

BRB No. 00-1174 BLA

MARGIE GIVENS)
(Widow of WILLIAM R. GIVENS))
)
 Claimant-Respondent)
)
 v.)
)
 PEABODY COAL COMPANY)
)
 and)
)
 OLD REPUBLIC INSURANCE)
 COMPANY, INCORPORATED)
)
 Employer/Carrier-) DATE ISSUED:
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT)
 OF LABOR)
)
 Petitioner) DECISION and ORDER

Appeal of the Decision and Order of Dismissal and the denial of the Director's Motion for Reconsideration of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

W. William Prochot (Greenberg Traurig LLP), Washington, D.C., for employer and carrier.

Timothy S. Williams (Howard M. Radzely, 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, United States Department of Labor.

Before: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.
DOLDER, Administrative Appeals Judge:

The Director, Office of Workers' Compensation Programs (the Director), appeals the June 29, 2000 Decision and Order of Dismissal (99-BLA-0107) and the August 15, 2000 denial of the Director's Motion for Reconsideration of Administrative Law Judge Rudolf L. Jansen 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). This case involves an overpayment of benefits made by employer/carrier (employer) to the deceased miner and the attempt of employer to recoup the overpayment made to the miner during his lifetime, from benefits awarded to claimant, the miner's widow. Pursuant to the decision of the United States Court of Appeals for the Sixth Circuit in *Youghioghney & Ohio Coal Co. v. Vahalik*, 970 F.2d 161, 16 BLR 2-94 (6th Cir. 1992), the administrative law judge determined that the

¹The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

²The United States Court of Appeals for the Sixth Circuit held in *Youghioghney & Ohio Coal Co. v. Vahalik*, 970 F.2d 161, 16 BLR 2-94 (6th Cir. 1992) that neither the administrative law judge nor the Benefits Review Board had subject matter jurisdiction over the claim of the Director, Office of Workers' Compensation Programs (the Director), for additional interest on interim benefits paid out of the Black Lung Disability Trust Fund (the Trust Fund), and the Secretary of Labor was required to file an action in federal

instant case did not relate to a claims determination but rather was a collection matter, and thus, the Director, Office of Workers' Compensation Programs (the Director), must pursue the matter in federal district court. The administrative law judge determined that employer's attempt to recoup the overpayment was in contravention of the regulations set forth at 20 C.F.R. §§725.515, 725.532 and 725.540(d); that there was no authority under the regulations which would allow a responsible operator to recoup an overpayment on a miner's claim by withholding payment on a survivor's claim. The administrative law judge, however, held that the Director must turn to federal district court to pursue the remedies outlined by 20 C.F.R. Part 725, Subpart H (2000). Specifically, the administrative law judge determined that under 20 C.F.R. §725.603, a lien arose in favor of the United States when employer failed, after demand, to pay the amount previously paid out of the Black Lung Disability Trust Fund (the Trust Fund) for claimant's survivor's benefits, and further determined that under 20 C.F.R. §725.604, the Director must seek enforcement of the lien in federal district court. Citing the Act, *see* 30 U.S.C. §934(b)(1), and *Vahalik*, the administrative law judge concluded that the instant case did not involve a claims determination as claimant's right to survivor's benefits was automatic in this 20 C.F.R. Part 727 case and was a collection matter. As such, based on the Sixth Circuit's decision in *Vahalik*, the administrative law judge concluded that the Office of Administrative Law Judges did not have subject matter jurisdiction over the case and, therefore, dismissed the case. Subsequently, the administrative law judge summarily denied the Director's Motion for Reconsideration.

The Director appeals from the administrative law judge's Decision and Order of Dismissal and from his denial of the Director's Motion for Reconsideration. The Director contends that the administrative law judge has subject matter jurisdiction to hear and decide this case, and urges the Board to vacate the administrative law judge's Decision and Order of Dismissal and to remand the case to the administrative law judge. Employer responds, and characterizes the case as a collection action. Employer argues that the administrative law judge properly decided, pursuant to the Sixth Circuit's decision in *Vahalik*, that he was without jurisdiction in this matter. Employer thus urges the Board to affirm the administrative law judge's decision dismissing the case. The Director has filed a reply brief, reiterating his position. Employer has filed a surreply to the Director's reply brief.

The Board's scope of review is defined by statute. If the administrative law judge's

district court seeking enforcement of the United States' lien and collection on liability.

³20 C.F.R. Part 725, Subpart H (2000) is now 20 C.F.R. Part 725, Subpart I.

⁴Employer moves for leave to submit its surreply. No objection to employer's motion has been received. We grant employer's motion and accept employer's surreply as part of the record. 20 C.F.R. §§802.215, 802.219.

findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

A brief review of the procedural history and the record as set out in the administrative law judge’s Decision and Order is necessary to the adjudication of this appeal. It is undisputed that the overpayment was created by the deceased miner’s receipt of state workers’ compensation benefits concurrent with his receipt of benefits under the Act. Employer has submitted evidence purporting to show that the miner and claimant, over a period of seven years during which the miner was collecting benefits under the Act from employer, misrepresented to employer the status of the miner’s state workers’ compensation claim. See Employer’s Exhibit 1; Director’s Exhibit 27 (Deposition of Claimant). Subsequent to the miner’s death in 1989, claimant filed a survivor’s claim based on derivative entitlement. Director’s Exhibits 1, 3. Claimant also received an award of state benefits. Director’s Exhibit 9. The district director awarded benefits to claimant under the Act based on her derivative entitlement, but determined that her monthly benefits payments were entirely offset by her receipt of state benefits. Director’s Exhibit 4.

When employer became aware that the miner had received state benefits concurrent with his receipt of benefits under the Act, employer sought recovery of the resulting overpayment. Employer sought the advice of the district director as to how to proceed. Director’s Exhibit 24 at 2. The district director informed employer that it should file a claim against the miner’s estate. *Id.* at 1. The record shows that in 1993 employer and claimant entered into a “Stipulation Agreed Order” in settlement of her state survivor’s claim which purports to waive her right to survivor’s benefits under the Act. This document indicates, in pertinent part:

Mr. Givens was awarded federal black lung benefits and a credit was to be taken on the federal black lung benefits for benefits paid under the state. There was an overpayment of over \$50,000.00 and the Peabody Coal Company is taking credit on the federal payments.

Director’s Exhibit 7.

When it came to the district director’s attention that claimant’s state award had

⁵In its response brief, employer states that there was not enough money in the miner’s estate (\$5,500) to cover the overpayment - \$58,278.68 as calculated by employer. Employer’s Brief at 3; *see* Director’s Exhibit 27 at 8.

expired, the district director began modification proceedings under 20 C.F.R. §725.310 (2000) so that a new award could be issued to claimant which would reflect the fact that she no longer was receiving state benefits and was thus entitled to the payment of benefits under the Act. The district director issued, in 1998, an amended award of benefits, instructing employer to pay claimant all survivor's benefits due her under the Act. Director's Exhibit 10. Employer objected to the order, arguing that it should be able to recoup from claimant's award the overpayment of benefits it made to the miner. Employer thus refused to make any payment to claimant pursuant to the district director's amended award. Director's Exhibits 14, 17, 19, 22. The Trust Fund began paying benefits to claimant, and the district director forwarded the case to the Office of Administrative Law Judges for a hearing. Director's Exhibits 23, 25.

At the October 26, 1999 hearing, the administrative law judge indicated:

There was a conference call in this case approximately a week ago, in which the parties agreed to submit the case based upon the existing record and to develop some evidence post-hearing.

Hearing Transcript at 4-5. The administrative law judge concluded the hearing after admitting evidence into the record and setting the schedule for the submission of post-hearing evidence and closing briefs. Subsequent to the hearing, claimant was deposed and the Director submitted the resulting transcript to the administrative law judge for inclusion into the record. Director's Exhibit 27.

The administrative law judge found merit in employer's arguments that claimant's entitlement was not in dispute as it was established based on her derivative entitlement to benefits, that employer's liability for the payment of benefits was not in dispute, and that although the facts in *Vahalik* involved the repayment of interest on money owed to the Trust Fund, the court's holding in *Vahalik* was not limited to cases involving interest. Specifically, the administrative law judge discussed the court's holding that:

Jurisdiction over the reimbursement of *principal and interest* upon interim payments by the fund is thus clearly vested in the district courts.

Vahalik, 970 F.2d 163, 16 BLR 2-97 (emphasis added).

The administrative law judge next reviewed employer's defenses for its failure to make any payment pursuant to the district director's amended award indicating that the "full Federal rate is payable..." Director's Exhibit 10: specifically, that employer is entitled to recover the overpayment of benefits made to the miner by withholding payment on the survivor's claim and that it executed a contract with claimant, the 1993 Stipulation Agreed

Order, covering its taking of a “credit on the federal benefits” in settlement of claimant’s state claim. The administrative law judge determined that employer’s action was in contravention of the regulations set forth at 20 C.F.R. §§725.515, 725.532 and 725.540(d); that there was no authority under the regulations which would allow a responsible operator to recoup an overpayment on a miner’s claim by withholding payment on the survivor’s claim. The administrative law judge held:

Rather, as the regulations direct, the responsible operator must pursue repayment from the estate of the miner. Peabody Coal Company has impermissibly refused to pay benefits on Mrs. Givens’ claim without authorization of the [district director], administrative law judge, [B]oard or court in clear violation of the regulatory directives.

Decision and Order of Dismissal at 9.

While finding that the Director correctly argued that employer had illegally withheld payment of black lung benefits to claimant, the administrative law judge added:

However, the Director requests that Employer be ordered to commence monthly benefits, reimburse the trust fund with interest and penalties, pay Claimant a twenty percent penalty for the total of her unpaid black lung benefits, and be required to pay attorney’s fees, costs, and expenses. (Director’s Brief at 1-2). None of these requests were raised as issues in the case at the time of the hearing and they cannot be interjected at this late date in the proceeding.[] The Director must turn to the U.S. District Court to pursue the remedies outlined by subpart H. Under 20 C.F.R. §725.603, a lien arose in favor of the United States when Employer failed to pay, after demand, the amount paid out of the Trust Fund for Mrs. Givens’ survivor’s benefits. Under 20 C.F.R. §725.604 of subpart H, the [district director] must seek enforcement of the lien in the U.S. District Court.

I conclude that no determinations regarding eligibility for benefits or the designation of a responsible operator remain in this case. Margie Givens is clearly eligible to receive benefits under the Act and Peabody Coal Company is clearly the responsible operator. Accordingly, I find that this claim is solely

⁶Apparently the administrative law judge was referring to the list of contested issues contained at Director’s Exhibit 25, which did not include: reimbursement of the Trust Fund, payment of a penalty to claimant and payment of attorney’s fees, costs and expenses.

a collection matter and that the Office of Administrative Law Judges does not have subject matter jurisdiction. 30 U.S.C. §934(b)(1); *Vahalik, supra*.

Decision and Order of Dismissal at 9. Having ruled that the claim was purely a collection matter and ruled that the Director would have to seek the relief set forth in 20 C.F.R. §725.604, the administrative law judge dismissed the case. Subsequently, the administrative law judge summarily denied the Director's Motion for Reconsideration.

The Director contends that an administrative law judge has subject matter jurisdiction to hear and decide this matter, in part owing to the fact that it involves an overpayment of benefits under 20 C.F.R. §725.547 (2000), and thus constitutes a "question in respect of a claim" within the meaning of Section 19(a) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §919(a), as incorporated by Section 422(a) of the Act. The Director also relies on the Board's decisions in *Potisek v. Director, OWCP*, 14 BLR 1-87, 1-89 (1990)(*en banc*) and *Jones v. Director, OWCP*, 14 BLR 1-80 (1990), holding that an

⁷During the recent revision of the regulations, the regulation at 20 C.F.R. §725.604 (2000) underwent only a technical change, namely "deputy commissioner" was changed to "district director." The revised regulation at 20 C.F.R. §725.604, applicable to all claims, provides:

Notwithstanding the provisions of §725.603, if an operator or other employer or its officers or agents fails to comply with an order awarding benefits that has become final, any beneficiary of such award of the district director may apply for enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the U.S. District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such operator or other employer or its officers or agents have failed to comply therewith, the court shall enforce obedience of the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such operator or other employer and its officers or agents compliance with the order.

20 C.F.R. §725.604.

⁸During the recent revision of the regulations, the regulation at 20 C.F.R. §725.547 underwent only technical changes, including having subsections (c) and (d) renumbered as 20 C.F.R. §725.548(a) and (b), respectively. This section prohibits an operator or carrier from making an adjustment of an overpayment without prior application to, and approval by, the Office of Workers' Compensation Programs, which shall exercise full supervisory authority over same.

overpayment is “in respect of a claim” within the meaning of Section 19(a) of the Longshore and Harbor Workers’ Compensation Act as it is directly traceable to the filing of a claim and the recoupment of an overpayment could affect the ongoing receipt of benefits. The Director argues that the administrative law judge has jurisdiction to resolve the present dispute and to order employer to pay claimant the benefits awarded her under the Act. The Director argues that the administrative law judge must specifically resolve the disputed amount of benefits payable to claimant, which employer asserts is zero. Director’s Brief at 6.

The Director also distinguishes *Vahalik* from the instant case because *Vahalik* involved an employer’s refusal to fully reimburse the Trust Fund for interest on an overpayment, the principal of which had been paid by the responsible operator. The Director asserts that *Vahalik* involved neither an overpayment nor a modification of an earlier award. The Director observes:

This is not a case like *Vahalik*. There is no flat refusal on the part of Employer here to pay benefits made payable by a final order. Rather, Employer here accepts its obligation to pay benefits on the widow’s claim, but asserts that the amount of monthly benefits to be paid is zero until it recoups the overpayment made to the miner. In the absence of the overpayment, Employer would admittedly be making benefits payments to the widow. Employer prefers to characterize this dispute as a collection, in which the Director seeks to have the Employer pay back benefits paid out by the Trust Fund. That is not the crux of the matter, however. The Director’s goal herein is to resolve the issue of whether the Employer’s attempt to recoup the miner’s overpayment from the widow is prohibited by the Act. The Trust Fund’s payment of survivor’s benefits here due to Employer’s refusal to do so is a peripheral issue, necessitated by Employer’s illegal attempts to recover an overpayment.

Director’s Brief at 8. The Director submits that to hold that the administrative law judge does not have jurisdiction to “hear and decide this matter” would enable employer to forum shop, avoiding application of the regulatory scheme “in hopes of achieving more favorable results through invocation of equitable principles before a federal district court.” Director’s Brief at 10.

The Director urges the Board to conclude that the Office of Administrative Law Judges and not the federal district court has jurisdiction over this matter, to vacate the administrative law judge’s Decision and Order of Dismissal, and to remand the case to the administrative law judge “to hear and decide the Director’s claim that Employer is prohibited from recouping the miner’s overpayment from the widow.” Director’s Brief at 11.

Employer contends that it has declined to pay the benefits awarded to claimant

because claimant has already received all amounts due her. Employer expands on its equitable defenses in light of claimant's "misrepresentation" and "deception" and that of her late husband, namely that they denied that the miner concurrently received state and federal benefits. Employer characterizes the matter as a collection action, and argues that the administrative law judge correctly decided, pursuant to *Vahalik*, that he was without jurisdiction in this matter. Employer thus urges the Board to affirm the decision below.

We affirm the administrative law judge's finding that jurisdiction in this matter lies not with the Office of Administrative Law Judges, but with the federal district court, as it is rational, supported by substantial evidence and consistent with applicable law. The Director seeks an order requiring employer to begin making payments to claimant pursuant to the district director's amended award and to reimburse the Trust Fund for payments made to claimant when employer refused to pay benefits. We agree with employer's contention that the Director "tries to have it both ways" when he argues that there are issues which can be resolved by the Department of Labor (the Department), but at the same time, he claims that the Department is barred from hearing employer's equitable defenses to its refusal to pay claimant benefits. Based on relevant caselaw, we hold that the administrative law judge does not have subject matter jurisdiction to decide the underlying issue in this case and that the Director's position in this case is contrary to the position he has taken in similar disputes. *See "B" Mining Co. v. Director, OWCP [Brown]*, 45 F.3d 851 (4th Cir. 1995), *aff'g Brown v. Sea "B" Mining Co.*, 17 BLR 1-115 (1993); *Peabody Coal Co. v. Director, OWCP [Ayers]*, 40 F.3d 906, 19 BLR 2-34 (7th Cir. 1994); *B & S Coal Co. v. Director, OWCP*, 35 F.3d 1041, 18 BLR 2-373 (6th Cir. 1994); *BethEnergy Mines, Inc. v. Director, OWCP*, 32 F.3d 843, 18 BLR 2-351 (3d Cir. 1994); *Vahalik, supra*. The Director specifically argued in *Brown*, *Ayers*, *BethEnergy Mines, Inc.* and *Vahalik* that where there had been a final determination of liability, the issue of the collection of interest on monies owed to the Trust Fund was a collateral one which did not concern claims determination, even where the amount the operator were required to pay had not yet been determined. The courts in all of the above-cited cases held that once the underlying liability of a responsible operator is determined, all questions invoking claims determination are resolved and the proper forum for collecting the amount due is the federal district court. We hold that the instant case is not distinguishable from this line of cases inasmuch as employer's liability for benefits in the instant case is established as a matter of law, given claimant's entitlement to derivative benefits. What is at issue in the instant case is the amount due claimant, and employer's equitable defenses against paying benefits to claimant, issues which are properly addressed by the federal district court. *See Brown, supra; Ayers, supra; B & S Coal Co., supra; BethEnergy Mines, Inc., supra; Vahalik, supra.*

Based on the foregoing, and the fact that it is undisputed that claimant is entitled to benefits and employer is liable for those benefits, we hold that the administrative law judge properly found that this case constitutes a collection action and falls under the holding of

Vahalik that “[j]urisdiction over the reimbursement of principal and interest upon interim benefits payments by the fund is thus clearly vested in the district courts.” *Vahalik*, 970 F.2d 163, 16 BLR 2-97; *see also B & S Coal Co., supra*; *see generally Snowden v. Director, OWCP*, 253 F.3d 725, 16 BLR 2-97 (D.C. Cir. 2001). We, therefore, affirm the administrative law judge’s dismissal of the case for lack of subject matter jurisdiction. Further, when employer refused to agree to the Director’s demand that it pay full benefits to claimant and reimburse the Trust Fund for monies paid to claimant, a lien arose in favor of the United States for the amount of employer’s liability, with jurisdiction to enforce the lien vested in the federal district court. 30 U.S.C. §934(b)(1), (b)(2), (b)(4)(A); 20 C.F.R. §§725.603, 725.604. Although the Director has attempted to characterize this case in a variety of ways, it is simply an enforcement action whereby the United States seeks to obtain from an operator, which is liable for the payment of benefits and has refused to pay, repayment to the Trust Fund for the amount of benefits paid plus interest. The statute could not be clearer: when the Secretary of Labor seeks to enforce the lien of the United States against an operator under these circumstances she must go to federal district court. 30 U.S.C. §934 (b)(4)(A).

⁹There is a similar provision in the Longshore and Harbor Workers’ Compensation Act, 33 U.S.C. §901 *et seq.*, when an employer has defaulted on compensation payment and claimant has obtained from the district director a supplementary order declaring the amount in default, the only review is in an enforcement proceeding in federal district court. 33 U.S.C. §918(a); *Snowden v. Director, OWCP*, 253 F.3d 725, 16 BLR 2-97 (D.C. Cir. 2001).

Accordingly, the administrative law judge's Decision and Order of Dismissal and denial of the Director's Motion for Reconsideration are affirmed.

SO ORDERED.

NANCY S. DOLDER
Administrative Appeals Judge

I concur:

REGINA C. McGRANERY
Administrative Appeals Judge

SMITH, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority opinion. I agree with the position of the Director, Office of Workers' Compensation Programs (the Director), that the instant case is not principally a collection matter but involves an issue invoking claims determination, namely an overpayment of benefits under 20 C.F.R. §725.547 (2000), and thus constitutes a "question in respect of a claim" within the meaning of Section 19(a) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §919(a), as incorporated by Section 422(a) of the Act. *See Potisek v. Director, OWCP*, 14 BLR 1-87, 1-89 (1990)(*en banc*); *Jones v. Director, OWCP*, 14 BLR 1-80 (1990). I am persuaded by the Director's argument that the decision of the United States Court of Appeals for the Sixth Circuit in *Youghioghny & Ohio Coal Co. v. Vahalik*, 970 F.2d 161, 16 BLR 2-94 (6th Cir. 1992) is distinguishable from the instant case as it involved neither an overpayment nor a modification of an earlier award of benefits. Critically, the Director notes:

This is not a case like *Vahalik*. There is no flat refusal on the part of Employer here to pay benefits made payable by a final order. Rather, Employer here accepts its obligation to pay benefits on the widow's claim, but asserts that the amount of monthly benefits to be paid is zero until it recoups the overpayment made to the miner. In the absence of the overpayment, Employer would admittedly be making benefits payments to the widow. Employer prefers to characterize this dispute as a collection, in which the Director seeks to have the Employer pay back benefits paid out by the Trust Fund. That is not the crux of

the matter, however. The Director's goal herein is to resolve the issue of whether the Employer's attempt to recoup the miner's overpayment from the widow is prohibited by the Act. The Trust Fund's payment of survivor's benefits here due to Employer's refusal to do so is a peripheral issue, necessitated by Employer's illegal attempts to recover an overpayment.

Director's Brief at 8. Based on the Director's position, I would reverse the administrative law judge's finding that he lacked subject matter jurisdiction to decide this matter and I would vacate the administrative law judge's decision dismissing the claim. I would remand the case to the administrative law judge with instructions to address the Director's request for an order requiring employer to commence payment of full benefits to claimant pursuant to the district director's amended award, and to reimburse the Black Lung Disability Trust Fund for monies paid to claimant.

ROY P. SMITH
Administrative Appeals Judge