises no specific allegations of error regarding the ALJ's findings that Dr. Fino's opinions are not well-reasoned regarding either form of pneumoconiosis, we affirm the ALJ's determination that Employer failed to rebut the presumption of clinical and legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 15-17. Employer's argument amounts to a request to reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989).

Total Disability Causation

The ALJ also found Employer did not rebut the presumption by establishing "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 25-26.

Employer relies on Dr. Fino's opinion that Claimant does not have a totally disabling pulmonary impairment caused by pneumoconiosis. Decision and Order at 25; Employer's Exhibits 3, 4. The ALJ accorded no weight to Dr. Fino's opinion as not well-reasoned and contrary to his findings regarding pneumoconiosis. Decision and Order at 25. Thus, he found Employer failed to disprove disability causation. *Id*.

Employer's raises no arguments absent those already rejected above. Employer's Brief at 15-16. Further, the ALJ permissibly discredited Dr. Fino's disability causation opinion as not well-reasoned because he did not diagnose legal or clinical pneumoconiosis, contrary to his findings. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (where a physician erroneously fails to diagnose pneumoconiosis, an ALJ "may not credit" their opinion on causation absent "specific and persuasive reasons" that are independent of the mistaken belief the miner did not have the disease) (citation modified); *see also Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); Decision and Order at 25; Employer's Exhibits 3, 4.

We therefore affirm the ALJ's finding that Employer did not rebut the presumption that no part of Claimant's pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 25-26. Consequently, we affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption and thus that Claimant is entitled to benefits.

Responsible Insurance Carrier or Self-Insurer

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner." 20 C.F.R. §725.495(a)(1). A coal mine operator is a "potentially liable operator" if it meets the criteria set forth at 20 C.F.R. §725.494(a)-(e).[9] *Id.* Once the district director identifies a potentially liable operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another operator financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

Employer does not dispute that it meets the criteria of a potentially liable operator. Rather, it alleges that because Claimant worked for Employer in Pennsylvania, Rockwood Casualty Insurance Company (Rockwood) should have been identified as the responsible carrier pursuant to its insurance policy with Employer, not Murray, which self-insures Employer's liability for its West Virginia operations only. Employer's Brief at 3, 13-15. The Director appears to acknowledge that the liable entity is dependent on the location of Claimant's work for Employer. *See* Director's Response at 3. However, he contends the "most credible" evidence demonstrates Claimant's work was in West Virginia; thus, Murray was correctly named as the liable self-insurer. *Id.* at 4-6.

Procedural History

On October 21, 2020, the district director issued the first Notice of Claim, identifying Employer as a potentially liable operator, as self-insured by Murray. Director's Exhibit 42. Employer timely contested its designation. Director's Exhibit 44. Thereafter, the district director issued a Schedule for Submission of Additional Evidence (SSAE), identifying Employer, self-insured through Murray, as the responsible operator and setting April 29, 2021, as the deadline to submit documentary evidence relevant to liability and identify any liability witnesses. Director's Exhibit 56 at 2-3. The district director advised that "[a]bsent a showing of extraordinary circumstances, no documentary evidence relevant

[9] 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).

to liability, or testimony of a witness not identified at this stage of the proceedings, may be admitted into the record once a case is referred to the [OALJ]."[10] *Id.* at 3 (citing 20 C.F.R. §725.456(b)(1)).

On February 10, 2021, Employer responded to the SSAE, denying all aspects of its potential liability, given the claim is not covered by Murray's self-insurance policy. Director's Exhibit 58. Subsequently, Rockwood's counsel entered an appearance and acknowledged that Rockwood is the insurance carrier, as Claimant's work for Employer occurred in Pennsylvania. Director's Exhibit 59.

On March 31, 2021, the district director issued a second Notice of Claim identifying Rockwood as the responsible carrier and a letter relieving Murray of "further liability." Director's Exhibits 38, 45. Rockwood timely responded, generally denying liability and attaching an employment history from Employer indicating that Claimant worked for it in Pennsylvania. Director's Exhibit 47. On April 28, 2021, Rockwood submitted Claimant's deposition transcript, where he testified his employment with Employer was in Pennsylvania.[11] Director's Exhibit 77 at 7-10. The district director then issued another SSAE identifying Employer, as insured by Rockwood, as the responsible operator, and setting October 11, 2021, as the deadline to submit documentary liability evidence and identify liability witnesses. Director's Exhibit 60 at 2-3. Rockwood timely responded, generally denying liability and Claimant's entitlement to benefits. Director's Exhibit 62.

Nearly a year later, on February 24, 2022, the district director issued a third Notice of Claim, again identifying Murray as the responsible self-insurer. Director's Exhibit 48. Employer timely contested the designation. Director's Exhibit 55. On August 29, 2022, the district director issued two new SSAEs: one identified Rockwood as the responsible insurance carrier and the other identified Murray as the self-insurer. Director's Exhibits 63, 64. Both SSAEs stated in the liability analysis that Employer "does not have mining operations in Pennsylvania, only in West Virginia."[12] Director's Exhibits 63 at 11; 64 at 11; *see* Director's Exhibit 81 at 13.

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[10] All subsequent SSAEs included the same admonition. *See* Director's Exhibits 60, 63, 64.

[11] He explained that he worked at the Blacksville Mine and accessed the mine at the Blacksville 2 portal, located in "Kuhntown, McMurray, [Pennsylvania]." Director's Exhibit 77 at 7-8.

[12] Both SSAEs further note that "[t]he entrance to the [Employer's] [West Virginia] mining operations is in [Pennsylvania], but the coal production takes place in West Virginia. The Rockwood policy only covers [Pennsylvania] employment which would not

Subsequently, Rockwood timely responded to the SSAE and requested that the SSAEs be rescinded and reissued with only Rockwood named as the responsible carrier. Director's Exhibits 73, 74. On September 15, 2022, Employer submitted liability evidence, arguing that Murray should be dismissed from the claim.[13] Director's Exhibit 75. On December 23, 2022, the district director issued a Proposed Decision and Order identifying Employer, as self-insured by Murray, as the responsible operator and dismissed Rockwood as a party to the claim. Director's Exhibit 18 at 2. The district director again explained its determination was based on its finding that Claimant's coal mine employment occurred in West Virginia, not in Pennsylvania. *Id.* at 13.

Employer requested a hearing before the Office of Administrative Law Judges, where it continued to contest Murray's liability. Director's Exhibit 90; Employer's Notice of Intent to Dispute Identification of Responsible Carrier. At the hearing, Claimant testified that he last worked for Employer in Pennsylvania and the entrance to the mine was called the Kuhntown Portal, located in Pennsylvania. Hearing Transcript at 12, 21.

The ALJ acknowledged Employer's argument that Rockwood provided coverage for claims arising out of Pennsylvania during Claimant's employment with Employer. Decision and Order at 5. He also summarized the Director's argument that the mine where Claimant worked for Employer was in West Virginia and thus that Murray was correctly named as Employer's self-insurer. *Id.* at 5-6. Without considering the conflicting evidence,[14] the ALJ cited Claimant's hearing testimony and CM-911a to find that he

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apply to [Claimant] as he 'worked' in [West Virginia] and therefore would be covered [by] the self-insurance of [Murray]." Director's Exhibits 63 at 11; 64 at 11.

[13] Employer submitted a one-page document from Rockwood indicating Rockwood provided workers' compensation insurance to Employer in Pennsylvania and West Virginia from December 5, 2014 to December 5, 2015, under policy number WC455744. Director's Exhibit 75 at 3. Employer also included Rockwood's September 7, 2022 letter that indicates it "did not issue any dispute regarding their designation as the liable insurance carrier under Workers' Compensation Policy WC455744." *Id*. at 4.

[14] The conflicting evidence includes, but is not necessarily limited to, Claimant's CM-911a; Employer's letter regarding Claimant's employment; an employment history provided in Claimant's Department-sponsored medical evaluation; Claimant's state workers' compensation claim decision denying benefits; Global Energy Monitor's website regarding Blacksville 2 mine; Mine Safety and Health Administration Mine Information; Employer's parent company website; and Claimant's deposition testimony. Director's Exhibits 5; 15; 18; 23 at 8; 39; 40; 41 at 11, 131, 137; 77.

worked in Pennsylvania for Employer. *Id.* at 6 n.3, 7 (citing Director's Exhibit 5; Hearing Transcript at 12).

Despite finding that Claimant's coal mine employment was in Pennsylvania, and without acknowledging the parties' agreement that liability depended on where Claimant worked for Employer, the ALJ found Employer's argument that Rockwood was the responsible carrier was unavailing. Decision and Order at 5-6. He found Employer did not carry its burden under 20 C.F.R. §725.495(c)(1) to demonstrate it is not financially capable of paying benefits as the declarations page for the insurance policy with Rockwood[15] "does not constitute affirmative evidence that [Employer], as [self-]insured by Murray, is not financially capable of paying for benefits." *Id.* at 6. The ALJ thus concluded that Murray was correctly named as Employer's self-insurer, as none of the liability evidence established Employer's self-insurance was not in effect during Claimant's last coal mine employment "regardless of whether some other policy existed between [Employer] and Rockwood." *Id.* at 6.

Employer argues the ALJ erroneously applied 20 C.F.R. §725.495(c)(1) to find Murray liable as he failed to determine if the district director met his responsibility to identify the correct carrier when he was repeatedly advised that liability was secured through a policy with Rockwood. Employer's Brief at 13-14. It further argues that the ALJ's finding that Murray is liable is irrational given the district director's basis for identifying Murray as liable was that Claimant worked in West Virginia when the ALJ found Claimant's coal mine employment occurred in Pennsylvania. *Id.* at 14-15.

The Director counters that the ALJ erred in determining that Claimant performed his coal mine employment with Employer in Pennsylvania because he ignored relevant evidence and relied on inadmissible evidence. Specifically, the Director argues that Claimant's hearing and deposition testimony were inadmissible for liability purposes because Employer did not identify Claimant as a liability witness before the district director. Director's Response at 1-2, 5-6. Despite those errors, the Director believes the "overwhelming weight" of the "most credible" evidence shows that Claimant's employment with Employer occurred in West Virginia. *Id.* at 4. Thus, he contends the ALJ's finding regarding the location of Claimant's work for Employer may be reversed and, given the ALJ's conclusion that Employer as self-insured by Murray is the responsible operator is ultimately correct, the responsible carrier finding can be affirmed. *Id.* at 4-5.

[15] The ALJ noted the policy "purports to provide coverage for claims arising out of both Pennsylvania and West Virginia from December 5, 2014 to December 5, 2015," which falls within the time and geographic area of Claimant's last day of work for Employer. Decision and Order at 6.

Alternatively, the Director argues remand is necessary for the ALJ to consider the relevant, admissible evidence regarding the location of Claimant's work with Employer and the parties' arguments regarding liability. *Id.* at 6. We agree remand is required.

The parties appear to agree that the entity liable for the payment of benefits is reliant on the location of Claimant's employment with Employer. Employer's Brief at 14-15; Director's Response at 4-6. The district director specifically provided that the location of Claimant's employment was the basis for naming Murray given the limited coverage of Employer's insurance policy with Rockwood. Director's Exhibits 63 at 11; 64 at 11; 81 at 13. As Employer repeatedly contested this finding before the district director, and provided evidence that Claimant worked in Pennsylvania and thus that Murray was not liable, we agree the ALJ erred in not analyzing this issue. *See, e.g., Arch Coal, Inc. v. Acosta*, 888 F.3d 493, 497 (D.C. Cir. 2018) (explaining an ALJ must make a de novo determination of an operator's liability); *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012) (it is the duty of the ALJ, and not the responsibility of the courts, to make findings of fact and to resolve conflicts in the evidence).

The ALJ summarily determined that Claimant's coal mine employment with Employer occurred in Pennsylvania based on his hearing testimony and CM-911a Employment History form. Decision and Order at 6 n.3, 7 (citing Director's Exhibit 5, Hearing Transcript at 12). Because the ALJ did not consider and weigh all of the relevant,[16] conflicting evidence as to where Claimant's coal mine employment with Employer occurred, a determination critical to the responsible carrier issue, we must vacate his responsible carrier determination. *See v. Wash. Metro. Area Trans. Auth*., 36 F.3d 375, 383-84 (4th Cir. 1994) (ALJ is the factfinder; thus, the Board should not rule on an issue before the ALJ has considered it); *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); *McCune v. Cent. Appalachian Coal Co*., 6 BLR 1-996, 1-998 (1984)

[16] The Director contends that Claimant's deposition and hearing testimony cannot be considered because no party designated him as a liability witness before the district director and Employer provided no "extraordinary circumstances" for failing to do so. Director's Response at 4 & n.4 (citing 20 C.F.R. §725.414(c)). However, we note that Rockwood's counsel submitted Claimant's deposition before the district director within the liability deadline set forth in the initial SSAE. Director's Exhibits 56, 60, 77. As indicated below, the ALJ should address on remand whether the submission of Claimant's deposition before the district director complies with the regulatory requirement to provide notice of a liability witness and thus allows for the consideration of Claimant's testimony on the issue of liability. *See* 20 C.F.R. §§725.414(c), (d), 725.456(b)(1).

(fact finder's failure to discuss relevant evidence requires remand). We therefore remand this case for further consideration of this issue.

Remand Instructions

On remand, the ALJ must reconsider whether Murray or Rockwood is the responsible carrier after considering all of the relevant, admissible evidence.[17] 20 C.F.R. §725.495. The ALJ must address Employer's challenges to the designation of Murray as the responsible carrier and the Director's response. 20 C.F.R. §§725.408(a)(2), 725.412(a)(1). Specifically, the ALJ should weigh all relevant and admissible liability evidence submitted before the district director to determine whether Claimant's coal mine employment occurred in Pennsylvania or West Virginia. The ALJ must consider all evidence bearing on this issue and resolve any conflicts. 20 C.F.R. §726.203(a); *see Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005); *see generally Muncy v. Elkay Mining Co*., 25 BLR 1-21, 1-27 (2011). Further, the ALJ must explain his findings in accordance with the Administrative Procedure Act.[18] *See Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989).

[17] Section 725.457(c) provides, "No person shall be permitted to testify as a witness at the hearing, or pursuant to deposition or interrogatory . . . unless that person meets the requirements of [20 C.F.R.] §725.414(c)." 20 C.F.R. §725.457(c). Section 725.414(c), in turn, provides, "[i]n accordance with the schedule issued by the district director, all parties must notify the district director of the name and current address of any potential witness whose testimony pertains to the liability of a potentially liable operator or the designated responsible operator." 20 C.F.R. §725.414(c). Thus, the ALJ should first consider whether Employer complied with the requirement to identify liability witnesses before the district director and therefore whether Claimant's deposition and/or hearing testimony was properly admitted as relevant to the responsible operator issue. If the ALJ finds Claimant was not properly designated as a liability witness before the district director, then he must consider whether extraordinary circumstances justify the admission of Claimant's testimony regarding liability matters. 20 C.F.R. §725.457(b)(1).

[18] The Administrative Procedure Act provides 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, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and remand the case to the ALJ for further consideration consistent with this decision.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge