U.S. Department of Labor

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

BRB No. 23-0093 BLA

HORACE K. MEREDITH, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HOBET MINING, INCORPORATED	)	
	)	
and	)	
	)	
ARCH RESOURCES[1]	)	DATE ISSUED: 9/27/2023
	)	
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 Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

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

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

[1] Employer advises the Benefits Review Board that Arch Coal, Incorporated is now known as Arch Resources. Employer's Brief at 3.

Olgamaris Fernandez (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, 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, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Theresa C. Timlin's Decision and Order Awarding Benefits (2021-BLA-05075) 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 miner's subsequent claim filed on April 22, 2019.

Because Employer conceded Claimant's entitlement, the ALJ's Decision and Order was limited to determining the responsible operator and responsible carrier. The ALJ found Hobet Mining, Incorporated (Hobet) is the responsible operator and Arch Coal, Incorporated, now Arch Resources (Arch), is the responsible carrier.

On appeal, Employer argues the ALJ erred in finding Arch is the liable carrier. Claimant responds in support of the award of benefits and the ALJ's determination that Arch is liable for benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to affirm the ALJ's determination that Arch is liable for benefits. Employer replied to Claimant's and the Director's briefs, reiterating its contentions on appeal.

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 (1965).

Responsible Insurance Carrier

[2] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 22; Director's Exhibit 7.

Employer does not challenge the ALJ's findings that Hobet is the correct responsible operator and was self-insured by Arch on the last day Hobet employed Claimant; thus, we affirm these findings.[3] *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 11. 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 Brief at 13-37; Employer's Reply to the Director's Brief at 2-7.

In 2005, after Claimant ceased his employment with Hobet, Arch sold Hobet to Magnum Coal (Magnum), and in 2008 Magnum was sold to Patriot. Director's Brief at 2; Director's Exhibit 34 at 12-15, 17-22, 193. On March 4, 2011, the Department of Labor (DOL) authorized Patriot to insure itself and its subsidiaries, retroactive to 1973. Employer's Exhibits 6-8. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Hobet, Patriot later went bankrupt and can no longer provide for those benefits. Director's Brief at 2, 12. Nothing, however, relieved Arch of liability for paying benefits to miners last employed by Hobet when Arch owned and provided self-insurance to that company. Decision and Order at 8-11.

Employer raises several arguments to support its contention that Arch was improperly designated the responsible carrier in this claim 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; (2) the Director did not prove that Arch's self-insurance covered Hobet for this claim; (3) without proof of coverage, the DOL improperly pierced Arch's corporate veil in holding it liable; (4) the sale of Hobet to Magnum released Arch from liability for the claims of miners who worked for Hobet, and the DOL endorsed this shift of liability; (5) the DOL's issuance of Black Lung Benefits

[3] Employer argues there is no insurance policy or self-insurance agreement establishing Arch's liability. Employer's Brief at 18-19. However, the Notice of Claim specifically identifies Arch as Hobet's insurance carrier, Director's Exhibit 23, and Employer's other arguments tend to acknowledge that Arch was the self-insurer of Hobet at the time of Claimant's last date of employment. *See, e.g.*, Employer's Brief at 6, 33-34 (framing the decision to name Arch liable instead of Patriot as involving a choice between Hobet's last insurer or its insurer on the date of Claimant's last exposure to coal mine dust).

Act (BLBA) Bulletin No. 16-01[4] reflects a change in policy through which the DOL began to retroactively impose new liability on self-insured mine operators that bypasses traditional rulemaking in violation of the Administrative Procedure Act.[5] Employer's Brief at 13-37; Employer's Reply to the Director's Brief at 2-7.

The Board has previously considered and rejected these and similar arguments under the same determinative facts related to the Patriot bankruptcy in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 3-19 (Oct. 25, 2022) (en banc); *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-308-18 (2022); and *Graham v. E. Assoc. Coal Co.*, 25 BLR 1-289, 1-295-99 (2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments. Thus, we affirm the ALJ's determination that Hobet and Arch are the responsible operator and carrier, respectively, and are liable for this claim.

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

[5] Employer argues the DOL's policy is a retroactive change that amounts to an unlawful taking of its property, in violation of the Fifth Amendment to the United States Constitution. Employer's Brief at 36-37. As the Director correctly points out, a private contract did not release Employer from liability, and requiring Employer to pay benefits under the Act does not constitute an unconstitutional taking of property. Director's Brief at 12, *citing W. Va. CWP Fund v. Stacy*, 671 F.3d 378 (4th Cir. 2011) ("the mere imposition of an obligation to pay money does not give rise to a claim under the Takings Clause").

Employer also contends that the ALJ did not adequately address its liability evidence nor its challenges to BLBA Bulletin No. 16-01. Employer's Brief at 21, *citing Arch Coal, Inc. v. Acosta*, 888 F.3d 493 (D.C. Cir. 2018), 21-26; Employer's Reply to the Director's Brief at 2-3; *see* Decision and Order at 9 n.9. As the Director points out, the ALJ correctly determined that Arch's liability is established under the Act and regulations and not the BLBA Bulletin No. 16-01 and, therefore, the BLBA Bulletin No. 16-01 is "immaterial." Decision and Order at 9-11; Director's Brief at 13. Thus, even if Employer's contentions are true, we consider any error to be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); *see also Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-308-18 (2022) (rejecting similar challenges to BLBA Bulletin No. 16-01).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge