

BRB No. 06-0382 BLA

CATHERINE D. BARTLEY	)	
(Widow of ARNOLD BARTLEY)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
UNION CARBIDE CORPORATION	)	DATE ISSUED: 02/28/2007
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand – Denying Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Roger Foreman (Forman & Huber, L.C.), Charleston, West Virginia, for claimant.

Christopher M. Hunter (Jackson Kelly, PLLC), Charleston, West Virginia, for employer.

Rita Roppolo (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand – Denying Benefits of Administrative Law Judge Michael P. Lesniak (the administrative law judge) rendered 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).<sup>1</sup> This case is before the Board for a second time. The relevant procedural history is as follows. Claimant was initially awarded benefits by Administrative Law Judge Robert J. Lesnick based on her survivor's claim, which was filed on September 28, 2000. Director's Exhibit 1. In considering the survivor's claim under 20 C.F.R. Part 718, Judge Lesnick initially considered whether employer was collaterally estopped from challenging the existence of pneumoconiosis based on a prior finding in the living miner's claim that the miner suffered from the disease. Because he found that all of the requisite elements for application of the doctrine of collateral estoppel had not been shown, Judge Lesnick refused to apply the doctrine, and thus he considered whether claimant had carried her burden of proof to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), and to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Judge Lesnick determined that the evidence was sufficient to establish that the miner suffered from complicated pneumoconiosis prior to his death, and therefore, he awarded benefits on the grounds that claimant had invoked the irrebuttable presumption, under 20 C.F.R. §718.304, that the miner's death was due to pneumoconiosis.

On appeal, the Board affirmed Judge Lesnick's determination not to apply the doctrine of collateral estoppel to preclude the parties from relitigating the issue of the existence of pneumoconiosis in the survivor's claim based on a prior finding of pneumoconiosis rendered in the living miner's claim.<sup>2</sup> *Bartley v. Union Carbide Corp.*,

---

<sup>1</sup> The miner died on August 20, 2000. Director's Exhibit 23. Prior to his death, the miner had filed a claim for benefits on February 14, 1983. *Id.* Employer agreed to pay benefits on this claim, pursuant to an Award of Benefits dated June 13, 1984 and a Supplemental Award dated September 13, 1984. *Id.* Claimant file her survivor's claim on September 28, 2000. Director's Exhibit 1.

<sup>2</sup> Collateral estoppel forecloses "the relitigation of issues of fact or law that are identical to issues which have actually been 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." *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999) (*en banc*), *citing Ramsey v. INS*, 14 F.3d 206 (4th Cir. 1994).

To successfully invoke the doctrine of collateral estoppel, in this case, which arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, the party asserting it must establish the following criteria:

- (1) the issue sought to be precluded is identical to the one previously litigated;
- (2) the precise issue raised in the present case must have been raised and actually litigated in the prior proceeding;

BRB No. 04-0361 BLA (Jan. 27, 2005) (unpub.), slip op. at 3-5. The Board, however, vacated the award of benefits in the survivor's claim because Judge Lesnick erred in his consideration of the x-ray, CT scan and medical opinion evidence, relevant to the existence of complicated pneumoconiosis under Section 718.304. *Bartley*, BRB No. 04-0361, slip op. at 5-12.

On remand, the case was reassigned to the administrative law judge, who reconsidered the medical evidence and claimant's entitlement to benefits. Insofar as the administrative law judge determined that there was no medical evidence to support a finding that the miner's death was hastened by simple coal workers' pneumoconiosis under 20 C.F.R. §718.205(c), he declined to specifically address whether claimant had carried her burden of proof to establish the existence of simple coal workers' pneumoconiosis at 20 C.F.R. §718.202(a). The administrative law judge further found that the medical evidence was insufficient to establish that the miner had complicated pneumoconiosis, and thus, he concluded that claimant was unable to invoke the irrebutable presumption at Section 718.304. Accordingly, the administrative law judge denied benefits.

Claimant appeals, arguing that the administrative law judge erred in failing to find that the miner suffered from pneumoconiosis, both simple and complicated, prior to his death, and that the administrative law judge erred in denying benefits. Employer responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter/brief, asking the Board to revisit its prior holding regarding application of the doctrine of collateral estoppel. The Director asserts that the Board failed to address, in its prior decision, the Director's argument that the facts of the instant case are significantly different from those presented in *Collins v. Pond Creek Mining Co.*, 22 BLR 1-229 (2003), which case was cited by the Board in support of its affirmance of Judge Lesnick's ruling on the collateral estoppel issue. Employer has also filed a reply brief, addressing the Director's arguments on application of collateral estoppel to the instant survivor's claim.

- 
- (3) determination of the issue must have been necessary to the outcome of the prior determination;
  - (4) the prior proceeding must have resulted in a final judgment on the merits;
  - and
  - (5) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding.

*See Sedlack v. Braswell Services Group, Inc.*, 134 F.3d 219 (4th Cir. 1998).

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

At the outset, we revisit the issue of whether the doctrine of collateral estoppel should be applied to give preclusive effect in the instant survivor's claim to a prior finding in the living miner's claim that the miner suffered from simple coal workers' pneumoconiosis. Claimant asserts on appeal that the administrative law judge erred by not specifically finding that the miner suffered from simple pneumoconiosis, and by choosing to credit the opinions of employer's medical experts that the miner's x-ray abnormalities could not be attributed to complicated pneumoconiosis because there were no underlying opacities consistent with simple coal workers' pneumoconiosis.

The Board previously affirmed Judge Lesnick's determination not to give preclusive effect to the finding rendered in the prior miner's claim with respect to the presence of simple coal workers' pneumoconiosis: *Bartley*, BRB No. 04-0361 BLA, slip op. at 3-5. In so doing, the Board explained:

In *Collins v. Pond Creek Mining Co.*, 22 BLR 1-229 (2003), the Board held that, in a survivor's claim where no autopsy evidence was obtained and entitlement to benefits was established in the living miner's claim, the doctrine of collateral estoppel is not applicable to preclude litigation of the issue of the existence of pneumoconiosis because the decision in *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), constituted a change in the law with respect to the standard for establishing the existence of pneumoconiosis under Section 718.202(a), therefore, a difference in the substantive legal standards applicable to the two proceedings exists. *Collins*, 22 BLR at 1-232-233; accord *Howard v. Valley Camp Coal Co.*, No. 03-1706 (4th Cir. Apr. 14, 2003) (unpub.). The administrative law judge discussed the pertinent case law and properly found that the doctrine of collateral estoppel was not applicable to the instant case which, like *Collins*, arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, because the holding in *Compton* constituted a change in the law with respect to the issue of the existence of pneumoconiosis pursuant to Section 718.202(a). Consequently, because the issue of whether the existence of pneumoconiosis was established in the survivor's claim was not identical to the one previously litigated and actually determined in the miner's claim, the administrative law judge properly concluded that the doctrine of collateral estoppel is inapplicable to the instant case....

*Bartley*, BRB No. 04-0361 BLA, slip. op. at 4-5.

Subsequent to the Board's January 27, 2005 Decision and Order, the Fourth Circuit issued *Collins v. Pond Creek Mining Co.*, 468 F.3d 213, BLR (4th Cir. 2006). The court held that the Board erred in permitting Pond Creek to relitigate, in the widow's claim for benefits, the issue of whether the miner had suffered from pneumoconiosis. *Id.* The court held that the Board erred in interpreting *Compton* as constituting a substantial change in the law with regard to a claimant's burden of proof for establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Collins*, 468 F.3d at 219, BLR at . The court thus held that the Board erred in concluding that the general requirements for application of the doctrine of collateral estoppel had not been satisfied in *Collins* to preclude the parties from relitigating the issue of whether the miner suffered from pneumoconiosis relevant to the survivor's claim. *Collins*, 468 F.3d at 220, BLR at .

In light of the Fourth Circuit's recent holding in *Collins*, that *Compton* does not constitute a substantial change in the law that is sufficient to preclude the application of the doctrine of collateral estoppel, we recognize that claimant is entitled to further consideration of whether she may rely on the doctrine of collateral establish to establish that the miner had simple coal workers' pneumoconiosis. *See Collins*, 468 F.3d at 217-220, BLR at . We also recognize that the issue of whether the miner suffered from simple coal workers' pneumoconiosis may bear on the administrative law judge's credibility determinations, namely the proper weight to be accorded the conflicting medical opinion evidence relevant to the presence of complicated pneumoconiosis. We, therefore, vacate the administrative law judge's Decision and Order, and remand this case for further consideration of whether claimant is entitled to invoke the doctrine of collateral estoppel, pursuant to the Fourth Circuit's holding in *Collins*, and whether she has established her entitlement to benefits pursuant to 20 C.F.R. §718.205(c)(3), by virtue of the irrebuttable presumption at 20 C.F.R. §718.304.

The Decision and Order on Remand – Denying Benefits is vacated, and the case is remanded for further consideration consistent with this decision.

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

JUDITH S. BOGGS  
Administrative Appeals Judge