IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cytemp Specialty Steel, Petitioner	:	
v.	:	No. 787 C.D. 2008
	:	Submitted: August 8, 2008
Workers' Compensation Appeal Board (Crisman), Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FRIEDMAN FILED: October 27, 2008

Cytemp Specialty Steel (Employer) petitions for review of the April 15, 2008, order of the Workers' Compensation Appeal Board (WCAB), which affirmed the decision of a workers' compensation judge (WCJ) granting the claim petition filed by Richard Crisman (Claimant). We vacate and remand.[1]

Claimant suffered a work-related cervical injury in September 1992. He reported the injury to Employer and treated with a panel physician, but he lost no time from work. On May 7, 1993, Claimant suffered a subsequent work-related

[1] Although the record here covers a fourteen-year history of litigation, this opinion includes only those facts necessary for resolution of the issue presented.

injury. Employer accepted liability for the May 1993 injury by way of a notice of compensation payable (NCP), which described the injury as a cervical sprain. (R.R. at 5a.) Pursuant to the NCP, Claimant received total disability benefits from September 8, 1993, to March 7, 1994. Thereafter, Claimant's benefits were reduced to partial disability,[2] and, by early 2003, Claimant had received the entire 500 weeks of partial disability benefits to which he was entitled under section 306(b)(1) of the Workers' Compensation Act (Act).[3] (WCJ's Findings of Fact, Nos. 1-4.)

Thereafter, on October 1, 2003, Claimant filed a claim petition alleging that he suffered a work-related strain to his neck, head and shoulder area on September 23, 1992, and was totally disabled as a result.[4] Employer filed an answer denying the allegations, and the matter was assigned to the WCJ for hearings.[5]

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[2] Effective March of 1994, WCJ Albert Wehan (WCJ Wehan) granted Employer's modification petition and reduced Claimant's benefits to partial on the ground that Claimant refused available full-time work within the physical restrictions imposed by his 1993 cervical injury. (R.R. at 194a-200a.) Subsequently, WCJ Wehan granted a second modification petition and further reduced Claimant's benefits as of May 30, 1995, based on Claimant's return to suitable work. (R.R. at 209a-15a.)

[3] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §512(1).

[4] Employer has stipulated that the statute of limitations is not an issue in this case because some medical expenses related to the alleged injury of September 23, 1992, were paid within three years of the filing of the claim petition. (WCJ's Findings of Fact, No. 5; 12/19/06 hearing, N.T. at 26.)

[5] Claimant filed a number of other petitions against Employer in 2003, alleging work injuries to multiple body parts on various dates. Among them was a review/reinstatement petition seeking to add a May 7, 1993, shoulder injury to the NCP and a claim petition alleging a shoulder injury on that date. These two petitions and four others were consolidated for decision by WCJ Wehan; however, litigation of two petitions alleging a September 1992 injury was postponed. By decision and order dated April 19, 2005, WCJ Wehan dismissed all six of Claimant's consolidated petitions; four were dismissed as barred by the statute of limitations, and WCJ Wehan dismissed the

(Footnote continued on next page…)

In support of his claim petition, Claimant described the circumstances surrounding his cervical injury in September 1992. Claimant also testified that, on May 7, 1993, he injured his shoulder, not his neck, and he reported the shoulder injury to his supervisor. Claimant stated that, as with the September 1992 injury, he treated with the panel physician but missed no time from work.[6] (WCJ's Findings of Fact, Nos. 1, 6; 12/16/06 hearing, N.T. at 18-22, 27-30; 12/19/06 hearing, N.T. at 22, 25; 5/30/07 hearing, N.T. at 30.)

Claimant testified that he began treating with James R. Macielak, M.D., in June 1993 and that he stopped working on November 6, 1995, acting on Dr. Macielak's advice. He stated that he continues to treat with Dr. Macielak and receive physical therapy, but his neck and shoulder symptoms have worsened over time and he now is unable to perform any type of gainful employment. (12/16/06 hearing, N.T. at 23-24, 28-30, 42-44, 47, 74; 5/30/07 hearing, N.T. at 19, 23.)

Claimant also presented the February 5, 2007, deposition testimony of Dr. Macielak. Dr. Macielak testified that he first examined Claimant on June 24, 1993, at which time Claimant reported that he developed neck symptoms as a result

(continued…)

petitions relating to the May 1993, injury, finding that Claimant's attempt to recover for a May 7, 1993, shoulder injury was barred under the doctrines of res judicata/collateral estoppel. (R.R. at 276a-87a.) After the WCAB affirmed WCJ Wehan's decision, litigation on the petitions alleging a September 1992 injury resumed.

[6] Claimant submitted copies of the supervisor's injury reports, which reflect a September 23, 1992, injury to Claimant's neck, head and shoulder area and a May 7, 1993, injury described as pain in his shoulder. (WCJ's Findings of Fact, Nos. 2-3; R.R. at 2a, 4a.)

of a September 23, 1992, work injury. Dr. Macielak diagnosed Claimant as suffering from severe cervical stenosis caused by the 1992 work injury, and he opined that Claimant was totally disabled as a result. (WCJ's Findings of Fact, No. 7; 2/5/07 deposition, N.T. at 17-21.)

Dr. Macielak acknowledged that Claimant never reported any event after September 1992 that would have impacted his cervical condition, and Dr. Macielak had no knowledge of a May 1993 cervical injury. Dr. Macielak added that Claimant's cervical strain and stenosis with radiculopathy would cause shoulder symptoms, and he opined that Claimant has been totally disabled as a result of the September 1992 cervical injury since November 6, 1995. (WCJ's Findings of Fact, No. 7; 2/5/07 deposition, N.T. at 24-28.)

Employer presented no testimony or medical evidence, (WCJ's Findings of Fact, No. 8), and the WCJ accepted the unrebutted testimony of Claimant and Dr. Macielak as credible, noting that Dr. Macielak did not waver in his opinion that the September 1992 work injury caused Claimant's cervical strain and cervical spinal stenosis and resulting disability. (WCJ's Findings of Fact, Nos. 12-13.) Based on these credibility determinations, the WCJ found that Claimant suffered a cervical strain and cervical spinal stenosis on September 23, 1992, and was totally disabled by that injury as of November 6, 1995. (WCJ's Findings of Fact, No. 14.) The WCJ awarded Claimant total disability as of that date, to be offset by payments already made to Claimant pursuant to the NCP. The WCJ did recognize that Claimant received benefits for a 1993 injury, but he observed that no 1992 injury had been

acknowledged. (WCJ's Findings of Fact, Nos. 4, 10, 17-19; Conclusions of Law, Nos. 4-5.) Employer appealed to the WCAB, which affirmed the WCJ's decision.

On appeal to this court,[7] Employer argues that all issues concerning the date and nature of Claimant's cervical injury and the extent of Claimant's disability were conclusively decided during fourteen years of prior litigation and, therefore, the principles of collateral estoppel and res judicata[8] bar relitigation of these issues.[9] Employer asserts that it accepted liability and fully compensated Claimant for his cervical injury in accordance with the NCP, and Employer maintains that whether Claimant actually sustained the cervical injury in September 1992, rather than in May 1993, is irrelevant, pointing out that Claimant experienced no wage loss until September 1993.

However, we are unable to address Employer's argument because the WCJ failed to issue necessary findings of fact. Specifically, the WCJ failed to address the critical question of whether Claimant's 1992 cervical injury has been

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[7] Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with law or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

[8] Technical res judicata precludes a future action between the same parties on the same cause of action when a final judgment on the merits already exists. *Henion v. Workers' Compensation Appeal Board (Firpo & Sons, Inc.)*, 776 A.2d 362 (Pa. Cmwlth. 2001). Collateral estoppel, on the other hand, forecloses litigation in a later action of issues of law or fact that were actually litigated and necessary to a previous final judgment. *Id.* Additionally, in *Henion*, we noted that the doctrine of technical res judicata applies to claims that were actually litigated as well as those matters that should have been litigated.

[9] We note that this is the only issue raised by Employer in its Statement of the Questions Involved. (Employer's brief at 4.)

accepted by Employer, albeit mistakenly characterized as a 1993 cervical injury in the NCP. The WCJ recognized that Claimant had received compensation for a 1993 injury, but she did not identify or describe that injury or distinguish it (other than by date) from the cervical injury already accepted by Employer. Absent such findings, application of the principles of res judicata and/or collateral estoppel cannot be undertaken.

We also note that the WCJ did not find that the 1992 cervical injury was a separate injury that preceded the cervical injury accepted by Employer some eight months later. An appellate court may not infer from the absence of a finding on a given point that the question was resolved in favor of the party who prevailed below; the point may have been overlooked or the law misunderstood at the hearing level. *Page's Department Store v. Velardi,* 464 Pa. 276, 346 A.2d 556 (1975). Although we believe that the record here would not support such a finding,[10] the scope of our appellate review precludes us from rendering factual determinations based on our understanding of the evidence. Rather, the adjudication to be reviewed must include all findings necessary to resolve the issues raised by the evidence and which are relevant to a decision. *Millcreek Manor v. Department of Public Welfare,* 796 A.2d 1020 (Pa. Cmwlth. 2002). Thus, we must remand this case to the WCAB for remand to the WCJ for the making of appropriate, necessary findings. *Sturniolo v.*

[10] The theory that Claimant sustained two distinct cervical injuries, one on September 23, 1992, and another on May 7, 1993, is raised by Claimant for the first time in his brief to this court. However, the testimony of both Claimant and Dr. Macielak indicates that Claimant sustained and was treated for a single cervical injury. (*See e.g.*, 12/16/06 hearing, N.T. at 10, 31; 12/19/06 hearing, N.T. at 22; 5/30/07 hearing, N.T. at 29-34; 2/5/07 deposition, N.T. at 24-28.)

Unemployment Compensation Board of Review, 338 A.2d 794 (Pa. Cmwlth. 1975).

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ROCHELLE S. FRIEDMAN, Judge

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O R D E R

AND NOW, this 27th day of October, 2008, the order of the Workers' Compensation Appeal Board (WCAB), dated April 15, 2008, is hereby vacated, and the matter is remanded to the WCAB to remand to the workers' compensation judge for findings of fact and conclusions of law in accordance with the foregoing opinion.

Jurisdiction relinquished.

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ROCHELLE S. FRIEDMAN, Judge