

IN THE SUPREME COURT OF THE STATE OF NEVADA

LOIS V. CROFT,

No. 35309

Appellant.

vs.

CDS OF NEVADA,

Respondent.

**FILED**

OCT 08 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review.

"This court's role in reviewing an administrative decision is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency's decision was arbitrary or capricious and was thus an abuse of the agency's discretion."<sup>1</sup> Additionally, the decision of an administrative agency will be affirmed if there is substantial evidence to support the decision.<sup>2</sup> Substantial evidence is "that which 'a reasonable mind might accept as adequate to support a conclusion.'"<sup>3</sup>

Appellant, Lois Croft, first contends that principles of res judicata and collateral estoppel preclude respondent, CDS of Nevada, from denying liability for her elbow injury. Specifically, Croft contends that the appeals officer's determination that she was involved in a work-related accident and that she was injured in the course and scope of her employment precludes CDS from subsequently disputing the extent of the injuries related to the industrial accident.

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<sup>1</sup>United Exposition Service Co. v. SIIS, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993) (citation omitted); see also NRS 233B.135.

<sup>2</sup>State. Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

<sup>3</sup>Id. (quoting Richardson v. Perales, 402 U.S. 389 (1971)).

"[R]es judicata precludes parties or those in privity with them from relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction."<sup>4</sup> For res judicata to apply, three pertinent elements must be present: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; and (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation.<sup>5</sup>

Further, this court recognizes that the doctrine of res judicata embodies two concepts: issue preclusion and claim preclusion.<sup>6</sup> Both concepts involve the above-referenced three elements.<sup>7</sup> Issue preclusion, or collateral estoppel, prevents a party from relitigating any issue that was "actually and necessarily litigated" in a previous suit.<sup>8</sup> Claim preclusion, or merger and bar, precludes "a subsequent action on the same claim or part thereof."<sup>9</sup> "The modern view is that claim preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than collateral estoppel."<sup>10</sup>

We conclude that principles of res judicata are not implicated in this case because the narrow issue presented to and decided by the hearing officer on June 27, 1995 and the appeals officer on May 15, 1997 was whether Croft's November 25, 1994 accident was work related. The issues concerning the nature and/or extent of Croft's injuries were not presented or litigated. Moreover, issues relating to the nature and extent

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<sup>4</sup>University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994).

<sup>5</sup>Id.

<sup>6</sup>Id. at 598, 879 P.2d at 1191.

<sup>7</sup>Paradise Palms v. Paradise Homes, 89 Nev. 27, 31, 505 P.2d 596, 599 (1973).

<sup>8</sup>Tarkanian, 110 Nev. at 599, 879 P.2d at 1191.

<sup>9</sup>Id.

<sup>10</sup>Id. at 600, 879 P.2d at 1192.

of Croft's injuries could not have been asserted in the prior proceeding. Accordingly, we conclude that the appeals officer's May 15, 1997, determination that Croft was involved in a work-related accident does not bar CDS from denying liability for Croft's left lateral elbow injury because the issues concerning the scope of Croft's injuries could not have been, and were not, "actually or necessarily litigated" before the appeals officer. Neither res judicata nor collateral estoppel are applicable.

Croft next contends that the appeals officer erred by determining that she was not entitled to benefits due to a pre-existing left elbow condition. As stated above, the decision of an administrative agency will be affirmed if there is substantial evidence to support the decision.<sup>11</sup> Our review of the record reveals substantial evidence to support the appeals officer's determination that, while the November 25, 1994 industrial accident may have "aggravated" Croft's pre-existing left lateral elbow condition, it was not the primary cause of Croft's left lateral elbow condition, and that she sustained no permanent disability as a result of the industrial accident. Accordingly, we conclude that Croft's contention lacks merit.

Finally, Croft contends that CDS should be sanctioned for nonpayment of workers' compensation benefits. Croft asserts that CDS unreasonably accused her of fraud to avoid paying benefits or returning her to work. Pursuant to NRS 616C.225, the administrator must determine that there was no reasonable basis for believing that a claimant fraudulently obtained benefits or payments before sanctioning the insurer.<sup>12</sup> The record reveals nothing of the circumstances surrounding CDS' March 16, 1995 denial of Croft's claim. CDS' denial letter simply indicates that its denial of Croft's claim was based upon information received from Allstate Insurance Company. Croft did not request sanctions below, and the appeals officer made no finding that CDS had no reasonable basis for believing that Croft fraudulently obtained benefits.

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<sup>11</sup>State, Emp. Security at 608, 729 P.2d at 498.

<sup>12</sup>NRS 616C.225(2).

Accordingly, we conclude that Croft has failed to show that CDS had no reasonable basis for its determination.

AFFIRMED.

Young J.  
Young

Leavitt J.  
Leavitt

Becker J.  
Becker

cc: Hon. Stephen L. Huffaker, District Judge  
Christopherson Law Offices  
King, Gross & Sutcliffe, Ltd.  
Clark County Clerk