U.S. Department of Labor

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

BRB No. 24-0353 BLA

BRENDA FIELDS (o/b/o RAYMOND FIELDS)	)	
Claimant-Respondent	)	
v.	)	
ARCH OF KENTUCKY/APOGEE COAL COMPANY, LLC	)	**NOT-PUBLISHED**
and	)	DATE ISSUED: 06/16/2025
ARCH RESOURCES, INCORPORATED	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits 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.

Ann Marie Scarpino (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 (Employer) appeal Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Awarding Benefits (2021-BLA-05491) rendered on a claim filed on March 27, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Apogee Coal Company (Apogee) is the responsible operator and Arch Resources (Arch) is the responsible carrier liable for the payment of benefits because it self-insured Apogee on the last day of the Miner's coal mine employment with it. Considering entitlement, the ALJ found Claimant[1] established the Miner had 19.59 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 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,[2] 30 U.S.C. §921(c)(4) (2018). He further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Arch is the liable carrier.[3] Claimant responds, urging the Benefits Review Board to affirm the ALJ's responsible

[1] Claimant is the widow of the Miner, who died on October 28, 2019, while his claim was pending before the district director. Director's Exhibit 16. She is pursuing the miner's claim on her husband's behalf.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled 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) (2018); *see* 20 C.F.R. §718.305(b).

[3] On December 9, 2024, Employer filed an errata brief, replacing its initial brief filed on December 2, 2024. 20 C.F.R. §802.211; Employer's Errata Brief at 2 n.1. Employer's errata brief retains its arguments regarding the responsible operator issue but omits its assertions that the ALJ was not appointed in a manner consistent with the

operator and carrier findings. The Acting Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to vacate the ALJ's responsible operator and carrier findings based on the ALJ's failure to discuss liability evidence Employer submitted.[4] Employer filed a reply to Claimant's response brief, reiterating its arguments on appeal.[5]

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.[6] 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 Insurance Carrier

Employer does not challenge the ALJ's findings that Apogee is the correct responsible operator and it was self-insured by Arch on the last day Apogee employed the Miner; thus, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 22. Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Black Lung Disability Trust Fund (Trust Fund). Employer's Errata Brief at 7-27.

In 2005, after the Miner ceased his employment with Apogee, Arch sold Apogee to Magnum Coal (Magnum), and in 2008 Patriot purchased Magnum. Director's Exhibit 35; Employer's Errata Brief at 25. In 2011, the Department of Labor (DOL) authorized Patriot

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Appointments Clause of the Constitution, Art. II § 2, cl. 2, the removal provisions applicable to the ALJ render his appointment unconstitutional, and the ALJ erred in finding Claimant established total disability. Employer's Errata Brief at 2 n.1.

[4] To the extent the Board does not remand this case based on Employer's evidentiary arguments, the Director requests an opportunity to respond to Employer's substantive liability arguments in a supplemental brief. Director's Response Brief at 1 n.1.

[5] 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; Decision and Order at 20.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 33; Director's Exhibit 5.

to insure itself and its subsidiaries, retroactive to 1973. Director's Exhibit at 35. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Apogee, Patriot later went bankrupt and can no longer provide for those benefits. *Id.*; Employer's Errata Brief at 24-25.

In a Proposed Decision and Order issued on December 21, 2020, the district director found Apogee is the responsible operator and Arch is the responsible carrier liable for the payment of benefits. Director's Exhibit 45 at 2-3, 7, 10-11. Following Employer's request for a hearing, the district director transferred the case to the Office of Administrative Law Judges, which assigned it to the ALJ. Director's Exhibits 49 at 5; 52 at 1-2, 4. At a telephonic hearing held on February 2, 2023, Employer proffered liability evidence contained in Employer's Exhibits 1-19, 26. Hearing Tr. at 10, 12-17, 20, 21. The Director objected to the admission of these exhibits. *Id*. at 15. The ALJ did not rule on the Director's objection to these exhibits during the hearing but allowed the parties to submit post-hearing briefs addressing the admissibility issue.[7] *Id*. at 17, 21.

Employer filed a Post-Hearing Statement in support of the admission of all of its liability evidence and alleged the district director violated the Administrative Procedure Act (APA).[8] Employer's February 6, 2023 Post-Hearing Statement Regarding Liability Evidence at 1. It also filed a closing brief "under the assumption that the contested evidence has been admitted."[9] Employer's April 12, 2024 Closing Brief at 3. The Director did not file a post-hearing brief.

In his Decision and Order, the ALJ stated that "[a]t the hearing" he admitted "Employer's Exhibits 1-21, 23, 25-27." Decision and Order at 2 n.2 (citing Hearing Tr. at 5-21). Further, citing the Board's reasoning in *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-308-18 (2022), the ALJ rejected Employer's argument that Patriot should have been

[7] Employer also proffered medical evidence contained in Employer's Exhibits 20, 21, 23, 25, 27. Hearing Tr. at 10, 20. The ALJ admitted these exhibits into the record. *Id.* at 21.

[8] The Administrative Procedure Act (APA) 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).

[9] Employer noted that its "consent motion to extend the briefing deadline until the ALJ ruled on the outstanding evidentiary issues . . . remain[ed] pending." Employer's April 12, 2024 Closing Brief at 3.

held liable for the payment of benefits. *Id*. at 23. He concluded Apogee is the responsible operator and Arch is the responsible carrier liable for the payment of benefits. *Id*. 23.

Employer argues the ALJ violated the APA and its due process rights by failing to "rule upon the record's contents" of its liability evidence exhibits before issuing his Decision and Order. Employer's Errata Brief at 6-7. It contends the ALJ's failure to "acknowledge, much less address," the liability evidence "warrants remand" because it's unclear whether the ALJ admitted the "sixteen Employer's Exhibits" that are "similar to those sixteen exhibits excluded from the record" in *Howard*. *Id*. at 4-9.

Further, Employer raises several arguments to support its contention that Arch was improperly designated the responsible carrier and thus the Trust Fund, not Arch, is responsible for the payment of benefits following Patriot's bankruptcy: (1) the ALJ evaluated Arch's liability for the claim as a responsible operator or commercial insurance carrier rather than as a self-insurer;[10] (2) the Director did not prove Arch's self-insurance covered Apogee for this claim; (3) without proof of coverage,[11] the DOL improperly pierced Arch's corporate veil in holding it liable; (4) the sale of Apogee to Magnum released Arch from liability for the claims of miners who worked for Apogee, and the DOL endorsed this shift of liability; (5) the DOL's issuance of Black Lung Benefits Act (BLBA) Bulletin No. 16-01[12] reflects a change in policy where the DOL began to retroactively impose new liability on self-insured mine operators that bypasses traditional rulemaking in violation of the APA; and (6) the DOL's retroactive imposition of new liability on Arch deprived it of due process.[13] Employer's Errata Brief at 6-32.

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[10] Employer also argues the Black Lung Benefits Act (BLBA) imposes liability only on responsible operators and potentially liable operators and does not impose liability on insurance carriers or self-insurers, such as Arch in this case. Employer's Errata Brief at 11-12.

[11] Employer argues there is no insurance policy or self-insurance agreement establishing Arch's liability. Employer's Errata Brief at 13-14.

[12] BLBA Bulletin No. 16-01 is a memorandum issued by the Director of the Division of Coal Mine Workers' Compensation on November 12, 2015, to "provide guidance for district office staff in adjudicating claims" affected by Patriot's bankruptcy.

[13] Employer asserts the DOL's "new approach to transactions completed over a decade ago [] offends Arch's due process rights." Employer's Errata Brief at 26-27.

Employer also contends the ALJ did not adequately address its liability evidence or challenges to BLBA Bulletin No. 16-01. Employer's Errata Brief at 9, 19-22, *citing*

The Director agrees with Employer's argument that the ALJ erred in failing to resolve the admissibility of Employer's liability evidence. Director's Response Brief at 1-4. Further, the Director asserts the ALJ erred in relying on *Howard* to reject Employer's arguments "without admitting or addressing" the liability evidence Employer submitted that "was not admitted or considered in [*Howard*]."[14] *Id*. at 2.

Because the Director, on behalf of the Trust Fund, concedes that the ALJ erred in failing to resolve the admissibility of Employer's liability evidence, we vacate his determination that Arch is the responsible carrier liable for the payment of benefits and remand the case for further consideration. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *see also L.P.* [*Preston*] *v. Amherst Coal Co.*, 24 BLR 1-57, 1-63 (2008) (en banc) (ALJ should resolve evidentiary issues before issuing a Decision and Order).

On remand, the only issue for the ALJ to consider is whether Arch is the responsible carrier in this case. The ALJ must first determine whether Employer timely submitted its liability evidence. 20 C.F.R. §§725.414(b), (c), (d), 725.456(b)(1). If the ALJ determines that Employer untimely submitted its liability evidence, then he must determine whether extraordinary circumstances exist for its admission.[15] 20 C.F.R. §§725.414(c), 725.456(b)(1); 65 Fed. Reg. 79,920, 79,989 (Dec. 20, 2000).

After determining if any of the liability evidence exhibits should be admitted into evidence, the ALJ should address Employer's challenges to the designation of Arch as the responsible carrier and the Director's response.[16] 20 C.F.R. §§725.408(a)(2),

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Arch Coal, Inc. v. Acosta, 888 F.3d 493 (D.C. Cir. 2018); Employer's Reply to Claimant's Brief at 1-2.

[14] The Director notes the ALJ failed to recognize that the 2021 depositions of Michael Chance, Kim Kasmeier, and David Bennedict in Employer's Exhibits 12-14 were not admitted or considered in *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-308-18 (2022).

[15] As the Director acknowledges, the ALJ should admit the 2021 depositions of Michael Chance, Kim Kasmeier, and David Bennedict in Employer's Exhibits 12-14 because Employer timely identified them as liability witnesses before the district director. 20 C.F.R. §§725.414(c), 725.457(c)(1); Director's Response Brief at 3.

[16] The Director argues the ALJ should find Employer's liability evidence on remand insufficient to dismiss Arch as the properly designated responsible carrier. Director's Response Brief at 3-4. The ALJ should also address Employer's arguments on remand.

725.412(a)(1). In doing so, the ALJ must set forth his findings in accordance with the APA. 5 U.S.C. §557(c)(3)(A); *see Wojtowicz*, 12 BLR at 1-165.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge