

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 016684-93

Arthur J. Lee
Massachusetts General Hospital
Lynn Plastics Corp.
Liberty Mutual Insurance Co.

Employee
Third Party Claimant
Employer
Insurer

REVIEWING BOARD DECISION
(Judges Smith, McCarthy & Wilson)

APPEARANCES

Bernard T. Loughran, Jr., Esq., for the third party at hearing
Roger J. Donahue, Jr., Esq., for the employee on brief
Jean M. Shea, Esq., for the insurer

SMITH, J. The employee appeals from the decision of an administrative judge denying and dismissing a third party claim for payment of an outstanding medical bill. The employee argues that entitlement to payment was established by a hearing decision containing a generic award of reasonable and adequate medical treatment. Because the prior decision did not specifically address the disputed medical services, we conclude that it did not preclude the insurer from challenging their causal connection to the established work injury. We therefore affirm the decision of the administrative judge.

Massachusetts General Hospital (MGH) filed this third party claim seeking payment of its medical bill totaling \$33,592.13. A copy of the claim was sent to the employee's attorney. (Letter dated February 28, 1996 from Loughran to Liberty Mutual.) The insurer denied payment, and the case proceeded from conciliation to conference. It appears that only the insurer and MGH participated in the § 10A conference, which resulted in an order for payment of the disputed bill. The insurer appealed the conference

order and the matter then went to a § 11 hearing. Only MGH and the insurer appeared at the hearing held on July 17, 1997.¹

At hearing, MGH and the insurer submitted the case to the judge for decision based upon the following stipulated facts: Arthur Lee suffered a work-related myocardial infarction on or about May 18, 1993. Following his myocardial infarction, he underwent coronary bypass surgery at MGH and was admitted there for that treatment from May 26, 1993 through June 8, 1993. Lee filed a claim and was awarded weekly compensation and medical benefits for a closed period from May 18, 1993 to September 10, 1993. The decision making this award did not *specifically* address the issue of payment to MGH for its treatment. MGH then filed the present claim for its services. After a § 10A conference, payment of the bills was ordered and the insurer appealed to a § 11 hearing. An impartial medical examiner was appointed.² He reported that Lee's admission to MGH and his coronary bypass surgery were due to pre-existing underlying coronary artery disease and not due to the work-related myocardial infarction of May 1993. (Tr. 4-5; Agreed Statement of Facts/Proposed Findings.)

Based upon these stipulated facts, the judge found the treatment rendered at MGH

¹ The employee's attorney was copied on some of the correspondence and pleadings in this proceeding in addition to the claim form. See, e.g. Motion to find Impartial Inadequate, dated March 19, 1997; Letter from Loughran to the Judge, dated March 17, 1997.

² Where only medical bills are in dispute, an impartial medical examiner is appointed pursuant to § 8(4), which provides, in pertinent part:

At any time subsequent to the filing of a claim or complaint solely regarding the reasonableness or necessity of a particular course of medical treatment, any party to such claim or complaint may request the senior judge to appoint a physician from the appropriate roster to conduct an examination of the employee and make a report within fourteen days. If the senior judge determines that said claim or complaint involves only the issue of reasonable and necessary medical treatment, he shall make such appointment within seven days. The impartial physician shall determine the appropriateness of any medical treatment claimed or denied by the parties, using any guidelines adopted by the health care services board or promulgated by the department. The determination by the impartial physician shall be binding upon the parties until any subsequent proceeding within the division of dispute resolution. The determination of the impartial physician shall be prima facie evidence of the appropriateness or inappropriateness of the course of medical treatment in question at any hearing at which such treatment is at issue.

G.L. c. 152, § 8(4), as amended by St. 1991, c. 398, § 24.

not causally related to Lee's employment and denied and dismissed the third party claim for payment. (Dec. filed July 18, 1997, 4-5.) The employee now appeals,³ arguing that the decision on his original liability claim, filed July 28, 1995, conclusively established his entitlement to payment of the MGH bill. We disagree.

The judicial doctrine of issue preclusion provides that " 'when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.'" Martin v. Ring, 401 Mass. 59, 61 (1987), quoting Fireside Motors, Inc. v. Nissan Motor Corp. in U.S.A., 395 Mass. 366, 372 (1985). The burden is on the party claiming res judicata by reason of a prior adjudication to prove that the issue had been previously decided. Fabrizio v. U.S. Suzuki Motor Corp., 362 Mass. 873, 874 (1972). The party may enter into evidence the pleading and decision in the prior proceeding as well as extrinsic evidence to show what was actually litigated and determined therein. Bordonaro v. Vandenkerckhaven, 322 Mass. 278, 282 (1948).

The meager record here does not compel a conclusion that this medical bill was distinctly put in issue in the prior proceeding. For example, the record does not contain the prior claim as an exhibit. See G.L. c. 152, § 7G and its implementing regulation, 452 CMR § 1.07(c)(1) (requiring claims for medical services to be accompanied by an itemized bill). The language of the prior decision, "that the insurer, Liberty Mutual, pay for all reasonable and adequate medical treatment for the claimed period of disability as provided under § 30 of the Act," (Dec. filed July 28, 1995, 11), is generic. It did not necessarily encompass an adjudication that these particular medical bills were caused by the injury. See Hall v. Boston Park Plaza Hotel, 12 Mass. Workers' Comp. Rep. 188, 190 (1998). The issue of the causal connection between the work-related myocardial infarction and the coronary artery bypass surgery did not have to be reached in order for the prior generic award to be made. On these stipulated facts, the judge could rationally

³ The insurer has not contested the employee's status as an "aggrieved party." See G.L. c. 152, § 11C.

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conclude that the causal relationship between these medical services and the work-related myocardial infarction had not been actually litigated in the prior proceeding and therefore, as a matter of law, the issue had not been concluded. See DeMetrio v. DeMatteo Constr. Co., 11 Mass. Workers' Comp. Rep. 624, 626 (1997) (employee allowed to file a subsequent claim for medical services for treatment discussed in deposition but for which no claim had been submitted).

The judge did not err in reaching the merits of the dispute. Her denial of the claim was soundly based on the impartial medical examiner's opinion. See G.L. c. 152, §§ 8(4) and 30. Because the judge's decision is not arbitrary or capricious, or contrary to law, we affirm it. G.L. c. 152, § 11C.

So ordered.

Suzanne E.K. Smith
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Sara Holmes Wilson
Administrative Law Judge

Filed: April 28, 1999