

BRB No. 97-1669 BLA

WILLIAM V. POLOMIK)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BELLAIRE CORPORATION)	DATE ISSUED:
)	
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 of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Sue Anne Howard, Wheeling, West Virginia, for claimant.

John C. Artz (Polito & Smock, P.C.), Pittsburgh, Pennsylvania, for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-118) of Administrative Law Judge Michael P. Lesniak denying benefits on a 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 claimant with thirty-three years of coal mine employment and adjudicated this duplicate claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c) or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) and, in light of the decision of the United States Court of Appeals for the Sixth Circuit in *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994), concluded that claimant failed to demonstrate a material change in conditions pursuant to 20 C.F.R.

§725.309. Additionally, the administrative law judge found the evidence of record insufficient to establish that claimant suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. On appeal, claimant challenges the administrative law judge's failure to apply the doctrine of collateral estoppel and his findings pursuant to Sections 718.202(a) and 718.204(b), (c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.

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 applicable law, they are binding upon this Board and may not be disturbed. 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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. Claimant contends that the administrative law judge erred in failing to apply the doctrine of collateral estoppel to bar employer from litigating the issue of the existence of pneumoconiosis. We disagree. Collateral estoppel, or issue preclusion, refers to the effect of a judgment in foreclosing relitigation in a subsequent action of an issue of law or fact that has been actually litigated and decided in the initial action. See *Freeman v. United Coal Mining Co. v. Director, OWCP [Forsythe]*, 20 F.3d 289, 18 BLR 2-189 (7th Cir. 1994). To successfully invoke 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 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.

See *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. 2510 (1990); *Forsythe, supra*; see also *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979).

Applying these principles to the facts of this case, the administrative law judge determined that the 1987 Decision and Order issued by Administrative Law Judge Michael F. Colligan on June 4, 1987, concluded that the medical opinions established the existence of pneumoconiosis pursuant to Section 718.202(a)(4), but that the evidence failed to establish total disability due to pneumoconiosis pursuant to Section 718.204(b), (c) and that benefits were thus denied. Decision and Order at 3; Director's Exhibit 60. Inasmuch as claimant did not seek further review and employer had no basis upon which to appeal, the administrative law judge reasonably concluded that employer was not estopped from relitigating the issue of the existence of pneumoconiosis in the instant action involving the same claimant. Decision and Order at 7-9. Consequently, contrary to claimant's contention, the finding of the existence of pneumoconiosis in the prior claim is not binding on the administrative law judge in the instant case since the doctrines of *res judicata* and collateral estoppel generally have no application in the context of a duplicate claim. *Sellards v. Director, OWCP*, 17 BLR 1-77 (1993). Thus, the administrative law judge properly made a finding regarding the existence of pneumoconiosis in the instant case and claimant's assertion that employer is estopped from raising the issue herein is without merit. We, therefore, affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). As claimant has failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a), an essential element of entitlement, an award of benefits is precluded under 20 C.F.R. Part 718 and we need not address claimant's contentions with respect to Section 718.204.¹ *Anderson v.*

¹ Inasmuch as we affirm the denial of benefits based on the administrative law judge's consideration of the merits, we need not address the duplicate claims issue in this case. 20 C.F.R. §725.309. *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994); *Dotson v. Director, OWCP*, 14 BLR 1-10 (1990).

Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); *Trent, supra.*

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge