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Collateral Estoppel and Its Effect on Workers' Compensation Decisions



A discussion of Section 118-A of the Worker's Compensation law which went into effect on Dec. 30, 2022 and eliminates the collateral estoppel effect of a Workers' Compensation board decision in any other action involving the same subject matter that has a prior determination from an administrative board.



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Labor Law

By Kevin G. Faley and Andrea M. Alonso | August 07, 2023 at 10:00 AM



Section 118-A of the Worker's Compensation law went into effect on Dec. 30, 2022. It eliminates the collateral estoppel effect of a workers' compensation board decision in any other action involving the same subject matter that has a prior determination from an administrative board. The exception provided is only for a determination of the existence of an employer/employee relationship.

Relevant Background

On Sept. 15, 2021, the Second Department held in *Lennon v. 56th & Park NY Owner, LLC* that a plaintiff's claim may be barred by the doctrine of collateral estoppel when there is a prior determination from an administrative board involving the same subject matter. *Lennon v. 56th & Park NY Owner, LLC*, 153 N.Y.S.3d 535, 538 (2d Dept. 2021).

Collateral estoppel, also known as issue preclusion, "precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity." *Id.* at 540 (collateral estoppel prevents a party from re-litigating a specific issue that has already been decided even if the party is raising the issue in a different type of case). The court held that a determination on an issue before a workers' compensation board could be used in subsequent actions or lawsuits related to the same accident.

In *Lennon*, a worker alleged that he was injured while working at a construction site in Manhattan. The plaintiff claimed that his injuries occurred when the hoist elevator on which he was riding made multiple and sudden unanticipated rises and drops.

The plaintiff later filed a claim for workers' compensation benefits due to knee injuries that he allegedly sustained during the incident. The plaintiff presented before an Administrative Law Judge (ALJ) with an attorney at his workers' compensation hearing.

The hearing was conducted similarly to a trial. All the witnesses who testified were cross-examined on the witness stand and counsel presented closing arguments at the conclusion of the hearing.

The ALJ ultimately denied the plaintiff's workers' compensation claim due to the plaintiff's inconsistent descriptions of the event, the injuries attributed to it, and the failure of the plaintiff's initial treating physician to find from imaging scans one week after the occurrence of any knee condition other than degenerative changes.

The plaintiff requested an administrative review of the determination. The Workers' Compensation Board affirmed the findings and conclusions of the ALJ.

The plaintiff subsequently commenced an action against the defendants, 56th and Park (N.Y.) Owner, LLC, Bovis Lend Lease LMB, Inc., Lend Lease (U.S.) Construction LMB, Inc., and Atlantic Hoisting & Scaffolding, LLC, for common-law negligence and violations of Labor Law §§200, 240(1), and 241(6). The defendants did not assert the affirmative defense of collateral estoppel in their answer.

The defendants later moved for leave to amend their answer to include an affirmative defense that the plaintiff's claim was barred by the doctrine of collateral estoppel. The defendants also moved for summary judgment.

The plaintiff opposed the motion for two reasons, the second being the most important. First, the plaintiff argued that the defendants' motion was untimely since they were aware of the ALJ's determination long before they submitted their answer. Second, the plaintiff argued that the issue before the Workers' Compensation Board was not identical to the broader issues present in the personal injury litigation.

The Supreme Court granted both motions and dismissed the claim. The appellate division affirmed reasoning that the plaintiff knew that his workers' compensation claim had been denied while the negligence action was pending and before the completion of discovery. The plaintiff should have anticipated the defendants' motion for leave to amend their answer to assert an affirmative defense of collateral estoppel. *Id.* The ALJ's findings established as a matter of law that the accident claimed by the plaintiff did not occur or did not occur in a manner that would cause the plaintiff's injury.

The Appellate Division distinguished the issue in *Lennon* from previous cases where collateral estoppel was not found by explaining that the ALJ's findings were "material and, in fact, pivotal, to the core viability of any personal injury action that the plaintiff could pursue in a court at law regarding the same incident."

Other findings not relating to the existence of a work-related injury, such as the disclosure of the plaintiff's employer, or a determination that the plaintiff had no further causally related disability or need for further treatment, are not material to a personal injury action. However, the existence of a work-related injury is a material and necessary component of such an action.

The New Legislation

In response to this decision, the New York State Senate passed Section 118-A of the Worker's Compensation Law, effectively overruling *Lennon*. Section 118-A states:

With respect to an action for a workers' compensation claim permissible under this chapter, no finding or decision by the workers' compensation board, judge or other arbiter shall be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship. *N.Y. Work. Comp. Law § 18-A.*

Section 118-A eliminates collateral estoppel for any determination other than the employer/employee relationship and allows a plaintiff to bring a lawsuit despite an unfavorable prior determination from an administrative board on any other issue.

The amended section provides opportunities for plaintiffs to seek compensation even if the workers' compensation board makes an adverse ruling concerning the worker's case that would have previously precluded a personal injury claim. Defense attorneys can no longer use a workers' compensation finding as a basis for collateral estoppel on any other issue except the issue of employment.

According to the sponsors of the bill, the law was justified to remedy perceived flaws with the Workers' Compensation hearing process. The reasoning was that hearings can sacrifice basic procedures and evidentiary rules of trials by not addressing fault and do not allow parties to take depositions or exchange documents before a hearing. Further, there is no avenue to compel witnesses to testify. 2021 New York Senate Bill No. 9149, New York Two Hundred Forty-Fourth Legislative Session.

Additionally, as part of the justification, the committee report also added that the hearings also do not afford workers the right to order medical tests or elicit testimony from physicians and that the hearings "do not give credence to injured workers' descriptions of their alleged injuries." Regardless of whether all of this is true or accurate, the bill was passed by the legislature.

While providing injured workers with a fair trial is a legitimate concern, the Legislature could have enacted more statutes to better regulate the Workers' Compensation Board's hearings instead of allowing their determinations to have little to no effect on a case. By enacting more regulations, the legislatures could have also upheld the agency's legitimacy while achieving their goal of providing a better trial process for injured workers.

Importance of Agencies

Agencies were created not by the Constitution but by statute; they have become essential to our federal and state governments. Legal Information Institute, *Administrative Law*, Cornell Law School, https://www.law.cornell.edu/wex/administrative_law#:~:text=Nonetheless%2C%20the%20current%20jurisprudence%20i

Agencies are necessary for "functional and pragmatic" purposes in our current society. Since Congress cannot enforce and administer every law it enacts, "it must rely on the agencies to administer, interpret, enforce, and otherwise regulate various federal laws that Congress has enacted."

The same philosophy applies to our state government and agencies. Every state has its individual interests and needs and has the power to create legislation tailored to those needs. State and Local Government, The White House, <https://www.whitehouse.gov/about-the-white-house/our-government/state-local-government/>.

State legislation affects us more directly than federal legislation. States have many statutes that need agencies to enforce them. The New York State Workers' Compensation Board is one of our largest agencies. They are responsible for administering workers' compensation, disability benefits and Paid Family Leave, a monumental task. Workers' Compensation Board, New York State, <https://www.wcb.ny.gov/content/main/TheBoard/InfoAbout.jsp#:~:text=The%20New%20York%20State%20Workers'%20> Since this is their area of expertise, it is unfortunate that this agency is now being relieved of many of its important functions.

Conclusion

Section 118-A has taken away the ability of workers' compensation judges to make binding and controlling findings after hearings and trials where the parties are represented by counsel and have had a full and fair opportunity to litigate the issues before the court.

With this new law, the legislature has chosen to ignore the rulings of the agency which it created to make such rulings and is allowing their determinations to have little to no effect on subsequent proceedings.

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