U.S. Department of Labor

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

BRB No. 25-0221 BLA

BOBBY MULLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	**NOT-PUBLISHED**
KANAWHA COAL, LLC, c/o SMART CASUALTY CLAIMS	)	
	)	
	)	DATE ISSUED: 06/25/2026
Employer-Petitioner	)	
	)	
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 Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

Stephen Shannon (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: GRESH, Chief Administrative Appeals Judge, ROLFE and ULMER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2024-BLA-05283) rendered on a claim filed on July 18, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

At the hearing, Employer indicated the issues of pneumoconiosis, pneumoconiosis causation, total disability, and disability causation were not being contested. Hearing Transcript at 7. Thus, the ALJ found Claimant established total disability due to pneumoconiosis and is entitled to benefits.[1] The ALJ also found Employer to be the properly designated responsible operator.

On appeal, Employer challenges its designation as the responsible operator. Claimant filed a response brief in support of the ALJ's designation. The Director, Office of Workers' Compensation Programs (the Director), has filed a response urging the Benefits Review Board to reject Employer's argument and affirm the ALJ's designation of Employer as the responsible operator. Employer has replied, reiterating its contentions.

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.[2] 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, 362 (1965).

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).[3] The district director is initially charged

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[1] 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 9.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as 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 Exhibit 4; Hearing Transcript at 17-18.

[3] 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

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 it is financially incapable of assuming liability for benefits or another operator financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

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."[4] 20 C.F.R. §725.495(d). If the reasons include the more recent operator's inability to pay benefits, the district director must provide a statement that the Office of Workers' Compensation Programs has no record of insurance coverage or authorization to self-insure for that employer 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 Claimant. *Rhino Energy, LLC v. Director, OWCP* [*Rule*], 174 F.4th 358, 369-73 (4th Cir. 2026); *see also Ark. Coals, Inc. v. Lawson*, 739 F.3d 309, 313-14 (6th Cir. 2014); 20 C.F.R. §725.495(c), (d).

In determining Employer (Kanawha Coal) is the responsible operator, the ALJ considered Claimant's tenure with it and all his subsequent employment. Decision and Order at 5-8. Claimant worked for Kanawha Coal from 1978 to 1987, PSB Coal Company

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must have arisen 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).

[4] In this situation, the Fourth Circuit held "the district director must indicate findings in his Statement of Reasons as to how all five criteria of 20 C.F.R. §725.494 apply to the most recent operator *and* the designated operator, rather than focusing on one determinative issue without providing any analysis as to the other factors." *Rhino Energy, LLC v. Director, OWCP* [*Rule*], 174 F.4th 358, 372 (4th Cir. 2026) (emphasis in original). The court emphasized that "a district director may only designate a prior operator instead of the miner's most recent employer after promulgating a substantively comprehensive Statement of Reasons explaining how the most recent employer fails to constitute a potentially liable operator in all relevant ways." *Id.*

in 1988, Boone Minerals from 1988 to 1990, Beaver Creek Mining in 1990, Maxm from 1990 to 1991, and Select Mining from 1991 to 2000. *Id.*; Director's Exhibits 6, 7, 22, 33. Initially, the ALJ found Claimant met neither the calendar year nor regular year requirement for PSB Coal Company, Beaver Creek Mining, or Maxm and thus they cannot be potentially liable operators. Decision and Order at 7. The ALJ further found Employer, Boone Minerals, and Select Mining were all potentially liable operators because they employed Claimant in excess of 125 working days. *Id.* Nevertheless, the ALJ noted the district director determined Select Mining and Boone Minerals are incapable of paying benefits because "there is 'no record of insurance coverage for that operator, or of authorization to self-insure, that meets the requirements of 20 C.F.R. [§]725.494(e)(1) or (e)(2) and that was effective on the date on which the miner was last employed by that operator.'" *Id.* at 8 (quoting Director's Exhibits 22, 33); *see* 20 C.F.R. §725.495(d). The ALJ then found Employer was properly designated as the responsible operator, as Employer did not rebut the presumption that it is capable of assuming liability for benefits. Decision and Order at 8.

Employer does not dispute it meets the criteria for a potentially liable operator, but argues it rebutted the presumption Claimant's pneumoconiosis arose in whole or in part out of his employment with it through the presentation of medical evidence and testimony, along with his Social Security earnings demonstrating his ability to do comparable work for years after he left Employer. Employer's Brief at 7. Specifically, Employer cites to Claimant's testimony that his breathing started to bother him ten to fifteen years ago, decades after he left Employer, points out that Claimant's diagnosis in 2021 of complicated pneumoconiosis came years after he left Employer, and asserts the ALJ failed to address this evidence in finding Employer failed to rebut the presumption. *Id.* at 8-10. Employer also argues one of Claimant's later coal mine employers should have been designated as the responsible operator, and Employer should be relieved of liability, because the Department of Labor failed to enforce operator insurance coverage requirements. *Id.* at 11-13.

The Director argues 20 C.F.R. §725.495(c)(2) places the burden on Employer, not the Director, to prove a subsequent employer could pay benefits and therefore should have been designated as responsible operator. Director's Brief at 3. In addition, the Director disagrees with Employer's argument that the vocational evidence and Claimant's subsequent wage earning capacity sustains Employer's rebuttal burden because, given that pneumoconiosis is a latent and progressive disease, the fact Claimant's disease had not yet progressed to totally disabling levels by the time Claimant left Employer does not prove his work there did not contribute to that progression. Director's Brief at 4. We agree with the Director.

The ALJ accurately recognized the district director included a statement as to why Claimant's subsequent employers Select Mining and Boone Minerals are incapable of paying benefits as 20 C.F.R. §725.495(d) requires.[5] Decision and Order at 8; Director's Exhibits 22, 33. The designated responsible operator bears the burden of proving a more recent operator possesses sufficient assets, including, if necessary, "presenting evidence" that the owner or partners, or president, secretary, and treasurer "possess assets sufficient to secure the payment of benefits . . . ." 20 C.F.R. §725.495(c). The ALJ properly found that because the district director satisfied his obligation under 20 C.F.R. §725.495(d), the burden shifted to Employer to prove another employer had the financial capability of paying benefits. 20 C.F.R. §725.495(c)(2); Decision and Order at 8. Moreover, she properly found Employer did not introduce any evidence to support its burden of proof. *Id.*

We also agree with the Director that the ALJ accurately found Employer did not sustain its burden to rebut the presumption Claimant's disability arose out of employment with Employer. Contrary to Employer's argument, by operation of 20 C.F.R. §725.494(a), Claimant's complicated pneumoconiosis is presumed to have arisen at least in part out of his work for Employer. The burden thus shifts to Employer to establish, by affirmative evidence, Claimant's disabling pneumoconiosis did not arise in whole or in part out of such work. 20 C.F.R. §725.494(a); *see Paramont Coal Co. Va., LLC v. Goode*, 774 F. App'x 134 (4th Cir. 2019) (unpub.). Employer has not produced affirmative evidence to satisfy its burden. While the evidence of record may establish when Claimant first became aware he had pneumoconiosis, there is no evidence to establish that Claimant's prior work with Employer did not cause, contribute to, or aggravate the progression or advancement of his condition. *See* 20 C.F.R. §725.494(a).

Employer has therefore not identified any basis to overturn the ALJ's finding the evidence of record is insufficient to establish Claimant's complicated pneumoconiosis did not arise at least in part out of his work for Employer. Decision and Order at 8. Further, because Employer has not established another potentially liable operator that is financially capable of assuming liability more recently employed Claimant for at least one year, we affirm the ALJ's finding that Employer is the responsible operator. 20 C.F.R. §725.495(c)(2); Decision and Order at 8.

[5] We affirm, as unchallenged on appeal, the ALJ's finding that PSB Coal Company, Beaver Creek Mining, and Maxm do not meet the requirements to be potentially liable operators. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §725.494(a)-(e); Decision and Order at 7.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge