



BRB No. 23-0211 BLO

VICTOR REXRODE)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 06/27/2024
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Waiver of Recovery of Overpayment of Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

Samuel B. Petsonk (Petsonk PLLC), Beckley, West Virginia, for Claimant.

William M. Bush (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Jennifer L. Jones, Deputy Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Waiver of Recovery of Overpayment (2022-BLO-00003) of Administrative Law Judge (ALJ) Patricia J. Daum, issued with respect to a claim filed on January 28, 2019, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act). The ALJ determined that Section 422(g) of the Act, 30 U.S.C. §932(g), as implemented by 20 C.F.R. §725.536,

precludes Claimant from receiving benefits from January 1, 2019 to December 31, 2020, because his earnings completely offset his black lung benefits.¹

On appeal, Claimant argues the Act and regulations provide an exception that allows a miner with complicated pneumoconiosis to continue to work in coal mine employment and receive benefits without being subject to an earnings offset. 30 U.S.C. §923(d); 20 C.F.R. §725.504. The Director, Office of Workers' Compensation Programs (the Director), urges the Benefits Review Board to affirm the ALJ's finding that Claimant's benefits are subject to the excess earnings offset provisions of 30 U.S.C. §932(g) and 20 C.F.R. §725.536.

The Board's scope of review is defined by statute. The ALJ's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Claimant is correct that a statutory exception in the Act allows working miners who have complicated pneumoconiosis³ to continue to receive benefits while working. 30

¹ Claimant filed his claim for benefits on January 28, 2019, and was initially awarded benefits by the district director in a Proposed Decision and Order issued on October 31, 2019. Claimant's Exhibit 1. Employer appealed, and Claimant began receiving interim benefits from the Black Lung Disability Trust Fund. *Id.* Subsequently, Employer withdrew its controversion to this claim and, on May 21, 2021, an ALJ remanded the case to the district director for payment of benefits commencing in January 2019. Director's Response Brief at 2. However, the district director found that Claimant's benefits must be offset as he was awarded state workers' compensation benefits for pneumoconiosis from May 24, 2018 to February 27, 2019, and continued to work in coal mine employment until October 2020. Director's Exhibit 12. The district director further found that Claimant's interim benefits from January 1, 2019 to December 31, 2020, should have been completely offset, as his earnings are in excess of "the yearly limits set by Social Security," and he was overpaid benefits in the amount of \$8,892.30. *Id.*

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Claimant's Brief at 3.

³ Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more

U.S.C. §923(d); 20 C.F.R. §725.504(a)(1)-(2). However, as the Director contends, the Act also contains a later-adopted provision which mandates that benefits be reduced by the amount of “excess earnings” the miner receives. 30 U.S.C. §932(g). The regulation implementing Section 932(g) of the Act provides:

In the case of a . . . miner whose claim was filed on or after January 1, 1982, benefit payments are reduced as appropriate by an amount equal to the deduction which would be made with respect to excess earnings under the provisions of sections 203(b), (f), (g), (h), (j), and (l) of the Social Security Act . . . , as if such benefit payments were benefits payable under section 202 of the Social Security Act

20 C.F.R. §725.536.

The Act and its relevant implementing regulations address benefits broadly; neither contains language exempting benefits paid to miners with complicated pneumoconiosis from the reduction. Thus, on its face, the reduction applies to the earnings of working miners with complicated pneumoconiosis.

Claimant urges that an exemption from the excess earnings reduction is implicit in the Act because otherwise the entitlement exception allowing working miners with complicated pneumoconiosis to continue to receive benefits is superfluous. Claimant’s Brief at 3. However, we do not find that contention persuasive as miners with complicated pneumoconiosis may continue to work without necessarily losing their benefits entirely when their benefit payments are reduced by the amount of their “excess earnings” from employment. 30 U.S.C §§923(d), 932(g); 20 C.F.R. §§725.504(a), 725.536. Thus, the two statutory provisions are compatible.

Consequently, because Claimant filed his claim after January 1, 1982, and does not challenge any of the ALJ’s other findings, we affirm her determination that the excess earnings offset pursuant to 20 C.F.R. §725.536 is applicable to Claimant.

large opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The Act, as codified, states that “[n]o miner who is engaged in coal mine employment shall (except as provided in section 921 (c)(3) of this title) be entitled to any benefits under this part while so employed.” 30 U.S.C. §923(d).

Accordingly, we affirm the ALJ's Decision and Order Denying Waiver of Recovery of Overpayment.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge