

BRB Nos. 04-0513 BLA
and 04-0513 BLA-A
Case No. 00-BLA-0643

RAYMOND ABSHIRE)	
)	
Claimant-Petitioner)	DATE ISSUED:
07/06/2004)	
Cross-Respondent)	
)	
v.)	
)	
D & L COAL COMPANY)	
)	
and)	
)	
KENTUCKY COAL PRODUCERS)	
SELF-INSURANCE FUND)	
)	
Employer/Carrier-)	
Respondent)	
Cross-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

On March 16, 2004, the Office of the District Director forwarded a letter from claimant's counsel, Leonard Stayton, dated June 24, 2003, appealing a determination of an overpayment on the claim. The Board construed this letter to be an appeal of the administrative law judge's June 12, 2003 Decision and Order on Remand Denying Benefits. On March 24, 2004, the Board acknowledged receipt of this appeal, assigned it the Board's docket number, BRB No. 04-0513 BLA.

On April 2, 2004, the Board acknowledged receipt of employer's Notice of Cross-Appeal of the administrative law judge's Decision and Order on Remand Denying Benefits. Employer's appeal was assigned the Board's docket number, BRB No. 04-0513 BLA-A.

By letter dated April 9, 2004, claimant's counsel informed the Board that he is not representing claimant in an appeal of the denial of benefits issued on June 12, 2003. Counsel further requested that any future correspondence regarding this appeal should be directed to claimant or "such other counsel as he may secure."

Employer has filed a motion to dismiss claimant's appeal. In support of this motion, employer contends that claimant never intended to appeal the administrative law judge's denial of benefits, and that therefore, the June 24, 2003 letter from counsel did not constitute a valid appeal of the June 12, 2003 Decision and Order denying benefits. Employer further notes that the dismissal of claimant's appeal would render its cross-appeal moot. Employer therefore urges the Board to dismiss claimant's appeal.

By letter dated June 17, 2003, the Office of the District Director informed claimant that an overpayment of benefits had occurred in this claim. The letter also set out procedures for claimant to follow if he wished to submit additional evidence relative to the overpayment, to request waiver of the overpayment, or to request an informal conference on the overpayment issue.

In his June 24, 2003 letter to the Office of the District Director, counsel states that "I wish to appeal the determination that there has been an overpayment" in claimant's case. Counsel further requests a waiver of any overpayment that may be found to exist. This letter was forwarded to the Board, and mistakenly treated as a notice of appeal of the administrative law judge's Decision and Order denying benefits. Rather, counsel's letter appears to be a request for an informal conference on the overpayment issue, pursuant to the instructions provided by the district director in his June 17, 2003 letter.

Accordingly, the Board grants employer's motion and dismisses claimant's appeal, BRB No. 04-0513 BLA. Moreover, employer's appeal, BRB No. 04-0513 BLA-A, is dismissed as moot, and this case is remanded to the Office of the District Director for further appropriate action. 20 C.F.R. §§802.401(b), 802.405(a).

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge