

U.S. Department of Labor

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



BRB Nos. 25-0208 BLA
and 25-0209 BLA

BARBARA STUMP)
(o/b/o and Survivor of Eldeen Stump))
)
Claimant-Respondent)
)
v.)
)
MEISTER, INCORPORATED)
)
and)
)
OLD REPUBLIC INSURANCE COMPANY)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 08/26/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and Decision and Order Awarding Benefits on Reconsideration of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

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

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

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Awarding Benefits and Decision and Order Awarding Benefits on Reconsideration (2013-BLA-06049 and 2018-BLA-05549) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case involves a miner's subsequent claim¹ filed on August 16, 2012, that is before the Benefits Review Board for a second time² and a survivor's claim filed on November 13, 2017.³

The ALJ found Employer is the properly designated responsible operator and determined Claimant established the Miner had at least fifteen years of underground coal

¹ This is the Miner's fourth claim for benefits. *See* Miner's Claim (MC) Director's Exhibits 1, 2, 3. On March 16, 2004, the district director denied the Miner's most recent prior claim, filed on April 8, 2003, because although he established pneumoconiosis arising out of coal mine employment, he failed to establish total disability. MC Director's Exhibit 3 at 3.

² Based on Employer's prior appeal in the miner's claim, the Board vacated ALJ Steven D. Bell's Decision and Order Awarding Benefits and remanded the case for ALJ Bell to reconsider "all prior substantive and procedural actions taken with regard to this claim, and to ratify them if he believes such action is appropriate." *Stump v. Meister, Inc.*, BRB No. 18-0211 BLA (May 25, 2018) (Order) (unpub.). The Office of Administrative Law Judges (OALJ) reassigned the case to ALJ Kane (the ALJ) on September 21, 2020 for a new hearing and decision consistent with *Lucia v. SEC*, 585 U.S. 237 (2018). Decision and Order at 2-3.

³ Claimant is the widow of the Miner, who died on October 23, 2017. Survivor's Claim (SC) Director's Exhibits 2, 5. She is pursuing the miner's claim on his behalf, along with her own survivor's claim.

mine employment. He further found Claimant established a totally disabling pulmonary or respiratory impairment and thus invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,⁴ 30 U.S.C. §921(c)(4), and established a change in an applicable condition of entitlement.⁵ 20 C.F.R. §725.309(c). He further found Employer did not rebut the presumption and awarded benefits in the miner's claim, commencing August 2021. Based on the award of benefits in the miner's claim, the ALJ found Claimant automatically entitled to survivor's benefits under Section 422(l) of the Act.⁶ 30 U.S.C. §932(l) (2018).

Claimant moved for reconsideration, challenging the ALJ's finding regarding the commencement date of benefits in the miner's claim. Employer also moved for reconsideration, challenging its designation as the responsible operator. In his Decision and Order Awarding Benefits on Reconsideration, the ALJ found his prior decision contained a clerical error and corrected its commencement date finding to August 2012, the month and year the Miner filed his claim. The ALJ adopted his previous findings and again found Employer is the properly designated responsible operator and adhered to the rest of the findings in his prior decision; thus he continued to award benefits in both claims.

On appeal, Employer argues the ALJ erred in determining it is the responsible operator. Claimant and the Director, Office of Workers' Compensation Programs (the

⁴ Section 411(c)(4) provides a rebuttable presumption that a miner's total disability or death was due to pneumoconiosis if he had 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); *see* 20 C.F.R. §718.305.

⁵ When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must deny the subsequent claim unless she 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); *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 the Miner failed to establish total disability in his prior claim, Claimant had to submit new evidence establishing that element in order to obtain review of the merits of the Miner's claim. *See White*, 23 BLR at 1-3; Director's Exhibit 3.

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

Director), respond urging affirmance of the ALJ's responsible operator determination. Employer replies to both Claimant and the Director and reiterates its arguments.⁷

The Board's scope of review is defined by statute. We must affirm the ALJ's Decisions and Orders if they are rational, supported by substantial evidence, and in accordance with applicable law.⁸ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Responsible Operator

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 The district director is initially charged with identifying and notifying operators that may be liable for benefits and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates the responsible 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. *See* 20 C.F.R. §725.495(c).

⁷ We affirm, as unchallenged on appeal, the ALJ's award of benefits in the miner's and survivor's claims. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Reconsideration at 36.

⁸ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 21; MC Director's Exhibit 6 at 3.

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).

If the designated responsible operator is not the operator that most recently employed the miner, the district director is required to explain “the reasons for such designation.” 20 C.F.R. §725.495(d). If the reasons include the most recent employer’s inability to assume liability for the payment of benefits, the record must include a statement that the Office of Workers’ Compensation Programs has no record of insurance coverage for that employer or of its authorization to self-insure as of the miner’s last day of employment. *Id.* Such a statement in the record constitutes prima facie evidence that the subsequent employer is not financially capable of paying benefits, and the burden shifts to the designated responsible operator to prove another operator financially capable of assuming liability more recently employed the miner. *Ark. Coals, Inc. v. Lawson*, 739 F.3d 309, 313-14 (6th Cir. 2014); 20 C.F.R. §725.495(c), (d); *see also Rhino Energy, LLC v. Director, OWCP [Rule]*, 174 F.4th 358, 369-73 (4th Cir. 2026).

In this case, the Miner’s most recent coal mine employment for one year was with Patty Collins Trucking (Collins Trucking), where he worked from 1992 or 1994¹⁰ until September 17, 2000. MC Director’s Exhibits 10, 12 at 12-13, 25 at 7. However, the district director did not designate Collins Trucking as the responsible operator because it was uninsured on the last day it employed the Miner. MC Director’s Exhibit 25 at 10. Therefore, on October 10, 2012, the district director issued Notices of Claims pursuant to 20 C.F.R. 725.407 to Hustler Coal Company, Incorporated (Hustler Coal), Kentucky Carbon Corporation (Kentucky Carbon), and Employer, identifying them as potentially liable operators who may be held responsible for the payment of benefits, and included the statement required by 20 C.F.R. §725.495(d) in the initial Notice of Claim issued to Hustler Coal.¹¹ MC Director’s Exhibits 25, 26, 27, 28. The district director subsequently dismissed Hustler Coal and Kentucky Carbon and designated Employer, as insured by Old Republic Insurance Company (Old Republic), as the responsible operator because it was the next most recent operator capable of paying benefits that employed the Miner for a year, having

¹⁰ The miner testified that he worked with Collins Trucking from 1994 to 2000. MC Director’s Exhibit 24A at 5-6. However, an April 29, 2003 letter from Collins Trucking indicates it employed the Miner from June 1, 1992 until September 17, 2000. MC Director’s Exhibit 10 at 1.

¹¹ On August 30, 2012, the district director initially notified Hustler Coal, as insured by Old Republic Insurance Company (Old Republic), which also insured Employer, that it was a potentially liable operator. Director’s Exhibit 25 at 2. In addition to the statement required by 20 C.F.R. §725.495(d) concerning the Miner’s coal mine employment with Collins Trucking, the district director listed the Miner’s subsequent coal mine employment of less than a cumulative year, which included Employer. *Id.* at 7, 10.

employed the Miner from 1985 through 1987.¹² MC Director's Exhibit 47 at 14; *see* MC Director's Exhibits 45, 46.

The ALJ determined the district director properly designated Employer as the responsible operator. Decision and Order on Reconsideration at 10. Specifically, he found the evidence establishes Employer is the successor to Hustler Coal and the Miner worked for those coal companies for more than a year in the aggregate. *Id.* at 9-10. In addition, he noted the record contains a statement from the district director explaining why the Miner's most recent employer, Collins Trucking, could not be designated as the responsible operator, as 20 C.F.R. §725.495(d) requires. *Id.* at 7. He further found Employer failed to meet its burden to prove that it is financially incapable of assuming liability or that another operator more recently employed the Miner for one year and is financially capable of assuming liability. *Id.* at 10.

Employer does not dispute, and we therefore affirm, that it is a potentially liable operator financially capable of assuming liability and that the record contains the required Section 725.495(d) statement concerning Collins Trucking. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Reconsideration at 8; Employer's Brief at 9-11; MC Director's Exhibit 25 at 10. Rather, Employer argues that because the district director failed to include the Section 725.495(d) statement when she issued the Schedule for Submission of Additional Evidence (SSAE) as required by 20 C.F.R. 725.410(a)(3),¹³ she deprived it of the opportunity to timely develop liability evidence about Collins Trucking's ability to pay benefits. Employer's Brief at 9-11; Employer's Reply Brief to the Director at 1-4. It contends that liability should be transferred to the Black Lung Disability Trust Fund (Trust Fund) because the alleged error

¹² The district director found Employer is the successor to Hustler Coal and thus found the Miner's tenure with Hustler Coal and Employer aggregate to establish at least one year of coal mine employment. MC Director's Exhibit 47 at 14; *see* 20 C.F.R. §§725.101(a)(32), 725.493(b)(1), 725.494(c). Employer does not challenge the ALJ's finding that it was a successor operator to Hustler Coal, and we therefore affirm that finding. *See Skrack*, 6 BLR at 1-711; Decision and Order at 10; Decision and Order on Reconsideration at 10; *see also* 20 C.F.R. §725.492(a).

¹³ The regulation at 20 C.F.R. §725.410(a)(3) provides that if the designated responsible operator is not the operator that most recently employed the miner, the district director "shall include, with the [SSAE], a copy of the statements required by §725.495(d)."

prejudiced its right to a full and fair defense in violation of due process. Employer's Brief at 10-11; Employer's Reply Brief to the Director at 4.

The Director concedes the district director failed to include the Section 725.495(d) statement with the SSAE issued to Employer but initially argues Employer failed to timely raise this argument because it waited until it filed its motion for reconsideration before the ALJ and thus forfeited this argument. Director's Response Brief at 5; *see* Employer's Motion for Reconsideration before the ALJ at 5-6; Employer's Closing Brief before the ALJ at 26.

We agree with the Director's position. Employer has not provided any basis to excuse its failure to raise the issue until after the ALJ issued an adverse decision. *See* Employer's Motion for Reconsideration before the ALJ at 5-6; Employer's Brief at 9-11; Employer's Reply Brief to the Director at 1-4. Employer's failure to raise these arguments prior to filing its Motion for Reconsideration contravenes regulatory issue exhaustion requirements. 20 C.F.R. §§725.451 (after district director issues decision, a party may request ALJ hearing "on any contested issue of fact or law"), 725.463 (hearing before an ALJ "shall be confined" to issues raised before the district director or new issues "not reasonably ascertainable" before the district director), 802.301 (Board cannot engage in de novo proceeding; it may only "review the findings of fact and conclusions of law on which the decision or order appealed from was based"); *Joseph Forrester Trucking v. Dir., Off. of Workers' Comp. Programs [Davis]*, 987 F.3d 581, 587 (6th Cir. 2021) ("Black lung benefits adjudication regulations require that litigants raise issues before the ALJ as a prerequisite to review by the Benefits Review Board."); *see Fleming v. USDA*, 987 F.3d 1093, 1097 (D.C. Cir. 2021) (constitutional arguments concerning 5 U.S.C. §7521 removal provisions are subject to Department of Agriculture statutory issue exhaustion requirements); *see also* 20 C.F.R. §§725.408(b), 725.414(c), 725.456(b)(1) (designated responsible operator must submit documentary evidence relevant to liability before the district director and must notify district director of any potential witnesses whose testimony pertains to liability; failure to do so renders such evidence and testimony inadmissible before the ALJ unless "extraordinary circumstances" exist to excuse untimely submission). Because Employer forfeited its argument, we decline to consider it. *See Bailey v. E. Assoc. Coal Co.*, 25 BLR 1-323, 1-330 (2022) (en banc).

Employer next argues the Department of Labor (DOL) was required to notify Kentucky state guaranty funds of their potential liability for this claim if Collins Trucking was uninsured, citing to cases that found the Kentucky Insurance Guaranty Association (KIGA) "steps into the shoes of an insolvent insurance company." Employer's Brief at 13 (quoting *Appleton & Ratliff Coal Corp. v. Ratliff*, 664 F.App'x 470, 474 (6th Cir. 2016) and citing *Island Fork Constr. v. Bowling*, 872 F.3d 754 (6th Cir. 2017)). The Director

responds the DOL was not required to name KIGA¹⁴ as a party because Collins Trucking was not insured by an insolvent carrier on the Miner's last day of coal mine employment, rather its policy with Old Republic was canceled prior to the Miner's last day of employment. Director's Response Brief at 8. Employer replies, asserting it was merely using KIGA as an example of a state guaranty fund, and that specifically, the DOL should have named the Kentucky Uninsured Employers' Fund (KUEF) in this claim. Employer's Reply Brief to the Director at 5-7. We disagree with Employer's assertions.

The KUEF was created to provide for the payment of compensation "when there has been a default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by" the Kentucky Workers' Compensation Act. KRS §342.760(1), (4). Thus, the KUEF is specifically for workers' compensation claims arising under Kentucky state law, and because these miner's and survivor's claims arise under federal law, it cannot provide coverage for them. *See id.* As the KUEF cannot provide coverage for these claims, the Trust Fund cannot be liable on the basis that the KUEF should have been notified of its potential liability.¹⁵ *See* 20 C.F.R. §725.495(c)(2). We therefore affirm the ALJ's finding that Employer is the properly designated responsible operator liable for benefits in the miner's and survivor's claims.¹⁶ *See* 20 C.F.R. §725.495(c), (d); Decision and Order on Reconsideration at 10.

¹⁴ The Director notes that although Employer refers to "Kentucky state guarantee funds," it only identifies KIGA in its brief. Director's Brief at 7 n.4.

¹⁵ Consequently, we reject Employer's argument that remand is required because the ALJ did not specifically address Employer's contentions concerning notification of the Kentucky state guaranty funds of their potential liability for this claim. *See Shinseki*, 556 U.S. at 413; Employer's Brief at 16-17; Employer's Reply Brief to the Director at 6-7.

¹⁶ Employer briefly asserts it should be dismissed from the survivor's claim because there is no Section 725.495(d) statement regarding Collins Trucking in that claim. Employer's Brief at 10; Employer's Reply Brief to the Director at 3. However, it does not explain why the DOL has not already fulfilled its obligation by including the Section 725.495(d) statement in the record of the miner's claim, given the unique regulations that govern proceedings before the district director in survivors' claims when a claimant is derivatively entitled to survivor's benefits. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). Indeed, the regulations implementing Section 932(l) make clear that a district director who determines that the claimant is a survivor entitled to benefits under Section 932(l) may issue a proposed decision and order at any time during adjudication of the claim and may designate the

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits and Decision and Order Awarding Benefits on Reconsideration.

SO ORDERED.

JONATHAN ROLFE, Acting Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

responsible operator in the proposed decision and order without first notifying the responsible operator of its potential liability. 20 C.F.R. §725.418(a)(3).