

BRB No. 09-0744 BLA

GARLAND STILTNER)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 07/23/2010
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Robert B. Rae, Administrative Law Judge, United States Department of Labor.

Garland Stiltner, Richlands, Virginia, *pro se*.

Sarah M. Hurley (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (2009-BLO-00013) of Administrative Law Judge Robert B. Rae denying waiver of an overpayment that occurred with respect to a duplicate claim filed on April 15, 1999, pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act). The record reflects that, on October 13, 1999, the district director issued an initial finding of entitlement and claimant began receiving interim benefits paid by the Black Lung Disability Trust Fund (the Trust Fund). Director's Exhibits 2, 3. After a formal hearing, which was held at the request of employer, Administrative Law Judge Edward Terhune Miller issued a Decision and Order denying benefits on December 10, 2001. Director's Exhibit 4. The denial of benefits was affirmed by the

Board, *Stiltner v. Island Creek Coal Co.*, BRB Nos. 02-0257 BLA and 02-0257 BLA-A (Nov. 26, 2002) (unpub.), and the United States Court of Appeals for the Fourth Circuit. *Stiltner v. Island Creek Coal Co.*, No. 03-1513 (4th Cir. Oct. 22, 2003) (unpub.).

By letter dated January 23, 2004, the district director informed claimant that an overpayment of benefits had occurred in the amount of \$19,894.50 because he had received interim benefits, but was subsequently found not to be entitled to benefits by Judge Miller. Director's Exhibit 13. Claimant was informed that if he wished to seek waiver of the overpayment, he was required to complete and submit an overpayment questionnaire, together with supporting financial documentation. *Id.* Meanwhile, claimant filed a petition for modification on February 4, 2004. In a Decision and Order issued on June 13, 2007, Judge Miller denied claimant's modification request and further found that claimant failed to show that he was entitled to waiver of recovery of the overpayment. Director's Exhibit 17. Claimant appealed, and the Board affirmed Judge Miller's denial of modification and benefits. *G.S. [Stiltner] v. Island Creek Coal Co.*, BRB No. 07-0844 BLA, slip op. (June 19, 2008) (unpub.). The Board, however, held that because the district director had not completed an administrative review of the waiver issue, prior to forwarding the case to the administrative law judge for review of claimant's modification request, the administrative law judge was without authority to deny waiver of recovery of the overpayment, as that issue was not ripe for adjudication. *Id.* at 6-7. Accordingly, the Board remanded the case to the district director for further consideration of whether recovery of the overpayment should be waived. *Id.* at 7.

On remand, by letter dated July 17, 2008, the district director again advised claimant that an overpayment had occurred in the amount of \$19,894.50, and made a preliminary finding that claimant was without fault in the creation of the overpayment. Director's Exhibit 23. Claimant was further advised of the requisite procedure for requesting waiver of recovery of the overpayment. *Id.* On September 22, 2008, claimant requested waiver and submitted a completed copy of an overpayment questionnaire, along with copies of his financial information.¹ Director's Exhibit 26. On October 8, 2008, the district director determined that recovery of the overpayment should not be

¹ On his overpayment questionnaire, claimant indicated that he supported his wife, that his monthly income included \$1,270.00 from his own Social Security benefits, \$405.00 from his wife's Social Security benefits, \$582.00 from his pension and \$766.00 from personal earnings, for a total of \$3,023.00. Director's Exhibit 26. Claimant listed his monthly expenses as \$500.00 for food, \$75.00 for clothing, \$363.00 for utilities and \$1,635.64 for other expenses, for a total of \$2,573.64. *Id.* Claimant also reported that he had \$300.00 "Cash on hand," a checking account balance of \$25,500.00, and a savings account balance of \$25,000.00. *Id.*

waived. Director's Exhibit 28. Thereafter, claimant requested a hearing and the case was assigned to Judge Rae (the administrative law judge).² Director's Exhibits 29, 30.

In his Decision and Order issued on June 15, 2009, the administrative law judge found, based on the concession of the Director, Office of Workers' Compensation Programs (the Director), that claimant was without fault in the creation of the overpayment. The administrative law judge determined, however, that recovery of the overpayment would not defeat the purpose of the Act or be against equity and good conscience. Thus, the administrative law judge denied claimant's request for waiver of recovery of the overpayment and ordered claimant to reimburse the Trust Fund in the amount of \$19,894.50.

On appeal, claimant challenges the administrative law judge's denial of waiver of recovery of the overpayment. The Director responds, urging the Board to affirm, as supported by substantial evidence, the administrative law judge's findings that recovery of the overpayment would not defeat the purpose of the Act or be against equity and good conscience.³

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The Board must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational,

² By letter dated June 5, 2009, claimant advised the administrative law judge that he did not want a hearing, and requested that the administrative law judge decide the overpayment issue on the record.

³ By Order dated March 30, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148, which amended the Black Lung Benefits Act (the Act) with respect to the entitlement criteria for certain claims. *Stiltner v. Director, OWCP*, BRB No. 09-0744 BLA (Mar. 30, 2010) (unpub. Order). The Director, Office of Workers' Compensation Programs (the Director), responded and maintains that Section 1556 does not apply to this case because it involves an administrative law judge's denial of claimant's request for a waiver of recovery of an overpayment. We hold that the recent amendments to the Act are not applicable to this case, as the claim was filed on January 1, 2005, prior to the effective date of the amendments.

supported by substantial evidence, and in accordance with applicable law.⁴ 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).

The regulation at 20 C.F.R. §725.522(b) provides that “[i]f benefit payments are commenced prior to the final adjudication of the claim and it is later determined by an administrative law judge, the Board, or court that the claimant was ineligible to receive such payments, such payments shall be considered overpayments.” See 20 C.F.R. §§725.522(c), 725.540. The regulation at 20 C.F.R. §725.542 also provides, in pertinent part, that there shall be no adjustment or recovery of an overpayment in any case where an incorrect payment has been made with respect to an individual who is without fault and where adjustment or recovery would either defeat the purpose of Act or be against equity and good conscience.⁵ 20 C.F.R. §725.542; see *Jarvis v. Carbon Fuel Company*, 23 F.3d 401, 1994 WL 179473 (4th Cir. Feb. 25, 1994) (unpub); *Ashe v. Director, OWCP*, 16 BLR 1-109 (1992). Recovery defeats the purpose of the Act if it deprives an individual of income required for ordinary and necessary living expenses. See 20 C.F.R. §725.543; *Keiffer v. Director, OWCP*, 18 BLR 1-35 (1993); *Nelson v. Director, OWCP*, 14 BLR 1-159 (1990). Recovery is against equity and good conscience if the individual changed his or her position for the worse or relinquished a valuable right in reliance upon receipt of the overpaid benefits. *Id.*

In this case, the administrative law judge noted that there was no dispute by the parties that an overpayment occurred in the amount of \$19,894.50. Decision and Order at 4. He further found, based on the Director’s concession, that claimant was without fault in the creation of the overpayment. *Id.* at 5. In considering whether recovery of the overpayment would defeat the purpose of the Act, the administrative law judge considered the overpayment questionnaire and the financial information provided by claimant. Based on his review of the evidence, the administrative law judge found that claimant has “approximately \$500.00 remaining at the end of each month after paying all

⁴ Because claimant’s last coal mine employment was in Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*); Director’s Exhibit 29.

⁵ We affirm the administrative law judge’s finding that claimant was without fault in the creation of the overpayment, as that finding is unchallenged on appeal and is favorable to claimant. See *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

of the household bills” and that “he has over \$50,000.00 in his checking and savings accounts.” *Id.* at 6.

The administrative law judge also considered claimant’s remarks on the overpayment questionnaire, explaining that recovery of the overpayment should be waived because, “[a]lthough it appears that I have more than enough income to meet my monthly obligations, I am in my eighties and I will need the money for burial expenses and possible nursing home care.” Director’s Exhibit 26; *see* Decision and Order at 6. The administrative law judge specifically rejected claimant’s assertion that his income and savings were needed for burial expenses and possible nursing home care, noting that “the regulations do not provide for consideration of prospective expenses and my decision must be based on the evidence of current income and expenses as shown in the record, not what could happen in the future.” Decision and Order at 6. Therefore, the administrative law judge concluded that “recovery of the overpayment would not deprive the [c]laimant of funds needed to meet ordinary and necessary living expenses,” and does not defeat the purpose of the Act. *Id.* at 7.

Additionally, the administrative law judge found that because claimant “made no argument and there is no evidence that [claimant] changed his financial position to his detriment because of receipt of interim benefits,” recovery would not be against equity or good conscience. *Id.* at 7. Thus, the administrative law judge found that claimant was required to repay the overpayment to the Trust Fund.

We affirm, as supported by substantial evidence, the administrative law judge’s conclusion that claimant is not entitled to waiver of the overpayment. In light of the monthly surplus of “approximately \$500.00,” and because claimant has liquid assets totaling over \$50,000.00, we conclude that the administrative law judge reasonably found that recovery of overpayment “would not deprive [claimant] of funds needed to meet ordinary and necessary living expenses.” Decision and Order at 7; *see Benedict v. Director, OWCP*, 29 F.3d 1140, 18 BLR 2-309 (7th Cir. 1994); *Napier v. Director, OWCP*, 999 F.2d 1032, 1036, 17 BLR 2-186, 2-192-93 (6th Cir. 1993). The administrative law judge also correctly noted that, while claimant asserts that he needs his income and savings for burial expenses and possible nursing home care, the regulations require the administrative law judge to consider current income and expenses, rather than speculative or prospective expenses. *Keiffer*, 18 BLR at 1-39. Thus, we hold that the administrative law judge properly determined that recovery of the overpayment would not defeat the purpose of the Act. *See* 20 C.F.R. §725.543.

We also affirm the administrative law judge’s finding that claimant failed to prove that recovery of the overpayment would be against equity and good conscience, insofar as claimant did not provide any evidence or argument to establish that he changed his position for the worse or that he relinquished a valuable right as a result of his receipt of

interim benefit payments. *See Jarvis*, 23 F.3d at 401, 1994 WL 179473 at 1; *Keiffer*, 18 BLR at 1-39; *see also McConnell v. Director, OWCP*, 993 F.2d 1454, 18 BLR 2-168 (10th Cir. 1993). Therefore, based on the administrative law judge's reasonable findings, we affirm the administrative law judge's determination that claimant failed to prove that he is entitled to a waiver of recovery of the overpayment pursuant to 20 C.F.R. §725.542.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge