

BRB No. 01-0202 BLA

IRENE SLONE)	
(Widow of EZRA D. SLONE))	
)	
Claimant-Respondent)	
)	
v.)	
)	
VIKING MINING CORPORATION)	DATE ISSUED:
)	
and)	
)	
ROCKWOOD INSURANCE COMPANY)	
)	
Employer/Carrier)	
)	
BOYD & STEVENSON COAL COMPANY,)	
INCORPORATED)	
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
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 of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for Boyd & Stevenson Coal Company, Incorporated.

Helen H. Cox (Howard M. Radzely, 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: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Boyd & Stevenson Coal Company, Incorporated (Boyd & Stevenson) appeals the Decision and Order (00-BLA-0196) of Administrative Law Judge Jeffrey Tureck awarding benefits on a survivor's 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).¹ Based upon Boyd & Stevenson's concession,² the administrative law judge found that claimant³ is

¹The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

²In a May 5, 2000 letter and during a hearing held on May 12, 2000, Boyd & Stevenson indicated that it conceded claimant's eligibility for benefits. Hearing Transcript at 5.

³Claimant is the widow of the miner, Ezra Slone, who died on March 25, 1999. Director's Exhibits 1, 6. The miner filed a claim on February 9, 1988. Director's Exhibit 28. On February 14, 1990, Administrative Law Judge Reno E. Bonfanti issued a Decision and

entitled to survivor's benefits. The administrative law judge also found that Boyd & Stevenson is the properly designated responsible operator in this survivor's claim.

On appeal, Boyd & Stevenson challenges the administrative law judge's designation of it as the responsible operator in this survivor's claim. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's designation of Boyd & Stevenson as the properly designated responsible operator in this survivor's claim.⁴ Claimant has not filed a brief in response to the appeal of Boyd & Stevenson.

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 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Order awarding benefits in the miner's claim. *Id.* Claimant filed a survivor's claim on April 13, 1999.

⁴Boyd & Stevenson filed a brief in reply to the Director's response brief, reiterating its prior contentions.

Boyd & Stevenson contends that the administrative law judge erred in designating it as the putative responsible operator in this survivor's claim. The administrative law judge observed that "[the miner's] last coal mine employer was [Viking Mining Corporation (Viking)], for whom he worked from 1974 through 1988." Decision and Order at 2. The administrative law judge also observed that "Viking was insured for black lung claims by [Rockwood Insurance Company (Rockwood)]." *Id.* However, the administrative law judge stated that "[s]ince it did not appear likely that either Viking or [Rockwood] could pay benefits in the widow's claim,⁵ OWCP also designated [the miner's] next most recent employer, Boyd & Stevenson, for whom he worked from 1970-1974 (DX 3), as a putative responsible operator." *Id.* at 3. The administrative law judge concluded that "Boyd & Stevenson, through its insurance carrier, is the operator responsible for this claim." *Id.*

Boyd & Stevenson asserts that the administrative law judge erred in dismissing Viking and Rockwood as putative responsible operators since Boyd & Stevenson asserts that Virginia Property & Casualty Insurance Guaranty Association (VA Guaranty Association), as Rockwood's reinsurer, is liable under the Black Lung Benefits Act (BLBA) for the payment of survivor's benefits. Citing *Lovilia Coal Co. v. Williams*, 143 F.3d 317, 21 BLR 2-353 (7th Cir. 1998), Boyd & Stevenson specifically asserts that VA Guaranty Association's liability under the BLBA cannot be limited by state law. The administrative law judge stated that "effective August 26, 1991, Rockwood was liquidated due to insolvency (DX 32) and the [VA Guaranty Association] assumed responsibility for the payment of the miner's claim from that time until the miner's death (DX 9)." *Id.* at 2. Nonetheless, the administrative law judge observed that "VA Guaranty Association, in a June 29, 1999 letter, contends that it is not responsible for the widow's claim, since it was filed after August 26, 1992, one year following [Rockwood's] liquidation, which it alleges is the statutory cut-off for claims against [Rockwood] (DX 14)." *Id.* at 2-3. Based upon VA Guaranty Association's contention with regard to the limitation on its liability by state statute, the administrative law

⁵In a certificate dated April 12, 2000, the State Corporation Commission of Virginia indicated that Viking was automatically terminated as a corporation existing under the laws of Virginia on June 1, 1989 for failure to file annual reports as required by law. In an order dated August 16, 1991, Judge Robert L. Myer of the Commonwealth Court of Pennsylvania declared Rockwood insolvent and directed the insurance commissioner of Pennsylvania to liquidate it.

judge found that Viking is incapable of assuming liability for the payment of benefits in this survivor's claim.

In *Williams*, one of the joint owners of the coal mine operator, Lovilia Coal Company (Lovilia), was also a "miner." Although Lovilia purchased a commercial insurance policy from Bituminous Casualty Corporation (Bituminous) for its employees, which complied with the federal insurance requirements of the BLBA, Lovilia did not pay insurance premiums for its owners. The United States Court of Appeals for the Seventh Circuit rejected the argument by the petitioners, Lovilia and Bituminous, that the BLBA does not require an insurer to pay benefits to a mine owner who opted not to purchase insurance for himself. The Seventh Circuit held that the BLBA requires that an insurance carrier provide benefits for all of a coal mine operator's black lung liability, and that the insurance carrier bears the burden of collecting the premiums for all covered miners. Therefore, the Seventh Circuit reasoned that since Lovilia's insurance policy with Bituminous contained the Federal Coal Mine Health and Safety Act endorsement, Bituminous was liable for the payment of benefits in the miner's claim.

However, the facts in the instant case are distinguishable from the facts in *Williams*. While the operator and its carrier in *Williams* attempted to circumvent the BLBA, the operator and its carrier in the case at hand did not do so. In *Williams*, Lovilia and Bituminous attempted to prohibit insurance coverage to the miner and his survivor by asserting that Lovilia's insurance coverage did not extend to its owners. In the instant case, the parties are in general agreement that Viking's insurance coverage by Rockwood extended to claimant. Nonetheless, VA Guaranty Association, Rockwood's reinsurer, asserts that its statutory liability for the insurance coverage of claims insured by Rockwood did not exist at the time claimant filed her claim. As the Director argues, the VA Guaranty Association is a statutorily established method of providing prompt payment of covered claims that result from the insolvency of an insurer. Further, as the Director argues, a covered claim is specifically defined and must be filed within a set deadline. In this particular case, the survivor's claim was filed on April 13, 1999. Director's Exhibit 1. However, the statutory deadline for filing a covered claim was August 26, 1992. Since all proceedings against VA Guaranty Association, as a reinsurer of Rockwood, are time-barred for claims filed after August 26, 1992, we reject Boyd & Stevenson's assertion that the administrative law judge erred in dismissing Viking and Rockwood as putative responsible operators. Neither Viking nor Rockwood was capable of assuming liability for the payment of benefits. Moreover, VA Guaranty Association was not legally obligated by the BLBA or state statute to provide insurance coverage to claimant based on her 1999 survivor's claim.

Boyd & Stevenson also asserts that the Director did not satisfy his obligation to investigate whether the officers of Viking had the ability to pay benefits to claimant. The administrative law judge has not rendered specific findings on the issue of liability for the

payment of benefits by corporate officers of Viking. The Board has held that corporate officers, as individuals, cannot be considered to be responsible operators unless they fall within the definition of a responsible operator at 20 C.F.R. §725.491. *See Lester v. Mack Coal Co.*, 21 BLR 1-126 (1999)(*en banc*)(McGranery, J., dissenting on other grounds); *see also Mitchem v. Bailey Energy, Inc.*, 21 BLR 1-161 (1999)(*en banc*)(Nelson and Hall, J.J., dissenting). Here, Boyd & Stevenson does not assert that a corporate officer of Viking falls within the definition of a responsible operator. Furthermore, the record does not indicate that a corporate officer of Viking falls within the definition of a responsible operator. 20 C.F.R. §725.491. Thus, since the Director is not required to consider whether officers of a corporation, as individuals, can be held liable as responsible operators, *see Lester*, 21 BLR at 1-132, we reject Boyd & Stevenson's assertion that the Director did not satisfy his obligation to investigate whether the officers of Viking had the ability to pay benefits to claimant.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge