

Appellate court cites WC settlement contract as basis for PSEBA & PEDA benefits; Collateral estoppel uses WC findings to establish other causes of action

By John P. O'Grady / Bryce Downey & Lenkov, LLC

In the recent decision of *Frank H. Richter v. Village of Oak Brook*, the petitioner originally filed several workers' compensation claims for injuries relating to his work as a firefighter. Two claims from 1999 alleged sinus problems caused by diesel fumes and exhaust levels at the fire station. A claim from January 2000 alleged bilateral shoulder injuries which occurred while responding to a fire, where the petitioner was handling a fire hose and a pike pole. There was subsequent injury to the shoulders when the petitioner fell down during a firefighting training exercise. The petitioner underwent multiple bilateral shoulder surgeries in 2001/2002.

Arbitration Finding / Disability Pension:

An arbitrator found (in April 2003) that the petitioner was temporarily totally disabled by the work-related diesel-induced rhinitis; this finding was affirmed by the Commission in December 2003. Also around this time, the petitioner applied for a line-of-duty disability pension, which was granted by the pension board in September 2003.

WC Settlement: In February 2004, the parties settled all WC claims. The "Terms of Settlement" provided that the settlement was a compromise intended to extinguish the respondent's legal obligations under the WC Act and the Occupational Diseases Act. The settlement contract also listed the neck, back and shoulders among the body parts affected.

Circuit Court Complaint Under PSEBA / PEDA: In May 2004, the petitioner filed a declaratory judgment action in the Circuit Court (DuPage County), asserting that the respondent was required to provide health insurance benefits/coverage for the petitioner and his family, pursuant to PSEBA (Public Safety Employee Benefits Act). The petitioner also sought unpaid TTD, pursuant to PEDA (Public Employee Disability Act). In answering the Complaint, the respondent admitted that the shoulder injury from the January 2000 firefighting incident could have been a partial or entire cause of the petitioner's disability. The respondent also virtually admitted that the petitioner's disabling injury could qualify as a

"catastrophic injury" under PSEBA.

Circuit Court's Finding That Collateral Estoppel Did Not Apply: The petitioner filed a motion for summary judgment, arguing that, under the doctrine of *res judicata* (actually the equivalent of collateral estoppel), the settlement agreement and the pension board's decision and the respondent's answers to the Complaint combined to establish his right to benefits under PSEBA / PEDA. The Circuit Court denied the petitioner's summary judgment motion, finding that: *res judicata* could not be used offensively by the petitioner; no identity of issues existed; and it would be unfair to use collateral estoppel in this action.

Appellate Court Decision: The Appellate Court, 2nd District, reversed the Circuit Court and found that the petitioner did indeed establish a right of recovery under PSEBA / PEDA. The Court found that the pension board's award of a line-of-duty pension, which was based on the January 2000 shoulder injuries, was equivalent to a finding of "catastrophic injury" as covered under PSEBA. The Court then examined whether the respondent was collaterally estopped from arguing that such injury did not result from a response to an emergency, as required by PSEBA.

Significance of Settlement Contract, and "Contributing Cause": The Court cited well-established case law that holds that a WC settlement or award, entered by the Commission, is a final adjudication of all matters in dispute up until the agreement. Then the Court cited two appellate decisions from 2008 (*Bahr v. Bartlett F.P.D.*; *Phalin v. McHenry Cty. Sheriff's Dept.*) as support for the finding that a public-safety employee can recover under PSEBA even if the emergency-related injury was only a contributing cause of his current disability, as opposed to being the sole cause of the disability. In *Bahr* and *Phalin*, the employees had multiple work injuries, and there was a question as to whether the injury that was last in time had to be emergency-related in order to recover under PSEBA. In those cases, the Court held that it is sufficient if an emergency-related injury contributes to the eventual dis-

ability, and it need not be the sole cause of the disability, and it is irrelevant whether the contributing injury was last in time. Here, the respondent admitted in pleadings that the pension board's line-of-duty pension was "based on his shoulder injuries," and the settlement contract listed the January 2000 accident as involving the shoulder injuries. So, the Court found that the January 2000 emergency-related injury was a basis for recovery under PSEBA, even though it may not have been the sole cause of the petitioner's disability. For the petitioner's PEDA claim, the Court ruled similarly, rejecting the respondent's challenge to the use of collateral estoppel.

Practical Considerations: The Court's analysis essentially implied that *respondents who fail to challenge or dispute every issue that could potentially lead to liability, in other legal forums, have nobody but themselves to blame*. The Court specifically dismissed notions such as "we couldn't foresee that the WC settlement would make us liable under PSEBA/PEDA" or "the settlement amount was too small to warrant using the contract as the basis for a catastrophic disability claim." This decision puts respondents on notice, to consider all of the ramifications that could potentially arise from how a settlement agreement is drafted.

(Case Citation: *Frank H. Richter v. Village of Oak Brook*, 2011 IL App 2d 100114, opinion filed September 23, 2011). ■

Save the Date!

February 20, 2012

**Advanced Workers'
Compensation—
Spring 2012**

Check the ISBA's Web site at www.isba.org/cle for details.