



BRB No. 20-0248 BLO

RANDY M. STILTNER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: 04/28/2021
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying in Part and Granting in Part Waiver of Recovery of Overpayment of Benefits of Larry A. Temin, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Kathleen H. Kim (Elena S. Goldstein, Deputy Solicitor of Labor; Barry H. Joyner, 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: BOGGS, Chief Administrative Appeals Judge, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge Larry A. Temin's Decision and Order Denying in Part and Granting in Part Waiver of Recovery of Overpayment of Benefits (2018-BLO-00021) issued with respect to the overpayment of benefits in a miner's claim

filed pursuant to the Black Lung Benefits Act, as amended U.S.C. §§901-944 (2018) (Act). The relevant procedural history is as follows.

Claimant filed this claim on October 30, 2013. Director's Exhibit 1. After the district director issued a Proposed Decision and Order awarding benefits, Claimant's employer requested a hearing before the Office of Administrative Law Judges. Director's Exhibits 2, 4. In the Proposed Decision and Order, the district director identified two dependents for purposes of augmentation of benefits: Claimant's wife and his stepson, who was over the age of eighteen and a full-time student. Director's Exhibit 2. By correspondence dated June 19, 2014, the district director advised Claimant he would be receiving interim benefits from the Black Lung Disability Trust Fund effective June 2014, with the first payment to be issued in July 2014. Director's Exhibit 4. The district director also advised Claimant he was responsible for reporting certain events that could affect the amount of his benefits, including the receipt of state workers' compensation benefits for total or partial disability due to pneumoconiosis during the same period as his receiving federal black lung benefits or if his child stopped attending school. *Id.* The district director informed him that failure to promptly report such events could result in an overpayment. *Id.*

On December 2, 2014, approximately five months after Claimant began receiving interim benefits payments, the district director received an Order Approving Settlement Agreement for Claimant's state workers' compensation benefits due to pneumoconiosis dated October 20, 2014.¹ Director's Exhibit 6. Later, on January 29, 2015, Claimant completed a questionnaire in which he indicated that as of June 2014, his stepson was no longer attending school. Director's Exhibit 5. Thereafter, the district director informed Claimant that the amount of his future interim benefit payments would be adjusted given this new information and his delay in reporting those two events resulted in an overpayment of benefits in the amount of \$2,267.50. Director's Exhibits 7-8. The district director found Claimant was at fault in creating the overpayment and provided him a repayment plan of \$500.00 per month at an interest rate of one percent per year. Director's Exhibits 8, 12.

Subsequently, Administrative Law Judge Dana Rosen issued a Decision and Order Denying Benefits on October 6, 2015. Director's Exhibit 10. Claimant did not appeal the

¹ Claimant received a net lump sum settlement payment of \$20,200.00 in lieu of monthly benefits of \$84.16 per month for 240 months. Director's Exhibit 6. These benefits began retroactively as of June 14, 2012. *Id.* Thus, these state benefits for total disability due to pneumoconiosis were concurrent with Claimant's federal black lung interim benefits, which began in June 2014. Director's Exhibits 4, 7-8. Claimant does not challenge the amount of the overpayment.

decision. The denial of benefits resulted in an additional overpayment, resulting in a total overpayment of \$16,694.90, including the previously calculated \$2,267.50. Director's Exhibit 10; Hearing Transcript at 5-6.

Claimant sought waiver of recovery of the overpayment, which the district director denied.² Director's Exhibits 11-12. He requested a hearing, which was held before Administrative Law Judge Larry A. Temin (the administrative law judge). Director's Exhibits 9, 13; Hearing Transcript.

The administrative law judge found Claimant was at fault in creating the \$2,267.50 overpayment due to his failure to timely inform the Department of Labor (DOL) that he received state workers' compensation benefits due to pneumoconiosis and that his stepson was no longer a full-time student. *See* 20 C.F.R. §725.542(a). Accordingly, the administrative law judge denied waiver of recovery of the \$2,267.50 overpayment. The administrative law judge noted the Director, Office of Workers' Compensation Programs (the Director), conceded Claimant was without fault as to the remaining portion of the overpayment resulting from the denial of benefits (\$14,427.40). Decision and Order at 3 n. 8, *citing* Director's Post-Hearing Brief at 4. The administrative law judge granted waiver of recovery of the \$14,427.40 overpayment, finding recovery would defeat the purpose of the Act. 20 C.F.R §725.542(b)(1); Decision and Order at 10, 12.

On appeal, Claimant argues the administrative law judge erred in finding he was at fault in creating the \$2,267.50 overpayment and argues recovery would defeat the purpose of the Act based on the administrative law judge's finding regarding the remainder of the overpayment. The Director responds, urging affirmance of the administrative law judge's finding that Claimant was at fault in creating the \$2,267.50 overpayment and thus his denial of waiver of recovery of that portion of the overpayment.³

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial

² The record does not include correspondence regarding the district director's denying waiver of recovery of the overpayment resulting from Administrative Law Judge Dana Rosen's denial of benefits.

³ The Director notes waiver of recovery of the \$14,427.40 overpayment resulting from the denial of benefits is not at issue in this appeal. Director's Brief at 3 n.3. Thus, we affirm the administrative law judge's grant of waiver of recovery of the \$14,427.40 overpayment as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12.

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’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Where a claimant is without fault in the creation of an overpayment of benefits, the claimant may obtain a waiver of recovery of the overpayment by demonstrating recovery would either defeat the purpose of the Act or would be against equity and good conscience. 20 C.F.R. §725.542; *Ashe v. Director, OWCP*, 16 BLR 1-109, 1-111 (1992). The regulations for determining whether a claimant is without fault in the creation of an overpayment of benefits are those promulgated by the Social Security Administration. 20 C.F.R. §§404.504-404.512. Whether an overpaid individual is without fault is determined by applying 20 C.F.R. §404.507:

What constitutes fault . . . on the part of the overpaid individual . . . depends upon whether the facts show that the incorrect payment to the individual . . . resulted from:

- (a) An incorrect statement made by the individual which he knew or should have known to be incorrect; or
- (b) Failure to furnish information which he knew or should have known to be material; or
- (c) With respect to the overpaid individual only, acceptance of a payment which he either knew or could have been expected to know was incorrect.

20 C.F.R. §404.507. In determining fault, the administrative law judge must look to the subjective reasonableness of Claimant’s actions in accepting the overpaid amount given his age, intelligence, education, physical and mental conditions, and other pertinent circumstances. *Jones v. Director, OWCP*, 14 BLR 1-80, 1-84 (1990) (en banc). If Claimant is at fault, waiver is precluded and there is no need to address the remaining issues. *Hampton v. Director, OWCP*, 11 BLR 1-118, 1-119 (1988). It is Claimant’s burden to establish entitlement to waiver. *Bennett v. Director, OWCP*, 18 BLR 1-48, 1-52 (1994).

The benefits application Claimant completed specified several events that may affect the amount of his federal black lung benefits, including the two events that occurred

⁴ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director’s Exhibit 10 at 16; Hearing Transcript at 9.

in this case. Decision and Order at 7, *citing* Director’s Exhibit 1. The application emphasized the importance of promptly reporting these events and Claimant checked the box next to “yes” in response to the question “Do you agree to notify the Department of Labor i[f] any of these events occur?” Decision and Order at 7, *quoting* Director’s Exhibit 1 at 3. The district director then notified Claimant in June 2014 that his interim benefits payments were subject to offset by his concurrent receipt of state workers’ compensation benefits due to pneumoconiosis and he was responsible for promptly informing the DOL if he received such benefits or if his stepson left school. Decision and Order at 8, *citing* Director’s Exhibit 4. Based on this evidence, the administrative law judge found Claimant received sufficient notice that these events could affect the amount of his federal black lung benefits. Decision and Order at 8.

The administrative law judge further considered Claimant’s age and education, finding he “appeared cognizant and aware when he testified” and “showed no signs of decreased mental abilities either from age or educational defects.” Decision and Order at 8. Given Claimant’s receipt of notice of the need to report the relevant events promptly, as well as Claimant’s testimony that he went to the DOL office in Pikeville to attempt to report his stepson’s change in educational status, the administrative law judge found he “knew or should have known” he needed to promptly inform the DOL both when he received his state workers’ compensation benefits and when his stepson stopped attending school. *Id.* The administrative law judge found Claimant’s failure to advise the DOL of these events for several months while continuing to accept benefit payments he knew or should have known were incorrect led him to find Claimant “not without fault” in creating the \$2,267.50 overpayment. *Id.* Thus, he denied waiver of recovery of the overpayment.

Claimant first argues the administrative law judge erred in considering his signed benefits application as notice of the need to report the relevant events, as it is based on the administrative law judge’s assumption that Claimant can read well and interpret such legal forms. Claimant’s Brief at 5. Relatedly, Claimant points to alleged confusion between himself and his wife regarding finances, including whether they continued to receive monthly payments for Claimant’s state workers’ compensation benefits due to pneumoconiosis, suggesting the administrative law judge did not sufficiently consider whether Claimant comprehended the need to promptly report the relevant events to the DOL. *Id.* Claimant’s argument lacks merit.

The administrative law judge considered Claimant’s education, age, and testimony, and permissibly found nothing in the record demonstrating he could not understand the DOL’s correspondence addressing these issues. Decision and Order at 8; *Jones*, 14 BLR at 1-84. Further, even if Claimant demonstrated confusion about finances and continued to receive monthly state workers’ compensation benefits, he does not explain how such confusion affected his understanding regarding his need to promptly report the relevant

events to the DOL. *See Bennett*, 18 BLR at 1-52 (Claimant must demonstrate he failed to inform the DOL of relevant events as a result of his limitations). Thus, the administrative law judge permissibly found the evidence did not support a finding that Claimant did not understand the need to promptly report these events.

Claimant further argues he either “misunderstood his then attorney, or accepted unsound advice” regarding his need to report his state workers’ compensation benefits due to pneumoconiosis to the DOL. Claimant’s Brief at 6. Claimant does not allege a lack of understanding regarding the need to report his stepson’s change in educational status or his receipt of state workers’ compensation benefits, but instead argues he was unaware of the need to report his state workers’ compensation benefits to the DOL in addition to Social Security. *Id.* As the administrative law judge found, however, Claimant testified he attempted to report that his stepson stopped attending school to the DOL to get him removed from his federal black lung benefits, which the administrative law judge found “illustrates his awareness of the situation and events that could impact his benefits.”⁵ Decision and Order at 8; Hearing Transcript at 26-29.

Claimant does not explain how he was aware of the need to report his stepson stopped attending school to the DOL, yet was unaware of the need to also report his state workers’ compensation benefits due to pneumoconiosis to the DOL, particularly when both events were addressed in the district director’s correspondence to him. The administrative law judge was not required to credit Claimant’s testimony regarding his then-attorney’s advice merely because it was uncontradicted.⁶ *Hampton*, 11 BLR at 1-119. Thus, Claimant’s argument is unpersuasive.

Substantial evidence supports the administrative law judge’s finding that Claimant was at fault in creating the \$2,267.50 overpayment. Thus, we affirm his determination. 20 C.F.R. §§725.542, 725.543; Decision and Order at 8. Because Claimant was found to be at fault in creating the \$2,267.50 overpayment, his remaining arguments are moot. *See* 20 C.F.R. §725.542; *Hampton*, 11 BLR at 1-119.

⁵ The administrative law judge noted Claimant’s testimony that he went to the Pikeville district director’s office to get his stepson removed from his benefits “as soon as [his son] quit being a student” was not supported by any documentation. Decision and Order at 5.

⁶ We note while Claimant was represented by a different attorney in his state workers’ compensation claim, he was represented by his current counsel throughout his federal claim at the same time that the relevant events occurred. Director’s Exhibits 2, 4.

Accordingly, the administrative law judge's Decision and Order Denying in Part and Granting in Part Waiver of Recovery of Overpayment of Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge