

BRB No. 99-1225 BLA

LORETTA GRIFFITH)
(o/b/o RANDALL CAMPBELL))

Claimant-Petitioner)

v.)

ROYALTY SMOKELESS COAL)
COMPANY)

Employer)

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

Respondent)

DATE ISSUED:

DECISION AND ORDER

Appeal of the Decision and Order Denying Claim in Part and Remanding Claim in Part of Pamela Lakes Wood, Administrative Law Judge, and the Decision and Order of John C. Holmes, Administrative Law Judge, United States Department of Labor.

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

Edward Waldman (Henry L. Solano, 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, United States Department of Labor.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Claim in Part and Remanding Claim in Part (97-BLA-0806) of Administrative Law Judge Pamela Lakes Wood and the Decision and Order (99-BLA-0437) of Administrative Law Judge John C. Holmes 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 the original decision regarding claimant's 1996 request for modification, Judge Wood denied claimant's modification request, finding that there was no mistake in a determination of fact in the 1995 Decision and Order of Administrative Law Judge Reno E. Bonfanti denying claimant's first request for modification and request for redistribution of the payment of back benefits. However, Judge Wood remanded the case to the district director for the sole purpose of determining whether claimant had been paid the augmented benefits for January 1, 1993 through September 30, 1993, as directed in the district director's January 1993 Amended Award of Benefits (1993 Amended Award). Following the district director's development of this issue and determination that the benefits had been correctly paid, the case was transferred to the Office of Administrative Law Judges, wherein it was assigned to Judge Holmes. In his June 1999 Decision and Order, Judge Holmes found that the augmented benefits on behalf of Randall due from January 1, 1993 through September 30, 1993 had been paid to claimant, in compliance with the 1993 Amended Award.

¹ Claimant is the former wife of the miner, Loyd E. Campbell, who began receiving federal black lung benefits in July 1992, pursuant to a claim filed in October 1991, and the mother of the miner's son, Randall Campbell. Director's Exhibits 1, 3, 7. The miner was awarded augmented benefits on behalf of his two sons, Loyd Jr. and Randall. Director's Exhibits 3, 7. Only the augmented back benefits awarded on behalf of Randall are herein at issue.

On appeal, claimant contends that she is entitled to the back augmented benefits due to the miner's son Randall for the period from October 1, 1991 through December 31, 1992. Additionally, claimant contends that since the failure to pay these back benefits to claimant was the fault of the Department of Labor, the Black Lung Disability Trust Fund (Trust Fund) should be liable for the redistribution to claimant of the augmented portion of these benefits. In response, the Director, Office of Workers' Compensation Programs (the Director), urges affirmance of Judge Wood's denial of modification. Employer has not participated in this appeal.²

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 applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The procedural history, in pertinent part, is as follows. The miner filed his application for benefits on October 8, 1991, which included a request for augmentation of benefits for his two minor children, Loyd Jr. and Randall. Director's Exhibit 1. The application for benefits, while indicating that the miner was divorced from claimant, failed to state that one of the children, Randall, was in the custody of claimant. *Id.* In June 1992, the district director initially determined that the miner was entitled to benefits and ordered employer to commence payment of benefits. Employer declined to pay benefits and, thus, on July 6, 1992, the district director notified the miner that he would receive interim benefits from the Trust Fund commencing with June 1992. Director's Exhibit 3. Employer requested a formal hearing and the case was transferred to the Office of Administrative Law Judges.

On December 2, 1992, claimant filed a "Request to be Selected as Payee" on behalf of her son, Randall, of whom she had custody. Director's Exhibit 4. On January 8, 1993, the district director determined that claimant was "the person who can best manage the black lung benefits for Randall Campbell." Director's Exhibit 6. Therefore, the district director issued an Amended Award of Benefits, ordering that the portion of the miner's benefits augmented on behalf of Randall be split

² The parties do not challenge Judge Holmes's determination that the augmented benefits due for January 1993 through September 1993 were paid to claimant, as required by the 1993 Amended Award, and, therefore, this finding is affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

from the miner's payments and paid separately to claimant, as the representative payee for Randall. *Id.* In addition, the 1993 Amended Award stated that "until further notice, all future black lung benefits," commencing with January 1993 payment, should be paid according to this procedure. *Id.*

By Decision and Order issued on August 13, 1993, Administrative Law Judge Sheldon R. Lipson awarded benefits to the miner. Director's Exhibit 7. Judge Lipson found the miner entitled to benefits and augmented the benefits for the miner's two dependent children, Loyd Jr. and Randall, with benefits commencing as of October 1, 1991. *Id.* In addition, Judge Lipson directed employer to reimburse the Trust Fund for the interim benefits it had paid. *Id.*

On August 20, 1993, the district director informed employer that, as a result of Judge Lipson's decision, it must reimburse the Trust Fund for benefits paid for the period from June 1, 1992 through September 30, 1993, and commence monthly payment to the miner beginning in October 1993. Director's Exhibit 8. The district director further instructed employer to pay the miner \$575.05 per month, and also pay directly to claimant \$156.85 per month on Randall's behalf. *Id.* Lastly, the district director ordered employer to pay the miner a lump sum amount of \$5,561.20, representing benefits from October 1, 1991 through May 31, 1992. *Id.* However, the district director did not order employer to make a separate payment to claimant for Randall with respect to the past due benefits, but rather, ordered the entire amount to be paid to the miner. *Id.*

On November 3, 1993, claimant retained counsel and requested a copy of the file. Director's Exhibit 11. On December 3, 1993, the district director informed the miner that, in order to determine whether his past due benefits were subject to the order for separate payment to Randall, the district director needed additional information as to whether Randall lived with the miner in October 1991, when the miner filed his application for benefits. Director's Exhibit 12. The record contains no response to this letter. On January 25, 1994, the district director issued an Amended Award of Benefits, informing claimant of an increase in the amount of monthly benefits. Director's Exhibit 13. The district director sent an additional letter to claimant on January 27, 1994, informing claimant that it had been determined that employer had paid all back due benefits as ordered by Judge Lipson and, therefore, all money due had been paid. Director's Exhibit 14. By letter dated July 6, 1994, claimant advised the district director that she had not received any response, other than the January 27, 1994 letter, to her request for modification, and further requested an informal conference on the issue of the payment of back due benefits. Director's Exhibit 17. The district director declined to schedule an informal conference, and instead forwarded the case for a formal

hearing with the Office of Administrative Law Judges. Director's Exhibits 18, 20.

In a Decision and Order issued on September 7, 1995, Judge Bonfanti denied claimant's request for modification of the miner's award of benefits based on his finding that the past benefits accrued prior to the claimant's request to be named as representative payee, that claimant was currently receiving benefits on behalf of Randall, and that this determination was consistent with Judge Lipson's Decision and Order. Judge Bonfanti also noted that employer had already paid the back benefits due to the miner as directed, and that the record failed to reflect that such benefits were not used for Randall's support. Lastly, Judge Bonfanti found that jurisdiction for the recovery of the disputed amount lies with the appropriate state court, not with the Office of Administrative Law Judges. Director's Exhibit 24.

Pursuant to claimant's appeal, the Board affirmed Judge Bonfanti's denial of claimant's request for modification. The Board held that claimant failed to raise an eligibility issue, but rather, was seeking redistribution of moneys already paid out by employer as directed by Judge Lipson, in his 1993 Decision and Order. Moreover, the Board held that there was no provision in the Act for the relief requested by claimant. Lastly, the Board held that claimant failed to allege any error in Judge Bonfanti's finding that the record fails to reflect that the miner did not use the augmented back due benefits for Randall's support. *Griffith v. Royalty Smokeless Coal Co.*, BRB No. 95-2190 BLA (Oct. 31, 1996)(unpub.); Director's Exhibit 35.

Claimant filed a second request for modification on November 18, 1996, stating that the Department of Labor failed to correct the administrative error by Judge Lipson when he ordered all back due benefits paid directly to the miner. Director's Exhibit 36. Accompanying her modification request, claimant included an affidavit regarding the custody and care of Randall since claimant's divorce from the miner in July 1990. *Id.* The district director issued a proposed order on January 3, 1997 denying claimant's request for modification, finding that no reason existed for modification. Director's Exhibit 37. The case was thereafter transferred to the Office of Administrative Law Judges.

Following a formal hearing, during which claimant testified that she had sole custody of Randall following her divorce from the miner in July 1990 and claimant also testified regarding the terms of the support payments paid on behalf of Randall, Judge Wood issued a Decision and Order denying, in part, claimant's request for modification but remanding the case to the district director for further information regarding a portion of the payment of back benefits. In particular,

Judge Wood found that Section 725.514, which allows for the payment of benefits to a representative payee, does not authorize the payment of back due payments, see 20 C.F.R. §725.514. Moreover, Judge Wood found that Section 725.514 provides that the terms and conditions of the certification of a representative payee is in the sole discretion of the district director, who, in this case, stated that all future augmented benefits on behalf of Randall were to be paid to claimant. Therefore, Judge Wood found that claimant was not entitled to receive a separate payment of the augmented portion of the back due benefits. Consequently, Judge Wood found that the record does not support a finding that there was a mistake in a determination of fact in the 1995 Decision and Order of Judge Bonfanti. However, Judge Wood remanded the case to the district director to determine whether claimant was paid the augmented benefits on behalf of Randall for the time period from January 1, 1993 through September 30, 1993, in compliance with the 1993 Amended Award. Director's Exhibit 47.

The district director, following a review of the OWCP payment records, determined that the payments for January 1993 through September 1993 were made to claimant and that none of these checks were returned. Therefore, in a Proposed Decision and Order dated November 10, 1998, the district director found that all benefits due and payable to claimant on behalf of Randall for the period January 1993 through September 1993, were issued to claimant. Director's Exhibit 48. Thereafter, claimant requested a formal hearing on this issue. Director's Exhibits 49, 50. The case was transferred to the Office of Administrative Law Judges, wherein it was assigned to Judge Holmes. In a Decision and Order dated June 18, 1999, Judge Holmes found that the evidence of record establishes that the payments in question were made to claimant and that all benefits owed her have been paid. Thus, Judge Holmes found that the Decision and Order of Judge Wood had been satisfied. The instant appeal was thereafter filed.

After consideration of the administrative law judge's Decision and Order, the issues raised on appeal, and the relevant evidence of record, we conclude that the Decision and Order of Judge Wood is supported by substantial evidence and there is no reversible error contained therein. Contrary to claimant's contention, the administrative law judge properly found that Randall was a dependent of the miner inasmuch as the issue of dependency is a necessary requirement to a finding of entitlement through augmentation. 20 C.F.R. §§725.208-725.211. In order for a miner's benefits to be augmented on behalf of a dependent child, the child need not be living with the miner, but rather, the child is deemed dependent on the miner if the child meets the criteria set forth at Section 725.209. 20 C.F.R. §725.209. Inasmuch as it is unchallenged that Randall meets the Section 725.209 criteria, that is, he was unmarried and under eighteen (18) years of age at the time the

miner filed his application for benefits, see Director's Exhibit 1, we reject claimant's contention that Judge Wood erred in finding that Randall was a dependent of the miner.

Moreover, we affirm Judge Wood's determination that the record does not support a finding of a mistake in a determination of fact in the 1995 Decision and Order of Judge Bonfanti. Contrary to claimant's contention, it was not unreasonable for Judge Wood to determine that there was no mistake in a determination of fact in Judge Bonfanti's decision inasmuch as Judge Bonfanti reasonably interpreted Section 725.514 to find that the back due benefits were properly paid. As Judge Wood stated, Section 725.514(c) provides that the district director (previously known to as the deputy commissioner) shall specify the terms and conditions of the certification of a payee and how the benefits in question are to be paid. 20 C.F.R. §715.514(c); Decision and Order at 6. Herein, the district director in his 1993 Amended Award, in finding that claimant was the person best suited to receive the augmented benefits on behalf of Randall, ordered that "until further notice, all future black lung benefits for Randall Campbell..." Director's Exhibit 6. Therefore, since the 1993 Amended Award specifically refers to future benefits, it was not inherently unreasonable for Judge Wood to reject claimant's contention that because the back due benefits were payable after the date of the 1993 Amended Award, these benefits were subject to the same method of payment. Rather, Judge Wood reasonably found that the strict language of the 1993 Amended Award referenced only future benefits, those benefits accrued and payable after January 1993, the month in which the district director certified claimant as a qualified payee for Randall and, therefore, does not effect the distribution of benefits for time periods prior to the date of certification. Decision and Order at 6-7; 20 C.F.R. §725.514. Based on her interpretation of Section 725.514, Judge Wood reasonably found that there was no mistake in a determination of fact in the 1995 Decision and Order of Judge Bonfanti denying claimant's contention that she was entitled to payment of the augmented back due benefits. Decision and Order at 7. Inasmuch as Judge Wood reasonably considered all of the relevant evidence, we affirm her finding that the record does not support a mistake in a determination of fact in the 1995 Decision and Order of Judge Bonfanti. See generally *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971); *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71(1992).

Finally, we reject claimant's contention that the Trust Fund is liable for payment of the augmented portion of the benefits payable from October 1, 1991 through December 31, 1992, on the basis that it was the failure of the Department

of Labor to properly allocate the benefits payable in this case. Contrary to claimant's contention, there is no provision in the Act or regulations to permit a duplicate payment of benefits or a redistribution of previously paid benefits by employer. Inasmuch as the parties do not challenge the fact that the full amount of the back due benefits, including those amounts attributable to the augmented benefits for the two dependent children, have been paid by employer to the miner as ordered by Judge Lipson in his 1993 Decision and Order, see Director's Exhibits 7-9, the regulations do not provide for a duplicate payment to be made or that the Trust Fund is liable for benefits where an employer has been properly named and is paying benefits in accordance with the order of the district director, administrative law judge, the Board or another court. See 20 C.F.R. §§725.522, 725.530. Consequently, we reject claimant's request that the Trust Fund be held liable for the augmented portion of the benefits payable for October 1991 through December 1992.³

³ As stated in the Board's previous Decision and Order,

The dispute herein involves a debt between two individuals, and does not involve a question of eligibility arising under the Act. 20 C.F.R. §801.102. There is no controversy regarding the miner's entitlement, or the amount of benefits awarded. There is no provision in the Act or the regulations to order the miner to pay claimant the disputed amount as employer has fulfilled its obligation by remitting the amount order by

Administrative Law Judge Lipson. Accordingly, as indicated by Judge Bonfanti, claimant must seek a resolution of this dispute in the appropriate state forum.

Griffith v. Royalty Smokeless Coal Co., BRB 95-2190 BLA, slip op. at 5, n.2 (Oct. 31, 1996)(unpub.).

Accordingly, Judge Wood's Decision and Order Denying Claim in Part and Remanding Claim in Part and Judge Holmes's Decision and Order are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge