

STATE OF MICHIGAN
COURT OF APPEALS

JUDY K. HALE,

Plaintiff-Appellant,

v

FAMILY DOLLAR STORES and TRAVELERS
CASUALTY COMPANY,

Defendants-Appellees.

UNPUBLISHED

April 23, 2002

No. 231763

WCAC

LC No. 00-000156

Before: Sawyer, P.J., and Murphy and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted an order of the Workers' Compensation Appellate Commission (WCAC), which affirmed the magistrate's decision to dismiss plaintiff's application for benefits based on the principle of res judicata. We reinstate the application.

Plaintiff suffered a work-related lower back injury. A magistrate awarded plaintiff general disability benefits after finding that plaintiff was partially disabled due to low back, left hip and left leg pain caused by the work-related injury. On appeal, the WCAC affirmed the decision of the magistrate, but remanded the matter to a different magistrate, the original magistrate being unavailable, to reopen proofs, determine plaintiff's residual earning capacity since her injury pursuant to *Sobtko v Chrysler Corp*, 447 Mich 1; 523 NW2d 454 (1994) and *Braddock v Bellrose, Inc*, 1994 ACO 525, and credit defendants with that amount. The magistrate on remand reopened proofs and then found that plaintiff was not entitled to benefits due to work avoidance and terminated her benefit award. The WCAC affirmed in reliance on *Haske v Transport Leasing, Inc, Indiana*, 455 Mich 628; 566 NW2d 896 (1997).

Plaintiff subsequently commenced the instant action for wage loss benefits. She alleged in her application for hearing that she was now entitled to benefits because she had been repeatedly denied employment by respective employers due to her restrictions and because her low back condition had worsened to the point that she was now totally disabled. Defendants responded by moving to dismiss the application on the ground that the doctrine of res judicata barred a revisiting of the final decision of the WCAC. The magistrate agreed with defendants and dismissed the application on the ground that it was barred by res judicata. Plaintiff appealed. The WCAC affirmed the decision of the magistrate. We granted plaintiff's application for leave to appeal on May 1, 2001.

Plaintiff challenges the application of the doctrine of res judicata in the presence of changed circumstances. Our review of worker's compensation cases is limited to questions of law. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 706; 614 NW2d 607 (2000). A decision of the WCAC is subject to reversal if the commission operated within the wrong legal framework, if the commission based a decision on erroneous legal reasoning, if the commission based a finding of fact upon a misconception of law or if the commission failed to correctly apply the law. *Bates v Mercier*, 224 Mich App 122, 124; 568 NW2d 362 (1997); *Jones-Jennings v Hutzl Hosp (On Remand)*, 223 Mich App 94, 105; 565 NW2d 680 (1997). We find that the WCAC erroneously applied the doctrine of res judicata.

Res judicata applies in the context of worker's compensation proceedings. *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 378; 521 NW2d 531 (1994). In the context of a worker's compensation case, an adjudication of an employee's claim constitutes an adjudication of the condition of the employee at the time of the entry of the order resolving the claim. It is not an adjudication of the employee's future condition and, therefore, does not preclude subsequent awards or subsequent modifications of an original award under the doctrine of res judicata upon a showing of a change in circumstances, e.g., a change in the employee's physical or mental condition. *Theodore v Packing Materials, Inc*, 396 Mich 152, 158; 240 NW2d 255 (1976); *Wood v Fabricators, Inc*, 189 Mich App 406, 416-418; 473 NW2d 735 (1991); Welch, Worker's Compensation in Michigan: Law & Practice, § 23.3, pp 23-7-23-9; see *Pike v Wyoming*, 431 Mich 589, 596; 433 NW2d 768 (1988) (Griffin, J.) (res judicata does not apply in a worker's compensation case where there has been a subsequent change in facts). Additionally, res judicata does not preclude an employee from filing a subsequent petition for benefits claiming that the employee's condition has worsened so that he or she was now disabled even though there has been a prior determination by a magistrate that the claimant suffered a personal work-related injury, but was not disabled by the injury. Welch, Worker's Compensation in Michigan: Law & Practice, § 23.3, p 23-8.

Plaintiff's petition alleges two subsequent and substantial changes in circumstances: an absence of work avoidance and a worsening of her physical condition such that she is now totally disabled. These alleged circumstances are sufficient to remove this case from the preclusive effects of res judicata. The decision of the WCAC to the contrary is the product of an erroneous application of the doctrine of res judicata.

We lack jurisdiction to address plaintiff's remaining issue. *Calovecchi v Michigan*, 461 Mich 616, 626; 611 NW2d 300 (2000).

Reversed and remanded for reinstatement of plaintiff's application for hearing. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Joel P. Hoekstra