

How to Use a Workers' Compensation Judge's Holding as a Shield in Civil Litigation

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Your company is being sued for injuries suffered in an accident. The person suing was working at the time. He submitted a workers' compensation claim, asserting that he suffered a long list of injuries and is entitled to prolonged lost wage payments. The workers' compensation judge rejects virtually all of the injuries as unrelated to the accident and limits the time that he receives lost wage compensation.

He now comes after your company for the same multitude of injuries and lost wages that had been limited by the workers' compensation judge. You can take advantage of the workers' compensation ruling to limit the damages claimed against you by utilizing the doctrine of collateral estoppel.

What is collateral estoppel (issue preclusion)?

Collateral estoppel is a shield that is often overlooked. The doctrine of collateral estoppel "prevent[s] a question of law or an issue of fact which has once been litigated and adjudicated finally in a court of competent jurisdiction from being [re-litigated] in a subsequent suit." *Capobianchi v. BIC Corp.*, 446 Pa. Super. at 137 (Pa. Super. Ct. 1995) *appeal denied* 544

Pa. 599 (Pa. 1996) (quoting *Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Super. 225 464 A.2d 1313, 1318 (Pa. Super. 1983)). "Pennsylvania courts apply the doctrine of collateral estoppel where an agency, acting in a judicial capacity, resolves certain disputed issues of fact that the parties had an opportunity to litigate. The doctrine is applicable to workers' compensation proceedings." *Jones v. Prudential Realty Co.*, 2005 Pa. Dist. & Cnty. Dec. LEXIS 402, *6 (Pa. County Ct. 2005); see also *Grant v. GAF Corporation*, 415 Pa. Super. 137, 150-51 (Pa. Super. Ct. 1992) *affirmed*, *Gasperin v. GAF Corp.*, 536 Pa. 429 (Pa. 1994).

In short, if a party to an action had the opportunity to pursue his rights in that action, he is bound by the ruling when he tries to pursue those same claims in a later proceeding. It is intended to prevent a party from trying to "better deal" in a later case.

What are the elements of collateral estoppel?

There are certain requirements that need to be met for collateral estoppel to apply. Collateral estoppel only applies when the following elements are met:

- (1) An issue decided in a prior action is identical to one presented in a later action;
- (2) The prior action resulted in a final judgment on the merits;
- (3) The party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and
- (4) The party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.

Frederick v. Action Tire Co., 1999 PA Super 332, *P8 (Pa. Super. Ct. 1999)(citing Rue v. K-Mart Corporation, 552 Pa. 13, 713 A.2d 82, 84 (Pa. 1998).

It is important to emphasize that each element listed above must be met in order for collateral estoppel to be applicable. If one is missing, you are out of luck.

Is a workers' compensation judge's holding considered a final judgment on the merits?

Yes. Pennsylvania Court's consider workers' compensation judge's holding final. Jones v. Prudential Realty Co., 2005 Pa. Dist. & Cnty. Dec. LEXIS 402, *6 (Pa. County Ct. 2005); see also Grant v. GAF Corporation, 415 Pa. Super. 137, 150-51 (Pa. Super. Ct. 1992) affirmed, Gasperin v. GAF Corp., 536 Pa. 429 (Pa. 1994). It is important to understand that in Pennsylvania a judgment is final for the purposes of collateral estoppel unless or until it is reversed on appeal. Basset v. Civil Serv. Comm'n of Phila., 514 A.2d 984, 986 (Pa. Commw. Ct. 1986). A party has twenty (20) days from the date the workers' compensation judge's decision is issued to file an appeal with the Department of Workers' Compensation Appeal Board. 77 P.S. §853. If a workers' compensation judge's decision is not appealed or it is not reversed on appeal, it will be considered a final judgment.

Thus, the workers' compensation decision limits the person's rights in a later case for damages. He is "collaterally estopped" from recovering additional damages.

Can issue preclusion be applied to injuries identified in a civil suit that were not alleged in the related workers' compensation action?

A plaintiff is barred from trying to include a condition which was not previously identified during the workers' compensation proceeding in a subsequent civil suit. Holts v. Thyssenkrupp Elevator Corp., 2011 Phila. Ct. Com. Pl. LEXIS 235 (Pa. C.P. 2011).

In Holt, plaintiff attempted to seek compensation for injuries which were not alleged in her previous workers' compensation action arising out of the same accident. In recommending that the plaintiff's post-trial motion be


denied the court reasoned "[a]ny attempt to include a condition not previously identified during the workers' compensation proceedings, would be impressible and prejudicial at this trial." *Id.* at *10-11.

Accordingly, not only is a workers' comp claimant stopped from recovering for damages which were rejected by the compensation judge, he is prevented from recovering damages that he did not claim in the worker's comp action.

Can a defendant who was not a party to the workers' compensation case assert collateral estoppel?


Yes. "[A] party who was a stranger to the prior action can assert collateral estoppel to preclude the relitigation of an issue." Capobianchi, 29 Phila at 341 affirmed Capobianchi, 446 Pa. Super at 130. "[E]ven though Defendant was not a party in the workers' compensation proceedings, it can assert collateral estoppel against the Plaintiffs in the instant suit." *Id.*

This means you get the benefit of the prior ruling. Note — you are not bound by the decision. You can still argue that the person is not entitled to even the damages awarded he was awarded in the workers' compensation action. However, the workers' comp award is the maximum he can recover.



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