

BRB No. 05-0848 BLA

RUFFICE C. ESTEP	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 07/26/2006
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order on Remand from the Benefits Review Board of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams & Rutherford), Norton, Virginia, for claimant.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy 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, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the administrative law judge's Decision and Order on Remand from the Benefits Review Board (02-BLO-0013), denying waiver of recovery of an overpayment of benefits to claimant.<sup>1</sup> This case is before the Board for the second time. In the administrative

---

<sup>1</sup> The district director issued an initial finding of entitlement on November 4, 1999. Director's Exhibit 2. On October 4, 2000, Administrative Law Judge Richard A. Morgan issued a Decision and Order Denying Benefits. Director's Exhibit 4. In a Decision and Order issued October 29, 2001, the Board affirmed the denial of benefits.

law judge's original Decision and Order, he noted that the parties had stipulated that the sole issue for determination was whether repayment of the overpayment would be against equity and good conscience pursuant to 20 C.F.R. §725.542(b)(2). The administrative law judge found that because claimant's expenditures for his wife's medical care were not incurred in reliance on the overpayment, waiver of recovery of the overpayment was not appropriate. Accordingly, the administrative law judge ordered claimant to repay \$16,844.99, the full amount of the overpayment. 2003 Decision and Order. On claimant's *pro se* appeal, the Board held that the administrative law judge rationally determined that recovery of the overpayment would not be against equity and good conscience, and therefore, affirmed the administrative law judge's findings pursuant to Section 725.542(b)(2). The Board, however, remanded the case for the administrative law judge to consider whether recovery of the overpayment would defeat the purpose of the Act. *Estep v. Director, OWCP*, BRB No. 03-0694 BLA (June 24, 2004)(unpub.).

On remand, the administrative law judge found that repayment of the overpayment would not defeat the purpose of the Act, as claimant would be able to "meet ordinary living expenses even after repaying the overpayment." Decision and Order on Remand at 3. Accordingly, the administrative law judge ordered that claimant repay the overpayment.

In this appeal, claimant asserts that recovery of the overpayment should be precluded because he was without fault in the creation of the overpayment. Claimant also argues that it is against equity and good conscience to require him to repay the overpaid benefits. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's decision denying waiver of recovery of the overpayment.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The regulations provide that there can be no recovery of an overpayment in any case where:

An incorrect payment has been made with respect to an individual:

- (a) Who is without fault, and where
- (b) Adjustment or recovery would either:

---

*Estep v. Premium Energy, Inc.*, BRB No. 01-0240 BLA (Oct. 29, 2001)(unpub.); Director's Exhibit 5. Claimant took no further action with respect to this claim.

1. Defeat the purpose of title IV of the Act, or
2. Be against equity and good conscience.

20 C.F.R. § 725.542. The regulations also provide that the standards for determining the applicability of this criteria “shall be the same as those applied by the Social Security Administration.” 20 C.F.R. §725.543. In order to establish that recovery of an overpayment defeats the purpose of the Act, claimant must show that recovery would deprive him of income required for ordinary and necessary living expenses. *See* 20 C.F.R. §§404.508, 725.453; *Keiffer v. Director, OWCP*, 18 BLR 1-35 (1993); *Nelson v. Director, OWCP*, 14 BLR 1-159 (1990).

This case was previously remanded to the administrative law judge for consideration of only one issue, *i.e.*, for the administrative law judge to consider whether recovery of the overpayment would defeat the purpose of the Act. The administrative law judge considered claimant’s financial circumstances and determined that recovery of the overpayment would not defeat the purpose of the Act. Claimant, who is represented by counsel on appeal, only asserts that recovery of the overpayment should be waived because he was without fault in creating the overpayment and because it is against equity and good conscience to require him to repay the overpayment. Because claimant does not challenge the administrative law judge’s finding on remand, that recovery of the overpayment would not defeat the purpose of the Act, this finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In light of the foregoing, and in light of the administrative law judge’s prior finding that recovery of the overpayment would not be against equity and good conscience, a finding which was affirmed by the Board, *see Estep*, slip op. at 3, we affirm the administrative law judge’s decision denying waiver of recovery of the overpayment.

Accordingly, the administrative law judge's Decision and Order on Remand from the Benefits Review Board is affirmed.

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge