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2012 IL App (2d) 110751WC-U

Order filed June 21, 2012

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

| | | |
|---------------------------------------|---|-------------------------------|
| LUIS SEIJAS, |) | Appeal from the Circuit Court |
| |) | of the 16th Judicial Circuit, |
| Appellant, |) | De Kalb County, Illinois |
| |) | |
| v. |) | Appeal No. 2-11-0751WC |
| |) | Circuit No. 10-MR-99 |
| |) | |
| THE ILLINOIS WORKERS' COMPENSATION |) | Honorable |
| COMMISSION <i>et al.</i> (Nestle USA, |) | Kurt P. Klein, |
| Appellee). |) | Judge, Presiding. |

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Doctrines of *res judicata* and collateral estoppel did not bar the Commission's findings that the claimant failed to establish an accidental injury that was causally related to a work accident. Moreover, the Commission's finding that the claimant failed to prove a work-related accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Luis Seijas, filed an "Application for Adjustment of Claim" under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2006)) seeking benefits for

an inguinal hernia that he claimed to have suffered while working for the respondent, Nestle USA (employer). After conducting a hearing, an arbitrator found that the claimant had failed to prove that he sustained an injury that arose out of and in the course of his employment and failed to prove any causal connection between a work-related injury and his current condition of ill-being. Accordingly, the arbitrator denied benefits and found all other issues raised by the claimant to be moot. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission), which unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of De Kalb County, which confirmed the Commission's ruling. This appeal followed.

¶ 3

FACTS

¶ 4 In 2006, the claimant worked for the employer in DeKalb, Illinois. His duties included picking orders and loading and unloading trucks. He was sometimes required to lift boxes weighing between 5 and 70 pounds by hand and load them onto pallets.

¶ 5 On September 25, 2006, the claimant presented to Dr. Basith Osmani complaining of pain in his groin. Dr. Osmani diagnosed an umbilical hernia,¹ which he surgically repaired two days later. This injury was the subject of a prior workers' compensation arbitration proceeding (case number 08-WC-20468) which was tried on June 19, 2008. In that case, Arbitrator Falcioni found that the claimant's umbilical hernia arose out of and in the course of his employment and was causally related to the claimant's work duties. The arbitrator awarded the claimant 4.5% loss of

¹ An umbilical hernia occurs when part of the intestine protrudes through an opening in the abdominal muscles.

the person as a whole and temporary total disability (TTD) benefits from September 25, 2006, (the date of the injury) through October 8, 2006. The arbitrator also awarded the claimant reasonable and necessary medical expenses related to the umbilical hernia, including the costs of surgery, preoperative consultation with Dr. Osmani, and postoperative check-ups.

¶ 6 During the prior arbitration proceeding, the claimant also sought benefits for an inguinal hernia² that was diagnosed by Dr. Osmani after his umbilical hernia had been surgically repaired. In support of this claim, the claimant testified that Dr. Osmani released him to full duty work after his umbilical hernia surgery sometime in October 2006.³ The claimant testified that, after he returned to work, one of the employer's secretaries told him to take an order and the claimant refused because it was a big order and he was feeling pain in his stomach. The claimant stated that, because of his stomach pain, he "didn't do the orders" but "did what [he] could do." He claimed that, on October 24 2006, he asked his wife to tell Dr. Osmani that he "wasn't feeling that good as to work, doing whatever [he] was supposed to do." The claimant's wife contacted Dr. Osmani, and Dr. Osmani gave the claimant a note restricting him from lifting over 20 pounds. The claimant returned to Dr. Osmani on October 31, 2006. Dr. Osmani's notes of that

² An inguinal hernia occurs when soft tissue—usually part of the intestine—protrudes through a weak point or tear in the lower abdominal wall. The resulting bulge can be painful, especially when the person coughs, bends over, or lifts a heavy object.

³ During the arbitration hearing, the claimant was asked by his counsel whether Dr. Osmani released him for work on October 7. The claimant responded, "[m]ight be, it might have been. I don't remember the dates." The claimant later testified that he reported to work at the time Dr. Osmani released him for work.

visit reflect that, after the claimant went back to work with no restrictions, he "picked up heavy crates" and was now experiencing right lower quadrant pain. Dr. Osmani examined the claimant again on November 28, 2006, at which time the doctor noted that the claimant was "still [experiencing] pain [with] heavy lifting at work." Dr. Osmani diagnosed a right side inguinal hernia and recommended immediate intervention. Dr. Osmani surgically repaired the claimant's inguinal hernia on December 4, 2006.

¶ 7 In case number 08-WC-20468, Arbitrator Falcioni denied benefits for the inguinal hernia. Based on his review of the testimony and other record evidence, Arbitrator Falcioni found that "[t]he inguinal hernia can only have developed after the date of accident" alleged in case number 08-WC-24068 (*i.e.*, after September 25, 2006). Accordingly, the arbitrator concluded that the inguinal hernia "must have developed from a separate incident" and was not causally connected to the September 25, 2006, work accident that was the subject of that arbitration proceeding. The arbitrator therefore denied benefits and any medical expenses related to the inguinal hernia, which amounted to several thousand dollars.⁴ The employer did not appeal Arbitrator Falcioni's decision.

¶ 8 On August 6, 2008, the claimant filed the "Application for Adjustment of Claim" at issue in the instant appeal (case number 08-WC-34691). The claimant sought benefits for the inguinal

⁴ The claimant filed a separate "Application for Adjustment of Claim" (case number 06-WC-44784) seeking benefits relating to his hernias and alleging an accident date of February 1, 2006. This claim was tried together with case number 08-WC-20468 on June 19, 2008. Arbitrator Falcioni rejected the claim because it found that the claimant had failed to give the employer proper notice of any injury allegedly suffered on February 1, 2006.

hernia he allegedly suffered when he returned to work after his umbilical hernia surgery and for related injuries or conditions. He alleged an accident date of October 31, 2006. Arbitrator Andros held hearings on February 20 and March 19, 2009. During the hearings, the claimant testified that he returned to work full duty without restrictions on October 7, 2006. He claimed that, upon his return, he was required to perform his usual job duties, including lifting boxes. For example, the claimant stated that, sometime in October 2006, he lifted 20 boxes of juice, each of which weighed between 35 and 36 pounds.⁵ The claimant testified that, after lifting these boxes, he felt a pain in his groin and became worried about it. Thereafter, he obtained a note from Dr. Osmani restricting him from lifting more than 20 pounds. The claimant introduced Dr. Osmani's October 31, 2006, medical record which stated that, after the claimant went back to work with no restrictions, he "picked up heavy crates," and was now experiencing right lower quadrant pain. He also introduced Dr. Osmani's November 28, 2006, record which noted that the claimant was "still [experiencing] pain [with] heavy lifting at work."

¶ 9 On December 4, 2006, Dr. Osmani surgically repaired the claimant's inguinal hernia. After surgery, the claimant continued to experience pain near the site of the hernia repair. While he was recovering from the surgery, the claimant developed an unrelated problem with his gallbladder. Dr. Osmani removed the claimant's gallbladder laparoscopically on January 27, 2007. During that procedure, Dr. Osmani discovered splaying of the mesh from the prior hernia surgery, which he repaired. The claimant did not present evidence suggesting that the problem

⁵ The claimant did not recall the exact date that he lifted these boxes. However, he testified that it was "the same very day [he] got back to work."

with the mesh was caused by a work-related injury or that the repair of the mesh added any additional cost to the claimant's gallbladder surgery.

¶ 10 The claimant returned to Dr. Osmani for a postsurgical follow-up visit on January 25, 2007. In his medical record of that visit, Dr. Osmani noted that the claimant "had had [a] recurrent right inguinal hernia, which was repaired." Dr. Osmani also noted that, "[o]n the basis of his history it is likely that excessive strain may have caused this; particularly lifting; and [the claimant] says that his work involved strain on the groin, in the region of previous hernia repair." Dr. Osmani's February 13, 2007, record indicates that the claimant continued to experience radiating pain in his groin following the surgery. Dr. Osmani diagnosed chronic neuralgia and referred the claimant to a pain specialist. After undergoing physical therapy, the claimant returned to work with no restrictions on May 7, 2007.

¶ 11 In August 2007, the claimant complained of right testicular discomfort and underwent an ultrasound. The ultrasound revealed a right-sided inguinal hernia. He saw a surgeon, Dr. Monfils, who noted that the claimant had had chronic right groin pain after his prior surgery on his right-sided inguinal hernia. The doctor noted that the pain was so bad that it kept the claimant from working. On November 19, 2007, Dr. Monfils performed surgery to repair the hernia and relieve the pain. However, he noted that there was only a 60% chance that the surgery would improve the claimant's symptoms. The claimant was off work until April 18, 2008. He voluntarily resigned on May 30, 2008. The claimant testified that he continued to have pain and discomfort in his abdomen and lower extremities after the surgery. He saw Dr. Kozlowski, who noted that the claimant was "no longer able to do work described in his job description." Dr.

Kozlowski concluded that it was unlikely that the claimant would ever be able to do the lifting that was required by his current job.

¶ 12 The claimant testified that he continues to have pain and discomfort in his groin and is unable to do any physical labor. He seeks benefits relating to his alleged work injury on October 31, 2006, including vocational rehabilitation and maintenance.

¶ 13 Arbitrator Andros found that the claimant had failed to prove that he sustained an injury that arose out of and in the course of his employment and failed to prove any causal connection between a work-related injury and his current condition of ill-being. The arbitrator based these findings in part on its finding that the claimant's credibility was questionable. The arbitrator found that the claimant's testimony was "very poor, confused and confusing," and that it "varied depending on the questions from both counsel and from direct to cross exam then redirect and re cross." The arbitrator discerned a "disconcerting pattern in which the claimant appears to have tailored his testimony in the best light in order to obtain an award of benefits in this case while ignoring" his contrary testimony in the prior arbitration proceedings. For example, the arbitrator noted that:

"In the case at bar *** [the claimant] testified that on the day he returned to work he picked an order, felt uneasy and called his wife to contact the doctor to obtain work restrictions. On cross-examination however, he was forced to admit he never picked the order he claims to have injured himself on after it was revealed he had previously testified in the June 19, 2008 trial he had been assigned to pick an order upon return to work on October 23, 2006, looked at the order and never

picked the order because he did not believe he could handle it. At that time he called his wife for the work restrictions."

The arbitrator cited several other examples of apparent inconsistencies between the claimant's testimony in the prior arbitration proceeding and his testimony in the current proceeding regarding various issues, including whether the employer accommodated the claimant's work restrictions and whether the claimant was placed on permanent work restrictions after his final surgery in November 2007.

¶ 14 The arbitrator also found that the testimony and the medical records did not support an injury date of October 31, 2006. He found that the testimony presented at the arbitration proceedings did not support any particular date of injury and noted that, "while some of the medical records imply issues with lifting at work, those narratives also do not support any specific date of onset."

¶ 15 Moreover, the arbitrator noted that the evidence showed that the claimant had suffered from an inguinal hernia as early as August 2006. The claimant testified that he saw his physician, Dr. Popp, in August 2006, complaining of nausea, upset stomach, and ongoing discomfort in his lower left groin. Dr. Popp noted a small, left-sided inguinal hernia. Dr. Popp recommended that the claimant have the hernia repaired and warned the claimant that the problem could get worse. However, the claimant decided to put off surgery at that time. The arbitrator noted that the claimant "did not identify any specific incident or event that precipitated his groin discomfort" in August 2006.

¶ 16 The arbitrator acknowledged that the claimant was diagnosed with an inguinal hernia in November 2006. However, the arbitrator found that it was "impossible from the testimony

combined with the records to determine where or when" this injury occurred. Summarizing his findings, the arbitrator stated:

"[The claimant] had a long-standing history of groin pain, diabetes, and other issues *** along with inguinal and ventral hernias ***. While the Arbitrator is sympathetic to [the claimant]'s general complaints, and lauds his professed work ethic he does not find him to be an accurate or persuasive witness and cannot find support for a work-related accident in the case at bar. Therefore, accident and causation issues/assertions are denied."

¶ 17 In addition, the arbitrator suggested that it would be inappropriate to award benefits in this case based upon a purported injury date of October 31, 2006, because that date was "considered in the decision rendered in case number 08WC 20468." Specifically, the arbitrator noted that "the October 31, 2006 date was addressed in the decision in case number 08WC 20468 as medical bills dated October 31, 2006 were awarded in that decision and therefore the date of loss of October 31, 2006 has been considered in case number 08WC 20468."

¶ 18 For all these reasons, the arbitrator denied benefits. He found all other issues raised by the claimant to be moot.

¶ 19 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of De Kalb County, which confirmed the Commission's ruling. This appeal followed.

¶ 21 The claimant argues that the Commission's findings that he failed to prove an accident on October 31, 2006, or a causal connection between an alleged accident and his inguinal hernia is contrary to law based upon principles of *res judicata* and collateral estoppel. Specifically, the claimant notes that, in case number 08-WC-20468, Arbitrator Falcioni found that: (1) the inguinal hernia "could only have occurred after" the claimant suffered an umbilical hernia on September 25, 2006, and "must have developed from a separate incident"; (2) after the claimant's umbilical hernia was surgically repaired, the claimant "returned to work and apparently injured himself again, suffering another hernia, but in a different part of the body"; (3) Dr. Osmani put the claimant on restrictions from work "because lifting heavy boxes at work was causing the pain to increase"; and (4) "Dr. Osmani noted on October 31, 2006 that [the claimant] had a recurrent hernia from lifting when he returned to work." The claimant argues that these statements by Arbitrator Falcioni amount to a finding that the claimant lifted boxes at work when he returned to work in October 2006 and that such lifting caused the claimant's right-sided inguinal hernia, which was diagnosed on October 31, 2006. He maintains that these findings became final when the employer failed to appeal the arbitrator's decision. Thus, the claimant argues that Arbitrator Andros's contrary findings in this case that the claimant did no lifting at work in October 2006 and that the claimant failed to establish that his inguinal hernia was caused by a work-related injury are barred by *res judicata* and collateral estoppel. We disagree.

¶ 22 The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996).

A final decision of an administrative agency may have *res judicata* effect if it is made in proceedings that are adjudicatory, judicial, or quasi-judicial in nature. *McCulla v. Industrial Comm'n*, 232 Ill. App. 517, 520 (1992). *Res judicata* promotes judicial economy by preventing repetitive litigation and also protects parties from being forced to bear the unjust burden of relitigating essentially the same case. *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004). When *res judicata* applies, it bars all matters that were offered to sustain or defeat a claim in the first action, as well as all matters that could have been offered. *Id.* at 533. For the doctrine to apply, three requirements must be met: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there was an identity of cause of action; and (3) there was an identity of parties or their privies. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008).

¶ 23 In determining whether there is an identity of causes of action for purposes of *res judicata*, Illinois courts apply a "transactional" test. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311 (1998). Under this test, separate claims will be considered the same cause of action if they arise from a single group of operative facts, regardless of whether they assert different theories of relief.

¶ 24 Here, Arbitrator Falcioni's decision in case number 08-WC-20468 does not bar Arbitrator Andros's findings in the subsequent arbitration proceeding under principles of *res judicata* because the two proceedings did not involve the same cause of action. Case number 08-WC-20468 addressed a work accident that occurred on September 25, 2006, and that resulted in the claimant suffering an umbilical hernia. The arbitration in the instant case, by contrast, concerns a different work accident that allegedly occurred on a different date (October 31, 2006) and allegedly produced a different injury (an inguinal hernia). Because case number 08-WC-20468

concerned only the former accident and injury, Arbitrator Falcioni did not determine in that case whether the claimant was entitled to benefits for the latter accident and injury. Accordingly, the two arbitrations do not involve the same group of operative facts, and *res judicata* does not apply.

¶ 25 The claimant also argues that the factual and legal findings that Arbitrator Falcioni made in case number 08-WC-20468 regarding the claimant's inguinal hernia have collateral estoppel effect. Collateral estoppel, also referred to as issue preclusion, is an equitable doctrine that promotes fairness and judicial economy by preventing the relitigation of factual or legal issues that have already been resolved in earlier actions. *Du Page Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77 (2001). Under the doctrine of collateral estoppel, "[w]hen 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." (Internal quotation marks omitted.) *Id.* at 79; see also *McCulla*, 232 Ill. App. 3d at 520. Collateral estoppel may be applied when the issue decided in the prior adjudication is identical with the one presented in the current action, there was a final judgment on the merits in the prior adjudication, and the party against whom estoppel is asserted was a party to, or in privity with a party to, the prior adjudication. *Du Page Forklift Service*, 195 Ill. 2d at 77.

¶ 26 Collateral estoppel does not apply here. The factual and legal issues presented in the instant case were not decided in case number 08-WC-20468. As noted, case number 08-WC-20468 decided matters relevant to the claimant's September 25, 2006, accident and his umbilical hernia. It did not determine whether the claimant suffered an inguinal hernia on October 31,

2006, and whether that injury was work related and otherwise compensable. Arbitrator Falcioni's discussion of the claimant's inguinal hernia in case number 08-WC-20468 merely establishes that the inguinal hernia was not causally related to the September 25, 2006, accident or to the claimant's umbilical hernia. In reaching that conclusion, Arbitrator Falcioni found that the claimant must have suffered the inguinal hernia some time after the umbilical hernia was surgically repaired, and he cited Dr. Osmani's medical records which arguably suggest that the inguinal hernia was work related. However, Arbitrator Falcioni did not find that the inguinal hernia actually was work related, much less that it was caused by a work-related accident on October 31, 2006. Thus, the factual and legal issues presented in this case were not decided in the prior arbitration.

¶ 27 Moreover, because the judgment in case number 08-WC-20468 addresses only the September 25, 2006, accident and the umbilical hernia, any factual or legal findings in that case relating to the inguinal hernia were not essential to the judgment. Accordingly, even if Arbitrator Falcioni had made findings regarding the accident date and the cause of the inguinal hernia (which he did not), collateral estoppel would not apply. *Du Page Forklift Service*, 195 Ill. 2d at 77 (2001) (collateral estoppel applies only "[w]hen 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.*") (Emphasis added.).

¶ 28 The claimant also argues that the Commission's finding that he failed to prove a compensable accident on October 31, 2006, is against the manifest weight of the evidence. We disagree. An injury is compensable under the Act only if it "arises out of" and "in the course of" one's employment. 820 ILCS 305/2 (West 2004). Both elements must be present at the time of

the employee's injury in order to justify compensation, and it is the employee's burden to establish these elements by a preponderance of the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). The determination of whether an injury arose out of and in the course of one's employment is generally a question of fact. *Id.* In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Id.*; see also *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 847 (1996). We will not overturn the decision of the Commission regarding whether an injury arose out of and in the course of employment unless the Commission's decision is found to be contrary to the manifest weight of the evidence. *Hosteny*, 397 Ill. App. 3d at 674. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id.*; see also *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007).

¶ 29 Applying these standards, we cannot conclude that the arbitrator's finding that the claimant failed to prove that he sustained a compensable accident on October 31, 2006, was against the manifest weight of the evidence. The claimant testified that, on the day he returned to work following surgery to repair his umbilical hernia, he lifted boxes of juice and felt pain. This is the only alleged work accident that the claimant identified that could have caused his inguinal hernia. However, the claimant did not mention this incident during his prior testimony in case number 08-WC-20468, even though he was seeking benefits for his inguinal hernia in that case as well. In fact, in case number 08-WC-20468, the claimant testified that, when he returned to work in October 2006, he refused to lift boxes because he felt unable to do so. Arbitrator Andros found that the inconsistencies between the claimant's testimony during the two arbitration proceedings

undermined the claimant's credibility and suggested that he was tailoring his testimony in the instant proceeding to improve his chances of obtaining benefits. Although some of the medical records arguably suggest that the claimant may have sustained the inguinal hernia while lifting at work, these records are apparently based upon the history provided by the claimant. Moreover, none of the medical records corroborates the claimant's testimony regarding the "juice box" incident or points to a specific date of onset for the injury. Thus, the arbitrator's conclusion that the claimant failed to prove a compensable accident in October 2007 is not against the manifest weight of the evidence.

¶ 30 The claimant contends that his testimony that he lifted juice boxes when he returned to work does not contradict his prior testimony in case number 08-WC-20468 because, in that case, the claimant merely testified that he declined to lift a "big order" on October 23, 2006; he did not testify that this "big order" was the same as the boxes of juice that he claimed to have lifted in this case. The claimant argues that his testimony in the two proceedings can be reconciled if we assume that he lifted the juice boxes when he returned to work in early October, felt pain, and then subsequently declined to lift a big order on October 23. Although this is a plausible reading of his testimony, we cannot say that it is the only reasonable reading or that the Commission's contrary reading was against the manifest weight of the evidence. Moreover, the Commission's finding that the claimant's credibility was questionable is supported by the fact that the claimant never mentioned the "juice box" incident during his testimony in case number 08-WC-20468, and by the other inconsistencies in the claimant's testimony.

¶ 31 Because we may affirm the Commission's decision on the ground that the claimant failed to establish a work-related accident, we need not address the remaining issues raised by the claimant.

¶ 32 **CONCLUSION**

¶ 33 For the foregoing reasons, we affirm the judgment of the De Kalb County circuit court, which confirmed the Commission's decision.

¶ 34 Affirmed.