

FEBRUARY 2016 CASE LAW UPDATE

Frank Lindemuth v. WCAB (Strischock Coal Co.), ___ A.3d__ (Pa. Cmwlth February 24, 2016) WL 730644

Issue: Whether Claimant was barred by collateral estoppel from raising an issue before the Workers' Compensation Judge that was different from an issue decided by the judge in prior litigation.

Answer: No.

Facts / Procedural History:

On October 10, 2005, Claimant sustained an injury while working as a heavy equipment operator. On that date, he attempted to restart a coal crusher when a battery exploded in his face. The employer recognized the work injury by NCP as "right and left eyes, face, shrapnel and chemical injuries to eyes and face, battery explosion with battery acid and shrapnel striking Claimant in face and eyes." On October 2, 2006, Claimant filed a Claim Petition and alleged that the work injury of October 10, 2005, further resulted in complete loss of sight in the right eye, facial scarring, and eighty percent loss of use of the left eye. On January 3, 2008, the Employer filed a Review Petition and alleged that as of October 10, 2005, Claimant's work injury was limited to the loss of use of his right eye for all practical intents and purposes and, further, that Claimant suffered no disability separate and apart from the specific loss injury. On May 20, 2008, Claimant filed a Petition to Review Medical Treatment and Petition to Review seeking to include headaches, neurological injury, nerve damage, psychological, specific post-traumatic stress disorder, and related anxiety and depression as a result of the physical injuries.

In a 2009 Opinion, the WCJ concluded that Claimant's injury "resulted in a permanent loss of use for all practical intents and purposes of his right eye," but that Claimant failed to sustain his Burden of Proof that the additional descriptions of injury resulted in disability separate and apart from his disability associated with his right eye loss of use. The WCJ's 2009 Decision was affirmed on appeal.

While the appeal of the 2009 Decision was pending, Claimant filed Petitions to Review Medical Treatment, Modify Compensation Benefits, Review Compensation Benefits, Review Benefit Offset, and Reinstate Compensation Benefits. Therein, Claimant alleged that the "frequency, duration, and intensity of head pain caused by the injuries he sustained" has increased and sought reinstatement of total disability benefits. The Petitions were consolidated and assigned to the same WCJ that presided over the previous litigation for hearings and disposition.

In a second decision from 2013, the WCJ concluded that the claimant failed to sustain his burden of establishing a change or worsening of his condition from the time of the prior 2009 decision and had failed to establish that the work injury included "trigeminal nerve neuralgia, or symptoms associated with the same." Additionally, the judge found that the claimant's increased subjective reports and the frequency and intensity of his headaches were not causally related to the work injury.

The claimant appealed to the Board and argued that the judge's decision was inconsistent with the prior decision, asserting that the judge was bound by the doctrine of collateral estoppel to conclude that a trigeminal nerve injury was sustained and that the claimant continued to require treatment for headaches. The Board concluded that the judge was not bound by the findings on trigeminal nerve injury from his prior 2009 decision and held that the claimant was precluded by collateral estoppel from raising the issue of whether he suffered a trigeminal nerve injury after that issue had been fully litigated in 2009.

The claimant appealed to the Commonwealth Court. His main argument was that the Board erred by not concluding that the judge was barred by collateral estoppel from finding that the claimant's headaches were unrelated to his work injury as the judge made a contrary finding in his 2009 decision. The claimant also argued that the Board erred by unilaterally applying collateral estoppel to the claimant and concluding that the claimant was barred from arguing that the work injury included trigeminal nerve damage.

Analysis:

The Court agreed with the claimant that the judge's 2013 conclusion that the claimant failed to establish that his work injury resulted in a trigeminal nerve neuralgia was in conflict with the 2009 decision. In the previous case, the claimant's expert testified that, in his opinion, the claimant suffered from this work-related condition and the judge accepted that testimony as credible. Consequently, the court concluded that the judge was bound by law to reach the same conclusion in the second decision. Nevertheless, the Court held that this fact was not relevant because, in the second round of litigation, the issue the judge was asked to address was whether the claimant's headaches had worsened since the prior decision, not whether those headaches constituted disability separate and apart from the specific loss of the claimant's right eye. The Court also held that, because the claimant raised the issue of collateral estoppel on appeal, it was not unfair for the Board to apply the doctrine to the claimant. But, the court agreed that the claimant was not barred by the doctrine from seeking a reinstatement of disability benefits based on the theory that the claimant's headaches (which had already been established to be related to the work injury) had worsened to a point where they were now disabling. The court concluded that the judge's decision denying the claimant's request for a reinstatement of benefits for those headaches was supported by substantial evidence and was a reasoned decision under the Act.