

BRB No. 03-0694 BLA-O

RUFFICE C. ESTEP)
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 06/24/2004
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

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

Ruffice C. Estep, Hurley, Virginia, *pro se*.

Michelle S. Gerdano (Howard M. 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 McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appears without the assistance of counsel and appeals the Decision and Order (2000-BLO-00013) of Administrative Law Judge Daniel F. Solomon denying waiver of recovery of an overpayment under 20 C.F.R. §725.542.¹ Claimant filed an application for benefits on March 13, 1998. Director's Exhibit 1. The district director made an initial finding of entitlement dated November 4, 1999, and interim payments to claimant were commenced. Director's Exhibit 2. On January 30, 2001, Administrative Law Judge Richard A. Morgan issued a Decision and Order in which he denied benefits. Director's Exhibit 4. Claimant took no further action with respect to this claim. The

¹ Claimant was represented by counsel at the hearing in this case. Hearing Transcript at 1.

district director subsequently began recovery proceedings and claimant requested a hearing, which was held before Administrative Law Judge Daniel F. Solomon (the administrative law judge).

In his Decision and Order, the administrative law judge stated that the parties stipulated that the only issue for decision was whether recovery of the overpayment would be against equity and good conscience under Section 725.542(b)(2). He determined that because the expenditures for claimant's wife's medical care, which provided the basis for claimant's request for waiver, were not incurred in reliance on the overpayment, waiver of recovery was not appropriate in this case. Accordingly, the administrative law judge ordered claimant to repay the amount of \$16,844.90.

On appeal, claimant argues generally that the administrative law judge's decision was based upon inaccurate information concerning his financial status and his wife's medical condition.² The Director, Office of Workers' Compensation Programs (the Director), asserts that although the administrative law judge properly found that recovery of the overpayment would not violate principles of equity and good conscience, the administrative law judge erred in not addressing the issue of whether recovery of the overpayment would defeat the purpose 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 Director contends, therefore, that the case should be remanded to the administrative law judge for consideration of this issue.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 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).

We will first address the administrative law judge's finding that recovery of the overpayment would not be against equity and good conscience pursuant to Section 725.542(b)(2). The administrative law judge considered claimant's assertion that denial

² Together with his letter requesting Board review of the administrative law judge's Decision and Order, claimant submitted documents containing information about these issues. In an Order dated August 29, 2003, the Board indicated that it could not address this evidence and that it would be returned to claimant with the Order. *Estep v. Director, OWCP*, BRB No. 03-0694 BLA (Aug. 29, 2003)(unpub. Order).

of his request for waiver would create hardship for him, as his financial obligations now include payment of medical expenses incurred by his wife that are not covered by insurance. The administrative law judge rationally determined that this did not provide a basis for waiver, as claimant's financial circumstances are not relevant to the inquiry into whether recovery of the overpayment would violate the principles of equity and good conscience and claimant did not incur these expenses in reliance upon the benefits payments. Decision and Order at 3; *see Hervol v. Director, OWCP*, 16 BLR 1-53 (1990). We affirm, therefore, the administrative law judge's finding under Section 725.542(b)(2).

With respect to the Director's argument that this case must be remanded to the administrative law judge for consideration of whether recovery of the overpayment would defeat the purpose of Title IV of the Act under Section 725.542(b)(1), we agree. In his Decision and Order, the administrative law judge stated that "the parties stipulated that the sole issue for determination in this case is whether repayment of the overpayment would be against 'equity and good conscience.'" Decision and Order at 1. As the Director contends, however, claimant's attorney actually indicated that "the stipulations would be that the only issue here is the – that recover (sic) would defeat the purposes of the Act and would be against equity and good conscience." Hearing Transcript at 6. Because claimant raised the issue of whether denying waiver of recovery of the overpayment would defeat the purpose of Title IV of the Act and the administrative law judge did not make specific findings as to whether, pursuant to Section 725.542(b)(1), recovery would deprive claimant of income required for ordinary and necessary living expenses, we must remand this case to the administrative law judge for consideration of this issue. *See Ashe v. Director, OWCP*, 16 BLR 1-109 (1992).

Accordingly the administrative law judge's Decision and Order is affirmed in part and vacated in part and this case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge