

BRB No. 94-2675 BLA

JANICE REDDEN TOLLIVER )  
(Surviving spouse of FRED REDDEN) )

Claimant-Petitioner )

v. )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )

Respondent )

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order of Frederick D. Neusner, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

Jill M. Otte (Thomas S. Williamson, Jr., 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: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (93-BLO-0054) of Administrative Law Judge Frederick D. Neusner denying waiver of recovery of overpayment of benefits made 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). In his Decision and Order, the administrative law judge found that an overpayment of benefits had been made to claimant in the amount of \$28,294.30, and that claimant was without fault in the creation of the overpayment. Decision and Order at 2, 3. The administrative law judge further found, however, that recovery of

the overpayment would not defeat the purpose of Title IV of the Act and would not be against equity and good conscience, and therefore denied claimant a waiver of recovery of the overpayment. Claimant appeals, asserting that the administrative law judge erred in finding that recovery of the overpayment would not defeat the purpose of Title IV of the Act. The Director, Office of Workers' Compensation Programs (the Director) responds, urging affirmance.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. § 921(b)(3), as incorporated by 30 U.S.C. § 932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.<sup>1</sup> Based on the Overpayment Recovery Questionnaire and claimant's testimony, the administrative law judge found that claimant's monthly income exceeded her monthly expenses and that claimant held \$17,857.45 in liquid assets. Decision and Order at 5; Director's Exhibits 39, 28; Hearing Transcript 22-40. Thus, the administrative law judge concluded that recovery of the overpayment would not deprive claimant of income required for ordinary and necessary living expenses, and that therefore recovery would not defeat the purpose of Title IV of the Act. See 20 C.F.R. §410.561c(b). Claimant contends that the administrative law judge erred, because the bulk of claimant's liquid assets are in a certificate of deposit intended solely to secure the future education of claimant's dependent son, and allowing recovery of the overpayment would deprive claimant of the income needed to pay the "reserved expense" of her son's higher education. Claimant's Brief at 4. We disagree. The Board has held that the regulations pertaining to overpayments do not provide for consideration of prospective expenses. *Keiffer v. Director, OWCP*, 18 BLR 1-35, 39 (1993).

Claimant further contends that the administrative law judge erred by requiring claimant to repay the entire \$28,294.30 at once, which would deprive claimant of the income needed to meet current ordinary and necessary living expenses. Claimant's Brief at 5; Decision and Order at 6. We reject claimant's contention. The purpose of the formal hearing is only to establish the existence of a debt, not how it will be paid, which will be determined once the collection process begins. See 20 C.F.R. §725.544; *Keiffer, supra*. The administrative law judge properly considered the entire financial circumstances of claimant's household, and correctly found that claimant's monthly income exceeds her monthly expenses, and the administrative law judge's finding is supported by substantial evidence. See Decision and Order at

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<sup>1</sup> The administrative law judge's findings that an overpayment of \$28,294.30 exists in this case, that claimant was not at fault in creating the overpayment, and that recovery of the overpayment is not against equity and good conscience are affirmed as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

4, 5; *Ashe v.*

*Director, OWCP*, 16 BLR 1-109 (1992). Thus, we affirm the administrative law judge's finding that recovery of the overpayment would not defeat the purpose of Title IV of the Act.

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

\_\_\_\_\_ NANCY S.  
DOLDER  
Administrative Appeals Judge