U.S. Department of Labor

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

BRB No. 21-0463 BLA

EDWARD W. BROWN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NUFAC MINING, INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED: 01/06/2023
NATIONAL UNION FIRE INSURANCE COMPANY/AIG	)	
	)	
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 Carrie Bland, District Chief Administrative Law Judge, United States Department of Labor.

Sarah Y. M. Himmel (Two Rivers Law Group P.C.), Christiansburg, Virginia, for Employer and its Carrier.

Steven Winkelman (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal District Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Awarding Benefits (2018-BLA-05448) rendered on a claim filed on July 22, 2016, pursuant to the Black Lung Benefits Act (Act), as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ determined Nufac Mining is the responsible operator and National Union Fire Insurance/AIG is the responsible carrier. She further found Employer did not dispute Claimant's entitlement to benefits, and therefore awarded benefits.

On appeal, Employer challenges the ALJ's responsible operator and carrier findings.[1] Claimant has not filed a response. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to affirm the ALJ's responsible operator and carrier findings. Employer filed a reply brief reiterating its arguments.

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 and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Responsible Operator and Carrier

The responsible operator is the "potentially liable operator" that most recently employed the miner.[3] 20 C.F.R. §725.495(a)(1). The district director is initially charged

[1] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant is entitled 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 because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[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 must have arisen at least in part 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

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 a 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 potentially liable operator is financially capable of assuming liability and more recently employed the miner for at least one year. 20 C.F.R. §725.495(c)(2).

The ALJ found Claimant's employment with Nufac Mining ended before September 14, 2002. Decision and Order at 9. As Employer does not challenge this finding, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). The ALJ also found that on Claimant's last day of coal mine employment with Nufac Mining, National Union Fire Insurance/AIG insured Nufac Mining's liabilities under the Act, including at the mine site where Claimant worked. Decision and Order at 7-8. Thus, she found Nufac Mining is financially capable of assuming liability based on its policy of insurance with National Union Fire Insurance/AIG. *Id.* at 7-9.

Employer first argues the ALJ lacked subject matter jurisdiction to interpret the relevant insurance contracts. Employer's Brief at 7-14. In addition, Employer argues the ALJ erred in finding National Union Fire Insurance/AIG is the properly named carrier for this claim. Employer's Brief at 14-23. Specifically, it contends she erred in determining National Union Fire Insurance/AIG's policy of insurance with Nufac Mining covered the mine site where Claimant worked, and thus she erred in finding Nufac Mining is financially capable of assuming liability for the claim. *Id*. The Director urges the Board to reject Employer's jurisdictional challenges. Furthermore, he contends the ALJ properly determined National Union Fire Insurance/AIG is the responsible carrier. Director's Response Brief at 5-18.

At the outset, we reject Employer's assertion that the ALJ lacked subject matter jurisdiction to interpret the relevant insurance contracts. The Act confers jurisdiction on ALJs to "hear and determine all questions in respect of [a] claim," 33 U.S.C. § 919(a) (incorporated by 30 U.S.C. § 932(a)). "[T]he determination of the identity of the party liable for the payment of benefits is one such question." *M.R. v. Karst Robbins Coal Co.*, BRB No. 09-0119, 2009 WL 3794427, slip op. at 8 (Oct. 21, 2009) (unpub.). Specifically, the Board has explained "[ALJs] have jurisdiction to resolve questions regarding insurance

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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).

contract coverage in the context of determining the responsible employer or carrier." *Jourdan v. Equitable Equip. Co.*, 32 BRBS 200, 205 (1998) (citing similar relevant cases); *see also Watson v. Wardell Orthopaedics, P.C.*, BRB No. 16-0545, 2017 WL 2876455, slip op. at 3 (June 30, 2017) (unpub.) ("The [ALJ] has the power to hear and resolve contractual issues which are necessary to the resolution of a claim . . . such as whether a contract for workers' compensation insurance covered the employer . . . .").

We also reject Employer's contention that, pursuant to the United States Supreme Court's decision in *Northern Pipeline Constr. Co. v. Marathon Pipeline Co.*, 458 U.S. 50 (1982), Congress lacked the authority to confer jurisdiction on ALJs to interpret insurance contracts in resolving claims for benefits under the Act. Employer's Brief at 12-13. As the Board explained in *Jourdan,* Congress has the authority to create federal workers' compensation schemes and "to delegate the initial resolution of claims arising under [those] scheme[s] to non-Article III tribunals." *Jourdan*, 32 BRBS at 204-205 (citing *Rodman v. Bethlehem Steel Corp.*, 16 BRBS 123, 126 (1984)*; see also Gibas v. Saginaw Mining Co.*, 748 F.2d 1112, 1119 (6th Cir. 1984) (right to seek benefits under the Act "was created by Congress" and "Congress can require that the adjudication of congressionally created rights take place in non-Article III tribunals"). In so holding, the Board explained that this authority is consistent with *Northern Pipeline* and its progeny because Congress did not impermissibly confer jurisdiction on ALJs to adjudicate *all* contract disputes between the parties, but only "those limited insurance contract disputes . . . which are necessary in order to determine compensation liability." *Jourdan,* 32 BRBS at 205 (quoting *Rodman*, 16 BRBS at 126). Thus, "it does not involve a broad grant of authority which would exceed the powers of a non-Article III tribunal." *Id.* at 204-205.

Finally, we reject Employer's argument that Congress violated the nondelegation doctrine by failing to provide an "intelligible principle" to guide ALJs in the interpretation of insurance contracts.[4] As the Director correctly points out, the nondelegation doctrine is not applicable here because the doctrine applies only to delegations of *legislative* power. Director's Brief at 10. As the Supreme Court has explained, the nondelegation principle "bars Congress from transferring its legislative power to another branch of Government." *Gundy v. United States*, 139 S. Ct. 2116, 2121 (2019) (Kagan, J.) (plurality opinion). Employer's argument that Congress improperly delegated the power to "interpret insurance contracts," Employer's Brief at 9, refers to a judicial or adjudicative function and not a legislative one. *See Empire Blue Cross & Blue Shield v. Janet Greeson's a Place for Us,*

[4] The Director correctly points out that although Employer does not use the term "nondelegation," the "intelligible principle" test that Employer invokes applies to congressional delegations of legislative power. *See, e.g.*, *Mistretta v. United States*, 488 U.S. 361, 372 (1989); Director's Brief at 10 n. 5.

Inc., 985 F.2d 459, 462 (9th Cir. 1993) (discussing "the quintessential judicial function of interpreting the contracts"); *Detroit, Toledo & Ironton R. Co. v. Consol. Rail Corp.*, 727 F.2d 1391, 1396 (6th Cir. 1984) (interpreting contracts is "judicial function"). Thus, the ALJ permissibly interpreted the relevant insurance contract to determine whether Employer and its carrier are liable for benefits.

As for whether the ALJ properly determined National Union Fire Insurance/AIG's policy of insurance with Nufac Mining covered the mine site where Claimant worked on his last day of employment, we review her decision to determine whether it is supported by substantial evidence. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has described substantial evidence as more than a scintilla, but only such evidence that a reasonable mind could accept as adequate to support a conclusion, and has held that the findings of an ALJ may not be disregarded on the basis that other inferences could have been drawn from the evidence. The court has further held that deference must be given to the fact-finder's inferences and credibility assessments, and it has emphasized that the scope of review of an ALJ's findings is limited. *See Lane v. Union Carbide Corp*., 105 F.3d 166, 174 (4th Cir 1997); *Newport News Shipbldg. and Dry Dock Co. v. Ward*, 326 F.3d 434 (4th Cir. 2003); *Norfolk Shipbldg. and Drydock Co. v. Faulk*, 228 F.3d 378 (4th Cir. 2000), *cert. denied*, 531 U.S. 1112 (2001); *Newport News Shipbldg. and Dry Dock Co. v. Tann*, 841 F.2d 540 (4th Cir. 1988).

Employer concedes Nufac Mining had an effective policy of insurance with National Union Fire Insurance/AIG under policy number No. 720-68-54 and this policy covered the mine site where Claimant worked from September 1, 2001, to September 1, 2002. Employer's Brief at 8-9. It argues, however, that a renewal of that policy for the period dating from September 1, 2002, no longer included the mine site where Claimant worked based on the applicable Employer Identification Numbers (EINs) on the new policy. *Id.* Thus, assuming Claimant's employment with it ended after September 1, 2002, Employer alleges National Union Fire Insurance/AIG is not the proper insurance carrier for this claim and thus liability must transfer to the Black Lung Disability Trust Fund (the Trust Fund). To support its argument, Employer submitted Policy Number 720-68-54 that listed a coverage period from September 1, 2001, to September 1, 2002, and Policy Number 720-68-54 that listed a coverage period from September 1, 2002, to September 1, 2003.[5]

[5] Employer alleged this second policy, labeled a "renewal" policy, was cancelled effective September 14, 2002, while the Director argued the renewal policy remained in effect beyond that date because Employer failed to properly notify the DOL of the renewal policy's cancellation under 20 C.F.R. § 726.212. Director's Exhibit 18; Director's Brief at 4. Having found Claimant ceased his employment with Employer prior to the alleged cancellation of the renewal policy on September 14, 2002, the ALJ declined to resolve this

The ALJ reasonably determined the policy covering the period from September 1, 2002, to September 1, 2003, was a renewal, and therefore a continuation, of the earlier policy because it was labeled a "renewal" policy on its face, and both the renewal policy and the original policy bear the same policy number. Decision and Order at 7. She also rationally concluded that, because the renewal policy listed mine sites using the same entity name, Nufac Mining, Inc., and in the same geographic area, Grundy, Virginia, as the earlier policy, the mine site where Claimant last worked was covered under the second policy regardless of the disparity in the EINs.[6] Because the ALJ rationally determined that the mine site where Claimant last worked was covered under the renewal policy, and substantial evidence supports this conclusion, we affirm her finding.

Thus we affirm the ALJ's finding that Nufac Mining is the responsible operator and is financially capable of assuming liability based on its policy of insurance with National Union Fire Insurance/AIG.

We also reject Employer's argument that the ALJ erred in allowing the Director to file a position statement regarding the Trust Fund's liability for this claim. Employer's Brief at 14-16. An ALJ exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Thus, a party seeking to

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specific dispute. Decision and Order at 6. As we affirm the ALJ's unchallenged finding that Claimant's employment with Employer ended before September 14, 2002, as well as her finding that the first policy and its renewal covered the mine where Claimant worked, we, too, need not determine whether the renewal policy's cancellation became effective after that date.

[6] Employer's argument implies Nufac Mining changed its policy terms to discontinue coverage of Claimant's mine site and instead secured coverage for Claimant's mine site through another insurance policy. Employer's Brief at 21-23. Nevertheless, as the Director asserts, federal law requires operators to secure all of their liabilities under the Act through insurance or self-insurance, 33 U.S.C. §§932(b), 933, and the regulations provide that "[e]ach carrier shall report to the [Director] each policy and endorsement issued, cancelled, or renewed by it to an operator." 20 C.F.R. §726.208. The record does not indicate Employer notified the Director of any change in Nufac Mining's insurance coverage for the mine site where Claimant worked from its policy in effect from 2001 to the renewal policy in 2002. Nor does the record indicate Nufac Mining reported (or submitted evidence of) the issuance of any new policy for Claimant's mine site. Thus, Employer's arguments regarding a new insurance policy or changes to its policy coverage are merely speculative.

overturn an ALJ's disposition of a procedural or evidentiary issue must establish that the ALJ's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009). Here, the ALJ explained why she admitted the Director's statement and accepted Employer's response to the Director's statement. Decision and Order at 6. Employer has not shown that it was not given adequate opportunity to respond to the Director's statement or that the ALJ did not also properly consider its response. Thus, we discern no abuse of discretion in her admitting and considering the Director's arguments.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge