IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paul Corbett, Petitioner	:	
v.	:	No. 2716 C.D. 2010
Workers' Compensation Appeal Board (Port Authority of Allegheny County), Respondent	:	Submitted: April 29, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: August 24, 2011

Paul Corbett (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board), which reversed the decision of a workers' compensation judge (WCJ) granting Claimant's Review Petition. We affirm.

On July 12, 2005, Claimant filed a Claim Petition alleging an injury sustained during the course and scope of his employment with the Port Authority of Allegheny County (Employer) on May 16, 2005. WCJ Persifor Oliver issued the following order:

> AND NOW, this 20th day of June, 2006, the claim petition is hereby granted. The claimant suffered a work injury on May 16, 2005 to his left shoulder, left side of his neck, left leg, and left hip. The employer is directed

> to pay all reasonable and necessary medical expenses causally related to the claimant's May 16, 2005 injury. Employer is further directed to reimburse claimant's counsel for costs of prosecution in the amount of $195.64 and to pay claimant's counsel, out of its own funds, counsel fees in the amount of $1,575.00.

Reproduced Record (R.R.) at 52a. Employer appealed. By order dated February 7, 2007, the Board affirmed and modified the WCJ's order, with the modification applicable to the period of the unreasonable contest and the award of attorney fees. See Board's November 23, 2010, Decision.

On December 12, 2008, Claimant filed a Review Petition on the basis that the description of the work injury sustained on May 16, 2005 is incorrect and should be amended to include an injury to his low back and left hip. Employer filed an answer denying Claimant's assertion that the work injury should be expanded to include a "low back" injury while pointing out that WCJ Oliver's decision already included the "left hip" in the description of the work injury.

A hearing on Claimant's Review Petition was held by WCJ David B. Torrey. Based upon the testimony and evidence presented, WCJ Torrey granted Claimant's Review Petition, concluding that Claimant met the requisite burden of proof. WCJ Torrey reasoned that Claimant could not have appealed WCJ Oliver's June 20, 2006 decision because he prevailed on the Claim Petition and, therefore, was not an aggrieved party. WCJ Torrey characterized WCJ Oliver's failure to include a low back injury as pertaining to the satisfaction of the award as opposed to the merits of the award, and therefore properly reviewable as a description of the work injury. WCJ Torrey rejected Employer's argument that the matter is precluded pursuant to the principle of res judicata.

From this decision, Employer filed an appeal with the Board, which reversed. The Board determined that the correct description of a work injury goes to the merits of the case and is not a mere element of the satisfaction of an award. The Board also determined that the issue was barred by res judicata because it should have been litigated in the previous Claim Petition. This appeal now follows.[1] Claimant presents the following issues for our review:

> 1. Whether the Board erred as a matter of law in reversing the decision of WCJ Torrey due to erroneous interpretation of case law and the record, where the Board erroneously applied the doctrine of res judicata, and misconstrued the Claimant's Review Petition as an appeal of the prior decision of WCJ Oliver.
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> 2. Whether the Board failed to properly interpret the prior decision of WCJ Oliver, and erroneously reversed the recent decision of WCJ Torrey to include the low back as part of the Claimant's injury.

Claimant contends that the Board erroneously applied the doctrine of res judicata and misconstrued Claimant's Review Petition as an appeal of WCJ Oliver's decision. We disagree.

Under the doctrine of technical res judicata, often referred to as claim preclusion, "when a final judgment on the merits exists, a future suit between the parties on the same cause of action is precluded." Weney v. Workers' Compensation Appeal Board (Mac Sprinkler Systems, Inc.), 960 A.2d 949, 953 (Pa. Cmwlth. 2008) (quoting Henion v. Workers' Compensation Appeal Board (Firpo & Sons, Inc.),

[1] This Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995).

776 A.2d 362 (Pa. Cmwlth. 2001)), petition for allowance of appeal denied, 601 Pa. 691, 971 A.2d 494 (2009). Under Pennsylvania law, the following four conditions must be present in order for the doctrine of res judicata to apply: 1) identity of issues; 2) identity of causes of actions; 3) identity of persons and parties to the actions; and 4) identity of the quality or capacity of the parties suing or being sued. Safeguard Mutual Insurance Company v. Williams, 463 Pa. 567, 345 A.2d 664 (1975); Weney; Volkswagon of America, Inc. v. Workers' Compensation Appeal Board (Bennett), 858 A.2d 151 (Pa. Cmwlth. 2004). For res judicata to apply, "the issue or issues must have been actually litigated and determined by a valid and final judgment." County of Berks ex rel. Baldwin v. Pennsylvania Labor Relations Board, 544 Pa. 541, 549, 678 A.2d 355, 359 (1996) (citing Philadelphia Marine Trade Association v. International Longshoremen's Association, 453 Pa. 43, 308 A.2d 98 (1973)). Res judicata applies not only to matters which were actually litigated, but also to those matters which should have been litigated... ." Armco Steel Corp. v. Workmen's Compensation Appeal Board, 431 A.2d 363, 365 (Pa. Cmwlth. 1981). Generally, causes of action are identical when the subject matter and the ultimate issues are the same in both the old and the new proceedings. Henion; Weney.

The issue before WCJ Oliver on Claimant's Claim Petition was whether Claimant sustained a work-related injury on May 16, 2005, and the nature of that injury. Pursuant to the findings of WCJ Oliver, Claimant filed a Claim Petition alleging he "sustained an injury to his left shoulder, left side of his neck, left leg and left hip."[2] Reproduced Record (R.R.) at 50a. WCJ Oliver ultimately concluded that Claimant sustained a work-related injury to "his left shoulder, left side of his neck,

[2] Claimant's Claim Petition is not part of the certified record in this case.

left leg and left hip." R.R. at 52a. In the proposed findings of fact submitted by Claimant to WCJ Oliver, Claimant states that he amended his allegations to include an injury to his low back.[3] Employer's Exhibit A. Claimant and his medical expert, Jorge Lindenbaum, M.D., provided testimony regarding a low back injury; Dr. Lindenbaum attributed the back injury to the work-related cause. Although, the WCJ credited Dr. Lindenbaum's testimony in its entirety, the WCJ did not include the low back injury in his award.

The issue before WCJ Torrey on Claimant's Review Petition was whether the work-related injury sustained on May 16, 2005 included an injury to Claimant's low back and left hip. This is the same issue that was litigated before WCJ Oliver. The left hip injury was included in WCJ Oliver's description of the work-related injury, but the low back injury was not. Claimant did not appeal this decision.

Claimant argues that the omission of the back injury was a mistake, which goes to the "satisfaction" of the award, as opposed to the "merits." In support of this proposition, Claimant relies upon Drozd v. Workers' Compensation Appeal Board (The Lion, Inc.), 485 A.2d 96 (Pa. Cmwlth. 1984). In Drozd, the claimant suffered a work-related injury and as a result he received total disability benefits at the rate of $60.00 per week. The employer appealed to the Board, which affirmed. Neither side appealed the Board's decision. Thereafter, the claimant filed a modification petition alleging that the referee, now referred to as a workers' compensation judge, used an obsolete version of Section 306(a) of the Workers' Compensation Act[4] (Act), 77 P.S. §511, to determine the amount of benefits. The

[3] It is unclear from the record how the Claim Petition was amended.

[4] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §511.

claimant contended that he was entitled to benefits of $86.14 per week and that the referee's error could be corrected under Section 413 of the Act, 77 P.S. §772. The referee denied the claimant's petition and the Board affirmed.

On appeal, we reversed and held that the referee's mechanical error in the computation of the claimant's benefits was not irremediable despite the failure to appeal. Drozd. Rather, we determined that Section 413 of the Act permits a referee to modify a compensation award to correct mechanical errors in the application of the statute. Id. In support of our decision, we relied upon Fowler v. Workmen's Compensation Appeal Board, 393 A.2d 1300 (Pa. Cmwlth. 1978), where a referee made a mathematical error and awarded a claimant $522.50 in medical expenses over the amount he was entitled to receive. Drozd. As a result of the overpayment in Fowler, we directed the compensation authorities to offset the overpayment against the award to the claimant for future medical expenses. Id.

In Drozd, this Court also relied on Giannetti v. M.C. Seib Co., 63 A.2d 464 (Pa. Super. 1949) and Bush v. Lehigh Brick Co., 109 A.2d 206 (Pa. Super. 1954), which were similar cases that involved mistakes in the calculation and payment of the claimants' awards. Like Giannetti and Bush, we held that Drozd did not concern the merits of the original award, but the question of its satisfaction. Because the claimant in Drozd was totally disabled and entitled to compensation, he should have received $84.16 per week during total disability instead of the $60.00 per week he had been awarded. Thus, we held that it was error on the part of compensation authorities not to have modified the original award to correct the mechanical error. Drozd.

Unlike Drozd and the cases cited therein, this case does not involve a mechanical or mathematical error relating to the satisfaction of the award. Rather, the issue of whether or not Claimant’s back injury should have been included in the

description of the work injury goes to the merits of the case, not the satisfaction of the award. The injury description is relevant to Claimant's substantive right to benefits. According to Claimant's proposed findings of fact filed with WCJ Oliver, Claimant amended his Claim Petition to include the back injury. Employer's Exhibit A. The back injury issue was raised and fully litigated in the proceedings on Claimant's Claim Petition. Claimant testified he experienced low back pain following the work injury and that he continues to seek medical care for his low back. Dr. Lindenbaum attributed Claimant's low back injury to the work-related cause. Employer's expert opined that the low back injury was not related to the work injury. Despite the fact that Claimant's medical witness was found to be credible, the back injury was not included in WCJ Oliver's award. Although Claimant prevailed on the Claim Petition in the final order issued by WCJ Oliver, Claimant lost on the issue of the low back injury. Even if the omission of the low back injury was a mistake on the part of WCJ Oliver, the mistake goes to the merits of the case, not to the satisfaction of the award, and should have been appealed.

Claimant maintains that, having prevailed on the Claim Petition, he was not "aggrieved" and, therefore, did not have standing to file an appeal with the Board. We disagree.

With regard to standing to appeal a WCJ's decision to the Board, we find the rules and cases relating to appellate procedure to be instructive. Pursuant to Rule 501 of the Pennsylvania Rules of Appellate Procedure[5] and Section 702 of the Administrative Agency Law,[6] only a person "aggrieved" by a decision has standing

[5] This rule provides, in pertinent part, that: "Except where the right of appeal is enlarged by statute, any party who is aggrieved by an appealable order ... may appeal therefrom." Pa. R.A.P. 501.

[6] This section provides, in pertinent part, that: "Any person aggrieved by an adjudication

(Continued....)

to appeal the tribunal's order. ACS Enterprises, Inc. v. Norristown Borough Zoning Hearing Board, 659 A.2d 651, 653 (Pa. Cmwlth. 1995). The term "aggrieved" is not defined in the Administrative Agency Law, but the case law has established that one is "aggrieved" if one (a) has a substantial interest in the subject-matter of the litigation; (b) the interest is direct; and (c) the interest is immediate and not a remote consequence. Beers v. Unemployment Compensation Board of Review, 534 Pa. 605, 611, 633 A.2d 1158, 1161 (1993); Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975). Whether a party has standing to appeal decision of a state agency is determined on a case-by-case basis and, if a person is determined aggrieved, he has standing. Chiro-Med Review Co. v. Bureau of Workers' Compensation, 908 A.2d 980 (Pa. Cmwlth. 2006).

A party who has prevailed in a proceeding below is not an aggrieved party and, consequently, has no standing to appeal. United Parcel Service, Inc. v. Pennsylvania Public Utility Commission, 574 Pa. 304, 830 A.2d 941 (2003). Although a prevailing party may disagree with the tribunal's legal reasoning or findings of fact, the prevailing party's interest is not adversely affected by the tribunal's ultimate order because the prevailing party was meritorious in the proceedings below. Almeida v. Workers' Compensation Appeal Board (Herman Goldner Co.), 844 A.2d 642, 644 (Pa. Cmwlth. 2004); ACS Enterprises; Middletown Township v. Pennsylvania Public Utility Commission, 482 A.2d 674, 685 (Pa. Cmwlth. 1984). "It is an elementary rule of appellate practice that one does not appeal a finding of fact of a tribunal." Wright v. Workmen's

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of a Commonwealth agency who has a direct interest in such adjudication shall have the right to appeal therefrom... ." 2 Pa.C.S. §702.

Compensation Appeal Board (Adam's Mark Hotel), 639 A.2d 1347, 1349 (Pa. Cmwlth. 1994); GNB, Inc. v. Workers' Compensation Appeal Board (Korman), 810 A.2d 732 (Pa. Cmwlth. 2002). "What is appealed is the order of the tribunal." Wright, 639 A.2d at 1349.

Applying these general principles of standing to the present case, we find that Claimant had standing to appeal the WCJ's decision to the Board. While Claimant prevailed on his Claim Petition, he only prevailed in part since the low back injury was not included in WCJ Oliver's award. As a result, Claimant was adversely affected by the decision because he was not entitled to receive payment for medical expenses incurred for the treatment of this injury. Claimant was, therefore, aggrieved. Thus, the proper remedy was to file an appeal from WCJ Oliver's order, which Claimant failed to do. As a result, WCJ Oliver's order is final and cannot be collaterally attacked by a subsequently filed review petition. For these reasons, we agree with the Board that the doctrine of res judicata bars the relief sought by Claimant in his Review Petition.

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

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O R D E R

AND NOW, this 24th day of August, 2011, the order of the Workers' Compensation Appeal Board, at A09-1152, dated November 23, 2010, is AFFIRMED.

JAMES R. KELLEY, Senior Judge