

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 46

WCC No. 2003-0798

HEATHER APPLGATE

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

APPEALED 8/11/03

Dismissed by stipulation for dismissal with full and final settlement 10/28/03.

Summary: Claimant, who had previously sought to include an extra dollar an hour in the computation of her wages for benefit purposes, renews that claim in this proceeding.

Held: The claim was considered and rejected in the prior proceeding and is therefore barred by the doctrine of *res judicata*.

Topics:

Judgments: *Res Judicata*. Where claimant asserted in a previous action that her wage rate for benefit purposes should be based on a dollar an hour raise she claimed the employer should have paid her, and that claim was rejected in a final decision of the Court. Her claim respecting the dollar an hour raise is barred by the doctrine of *res judicata*.

1 The matter before the Court is Liberty's motion for partial summary judgment with respect to the amount of claimant's wages. This Court previously held that claimant's benefits must be based on the actual wage she was receiving at the time of her injury. (*Applegate v. Liberty Northwest Ins. Corp.*, WCC No. 2001-0468, Decision and Judgment (January 31, 2002) (hereinafter "*Applegate I*").) Based on that determination, Liberty argues that her present request is barred by doctrine *res judicata*.

Factual Background

2 This is the third in a series of petitions by the claimant. One of the issues set out in the Pretrial Order in *Applegate I* was:

Did Heather Applegate work 1000 or more hours at Bitterroot Valley Living Center, which entitled her to a dollar an hour raise, for a total hourly rate of \$8.50.

(Pretrial Order, Issue 1 at 2.) Correctly or not,⁽¹⁾ this Court rejected her contention, holding that her benefits should be based on the actual wage she was receiving at the time of injury:

[T]he preinjury wage to be used in computing any wage loss was the wage claimant in fact was earning at the time of her injury, not some other wage the claimant may have believed she was entitled to based on policies of her employer.

(*Applegate I* at 1.)

3 In her current petition, the claimant renews her claim that her wage rate should have included the dollar an hour raise she claims she should have been receiving at the time of her injury. This time she bases her assertion on a stipulation reached with her employer in a wage and hour proceeding brought subsequent to my decision in *Applegate I*. The stipulation is set out in a Memorandum of Agreement and Dismissal prepared by a hearing officer of the Department of Labor and Industry (Department). The memorandum is attached to Petitioner's Reply to Respondent's Motion for Partial Summary Judgment and Counter Motion for Partial Summary Judgment and Brief in Support and reflects that claimant filed a wage claim on June 10, 2002. It goes on to state that the Department issued an initial determination denying her wage claim but she appealed. The matter was then mediated, resulting in an agreement wherein the employer "stipulated and agreed that the claimant had become entitled to a one-dollar wage rate increase effective July 1, 2000." (Memorandum of Agreement and Dismissal at 1.) However, the memorandum also states that the "settlement [is] based upon economic considerations" and that "[t]he parties made no admissions relevant to the truth or validity of the wage claim" (*Id.*)

Discussion

4 Summary judgment may be granted only where the undisputed material facts require entry of judgment as a matter of law. ARM 24.5.329(2); *Lewis v. Nine Mile Mines, Inc.*, 268 Mont. 336, 340, 886 P.2d 912, 914 (1994). The facts essential to the present motion are a matter of Court record. The Decision and Judgment and the Pretrial Order in *Applegate I* on their faces show that claimant's present claim to an additional dollar an hour in wages is an attempt to relitigate the very issue litigated in *Applegate I*. The attempt to relitigate the issue is plainly barred by the doctrine of *res judicata*, the elements of which are summarized in *In re Raymond W. George Trust*, 1999 MT 223, 47, 296 Mont. 56, 986 P.2d 427, as follows:

"[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." Scott v. Scott (1997), 283 Mont. 169, 175, 939 P.2d 998, 1001 (citing Fiscus v. Beartooth Electric Cooperative, Inc. (1979), 180 Mont. 434, 436, 591 P.2d 196, 197). The doctrine bars a party from re-litigating a matter that the party has already litigated and from re-litigating a matter that the party had the opportunity to litigate in an prior case. City of Bozeman v. AIU Ins. Co. (1995), 272 Mont. 349, 354, 900 P.2d 929, 932 (quoting State ex rel. Harlem Irrigation District v. Montana Seventeenth Judicial District Court (1995), 271 Mont. 129, 894 P.2d 943, 946). Res judicata is based on the policy that there [296 Mont. 68] must be some end to litigation. Glickman v. Whitefish Credit Union Ass'n, 1998 MT 8, 20, 287 Mont. 161, 20, 951 P.2d 1388, 20. A claim is res judicata if: (1) the parties or their privies are the same; (2) the subject matter of the claim is the same; (3) the issues are the same and relate to the same subject matter; and (4) the capacities of the persons are the same in reference to the subject matter and issues. Glickman, 20 (citing Loney v. Milodragovich, Dale & Dye, P.C. (1995), 273 Mont. 506, 510, 905 P.2d 158, 161).

All four elements are met in this case.

PARTIAL JUDGMENT

5 Claimant's request that the Court order the insurer to include an additional dollar an hour wage to which she claims she was entitled but not receiving at the time of her industrial accident is barred by the doctrine of *res judicata* and is therefore **dismissed with prejudice**.

DATED in Helena, Montana, this 26th day of June, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Steve M. Fletcher

Mr. Larry W. Jones

Submitted: June 5, 2003

1. In the recent case of *Greene v. Uninsured Employers' Fund*, 2003 MTWCC 27, 99, I held that wages included any "back pay" to which an employee is entitled, included back pay owed on account of mandatory minimum wage laws. The finding was based on section 39-71-123(1)(b), MCA, which expressly provides for the inclusion of back pay.