

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 1568

**F.J. PARK
VERSUS
DIVISION OF ADMINISTRATON**

Consolidated With

2018 CA 1569

**F.J. PARK
VERSUS
DIVISION OF ADMINISTRATION**

Judgment Rendered: JUN 21 2019

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On Appeal from the Office of Workers' Compensation
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. 17-1501 c/w 17-03819

Honorable Pamela A. Moses-Laramore, Workers' Compensation Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

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McCLENDON, J.

In this workers' compensation proceeding, claimant F.J. Park appeals a judgment sustaining a peremptory exception of res judicata and dismissing his claims against his employer. We affirm.

FACTS AND PROCEDURAL HISTORY

On February 14, 1998, F.J. Park sustained injuries to his right shoulder, neck, and lumbar spine while working as a master carpenter for the Department of Building and Grounds, an agency of the State of Louisiana, Division of Administration ("DOA"). Mr. Park received medical treatment for his injuries and temporary total disability ("TTD") benefits when his treating physician determined he could not return to work.

Mr. Park's physician released him to "light duty" work in a sedentary capacity in August of 1999. He performed clerical work for the Department of Building and Grounds until he accepted disability retirement in February 2000. Following his acceptance of disability retirement, Mr. Park began to receive Supplemental Earnings Benefit ("SEB") payments at the TTD rate. He received SEB for a total of 529 weeks, nine weeks over the 520 weeks due under the Workers' Compensation Act ("the Act"). The final SEB payment was received on February 6, 2009.

On April 28, 2009, Mr. Park filed a disputed claim for compensation seeking permanent total disability ("PTD") status and benefits, as well as vocational rehabilitation services. A second disputed claim for compensation was filed by Mr. Park on March 22, 2011. The two matters were consolidated by order dated May 16, 2011.

The claim was ultimately tried on April 26, 2013. The Workers' Compensation Judge ("WCJ") rendered judgment and oral reasons for judgment from the bench. Relevant to this appeal, the WCJ found that Mr. Park had failed to prove that he was entitled to PTD status and benefits. The WCJ also found that Mr. Park was entitled to further vocational rehabilitation services and awarded reinstatement of the same. A written judgment and written reasons for judgment were executed on May 29, 2013.¹

¹ In the May 29, 2013 judgment, the WCJ further found that the DOA had not improperly terminated Mr. Park's SEB benefits. Rather, the WCJ found that the SEB benefits available to Mr. Park had been exhausted; therefore, he was due no further indemnity benefits and was awarded no attorney's fees or penalties. The WCJ also found that Mr. Park failed to prove that the DOA did not timely authorize treatment for his psychological condition.

On October 2, 2017, Mr. Park filed an amended disputed claim for compensation again seeking permanent total disability status and benefits and vocational rehabilitation. (R. 4) Defendant herein, the DOA, filed a peremptory exception of res judicata and a motion for partial summary judgment.² The exception of res judicata was heard on July 20, 2018. The WCJ granted the exception from the bench, and signed a written order on August 2, 2018. Mr. Park then appealed this judgment, asserting the following assignments of error:

- (1) The WCJ erred when the court noted in its final judgment that the court did not recognize claimant's change in condition.
- (2) The WCJ erred when it noted that La. R.S. 23:1310(e) states a judgment denying benefits is res judicata after the claimant has exhausted his rights of appeal.

LAW & ANALYSIS

We first address assignment of error number two, and pretermite discussion of assignment of error number one.

Louisiana Revised Statute 23:1310.8 sets forth the provisions governing the continued jurisdiction of the O.W.C. Mr. Park argues that LSA-R.S. 23:1310.8 is to be liberally construed in favor of the claimant and that the legislature did not intend for a judgment determining the extent of a claimant's disability be res judicata, as it expressly provided that a compensation award can be modified based on a change in the worker's condition.

The pertinent parts of the governing statute, LSA-R.S. 23:1310.8, provide:

B. Upon the motion of any party in interest, on the ground of a change in conditions, the workers' compensation judge may, after a contradictory hearing, review any award, and, on such review, may make an award ending, diminishing, or increasing the compensation previously awarded, subject to the maximum or minimum provided in the Workers' Compensation Act, and shall state his conclusions of fact and rulings of law, and the assistant secretary shall immediately send to the parties a copy of the award.

E. A judgment denying benefits is res judicata after the claimant has exhausted his rights of appeal.

² A separate judgment disposing of the DOA's motion for partial summary judgment was rendered and is not before this court in the instant appeal.

In its May 29, 2013 judgment, the WCJ specifically denied Mr. Park's original claim for PTD status and benefits upon "finding that F.J. Park failed to meet the burden of proof necessary to establish that F.J. Park is Permanently and Totally Disabled as a result of the February 14, 1998 work-related accident." Louisiana Revised Statute 23:1310.8(B) permits any party in interest to seek to end, diminish, or increase compensation previously awarded on the ground of a change in the claimant's conditions; however, this Court has previously held that under LSA-R.S. 23:1310.8(B), a claimant cannot seek modification of an adverse judgment *denying* benefits, because the statutory language "compensation previously awarded" requires that a prior award of compensation has been made. **Albert v. Air Products & Chemicals**, 2015-0525 (La.App. 1 Cir. 1/21/16), 186 So.3d 743, 746, writ denied, 2016-0630 (La. 5/20/16), 191 So.3d 1071, citing **Fox v. Reynolds Indus. Contractors**, 44,938, 44,939 (La.App. 2 Cir. 1/27/10), 33 So.3d 895, 901, writ denied, 2010-0676 (La. 5/28/10), 36 So.3d 250, and **Johnson v. Fresenius Medical Care**, 43,952 (La.App. 2 Cir. 2/4/09), 4 So.3d 187, 188-89.

The May 29, 2013 judgment is therefore subject to LSA-R.S. 23:1310.8(E), which provides that a judgment denying benefits is res judicata after the claimant has exhausted his rights of appeal. Mr. Park did not appeal that judgment, and it has become final. Under LSA-R.S. 23:1310.8(E), once Mr. Park's rights of appeal were exhausted, the judgment denying PTD status and benefits was res judicata and barred another claim for PTD status and benefits related to his work-related accident. Thus, the WCJ correctly granted the DOA's exception of res judicata. See Albert, 186 So.3d at 746-747.

We note that the DOA filed a peremptory exception of prescription with this Court, arguing that Mr. Park's claims for PTD status and benefits have prescribed under LSA-R.S. 23:1209(A)(2). As the judgment Mr. Park seeks to modify is res judicata, the exception of prescription is moot.

CONCLUSION

For the foregoing reasons, the August 2, 2018 judgment granting the DOA's exception of res judicata and dismissing Mr. Park's petition to modify the May 29, 2013

judgment is affirmed. The DOA's exception of prescription filed in this court is denied as moot. All costs of this appeal are assessed to Mr. Park.

AFFIRMED.