

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DONALD ST. JAMES,)
)
Claimant-Below,)
Appellant,)
)
v.) C.A. No. N21A-11-002 CLS
)
STATE OF DELAWARE,)
)
Employer-Below,)
Appellee.)
)

Date Submitted: May 3, 2022
Date Decided: August 23, 2022

Upon Appellant's Appeal from the Order of the Industrial Accident Board.
AFFIRMED.

ORDER

Jennifer D. Donnelly, Esquire, Kimmel, Carter, Roman, Peltz & O'Neill, P.A.,
Newark, Delaware, 19702, Attorney for Claimant Below-Appellant.

John J. Ellis, Esquire, Heckler & Frabizzio, Wilmington, Delaware, 19899,
Attorney for Employer-Below/Appellee, State of Delaware.

SCOTT, J.

INTRODUCTION

Before this Court is Appellant Donald St. James's ("Mr. St. James") appeal from the decision of the Industrial Accident Board ("Board"). The Court has reviewed the parties' submissions. For the following reasons, the Board's decision is **AFFIRMED**.

BACKGROUND

On February 22, 2019, Mr. St. James was working as a maintenance worker for the State of Delaware ("Employer") when he sustained a shoulder injury. Employer and Mr. St. James filed a Board Agreement to recognize Mr. St. James's injury.

On September 21, 2020, Mr. St. James filed a Petition to Determine Additional Compensation Due ("Original Petition") as he alleged, he had an ongoing work injury and should be entitled to permanent impairment benefits to his right shoulder based on a 14% impairment rating from his expert, Dr. Stephen Rodgers ("Dr. Rodgers").

After receiving the Original Petition, Employer retained Dr. Samuel Matz ("Dr. Matz") to perform a Defense Medical Examination ("DME") and he found Mr. St. James did not sustain a permanent injury to the right shoulder as a result of the work accident.

The Board heard the issue on March 2, 2021 and issued its decision on May 18, 2021. The Board on the Original Petition, that although Mr. St. James did suffer some level of permanent impairment, he did not meet his burden of proof as to the existence of the 14% impairment to his shoulder. The Board denied the Original Petition and Mr. St. James did not appeal the decision, making the decision final.

Subsequently, Mr. St. James requested Dr. Rodgers review medical records relating to his past medical history and write a supplemental report be provided to Mr. St. James. On August 17, 2021, after the Original Petition had become final, Mr. St. James filed a second Petition to Determine Additional Compensation Due (“the Petition”), which is the subject of this Appeal, which requested the same percentage of permanency as the Original Petition with Dr. Rodgers’s supplemental report attached.

In response to the Petition, Employer requested a hearing for the Board to consider a Motion to Dismiss the Petition because it was barred by *res judicata* and/or *collateral estoppel*.

On October 28, 2021, the Board heard the Motion to Dismiss and granted the Employer’s Motion to Dismiss (“Dismissal”). The basis of the Dismissal was Mr. St. James brought the same cause of action that was previously adjudicated before the Board on the merits and is not alleging any change of condition since the Board

rendered the last decision, thereby his claim was barred by *res judicata*. Mr. St. James appealed the Dismissal to this Court.

PARTIES CONTENTIONS

Mr. St. James argues the Board erroneously dismissed the Petition under the doctrine of *res judicata*. Specially on this point, Mr. St. James explains that in his Original Petition, the Board decided that Mr. St. James sustained a permanent injury to his right shoulder as a result of the subject work accident because in the denial of the Original Petition, the Board references Mr. St. James had some degree of permanent impairment. Subsequently, Mr. St. James explains that the purpose of filing the Petition was for the Board to answer the unanswered question of what the amount of percentage of permanent impairment to Mr. St. James was. Based on the purpose of filing the Petition being to determine the percentage of permanent impairment, Mr. St. James argues that his claim is not barred by *res judicata* nor collateral estoppel. Additionally, Mr. St. James asserts the Board is obligated to make a finding as to the amount, or percentage, of permanency Claimant sustained because under 19 *Del. C.* § 2326(g), “the Board shall award proper and equitable compensation for the loss of any member or part of the body or loss of use of any member or part of the body.”

Employer argues the Board correctly dismissed the Petition based on *res judicata* because the claim had already been decided on the merits and was a final decision and dismissal would also be appropriate under the doctrine of collateral estoppel.

STANDARD OF REVIEW

On appeal from the Industrial Accident Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record and free from legal error.¹ In reviewing the actions of the agency, the Court is required “to search the entire record to determine whether, on the basis of all the testimony and exhibits before the agency, it could fairly and reasonably reach the conclusion that it did.”² “Therefore, every part of the record before an administrative agency which is necessary to a review of its decision must be made part of the record brought before this Court.”³

¹ *Bedwell v. Brandywine Carpet Cleaners*, 684 A.2d 302, 304 (Del. Super. 1996) (citing *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960)).

² *Nat'l Cash Register v. Riner*, 424 A.2d 669, 674–75 (Del.Super.1980).

³ *Perrine v. State*, 1994 WL 45341, at *1 (Del.Super.) (citing *Henry v. Dep't of Labor*, 293 A.2d 578, 581 (Del.Super.1972)).

ANALYSIS

The Court finds, after reviewing all the testimony and exhibits before the agency to render its decision, the Board fairly and reasonably reach the conclusion that the Petition was barred by *res judicata*.

Before the Court are two Petitions to Determine Additional Compensation Due to Injured Employee Petitions, the Original Petition which became final in June 2021, and the Petition subject to this appeal. The Petition asserts the same claims on its face as the first, contained only a different date of filing and an additional opinion from the same physician as the first. Based upon the hearing which led to the Decision before us, the testimony of Mr. St. James's counsel is the Petition was filed because when the original petition was denied, her position was that her client could not file for appeal because the Board did not say Mr. St. James had a zero percent impairment and "it wasn't that the Board said [Mr. St. James] had a 14 percent impairment." She believed her client could not have filed for a Motion for Re-argument, "because the Board was clearly wanting something more to address that problematic concern these prior records that were brought up at the hearing." So, her recommendation to her client was to "send Dr. Rodgers these records" and "ask him if that would impact his decision. And we will ask the Board to reconsider, solely the actual amount of permanent impairment" Mr. St. James should be awarded. Mr. St. James's counsel agreed that the Petition was

“essentially a reargument of the [Original] Petition that was already filed” and that her client’ position is that the Original Petition was “not finally decided.”

Based on the Original Petition, which this Court must accept as a final order, the Petition and the transcript from the oral argument the Board relied upon in denying the Petition, the Board fairly and responsibly reached its decision that the Petition was barred by res judicata. Res judicata applies if “1) the court making the prior adjudication had jurisdiction, 2) the parties in the present action are either the same parties or in privity with the parties from the prior adjudication, 3) the cause of action [is] the same in both cases or the issues decided in the prior action [are] the same as those raised in the present case, 4) the issues in the prior action [were] decided adversely to the plaintiff’s contentions in the instant case, and 5) the prior adjudication [was] final.” The only two elements which the Board needed to address and which this Court will now address are (3) the cause of action is the same in both cases or the issues decided in the prior action are the same as those raised in the present case and (5) the prior adjudication was final.⁴ Mr. St. James argued below that the Petition asks a separate question than the first because the Petition asked the Board to determine the percentage of permanency and the Original Petition was “not finally decided.” Based on the two petitions being

⁴ *Chavez v. David's Bridal*, 979 A.2d 1129, 1134 (Del. Super. 2008), *aff'd*, 950 A.2d 658 (Del. 2008).

identical on the cover page with the only difference being the date filed, it is reasonable the Board would not find Mr. St. James's argument that the Original Petition and Petition are asking two separate questions. Additionally, based on the Board's policy that orders become final after 30 days, it is reasonable the Board found the denial of the Original Petition was final. Therefore, the Board denial based on the Petition being barred by *res judicata* was fairly and reasonably decided.

Additionally, Mr. St. James's claim regarding the Board being obligated to make a finding as to the amount, or percentage, of permanency he sustained is not properly before this Court. This claim relates to the Original Petition that was denied and became final, not the Petition before the Court now, therefore it is moot.

CONCLUSION

For the foregoing reasons, the Board's decision is **AFFIRMED**.

/s/ Calvin L. Scott
Judge Calvin L. Scott, Jr.