STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MEREDITH F. SCETTA	)	
	)	
VS.	)	W.C.C. 02-04731
	)	
ST. JOSEPH HOSPITAL	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's appeal from the denial and dismissal of her original petition on the ground that it was barred by the doctrine of *res judicata*. After review of the record in this matter, as well as the record in the employee's prior original petition, W.C.C. No. 00-06129, we affirm the decision and decree of the trial judge and deny and dismiss the employee's appeal.

In order to properly address this matter, it is necessary to have a thorough understanding of the employee's prior case, W.C.C. No. 00-06129. On October 13, 2000, the employee filed an original petition alleging that she sustained injuries to her left arm, left hand, left shoulder, and left elbow on July 5, 2000 while removing blankets from a clothes dryer at work. The petition requested weekly benefits for total incapacity from July 10, 2000 to October 5, 2000, and for partial incapacity from March 22, 2001 to May 20, 2001. After the denial of the petition at the pretrial conference, the employee claimed a trial.

During the trial, Ms. Scetta recounted a specific incident that occurred at work on July 5, 2000 which resulted in pain in her arm, shoulder and back. Dr. Sidney Migliori, an orthopedic

surgeon, provided the only expert medical testimony regarding causal relationship. She initially saw the employee regarding this incident on July 19, 2000. At that time, Ms. Scetta complained of left elbow pain and tingling in the fourth and fifth fingers which she attributed to pulling laundry out of a dryer at work on July 5, 2000. The doctor's diagnosis was left lateral epicondylitis. When questioned by the employee's attorney as to the cause of the condition, Dr. Migliori testified:

> "Well, given her history and the temporal relationship to the injury stated, and her denying that this had been there previously, it was causally related to the incident of 7/5/00."

Pet. Exh. 6, p. 9.

Under cross-examination, the doctor explained that lateral epicondylitis is an overuse injury often caused by repetitive activity. Id. at 49. Basically, it is the inflammation of a tendon usually resulting in the insidious onset of pain. In the employee's case, Dr. Migliori related the condition to the specific incident on July 5, 2000 based upon the temporal relationship between the incident and the onset of pain as described by Ms. Scetta, and her denial of any previous symptoms.

The trial judge concluded that the doctor's testimony was not sufficient to establish a causal relationship between the specific incident on July 5, 2000 and the condition she diagnosed, left lateral epicondylitis.

> "With reference to the causal relationship between the July 5th incident and the condition which was diagnosed, I do not believe the record indicates, when the depo is reviewed in its entirety, that the doctor testified that the injury was causally related to that particular incident. Normally, that would be the conclusion of this litigation; however, there is a separate theory, and candidly it's the conclusion of this particular aspect of this litigation. However, under the provision of Chapter 34, the occupational disease section of the law, there is another issue which would be whether or not this employee suffered an occupational disease and whether the

> lateral epicondylitis was caused by or connected with the peculiar nature and characteristics of her employment. While that was not fully developed in Dr. Migliori's deposition, and the matter has not been litigated on that particular issue, it is clear to me that if this is compensable at all it would be as an occupational disease and not related to a particular traumatic incident."

Tr. 85-86. The trial judge explicitly stated that, in his opinion, the claim under the occupational disease statute had not been raised or litigated before him, and therefore, a future claim for benefits under that section was not barred. He then denied the petition alleging a specific injury on July 5, 2000.

The employee claimed an appeal and filed three (3) reasons of appeal. In the second reason, she contended that the trial judge failed to apply applicable case law stating:

> "b. That work related repetitive trauma is compensable in and of itself with or without the existence of a specific work incident which causes or leads to disability."

The employee's argument was that the trial judge erred when he did not find that the lateral epicondylitis was caused by her repetitive activities at work; i.e., that she sustained an occupational disease. The Appellate Division concluded that the evidence, in particular the employee's own testimony, did not support that theory and denied the appeal. The final decree was entered on December 23, 2004.

On July 3, 2002, the employee had filed another original petition, alleging an injury to her left upper extremity on July 10, 2000 due to "repetitive use of the left upper extremity at work." She sought weekly benefits for the same periods of total and partial incapacity alleged in the petition in W.C.C. No. 00-06129. The trial judge for this second petition was the same judge that tried the first. The employer filed a motion for summary judgment and a motion to dismiss the present matter, arguing that there were no genuine issues of material fact and the employee failed to state a claim upon which relief could be granted. In its memorandum to the trial judge,

the employer contended that the doctrine of *res judicata* should be applied to bar the second petition.

After the appellate decision in W.C.C. No. 00-06129 was rendered, and the employee had testified, the trial judge issued a bench decision denying the employee's petition. He pointed out that in her appeal in W.C.C. No. 00-06129, the employee specifically argued that he had overlooked and misconstrued material evidence in support of her contention that she sustained an injury and disability due to repetitive activities at work. The Appellate Division addressed the merits of her argument and concluded that the evidence in the record did not support a finding that repetitive trauma caused her condition. The trial judge in the present matter, W.C.C. No. 02-04731, found that, under these circumstances, the doctrine of *res judicata* did apply. The employee then filed the claim of appeal which is presently before the panel.

Pursuant to R.I.G.L. § 28-35-28(b), our initial review on appeal is limited to determining whether any of the findings of fact made by the trial judge are clearly erroneous. The employee filed twenty-six (26) reasons of appeal which, in summary, assert that the trial judge was wrong to find that the petition was barred by the doctrine of *res judicata* and that he incorrectly applied the doctrine in this situation. We disagree with the employee's contention.

We acknowledge that in W.C.C. No. 00-06129, the trial judge went to great lengths to make clear that he was not addressing repetitive trauma or occupational disease as a cause of the employee's condition. He basically left the door open for the employee to file a second petition alleging this alternate mechanism of injury. In her appeal of that decision, however, the employee herself shut that door by arguing to the Appellate Division that the trial judge overlooked or misconstrued the testimony of Dr. Migliori regarding repetitive trauma, i.e., that she did raise and litigate that issue before the trial judge, and he should have decided it. She

forced the Appellate Division to address the issue, and the panel found that there was insufficient evidence in the record to prove her contention that repetitive trauma at work caused her condition. The employee cannot now argue that she should be permitted a second opportunity to prove her case.

In broad terms, the application of the doctrine of *res judicata* "makes a prior judgment in a civil action between the same parties conclusive with regard to any issues that were litigated in the prior action, or, that could have been presented and litigated therein." ElGabri v. Lekas, 681 A.2d 271, 275 (R.I. 1996). Due to the unique character of a workers' compensation claim, the application of the doctrine has been limited to only those issues which were actually raised and decided in the prior action. DiVona v. Haverhill Shoe Novelty Co., Inc., 85 R.I. 122, 126, 127 A.2d 503, 506 (1956).

Although the trial judge in W.C.C. 00-06129 believed that the employee did not raise or litigate the issue whether her condition was caused by repetitive trauma at work, i.e., an occupational disease, the employee, as stated in her reasons of appeal in that matter, asserted that the issue was before the trial judge, and he should have awarded her benefits on that theory based upon the testimony of Dr. Migliori. As a result, the Appellate Division decided the issue and found that Dr. Migliori's testimony was insufficient to support that claim. Ms. Scetta cannot now argue in the present matter that the issue was not raised in the prior action. To allow such a result would be in direct contravention of the principles and policies underlying the doctrine of *res judicata*, to conserve judicial resources by eliminating multiple and potentially inconsistent decisions in identical actions. Gaudreau v. Blasbalg, 618 A.2d 1272, 1275 (R.I. 1993).

The employee argues that the trial judge prematurely rendered a decision in this matter because she had not yet presented her medical evidence and rested. Under the circumstances, the

presentation of further evidence was not necessary to the issue before him – whether the issue of repetitive trauma or occupational disease had been raised and decided during any stage of the prior action. After reviewing the Appellate Division decision in the prior case, W.C.C. No. 00-06129, the trial judge determined that the employee had raised the issue, and the Appellate Division had rendered a decision on that issue. Therefore, the subsequent petition before him in W.C.C. No. 02-04731, was barred by the doctrine of *res judicata*. We conclude that his findings were not clearly erroneous.

Based upon the foregoing discussion, we deny and dismiss the employee's appeal and affirm the decision and decree of the trial judge. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Bertness and Hardman, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Hardman, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on October 24, 2006 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Thomas M. Bruzzese, Esq., and James T. Hornstein, Esq., on

_____