STATE OF MICHIGAN

COURT OF APPEALS

CAROLYN SPILLER, Plaintiff-Appellant,	UNPUBLISHED August 9, 2005
v	No. 253502 WCAC
UNITED AIRLINES INC, Defendant-Appellee.	LC No. 03-000051

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff Carolyn Spiller appeals by leave granted the Worker's Compensation Appellate Commission's (WCAC) order affirming a magistrate's dismissal of Spiller's petition for disability benefits. We reverse and remand for further proceedings. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

In January 2001, Spiller filed the instant petition for disability benefits. Spiller claims to have herniated a disk in her neck while moving a computer at work on May 31, 2000. However, Spiller contends that she did not become disabled from this injury until October 23, 2000.

United Airlines filed a motion to dismiss the instant petition on res judicata grounds. United Airlines argued that Spiller's instant claim was barred because it could have been raised in a prior petition for benefits that Spiller filed in June 1998 in regard to an alleged repetitive strain injury to her hand and arm. United Airlines noted that the hearing on Spiller's June 1998 petition did not occur until August 2000 and the record in that matter did not close until October 2, 2000, and contended that because Spiller suffered the neck injury, and actually sought treatment for that injury, prior to the record being closed in the first action, Spiller could have brought the allegations raised in the instant action in the first action. In response, Spiller argued that because she was not actually disabled by the neck injury until after the record was closed in the first action, her instant claim for disability benefits for the neck injury was not ripe at the time of the first action.

The magistrate agreed with United Airlines and dismissed the instant claim. The magistrate noted that, in Michigan, the doctrine of res judicata applies not only to bar those claims previously litigated but also those claims arising out of the same transaction which could

have been brought in the prior action but were not, and concluded that, in this case, because the alleged neck injury occurred before trial in the prior action, Spiller's instant claim could have been raised therein. The magistrate found Spiller's contention that her claim was not ripe because her doctor did not find her to be disabled until after the first action ended to be unpersuasive.

Spiller appealed the magistrate's dismissal to the WCAC, where it was affirmed. The WCAC agreed with the magistrate's analysis, and stated that the fact that the neck injury allegedly worsened and did not become disabling until after the prior action concluded did not mean that the instant claim was not ripe at the time of the prior action, and did not render res judicata inapplicable.

II. The WCAC's Decision

A. Standard Of Review

We will uphold the WCAC's factual findings if there is any evidence supporting them, provided the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decision.[1] Our review begins with the WCAC's decision, not the magistrate's.[2] We review de novo questions of law in any WCAC order.[3] Application of res judicata is a legal question subject to review de novo.[4] We will reverse the WCAC's decision if it is based on erroneous legal reasoning or application of the wrong legal framework.[5]

B. Res Judicata

At issue in this case is the application of the doctrine of res judicata. Generally speaking, there are two forms of res judicata, the "narrow" form and the "broad" form. "Narrow application bars a second action only if the same question was actually litigated in the first proceeding. Broad application bars as well those claims arising out of the same transaction which plaintiff could have brought, but did not."[6] The Michigan Supreme Court has held that the "broad" form of res judicata applies in worker's compensation cases.[7]

In this case, we find the application of res judicata, even in its broad form, to have been improper. In particular, the doctrine is inapplicable because Spiller's claims do not satisfy the

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[1] See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 701, 709-710; 614 NW2d 607 (2000).

[2] *Id*.

[3] *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000).

[4] See *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

[5] See *DiBenedetto, supra* at 401-402.

[6] *Gose v Monroe Auto Equip Co*, 409 Mich 147, 160; 294 NW2d 165 (1980).

[7] See *id*. at 160-162.

"same transaction" requirement. The test for determining whether two claims arise out of the same transaction and are identical for res judicata purposes is whether the same facts or evidence are essential to the maintenance of the two actions.[8] If two actions rest on different sets of facts, or if different proofs would be required to sustain the two actions, a judgment in one does not bar the maintenance of the other.[9]

In the case at bar, Spiller seeks compensation for a herniated disk in her neck; an injury unrelated to the prior injury to her hand and arm. Therefore, the evidence required to establish the instant claim would be different than the evidence required to establish Spiller's prior claim. Consequently, Spiller's claims do not arise out of the same transaction. Therefore, res judicata is simply inapplicable, and does not bar the instant action, and the WCAC and magistrate erred in concluding otherwise.

Reversed and remanded to the magistrate for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

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[8] *Jones v State Farm Mut Automobile Ins Co*, 202 Mich App 393, 401; 509 NW2d 829 (1993), modified on other grounds 447 Mich 429 (1994).

[9] *VanDeventer v Michigan Nat'l Bank*, 172 Mich App 456, 464; 432 NW2d 338 (1988).