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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Case No. MON 0210763

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CHARLES BROWN, (decedent),
Lydia Brown, (widow),
Applicant,

vs.

CITY OF LOS ANGELES POLICE
DEPARTMENT; Permissibly Self-Insured,

Defendant.

**OPINION AND ORDER GRANTING
PETITION FOR RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

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Lien claimant, Blue Cross of California, seeks reconsideration of the Opinion and Order, issued December 26, 2000, but not served on lien claimant until January 26, 2001, in which a workers' compensation administrative law judge (WCJ) found the May 22, 1997 determination of the City of Los Angeles Board of Pension Commissioners, which held the cause of the decedent's death was not related to his employment, was entitled to res judicata/collateral estoppel effect in proceedings before the WCAB. The WCJ held that the applicant's decedent's death was not industrial and that lien claimant was therefore precluded from seeking reimbursement on its lien for medical treatment expenses.

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Lien claimant contends that the WCJ erred in holding that the determination of the Board of Pension Commissioners is res judicata on its claim for reimbursement on its lien for medical treatment. Lien claimant raises the following arguments in its petition. First, that the Board of Pension Commissioners is not a constitutional court, and thus its determinations are not entitled to res judicata effect. Second, that the elements of res judicata have not been satisfied. Third, that lien claimant has been denied its due process right to a fair trial by the application of res judicata. Fourth, that the Appeals Board has exclusive jurisdiction over its lien claim, and lien claimant had no right to participate in the Board of Pension Commissioners proceedings. Fifth, lien claimant

1 asserts that defendant improperly raised the issue of res judicata after the close of discovery
2 without establishing that the evidence of the determination of the Board of Pension Commissioners
3 could have been obtained and offered into evidence at the Mandatory Settlement Conference
4 (MSC). Sixth, lien claimant offers as newly discovered evidence the settlement agreement between
5 applicant and the Board of Pension Commissioners, settling her claim for pension benefits while
6 on appeal. Seventh, lien claimant argues that the effect of applicant's settlement of her claim for
7 pension benefits supercedes the findings of the Board of Pension Commissioners and negates its
8 preclusive effect. Eighth, lien claimant asserts that defendant fraudulently concealed the existence
9 of the settlement.

10 Defendant filed an answer to the applicant's petition for reconsideration.

11 Following our review of the record, and because we find lien claimant was not a party, nor
12 in privity with a party, to the Board of Pension Commissioners proceedings, we shall grant
13 reconsideration, rescind the Order and return this matter to the trial level for further proceedings.

14 Statement of Facts

15 Decedent, Charles Brown, was a police officer employed by the City of Los Angeles Police
16 Department, permissibly self-insured, when he died on June 8, 1995, as a result of complications
17 from alcoholism. Subsequently, decedent's widow, applicant Lydia Brown, sought surviving
18 spouse benefits from the Board of Pension Commissioners of the City of Los Angeles. Her
19 application for benefits was denied on May 22, 1997, based upon a finding that the medical
20 evidence did not establish that the decedent's "alcoholism and related death were a result of his
21 stress in employment as a police officer." Applicant filed a petition for writ of mandate with the
22 Superior Court, seeking to reverse the determination of the Board of Pension Commissioners.

23 Applicant also filed an application for death benefits with the Workers' Compensation
24 Appeals Board. The matter proceeded to trial in 1997, but was subsequently stayed at the
25 defendant's request, citing the jurisdiction of the Superior Court on appeal from the Board of
26 Pension Commissioners' determination. The WCJ's stay order was sustained by the Appeals Board
27 following petitions for reconsideration and removal by applicant and lien claimant. Before the

1 matter returned to the Appeals Board, applicant had settled both matters. An Order Approving
2 Compromise and Release on applicant's dependency claim was issued March 9, 2000, approving
3 applicant's settlement of her claim for \$49,950.00.

4 In September of 1999, while the appeal from the determination of the Board of Pension
5 Commissioners was pending, that matter was settled and applicant filed a request for dismissal
6 with prejudice of the petition for writ of mandate. The settlement agreement, though not offered
7 into evidence in these proceedings, and attached to defendant's answer to the petition for
8 reconsideration, provides that the Board of Pension Commissioners waived their right to costs in
9 the superior court proceedings in exchange for a dismissal with prejudice.

10 Lien claimant filed a lien for medical treatment in September 1997, in the sum of
11 \$121,062.40, representing the expenses of the decedent's hospitalization and treatment.

12 The matter returned to the trial calendar on lien claimant's request. An MSC was held on
13 July 12, 2000, at which the parties detailed the issues to be determined. However, on the day set for
14 trial the WCJ ordered the matter submitted on briefs on the issue of res judicata/collateral estoppel.

15 On December 26, 2000, the WCJ issued an Opinion on Decision and Order, in which he
16 determined that the finding by the Board of Pension Commissioners mandated that there be a
17 finding in the lien proceedings that applicant's decedent did not sustain an industrial injury, and
18 therefore lien claimant was not entitled to reimbursement. The WCJ explained in his opinion that
19 defendant, City of Los Angeles, had previously defended itself before the Board of Pension
20 Commissioners, and again when the matter was brought by applicant to the WCAB. "This judge
21 finds compelling the argument of defendant that the lien claimant stands in the shoes of the
22 applicant and a res judicata/collateral estoppel finding that applies to applicant applies to lien
23 claimant."

24 Discussion

25 We disagree with the WCJ's premise for applying the preclusive effect of res judicata
26 against Blue Cross: that lien claimant stands in the shoes of applicant for purposes of res
27 judicata/collateral estoppel.

1 The doctrines of res judicata and collateral estoppel are intended to give conclusive effect
2 to earlier judgments in subsequent proceedings involving the same causes of action or issues. The
3 doctrines apply when identical issues or claims were litigated and decided in a final judgment on
4 the merits in the prior litigation, and the parties in both actions are the same or in privity with one
5 another. (See *People v. Taylor* (1974) 12 Cal.3d 868; *Bernhard v. Bank of America* (1942) 19
6 Cal.2d 807.)

7 Here, despite the WCJ's view that lien claimant can be bound by the outcome of the
8 determination in a forum in which it had no notice and did not participate, we find the absence of
9 privity between lien claimant and applicant prevents the application of the bar of res judicata in this
10 matter.

11 "The question of privity has been restated in terms of whether a nonparty was 'sufficiently
12 close' to an unsuccessful party in a prior action as to justify the application of collateral estoppel
13 against the nonparty." (*Lynch v. Glass* (1975) 44 Cal.App.3d 943. The court in *Lynch* further noted
14 that due process must be provided, and that this "requires that the nonparty have had an identity or
15 community of interest with, and adequate representation by, the losing party in the first action.
16 (citations omitted) The circumstances must also have been such that the nonparty should
17 reasonably have expected to be bound by the prior adjudication." (*Id.* At 943.) In *Lynch*, in an
18 action to establish an easement to a road by a member of the public, the court held that a prior
19 similar unsuccessful action by a private developer would not be a bar to the second action, despite
20 the benefit to both parties from the creation of an easement.

21 In *County of Shasta v. Carruthers* (1995) 31 Cal.App.4th 1838, at 1843, the court noted
22 that "the opportunity to be heard in a prior action is an underlying policy reason allowing the
23 application of res judicata." In that action, the court held res judicata did not apply as there was no
24 privity between a mother, who settled a paternity action against the father of her child, and the
25 District Attorney, who brought a paternity action on behalf of the child.

26 While the general principle that a lien claimant's right to recover medical treatment
27 expenses is derivative of an applicant's right to benefits is not in dispute (*Kaiser Foundation*

1 *Hospitals v. Workers' Comp. Appeals Board (Martin)*. (1985) 39 Cal.3d 57 [50 Cal.Comp.Cases
2 411), a lien claimant is a party to the proceedings and is entitled to notice and an opportunity to
3 participate. (*Beverly Hills Multispecialty Group v. Workers' Comp. Appeals Board* (1994) 26
4 Cal.App.4th 789 [59 Cal.Comp.Cases 461].) "Thus, due process requires that a lien claimant be
5 informed of the scope and purpose of a hearing that may affect its rights and liabilities." (*Id* at
6 472.)

7 Here, lien claimant was not a party to the proceedings before the Board of Pension
8 Commissions of the City of Los Angeles, yet its right to recover on its lien was extinguished by the
9 WCJ based upon the outcome of those proceedings. Lien claimant's lack of notice of the pension
10 hearing and its inability to participate in those proceedings, such that it had no knowledge that its
11 interests could be bound, precludes a finding that there was privity of interests between lien
12 claimant and applicant. In the absence of privity, there can be no application of res judicata in the
13 instant proceedings. Lien claimant is entitled to a hearing to establish its right to reimbursement on
14 its lien claim for medical treatment.

15 We note defendant's contention in its answer, that the law of the case is controlling since
16 the WCJ previously resolved this issue by Opinion on Decision dated June 3, 1998. However, the
17 WCJ's determination was limited to whether the WCAB proceeding should be abated pending the
18 outcome of the Superior Court proceedings on applicant's petition for writ of mandate. There was
19 no determination on the preclusive effect to be accorded the Board of Pension Commissioners
20 finding.

21 We further note that lien claimant has filed a supplemental petition seeking the admission
22 of documentary evidence and making additional arguments including a request for sanctions
23 against defense counsel. We decline to exercise our discretionary authority to permit the filing of
24 any supplemental petitions. (See WCAB Rule 10848.)

25 Accordingly, we shall grant reconsideration, rescind the Order, and return this matter to the
26 trial level for further proceedings on the lien claim of Blue Cross of California.

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For the foregoing reasons,


IT IS ORDERED that the February 14, 2001 Petition for Reconsideration be, and hereby is, **GRANTED**, and as our Decision After Reconsideration, the December 26, 2000 Order is **RESCINDED**, and the matter shall be **RETURNED** to the trial level for further proceedings and decision consistent with this opinion.

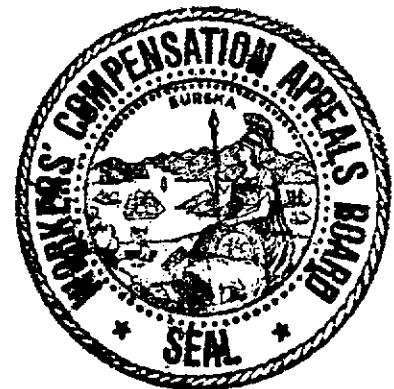
WORKERS' COMPENSATION APPEALS BOARD


ROBERT N. RICHARDS

I CONCUR,


MERCEDES RIOS


WILLIAM S. CASEY



DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

APR 16 2001

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD, EXCEPT LIEN CLAIMANTS. BUT INCLUDING LIEN CLAIMANT PETITIONER.

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