

U.S. Department of Labor

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



BRB No. 23-0217 BLA

REX A. HATFIELD

Claimant-Respondent

v.

ROCKHOUSE CREEK DEVELOPMENT
CORPORATION, c/o BLACKHAWK
MINING, LLC

and

BRICKSTREET MUTUAL INSURANCE

Employer/Carrier-
Petitioners

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 01/30/2025

DECISION and ORDER

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

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

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Tennessee, for Employer and its Carrier.

Victoria Yee (Emily Su, Deputy Solicitor for the National Office; Jennifer Feldman Jones, Acting Associate Solicitor; Andrea J. Appel, Counsel for

Administrative Appeals), Washington, D.C., for the Acting 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) Lystra A. Harris's Decision and Order Awarding Benefits and Order Denying Employer's Motion for Reconsideration (2021-BLA-05392), rendered on a claim filed on September 28, 2016,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).²

The ALJ found Employer is the responsible operator. Furthermore, based on the parties' stipulations, she determined Claimant suffers from complicated pneumoconiosis arising out of his coal mine employment and therefore invoked the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. Consequently, the ALJ awarded benefits. She subsequently denied Employer's Motion for Reconsideration regarding the responsible operator issue in a March 22, 2023 Order.

On appeal, Employer argues the ALJ erred in finding it is the responsible operator.³ Claimant and the Acting Director, Office of Workers' Compensation Programs (the Director), respond, urging the Benefits Review Board to affirm the ALJ's responsible operator determination.

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

¹ Claimant filed a prior claim on June 2, 2015, but withdrew it. Director's Exhibit 1. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306(b).

² This case involves Claimant's fourth request for modification of a district director's denial of benefits. Director's Exhibits 43, 49, 60, 64. In a case involving a request for modification of a district director's decision, the ALJ proceeds anew and "the modification finding is subsumed in the [ALJ's] findings on the issues of entitlement." *Kott v. Director, OWCP*, 17 BLR 1-9, 1-13 (1992); *Motichak v. BethEnergy Mines, Inc.*, 17 BLR 1-14, 1-19 (1992).

³ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established entitlement to benefits. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-4; Employer's Brief at 4 n.5.

with applicable law.⁴ 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).

The responsible operator is the “potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494,⁵ that most recently employed the miner” for at least one year. 20 C.F.R. §725.495(a)(1). 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 identifies a potentially liable operator, that operator may be relieved of liability only if it shows it is financially incapable of assuming liability for benefits or another operator more recently employed the miner for a cumulative period of at least one year and is financially capable of assuming liability for benefits. 20 C.F.R. §725.495(c).

However, 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 more recent operator’s inability to pay for benefits, the district director must provide a statement that he has no record of insurance coverage or authorization to self-insure for that employer as of the miner’s last day of employment. 20 C.F.R. §725.495(d). Such a statement in the record constitutes prima facie evidence that the subsequent employer is not financially capable of paying benefits. *Id.* If the record lacks such a statement, however, the subsequent employer is presumed to be financially capable of paying benefits. *Id.*

It is undisputed that Claimant worked in coal mine employment for Employer for more than one calendar year from October 2002 through August 2014 and subsequently worked for Blackhawk Mining, LLC/James River (Blackhawk) from August 2014 to

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director’s Exhibits 3-8.

⁵ 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).

December 2014 or January 2015. Decision and Order at 4-6; Director's Exhibits 3-5; 24 at 3-5; 34 at 38-40; Hearing Transcript at 19. Moreover, Employer does not contend that it does not meet the criteria of a potentially liable operator. 20 C.F.R. §725.494(a)-(e); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7. Employer argues that Blackhawk is a successor operator⁶ and the ALJ erred in requiring it to prove Blackhawk is financially capable of paying benefits when the district director did not include a statement that it searched its files and has no record of insurance coverage or authorization to self-insure for Blackhawk pursuant to 20 C.F.R. §725.495(d). Employer's Brief at 8-10. The Director and Claimant respond that, because the district director found Blackhawk was not the responsible operator because it did not employ Claimant for at least one year, the district director was not required to include a statement regarding Blackhawk's insurance coverage and thus Employer is not entitled to a presumption that Blackhawk is financially capable. Therefore, they assert the ALJ properly placed the burden on Employer to establish that Blackhawk was financially capable of paying benefits. Director's Response at 4-9; Claimant's Response at 4-6. We agree with Employer's argument.

District Director Proceedings

The district director issued a Notice of Claim (NOC) on October 3, 2016, naming Employer as the operator that most recently employed Claimant for at least one year. Director's Exhibit 22. Employer had 30 days from receipt of the NOC to contest its designation as a potentially liable operator and 90 days to submit documentary evidence in support of its arguments. *Id.* at 1-2. However, the district director also noted that the response did not need to include evidence about any other potentially liable operator or its employment of the miner because the parties would be given time to submit such evidence after the issuance of the Schedule for Submission of Additional Evidence (SSAE). *Id.* at 2.

On October 27, 2016, Employer timely responded to the NOC, denying that it is a potentially liable operator. Director's Exhibit 23. Employer supplemented its response on

⁶ A "successor operator" is "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such prior operator, or substantially all of the assets thereof[.]" 20 C.F.R. §725.492(a). If a successor relationship is established between two coal mine employers, a miner's tenure with a prior and successor operator may be aggregated to establish one year of employment. *See* 20 C.F.R. §§725.101(a)(32), 725.493(b)(1), 725.494(c). If the successor operator independently employed the miner after the asset transaction that gave rise to successor operator liability, the successor operator is primarily liable for the payment of benefits. 20 C.F.R. §725.493(b)(1).

December 29, 2016, accepting that it meets the criteria of a potentially liable operator but alleging that Blackhawk was a successor operator. Director's Exhibit 24. Employer argued that the mine where Claimant worked for it was sold to Blackhawk on August 29, 2014, by James River, and Claimant continued to work there until he was laid off on January 10, 2015. *Id.* Employer submitted a questionnaire stating it employed Claimant from October 7, 2002 to August 29, 2014 at Mine #8 in Gilbert, West Virginia, and was insured by Brickstreet from July 1, 2014 to August 29, 2014. *Id.* It also submitted a questionnaire from Blackhawk stating it employed Claimant from August 29, 2014 to January 10, 2015, at Hampden Coal Mine 3A in Gilbert, West Virginia, and was insured by Brickstreet on August 29, 2014. *Id.*

The district director issued the SSAE on June 21, 2017, naming Employer as the responsible operator and giving it until August 20, 2017, to submit evidence in support of its position. Director's Exhibit 31 at 3. Even though Employer's supplemental response to the NOC was both within 90 days of receipt of the SSAE and was clearly evidence regarding the liability of another operator and therefore not technically due under the terms of the NOC, the district director stated that Employer's submission of evidence was untimely. *Id.* at 19.

On July 13, 2017, Employer filed a response to the SSAE noting that its response to the NOC was filed within the 90-day deadline and arguing that Blackhawk is a successor operator. Director's Exhibit 32. On November 17, 2016, Employer filed Claimant's answers to interrogatories in which Claimant stated that his work with Employer ended because the "mine just changed hands" and his work for it ended when it was "took over by another company." Director's Exhibit 33 at 10-14. It also submitted pay stubs from Employer ending on August 29, 2014. *Id.* at 47.

On July 13, 2017, Employer requested an extension of the deadline for the "submission of all affirmative evidence," and the district director extended the deadline to January 30, 2018. Director's Exhibits 35, 36. On September 8, 2017, Employer submitted Claimant's deposition testimony. Director's Exhibit 34. Relevant to the issues raised on appeal, Claimant testified that he worked for Employer until they "sold out to Blackhawk" and that he worked the same job, at the same mine, and with the same equipment and "more or less the same people," although Blackhawk may have "weeded them out a little bit." *Id.* at 38-39, 55. He agreed that Blackhawk took over from Employer and although the company downsized and reduced his hours, wages, and 401k matching, his job was the same; the only difference was where his pay came from. *Id.* at 39-41.

On February 12, 2018, the district director issued a Proposed Decision and Order (PD&O) Denying Benefits. Director's Exhibit 43. The district director again found Employer is the responsible operator, stating that, although Claimant was employed by a subsequent operator, he worked there for less than one year. *Id.* at 8. The district director

again incorrectly found the evidence Employer submitted on the responsible operator issue was untimely because it was not returned within the deadline to submit evidence. *Id.* The district director therefore did not address whether Blackhawk employed Claimant as the successor to Employer and if so, whether Blackhawk was financially capable of paying benefits.

On February 22, 2018, Employer responded to the PD&O disagreeing with the district director's finding that it is the responsible operator and arguing that Blackhawk was a successor operator and Employer's evidence on that issue was timely submitted. Director's Exhibit 44. On February 26, 2018, Employer requested revision of the PD&O to dismiss it as the responsible operator and name Blackhawk as such. Director's Exhibit 45. The district director did not take action on either filing.

Thereafter, Claimant filed four timely requests for modification, the first three of which the district director denied for failure to establish a change in a condition or a mistake of fact in the prior denials. Director's Exhibits 46, 49, 50, 54, 56, 60, 64. The district director granted Claimant's fourth modification request and awarded benefits.⁷ During the modification proceedings, Employer continued to allege it is not the properly designated responsible operator in its responses to the district director's denial of the second and third requests for modification and in response to the award of benefits issued pursuant to Claimant's fourth request for modification. Director's Exhibits 55, 61, 62, 72. The district director did not address those arguments.

Administrative Law Judge Proceedings

After the claim was transferred to the Office of Administrative Law Judges (OALJ) for a hearing, Employer moved to be dismissed as the responsible operator, arguing that Blackhawk is its successor and therefore Employer must be dismissed. Employer's Motion to Dismiss at 4-6. The Director responded, arguing that Employer cannot be dismissed as the responsible operator because, even if Blackhawk is a successor operator, Employer still meets the conditions to be named a responsible operator and must still establish that it is financially incapable of paying benefits. Director's Response at 2-3. Employer replied that it need not do so when the record establishes that Blackhawk is primarily responsible for paying benefits as a successor operator that independently employed Claimant. Employer's Reply at 2-3 (unpaginated). The ALJ denied Employer's Motion, concluding she was prohibited from dismissing the responsible operator without the consent of the Director. Sept. 16, 2021 Order.

⁷ This Proposed Decision and Order was not included in the Director's Exhibits due to an error by the district director. Decision and Order at 2.

Employer reiterated its arguments in its closing brief to the ALJ. Employer's Closing Arguments at 6-9. The Director also reiterated his position that Employer was properly named the responsible operator even if Blackhawk is a successor operator. Director's Closing Arguments at 2-4. Employer replied that a successor operator that employed the miner is primarily liable for the payment of benefits, and therefore it was improperly named the responsible operator in this claim. Employer's Response at 1. However, the ALJ found Employer is the properly designated responsible operator on other grounds, namely it did not satisfy its burden to show that Blackhawk is financially capable of paying benefits. Decision and Order at 5-7.

Employer moved for reconsideration, arguing that it need not establish that Blackhawk is financially capable of paying benefits because Blackhawk is presumed to be financially capable as a result of the district director's failure to include a statement that it searched its files and found no record of insurance or authorization to self-insure for Blackhawk pursuant to 20 C.F.R. §725.495(d). Employer's Motion for Reconsideration at 1-3. After the ALJ ordered the Director to file a response brief, he responded that Employer's argument is not a valid legal basis for reconsideration because it is not based on a "clear error" by the ALJ. ALJ Feb. 22, 2023 Order; Director's Response to Employer's Motion for Reconsideration at 2. Alternatively, he argued that Employer failed to submit credible evidence that Blackhawk is a successor operator and, even if it did, this would not relieve Employer of its liability. Director's Response to Employer's Motion for Reconsideration at 3. The Director further argued that the district director declined to name Blackhawk as the responsible operator, not because of its alleged inability to pay benefits, but rather because it did not employ Claimant for at least one year. Therefore, the Director argued the district director was not required to include a statement that it had searched its records and thus the burden remained on Employer to establish Blackhawk is financially capable of paying benefits. *Id.* at 3-4.

The ALJ denied reconsideration, holding that because the district director's sole reason for not naming Blackhawk as the responsible operator was that it did not employ Claimant for at least one year, the district director was not required to include a statement regarding its search of its records for Blackhawk's insurance coverage. ALJ's Mar. 22, 2023 Order at 3-4. Because the district director was not required to provide a statement regarding such coverage, the ALJ determined the burden remained on Employer to prove Blackhawk's financial capability.

**Employer Did Not Have the Burden to Prove that Blackhawk is
Financially Capable of Paying Benefits**

Employer timely submitted evidence and argued to the district director that it was not the responsible operator because Blackhawk is a successor operator to Employer that independently employed Claimant and is therefore primarily liable for benefits. Director's

Exhibits 24, 32, 34, 44, 45, 55, 61, 62, 72. The district director did not address these arguments, incorrectly finding the evidence and arguments untimely despite their submission prior to the applicable deadline. Director's Exhibits 31, 43. Instead, because Blackhawk did not employ Claimant for a full year, the district director found Employer is the responsible operator. Director's Exhibits 31, 43.

As discussed earlier, if the district director designates a responsible operator that 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 (OWCP) has no record of insurance coverage for that employer or of its authorization to self-insure. *Id.* "In the absence of such a statement, it shall be presumed that the most recent employer is financially capable of assuming its liability for a claim." *Id.* The record in this case includes no statement from OWCP regarding Blackhawk's insurance pursuant to 20 C.F.R. §725.495(d).

The Director is correct that the district director's obligation to include a statement regarding the most recent operator's lack of insurance is triggered only when the district director relies on financial incapability as a reason to not designate that operator. Director's Response at 8-9. However, inclusion or exclusion of this statement from the record has consequences. Inclusion of "such a statement" in the record constitutes "prima facie evidence that the most recent employer is not financially capable of assuming its liability for a claim." 20 C.F.R. §725.495(d). "In the absence of such a statement," however, "it shall be presumed that the most recent employer is financially capable of assuming its liability for a claim." *Id.*; 62 Fed. Reg. 3338, 3365 (Jan. 22, 1997) ("Where the designated responsible operator is not the miner's most recent employer, the Director is required to place into the record a statement that OWCP has searched its insurance and self-insurance records."); 65 Fed. Reg. 79920, 80009 (Dec. 20, 2000) (district director must include, "if appropriate, an explanation of the Department's search of its insurance files"). Moreover, in this case, the record reflects that the district director was timely put on notice that Blackhawk may qualify as a successor operator such that its financial capability was at issue, but the district director did not address the arguments and evidence. Director's Exhibits 31, 43.

We therefore vacate the ALJ's determination that Employer is the properly designated responsible operator and remand the case for further consideration. Decision and Order at 5-7; ALJ March 22, 2023 Order at 3-4. On remand, the ALJ is instructed to address all relevant evidence and consider whether Employer has established that a successor operator relationship exists between it and Blackhawk. 20 C.F.R. §725.492(a). If such a relationship exists, then the ALJ must presume that Blackhawk is financially capable of paying benefits as the record lacks a statement that the district director has no

record of Blackhawk having insurance or self-insurance to cover this claim. 20 C.F.R. §725.495(d). On remand, the ALJ must set forth her findings in detail, including the underlying rationale for her decision, as the Administrative Procedure Act requires.⁸ *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and Order Denying Employer's Motion for Reconsideration and remand the case to the ALJ for further consideration consistent with this decision.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

⁸ The Administrative Procedure Act provides that 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).