STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MARIA SANTORO	)	
	)	
VS.	)	W.C.C. 03-05818
	)	
CITY OF PROVIDENCE/SCHOOL DEPT.	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the petitioner/employee's appeal from the decision of the trial judge granting the employer's motion to dismiss the employee's petition to review on the grounds of *res judicata*. After reviewing the contents of the file, the trial judge's decision, and the decisions rendered in the prior matters cited by the trial judge, we must agree that the allegations contained in this petition have all been previously decided. Therefore, we deny the employee's appeal and affirm the decision and decree of the trial judge.

The employee, Ms. Santoro, has represented herself in this matter from its inception, as well as in numerous previous cases before the court. Her motion to proceed *in forma pauperis* was denied, and consequently, she was unable to obtain a transcript of the trial in this matter. As a result, we have relied upon the documents and exhibits contained in the court file, as well as the trial judge's decision, in obtaining information as to the facts presented in this case.

The matter is before the court on an employee's petition to review containing three (3) allegations. First, the employee alleged her incapacity for work has increased or returned.

However, the employee did not specify the date of the alleged return of incapacity, or which injury caused the alleged return of incapacity. The trial judge noted in his decision that during the hearings on the employer's motion to dismiss, the employee stated that her return of incapacity dated back to 1995 and continued to the present and was the result of several injuries she allegedly sustained at work.

Second, the employee alleged that her employer refused to pay for necessary medical services. The trial judge was able to elicit that the employee sought payment for acupuncture treatment she received from Dr. Tadeusy Sztykowski. The bill for the treatment totaled One Thousand Seven Hundred Sixty-Seven and 00/100 ($1,767.00) Dollars and the dates of treatment were from November 9, 1998 through December 7, 1999. The treatment was directed at her neck, skull, left shoulder, middle of her spine, low back and overall spine.

Third, the employee alleged the compensation agreement or decree does not accurately and completely set forth all of the injuries sustained by the employee. Ms. Santoro requests that the description of her injuries be amended to include the following:

> "1995 injury has increased permanent damage. Chest pectoril [sic], right side severe and low back connects both legs. See attached medical reports."

The employee cites four (4) incidents that occurred at work on September 14, 1994, November 28, 1994, April 12, 1995, and May 9, 1995 as the cause of her current problems. She contends that those incidents caused injuries to her left shoulder, neck, spine, low back, anterior chest wall, left arm, right arm, and right foot.

The trial judge denied the petition at the pretrial conference, and the employee filed a claim for trial in a timely manner. The employer then filed a motion to dismiss the petition, primarily arguing that the allegations in the petition had been previously decided and were

therefore barred from being re-litigated by the doctrine of *res judicata*. The trial judge in the present matter, Judge George T. Salem,, Jr., reviewed ten (10) previous cases involving this employer and employee and the two (2) lengthy bench decision rendered by the trial judge in those matters, Judge Bruce Q. Morin. Based upon this review, Judge Salem concluded that the allegations contained in the employee's current petition had been previously heard and decided. Therefore, he granted the employer's motion to dismiss. The employee then filed the claim of appeal which is now before this panel.

The appellate panel is guided by the standard set forth in R.I.G.L § 28-35-28(b) when reviewing a trial judge's decision.

> The findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous.

R.I.G.L. § 28-35-28(b). The appellate panel is precluded from undertaking a *de novo* review of the evidence absent an initial finding that the trial judge was clearly wrong or misconceived or overlooked material evidence. Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996); Blecha v. Wells Fargo Guard-Company Serv., 610 A.2d 98 (R.I. 1992). Guided by this standard of review, we have examined the decision and the evidence available to the panel in this matter and conclude that the findings of fact and law made by the trial judge are not clearly erroneous. Therefore, we deny the employee's appeal and affirm the dismissal of her petition.

The employee presented her reasons of appeal in a ten (10) page handwritten statement dated February 27, 2007. Unfortunately, because the employee represented herself at the trial level and in the present appeal, her reasons of appeal are not easily comprehended. Ms. Santoro seems to view all of the petitions she has had before this court as consolidated into one (1) continuous claim involving all of her alleged injuries which she is persistently litigating. She refuses to accept the fact that her claims against the Providence School Department regarding the

effects of these four (4) incidents are concluded, and she cannot continue to ask this court to re-consider these cases or hear them again.

The statement filed by Ms. Santoro which we believe to be her reasons of appeal again focuses on problems in representing herself in her prior petitions before Judge Morin, difficulties in engaging an attorney to represent her, and her contention that she is unable to afford the cost of this transcript as well as prior transcripts. Her reasons of appeal clearly lack the specificity required by statute and case law. Rhode Island General Laws § 28-35-28(a) requires the appellant to file "reasons of appeal stating specifically all matters determined adversely to him or her which he or she desires to appeal…" The Rhode Island Supreme Court has stated:

> The Appellate Commission's recognition of the general result desired by petitioner does not relieve her of the burden of specifying in what manner or where in the record the trial commissioner allegedly erred.

Falvey v. Women and Infants Hosp., 584 A.2d 417, 419 (R.I. 1991).

Ms. Santoro does not address why she believes the decision rendered by Judge Salem in this petition is wrong. Although technically, the employee's reasons of appeal could be dismissed for both lack of specificity and relevancy, we will briefly address why we agree with Judge Salem that this petition must be dismissed on the grounds of *res judicata*.

Pursuant to the doctrine of *res judicata*, a judgment rendered by a court of competent jurisdiction in a prior case involving the same parties is final and conclusive as to any issues actually litigated, or that could have been litigated, in that proceeding. ElGabri v. Lekas, 681 A.2d 271, 275 (R.I. 1996). The doctrine is applied to prohibit pursuing a second action in court "where there exists identity of parties, identity of issues, and finality of judgment in an earlier action." Gaudreau v. Blasbalg, 618 A.2d 1272, 1275 (R.I. 1993) (citations omitted).

We recognize that the application of the doctrine of *res judicata* is limited somewhat in workers' compensation, particularly in petitions to review an existing memorandum of agreement or a decree. *See* Lavoie v. Victor Elec., 732 A.2d 52, 54 (R.I. 1999); DiVona v. Haverhill Shoe Novelty Co., 85 R.I. 122, 125, 127 A.2d 503, 505 (1956).

> It is our opinion that in enacting sec. 12 [of P.L. 1954, ch. 3297, art. III] the legislature intended to give both an employer and an employee a comprehensive right to litigate from time to time, on a petition to review or one based on a new injury, questions involving an increase or a decrease in the incapacity of the employee after an approved agreement or a decree has been entered….
>
> "Consistent with a liberal construction of the provisions of the act we hold that the doctrine of *res adjudicata* will be applied in these cases only with respect to such issues as were actually raised and decided in the prior action. The question then becomes one of fact: Was the questioned issue of fact raised and decided in the prior case? If it was, it is barred by the doctrine. If it was not so raised and decided, it may properly be heard in the subsequent proceeding in accordance with the act.

DiVona at 126, 127 A.2d at 505-06.

After reviewing his decision, we find that Judge Salem properly applied the doctrine of *res judicata* in this matter and correctly dismissed Ms. Santoro's petition.

On March 8, 2002, Judge Morin rendered a bench decision in nine (9) consolidated cases involving Ms. Santoro and the Providence School Department. (W.C.C. Nos. 96-06055, 97-03086, 97-03309, 97-03310, 97-03311, 97-03312, 97-04136, 97-04991, and 97-06376.) On February 10, 2003, Judge Morin issued a bench decision in another petition filed by the employee, W.C.C. No. 99-01223. As we will explain below, all of the allegations contained in Ms. Santoro's current petition have been previously addressed in one (1) or more of these prior decisions.

In the present petition, the employee alleged a return of incapacity due to her work-related injuries. In her presentation to Judge Salem, she indicated that the incapacity began in 1995 and continued to the present. Several of the cases decided by Judge Morin in 2002 and 2003 addressed the periods of disability for those injuries proven to be work-related (W.C.C. Nos. 96-06055, 97-03309, 97-04136 and 99-01223). In particular, the decision in W.C.C. No. 97-04136 determined that the last period of incapacity ended on August 4, 1997. The decree in that matter was entered on March 20, 2002. Ms. Santoro had the opportunity to present evidence of her ongoing disability until shortly before the entry of that decree. As Judge Salem correctly noted in the matter before this panel, Ms. Santoro is now alleging a period of incapacity beginning before the decree in the prior case was entered. This attempt to re-litigate the extent of her incapacity is not permitted under the doctrine of *res judicata*.

The employee also alleged that the employer refuses to pay for necessary medical treatment, although she did not specify the medical services for which she was seeking payment. During the course of the trial, it became evident to the trial judge that Ms. Santoro was seeking payment for acupuncture treatment she had previously undergone with Dr. Tadeusy Szytkowski from November 9, 1998 through December 7, 1999. This issue was quite clearly decided in an earlier decision by Judge Morin, W.C.C. No. 99-01223. In that matter, Dr. Szytkowski testified and his reports were admitted into evidence. However, there was no evidence indicating that the treatment was necessary to treat the effects of any of the work-related injuries sustained by Ms. Santoro. Consequently, Judge Morin denied the request for payment for the acupuncture treatment. The employee's request to file an appeal of that decision out of time was denied by the Appellate Division and the Rhode Island Supreme Court.

Obviously, the acupuncture treatment by Dr. Szytkowski was addressed by Judge Morin in his decision in 2002. There is no indication in Judge Salem's decision that Ms. Santoro was seeking payment for any other specific type of treatment or medical service.

The third allegation of the employee's petition states that the Memorandum of Agreement should be amended to read: "1995 injury has increased permanent damage. Chest pectoril [sic], right side severe and low back connects both legs. See attached medical reports." In his decision, Judge Salem indicated that during the trial, Ms. Santoro stated that the four (4) incidents at work on September 14, 1994, November 28, 1994, April 12, 1995, and May 9, 1995 caused the following injuries: left shoulder, loss of motion, neck injury, spine injury, low back injury, anterior chest wall injury, left arm injury, right arm injury, and right foot injury. This request to expand the description of the injuries sustained by Ms. Santoro has been decided in several of the cases heard previously by Judge Morin.

W.C.C. No. 97-03309 addressed amending the description of the injury sustained by the employee on September 14, 1994. A Memorandum of Agreement was issued by the Providence School Department stating that Ms. Santoro sustained a left shoulder injury on that date. The petition alleged that she also injured her back, right leg, neck and head. Based upon an injury report filed by Ms. Santoro and reports of medical treatment immediately following the incident, Judge Morin found that there was insufficient evidence to establish anything more than a left shoulder injury and denied the petition.

Two (2) previous petitions filed by Ms. Santoro requested expansion of the description of the injury she sustained on November 28, 1994. A Memorandum of Agreement documented that injury as a "contusion to legs." In W.C.C. Nos. 97-03086 and 97-03310, the employee alleged that this incident also caused injuries to her back, head, neck, and whole body. Again, Judge

Morin, relying upon the employee's own statement regarding her injury and the medical reports regarding her treatment immediately after the incident, concluded that the evidence did not establish any additional injuries.

In W.C.C. No. 96-06055, the employee alleged that she sustained injuries at work due to an incident on April 12, 1995. In his decree entered on March 20, 2002, Judge Morin found that Ms. Santoro sustained a lumbar strain as a result of lifting a child at work on April 12, 1995. He further determined that this incident resulted in partial disability from April 12, 1995 to May 26, 1995. He rejected any claims of additional injuries or additional periods of incapacity.

The alleged work-related incident or incapacity of May 9, 1995 was addressed by Judge Morin in W.C.C. No. 97-03312. In that petition, Ms. Santoro claimed that she sustained injuries to her chest, spine, low back, and head, as well as breathing problems due to lack of oxygen in the classroom. Judge Morin dismissed this petition because it was not filed within two (2) years of the date of the alleged injury or incapacity as required by R.I.G.L. § 28-35-57(a). Consequently, liability for this alleged injury or incapacity on May 9, 1995 was never established.

A review of the decision and decrees in the above-noted matters reveals that the request by Ms. Santoro to expand the description of her injuries in the current petition has been extensively litigated in these previous petitions which were decided in 2002. We see no reason to allow Ms. Santoro another opportunity to present evidence on the same issue.

In summary, Ms. Santoro and the Providence School Department are the same parties that were involved in the prior petitions heard by Judge Morin. As we have set forth above, this petition presents the same issues which were extensively litigated from 1996 to 2002 in the ten (10) petitions decided by Judge Morin. All of those judgments are final with no further appeals

available. The doctrine of *res judicata* is applicable and was properly applied by Judge Salem in the present petition. Therefore, we deny and dismiss the employee's appeal and affirm the decision and order 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

Sowa and Hardman, JJ. concur.

ENTER:

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Olsson, J.

_____
Sowa, J.

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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 March 27, 2006 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Sowa, J.

_____
Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Maria Santoro, 20 Granite St., Apt. 7, Westerly, RI 02891, and Paul Gionfriddo, Esq., on

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