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WC Law Court decision issued on July 20, 2017 – Res Judicata and Permanent Impairment

It has long been established that when an issue is litigated to a final conclusion before the Workers' Compensation Board, the matter may not be re-litigated in a subsequent proceeding. This doctrine is known as res judicata, which literally means "thing adjudged", and although the concept arose in courts of general jurisdiction it has been found by the Law Court to be fully applicable to workers' compensation proceedings. A recent decision of the Court addressed the application of res judicata to permanent impairment determinations. In *Bailey v. City of Lewiston*, 2017 ME 160 (July 20, 2017), the employee sustained an occupational respiratory injury in 2001 and by decree was awarded ongoing benefits for partial incapacity. Ultimately the employee sought a Board determination of PI, and relying upon the opinion of a Section 312 examiner the Board established the level of PI at 32%. Benefits for partial continued without durational limit because the extent of impairment exceeded the applicable threshold. Several years after PI had been established, the employer filed both a Petition for Review and another Petition to Determine the Extent of Permanent Impairment based upon a significant change in medical circumstances. Specifically, the same Section 312 physician found that the employee's medical condition had improved dramatically from the time of the first exam such that the level of PI had improved to 0%. The ALJ found that the issue of PI was not barred by res judicata and granted the employer's petitions. Because the level of PI was 0% and because partial benefits in excess of the durational limit had been paid by the time of the decree, payment of benefits ceased. On appeal the Appellate Division reversed the decision of the ALJ and found that the initial PI determination was final and could not be re-evaluated. The employer then appealed to the Law Court. In its decision the Court distinguished Board determinations on the nature and extent of incapacity from Board findings of the level of PI resulting from an injury. Regarding disability determinations, the Court recognized that the degree of incapacity may fluctuate and that parties may establish a change in the level of incapacity by comparative medical or economic evidence. However, the function of PI under the Act is to determine whether or not an injured worker's entitlement to partial is either capped or not, and the Court ruled that the purpose of the statute would be circumvented if a party could seek a modification of a PI determination in order to alter the durational length of entitlement to partial. As the Court held: "…the workers' compensation statute provides no opportunity for a redetermination of a hearing officer's or ALJ's findings regarding permanent impairment or MMI". The Court's decision is broad enough to preclude an employee from seeking an increase in the level of PI after the Board had previously ruled upon the issue. Therefore, although res judicata will not prevent the parties from relitigating the extent of disability based upon changed circumstances, once PI has been established by the Board the matter is considered to have been finally determined and cannot be re-opened.

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