

**UNPUBLISHED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

<b>HUMPHREYS ENTERPRISES, INC.,</b>	)	
	)	
Plaintiff,	)	Case No. 2:02CV00049
	)	
v.	)	<b>OPINION</b>
	)	
<b>JO ANNE B. BARNHART,</b>	)	By: James P. Jones
<b>COMMISSIONER OF SOCIAL</b>	)	United States District Judge
<b>SECURITY,</b>	)	
	)	
Defendant.	)	

*Daniel R. Bieger, Copeland & Bieger, P.C., Abingdon, Virginia, and Mary Lou Smith, Howe Anderson & Steyer, P.C., Washington, D.C., for Plaintiff; Julie C. Dudley, Assistant United States Attorney, Roanoke, Virginia, and Richard G. Lepley and Lisa M. Bornstein, U.S. Department of Justice, Washington, D.C., for Defendant.*

In its Complaint, the plaintiff Humphreys Enterprises, Inc., alleged that it had been improperly assigned certain retired miners by the defendant Commissioner of Social Security pursuant to the Coal Industry Retiree Health Benefits Act of 1992 (“Coal Act”), 26 U.S.C.A. §§ 9701-9722 (West Supp. 2002). Both parties moved for summary judgment and I referred the case to the Honorable Pamela Meade Sargent, United States Magistrate Judge, to conduct appropriate proceedings and to submit to the court a report setting forth findings and recommendations. *See* 28 U.S.C.A. § 636(b)(1)(B) (West 1993 & Supp. 2002); Fed. R. Civ. P. 72(b).

The magistrate judge issued her report on October 11, 2002, finding that the assignments in question were invalid and recommending that I enter summary judgment in favor of the plaintiff. Even though the plaintiff was entirely successful, it has filed a timely objection to the magistrate judge's report, complaining that the magistrate judge decided the case on the wrong ground. The defendant has filed no objections and no response to the plaintiff's objection.<sup>1</sup>

The defendant Commissioner assigned the retired miners at issue to the plaintiff on the basis that the defendant was a "related person" to another entity, W-E Coal Company, within the meaning of the Coal Act. The sole support for this determination was that the plaintiff and W-E Coal Company shared the same post office box. The magistrate judge found that this determination was arbitrary and capricious and thus the agency decision must be set aside.

The plaintiff, of course, does not contest this result. It asserts only that the magistrate judge erred in applying any deference to the Commissioner's determination. Instead, it contends, the court must review the Commissioner's

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<sup>1</sup> I will dispense with oral argument on the objection because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

decision de novo because the “related person” determination was a “question[] of law.” (Pl.’s Obj. at 2.)

Under the Administrative Process Act, the court may not set aside the Commissioner’s determination unless it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C.A. § 706(2)(A) (West 1996). In contrast to factual matters, a “question of law clearly within the competence of courts” is not subject to any deferential review. *Burgin v. Office of Personnel Mgmt.*, 120 F.3d 494, 497-98 (4th Cir. 1997). In the present case, however, the issue of whether the plaintiff and W-E Coal Company were “related parties” was at most a mixed question of fact and law, and thus reviewable by the arbitrary and capricious standard. *See Coca-Cola Co. v. Atchison, Topeka, & Santa Fe Ry.*, 608 F.2d 213, 218 (5th Cir. 1979). I find that the magistrate judge utilized the correct standard of review of the Commissioner’s determination.

A separate judgment will be entered accepting the magistrate judge’s findings and recommendation and granting judgment for the plaintiff.

DATED: November 6, 2002

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United States District Judge