

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 17-0421 BLO

CLARIS I. FITE ROSE)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 05/23/2018
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Request for Waiver of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Claris I. Fite Rose, Fanrock, West Virginia.

Jeffrey S. Goldberg (Kate S. O'Scannlain, Solicitor of Labor; Maia S. Fisher, 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: HALL, Chief Administrative Appeals Judge. GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals, without the assistance of counsel, the Decision and Order Denying Request for Waiver (2013-BLO-00011) of Administrative Law Judge Theresa C. Timlin, issued with respect to the overpayment of benefits in a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2012) (the Act).²

The administrative law judge found that an overpayment in the amount of \$20,962.80 occurred because claimant received interim benefits following an initial award by the district director, but was subsequently found not to be entitled to benefits.³ See Decision and Order at 1-2; Director's Exhibit 1. Based on the concession of the Director, Office of Workers' Compensation Programs (the Director), the administrative law judge found that claimant was without fault in the creation of the overpayment. The administrative law judge determined that claimant failed to establish that recovery of the overpayment would defeat the purpose of the Act or be against equity and good

¹ Claimant is the widow of the miner, Daniel C. Fite, who died on May 23, 2003. See Director's Exhibit 1.

² At claimant's request, a hearing was held on June 18, 2014 before Administrative Law Judge Theresa C. Timlin (the administrative law judge). Claimant appeared without the assistance of counsel, and agreed to proceed unrepresented. Hearing Tr. at 4. Because claimant did not bring any financial documentation that would establish her income and expenses, however, the hearing was continued and the administrative law judge afforded claimant the opportunity to submit documentation, post-hearing. *Id.* at 5-6. The parties agreed that they would attempt to reach a settlement, and if they were unable to do so, claimant's documentation would be sent to the administrative law judge who would make a decision on the record. *Id.* The parties did not reach a settlement, and the administrative law judge issued her decision on the record, as agreed. Decision and Order at 2.

³ Claimant filed her survivor's claim on July 3, 2003. Director's Exhibit 1. Following an initial finding of entitlement by the district director, in a Decision and Order issued on June 11, 2007, Administrative Law Judge Stephen L. Purcell denied benefits. The Board affirmed the denial of benefits on June 30, 2008. *C.L.F. [Fite] v. U.S. Steel Corp.*, BRB No. 07-0843 BLA (June 30, 2008) (unpub.), *recon. denied*, (Feb. 3, 2009) (Order) (unpub.); Director's Exhibit 1. Claimant filed a timely request for modification and the case was assigned to Administrative Law Judge Thomas M. Burke. In a Decision and Order issued on April 14, 2011, Judge Burke found that claimant failed to establish a basis for modification of the prior denial, pursuant to 20 C.F.R. §725.310. On May 17, 2012, the Board affirmed Judge Burke's denial of benefits. *Fite v. U.S. Steel Corp.*, BRB No. 11-0553 BLA (May 17, 2012) (unpub.); Director's Exhibit 1.

conscience, however, based on the financial information provided by claimant. Thus, the administrative law judge denied claimant's request for waiver of recovery of the overpayment and ordered claimant to reimburse the Black Lung Disability Trust Fund \$20,962.80.

On appeal, claimant generally challenges the administrative law judge's denial of waiver of recovery of the overpayment. The Director responds, requesting the Board to affirm the administrative law judge's findings that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.

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 Co.*, 12 BLR 1-176, 1-177 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law.⁴ 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).

Where a claimant is without fault in the creation of an overpayment, she may obtain waiver of recovery by demonstrating that it would either defeat the purpose of the Act or would be against equity and good conscience. 20 C.F.R. §725.542; *see Jarvis v. Carbon Fuel Company*, 23 F.3d 401 (Table), 1994 WL 179473 (4th Cir. Feb. 25, 1994) (unpub); *Ashe v. Director, OWCP*, 16 BLR 1-109, 1-111 (1992). Recovery defeats the purpose of the Act if it deprives claimant of income required for ordinary and necessary living expenses.⁵ *See* 20 C.F.R. §725.543, incorporating 20 C.F.R. §§404.506-404.512;

⁴ Because the miner's last coal mine employment was in West 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); *see also Fite v. U.S. Steel Corp.*, BRB No. 11-0553 BLA (May 17, 2012) (unpub.), slip op. at 2 n.3; Director's Exhibit 1.

⁵ Under the Social Security Administration regulations used to determine whether claimant is entitled to a waiver, *see* 20 C.F.R. §725.543, incorporating 20 C.F.R. §§404.506-404.512, "ordinary and necessary expenses" are defined to include:

- (1) Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (e.g., life, accident, and health insurance including premiums for supplementary medical insurance benefits under title XVIII), taxes, installment payments, etc.;

Keiffer v. Director, OWCP, 18 BLR 1-35, 1-39 (1993). Recovery is against equity and good conscience if claimant changed her position for the worse or relinquished a valuable right in reliance upon receipt of the overpaid benefits. 20 C.F.R. §404.509(a)(1); *Keiffer*, 18 BLR at 1-39.

Here, the administrative law judge noted that there was no dispute by the parties regarding the amount of the overpayment. Decision and Order at 6 n.5. She further found, based on the Director's concession, that claimant was without fault in the creation of the overpayment. *Id.* at 3 n.2. In determining that claimant is not entitled to waiver of recovery of the overpayment, the administrative law judge considered the relevant evidence regarding claimant's monthly income and estimated monthly expenses, as demonstrated in the 2014 receipts provided by claimant after her formal hearing.⁶ Decision and Order at 2; Claimant's Exhibit 1. The administrative law judge found that claimant had a monthly income of \$2,431.00, consisting of \$1,777.00 from the Social Security Administration and \$654.00 from a United Mine Workers' Association pension. Decision and Order at 4; Claimant's Exhibit 1. In addition, the administrative law judge found that claimant had approximately \$4,000.00 in cash assets, including a bank account in the amount of \$3,978.00, evidenced by an August 2014 bank statement, and \$50.00 cash on hand. *Id.* "[G]iving Claimant every favorable legal and factual inference," the administrative law judge determined that claimant has maximum monthly expenses of \$2,045.00.⁷ Decision and Order at 4-6; Claimant's Exhibit 1. Thus, the administrative

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- (2) Medical, hospitalization, and other similar expenses;
 - (3) Expenses for the support of others for whom the individual is legally responsible; and
 - (4) Other miscellaneous expenses which may reasonably be considered as part of the individual's standard of living.

20 C.F.R. §404.508(a)(1)-(4).

⁶ Claimant submitted a completed overpayment questionnaire, a recent bank statement, copies of her insurance bills, vehicle tax and loan statement, medical bills, utility bills, and receipts for groceries. Decision and Order at 4-6; Claimant's Exhibit 1.

⁷ Claimant noted that she remarried in November 2012. However, she stated that she and her current husband separate their income and expenses, with each spouse responsible for payment of their own expenses. Claimant's Exhibit 1.

law judge found that claimant had approximately \$400.00 in excess monthly income and approximately \$4,000.00 in financial assets. *Id.* Because recovery of the overpayment would not deprive claimant of funds needed to meet her ordinary and necessary living expenses, the administrative law judge concluded that it would not defeat the purpose of the Act. *Id.*

Finding further that claimant “makes no argument that she changed her financial position for the worse or relinquished a valuable right” in reliance upon the overpayment, the administrative law judge concluded that recovery of the overpayment would not be against equity or good conscience. Decision and Order at 6. She therefore denied claimant’s request for waiver.

We affirm the administrative law judge’s conclusion that claimant is not entitled to waiver of the overpayment as supported by substantial evidence. The administrative law judge permissibly found that overpayment “would not deprive [c]laimant of funds needed to meet her ordinary and necessary living expenses” in light of claimant’s monthly surplus of approximately \$400.00 in income. Decision and Order at 6; *see* 20 C.F.R. §§404.508, 725.542, 725.543; *Benedict v. Director, OWCP*, 29 F.3d 1140, 1144, 18 BLR 2-309, 2-310-11 (7th Cir. 1994); *Napier v. Director, OWCP*, 999 F.2d 1032, 1036, 17 BLR 2-186, 2-192-93 (6th Cir. 1993).

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, as claimant did not provide any evidence or argument to establish that she changed her position for the worse or that she relinquished a valuable right as a result of her receipt of interim benefits payments. 20 C.F.R. §§404.590(b), 725.542, 725.543; *see Jarvis*, 23 F.3d at 401, 1994 WL at 179473; *Keiffer*, 18 BLR at 1-39. Therefore, based on the administrative law judge’s reasonable findings, we affirm her determination that claimant failed to prove that she is entitled to a waiver of recovery of the overpayment pursuant to 20 C.F.R. §725.542.⁸

⁸ On appeal claimant asserts that she does not have the money to repay the overpayment. We note that once the district director issues an order setting forth the repayment schedule, claimant may request an adjustment in her monthly payments, based on changed financial circumstances. *See* 20 C.F.R. §725.544.

Accordingly, the administrative law judge's Decision and Order Denying Request for Waiver is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge