

BRB No. 09-0449 BLA

MINNIE L. McKNIGHT )  
(Widow of ISAAC C. McKNIGHT) )  
 )  
Claimant-Respondent )  
 )  
v. )  
 )  
ISLAND CREEK COAL COMPANY )  
 ) DATE ISSUED: 03/24/2010  
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 – Award of Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Waseem A. Karim (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Award of Benefits (05-BLA-5918) of Administrative Law Judge Daniel L. Leland rendered on a survivor's claim<sup>1</sup> 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

---

<sup>1</sup> Claimant is the widow of the miner, who died on May 26, 2003. Director's Exhibit 10; Claimant's Exhibit 1. The miner filed an application for benefits on March 3, 1983, and benefits were awarded by the district director on October 26, 1987. Living Miner's Claim at 29, 219 (unstamped exhibit).

credited the miner with twenty-nine years of coal mine employment,<sup>2</sup> and determined that the doctrines of collateral estoppel and equitable estoppel barred employer from relitigating the issues of the existence of pneumoconiosis and the cause of the miner's pneumoconiosis, which were established in the miner's claim. The administrative law judge further found that the evidence established 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 argues that the administrative law judge erred in applying collateral estoppel and equitable estoppel to preclude relitigation of the issues of the existence of pneumoconiosis and disease causation. Employer also asserts that the administrative law judge erred in finding that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Neither claimant, nor the Director, Office of Workers' Compensation Programs, has filed a 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 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. See 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. Death will also be considered due to pneumoconiosis if the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Mills v. Director, OWCP*, 348 F.3d 133, 23 BLR 2-12 (6th Cir. 2003).

---

<sup>2</sup> The record indicates that the miner's coal mine employment was in Kentucky. Director's Exhibit 7; Living Miner's Claim at 217. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

The administrative law judge found that the existence of pneumoconiosis arising out of coal mine employment was established in the survivor's claim because employer was collaterally and equitably estopped from relitigating those issues, which were established in the miner's claim. A review of the relevant procedural history is as follows: The miner's federal claim was denied by the district director on August 2, 1983. Miner's Claim at 182. At the miner's request, the case was transferred to the Office of Administrative Law Judges (OALJ) for a hearing. Miner's Claim at 141, 181. While his claim was pending before the OALJ, on March 10, 1986, the Kentucky Workers' Compensation Board determined that the miner had pneumoconiosis and that he was "100% occupationally disabled." Miner's Claim at 37-40. The miner was awarded state benefits "[f]or as long as he is so disabled," to be paid by employer. *Id.* Thereafter, in a letter to Administrative Law Judge Robert D. Kaplan, dated May 27, 1986, employer indicated that it no longer contested liability for the payment of federal black lung benefits and it withdrew its controversion of all issues in that claim.<sup>3</sup> Miner's Claim at 57. By Order issued June 18, 1986, Judge Kaplan remanded the case to the district director for the issuance of an appropriate order. Miner's Claim at 54. On October 26, 1987, the district director issued an Award of Benefits. The award stated that employer agreed to pay benefits, and indicated that the miner's benefits were offset by his Kentucky benefits, such that "the continuing monthly rate of Federal Black Lung Benefits is \$00.00." Miner's Claim at 30. Except for a ten-month period, during which the offset was suspended to allow the Kentucky Special Fund to recover an attorney fee and attorney fee discount deducted from the state award, employer paid no benefits to the miner. Miner's Claim at 17, 20; Employer's Brief at 2.

In addressing collateral estoppel, the administrative law judge found that the miner's claim "was not litigated because of Employer's acquiescence." Decision and Order at 4. The administrative law judge stated that, although Judge Kaplan did not "render a written decision [in the miner's claim, he] remanded the case on Employer's insistence," and Judge Kaplan's remand was "equivalent to holding a hearing and deciding the case." *Id.* The administrative law judge noted further that claimant "relies on exactly the same facts as existed at the time that Remand was requested." *Id.* Therefore, the administrative law judge found that litigation of the issues of the existence of pneumoconiosis and causation was precluded by the doctrine of collateral estoppel.

Employer contends that the administrative law judge erred in applying collateral estoppel, because the issue of the existence of pneumoconiosis was not actually litigated in the miner's claim. Employer's Brief at 9. Employer's contention has merit.

---

<sup>3</sup> Employer states that it withdrew its controversion because it had no financial incentive to litigate the claim, since the Kentucky benefits award totally offset the federal award. Employer's Brief at 2, 8.

Preclusion under the doctrine of collateral estoppel requires that four criteria be met:

- (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 proceeding;
- (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.

*Detroit Police Officers Ass'n v. Young*, 824 F.2d 512, 515 (6th Cir. 1987)(footnotes omitted).

A fact established by stipulation or concession may not be given collateral estoppel effect in a subsequent proceeding because the issue was not actually litigated. *Justice v. Newport News Shipbuilding & Drydock Co.*, 34 BRBS 97, 98 (2000). Because the miner's award of benefits was based on employer's withdrawal of controversion, the issues of the existence of pneumoconiosis and causation were not actually litigated in the miner's claim and, thus, a required element of collateral estoppel is not established. *See Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999)(*en banc*); *Justice*, 34 BRBS at 98. Therefore, we reverse the administrative law judge's finding that employer is collaterally estopped from relitigating the issues of the existence of pneumoconiosis and disease causation in the survivor's claim.<sup>4</sup>

We next address the administrative law judge's findings regarding equitable estoppel. The administrative law judge found that employer's "conduct," in withdrawing its controversion in the miner's claim and requesting remand to the district director, constituted a "representation" upon which the miner's widow justifiably relied "to her detriment." Decision and Order at 4-5. Noting that "the Miner was in pay status for fifteen years as a result of Employer's acquiescence," the administrative law judge determined that equitable estoppel barred employer from asserting, in the survivor's claim, that the miner did not have pneumoconiosis. Decision and Order at 5.

---

<sup>4</sup> Because we decide the collateral estoppel issue on the above grounds, we need not address employer's argument that the administrative law judge did not consider that employer lacked a financial incentive to litigate the miner's claim, because benefits were totally offset by his Kentucky lifetime award. Employer's Brief at 2; *see Polly v. D&K Coal Co.*, 23 BLR 1-77, 1-82-84 (2005).

Employer argues that the administrative law judge erred in applying equitable estoppel, because there is no evidence that employer made “misrepresentations intended to induce reliance” by withdrawing its controversion in the miner’s claim. Employer’s Brief at 10. We agree.

The “traditional elements required to invoke equitable estoppel are a definite misrepresentation by one party, intended to induce some action in reliance, and which does reasonably induce action in reliance by another party to his detriment.” *U.S. v. Guy*, 978 F.2d 934, 937 (6th Cir. 1992), *citing Heckler v. Community Health Servs.*, 467 U.S. 51, 59 (1984). In this case, the administrative law judge found that employer’s request to remand the miner’s claim to the district director was a “representation” upon which claimant “justifiably relied.” Decision and Order at 5. The administrative law judge, however, nowhere found, or identified evidence, that employer made a “definite misrepresentation” that, by its misleading nature, was “intended to induce some action in reliance” by claimant. *See Guy*, 978 F.2d at 937. Moreover, the administrative law judge did not specify the manner in which claimant detrimentally relied upon any such representation.<sup>5</sup> *See Guy*, 978 F.2d at 937; *see also Betty B Coal Company v. Director, OWCP [Stanley]*, 194 F.3d 491, 504, 22 BLR 2-1, 2-23 (4th Cir. 1999). Therefore, we reverse the administrative law judge’s finding that equitable estoppel barred the relitigation of the issues of the existence of pneumoconiosis and disease causation in the survivor’s claim.<sup>6</sup>

Based on the foregoing analysis, we vacate the administrative law judge’s finding that the existence of pneumoconiosis arising out of coal mine employment was established in the survivor’s claim pursuant to 20 C.F.R. §§718.202(a), 718.203(b), based upon collateral estoppel and equitable estoppel. The administrative law judge, on remand, must determine whether the relevant medical evidence establishes that the miner had pneumoconiosis that arose out of his coal mine employment, pursuant to 20 C.F.R. §718.202(a), 718.203. *See Trumbo*, 17 BLR at 1-87-88. Because we have vacated the administrative law judge’s finding of pneumoconiosis, we also vacate the administrative law judge’s finding that the miner’s death was due to pneumoconiosis pursuant to 20

---

<sup>5</sup> The record reflects that claimant developed and submitted, in the survivor’s claim, medical evidence that the miner had pneumoconiosis arising out of coal mine employment and that he died due to pneumoconiosis. Director's Exhibit 10; Claimant's Exhibit 1.

<sup>6</sup> We agree with employer that the administrative law judge’s additional statement that it would “render an injustice” to allow employer to reopen the miner’s claim, Decision and Order at 5, was misplaced. Employer has not attempted to reopen the miner’s claim.

C.F.R. §718.205(c), and instruct him to reconsider that issue, if reached, on remand, consistent with *Conley v. Nat'l Mines Corp.*, 595 F.3d 297, --- BLR --- (6th Cir. 2010), and *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003).

In the interest of judicial economy, and to avoid any repetition of error on remand, we next consider employer's allegations of error in the administrative law judge's evaluation of the evidence at Section 718.205. As employer contends, the administrative law judge found that chronic obstructive pulmonary disease (COPD), caused the miner's death, Decision and Order at 10, but did not address whether the relevant, conflicting evidence established that the COPD arose out of the miner's coal mine employment, and therefore constituted legal pneumoconiosis. 20 C.F.R. §718.201. On remand, as discussed, *supra*, before determining whether the miner died due to legal pneumoconiosis, the administrative law judge must consider whether the relevant evidence establishes that the miner's COPD arose out of coal mine employment. Further, we agree with employer that the administrative law judge did not adequately explain his basis for crediting, as well-reasoned, Dr. King's opinion,<sup>7</sup> despite the physician's misunderstanding of the miner's smoking and employment histories. Although the administrative law judge noted that Dr. King overstated the length of the miner's coal mine employment and "probably understated" the miner's smoking history, Decision and Order at 9, the administrative law judge found that Dr. King's opinion was reasoned, and relied upon it to find that the miner's death was due to pneumoconiosis. *Id.* at 9-10. On remand, the administrative law judge must determine the extent of claimant's smoking history and explain whether Dr. King's reliance on a shorter smoking history and a more extensive coal mine employment history affect the credibility of his opinion regarding whether pneumoconiosis hastened the miner's death. *See Stark v. Director, OWCP*, 9 BLR 1-36 (1986). Moreover, he must evaluate Dr. King's opinion to determine whether it is documented and reasoned, and explain his findings. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

Further, we agree with employer that the administrative law judge must reconsider the opinions of Drs. Ghio and Jarboe.<sup>8</sup> The administrative law judge discredited their

---

<sup>7</sup> Dr. King, who is Board-certified in Family Practice and who treated the miner during his final hospitalization, signed the miner's death certificate stating that the immediate cause of death was chronic obstructive lung disease, due to coal miners' pneumoconiosis and smoking. Director's Exhibit 10; Claimant's Exhibit 1; Employer's Exhibit 5.

<sup>8</sup> Dr. Ghio, who is Board-certified in Internal Medicine and Pulmonary Disease, reviewed the medical records, and opined that the miner did not suffer from pneumoconiosis. Employer's Exhibits 1, 2. Dr. Ghio opined that the miner died a respiratory and cardiac death related to his cigarette smoking, that coal workers'

opinions that the miner's death was unrelated to pneumoconiosis, because neither physician diagnosed pneumoconiosis, which the administrative law judge found "established by operation of law." Decision and Order at 8. Because we have vacated the administrative law judge's finding that the existence of pneumoconiosis was established, we instruct him to reconsider the opinions of Drs. Ghio and Jarboe. Further, on remand, the administrative law judge must consider the entirety of the opinions of Drs. Ghio and Jarboe, in particular, their statements that, even if they assumed that the miner suffered from pneumoconiosis, they would not alter their opinions regarding the cause of the miner's death.<sup>9</sup> See *Abshire v. D&L Coal Co.*, 22 BLR 1-202, 1-214-15 (2002)(*en banc*).

---

pneumoconiosis did not have any relationship to the miner death, and that "[i]f [the miner] were found to have coal workers' pneumoconiosis, my opinion regarding the cause of his death and the role his coal dust exposure played in his death would not change." *Id.* Dr. Jarboe, who is Board-certified in Internal Medicine and Pulmonary Disease, reviewed the miner's medical records and stated that the evidence was insufficient to diagnose pneumoconiosis. Employer's Exhibits 3, 4. He opined that the miner's smoking-induced airway disease caused the miner's respiratory insufficiency and death, and he stated that coal workers' pneumoconiosis did not cause, contribute to, or hasten the miner's death. *Id.* Dr. Jarboe also stated that, even if the miner were found to have coal workers' pneumoconiosis, his opinion regarding the cause of the miner's death would not change. *Id.*

<sup>9</sup> Contrary to employer's contention, the administrative law judge has the discretion to discount medical opinions regarding the cause of the miner's death, where the physicians did not diagnose the miner with pneumoconiosis. See *Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir. 1993), *vac'd sub nom.*, *Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds*, *Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *Adams v. Director, OWCP*, 886 F.2d 818, 826, 13 BLR 2-52, 2-63-64 (6th Cir. 1989).

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

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge