BRB No. 96-1251 BLA

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| VAUGHN W. LUTHER | ) | |
| | ) | |
| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | DATE ISSUED: |
| CSX TRANSPORTATION, INCORPORATED | ) | |
| | ) | |
| Employer-Respondent | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Respondent | ) | DECISION and ORDER |

Appeal of the Decision and Order of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Phillip L. Wein, Clarion, Pennsylvania, for claimant.

D. Scott Newman (Burns, White, & Hickton), Washington, D.C., for employer.

Elizabeth A. Goodman (J. Davitt McAteer, 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, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order (95-BLA-0766) of Administrative Law

Judge Daniel L. Leland 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). This claim is a duplicate claim. Claimant's first claim for benefits, was filed on September 14, 1984 and denied on March 13, 1985 by a claims examiner on the basis that the evidence did not establish that he was a miner under the Act. Claimant was given sixty days to submit additional evidence to prove that he was a miner or to request a hearing before an administrative law judge. Claimant took neither action and the case was closed. Director's Exhibit 36. The administrative law judge considered this claim pursuant to 20 C.F.R. §725.309 and held that claimant is collaterally estopped from relitigating the issue of his status as a miner and that his duplicate claim for benefits cannot be considered. Accordingly, the claim was denied. On appeal, claimant contends that the administrative law judge erred in finding that he is collaterally estopped from relitigating the issue of whether he is a miner because his prior claim was never litigated prior to being denied and because the record contains new evidence, obtained after the denial of his first claim, which establishes that the claimant was a miner. Employer and the Director, Office of Workers' Compensation Programs (the Director), respond urging affirmance.

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order on Remand, the arguments raised on appeal, the evidence of record, and the holding of the United States Court of Appeals for the Third Circuit, within whose jurisdiction this claim arises, in *LaBelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-78 (3d Cir. 1995), we conclude that the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. Upon considering the claim pursuant to Section 725.309, the administrative law judge held that claimant is collaterally estopped from relitigating the issue of his status as a miner, citing *Swarrow*, *supra*. In *Swarrow*, the United States Court of Appeals for the Third Circuit, within whose jurisdiction this claim arises, addressed this issue and stated:

> A claim, even though it is a second claim, in which "a material change in conditions" is asserted and established cannot be barred when it states a new cause of action. Of course, new factual allegations supporting a previously denied claim will not create a new cause of action for the same injury previously adjudicated. *See, e.g., Rogerson v. Secretary of Health & Human Servs.,* 872 F.2d 24, 29 (3d Cir. 1989). In contrast, new facts (*i.e.* events occurring after the events giving rise to the earlier claim) may give rise to a new claim, which is not precluded by the earlier judgement.

*Swarrow*, 20 BLR at 2-87. In a footnote, the court further stated:

> Of course, the doctrine of collateral estoppel, or issue preclusion, may bar a claimant from relitigating issues decided in a previous action. For instance, if the Administrative law judge had found that Swarrow had not established that he was a "miner" under the Act, Swarrow may not later relitigate that issue (unless, of course, he subsequently worked as a miner).

*Swarrow,* 20 BLR at 2-88 note 10.

In this case, after citing the above language, the administrative law judge stated:

> This is precisely what has occurred in this case as the claims examiner decided that claimant was not a miner under the Act and claimant is now attempting to prove otherwise. He has not alleged any additional employment which would qualify him as a miner since his first claim was denied. After the denial was issued, claimant could have submitted additional evidence showing that he was a miner or he could have requested a hearing. He also had the option of requesting modification within one year of the denial and his claim would have been reevaluated.

Decision and Order at 3.

The administrative law judge is empowered to weigh the evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark v. Karst-Robbins Coal Co.,* 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Thus, we affirm the administrative law judge's finding pursuant to Section 725.309(d) and the denial of benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge