

BRB No. 03-0547 BLA
Case No. 02-BTD-0002

GLEND A HAMILTON (o/b/o)	
ART V. STANLEY (Deceased)))	
)	
Claimant-Respondent)	
)	
v.)	
)	
BETTY B COAL COMPANY)	DATE ISSUED: 02/28/2005
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER on
Party-in-Interest)	RECONSIDERATION

Appeal of the Decision and Order of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Tab R. Turano (Greenberg Traurig, LLP), Washington, D.C., for employer.

Helen H. Cox (Howard Radzely, Solicitor of Labor; Donald S. Shire, 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:

Employer has filed a timely Motion for Reconsideration requesting the Board to reconsider its Decision and Order of May 28, 2004, in the captioned case which arises under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). In that decision, the Board affirmed the administrative law

judge's Decision and Order directing employer to reimburse the Black Lung Disability Trust Fund (Trust Fund) for \$127,688.10 in medical expenses paid by the Department of Labor on behalf of the miner. *Hamilton v. Betty B Coal Co. [Stanley]*, BRB No. 03-0547 BLA (May 28, 2004) (unpublished). Employer presently takes issue with the administrative law judge's findings that certain contested charges for medical treatment were not included in the \$127,688.10 that the administrative law judge ordered employer to reimburse the Trust Fund. Employer further argues that the Board erred in finding the evidence sufficient to establish invocation of the presumption at 20 C.F.R. §725.701. Employer also argues, *inter alia*, that the Board erred in affirming the administrative law judge's finding that the evidence was insufficient to establish rebuttal of the presumption. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response to employer's motion for reconsideration.

Employer argues that the Board erred in upholding the administrative law judge's findings that employer was not charged with the costs associated with the miner's emergency room visits on January 18, 1993 and January 25, 1993, and with the miner's hospitalization from December 11, 1991 to December 16, 1991. In his Decision and Order, the administrative law judge stated:

Items that Employer raised for December 11 to 16, 1991 (Cost: \$189.70) and two emergency room ("ER") visits January 18 and January 21, 1993, \$2,470 in reimbursement charges were not attributable to the Employer and were not included in the total presented. *See* DX 52 and Appendix A. Therefore, these were not charged [sic] they are not reimbursable.

Decision and Order at 24; *see also* Decision and Order at 13, 15.

In its Decision and Order, the Board rejected employer's contention that it was improperly charged with costs associated with an emergency room visit on December 11, 1991. However, upon further review, we agree with employer that the total of \$127,688.10 that the administrative law judge ordered employer to reimburse the Trust Fund included \$189.70 in costs associated with the miner's hospitalization from December 11, 1991 through December 16, 1991. *See* Decision and Order, Appendix A, 014-7; Director's Exhibit 51. Moreover, contrary to the administrative law judge's characterization, employer was also charged with the medical costs associated with the miner's emergency room visits on January 18, 1993 (\$1,675.20) and January 21, 1993 (\$795.10). *See* Decision and Order, Appendix A, 007-4, 008-2; Director's Exhibit 51. Because the administrative law judge was unaware that his order that employer reimburse the Department of Labor a total of \$127,688.10 for the miner's reasonable and necessary medical treatment included costs associated with the miner's hospitalization from December 11, 1991 to December 16, 1991 and for emergency room visits on January 18,

1993 and January 21, 1993, we remand the case to the administrative law judge for reconsideration of whether these particular medical costs are reimbursable under 20 C.F.R. §725.701.

After consideration of employer's remaining contentions of error, the administrative law judge's Decision and Order, and our May 28, 2004 Decision and Order, we find no basis to alter our previous affirmance of the administrative law judge's finding that the evidence is sufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §725.701(b). We similarly discern no basis to alter our affirmance of the administrative law judge's finding that employer failed to establish rebuttal of the presumption that the miner's pulmonary disorder was caused, or at least aggravated by, his pneumoconiosis.

Accordingly, we grant employer's Motion for Reconsideration, in part, and modify our Decision and Order of May 28, 2004. The administrative law judge's Decision and Order ordering the repayment of medical expenses is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge