

BRB No. 96-1780 BLA

LOREN HOWERTON (deceased))	
)	
Claimant-Respondent)	
)	
v.)	
)	DATE ISSUED:
ZIEGLER COAL COMPANY)	
)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER
Party-in-Interest)	

Appeal of the Decision and Order of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Harold B. Culley, Jr. (Culley & Wissore), Raleigh, Illinois, for claimant.

Daniel A. Beatty (Law Offices of Wayne R. Reynolds, P.C.), Belleville, Illinois, for employer.

Jennifer U. Toth (J. Davitt McAteer, 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, the United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (95-BLA-0878) of Administrative Law Judge Mollie W. Neal awarding medical 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 ordered employer to reimburse the

Black Lung Disability Trust Fund (the Trust Fund) \$22,227.80 plus interest for medical expenses incurred in treating the miner's pneumoconiosis.

The miner was awarded benefits under Part B of the Act, 30 U.S.C. §§921-25, by the Social Security Administration. On June 18, 1979, he filed for Medical Benefits Only pursuant to Section 11 of the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, §11, 92 Stat. 101 (1978), codified at 30 U.S.C. §924(a), as implemented by 20 C.F.R. §725.701(A) et seq. Director's Exhibit 1. Employer initially controverted the claim, but later withdrew its controversion of liability for medical benefits. Director's Exhibit 3. Accordingly, an award of medical benefits was entered by the district director on July 20, 1983. Director's Exhibits 4-5. Subsequently, the miner was hospitalized six times for respiratory problems at the Memorial Hospital of Carbondale, Illinois, which resulted in the \$22,227.80 of medical bills. Director's Exhibit 22. Because employer refused to pay these charges, the Trust Fund paid them on an "interim exception basis," and then sought reimbursement from employer. Director's Exhibits 19, 20 24, 26, 30, 58, 69.

At the district director level, employer challenged reimbursement solely on the basis that the treatment rendered was not reasonable or related to pneumoconiosis pursuant to 20 C.F.R. §725.701. At the hearing, however, employer raised the additional argument that the Department of Labor failed to prove that the Trust Fund actually paid the \$22,227.80. Hearing Transcript at 6-7. Employer's counsel argued that a United States Treasury Voucher that he received in response to his discovery request, and which indicated that a check for \$22, 227.80 was issued to Memorial Hospital, was insufficient proof of payment. *Id.* The administrative law judge indicated to employer's counsel that he had neglected to raise this issue with the district director, and directed him to limit his argument to the hearing issues checked on the Department of Labor CM-1025 form.¹ Hearing Transcript at 13-14; Director's Exhibit 67. However, post-hearing, employer argued that the only issue was "whether the Department of Labor actually paid the hospital bill in question. . . ." Employer's Post-Hearing Brief at 1.

The administrative law judge found that because employer failed to raise the proof of payment issue before the district director, the issue was not before her. Decision and Order at 8. The administrative law judge concluded that, since there was no dispute that

¹ The issues specifically raised were whether employer was liable for the payment of the miner's medical bills or the accrued interest. Director's Exhibit 67 at 2. We note that this form also bears a check mark indicating that the Trust Fund certified payment, and a notation reading "The Black Lung Disability Trust Fund paid \$22,227.80 of medical bills on an interim basis." *Id.*

the medical expenses were reasonably necessary and related to pneumoconiosis, employer was liable for the repayment of \$22,227.80 to the Trust Fund. *Id.*

On appeal, employer concedes its liability for \$22,227.80, but contends that the Department of Labor failed to prove by a preponderance of the evidence that the Trust Fund actually paid this amount to Memorial Hospital. Claimant and the Director, Office of Workers' Compensation Programs (the Director), respond, urging affirmance.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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).

Employer contends that the administrative law judge erred in ordering reimbursement because the Trust Fund failed to submit evidence sufficient to prove that it actually paid the \$22,227.80 in medical charges. Employer's Brief at 3. Employer does not challenge, and the record supports, the administrative law judge's finding that employer failed to raise this issue before the district director. Therefore, we affirm the administrative law judge's finding that the proof of payment issue was not before her for resolution.² See 20 C.F.R. §725.463(a); *Kott v. Director, OWCP*, 17 BLR 1-9, 1-13 (1992). In light of employer's concession that the medical charges were incurred in the treatment of the miner's pneumoconiosis, Employer's Brief at 3, we affirm the administrative law judge's finding pursuant to Section 725.701.

² In light of counsel's contention that the voucher was insufficient proof of payment, the administrative law judge asked him whether he had attempted to verify with Memorial Hospital whether payment was received. Hearing Transcript at 10. He stated that he had not. *Id.*

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

SO ORDERED.

BETTY JEAN HALL
Chief Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. MCGRANERY
Administrative Appeals Judge