

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1738

ITMANN COAL COMPANY,

Petitioner,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR; ZED JEFFERSON
THORNTON, executor of Shirley Ann Thornton's estate,

Respondents.

On Petition for Review of an Order of the Benefits Review Board. (23-0283 BLA)

Submitted: April 1, 2026

Decided: June 17, 2026

Before QUATTLEBAUM and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

ON BRIEF: John R. Sigmond, PENN, STUART & ESKRIDGE, Bristol, Tennessee, for Petitioner. Wes Addington, APPALACHIAN CITIZENS' LAW CENTER, Whitesburg, Kentucky, for Respondent Thornton.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Itmann Coal Company petitions for review of the Benefits Review Board's decision and order affirming the Administrative Law Judge's award of black lung benefits pursuant to 30 U.S.C. §§ 901-944. "It is firmly established that, before an agency, parties must raise all issues they seek to maintain on appeal at the time appropriate under its practice." *Edd Potter Coal Co. v. Dir., Off. of Workers' Comp. Programs*, 39 F.4th 202, 206 (4th Cir. 2022) (internal quotation marks omitted). Here, Itmann only raises arguments that have previously been waived or are being raised for the first time on appeal. Therefore, Itmann has waived appellate review on all the issues it seeks to present in this court.* Accordingly, we deny the petition for review. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

* It's a closer call whether Itmann has waived its challenge to the Administrative Law Judge's finding that the 2012 pulmonary function test was reliable based on Dr. Kenneth Gallup's opinion. But even if this argument isn't waived, we see no error in the Administrative Law Judge's decision.