

BRB No. 89-3556 BLA

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

Appeal of the Decision and Order of Julius A. Johnson, Administrative Law Judge, United States Department of Labor.

Harold B. Culley, Jr., Raleigh, Illinois, for claimant.

C. William Mangum (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, United States Department of Labor.

Before: DOLDER, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (88-BLO-0097) of Administrative Law Judge Julius A. Johnson denying waiver of recovery of overpayment of interim benefits 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 record reflects an overpayment of \$35,902.40. See Director's Exhibits 5, 8, 12. The administrative law judge accepted the concession of the Director, Office of Workers' Compensation Programs (the Director), that claimant was without fault in

creating the overpayment, and found that recovery of the overpayment would neither defeat the purpose of Title IV of the Act nor be against equity and good conscience. See 20 C.F.R. §410.561a *et seq.* Accordingly, the administrative law judge denied waiver of recovery of the overpayment, and ordered claimant to repay the Black Lung Disability Trust Fund (Trust Fund) the amount of

\$35,902.40 in one lump sum. On appeal, claimant contends that the administrative law judge lacks subject matter jurisdiction, and challenges the administrative law judge's denial of waiver of recovery. The Director responds, urging affirmance.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant initially contends that the administrative law judge lacked subject matter jurisdiction over the instant controversy involving overpayment of interim benefits. We disagree. Contrary to claimant's arguments, the Board has held that the Office of Administrative Law Judges has subject matter jurisdiction over issues of waiver and recovery of overpayments arising pursuant to 20 C.F.R. §410.560 *et seq.*, thus the administrative law judge properly denied claimant's Motion to Dismiss herein. Decision and Order at 2, 3; see *Knope v. Director, OWCP*, 16 BLR 1-59 (1990); *Jones v. Director, OWCP*, 14 BLR 1-80 (1990) (*en banc*, Brown, J., concurring); *Potisek v. Director, OWCP*, 14 BLR 1-87 (1990) (*en banc*) (Brown, J., dissenting).

Claimant also generally asserts that recovery of the overpayment would defeat the purpose of Title IV of the Act pursuant to 20 C.F.R. §410.561c, and would be against equity and good conscience pursuant to 20 C.F.R. §410.561d. Inasmuch as claimant has failed to identify any substantive error of law or fact in the administrative law judge's findings pursuant to Sections 410.561c and 410.561d, however, claimant has provided the Board with no basis upon which to review the administrative law judge's finding that recovery would neither defeat the purpose of Title IV of the Act nor be against equity and good conscience thereunder, and we must affirm that finding. *Etzweiler v. Cleveland Brothers Equipment Co.*, 16 BLR 1-38 (1992); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Consequently, we affirm the administrative law judge's denial of waiver of recovery.

We further hold that since the administrative law judge denied waiver, he properly ordered recoupment of the overpayment owed by claimant to the Trust Fund in the sum of \$35,902.40. See *generally* 42 U.S.C. §404(a), as incorporated into the Act by 30 U.S.C. §923(b). We recognize, however, that enforcement decisions are within the purview of the district director, and thus the matter will now be forwarded to that office. See *generally* 31 U.S.C. §952(a); 29 C.F.R. Part 20; 4

C.F.R. Parts 101-104; 20 C.F.R. §725.544. We, therefore, vacate that portion of the administrative law judge's Decision and Order which sets forth the method and manner of reimbursement of the overpaid amount. Accordingly, the administrative law judge's Decision and Order denying waiver of recovery of overpayment of interim benefits is affirmed in part, vacated in part, and this case is forwarded to the district director for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge