

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

APRIL HALVERSON,

Claimant,

vs.

DYERSVILLE FOOD BANK, INC.,

Employer,

and

DONEGAL MUTUAL INS. CO. d/b/a
LEMARS INSURANCE COMPANY,Insurance Carrier,
Defendants.

File No. 5048905

A P P E A L

D E C I S I O N

Head Notes: 2907, 4000.1, 4000.2;
5-9999

Defendants Dyersville Food Bank, Inc., employer, and its insurer, Donegal Mutual Insurance Company d/b/a LeMars Insurance Company, appeal from an Iowa Code section 86.13 penalty decision filed on November 13, 2019. Claimant April Halverson cross-appeals. The hearing on the penalty benefits petition was held on September 27, 2019, and the case was considered fully submitted in front of the deputy workers' compensation commissioner on October 18, 2019.

In the penalty benefits decision, the deputy commissioner found claimant was not entitled to an award of penalty benefits for the period of January 9, 2017, through May 3, 2018, due to her failure to plead penalty benefits during the combined review-reopening and partial commutation action that proceeded to hearing on May 3, 2018. However, the deputy commissioner found the doctrines of issue preclusion and claim preclusion were inapplicable to claimant's claim for penalty benefits for the period of May 4, 2018, through September 27, 2019. The deputy commissioner found claimant was entitled to penalty benefits for the period of May 4, 2018, through September 27, 2019. In the alternative, the deputy commissioner found claimant was at least entitled to penalty benefits for the period of January 17, 2019, through September 27, 2019. The deputy commissioner awarded costs to claimant.

On appeal, defendants argue claimant is not entitled to penalty benefits during an intra-agency appeal. Defendants additionally assert their motion for sanctions should have been sustained during the hearing.

On cross-appeal, claimant asserts her penalty claim for the period of January 9, 2017, through May 3, 2018, is not barred or waived. Claimant additionally asserts she is entitled to the maximum penalty award.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the penalty benefits decision filed on November 13, 2019, is affirmed in its entirety with the additional analysis set forth below.

At the outset, I affirm the deputy commissioner's denial of defendants' motion for sanctions. I adopt the deputy commissioner's rationale as set forth at hearing. (Hearing Transcript, p. 16)

I now turn to claimant's claim for penalty benefits for the period of January 9, 2017, through May 3, 2018. As mentioned, the deputy commissioner found claimant was not entitled to penalty benefits for this period due to her failure to plead a claim for such benefits during her partial commutation action that ultimately went to hearing on May 3, 2018. While I affirm the deputy commissioner's ultimate finding, my rationale is broader than the deputy commissioner's reliance on Allen v. Tyson Fresh Meats, Inc., an agency decision that was later affirmed by the Iowa Court of Appeals. File No. 5049025 (App. Dec. July 5, 2016); 913 N.W.2d 275 (Iowa Ct. App. 2018) (table).

Instead, I rely on the doctrine of claim preclusion. Claim preclusion "prevents piecemeal litigation by requiring a party to try the entire claim or defense in the case at trial." Penn v. Iowa State Bd. of Regents, 577 N.W.2d 393, 398 (Iowa 1998) (citation omitted). In other words, "a party must litigate all matters growing out of the claim, and claim preclusion will apply 'not only to matters actually determined in an earlier action but to all relevant matters that could have been determined.'" Id. (quoting Shumaker v. Iowa Dep't of Transp., 541 N.W.2d 850, 852 (Iowa 1995)); see Arnevik v. University of Minnesota Bd. of Regents, 642 N.W.2d 315, 319 (2002) ("Claim preclusion, as opposed to issue preclusion, may foreclose litigation of matters that have never been litigated.").

Three factors must be present to establish claim preclusion:

(1) the parties in the first and second action are the same parties or parties in privity, (2) there was a final judgment on the merits in the first action, and (3) the claim in the second suit could have been fully and fairly adjudicated in the prior case (i.e., both suits involve the same cause of action).

Pavone v. Kirke, 807 N.W.2d 828, 836 (2011).

In this case, all three factors of claim preclusion are present. First, the parties in the review-reopening/partial commutation action are the same parties in the penalty

benefits action. Next, there was a judgment on the merits in the review-reopening/partial commutation claims. And finally, the claim for penalty benefits through the date of the review-reopening/partial commutation hearing could have been fully and fairly adjudicated during the review-reopening/partial commutation hearing.

Iowa Administrative Code rule 876-4.2, as aptly cited by the deputy commissioner, provides that “[e]ntitlement to denial or delay benefits provided in Iowa Code section 86.13 shall be pled” but “may” be bifurcated. 876 IAC 4.2 (emphasis added). The Iowa Court of Appeals recently addressed this rule as it relates to claim preclusion in True v. Heritage Care and Rehabilitation, 2020 WL 1548520 (Iowa Ct App. 2020) (slip copy).

The court in True explained that “Rule 876—4.2 is relevant to the third element of claim preclusion” because it “recognizes there may be instances where additional facts may be needed for a full and fair adjudication of penalty benefits.” Id. As such, “[t]he rule functions to create an exception to claim preclusion when the claimant follows the specified procedure” for bifurcation. Id. Importantly, this exception to claim preclusion “does not exist outside the procedural requirements.” Id.

In this case, claimant filed her petition for partial commutation on June 26, 2017. Her claim for partial commutation (and defendants’ review-reopening claim) proceeded to hearing on May 3, 2018. Claimant alleges entitlement to penalty benefits beginning on January 9, 2017 - roughly six months before she filed her petition for partial commutation. Thus, claimant had ample opportunity to gather facts necessary for a full and fair adjudication of her penalty claim. Further, she still had a specific procedure available to her to bifurcate her claim had she requested it - but she failed to do so.

I recognize that the facts in True are different than the facts in this case. In True, claimant pled a penalty claim but then failed to argue it or bifurcate it at hearing. In this case, on the other hand, claimant did not assert a penalty claim during the course of the review-reopening/partial commutation action. This distinction, however, does not change the outcome of this case in light of the doctrine of claim preclusion, the compulsory language in Rule 876-4.2, and claimant’s failure to follow the procedure in Rule 876-4.2 to seek an exception to claim preclusion. 876 IAC 4.2; see True, 2020 WL 1548520 (“True initially pled her penalty-benefits claim as required under the rule.” (emphasis added)). Thus, by failing to make her claim for penalty benefits during the course of the review-reopening/partial commutation action, claimant waived her right to seek the accrued penalty benefits in a subsequent action.

In her brief on appeal, claimant sets forth several hypothetical scenarios to illustrate why the failure to plead a claim for penalty benefits in one proceeding should not preclude claimant from pleading and pursuing penalty benefits in a subsequent action. Ultimately, however, claim preclusion does not apply “unless the party against whom preclusion is asserted had a ‘full and fair opportunity’ to litigate the claim or issue in the first action.” Arnevik v. Univ. of Minnesota Bd. of Regents, 642 N.W.2d 315, 319 (Iowa 2002) (quoting Whalen v. Connelly, 621 N.W.2d 681, 685 (Iowa 2000)). And

unlike the hypothetical scenarios in claimant's brief, claimant in this case had a full and fair opportunity to litigate the penalty benefits claim in the review-reopening/partial commutation action. I therefore find claimant waived her claim for penalty benefits that had accrued through May 3, 2018. Thus, with this additional analysis, I affirm the deputy commissioner's finding that claimant is not entitled to an award of penalty benefits for the period of January 9, 2017, through May 3, 2018.

With respect to claimant's penalty benefits claim for the period of May 4, 2018, through September 27, 2019, I affirm the deputy commissioner's finding that claimant is entitled to an award of \$6,770.00. The period of May 4, 2018, through September 27, 2019 amounts to roughly 73 weeks of benefits. At claimant's rate of \$185.49, these 73 weeks equate to \$13,540.77 of unpaid benefits for which penalty benefits are owed. The deputy commissioner's penalty award of \$6,770.00 is roughly 50 percent of the amount of benefits owed - the highest allowable award. I affirm the deputy commissioner's findings, conclusions and analysis regarding this issue in their entirety.

ORDER

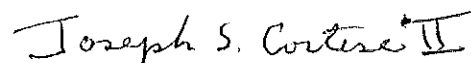
IT IS THEREFORE ORDERED that the Iowa Code section 85.13 decision filed on November 13, 2019 is affirmed in its entirety with the above-stated additional analysis.

Defendants shall pay claimant six thousand seven hundred seventy and 00/100 dollars (\$6,770.00) in penalty benefits.

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant's filing fee totaling one hundred dollars (\$100.00), and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 24th day of August, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Daniel Anderson (via WCES)

Thomas B. Read (via WCES)