

BRB No. 89-2969 BLA

CARL J. HATTEN)
)
 Claimant)
)
 v.)
)
 K & H COAL COMPANY,) DATE ISSUED:
 INCORPORATED)
)
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Petitioner) DECISION and ORDER

Appeal of the Decision and Order of Michael F. Colligan, Administrative Law Judge, United States Department of Labor.

Tracey G. Benson (Miller, Kistler, Campbell, Miller & Williams, Inc.), Bellefonte, Pennsylvania, for employer.

Rodger Pitcairn (Judith E. Kramer, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order (87-BLA-1563) of Administrative Law Judge Michael F. Colligan awarding benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge properly reviewed this claim pursuant to the provisions at 20 C.F.R. Part 718, and credited the miner with twenty-five years of qualifying coal mine employment. The administrative law judge found that employer was improperly designated as the responsible operator herein pursuant to 20 C.F.R. §§725.492 and 725.493, and thus found the Black Lung Disability Trust Fund (Trust Fund) liable for payment of benefits. The administrative law judge further found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.302, and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, benefits were awarded. On appeal, the Director contends that the administrative law judge erred in holding the Trust Fund liable for payment of benefits. Employer responds, urging affirmance of the administrative law judge's finding of Trust Fund liability.¹ Claimant has not participated in this appeal.²

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial

¹ The administrative law judge dismissed employer as a party to this action at the time of the hearing. Decision and Order at 5; Hearing Transcript at 39. The Board considered employer's response brief to be its motion for dismissal as responsible operator herein, and in its Order issued on September 23, 1991, and Order Denying Reconsideration issued on February 13, 1992, the Board dismissed employer as a party to this action.

² The administrative law judge's award of benefits pursuant to 20 C.F.R. Part 718 is affirmed as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Director contends that the administrative law judge erred in holding the Trust Fund liable for payment of benefits, since the administrative law judge improperly denied its Motion to Remand, made prior to the hearing on the merits, for the district director to identify and notify all potentially liable responsible operators herein. We disagree. The Board has held that due process and the efficient administration of the Act require the Department of Labor to resolve the operator issue in a preliminary proceeding, see 20 C.F.R. §725.412(d), and/or proceed against all putative responsible operators at every stage of the claims adjudication. *Crabtree v. Bethlehem Steel Corp.*, 7 BLR 1-354 (1984). In the instant case, the record reflects that on the employment history form accompanying claimant's second claim for benefits, filed on September 18, 1983, claimant indicated that he worked for employer from October 1971 through March 1978, and then performed coal mine employment for "Patton Mining Co." from April 1978 through November 1980. Director's Exhibit 1. After the district director identified employer as the responsible operator herein on November 10, 1986, Director's Exhibit 30, both employer and its insurer filed controversions denying liability, and the insurer named "Hatten Mining Company" as the last employer for which claimant worked as a miner for more than one year. Director's Exhibits 31, 33. Nevertheless, the district director did not identify or notify any additional potential responsible operators, but forwarded the claim to the Office of Administrative Law Judges on February 12, 1987. Since the Director did not file a Motion to Remand until September 19, 1988, the administrative law judge was not obligated to grant the motion and further delay resolution of this matter. See 20 C.F.R. §725.412; *Crabtree, supra*. Moreover, as a hearing on the merits has already been held, a remand for identification of other potential responsible operators at this time would be tantamount to relitigating the claim. *Crabtree, supra*. Consequently, as employer is not responsible for payment, and in the absence of any other potentially liable operator, we affirm the administrative law judge's finding that the Trust Fund is liable for payment of benefits.

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge