PERCY MADORE
(Appellant)

v.

ANTONIO LEVESQUE & SONS, INC.
(Appellee)

and

TRAVELERS INSURANCE CO.
(Insurer)

Conference held: September 11, 2019
Decided: October 29, 2021

PANEL MEMBERS: Administrative Law Judges Hirtle, Collier, and Stovall
BY: Administrative Law Judge Collier

[¶1] Percy Madore appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) denying his Petition for Payment of Medical and Related Services. Mr. Madore contends that the ALJ erred in concluding that his petition was barred by the doctrine of *res judicata*. We agree with Mr. Madore and vacate the decision.

I. BACKGROUND

[¶2] Percy Madore is paralyzed below the waist as a result of a 1974 work injury. In a 2009 decree, the board ordered the employer, Antonio Levesque & Sons, Inc., to pay for a specially modified ATV. In a decree dated May 1, 2017, the board authorized the purchase of a replacement ATV at Levesque & Sons' expense. In

October of 2017, Mr. Madore filed the petition at issue in this appeal, seeking payment of bills relating to the conversion of the ATV for winter use. Specifically, Mr. Madore sought reimbursement for the purchase of snow tracks for the ATV, a utility trailer, and a hitch assembly for his vehicle. The bills for the snow tracks and hitch were incurred on different dates in January of 2016, prior to the filing of the petition resulting in the 2017 decree, while the bill for the utility trailer was incurred on July 7, 2016. The replacement ATV itself was purchased in 2014.

[¶3] The ALJ denied the petition based on the doctrine of *res judicata*, concluding that Mr. Madore should have included these bills in the litigation leading to the 2017 decree. In response to the decision, Mr. Madore filed a Motion for Additional Findings of Fact and Conclusions of Law. The ALJ issued an amended decision but did not alter the conclusion. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶4] The Appellate Division is "limited to assuring that the [ALJ's] factual findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted). Because Mr. Madore requested additional findings of fact and conclusions of law, the Appellate Division

may review only the findings actually made and the legal standards actually applied by the ALJ. *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446.

B. Analysis

[¶5] The ALJ concluded that the three bills at issue in this litigation are for accessories to the ATV and are "related to the employee's catastrophic work injury." He denied the petition, however, because he concluded that "the bills presented in this action were available at the time of the prior litigation and pertain to the same cause of action," and "[b]y presenting his claim with respect to the replacement ATV in piecemeal fashion, the employee has run afoul of the principles of res judicata." We disagree with this conclusion.

[¶6] Valid and final decisions of the Workers' Compensation Board, like court decisions, are subject to the general rules of *res judicata* and issue preclusion. *Bailey v. City of Lewiston*, 2017 ME 160, ¶ 10, 168 A.3d 762; *Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 9, 837 A.2d 117. "*Res judicata* is grounded in concerns for judicial economy and efficiency, the stability of final judgments, and fairness to litigants." *See Lewis v. Me. Coast Artists*, 2001 ME 75, ¶ 9, 770 A.2d 644 (quotation marks omitted).

[¶7] The judge-made doctrine of *res judicata* consists of two strands or branches intended to prevent repeated litigation of the same matter: claim preclusion or "merger and bar," and issue preclusion or collateral estoppel. *Beegan v. Schmidt*,

451 A.2d 642, 644 (Me. 1982). Although Levesque & Sons framed the issue as falling under the issue preclusion branch, it in fact falls within the claim preclusion branch. Pursuant to the doctrine of claim preclusion, "[i]f a plaintiff brings an action which proceeds to final judgment, [the] 'cause of action' is said to be 'merged' in the judgment if he wins and 'barred' by it if he loses. This means that what was considered or should have been considered in the first action cannot form the basis of a subsequent action." *Id.* (quotation marks omitted).

[¶8] Unlike issue preclusion (which merely prevents the re-litigation of an issue of fact actually litigated and decided in an earlier case), claim preclusion prohibits the re-litigation of an entire "cause of action" between the same parties or their privies after a final judgment in an earlier proceeding on the same cause of action. *Id.* The Law Court has noted that "the slippery phrase 'cause of action' all but defies definition." *Krasdoska v. Kipp*, 397 A.2d 562, 568 (Me. 1979). However, whether the subsequent complaint presents the same "cause of action" that was presented and disposed of in the earlier proceeding is both the "key question" for decision and the "major problem" of applying the principle of claim preclusion. *Beegan*, 451 A.2d at 646.

[¶9] Maine uses a transactional test to define a "cause of action" and to determine whether a claim should have been raised and litigated in an earlier proceeding:

> In applying the transactional test, the claims are the same if they are part of the same transaction, i.e., they are 'founded upon the same transaction, [arise] out of the same nucleus of operative facts, and [seek] redress for essentially the same basic wrong. To determine whether facts arise out of the same transaction, we consider whether the facts are related in time, space, origin, or motivation.

Lewis, 2001 ME 75, ¶ 10 (citations omitted); *see also Beegan*, 451 A.2d at 645. Ultimately, the Law Court has stated, "the transactional test of a cause of action demands of the plaintiff nothing more than what is fair." *Beegan*, 451 A.2d at 647.

[¶10] Although the doctrine of *res judicata* applies to workers' compensation proceedings, *Grubb*, 2003 ME 139, ¶ 8, the principle of claim preclusion must be applied judiciously in this arena. Defining a "cause of action" in workers' compensation proceedings can be even more "slippery" than in ordinary civil litigation. Workers' compensation cases can last for many years and involve multiple rounds of litigation, as an injured worker's entitlement to benefits can extend for a lifetime and will often involve many issues over time. It is often not apparent whether an issue should have been litigated at one time as opposed to another. Claims may involve hundreds or thousands of individual items and bills, especially in a case involving a catastrophic, permanent injury such as this one. The vast majority of these are dealt with and resolved short of the board's formal dispute resolution process. It is not practical to expect that every prescription or trip to a therapist must be submitted to litigation.

[¶11] Bearing in mind the board's statutory mission, which includes preventing disputes, reducing litigation, and ensuring the prompt delivery of benefits legally due, 39-A M.R.S.A. § 151-A (2001), it behooves us to be cautious in determining that a specific item "should have been" claimed, or contested, in a particular round of litigation or forfeited permanently. *See Oleson v. Int'l Paper*, Me. W.C.B. No. 14-29, ¶ 19 (App. Div. 2014) (cautioning against applying the doctrine of claim preclusion too broadly, particularly when applying it to bar claims that *might have been tried* in prior litigation, but were neither litigated by the parties nor decided in the prior litigation, citing *Wacome v. Paul Mushero Const. Co.*, 498 A.2d 593 (Me. 1985)).

[¶12] Here, the issue in the previous round of litigation was the reasonableness and necessity of the purchase of the replacement ATV itself pursuant to 39-A M.R.S.A. § 206 (Pamph. 2020). The items at issue in the current litigation, although related to the ATV, are accessories to the ATV, and were purchased at different times and in different transactions. Applying the scope of *res judicata* discussed above, Mr. Madore should not forfeit reimbursement for reasonable and necessary aids because he failed to submit bills for different but related items in conjunction with the prior litigation.

[¶13] Moreover, in the current litigation, Levesque & Sons did not defend on the ground that the items at issue were not reasonable and necessary aids—it

defended only on the ground that the claims for payment were precluded due to the prior litigation—thus it forfeited our consideration of any such defense. *See Laursen v. Sapphire Mgmt.*, Me. W.C.B. No. 20-19, ¶ 9 (App. Div. 2020). And, although ruling on other grounds, the ALJ found that "[t]here is no dispute that the 3 bills at issue here are accessories to the purchase of the new ATV, related to employee's catastrophic work injury and the psychological sequelae thereof."

III. CONCLUSION

[¶14] We conclude that the ALJ misapplied the law in determining that Mr. Madore's petition was barred by the claim preclusion, or merger, aspect of the doctrine of *res judicata*. Because this was the only issue raised and the ALJ made adequate findings to adjudicate the claim on appeal, we vacate the ALJ's decision and grant Mr. Madore's petition.

The entry is:

> The ALJ's decision is vacated and the Petition for Payment of Medical and Related Services is GRANTED.

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 (Pamph. 2020).

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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