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WC Appellate Division Decision issued on January 16, 2018 – Record of Mediation

When parties reach agreement at mediation and the issues agreed to are reflected in the record, the record is fully binding upon the parties and has the effect of a final Board determination. However, when no agreements are reached and the mediation is considered unresolved, the record itself has no res judicata effect. In *Karimova v. Nordyx*, Me. W.C.B. No. 18-01 (App. Div. 2018), the Board granted a Petition for Award alleging a September 11, 2006 personal injury which had not been identified or included within a prior record of mediation. The employer claimed that the injured worker was prevented by res judicata from raising the claim on the grounds that it could have been asserted at mediation. The Appellate Division disagreed and ruled that the doctrine of res judicata applies only when a final judgment is rendered, but that unsuccessful or unresolved mediations which result in records that merely list the issues in dispute cannot be given res judicata effect. Accordingly, the Division ruled that the employee was not prevented from pursuing her claim for the September 11, 2006 injury simply because it had not been raised at a previous mediation.

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