CASE NO. 6222 CRB-5-17-9 : COMPENSATION REVIEW BOARD
CLAIM NO. 700173894

ERIC LENT : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : DECEMBER 7, 2018

CITY OF STAMFORD
EMPLOYER
SELF-INSURED

and

PMA MANAGEMENT CORPORATION OF
NEW ENGLAND
THIRD-PARTY ADMINSTRATOR
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Zachary J. Phillipps, Esq., and William M. Davoren, Esq., Wofsey, Rosen, Kweskin & Kuriansky, L.L.P., 600 Summer Street, Stamford, CT 06901.

The respondents were represented by Scott Wilson Williams, Esq., Williams Moran, L.L.C., 2 Enterprise Drive, Suite 412, Shelton, CT 06484.

This Petition for Review from the September 7, 2017 Ruling Re: Motion to Dismiss of Christine L. Engel, the Commissioner acting for the Fifth District, was heard April 27, 2018 before a Compensation Review Board panel consisting of Commissioners Scott A. Barton, Stephen M. Morelli and Daniel E. Dilzer.[1] [2]

[1] As of the date this matter was heard by the Compensation Review Board, Commission Chairman Stephen M. Morelli had not yet been appointed to that position.
[2] We note that a motion for extension of time and a motion for continuance were granted during the pendency of this appeal.

OPINION

SCOTT A. BARTON, COMMISSIONER: The claimant has appealed from the September 7, 2017 Ruling Re: Motion to Dismiss [hereinafter "Ruling"] issued by Commissioner Christine L. Engel granting the respondents' motion to dismiss. The claimant previously sought relief before two other adjudicative agencies based on the same factual narrative under which he was seeking relief from the Workers' Compensation Commission [hereinafter "Commission"]. The respondents contend that because the prior panels ruled against the claimant on the facts, the factual determinations of those forums are entitled to the force of collateral estoppel and the claim, as a matter of law, should be dismissed.[3] The respondents filed a motion to dismiss on August 31, 2017, and the trial commissioner granted the relief *ex parte* before considering any objection from the claimant.

The claimant has appealed, arguing that the Ruling violated his right to due process and was inconsistent with statutes seeking to limit the preclusive effect of decisions reached by such adjudicatory panels. We are persuaded, pursuant to this board's prior reasoning in Mohamed v. Domino's Pizza, 5352 CRB-6-08-6 (April 22, 2009), and Caraballo v. Specialty Foods Group, Inc./Mosey's Inc., 5082 CRB-1-06-4 (July 3, 2007), that the trial commissioner in this matter should not have rendered her decision without a contested hearing. The trial commissioner's failure to hold such a hearing before issuing her decision requires us to vacate the Ruling and remand this matter to a trial commissioner for further proceedings, including a full contested hearing on the pending motion to dismiss.

[3] The claimant argued before the Connecticut State Board of Mediation and Arbitration and the State of Connecticut Employment Security Appeals Division.

The following facts are relevant to our consideration of this appeal. The claimant contends that he was injured on May 7, 2015, when he tripped on a rock, slipped, and used his hand to break his fall, thus breaking his hand. He filed a notice of claim ("form 30C") dated May 13, 2015, which was received by the Commission on May 19, 2015. The respondents filed a "form 43" dated May 14, 2015, and received by the Commission on May 18, 2015, disclaiming liability for the incident. The disclaimer stated that the respondents were challenging the claim because they "[questioned] injury being self inflicted." The matter was set down for a formal hearing which commenced on May 8, 2017.

At the formal hearing, the respondents indicated that their defense to the claim was based upon their belief that the claimant was angry and punched a locker or metal door on the day he was injured and it was that action which caused his broken hand. See May 8, 2017, Transcript, p. 14. They were prepared to present record reviews performed by Duffield Ashmead, M.D., and Thomas J. Danyliw, M.D., supportive of that mechanism of injury. The sole witness to testify at the hearing was a medical witness for the claimant, W. Tracy Schmidt, M.D., and the hearing was adjourned prior to the completion of Dr. Schmidt's cross-examination.

Prior to the next session of the formal hearing, the respondents filed their motion to dismiss. Attached as exhibits to this motion were the May 26, 2017 decision of the Connecticut State Board of Mediation and Arbitration [hereinafter "Arbitration Board"] and the March 29, 2016 decision of the State of Connecticut Employment Security Appeals Division [hereinafter "Employment Board."] The Arbitration Board adopted the theory of causation advanced by the respondents in the instant proceedings and found that

the respondents had just cause to terminate the claimant from employment. The Employment Board determined, based on the same theory of causation, that the respondents had discharged the claimant for deliberate misconduct and he was therefore not entitled to unemployment benefits. The respondents argue that because these adjudicatory panels concluded that the factual arguments relative to the mechanism of the claimant's injury do not support an award of benefits under Chapter 568, the decisions should be afforded the force of collateral estoppel. The trial commissioner accepted the respondents' argument and granted the motion to dismiss.

The claimant argues that the Ruling must be vacated, pointing out that pursuant to the provisions of General Statutes § 31-249g (b) and § 31-51bb, it is improper to apply a decision of either the Arbitration Board or the Employment Board in a manner that denies a claimant the right to seek redress in another forum.[4] He also contends that prior Supreme Court decisions, specifically Spiotti v. Wolcott, 326 Conn. 190 (2017), and Genovese v. Gallo Wine Merchants, Inc., 226 Conn. 475 (1993), support this position. Finally, the claimant asserts that, similar to the ruling against the aggrieved party in Bryan v. Sheraton-Hartford Hotel, 62 Conn. App. 733 (2001), the decision in the present matter failed to comport with due process because the commissioner issued her Ruling without affording the claimant the opportunity to offer any arguments or evidence

[4] General Statutes § 31-249g (b) states: "No finding of fact or conclusion of law contained in a decision of an employment security appeals referee, the board of review or a court, obtained under this chapter, shall have preclusive effect in any other action or proceeding, except proceedings under this chapter."
General Statutes § 31-51bb states: "No employee shall be denied the right to pursue, in a court of competent jurisdiction, a cause of action arising under the state or federal Constitution or under a state statute solely because the employee is covered by a collective bargaining agreement. Nothing in this section shall be construed to give an employee the right to pursue a cause of action in a court of competent jurisdiction for breach of any provision of a collective bargaining agreement or other claims dependent upon the provisions of a collective bargaining agreement."

challenging the relief sought by the respondents. We find the claimant's contentions in this regard persuasive.

This board has previously had the opportunity to consider appeals in which a trial commissioner essentially reached an *ex parte* decision on a material issue. We reversed those decisions and remanded the matters for new hearings in order to enable the non-moving parties to contest the claims for relief. For example, we find Mohamed, supra, indistinguishable from the matter at bar. In Mohamed, the trial commissioner received a motion to open and vacate a stipulation and granted this relief prior to giving the other party an opportunity to challenge the relief being sought. We stated:

> The evidence presented was in the form of an affidavit which was acted on without providing the claimant an opportunity to rebut the averments. "Our precedent also holds that both parties should be given an opportunity to cross-examine material evidence central to a commissioner's ultimate factual findings, Balkus v. Terry Steam Turbine Co., 167 Conn. 170, 177 (1974); this did not occur in this proceeding." Caraballo v. Specialty Foods Group, Inc./Mosey's Inc., 5082 CRB-1-06-4 (July 3, 2007). The *ex parte* order herein also lacks findings of fact. As Chief Justice Wheeler pointed out in the early years of Workers' Compensation law in Connecticut, this poses a situation where the matter should be referred back to the trier of fact.

Mohamed, supra.

In addition, we observed that:

> No case under this Act should be finally determined when the trial court, or this court, is of the opinion that, through inadvertence, or otherwise, the facts have not been sufficiently found to render a just judgment. When this appears, the case must be returned to the commissioner for a finding in accordance with the suggestions made by the trial court or this court, and for an award to be made upon the corrected finding.

Id., *quoting* Cormican v. McMahon, 102 Conn. 234, 238 (1925).

Moreover, we are not persuaded that an effort to obtain the preclusive effect of collateral estoppel from a decision reached in another adjudicatory forum should occur without a contested hearing. In Dzienkiewicz v. State/Dept. of Correction, 5211 CRB-8-07-3 (March 18, 2008), *aff'd*, 291 Conn. 214 (2009), we stated the following relative to the claimant's efforts to admit into evidence a favorable decision from the State Employee Retirement Medical Examining Board:

> The respondent also suggests that what the claimant seeks is collateral estoppel. There have been some limited circumstances where we have permitted parties to assert collateral estoppel from a decision made by another tribunal. This has occurred when an issue was fully litigated before a prior tribunal which used a similar standard of proof as our Commission uses to reach its determination.

Id.

In the present matter, the commissioner made no factual determinations regarding the manner in which the Arbitration Board or the Employment Board conducted their hearings. Moreover, the commissioner made no affirmative determination reflecting that either of the decisions of these adjudicative bodies was the result of a fully contested hearing utilizing a standard of proof similar to that required in hearings conducted pursuant to Chapter 568 in order to apply collateral estoppel. In Larocque v. Electric Boat Corporation, 5942 CRB-2-14-6 (July 2, 2015), this tribunal examined our Appellate Court's analysis in Bridgeport Harbour Place I, LLC v. Ganim, 131 Conn. App. 99 (2011), regarding the fact-driven nature of a decision to apply collateral estoppel to another adjudicatory panel's decision.[5]

[5] In Larocque v. Electric Boat Corporation, 5942 CRB-2-14-6 (July 2, 2015), the trial commissioner ultimately declined to grant collateral estoppel in our forum for an award issued under the federal Longshore Act.

> The application of the collateral estoppel doctrine may not be proper when the burden of proof or legal standards differ between the first and subsequent actions. See, e.g., Bath Iron Works Corp. v. Director, Office of Workers' Compensation Programs, 125 F.3d 18, 22 (1st Cir. 1997) ('[c]ertainly a difference in the legal standards pertaining to two proceedings may defeat the use of collateral estoppel … [b]ut this is so only where the difference undermines the rationale of the doctrine' [citations omitted]); Newport News Shipbuilding & Dry Dock Co. v. Director, Office of Workers' Compensation Programs, 583 F.2d 1273, 1279 (4th Cir. 1978) ('[r]elitigation of an issue is not precluded by the doctrine of collateral estoppel where the party against whom the doctrine is invoked had a heavier burden of persuasion on that issue in the first action than he does in the second, or where his adversary has a heavier burden in the second action than he did in the first'), cert. denied, 440 U.S. 915, 99 S. Ct. 1232, 59 L. Ed. 2d 465 (1979); see also Purdy v. Zeldes, 337 F.3d 253, 260 n.7 (2d Cir. 2003) ('Collateral estoppel in this context is a fact intensive inquiry that is best determined on a case-by-case basis. As the [D]istrict [C]ourt stated, the collateral estoppel effect of the prior proceeding may depend on the specific approach taken by the courts addressing the petition in a particular case.' [Internal quotation marks omitted.]). Birnie v. Electric Boat Corp., 288 Conn. 392, 406–407, 953 A.2d 28 (2008). The standards of each proximate cause element must be examined in detail to determine whether a difference exists and collateral estoppel bars the plaintiff's state causes of action. Id.

Bridgeport Harbour Place I, LLC, supra, 155.

Our review of the evidentiary record in this matter does not allow us to infer that a "fact-intensive inquiry" occurred in a matter which was decided solely upon the arguments propounded in the moving party's pleading. We find this matter is in many ways similar to Caraballo, supra, in which a trial commissioner dismissed a claim for lack of jurisdiction based solely on the briefs submitted by the parties and without holding an evidentiary hearing. In Caraballo, we remarked that:

> jurisdiction under our statute requires the establishment of jurisdictional facts. Kuehl v. Z-Loda Systems Engineering, Inc., 265 Conn. 525, 533-534 (2003). A stipulation of facts was not presented to the trial commissioner; hence we must conclude there

> was an ongoing factual dispute as to the nature of the medical care proffered to the claimant prior to the filing of the Form 30C. Our precedent also holds that both parties should be given an opportunity to cross-examine material evidence central to a commissioner's ultimate factual findings, Balkus v. Terry Steam Turbine Co., 167 Conn. 170, 177 (1974); this did not occur in this proceeding. [6]

Caraballo, supra.

In the present matter, we conclude that the claimant must be presented with the opportunity to challenge the decisions from the Arbitration Board and/or Employment Board before a trial commissioner may grant those decisions preclusive effect.

In light of our conclusion that the dictates of due process require a contested hearing on the facts raised in this matter, we decline to address the additional statutory issues raised by the claimant. Those arguments may be presented to the trial commissioner upon remand. The Ruling is hereby vacated and the matter is remanded for additional proceedings. [7]

Commission Chairman Stephen M. Morelli and Commissioner Daniel E. Dilzer concur in this opinion.

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[6] See also Ghazal v. Cumberland Farms, 5397 CRB-8-08-11 (November 17, 2009), in which the trial commissioner decided to rely on a medical report and order medical treatment for the claimant prior to allowing the respondents to depose the expert witness. The respondents objected and subsequently appealed, and this board sustained their appeal, concluding that the commissioner's decision was in contravention of Balkus v. Terry Steam Turbine Co., 167 Conn. 170 (1974), and Caraballo v. Specialty Foods Group, Inc./Mosey's Inc., 5082 CRB-1-06-4 (July 3, 2007). We remanded the matter for additional proceedings on the issue of medical treatment in order to allow the respondents to challenge the opinion of the witness.

[7] Given that Commissioner Christine L. Engel has retired since the issuance of the subject Ruling, we anticipate that further proceedings will be held before a different trial commissioner.