

VIOLET M. O'BROCKTA) BRB No. 88-2144 BLA

Claimant-Respondent)

v.)

EASTERN ASSOCIATED COAL)
COMPANY)

Employer-Respondent)

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

Petitioner)

and)

BENJAMIN STINNER)

BRB No. 88-2643 BLA
Claimant-Respondent)

)

v.)

UNDERKOFFLER COAL SERVICE AND)
ROCKWOOD INSURANCE COMPANY)

Employer/Carrier-)
Respondent)

DATE ISSUED:)

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

Petitioner)

DECISION and ORDER)

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)
)

Appeal of the Order Denying Motion for Clarification of George P. Morin and Decision and Order of V. M. McElroy, Administrative Law Judges, United States Department of Labor.

Andrew C. Onwudinjo (Krasno, Krasno & Quinn), Pottsville, Pennsylvania, for claimant Stinner.

Mark J. Botti and Mark E. Solomons (Arter & Hadden), Washington, D.C., for employer Eastern Associated Coal Company.

Robert N. Gawlas, Jr. (Rosenn, Jenkins & Greenwalk), Wilkes-Barre, Pennsylvania, and Paul K. Paterson (Law Offices of John C. Mascelli), Scranton, Pennsylvania, for employer Underkoffler Coal Service.

Dorothy L. Page and Edward O. Falkowski (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: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs, (the Director) appeals¹ the Order Denying Motion for Clarification (83-BLA-1363) of Administrative Law Judge George P. Morin and Decision and Order (86-BLA-1349) of Administrative Law Judge V. M. McElroy on claims 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). At issue is the availability of offset to employers paying federal black lung benefits for the amount of state benefits received by the miners from the Commonwealth of Pennsylvania under its Occupational Disease Act (ODA).² The Director argues that,

¹Pursuant to order dated May 14, 1992, the Board granted the Director's motion to consolidate these appeals for the purposes of decision only. The Board held oral argument on these consolidated cases in Charleston, West Virginia, on October 14, 1993.

²In *O'Brockta*, the Department of Labor (DOL) made an initial finding of entitlement, Director's Exhibit 32, and, following a formal hearing, Administrative Law Judge Daniel Goldstein awarded benefits to claimant. See February 25, 1986 Decision and Order. He later amended this decision, ordering employer to reimburse the Black Lung Disability Trust Fund for interim payments, less the amount offset by concurrent state benefits, *i.e.*, the \$1,750.00 paid to claimant under the Pennsylvania ODA.

inasmuch as claimants' state benefits were not made under a state workers' compensation law as required by the Act, reversal is mandated as a matter of law. Employers respond, urging affirmance, and claimants³ did not file response briefs in these appeals.

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

O'Brockta Director's Exhibit 3. Following motions for clarification filed by both parties, Judge Morin reiterated the decision that offset was available to employer during the period of concurrent state benefits. Order Denying Motion for Clarification at 3-4.

In *Stinner*, after an administrative award of benefits and following a formal hearing, Administrative Law Judge Reid Tait ordered employer to reimburse the Trust Fund for the interim benefits received by claimant. Employer, however, withheld \$2,000.00, the amount paid to claimant under the ODA. The district director ordered that employer pay the \$2,000.00, and employer requested a hearing. Judge McElroy then determined that the payments made to claimant under the ODA were subject to offset.

³Claimant Violet M. O'Brockta, widow of the miner, George M. O'Brockta, filed two survivor's claims, one on October 3, 1980, O'Brockta Director's Exhibit 2, and one on October 7, 1980, O'Brockta Director's Exhibit 3. Claimant Benjamin Stinner, the miner, filed his claim for benefits on January 9, 1980. Stinner Director's Exhibit 1.

The Director, citing Section 412(b), 30 U.S.C. §922(b), 20 C.F.R. §§725.533, 725.535, and legislative history, argues that the decisions should be reversed because the source of the miners' state benefits was the Commonwealth of Pennsylvania's general revenues; thus, the Director urges, these benefits were not received under a state workers' compensation law, and, therefore, the administrative law judges erred in determining that offset of federal benefits paid to claimants was available to employers. O'Brockta Director's Brief at 4-8; Stinner Director's Brief at 5-10.

Employers argue that the plain meaning of the term "workers' compensation law," as defined in Section 725.101(4), mandates that offset be granted, O'Brockta Employer's Brief at 3-4, Stinner Employer's Brief at 7-10; that the Board may not add language to the statute by relying on "snatches" of the legislative history, which is inconclusive and pertains to provisions enacted under Part B of the Act,⁴ see 30 U.S.C. §922(b), under which benefits are paid by the Social Security Administration, O'Brockta Employer's Brief at 7-9; and finally that the Director's rationale for not granting offset in these consolidated cases is not applicable to Part C of the Act, see 30 U.S.C. §932(g), under which benefits are paid by coal mine operators, O'Brockta Employer's Brief at 10-11.

The purpose of Section 422(g), 30 U.S.C. §932(g), is to offset federal awards by the amount of concurrent state benefits received because of death or disability due to pneumoconiosis. See 30 U.S.C. §932(b); *Webb v. Blue Diamond Coal Co.*, 9 BLR 1-92 (1986); *Ball v. Jewell Coke & Coal Co.*, 6 BLR 1-693 (1983). In these consolidated cases, each miner received benefits pursuant to Section 301(i) of the Pennsylvania ODA.⁵ See O'Brockta Director's Exhibit 6; Stinner Director's Exhibit 4.

⁴Congress initially anticipated that, under the Black Lung Benefits Act, state workers' compensation programs would be developed to provide the funds for payment of benefits. See 30 U.S.C. §901 *et seq.*; 20 C.F.R. Part 722. In the interim, the Act provided for a federally-funded disability program to provide immediate aid to disabled miners who filed claims by June 30, 1973; this program, known colloquially as "Part B," is administered by the Social Security Administration. The Part C program, which is administered by DOL according to workers' compensation principles, was designed to provide a base for development of similar state-administered programs funded by coal mine operators for the long-range compensation of miners. See 26 U.S.C. §4121; 30 U.S.C. §901 *et seq.*; see generally *Kosh v. Director, OWCP*, 8 BLR 1-168 (1985), *aff'd* 791 F.2d 918 (3d Cir. 1986)(table).

⁵Section 301(i) of the ODA is a special provision of the act to provide a nominal benefit to employees who have been totally disabled due to silicosis, anthraco-silicosis, coal workers' pneumoconiosis, and asbestosis, and who have not been compensated because their claims are barred by any of the limitations presented by the act and who are not eligible to claim the greater benefits under the Pennsylvania Workers' Compensation and Occupational Disease Acts. See Section 301(i). Under

Section 301 is part of Title 77, "Workmen's Compensation," of the Pennsylvania code. See 77 P.S. §§1401 *et seq.* The Pennsylvania legislature enacted Section 301(i) pursuant to Article 3, §18 of the Pennsylvania Constitution, which "is the provision enabling the legislature to enact workmen's compensation law." *Grosser v. L.E. Smith Glass Co.*, 505 A.2d 1093, 1096 (Pa.Cmwlt. 1986). The ODA is included in the workers' compensation portion of the Pennsylvania statute, see 77 P.S. §1 *et seq.*, and, as is the case with workers' compensation statutes generally, provides that there is to be no recovery at common law for a disease that is covered by the ODA, see *Weldon v. The Celotex Corp.*, 695 F.2d 67, 68 (3d Cir. 1982).

Pennsylvania law, when a miner's last exposure to coal mine dust occurred on or before December 1, 1965, benefits awarded under Section 301(i) of the ODA are payable solely by the state. See *Syster v. Haws Refractories*, 532 A.2d 514, 515 (Pa.Cmwlt. 1987). When a miner's last coal dust exposure occurred after December 1, 1965, as in both of these cases, Section 301(i) in effect incorporates by reference Sections 308(a) and 301(g) of the ODA. See *Grosser v. L.E. Smith Glass Co.*, 505 A.2d 1093, 1095 (Pa.Cmwlt. 1986). These latter sections provide that when the disability was due to disabling pneumoconiosis after an exposure of five or more years, compensation is paid either solely by the state, in the event the miner was employed by successive, different employers, see Section 301(g), *supra*, or in part by the state and in part by employer, see Section 308(a), *supra*. See *Grosser*, 505 A.2d at 1096, n.4; *Commonwealth v. Blank*, 481 A.2d 705, 708-709 (Pa.Cmwlt. 1984)(provisions of Section 301(g) applicable where claimant worked for successive, different employers). In these consolidated cases, both claimants' last coal dust exposure was after December 1, 1965, and each had successive, different employers. See O'Brockta Director's Exhibit 4; Stinner Director's Exhibit 2.

As support for his argument that "Congress very clearly indicated that payments made under a workmen's compensation act . . . did not include payments funded by general state revenues," the Director quoted what he identified as the joint Senate and House conference report, stating that benefits payments made under state programs funded by general revenues are not included in the offset provision, O'Brockta Director's Brief at 7; Stinner Director's Brief at 6, citing Conference Report,⁶ Federal Coal Mine Health and Safety Act of 1969 (H.R. Rep. 91-761, 91st Cong., 1st Sess. (1969) *reprinted in* 115 Cong. Rec. 39462-39490, at 39489 (Dec. 16, 1969). The Director then quoted from comments made by Congressman John Dent of Pennsylvania who, in explaining the terms of the bill to the House, stated that the Pennsylvania program was the only one funded through general revenues and further stated that offset would not be available for benefits paid from Pennsylvania's general revenues. *Legislative History of the Federal Coal Mine Health and Safety Act of 1969* at 1566; O'Brockta Director's Brief at 8-9; Stinner Director's Brief at 7, citing 115 Cong.Rec. 39713 (Dec. 17, 1969). The Director thus concluded that workers' compensation benefits as contemplated by Section 412(b) of the Act and Sections 725.533 and 725.535 do not include state benefits funded by general state revenues. O'Brockta Director's Brief at 9.

The term workers' compensation is defined in *Larson's Workmen's Compensation* as follows:

Workmen's compensation is a mechanism for providing cash-wage benefits and medical care to victims of work-connected injuries, and for placing the cost of these injuries ultimately on the consumer, through the medium of insurance, whose premiums are passed on in the cost of the product.

Larson's Workmen's Compensation Desk Edition (1991) at 1-1.

⁶We note that what the Director claims is the joint Senate and House conference report is actually the "Statement of the Managers on the Part of the House." See *Legislative History of the Federal Coal Mine Health and Safety Act of 1969*, 1507-1539 at 1534; O'Brockta Employer's Brief at 9-10; H. Rpt. No. 91-761, as reported in *Cong. Rec.* S39462 (daily ed. Dec. 16, 1969). However, this "Statement" on the part of the House managers is an explanation of the action agreed upon by the conferees of the House and Senate in their conference report. *Legislative History* at 1507.

Section 725.101(4) defines "workers' compensation law" as "a law providing for payment of benefits to employees, and their dependents and survivors, for disability on account of injury, including occupational disease, or death, suffered in connection with their employment." 20 C.F.R. §725.101(4). It does not address the source of those benefits. The "Discussion and Changes" in the *Federal Register* regarding Section 725.535, which provides for offset of federal benefits if a claimant is also receiving state benefits, states:

The purpose of the Act is to guarantee minimum monthly benefits to eligible persons who, because of the effects of black lung disease, are in need of financial assistance in meeting ordinary living expenses. The Act is not intended to, and does not set monthly or lifetime maximum benefit levels to which a claimant might be entitled from all sources. . . .

Id. at 36,811.

Section 422(g) of the Act, which is applicable to Part C claims, states:

The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis.

30 U.S.C. §932(g).

At oral argument, the Director's counsel explained that because of Congressman Dent's remarks, the Office of Workers' Compensation Programs had not offset Section 301(i) benefits. The Director's argument may have had support insofar as Part B claims are concerned. Section 410.110(p), which is the implementing regulation of Section 412(b), provides:

A workmen's compensation law means a law providing that a workers' compensation is "a law providing for payment of compensation to an employee (and his dependents) for injury including occupational disease) or death suffered in connection with his employment. A payment funded wholly out of general revenues and paid (without regard to insurance principles) solely on account of the financial need of the miner and his family, shall not be considered a payment under a workmen's compensation law."

20 C.F.R. §410.110(p)(emphasis added).

The instant cases, however, were filed under the provisions of Part C, see n.3, *supra*, and the underlined language above was not included in the definition of workers' compensation law provided under Part C at Section 422(g) or its implementing

regulation at C.F.R. §725.101(4). Section 422(g), as enacted in 1969, emphasizes that the amount of benefits payable shall be reduced by the amount of any compensation received under any federal or state workers' compensation law because of death or disability due to pneumoconiosis. 30 U.S.C. §932(g). As noted in n.5, *supra*, Section 301(i) of the Pennsylvania ODA provides for benefits for total disability due to silicosis, anthraco-silicosis, and coal workers' pneumoconiosis (emphasis added). Thus, the Director has neither pertinent regulatory nor statutory language to support his position with regard to Part C claims.

Statutory construction properly begins with examination of the literal language of a statute "for if the intent of Congress is clear, that is the end of the matter." *Good Samaritan Hospital v. Shalala*, U.S. , 113 S.Ct. 2151, 2157 (1993), citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842, 104 S.Ct. 2778, 2781 (1984). It is assumed that the legislative purpose is expressed in the ordinary meaning of the words used. *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68, 102 S.Ct. 1534, 1537 (1982); *Lucas v. Director, OWCP*, 14 BLR 1-112, 1-114 (1990)(*en banc*), citing *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980) (absent clearly expressed legislative intent to the contrary, language must ordinarily be regarded as conclusive).

The plain meaning of Section 422(g), which covers Part C claims such as these, is that benefits paid pursuant to a law denominated by a state as a workers' compensation law are subject to offset. The literal language of the statute does not refer to the source of workers' compensation funds. Rather, all references in the statute and its implementing regulations are to the laws of the state, not to how the state funds the compensation. See 20 C.F.R. §§725.533(a), 725.535(a).

While the United States Court of Appeals for the Third Circuit, within whose jurisdiction these consolidated cases arise, has stated that deference is owed to the Director, not the Board, "for the Director makes policy under the Black Lung Act," *Director, OWCP v. Mangifest*, 826 F.2d 1318, 1323, 10 BLR 2-220, 2-229 (3d Cir. 1987), the court has also emphasized that it will not defer to an "interpretation" in an adversary proceeding that strains "the plain and natural meaning of words in a standard," or give deference to an interpretation of a regulation that implies language that does not exist in the regulation, *Director, OWCP v. Barnes and Tucker Co. [Molnar]*, 969 F.2d 1524, 1527, 16 BLR 2-99, 2-103 (3d Cir. 1992). Because the statutory language of Section 422(g) is clear and unambiguous, we see no need to go beyond the statute's plain meaning and refer to the legislative history to aid in our construction of that statutory provision or to rely on a comment by one Congressman.

As the United States Supreme Court recently stated, if the text of a statute is unambiguous, no weight may be given to the comments of a single Senator made during floor debate. *Bath Iron Works Corp. v. Director, OWCP*, U.S. , 113 S.Ct. 692, 26 BRBS 151, (CRT)(1993); see also *Good Samaritan, supra*; *Chevron, supra*; *Director, OWCP v. O'Keefe*, 545 F.2d 337, 343 (3d Cir. 1976); cf. *Molnar, supra*;

Lucas, supra; see also *Justus v. Knox Creek Coal Co.*, 16 BLR 1-95, 1-98 n.5 (1992).
We therefore hold

that the Director's argument is without merit and offset is available to employers in these cases where the miners' state awards were made pursuant to Section 301(i) of the Pennsylvania ODA.

Accordingly, the Order Denying Motion for Clarification of Administrative Law Judge George P. Morin and the Decision and Order of Administrative Law Judge V. M. McElroy granting offset are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge