

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation Appeal	:	
Board (Spaddy),	:	No. 1273 C.D. 2009
	:	
Respondent	:	Submitted: January 22, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: February 24, 2010

The City of Philadelphia (Employer) petitions this Court for review of the June 3, 2009 order of the Workers' Compensation Appeal Board (Board) affirming an order of a Workers' Compensation Judge (WCJ) granting the reinstatement and penalty petitions of Tina Spaddy (Claimant). Employer presents three issues for this Court's review: (1) whether the Board erred in granting Claimant's reinstatement petition; (2) whether Claimant's reinstatement petition was barred by res judicata and/or collateral estoppel; and (3) whether the Board erred in granting Claimant's penalty petition. For reasons that follow, we affirm the Board's order.

Claimant suffered a work injury on January 1, 2000, and received workers' compensation benefits pursuant to a Notice of Compensation Payable. On February 15, 2001, Employer filed a petition to terminate or suspend Claimant's

benefits. Claimant's benefits were suspended as of August 24, 2001 because she returned to work. On September 30, 2001, Claimant suffered a recurrence of her work injury. On January 7, 2002, Claimant filed a reinstatement petition. Based upon Employer's voluntary payment of benefits, however, Claimant withdrew her reinstatement petition on June 12, 2003.

Notwithstanding, as a result of a termination/suspension petition which was originally filed in 2001, a WCJ determined, on April 30, 2004, that Claimant's benefits were suspended as of August 24, 2001. Employer responded by ceasing payment of Claimant's benefits. Claimant and Employer then appealed to the Board. On February 17, 2005, the Board affirmed Claimant's suspension of benefits.

On March 3, 2005, Claimant filed another reinstatement petition; and on April 5, 2006, Claimant filed a penalty petition. On August 19, 2008, the WCJ granted Claimant's petitions. Employer appealed to the Board; and on June 3, 2009, the Board affirmed the WCJ's order. Employer appealed to this Court.<sup>1</sup>

Employer argues that the Board erred in affirming the WCJ because the WCJ erred in finding that Claimant met her burden for a reinstatement of benefits as of September 30, 2001. Employer contends that Claimant must present medical evidence before her benefits can be reinstated. We disagree.

In the instant case, Employer suspended its voluntary payment of benefits to Claimant based upon the WCJ's April 30, 2004 order that determined that Claimant's benefits were suspended as of August 24, 2001. However, when that order was appealed to the Board, the Board specifically held: "inasmuch as

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<sup>1</sup> This Court's review is limited to determining whether an error of law was committed, whether the findings of fact are supported by substantial evidence and whether Claimant's constitutional rights were violated. *Sysco Food Servs. of Phila. v. Workers' Comp. Appeal Bd. (Sebastiano)*, 940 A.2d 1270 (Pa. Cmwlth. 2008).

[Employer] reinstated Claimant's benefits subsequent to the date of the suspension ordered by the [WCJ], Claimant[']s benefits will remain reinstated until such time as [Employer] obtains a change of Claimant's status pursuant to the provisions of the Workers' Compensation Act<sup>[2]</sup> (Act).” Reproduced Record at 34a. Thus, Claimant was able to meet her burden of proving entitlement to a reinstatement of benefits by proving that Employer unilaterally stopped paying her benefits without a legitimate basis, in total disregard of the Board's prior holding. In addition, the record contains Claimant's uncontradicted testimony regarding the recurrence of her injury.<sup>3</sup> See Notes of Testimony, April 3, 2006 at 6-7. Accordingly, the Board did not err in affirming the WCJ's determination that Claimant met her burden of proving her entitlement to a reinstatement of benefits.

Employer further argues that Claimant's reinstatement petition was barred by res judicata and/or collateral estoppel because the WCJ's April 30, 2004 order suspended Claimant's benefits as of August 24, 2001. Employer contends the WCJ disposed of the issue and the Board affirmed it, thus Claimant is barred from requesting a reinstatement of benefits for a date prior to April 30, 2004. We disagree.

In order for technical res judicata to apply, there must be: “(1) identity of the thing sued upon or for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the parties suing or sued.”

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<sup>2</sup> “Act of June 2, 1995, P.L. 736, as amended, 77 P.S. §§1-1041.4, 2501-[2708].” (Cited in Board Op. as footnote 3).

<sup>3</sup> Because Claimant's benefits were suspended, only proof that her earning power was adversely affected and her injury continued is required for a reinstatement of benefits. *City of Philadelphia v. Workers' Comp. Appeal Bd. (McGinn)*, 879 A.2d 838 (Pa. Cmwlth. 2005).

*Weney v. Workers' Comp. Appeal Bd. (Mac Sprinkler Sys., Inc.)*, 960 A.2d 949, 954 (Pa. Cmwlth. 2008) (quoting *Henion v. Workers' Comp. Appeal Bd. (Firpo & Sons, Inc.)*, 776 A.2d 362, 366 (Pa. Cmwlth. 2001)). Collateral estoppel applies when:

(1) the issue decided in the prior case is identical to the one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the doctrine is asserted was a party or in privity with a party in the prior case and had a full and fair opportunity to litigate the issue; and (4) the determination in the prior proceeding was essential to the judgment.

*Id.* Here, the prior matter concerned a suspension petition, and the issue decided was whether Claimant's benefits were suspended on August 24, 2001, when Claimant went back to work. The matter currently before the Court is whether Claimant's benefits were properly reinstated where Employer unilaterally suspended Claimant's benefits after the date of the WCJ's order of April 30, 2004. Although the parties are identical, the determination in the prior proceeding was not essential to the current determination, and the issue in the prior proceeding is not identical to the current issue. Thus, neither *res judicata* nor collateral estoppel apply.

While it is true that *res judicata* also bars a claimant from raising a matter that should have been raised in an earlier proceeding, in this case Claimant could not have raised the issue of her reinstatement of benefits until after the WCJ's determination of April 30, 2004 since that served as the basis of Employer's decision to cease payment of benefits. Further, Claimant did raise the issue of her reinstatement of benefits when her recurrence of injury initially occurred. The issue, however, was deemed moot when Employer voluntarily reinstated payment of Claimant's benefits. Hence, this is not an issue that Claimant failed to raise at an earlier time. Accordingly, Claimant's reinstatement petition was not barred by either *res judicata* or collateral estoppel.

Finally, Employer argues that the Board erred in granting Claimant's penalty petition. Employer contends it did not violate the Act, nor did it violate the Act in such a way warranting the award of penalties. We disagree.

“[I]t is not the policy of the Court to endorse an employer's unilateral decision to cease paying a claimant's benefits without a written agreement or official order. Such action is an unauthorized supersedeas for which penalties may be imposed.” *Farance v. Workers' Comp. Appeal Bd. (Marino Bros., Inc.)*, 774 A.2d 785, 789 (Pa. Cmwlth. 2001). “In order for the imposition of penalties to be appropriate, a violation of the Act or of the rules and regulations issued pursuant to the Act must appear on the record.” *Id.* Here, notwithstanding an order of the Board specifically stating that Employer was required to continue payment of Claimant's benefits, Employer unilaterally ceased payment of benefits with no legitimate reason. This is a clear violation of the Act.<sup>4</sup>

Further, “[b]ecause the assessment of penalties, as well as the amount of penalties imposed, are discretionary, we will not overturn a penalty on appeal absent an abuse of discretion by the WCJ.” *Id.* Given the facts of this case, we hold the WCJ did not abuse her discretion. Accordingly, the Board did not err in affirming the WCJ's granting of Claimant's penalty petition.

For all of the above reasons, the order of the Board is affirmed.

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JOHNNY J. BUTLER, Judge

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<sup>4</sup> The requisite conditions for legitimately ceasing payment of benefits can be found in: Section 408 of the Act, 77 P.S. § 732; Section 434 of the Act, 77 P.S. § 1001; Sections 413(a.1) and 413(a.2) of the Act, 77 P.S. § 774; or Section 413(c) of the Act, 77 P.S. § 774.2; none of which Employer satisfied. *Farance*.

