

EVALINA KARIMOVA
(Appellee)

v.

NORDX
(Appellant)

and

SYNERNET
(Insurer)

Argued: December 7, 2017
Decided: January 16, 2018

PANEL MEMBERS: Administrative Law Judges Goodnough, Jerome, and Stovall

BY: Administrative Law Judge Goodnough

[¶1] NorDx appeals from a decision of a Workers' Compensation Board administrative law judge (*Collier, ALJ*) granting a number of Evalina Karimova's petitions, including a Petition for Award for a September 11, 2006, bilateral carpal tunnel injury. In a previous round of litigation, the parties unsuccessfully mediated Ms. Karimova's other dates of injury, and her September 11, 2006, injury was not included as an issue in the records of mediation. Because of that omission, NorDx argues, principles of res judicata foreclosed Ms. Karimova from thereafter asserting a claim for that injury.

[¶2] We disagree with NorDx's argument. Res judicata does not extend so far as to necessarily bar a claim for workers' compensation benefits when an

employee could have asserted that claim in a previous round of litigation. *See Day v. S.D. Warren*, Me. W.C.B. Dec. No. 16-19, ¶ 5 (App. Div. 2016). Moreover, res judicata applies only after a tribunal renders a final adjudication. *Ervey v. Ne. Log Homes*, 638 A.2d 709, 710 (Me. 1994); Restatement (Second) of Judgments § 13 (1982) (“The rules of res judicata are applicable only when a final judgment is rendered.”). Unlike mediation agreements, which serve as the equivalent of final adjudications, *see Jasch v. Anchorage Inn*, 2002 ME 106, ¶ 17, 799 A.2d 1216, records of unresolved mediations that merely recite issues in dispute do not have the same res judicata effect as judicial decrees, *cf. Beal v. Allstate Ins. Co.*, 2010 ME 20, ¶ 14, 989 A.2d 733 (“To have a preclusive effect, an arbitration decision must become final rather than remain tentative, provisional, or contingent.”); Restatement (Second) of Judgments § 13 cmt. b (“[W]hen res judicata is in question a judgment will ordinarily be considered final in respect to a claim . . . if it is not tentative, provisional, or contingent and represents the completion of all steps in the adjudication of the claim by the court.”).

[¶3] The ALJ correctly determined that the employee’s claim relative to the 2006 carpal tunnel injury was not barred due to the operation of res judicata.

The entry is:

The administrative law judge’s decision is affirmed.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2016).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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