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WC Appellate Division Decision issued on February 16, 2018 – Res Judicata and Multiple Injury Claims

Two years ago the Appellate Division held in *Eck v. Verso Paper*, Me. W.C.B. No. 16-20 (App. Div. 2016) that the Board may determine that an employee has sustained more than one gradual injury to the same portion of the body. This decision sparked concern among employers that multiple claims could be made in an attempt to obtain a finding of compensability of any injury occurring at some point over a broad spectrum of time. In a recent decision the Appellate Division relied upon the established doctrine of res judicata to preclude redundant litigation in search of a compensable event. In *Bridgeman v. S.D. Warren*, Me. W.C.B. No. 18-08 (App. Div. 2018) the employee filed a Petition for Award in 2001 alleging a gradual mental stress injury occurring on August 6, 1999. The evidence included testimony of severe harassment in December 1994 that produced an emotional breakdown, and a Section 312 examination also referred to the December 1994 events. In a 2002 decree the Board determined that the claimed injury had occurred, but that timely notice was not given. Accordingly, the Petition for Award was denied. Years later the employee filed another Petition for Award in 2011 alleging a gradual stress injury but asserting December 1, 1994 as the actual date of injury. The same essential evidence of occupational stress was offered in the second proceeding as had been presented in the first. The presiding ALJ found that the employee had sustained an injury on December 1, 1994 and awarded ongoing benefits for total incapacity. The employer appealed to the Appellate Division, arguing that the claim was barred by res judicata. The Appellate Division agreed and vacated the decision of the ALJ. Whenever there has been a final decision in a litigated claim, res judicata prevents the re-litigation of the same essential claim in a subsequent proceeding. The Division held that, notwithstanding the assertion of a new date of injury, "the matters presented for decision in the second action were actually litigated in the first". The Division found that the employee "has essentially repackaged a claim that the board rejected in 2002", and that the claim in the second case was based upon the same operative facts that had been raised in the prior litigation. Therefore, because the claim resulting in the 2002 decree was based upon the identical circumstances alleged in the second proceeding, the allegation that the employee had sustained a different injury on an alternative date was barred by res judicata. Any other result, according to the Division, would both compromise judicial economy and undermine the stability of final judgments, and would require the employer "to mount multiple defenses over time against a single claim".

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