

BRB No. 89-2710 BLA

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

Appeal of the Certification of Transcript and Denial of Relief Requested on Motion for Reconsideration of George A. Fath, Administrative Law Judge, United States Department of Labor.

Richard Zorn (Robert P. Davis, 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, the United States Department of Labor.

Before: STAGE, Chief Administrative Appeals Judge, DOLDER, Administrative Appeals Judge, and LAWRENCE, Administrative Law Judge.\*

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Certification of Transcript and Denial of Relief Requested on Motion for Reconsideration (86-BLA-0569) of Administrative Law Judge George A. Fath

declining to adjudicate the issue of whether waiver of recovery of overpayment of interim

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

benefits was appropriate 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). The administrative law judge found that an overpayment had been made to claimant in the amount of \$28,643.50, but that he did not have subject matter jurisdiction to issue a binding Decision and Order either granting or denying waiver of recovery of overpayment of interim benefits. Accordingly, the administrative law judge did not adjudicate this issue, but rather issued a Certification of Transcript, which summarized the evidence ascertained at the formal hearing and from the record herein. The administrative law judge further denied the relief requested on the Director's Motion for Reconsideration for lack of jurisdiction. On appeal, the Director asserts that the administrative law judge has proper jurisdiction, and asks that the case be remanded to the Office of Administrative Law Judges for a Decision and Order on the issue of whether waiver of recovery of the overpayment is proper. Claimant has not participated in this appeal.<sup>1</sup>

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<sup>1</sup> The Director additionally requests that the Board remand this case to the

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administrative law judge for a full hearing on the merits. A review of the record, however, indicates that the administrative law judge conducted a full hearing on January 5, 1988.

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

Subsequent to the administrative law judge's Certification of Transcript and Denial of Relief Requested on Motion for Reconsideration, the Benefits Review Board decided Jones v. Director, OWCP, 14 BLR 1-80 (1990)(en banc)(Brown, J., concurring), which held that the Office of Administrative Law Judges and the Board have jurisdiction of overpayment issues arising pursuant to 20 C.F.R. §410.560 et seq. The Board further held that the Federal Claims Collection Act's \$20,000 ceiling on agency discretion with respect to the compromise and collection of claims does not affect the jurisdiction of the administrative law judge or the Benefits Review Board to determine whether recovery of overpayment should be waived. Jones, supra; see also Knope v. Director, OWCP, BLR , BRB No. 88-3314 BLA (Dec. 27, 1990). See Section 204 of the Social Security Act, 42 U.S.C. §404, which is made applicable to the Act by 30 U.S.C. §§923(b), 940; 33 U.S.C. §919. Consequently, we vacate the administrative law judge's finding that he does not have subject matter jurisdiction, and we remand this case for the administrative law

judge to determine whether waiver of recovery of overpayment of interim benefits is appropriate pursuant to 20 C.F.R. §410.561a et seq. See Knope, supra; Nelson v. Director, OWCP, 14 BLR 1-159 (1990); Weis v. Director, OWCP, BLR , BRB No. 88-2827 BLA (Nov. 28, 1990); Potisek v. Director, OWCP, 14 BLR 1-87 (1990)(en banc)(Brown, J., dissenting).

Accordingly, the administrative law judge's Certification of Transcript and Denial of Relief Requested on Motion for Reconsideration are vacated, and this case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY J. STAGE, Chief  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

LEONARD N. LAWRENCE  
Administrative Law Judge