

BRB No. 92-1027 BLA

JAMES H. PHELPS)
)
 Claimant-Petitioner)
)
v.)
) DATE ISSUED: _____)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

James H. Phelps, Morgantown, Kentucky, *pro se*.

Before: STAGE, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (90-BLO-0164) of Administrative Law Judge Richard E. Huddleston denying waiver of recovery of overpayment 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). Claimant was awarded benefits in a Decision and Order issued by Administrative Law Judge Nicodemo DeGregorio on November 9, 1987. Claimant's benefits were augmented by reason of his dependent wife, Inez Phelps. Claimant and his wife were divorced on June 1, 1988 and his wife died on September 9, 1989. On January 8, 1990, the Award of Benefits was amended as a result of claimant's divorce. On January 17, 1990, claimant was notified of the existence of an overpayment in the amount of \$2,054.80, and the finding that he was at fault in the creation of the overpayment by not timely reporting his divorce to the Department of Labor. The finding of fault and overpayment were affirmed after reconsideration and claimant requested a formal hearing on the issue. In his Decision and Order, the administrative law judge determined that claimant was at fault in not notifying the

Federal Black Lung Benefits Program of his divorce. The administrative law judge further noted that the fact that claimant bought a \$1,200 tractor in March 1991, while this overpayment claim was pending, negates any determination that requiring repayment is against equity and good conscience, or defeats the purpose of the Act. Accordingly, waiver was denied. Claimant now appeals this

determination. The Director, Office of Workers' Compensation Programs (the Director), has not responded to this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

In making his finding that claimant was at fault in causing the overpayment pursuant to 20 C.F.R. §410.561d, the administrative law judge noted that claimant was notified by letter dated January 21, 1988, that it was his responsibility to notify the Department of Labor of any changes which might affect the amount of his benefits. See Decision and Order at 3. A list of such changes, which included divorce, was attached to the letter. See Director's Exhibit 6. The administrative law judge also permissibly considered claimant's educational background and intelligence and determined that claimant was capable of reading and understanding the notice that was sent to him five months before his divorce was final. See Decision and Order at 3; see generally *Jones v. Director, OWCP*, 14 BLR 1-80 (1990). The administrative law judge also noted that claimant asked his attorney whether the divorce would affect his benefits, and after determining that the divorce would not impact upon his state benefits, claimant's attorney was provided only with a return address for the Kentucky Special Fund. Claimant did not give his attorney an address for the Federal Black Lung Program. See Decision and Order at 3. Thus, the administrative law judge's finding that claimant was at fault in causing his overpayment is affirmed as it is supported by substantial evidence and is within the administrative law judge's discretion as trier-of-fact in assessing the credibility of the witnesses. See 20 C.F.R. §§725.542, 725.543, 410.561 *et seq.*

Accordingly, the administrative law judge's Decision and Order denying waiver of recovery of the overpayment is affirmed.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge