

FRANKLIN GALLUP  
(Appellant)

v.

KEYSTONE AUTOMOTIVE INDUSTRIES, INC.  
(Appellee)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.  
(Insurer)

Argument held: September 11, 2019

Decided: March 26, 2021

PANEL MEMBERS: Administrative Law Judges Collier, Hirtle, and Stovall  
BY: Administrative Law Judge Collier

[¶1] Franklin Gallup appeals from a decision of a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) denying his Petitions for Restoration and for Payment of Medical and Related Services. Mr. Gallup contends that the ALJ erred by failing to give res judicata effect to an earlier decree involving these same parties. We affirm the decision.

## I. BACKGROUND

[¶2] Franklin Gallup, a driver for Keystone Automotive Industries, injured his right shoulder in January of 2008. Prior to that injury, he had received treatment for problems with that shoulder. Mr. Gallup had surgery on the shoulder in May and was out of work until October of 2008. Mr. Gallup filed petitions in August of 2009

and the ALJ signed off on a Stipulated Decree in which the parties agreed that the 2008 work injury “represented a significant aggravation of an underlying condition” and that this injury “was at least in part the reason [Mr. Gallup] had surgery, and was out of work from 05/28/08 through 10/05/08.” Keystone Automotive paid Mr. Gallup a period of incapacity benefits pursuant to the Stipulated Decree, as well as related medical bills.

[¶3] Mr. Gallup underwent a second surgery on his shoulder in 2010, and on July 12, 2017, he underwent a reverse shoulder arthroplasty. The issue before the board in this round of litigation is whether the 2017 surgery and ongoing incapacity are the result of the 2008 work injury.

[¶4] The ALJ found that they are not, based on the opinion of Matthew Donovan, M.D., who was appointed as an independent medical examiner (“IME”) pursuant to 39-A M.R.S.A. § 312 (Pamph. 2020). Dr. Donovan attributed Mr. Gallup’s more recent problems to the natural progression of his preexisting shoulder problems rather than the work injury or the surgeries. The ALJ adopted that opinion.

[¶5] In a Motion for Findings of Fact and Conclusions of Law, Mr. Gallup contended that the 2009 Stipulated Decree established the nature and extent of the preexisting condition and work injury, and that the ALJ was bound by that determination. The ALJ disagreed and denied Mr. Gallup’s petitions. Mr. Gallup appeals.

## II. DISCUSSION

[¶6] The Appellate Division is “limited to assuring that the [ALJ’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.” *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995) (quotation marks omitted).

[¶7] Mr. Gallup contends that the ALJ was required to reject Dr. Donovan’s medical opinion regarding the nature of his preexisting right shoulder condition, based on the res judicata effect of the 2009 Stipulated Decree. Mr. Gallup relies on the collateral estoppel, or issue preclusion, branch of the res judicata doctrine.<sup>1</sup> *See Pushard v. Bank of America, N.A.*, 2017 ME 230, ¶ 19, 175 A.3d 103 (Me. 2017); *Beegan v. Schmidt*, 451 A.2d 642, 644 (Me. 1982). Maine case law is in accord with the RESTATEMENT (SECOND) OF JUDGMENTS: ISSUE PRECLUSION § 27 (1982), which provides: “When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” *See, e.g., Curtis v. Allstate Ins. Co.*, 2002 ME 9, ¶ 23 n.6, 787 A.2d 760.

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<sup>1</sup> This is distinct from the branch of res judicata known as bar, or claim preclusion, which applies to claims that were or might have been included in an earlier decision. *Beegan v. Schmidt*, 451 A.2d 642, 644 (Me. 1982).

[¶8] Mr. Gallup contends that the 2009 Stipulated Decree was based on an earlier independent medical examination conducted pursuant to section 312, and that the medical findings of the prior examiner regarding the work-related aggravation of his preexisting shoulder condition conflict with Dr. Donovan’s medical findings and must control the outcome here.

[¶9] Mr. Gallup relies on *Dufault v. Midland-Ross of Canada, Ltd.*, 380 A.2d 200, 205 (Me. 1977) for “the basic principle that an approved agreement for compensation has the force of a final adjudication to the extent of the facts agreed upon and the conditions considered by the parties as a basis for the compensation to be paid.” Specifically, he argues that the 2009 independent medical examination formed the basis for the Stipulated Decree and therefore the previous IME’s conclusions regarding the nature of the preexisting medical condition must be accorded full and final preclusive effect. We disagree with Mr. Gallup’s contentions.

[¶10] The Court in *Dufault* held only that medical reports issued after the parties reached an agreement, but before the Commission approved the agreement, can be considered as evidence of a change in circumstances since the date of the agreement. *Id.* That is, conclusiveness dates from the execution of the agreement, not the date of approval of the agreement. *Id.* at 206. In this case there does not appear to be any issue regarding evidence of changed circumstances since the

Stipulated Decree. The issue goes to whether the Stipulated Decree addressed and decided the issue presented in the current litigation.

[¶11] The 2009 Stipulated Decree does not address, much less actually decide, the issue of the precise medical nature of Mr. Gallup's underlying shoulder condition. It contains no language describing Mr. Gallup's underlying medical condition, nor does it expressly adopt the prior IME's medical conclusions or even mention the examination. The lone reference to the underlying condition is one sentence stating that he "suffered a right shoulder injury which represented a significant aggravation of an underlying condition on 01/16/08." That conclusion is entitled to res judicata effect. Dr. Donovan acknowledged that the 2008 work injury aggravated a preexisting condition, causing disability. His medical findings regarding Mr. Gallup's *present* condition, as being caused by the natural progression of the underlying degenerative condition rather than the employment, do not contradict this established fact.

### III. CONCLUSION

[¶12] The 2009 Stipulated Decree does not contain preclusive language that establishes that the current right shoulder condition was caused by the employment rather than the natural progression of the underlying condition, and we are unable to supply such language by implication. Thus, the ALJ's decision involved no

misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation.

The entry is:

The administrative law judge's decision is affirmed.

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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 (Pamph. 2020).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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