

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F209095

CLARENCE D. HUTSON, EMPLOYEE **CLAIMANT**

CITY OF DUMAS, EMPLOYER **RESPONDENT**

**ARKANSAS PUBLIC ENTITIES IC WC TRUST/
GALLAGHER BASSETT SERVICES (TPA),
INSURANCE CARRIER** **RESPONDENT**

OPINION FILED JULY 11, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on June 17, 2005, in Monticello, Drew County, Arkansas.

Claimant appeared pro se.

Respondents represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

A hearing was held on June 17, 2005, to determine claimant's entitlement to the payment of past medical expenses that should have been paid pursuant to the original claim having been compensable, as well as claimant's entitlement to additional medical treatment, an impairment rating, and mileage reimbursement.

The parties stipulated to the existence of the employer/employee relationship on July 17, 2002, and at all pertinent times. It was further stipulated that the claimant's earnings were sufficient to entitle him to weekly indemnity benefits of \$192.00 for temporary total disability benefits. The parties additionally stipulated that

the Commission entered an opinion dated January 22, 2004, authored by then-Administrative Law Judge (ALJ) Dail Stiles, finding that claimant did not demonstrate by a preponderance of the evidence that he was entitled to ongoing medical treatment as a result of his July 17, 2002, injury, and that said opinion was not appealed to the Full Commission.

Claimant contends that he remains in pain and continues to need treatment from a doctor, as well as the payment of his past medical expenses and mileage.

Respondents contend that all benefits to which claimant is entitled have been paid, and that the Commission's decision of January 22, 2004, which was not appealed, became a final order; as such, under the doctrine of *res judicata*, this claim cannot be relitigated. In the alternative, respondents contend that claimant's further medical treatment is not reasonable and necessary.

STATEMENT OF THE CASE

The January 22, 2004, opinion of ALJ Stiles is incorporated by reference into this opinion as if set forth word for word, including the parties' stipulations, contentions, and statement of the case.

As was stipulated above, ALJ Stiles found that claimant did not demonstrate by a preponderance of the evidence that he was entitled to ongoing medical treatment as a result of his July 17, 2002, injury. It was further stipulated that his opinion was not appealed to the Full Commission.

On January 19, 2005, claimant filed, pro se, another Form AR-C, requesting additional medical treatment for the same injuries. At the original proceeding, claimant had been represented by attorney Ken Harper. Claimant had requested in December of 2004, that the Commission relieve Mr. Harper as his attorney.

Claimant admitted during his testimony that ALJ Stiles had found he was not entitled to ongoing medical treatment. Claimant further acknowledged that his attorney had agreed at the original hearing of December 19, 2003, that no impairment rating had been issued. Further, claimant acknowledged that his attorney had failed to seek mileage expenses at the December 19, 2003, hearing.

Claimant introduced as an exhibit numerous medical bills he has received since his July 17, 2002, injury. Respondents agreed that they would accept responsibility for and would pay any and all past medical bills that should have been paid in relation to claimant's compensable injury of July 17, 2002, incurred prior to the issuance of the January 22, 2004, opinion issued by ALJ Stiles.

FINDINGS OF FACT

1. The stipulations agreed to by the parties herein are accepted as fact;
2. The previous opinions and orders in this matter, along with any briefs and other filings as previously designated are admitted and made part of the record herein;

3. Respondents are liable for any and all past medical bills that should have been paid in relation to claimant's compensable injury of July 17, 2002, incurred prior to the issuance of the January 22, 2004, opinion issued by ALJ Stiles;
4. ALJ Stiles's opinion of January 22, 2004, was not appealed; as such, it became a final order;
5. The issue of claimant's entitlement to ongoing medical treatment is barred by the doctrine of *res judicata*;
6. The issue of an impairment rating was waived by claimant;
7. The issue of mileage reimbursement was waived by claimant.

DISCUSSION

It was stipulated by the parties that ALJ Stiles's opinion of July 17, 2002, wherein he found that claimant did not demonstrate by a preponderance of the evidence that he was entitled to ongoing medical treatment as a result of his July 17, 2002, injury, was not appealed to the Full Commission. As no appeal was taken, the opinion became a final order. Because this issue was previously litigated, and no appeal was taken from the opinion, respondents contend that the issue on claimant's entitlement to ongoing medical treatment is barred by *res judicata*.

The concept of the doctrine of *res judicata* has two facets: claim preclusion and issue preclusion. See *Craven v. Fulton Sanitation Service, Inc.*, 04-791 (Ark.

4-14-2005); *Barclay v. Waters*, ___ Ark. ___, ___ S.W.3d ___ (May 20, 2004); *Searcy v. Davenport*, 352 Ark. 307, 100 S.W.3d 711 (2003); *John Cheeseman Trucking, Inc. v. Pinson*, 313 Ark. 632, 855 S.W.2d 941 (1993). Claim preclusion forecloses further litigation on a cause of action, while issue preclusion forecloses further litigation in connection with a certain issue. *Id.* Issue preclusion is the type of *res judicata* involved in this case.

Issue preclusion, better known in this state as collateral estoppel, bars relitigation of issues of law or fact previously litigated, provided that the party against whom the earlier decision is being asserted had a full and fair opportunity to litigate the issue in question and that the issue was essential to the judgment. *Beaver v. John Q. Hammons Hotels*, 355 Ark. 359, 138 S.W.3d 664 (2003); *Zinger v. Terrell*, 336 Ark. 423, 985 S.W.2d 737 (1999). To apply collateral estoppel, the following elements must be present: (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) the issue must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment. *Id.*

In this examiner's opinion, claimant had a full and fair opportunity to litigate the issue of his entitlement to ongoing medical treatment before ALJ Stiles, and that the issue was essential to the judgment. Claimant now wishes to relitigate the same issue involved in the prior litigation; that issue was actually litigated and was

determined by a valid and final judgment. As such, it is my opinion that the doctrine of *res judicata*, or collateral estoppel, does apply, and claimant's claim herein is, therefore, barred.

It was further acknowledged by claimant that his attorney, at the full hearing upon which ALJ Stiles based his opinion, agreed there was no impairment rating. Moreover, it was acknowledged by claimant that mileage was never sought at the hearing wherein claimant was represented by an attorney and from which no appeal was taken following the opinion. As claimant's attorney agreed at the first full hearing that there was no impairment rating in this case, that issue was waived. Further, the issue of mileage was never raised at the previous hearing, from which a final order has been issued; as such, that issue has, likewise, been waived.

In regard to medical expenses that claimant contends should have been paid, respondents' attorney, as an officer of the court, agreed that respondents would accept responsibility for and would pay any and all past medical bills that should have been paid in relation to claimant's compensable injury of July 17, 2002, incurred prior to the issuance of ALJ Stiles's January 22, 2004, opinion.

AWARD

Respondents are liable for any and all past medical bills that should have been paid in relation to claimant's compensable injury of July 17, 2002, incurred prior to the issuance of ALJ Stiles's January 22, 2004, opinion.

Otherwise, and for all of the above-stated reasons, the remainder of this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge