

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

U.S. Steel Mining Company, LLC, :  
Petitioner :  
 :  
v. : No. 1013 C.D. 2008  
 : Submitted: October 31, 2008  
Workers' Compensation Appeal Board :  
(Cortes), :  
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE FRIEDMAN

FILED: December 8, 2008

U.S. Steel Mining Company, LLC (Employer) petitions for review of the May 7, 2008, order of the Workers' Compensation Appeal Board (WCAB) that affirmed the decision of a workers' compensation judge (WCJ) granting the fatal claim petition filed by Mary Ann Cortes (Claimant), the widow of Joseph F. Cortes (Decedent). We affirm.

In a 1987 adjudication, Decedent was awarded total disability benefits based on findings that he was totally and permanently disabled from coal workers' pneumoconiosis caused by his work-related exposure to coal dust. (WCJ's Findings of Fact, No. 2.) In November 2005, Claimant filed a fatal claim petition alleging that Decedent's death, on August 12, 2005, was causally related to his occupational disease. Employer filed a timely answer, and the matter was assigned to a WCJ for hearings.

Claimant presented the deposition testimony of Cyril H. Wecht, M.D., who is board-certified in anatomic, clinical and forensic pathology. Dr. Wecht performed an autopsy on Decedent, reviewed Decedent's medical records and prepared slides containing sections of Decedent's lung tissue. In pertinent part, Dr. Wecht testified that the primary cause of Decedent's death was hypertensive and arteriosclerotic cardiovascular disease; Dr. Wecht further opined that Decedent's coal workers' pneumoconiosis was a substantial contributing factor to his death. (R.R. at 48a-53a.)

Employer offered the deposition testimony of Everett F. Oesterling, M.D. Dr. Oesterling, who is board-certified in clinical and anatomic pathology, reviewed Decedent's medical records and lung tissue slides. Dr. Oesterling testified that he found no evidence of coal workers' pneumoconiosis in the slides he examined, and he opined that Decedent had not suffered from this disease. (R.R. at 120a-21a, 134a, 146a.) On cross-examination, Dr. Oesterling acknowledged that coal workers' pneumoconiosis is not curable. He also agreed that if Decedent had been totally disabled from coal workers' pneumoconiosis during his lifetime, the disease would have been a substantial contributing factor to his death. (R.R. at 137a-38a, 144a-46a.)

The WCJ accepted the testimony of Dr. Wecht as more credible and persuasive than that of Dr. Oesterling, noting that Dr. Oesterling's opinion was contrary to the fact, established in a prior judicial determination, that Decedent was totally disabled due to coal workers' pneumoconiosis. (WCJ's Findings of Fact, No. 11.) The WCJ also concluded that Dr. Oesterling's testimony was not

competent to support the contention that Decedent was not totally and permanently disabled by coal workers' pneumoconiosis during his lifetime. (WCJ's Conclusions of Law, No. 2.) Based on the credited testimony, the WCJ determined that Claimant satisfied her burden of proof and granted the fatal claim petition. Employer appealed to the WCAB, which affirmed the WCJ's decision.

On appeal to this court,<sup>1</sup> Employer argues that the WCJ erred in concluding that Dr. Oesterling's failure to recognize the existence of coal workers' pneumoconiosis rendered his testimony incompetent. Employer asserts that the issue before the WCJ was whether or not Decedent died as a result of coal workers' pneumoconiosis, not whether Decedent was disabled from that disease during his lifetime. According to Employer, because the cause of Decedent's death was not previously litigated, the principles of res judicata and collateral estoppel do not apply,<sup>2</sup> and, therefore, the WCJ should have considered Dr. Oesterling's testimony in deciding the fatal claim petition.

The arguments Employer raises in this appeal are the same as those raised by Employer and rejected by our court in *U.S. Steel Mining Company, LLC*

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<sup>1</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

<sup>2</sup> The doctrine of res judicata provides that, when a final judgment on the merits exists, a future suit between the parties on the same cause of action is precluded. *Maranc v. Workers' Compensation Appeal Board (Bienenfeld)*, 751 A.2d 1196 (Pa. Cmwlth. 2000). The principle of collateral estoppel acts to foreclose litigation in a later action of issues of law or fact that were actually litigated and necessary to a previous final judgment. *Id.*

*v. Workers' Compensation Appeal Board (Sullivan)*, 859 A.2d 877 (Pa. Cmwlth. 2004), *appeal denied*, 582 Pa. 705, 871 A.2d 195 (2005). In that case, a 1985 adjudication established that the decedent was partially disabled as a result of coal workers' pneumoconiosis contracted in the course of his employment. However, at hearings on the widow's fatal claim petition, Employer's medical witnesses denied the existence of the decedent's non-reversible occupational disease. We specifically held that, to the extent that Employer's medical witnesses denied that the decedent suffered from coal workers' pneumoconiosis, their testimony impermissibly relitigated the issue of the decedent's established condition and, therefore, was not competent to support the denial of the fatal claim petition. The WCJ correctly reached the same conclusion here.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Judge

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ORDER

AND NOW, this 8th day of December, 2008, the order of the Workers' Compensation Appeal Board, dated May 7, 2008, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Judge