IN THE COURT OF APPEALS OF IOWA

No. 1-438 / 00-1169
Filed November 28, 2001

BARBARA HOOPER and JAMES HOOPER,
Plaintiffs-Appellants,

vs.

IBP, INC.,
Defendant-Appellee.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Buena Vista County, Frank B. Nelson, Judge.

Barbara and James Hooper appeal from the district court's ruling granting IBP, Inc., summary judgment on a claim for the bad faith failure as a former employer to pay medical expenses for a work-related injury. **REVERSED AND REMANDED.**

Steven Hamilton of Hamilton Law Firm, Storm Lake, for appellants.

Robert D. Houghton and Theresa C. Davis of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellee.

Heard by Sackett, C.J., and Huitink and Hecht, JJ.

HUITINK, J.

James Hooper appeals from a district court order granting summary judgment to IBP, Inc. on his claim for bad faith failure to pay medical bills. We reverse and remand for further proceedings.

I. Background Facts and Proceedings.

Hooper brought two workers' compensation claims against his employer, IBP, seeking benefits for physical and mental injuries sustained in the course of his employment. IBP acknowledged liability for the physical injuries but not the mental injury, asserting it was a preexisting condition caused by other stresses in Hooper's life. Following arbitration, the deputy industrial commissioner resolved this dispute against IBP, finding as follows:

> It is found that whatever the state of [Hooper's] prior psychological health might have been, it was not disabling and he was able to function and be gainfully employed at all pertinent times in his life. It is found that the pain and other stresses associated with his left shoulder injury aggravated his preexisting condition or preexisting susceptibility to develop depression and caused the onset of the current depressive episode . . . . The development of claimant's depression follows a logical, temporal relationship with the shoulder injury. It is further found that claimant has been totally disabled since the development of the depression in August 1991 and that he is likely to remain totally disabled by the depression indefinitely into the future.

The industrial commissioner, district court, and the court of appeals subsequently affirmed this decision.

On December 16, 1993, Hooper filed a petition requesting compensatory and punitive damages for IBP's bad faith failure to pay Hooper's medical bills. Hooper alleged that IBP's "refusal to pay the medical charges [was] willful and intentional . . . and designed to aggravate his fragile mental health condition and

[did, in fact, cause] him to suffer extreme nervousness, loss of sleep, depression and other injuries."[1] The district court ultimately dismissed Hooper's petition, finding that the Workers' Compensation Act provides the sole remedy for all workplace injuries and that the issue of causation was barred from further litigation under the doctrine of res judicata.

On appeal Hooper contends the district court erred in granting IBP's motion for summary judgment. Specifically, he argues the Workers' Compensation Act does not bar a common law bad faith claim and the finding in the workers' compensation proceeding that his physical injuries were a substantial cause of his mental condition does not preclude a concurrent finding that IBP's refusal to pay medical bills was also a substantial cause of his illness.

II. Standard of Review.

We review a grant of summary judgment for correction of errors at law. Iowa R. App. P. 4; *Whalen v. Connelly*, 621 N.W.2d 681, 684 (Iowa 2000). Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Westfield Ins. Co. v. Economy Fire & Cas. Co.*, 623 N.W.2d 871, 876 (Iowa 2001). Here, we must determine whether the district court correctly applied the law. *Whalen*, 621 N.W.2d at 685. We review the record in the light most favorable to Hooper as the nonmoving party. *Id.*

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[1] Hooper's claim for punitive damages was waived in his resistance to IBP's motion for summary judgment.

III. Exclusivity Doctrine.

We find the district court erred in finding that the Workers' Compensation Act provides the exclusive remedy for Hooper's injury. Iowa Code section 85.20 (1997) provides that a workers' compensation proceeding provides the exclusive remedy of an employee against an employer for work-related injuries covered by the act. A common law bad faith claim, however, is not barred by this rule of exclusivity because it is an intentional tort, recovery for which is not provided for by the act. *See Gibson v. ITT Hartford Ins. Co.,* 621 N.W.2d 388, 396-97 (Iowa 2001) (Iowa Code section 86.13 is not exclusive remedy precluding common law bad faith claim); *Reedy v. White Consolidated Indust., Inc.,* 503 N.W.2d 601, 603 (Iowa 1993) (self-insured employers subject to same liability for bad faith failure to pay medical benefits as insurance carriers); *Boylan v. American Motorists Ins. Co.,* 489 N.W.2d 742, 744 (Iowa 1992) (penalty provision of Workers' Compensation Act applies only to negligent conduct and thus does not act to bar bad faith claim based on willful or reckless acts).

IV. Issue Preclusion.

Issue preclusion or collateral estoppel is part of the larger doctrine of res judicata. *Bryan v. Hall*, 367 N.W.2d 251, 252 (Iowa Ct. App. 1985). Issue preclusion bars a party from relitigating an issue that has already been raised and decided in a prior action. *Harrison v. State Bank of Bussey*, 440 N.W.2d 398, 401 (Iowa Ct. App. 1989). The four prerequisites for issue preclusion are well established:

> (1) The issue concluded must be identical;
> (2) The issue must have been raised and litigated in the prior action;

> (3) The issue must have been material and relevant to the disposition of the prior action; and
> (4) The determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Israel v. Farmers Mut. Ins. Ass'n, 339 N.W.2d 143, 146 (Iowa 1983).

Applying these concepts to the current proceeding, we find it was also error for the district court to grant summary judgment on the basis of issue preclusion. Although the cause of Hooper's injury is at issue in both proceedings, the precise issue of causation was not identical. A finding that Hooper's mental condition was proximately caused by physical injuries sustained is not preclusive of a finding that IBP's refusal to pay the resulting medical bills was also a substantial causative factor. Moreover, the question of whether IBP's bad faith failure to pay medial bills was a factor causing Hooper's mental condition was not, nor could not have been, litigated in the workers' compensation proceeding. *See Shumaker v. Iowa Dep't of Transp.*, 541 N.W.2d 850, 852-53 (Iowa 1995) (citing Restatement (Second) of Judgments § 26 (1982) (where a claim could not be addressed in prior action because of limitations in subject matter jurisdiction, it will not be precluded in a subsequent action)).

We also reject IBP's argument that any damages Hooper could recover through his bad faith claim are completely duplicative of damages already awarded in the workers' compensation proceeding. In the workers' compensation context, a mental injury is an unscheduled injury. *See* Iowa Code section 85.34(2). The amount of compensation awarded for unscheduled injuries depends upon the extent of the industrial disability resulting from the injury. *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12, 15 (Iowa 1993). Industrial disability

measures an injured worker's lost earning capacity. *Myers v. F.C.A. Servs., Inc.*, 592 N.W.2d 354, 356 (Iowa 1999). In assessing whether a claimant has sustained a loss of earning capacity, the workers' compensation commissioner is required to consider all "factors that bear on [the claimant's] actual employability." *Second Injury Fund v. Hodgins*, 461 N.W.2d 454, 456 (Iowa 1990) (quoting *Guyton v. Irving Jensen Co.*, 373 N.W.2d 101, 104 (Iowa 1985)). These factors include not only the claimant's functional disability, but also his age, education, qualifications, experience, and ability to engage in similar employment. *Myer*, 592 N.W.2d at 356. The commissioner's primary focus in the determination of industrial disability is therefore on the ability of the worker to be gainfully employed. In contrast, tort recovery allows for elements of damages not provided for within Iowa's workers' compensation scheme. *Black v. Chicago Great W. R. Co.*, 187 Iowa 904, 917, 174 N.W. 774, 778-79 (1919) ("The amount of the recovery for tort might be in a greater amount than the compensation fixed by the [workers' compensation] statute since there may be other elements of damage allowed in an action for tort as for instance, pain and suffering, etc."). *See Niblo v. Parr Mfg., Inc.*, 445 N.W.2d 351, 354 (Iowa 1989) (when a tort involves willful or unlawful conduct other than negligence, plaintiff may recover mental distress damages); *Dolan v. Aid Ins. Co.*, 431 N.W.2d 790, 794 (Iowa 1988) (damages for ordinary emotional distress recoverable in first party bad faith claim); *DeBurkarte v. Louvar*, 393 N.W.2d 131, 142 (Iowa 1986) (tort actions allow damages for pain and suffering, including mental anguish and the loss of enjoyment of life).

To the extent Hooper has already been compensated for mental illness or injury, that compensation was presumably limited to those injuries casually related to his employment at IBP. *See Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 847 (Iowa 1995). In this case, Hooper seeks compensation for emotional distress and other damages caused by IBP's bad faith failure to pay benefits to which he was entitled. Whether and to what extent Hooper suffered emotional distress or other damages in addition to those established in earlier workers' compensation proceedings are issues that neither the industrial commissioner nor this court has previously addressed. Contrary to IBP's argument, we fail to see how Hooper's recovery of damages in addition to those already received results in a double recovery.

The judgment of the district court is therefore reversed, and this case is remanded for further proceedings consistent with our opinion.

REVERSED AND REMANDED.

Hecht, J., concurs; Sackett, C.J., dissents.

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SACKETT, C.J. (dissenting)

I dissent. I would affirm the trial court.