IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY,
Appellant,
vs.
RAY MOORE,
Respondent.

No. 46508

FILED

OCT 26 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting judicial review in an occupational disease matter.[1] Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

In 1999, respondent Ray Moore requested his former employer, appellant Clark County, to provide medical benefits for yearly stress tests and biennial thallium imaging, as part of his accepted occupational disease claim. When his request was denied, Moore sought administrative review by a hearing officer. The hearing officer affirmed the denial of the requested benefits, concluding that no provision for annual testing was included in Moore's permanent total disability determination. Although he could have administratively appealed the hearing officer's decision,[2] Moore did not do so.

In 2004, Moore again requested Clark County to provide medical benefits for yearly stress tests and biennial thallium imaging.

[1]Pursuant to NRAP 34(f), we have determined that oral argument is not warranted in this case.

[2]See NRS 616C.345.

When his request was denied, Moore administratively appealed. An appeals officer ultimately concluded that Moore's request was barred by the doctrine of res judicata. Moore petitioned for judicial review, which petition the district court granted, ordering that Clark County was responsible to pay for Moore's future annual tests. Clark County now appeals from the district court's order, arguing that the appeals officer correctly concluded that Moore's 2004 claim was precluded on res judicata grounds.

Whether a claim or issue is precluded on res judicata or collateral estoppel principles is a mixed question of law and fact, but "the legal issues predominate."[3] Accordingly, we review the appeals officer's legal determination that Moore's action was barred by res judicata de novo, giving deference, however, to any related factual determinations that are based on substantial evidence.[4]

Preliminarily, we note that res judicata and collateral estoppel principles apply in the context of administrative proceedings.[5] Generally,

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[3]University & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 984, 103 P.3d 8, 16 (2004).

[4]Id.; Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491-92 (2003) (noting that, in the context of orders resolving petitions for judicial review, this court, like the district court, independently reviews the appeals officer's purely legal determinations but defers to the appeals officer's fact-based determinations if supported by substantial evidence); McClanahan v. Raley's, Inc., 117 Nev. 921, 924, 34 P.3d 573, 576 (2001) (reviewing an appeals officer's decision in the context of an appeal from a district court order granting judicial review).

[5]Sutton, 120 Nev. at 984, 103 P.3d at 16; Jerry's Nugget v. Keith, 111 Nev. 49, 54, 888 P.2d 921, 925 (1995); see also Reno Sparks Visitors

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these principles preclude parties from relitigating any finally determined cause of action or issue.[6] Res judicata, or claim preclusion, prevents a party who has obtained "'a valid and final judgment on a claim'" from pursuing that claim or any part of it again.[7] Relatedly, collateral estoppel, or issue preclusion, disallows a party from rearguing in a second action any "issue of fact or law [that] was actually litigated and determined by a valid and final judgment" in a prior action.[8]

Here, even though Moore's 1999 request that Clark County pay for yearly and biennial medical testing was litigated and determined in a decision that became final when Moore failed to challenge it,[9] Moore argues that the hearing officer's decision regarding future years' testing

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Auth. v. Jackson, 112 Nev. 62, 910 P.2d 267 (1996) (determining that the denial of a claim identical to an earlier denied claim was not appealable and, as an appeal from the earlier denial was time-barred, the administrative review officers had no jurisdiction to consider the issues raised).

[6]Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998).

[7]Id. at 835, 963 P.2d at 473 (quoting University of Nevada v. Tarkanian, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994)).

[8]Id. (quotations and citations omitted).

[9]See NRS 616C.330(10); Ayala, 119 Nev. at 235, 71 P.3d at 492 (recognizing that a hearing officer's decision may constitute a final decision). We note that Moore has not asserted that he did not receive proper notice of the hearing officer's 1999 decision and the forms necessary to administratively appeal, or that his failure to timely appeal should be excused under NRS 616C.345(8).

was not valid and binding because any claims for those years remained unliquidated. Thus, in other words, although Moore concedes that the decision was effective for res judicata purposes as to "medical testing for the year 199[9],"[10] he contends that the hearing officer lacked jurisdiction to consider the claim for future years' benefits because that matter was not ripe, as those expenses had not yet been incurred or denied.

But in 1999, Moore appropriately asked Clark County to authorize, in advance, the future tests.[11] Thus, his 1999 claim was ripe, and the hearing officer's decision as to those benefits was valid, so that his 2004 claim was barred under the doctrine of res judicata.

And even if the claim for future benefits was not ripe, so that, technically, res judicata does not apply, the issue of whether Clark County was obligated under Nevada's occupational disease law to pay for the 1999 medical stress tests (and any thallium imaging) was, even according to Moore, finally adjudicated by the hearing officer. As a result, Moore was precluded by collateral estoppel principles from rearguing that issue in 2004.[12]

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[10]Although Moore actually refers to the year 1996, he does so in the context of arguing that the hearing officer's decision is not res judicata as to future benefits; accordingly, we presume that his reference to 1996, rather than 1999, was a clerical error.

[11]See generally NRS 616C.157 (allowing for prior authorization); NRS 617.160 (requiring that NRS Chapter 617 be administered in the same manner as NRS Chapters 616A-616D); cf. NRS 617.362 (prohibiting payment before compensation is due).

[12]Cf. Simmons v. Mutual Benefit Health & Accident Ass'n, 180 N.W.2d 672, 675 (Neb. 1970) (recognizing that, when a subsequent proceeding's "cause of action was not the same, but the issue as to the

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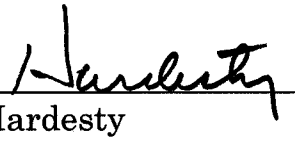
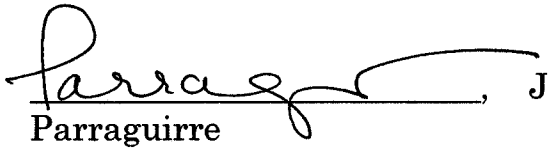
As Moore's 2004 claim was barred under the doctrines of res judiciata and collateral estoppel, the district court erroneously reversed the appeals officer's order dismissing Moore's administrative appeal and granted benefits. Accordingly, the district court's order granting judicial review is reversed.

It is so ORDERED.

_____, J.
Gibbons



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Kenneth C. Cory, District Judge
Lester H. Berkson, Settlement Judge
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Michael Paul Wood
Clark County Clerk

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meaning of the [insurance] policy was the same" as an issue resolved in a prior proceeding, the issue could not be relitigated in the subsequent proceeding). We note that Moore has not asserted that any change in circumstances related to his injury prevents res judicata or collateral estoppel principles from applying to this matter. See Keith, 111 Nev. at 55, 888 P.2d at 925.