

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**1999 MTWCC 60**

**WCC No. 9810-8078**

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**WAYNE V. KELLY**

**Petitioner**

**vs.**

**STATE COMPENSATION INSURANCE FUND**

**Respondent/Insurer for**

**BELT PUBLIC SCHOOLS**

**Employer.**

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**COURT'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT**

**Summary:** Claimant suffered a neck injury in 1986, and another neck injury in 1987. In a prior proceeding in the Workers' Compensation Court, and on appeal to the Supreme Court, it was held that claimant reached maximum medical healing prior to second injury, making claimant's status after the second injury the result of the second injury for workers' compensation purposes, under an extension of Belton v. Carlson Transport, 202 Mont. 384, 385-386, 658 P.2d 405, 406 (1983). Claimant now alleges his current deteriorated condition is a result of the 1986 injury. Insurer moved for summary judgment on grounds of collateral estoppel or res judicata.

**Held:** Motion for partial summary judgment granted. Res judicata applies, barring any present claim that claimant's post-1987 condition is attributable to the 1986 injury.

**Topics:**

**Defenses: Res Judicata.** Claimant suffered a neck injury in 1986, and another neck injury in 1987. In a prior proceeding in the Workers' Compensation Court, and on appeal to the Supreme Court, it was held that claimant reached maximum medical healing prior to second injury, making claimant's status after the second injury the result of the second injury for workers' compensation purposes, under an extension of Belton v. Carlson Transport, 202 Mont. 384, 385-386, 658 P.2d 405, 406 (1983). Claimant now alleges his current deteriorated condition is a result of the 1986 injury. Insurer's motion for partial summary judgment on this issue granted. Res judicata

applies, barring any present claim that claimant's post-1987 condition is attributable to the 1986 injury.

**Injury and Accident: Subsequent Injury.** Claimant suffered a neck injury in 1986, and another neck injury in 1987. In a prior proceeding in the Workers' Compensation Court, and on appeal to the Supreme Court, it was held that claimant reached maximum medical healing prior to second injury, making claimant's status after the second injury the result of the second injury for workers' compensation purposes, under an extension of *Belton v. Carlson Transport*, 202 Mont. 384, 385-386, 658 P.2d 405, 406 (1983). Claimant now alleges his current deteriorated condition is a result of the 1986 injury. Insurer's motion for partial summary judgment on this issue granted. Res judicata applies, barring any present claim that claimant's post-1987 condition is attributable to the 1986 injury.

**Maximum Medical Improvement (MMI).** Claimant suffered a neck injury in 1986, and another neck injury in 1987. In a prior proceeding in the Workers' Compensation Court, and on appeal to the Supreme Court, it was held that claimant reached maximum medical healing prior to second injury, making claimant's status after the second injury the result of the second injury for workers' compensation purposes, under an extension of *Belton v. Carlson Transport*, 202 Mont. 384, 385-386, 658 P.2d 405, 406 (1983). Claimant now alleges his current deteriorated condition is a result of the 1986 injury. Insurer's motion for partial summary judgment on this issue granted. Res judicata applies, barring any present claim that claimant's post-1987 condition is attributable to the 1986 injury.

¶1 After review and consideration of the respondent's motion for partial summary judgment, and the supporting and opposing briefs, on September 9, 1999, this Court granted the motion, leaving its explanation for another day. This is that day.

¶2 The petitioner (claimant) suffered two successive injuries to his neck while working for Belt Public Schools, the first on May 14, 1986, and the second on November 21, 1987. On both occasions the insurer was the State Compensation Insurance Fund (State Fund). On September 12, 1991, this Court determined that claimant had reached maximum healing with respect to his 1986 neck injury and that his entitlement to compensation for his neck after the second injury rested with that injury. *Wayne V. Kelly v. State Compensation Mutual Ins. Fund*, WCC No. 9007-5924, Findings of Fact and Conclusions of Law and Judgment (September 12, 1991), *aff'd*, 254 Mont. 200, 835 P.2d 774 (1992).

¶3 In his Petition for Trial the claimant alleges that subsequent to this Court's 1991 decision he underwent additional neck surgeries, which he attributes to his 1986 injury. His most recent surgery was in 1996 and he alleges that he has been totally disabled since that surgery. He attributes his disability to the 1986 injury and seeks benefits based on 1986 wages.

¶14 In its motion for partial summary judgment, respondent argues that the prior decisions of this and the Supreme Court are *res judicata* or *collateral estoppel* with respect to claimant's request for further benefits for his 1986 injury. The Court agrees.

#### Discussion

¶15 The doctrines of *res judicata* and *collateral estoppel* are related ones. Both preclude parties from relitigating causes of actions and issues finally decided in prior actions. The doctrine of *res judicata* precludes relitigation of the same claim or cause of action; the doctrine of *collateral estoppel* bars relitigation of an issue or matter which was necessarily determined in a prior action. The former is characterized as "claim preclusion", the latter as "issue preclusion":

[R]es judicata is a final judgment which, when rendered on the merits, is an absolute bar to a subsequent action between the same parties or those in privity with them, upon the same claim or demand. *Fiscus*, 591 P.2d at 197 (quoting *Western Montana Prod. Credit Ass'n v. Hydroponics, Inc.* (1966), 147 Mont. 157, 161, 410 P.2d 937, 939). See also *Hollister v. Forsythe* (1996), 277 Mont. 23, 27, 918 P.2d 665, 667. We defined collateral estoppel as a final judgment which bars the parties, or those in privity with them, from relitigating matters which were previously necessarily litigated and determined, even if the claim or demand in the subsequent action is different. *Fiscus*, 591 P.2d at 197 (quoting *Western Mont. Prod. Credit Ass'n*, 410 P.2d at 939). See also *Estate of Eide v. Tabbert* (1995), 272 Mont. 180, 183-84, 900 P.2d 292, 295. In other words, res judicata is "an absolute bar to a subsequent action," while collateral estoppel "prevents the parties from relitigating only those matters that were determined." *Fiscus*, 591 P.2d at 197. Res judicata, therefore, also properly is referred to as "claim preclusion," while collateral estoppel also properly is referred to as "issue preclusion." *Brault v. Smith* (1984), 209 Mont. 21, 26, 679 P.2d 236, 238.

*Scott v. Scott*, 283 Mont. 169, 175, 939 P.2d 998, 1001 (1997).

The doctrine of *res judicata* applies

when four criteria are met - the parties or their privies are the same; the subject matter of the claim is the same; the issues are the same and relate to the same subject matter; and the capacities of the persons are the same in reference to the subject matter and the issues.

*Scott v. Henrich*, 283 Mont. 97, 101, 938 P.2d 1363, 1366, (1997). All criteria for *res judicata* are met in this case and I need not consider whether the elements for an application of the *collateral estoppel* doctrine are also met.

¶16 In the prior mentioned litigation, the claimant alleged that he had not reached maximum medical improvement (MMI) with respect to his 1986 injury when he reinjured his neck in 1987. He sought judgment holding the State Fund liable for his post-1987 neck condition based upon on his 1986 injury. This Court held against him, finding that he reached MMI prior to his 1987 injury and that the State Fund was therefore liable for his neck injury based on the 1987 aggravation. *Wayne V. Kelly v. State Compensation Mutual Ins. Fund*, WCC No. 9007-5924, Findings of Fact and Conclusions of Law and Judgment (September 12, 1991). The Supreme Court affirmed. *Kelly v. State Compensation Mutual Ins. Fund*, 254 Mont. 200, 835 P.2d 774 (1992). In its decision, the Supreme Court applied and extended the rule of *Belton v. Carlson Transport*, 202 Mont. 384, 385-86, 658 P.2d 405, 406 (1983).

¶17 In *Belton* the Court held that where the claimant suffers a second work-related injury which aggravates a condition caused by the first work-related injury, then the insurer at risk for the second injury is liable for benefits **if** the claimant had reached maximum healing with respect to the first injury. Hence, the aggravation relieved the first insurer of further liability with respect to the medical condition. Only if the claimant had not reached maximum healing prior to the aggravation is the first insurer liable.

¶18 *Kelly* extended the *Belton* rule to subsequent aggravations involving the same insurer:

The rule in *Belton v. Carlson Transport* (1983), 202 Mont. 384, 385-86, 658 P.2d 405, 406, controls this situation even though *Belton* dealt primarily with the issue of which insurance carrier is at risk when a worker suffers more than one compensable work-related injury. *Belton* 's maximum healing rule can be applied in cases such as the one at bar to determine which injury proximately caused the claimant's current disability. [Citation omitted.]

*Kelly*, 254 Mont. 200, 204, 835 P.2d 774, 777 (1992). Since maximum medical healing occurred prior to *Kelly*'s second 1987 injury, the Court held that the State Fund's liability for benefits with respect to his neck are determined by the 1987, not the 1986 injury.

¶19 In the present case, the claimant alleges that his neck condition has deteriorated since 1991. That may be so, however, *Kelly* held that liability for his condition is based on the 1987 injury. He was a party to the prior litigation; the subject matter - liability for his neck condition - was the same; the issue - which injury is responsible for his neck condition - was the same; and the capacities of the parties are the same. All of the elements of *res judicata* are met. Whether or not his neck condition has worsened in the intervening eight years, the claimant may not relitigate the Court's prior finding that the State Fund's liability for his neck condition is based on the 1987, not the 1986 injury.

¶10 The remaining issues shall be set for trial.

DATED in Helena, Montana, this 4<sup>th</sup> day of October, 1999.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Ms. Antonia P. Marra

Mr. William O. Bronson

Date Submitted: August 9, 1999