

GARY DAY
(Appellant)

v.

S.D. WARREN
(Appellee)

and

CCMSI

Conference held: July 23, 2015
Decided: July 22, 2016

PANEL MEMBERS: Administrative Law Judges Elwin, Collier, and Knopf
BY: Administrative Law Judge Elwin

[¶1] Gary Day appeals from a decision of a Workers' Compensation Board administrative law judge (*Jerome, ALJ*) denying his two Petitions for Award on the basis that the claims were barred by the doctrine of res judicata. Mr. Day contends that the ALJ erred in applying res judicata because the current petitions allege dates of injury that are different from the dates alleged in the previous litigation. We conclude that the ALJ did not err when determining that res judicata barred Mr. Day's claims and affirm the decision.

I. BACKGROUND

[¶2] Gary Day worked at a paper mill owned by S.D. Warren for 39 years, mainly as a pipefitter and welder. In a previous round of litigation, Mr. Day filed

a petition asserting that he suffered an acute injury to his cervical spine on October 29, 2010, and a gradual injury on that same date. A hearing was held in September of 2012. In a March 8, 2013, decision, the ALJ granted Mr. Day's petition in part, awarding the protection of the Workers' Compensation Act for the acute injury, but awarding no ongoing incapacity benefits. The ALJ was not persuaded by the medical evidence that Mr. Day's ongoing cervical problems were caused by the October 29, 2010, work injury.¹ The ALJ did not specifically address the gradual injury in the 2013 decree. Mr. Day filed a motion for additional findings of fact and conclusions of law, but did not request additional findings relating to a gradual injury. The ALJ issued an amended decision with additional findings on April 2, 2013, but did not alter the outcome.

[¶3] In the present round of litigation, Mr. Day filed the petitions at issue, claiming gradual injuries to his cervical spine allegedly manifesting on December 10, 2010, two days before a sudden onset of neck pain, and July 21, 2011, his last day of work. The ALJ denied the petitions, concluding that the March 8, 2013, decision bars Mr. Day's gradual injury claims.² Mr. Day filed a motion for findings

¹ The ALJ specifically found that "based on the lack of persuasive medical evidence supporting causation, I find that the Employee has not demonstrated on a more probable than not basis that the cervical problems he suffered on and after December 12, 2010 were related to his October 29, 2010 date of injury."

² The ALJ stated: "In this proceeding, Mr. Day has renewed his claim that the cervical problems that he suffered as of December of 2010 and thereafter were due to gradual injuries to his cervical spine."

of fact and conclusions of law, which the ALJ denied. Mr. Day then filed this timely appeal.

II. DISCUSSION

A. Standard of Review

[¶4] The Appellate Division is “limited to assuring that the [administrative law judge’s] factual findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation.” *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983).

B. Res Judicata

[¶5] Mr. Day contends that the ALJ erred in holding that res judicata precluded him from asserting his claims pertaining to gradual cervical injuries because he is alleging different dates of injury that were not previously litigated.

The Law Court has stated:

[V]alid and final decisions of the Workers’ Compensation Board are subject to the general rules of res judicata and issue preclusion, *see Ervey v. Northeastern Log Homes, Inc.*, 638 A.2d 709, 710 (Me. 1994) (res judicata); *Crawford v. Allied Container Corp.*, 561 A.2d 1027, 1028 (Me. 1989) (issue preclusion), not merely with respect to the decision’s ultimate result, but with respect to all factual findings and legal conclusions that form the basis of that decision, *see McIntyre [v. Great No. Paper, Inc.]*, 2000 ME 6, ¶¶ 7-8, 743 A.2d at 747. Res judicata and issue preclusion in the workers’ compensation setting is intended to promote “judicial economy and efficiency, the stability of final judgments, and fairness to litigants.” *Crawford*, 561 A.2d at 1028.

Grubb v. S.D. Warren Co., 2003 ME 139, ¶ 9, 837 A.2d 117. In certain cases, the doctrine of res judicata may bar “the relitigation of issues that were tried, *or that may have been tried*, between the same parties or their privies in an earlier suit on the same cause of action.” *Blance v. Alley*, 1997 ME 125, ¶ 4, 697 A.2d 828 (citations and quotation marks omitted, emphasis added). The doctrine of res judicata does not preclude an award of benefits under the Workers’ Compensation Act for one injury when there has been a prior adjudication regarding a different injury. *See Oleson v. International Paper*, Me. W.C.B. No. 14-29, ¶ 20 (App. Div. 2014) (determining that entitlement to incapacity benefits resulting from a shoulder injury was neither litigated by the parties nor decided in the decision regarding his back injury and thus was not barred by res judicata). *See also Wacome v. Paul Mushero Const. Co.*, 498 A.2d 593, 594 (Me. 1985) (holding claimant who entered agreement for foot injury is not barred by res judicata from later seeking compensation for back injury arising from same accident).

[¶6] In the previous litigation, Mr. Day asserted that work activity in his many years at the mill caused a gradual injury to his neck that manifested on October 29, 2010. In the current litigation, Mr. Day is alleging that work activity in his many years at the mill caused a gradual injury to his neck that manifested on December 10, 2010. With regard to the alleged July 21, 2011, gradual injury, Mr. Day is alleging that work activities from the date he returned to work in March

2011 after his cervical surgery through his last day of employment caused a separate gradual injury.

[¶7] While res judicata does not preclude an award of benefits for one injury under the Workers' Compensation Act when there has been a prior adjudication regarding a different injury, it can preclude an award when there was a prior adjudication regarding the same injury. "A party is precluded from relitigating an issue that has been (1) actually litigated, (2) determined by a final judgment, and (3) the determination was essential to the judgment." *Traussi v. B & G Foods, Inc.* Me. W.C.B. No. 15-10, ¶ 10 (App. Div. 2015).

[¶8] In this case, the ALJ determined that the gradual injuries asserted in the 2013 petitions were in fact the same gradual injury asserted in the previous litigation. She specifically found that there were no new facts present in this case that were not present in the earlier case, and concluded that the same claim of incapacity is at issue. We find no error in this determination. Even though the specific dates were not previously alleged, Mr. Day alleged in both rounds of litigation that his hard work over his career at the mill resulted in a gradual injury to his neck. In each round he argued that this resulted in his hospitalization in December of 2010 and his eventual cervical surgery. Although the ALJ made no specific findings regarding the alleged gradual injury in the first round of litigation, she did find that the neck pain Mr. Day suffered in December 2010 for which he

sought medical treatment was not work-related, and Mr. Day requested no additional findings regarding the gradual injury. Moreover, he submitted medical records dating through April 2012—beyond the dates of both injuries alleged in the later proceedings—at the earlier hearing. The same records were submitted for the 2014 hearing. In each proceeding he relied on the records of his cervical treatment beginning with a hospitalization on December 12, 2010. The only additional medical record submitted in the later round of litigation was an independent medical examiner’s report pursuant 39-A M.R.S.A. § 312 (Supp. 2015) from Dr. Frank Graf. In preparing his report, Dr. Graf did not review any medical records dated later than February 2012.

[¶9] Accordingly, the ALJ neither misconceived the law nor applied the law to the facts in an arbitrary or irrational fashion when determining that the gradual injuries alleged in the 2013 petitions were the same as that alleged in the previous petition, and were thus barred from relitigation.

III. CONCLUSION

The entry is:

The administrative law judge’s decision is affirmed.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2015).

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