

BRB No. 98-1000 BLA

PHYLLIS J. YOUNG)
(Widow of LESTER J. YOUNG))
)
 Claimant-Petitioner)
)
 v.)
)
SEWELL COAL COMPANY) DATE ISSUED: 8/25/99
)
 Employer-)
Respondent)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT OF)
LABOR)
) DECISION AND ORDER

Party-in-Interest

Appeal of the Decision and Order Denying Benefits of Jeffrey Tureck,
Administrative Law Judge, United States Department of Labor.

G. Todd Houck, Mullens, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for
employer.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY,
Administrative Appeals Judge, and NELSON, Acting Administrative
Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits (97-BLA-1438) of Administrative Law Judge Jeffrey Tureck on a survivor's 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 administrative law judge credited the miner with twenty-eight years of coal mine employment and adjudicated this case pursuant to 20 C.F.R. Part 718, based on claimant's September 19, 1996 filing date. The administrative law judge noted the procedural history of this claim, specifically, that the miner had been awarded benefits pursuant to an application for benefits filed on June 16, 1994.² The administrative law judge found that since the finding of the existence of pneumoconiosis in the miner's claim was "clearly mistaken", the only way claimant could establish the existence of pneumoconiosis was if that finding was binding in the survivor's claim. However, the administrative law judge rejected claimant's contention that, based on the finding of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) in the miner's claim, employer was collaterally estopped from relitigating this issue in the survivor's claim. Rather, the administrative law judge, citing the Board's holding in *Alexander v. Island Creek Coal Co.*, 12 BLR 1-44 (1988), found that there are different standards of proof between a miner's claim and a survivor's claim and, therefore, the doctrine of collateral estoppel does not apply. Considering all of the evidence pursuant to Section 718.202(a), the administrative law judge found that the autopsy evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Noting that the autopsy evidence is the most probative evidence, the administrative law judge further found that the remaining medical evidence of

¹ Claimant is the widow of the miner, Lester J. Young, who died on September 27, 1995. Director's Exhibit 8. Claimant filed a survivor's claim on September 19, 1996. Director's Exhibit 1. The survivor's claim is the only case currently before the Board.

² In a Decision and Order issued August 14, 1996, Administrative Law Judge Daniel L. Leland awarded benefits in the miner's claim, crediting the miner with thirty-nine years of coal mine employment and finding the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b). Additionally, Judge Leland found the evidence sufficient to establish total respiratory disability due, at least in part, to the miner's pneumoconiosis pursuant to 20 C.F.R. §718.204(b) and (c). Director's Exhibit 29. The Board, in a Decision and Order issued on July 18, 1997, affirmed the administrative law judge's award of benefits in the miner's claim. *Young v. Sewell Coal Co.*, BRB No. 96-1628 BLA (July 18, 1997)(unpub.). No further appeal was taken.

record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Accordingly, the administrative law judge denied benefits.

In challenging the administrative law judge's denial of benefits, claimant contends that the administrative law judge erred in finding that the doctrine of collateral estoppel is not applicable in this case. Specifically, claimant argues that the necessary elements for application of the doctrine of collateral estoppel have been met and, therefore, the administrative law judge erred in addressing the issue of the existence of pneumoconiosis pursuant to Section 718.202(a). Claimant also contends that the evidence of record is sufficient to establish entitlement to benefits. In response, employer urges affirmance of the administrative law judge's denial of benefits, arguing that the administrative law judge properly found that the doctrine of collateral estoppel is not applicable in this case. In addition, employer urges affirmance of the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.

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

In the instant case, the administrative law judge rejected claimant's contention that the doctrine of collateral estoppel precludes employer from litigating the issue of the existence of pneumoconiosis pursuant to Section 718.202(a). Specifically, the administrative law judge stated that findings made in a miner's claim will not be given collateral estoppel effect in a survivor's claim because a survivor's claim involves different standards of proof than a miner's claim, citing *Alexander, supra*. Decision and Order at 3. Consequently, the administrative law judge reviewed the medical evidence of record and found that it was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). The administrative law judge, therefore, concluded that because claimant did not establish the existence of pneumoconiosis, she could not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

Claimant challenges the administrative law judge's denial of benefits, contending that the administrative law judge erred in failing to apply the doctrine of collateral estoppel to bar employer from relitigating the issue of the existence of

pneumoconiosis pursuant to Section 718.202(a). In particular, claimant argues that the necessary elements for application of the doctrine of collateral estoppel have been met and, therefore, the administrative law judge erred in addressing the issue of the existence of pneumoconiosis pursuant to Section 718.202(a). Claimant's contention has merit.

Collateral estoppel forecloses "the relitigation of issues of fact or law that are identical to issues which have been actually determined and necessarily decided in prior litigation in which the party against whom [issue preclusion] is asserted had a full and fair opportunity to litigate." *Ramsay v. INS*, 14 F.3d 206 (4th Cir. 1994); see *Virginia Hosp. Ass'n v. Baliles*, 830 F.2d 1308 (4th Cir. 1987); see also *Freeman v. United Coal Mining Co. v. Director, OWCP [Forsythe]*, 20 F.3d 289, 18 BLR 2-189 (7th Cir. 1994). For collateral estoppel to apply in the present case, which arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, claimant must establish that:

- (1) the issue sought to be precluded is identical to one previously litigated;
- (2) the issue was actually determined in the prior proceeding;
- (3) the issue was a critical and necessary part of the judgment in the prior proceeding;
- (4) the prior judgment is final and valid; and
- (5) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the previous forum.

See *Sedlack v. Braswell Services Group, Inc.*, 134 F.3d 219 (4th Cir. 1998); *Sandberg v. Virginia Bankshares, Inc.*, 979 F.2d 332 (4th Cir. 1992); *Ramsay, supra*. Based on the facts of this case, the doctrine of collateral estoppel is applicable in this case regarding the existence of pneumoconiosis pursuant to Section 718.202(a), inasmuch as each of the prerequisites for application of the doctrine is present. See *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134 (1999); see generally *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

Initially, contrary to the administrative law judge's statement of the issue, the standards of proof regarding the existence of pneumoconiosis are identical in a living miner's claim filed under Part 718 and a survivor's claim filed under Part 718, inasmuch as claimant, in either a living miner's case or a survivor's case, must establish the existence of pneumoconiosis pursuant to any of the methods available at Section 718.202(a) in order to establish entitlement to benefits. See 20 C.F.R. §§718.201, 718.202(a); *Trumbo, supra*; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985). Thus, the

issue that claimant seeks to preclude in the present case is identical to the one previously litigated. Moreover, the finding of the existence of pneumoconiosis pursuant to Section 718.202(a)(4) rendered in the miner's claim, see Director's Exhibit 29, was a necessary element of entitlement in the miner's claim and, thus, was essential to the judgment of benefits. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*); see generally *N.L.R.B v. Master Slack and/or Master Trousers*, 773 F.2d 77, 81 (6th Cir. 1985)(a factual issue is 'necessarily decided' for issue preclusion purposes if its determination was necessary to support the judgment entered in the prior proceeding). In addition, the decision in the miner's claim became a final and valid judgment following the Board's affirmance of the award of benefits in the miner's claim, of which employer did not seek further review. See *Young v. Sewell Coal Co.*, BRB No. 96-1628 BLA (July 18, 1997)(unpub.). Lastly, as the miner died during the pendency of his claim, the formal record of the miner's claim included evidence from his autopsy as well as reviews of this evidence obtained by employer. See Director's Exhibits 27, 29. Employer, therefore, was provided a full and fair opportunity to litigate this issue inasmuch as the record in the survivor's claim does not contain any autopsy evidence which was not available and could not have been adduced at the time of the adjudication of the miner's claim. See *Hughes, supra*.

Consequently, under the facts of this case, we reverse the administrative law judge's finding that the doctrine of collateral estoppel is not applicable inasmuch as all the elements of collateral estoppel have been met. We hold, therefore, that employer is barred from relitigating the issue of the existence of pneumoconiosis pursuant to Section 718.202(a). *Id.* Moreover, we remand the case to the administrative law judge to determine whether the relevant evidence of record is sufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c), including whether pneumoconiosis hastened, in any way, the miner's ultimate demise.³ 20 C.F.R. §718.205(c); *Shuff v. Cedar Coal Co.*, 967

³ Benefits are payable on a survivor's claim filed on or after January 1, 1982 only when claimant meets her burden of establishing that the miner's death was due to pneumoconiosis arising out of coal mine employment, where pneumoconiosis was substantially contributing cause of the miner's death, where death was caused by complications of pneumoconiosis, or where complicated pneumoconiosis is established. 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that if pneumoconiosis hastens death in any way, it is a substantially contributing cause of death pursuant to Section 718.205(c)(2). *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert.*

F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *Trumbo, supra*; *Neeley, supra*.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is reversed in part, vacated in part and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

denied, 113 S.Ct. 969 (1993); *see generally Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).