

BRB No. 92-0880 BLA

DORIS LATTIMER)
(Widow of HAROLD LATTIMER))

)
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 Charles W. Campbell, Administrative Law Judge, United States Department of Labor.

Doris Lattimer, Glenford, Ohio, *pro se*.

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

DOLDER, Acting Chief Administrative Appeals Judge:

Claimant appeals, without the assistance of counsel, the Decision and Order Partially Waiving Overpayment (90-BLA-0112) of Administrative Law Judge Charles W. Campbell 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). Claimant filed a survivor's claim and received benefit payments in the amount of \$32,958.30. This award of benefits was later reversed on appeal and the \$32,958.30 in benefit payments became an overpayment. Claimant then requested

a formal hearing on the overpayment issue. In his Decision and Order, the administrative law judge determined that claimant was without fault in causing the overpayment and that recovery of the overpayment would not defeat the purpose of the Act. The administrative law judge then determined that it would be against equity and good conscience to recover \$20,100 of the overpayment, but that there is no basis for waiving recovery of the remaining \$12,858.30 of the overpayment. Accordingly, recovery of the overpayment was partially waived. Claimant appeals the partial waiver of recovery of the overpayment. The Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond to this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

The administrative law judge considered the evidence of record and claimant's testimony as to her financial status and permissibly determined that claimant's monthly income was approximately \$1,300 and that her expenses were approximately \$1,252. See Decision and Order at 7. He then properly found that recovery would not defeat the purpose of the Act. As a result, the administrative law judge's finding that recovery of the overpayment would not defeat the purpose of the

Act pursuant to §410.561c is affirmed as it is supported by substantial evidence.

The administrative law judge next considered the evidence of record and claimant's testimony and permissibly determined that claimant had changed her position for the worse in reliance upon the benefit payments in the amount of \$20,100. See Decision and Order at 8. This amount arose from the purchase of a car, furnace, lawnmower, and a freezer, as well as from improvements made to her properties. See Decision and Order at 8; Hearing Transcript at 28-33. As a result, the administrative law judge's finding that recovery of \$20,100 of the overpayment would be against equity and good conscience pursuant to §410.561d is affirmed as it is supported by substantial evidence.

Accordingly, the administrative law judge's Decision and Order Partially Waiving Recovery of Overpayment is affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

I Concur:

ROBERT P. SMITH
Administrative Appeals Judge

BROWN, Administrative Appeals Judge, dissenting:

I must respectfully dissent, for the reasons expressed in my dissenting opinion in *Potisek v. Director, OWCP*, 14 BLR 1-87 (1990) (*en banc*) (Brown, J., dissenting), *i.e.*, that the Benefits Review Board does not have subject matter jurisdiction over

the issues of waiver and recovery of overpayments in instances such as this.

JAMES F. BROWN
Administrative Appeals Judge