

BRB No. 00-0451 BLA

PHYLISS VILLAIN	)	
(Widow of EUGENE VILLAIN)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ZIEGLER COAL COMPANY	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Joe D. Black (Ramsey & Black), Vincennes, Indiana, for claimant.

W. William Prochot (Arter & Hadden LLP), Washington, D.C., for employer.

Jeffrey S. Goldberg (Judith E. Kramer, Acting 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: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (98-BLA-0703) of

Administrative Law Judge Rudolf L. Jansen 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). Initially, the administrative law judge credited the parties stipulation that the miner worked in qualifying coal mine employment for eleven and one-half years. Next, the administrative law judge found that the doctrine of collateral estoppel applied to this case and that the previous finding of Administrative Law Judge Richard D. Mills in the miner's claim, that the miner had pneumoconiosis, barred relitigation of this issue in this survivor's claim. The administrative law judge found further, however, that the application of this doctrine is "somewhat uncertain," and consequently, addressed the merits of the existence of pneumoconiosis. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge determined that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b), and that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's application of the doctrine of collateral estoppel, arguing that this survivor's claim is analogous to a duplicate claim, and as such, is entirely independent from the miner's claim. Furthermore, employer contends that the administrative law judge erroneously found that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4) and that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Claimant responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response letter, disagreeing

---

<sup>1</sup> Claimant, Phyllis Villain, is the widow of Eugene Villain, the miner, who died on April 18, 1997. Director's Exhibit 2. The miner filed his application for benefits on February 6, 1987 and was awarded benefits by Administrative Law Judge Richard D. Mills in a Decision and Order issued on February 16, 1989. Director's Exhibit 19. Employer timely appealed and the Board affirmed the award of benefits, *Villain v. Ziegler Coal Co.*, BRB No. 89-0945 BLA (Jul. 10, 1991)(unpub.), and also denied employer's motion for reconsideration on January 5, 1993. Employer did not appeal the Board's decisions. After the miner's death on April 18, 1997, the widow filed her application for benefits on May 8, 1997. Director's Exhibit 1.

2 Subsequent to the issuance of the Decision and Order of the administrative law judge, the Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Reconsideration because the administrative law judge had erroneously ordered the Director to pay benefits instead of employer. The administrative law judge granted the Director's motion and accordingly, amended that portion of the decision to order employer to pay benefits to claimant in a Decision on Motion for Reconsideration dated January 4, 2000.

with employer's contentions regarding collateral estoppel and with the administrative law judge's weighing of the medical opinion evidence under Section 718.205(c)(2). In addition, employer has filed a reply brief, reiterating its challenges to the administrative law judge's application of collateral estoppel and his weighing of the conflicting medical opinion evidence.

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 the 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'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to benefits on a survivor's claim filed on or after January 1, 1982, a claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(a), 718.205(a). Death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Seventh Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it actually hastens the miner's death. *See Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 183, 16 BLR 2-121, 2-128 (7th Cir. 1992).

Employer initially argues that the administrative law judge's decision is inconsistent with applicable law because the administrative law judge found that collateral estoppel was applicable to the instant claim. Employer contends that Administrative Law Judge Mills' determination that the existence of pneumoconiosis was established in the deceased miner's claim is not the same issue in the survivor's claim because the miner's and survivor's claims are separate and distinct claims. More specifically, employer argues that the survivor's claim is analogous to a duplicate miner's claim inasmuch as new evidence may be proffered to demonstrate that the miner's health may have improved, deteriorated, or remained the same since the prior determination, and as such, the parties must be permitted to address the miner's condition upon the filing of the new claim. Claimant responds, arguing that employer is attempting to relitigate the issue of the existence of pneumoconiosis, which has been fully and fairly litigated in a prior adjudication, and affirmed by the Board on appeal. Therefore, claimant contends that the doctrine of collateral estoppel bars the relitigation of this issue. The Director agrees, contending that *res judicata* concerns in the duplicate claims context do not apply to relitigation of the existence of pneumoconiosis in survivor's claims. Moreover, the Director stated, "For all practical purposes, the issue of whether the miner had pneumoconiosis at his death is identical to the issue litigated and established in the miner's claim." Director's Letter at 2.

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, the party asserting it must establish the following criteria:

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

*See Freeman v. United Coal Mining Co. v. Director, OWCP [Forsythe]*, 20 F.3d 289, 18 BLR 2-189 (7th Cir. 1994); *N.A.A.C.P., Detroit Branch v. Detroit Police Officers Association*, 821 F.2d 328 (6th Cir. 1989); *Virginia Hospital Association v. Baliles*, 830 F.2d 1308 (4th Cir. 1987), *appeal after remand* 868 F.2d 653, *reh’g denied, certiorari granted in part* 110 S.Ct. 49 (1989), *aff’d Wilder v. Virginia Hospital Association*, 110 S.Ct. 49 (1990).

In *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134 (1999)(*en banc*), the Board held that, “while ...the existence of pneumoconiosis is an essential element of entitlement in a living miner’s claim, the establishment of that element does not support, and thus is not ‘essential’ to, a judgment denying benefits.” *Hughes*, 21 BLR at 1-138. Hence, the Board concluded that, in a survivor’s claim, the doctrine of collateral estoppel is not applicable to preclude employer or the Director from relitigating the issue of occupational pneumoconiosis previously established in the living miner’s claim if benefits were ultimately denied in the miner’s claim, because the issue was not necessary to the judgment. Additionally, where a survivor’s claim includes autopsy evidence which was not available and could not have been adduced at the time of adjudication of the miner’s claim, an exception to application of the doctrine of collateral estoppel may be warranted to allow relitigation of the issue of occupational pneumoconiosis. *Hughes*, 21 BLR at 1-134.

We affirm the administrative law judge’s determination that the doctrine of collateral estoppel is applicable, in this case, however. Decision and Order at 7. All four

---

3 Notwithstanding his finding that the doctrine of collateral estoppel applied in this case to bar relitigation of the issue of pneumoconiosis, the administrative law judge nevertheless

requisite elements have been satisfied. First, the existence of pneumoconiosis was raised in the present survivor's claim and actually litigated in the prior proceeding on the miner's claim. Second, the determination of the existence of pneumoconiosis was necessary to the previous miner's award of benefits, unlike a denial of benefits in *Hughes*, inasmuch as the presence of pneumoconiosis pursuant to Section 718.202(a) is a requisite element of entitlement to benefits in a Part 718 case. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Third, the prior proceeding resulted in a final judgment on the merits inasmuch as the Board affirmed Administrative Law Judge Mills' Decision and Order awarding benefits, which employer did not pursue, and the miner's claim was in payment status until his demise. Finally, employer had a full and fair opportunity to litigate this issue in the prior miner's claim. *See Forsythe, supra*. Additionally, the evidence of record in the instant case contains no autopsy evidence, hence, an exception does not apply. Accordingly, we hold that collateral estoppel, or issue preclusion, applies to the instant survivor's claim, employer is collaterally estopped from relitigating the issue of the existence of pneumoconiosis, and the existence of pneumoconiosis is established as a matter of law. *See Ramsay v. INS*, 14 F.3d 206 (4th Cir. 1994); *Alexander v. Island Creek Coal Co.*, 12 BLR 1-44 (1988).

We turn next to employer's challenge of the administrative law judge's determination that claimant established that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(2). Specifically, employer argues that the administrative law judge improperly and mechanically accorded dispositive weight to Dr. Ridge because Dr. Ridge was the miner's treating physician, did not diagnose the presence of pneumoconiosis during his treatment of the miner or list it on the death certificate, and did not provide a reasoned medical explanation for his opinion. Employer's arguments lack merit. Initially, the administrative law judge properly found that Dr. Ridge testified at his deposition that he mistakenly omitted pneumoconiosis as a significant factor contributing to the miner's death when completing the death certificate. *See Fagg v.*

---

concluded that as application of the doctrine was still "somewhat uncertain," he would also render findings pursuant to Section 718.202(a)(1)-(4) on the merits. Decision and Order at 7-9. However, because we affirm the administrative law judge's application of collateral estoppel to this case to bar relitigation of the issue of pneumoconiosis, we will not consider the administrative law judge's additional consideration of the evidence on the merits at Section 718.202(a)(1)-(4). Decision and Order at 7-9.

4 Inasmuch as the administrative law judge's determination that the miner's pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(b) is unchallenged on appeal, we affirm this determination. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 9.

*Amax Coal Co.*, 12 BLR 1-77 (1988); Decision and Order at 10; Claimant's Exhibit 1 at 64-65. Furthermore, the administrative law judge acknowledged Dr. Tuteur's demonstrated pulmonary expertise, but nevertheless, permissibly found that Dr. Ridge's opinion, that the miner's death was due to cancer and hastened and accelerated by pneumoconiosis, outweighed that of Dr. Tuteur. See *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988); Decision and Order at 10; Director's Exhibits 2, 19; Claimant's Exhibit 1. The administrative law judge, within a rational exercise of discretion, found that Dr. Ridge's opinion was entitled to determinative weight inasmuch as this physician's opinion was based on an accumulation of twenty years of medical treatment, medical evidence and documentation, see *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987), and thorough examinations of the miner during the miner's lifetime, see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984); Decision and Order at 10. Inasmuch as the administrative law judge did not accord greater weight to Dr. Ridge's opinion solely because he personally treated the miner and, while a physician's medical qualifications are a factor to be considered in determining the probative value of that physician's opinion, the administrative law judge was not required to defer to Dr. Tuteur's opinion because of his superior qualifications, we reject employer's arguments. *Forsythe*, 20 F.3d at 296, 18 BLR at 2-199; *Amax Coal Co. v. Beasley*, 957 F.2d 324, 327, 16 BLR 2-45, 2-48-49 (7th Cir. 1992); *Amax Coal Co. v. Franklin*, 957 F.2d 355, 16 BLR 2-50 (7th Cir. 1992); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993).

Employer argues that the administrative law judge impermissibly rejected Dr. Tuteur's opinion because he did not examine the miner. The Director asserts, to the contrary, that the administrative law judge "did not reject Dr. Tuteur's opinion simply because he had not examined the miner, nor did the [administrative law judge] credit Dr. Ridge because he had..." Director's Response Letter at 2. Although the administrative law judge noted that Dr. Tuteur had not examined the miner, he nonetheless reasonably found the opinion less credible because Dr. Tuteur "never clearly opines as to the impact of the miner's totally disabling coal workers' pneumoconiosis upon his death." Decision and Order at 10 [emphasis in original]. Inasmuch as it is the role of the administrative law judge to determine both the relative credibility of the evidence and the inferences to be drawn therefrom and such determinations must be upheld unless they are unreasonable or unsupported by the record, we affirm the administrative law judge's finding to accord greater probative weight to Dr. Ridge's opinion inasmuch as this determination is rational and supported by substantial evidence. See *Summers v. Freeman United Coal Mining Co.*, 14 F.3d 1220, 18 BLR 2-105 (7th Cir. 1994); *Meyer v. Ziegler Coal Co.*, 894 F.2d 902, 908, 13 BLR 2-285, 2-292 (7th Cir. 1990), *cert. denied*, 498 U.S. 827 (1990) (process of weighing conflicting medical evidence and drawing inferences therefrom properly lies within authority of administrative law judge); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg, supra*. Inasmuch as the administrative law judge properly credited Dr. Ridge's opinion and determined that claimant established that pneumoconiosis hastened the miner's death, we affirm his Section 718.205(c)(2) finding.

*See Railey, supra.*

Accordingly, the Decision and Order - Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

MALCOLM D. NELSON, Acting  
Administrative Appeals Judge