

Poe, Amy

RES JUDICATA

Occupational Disease

The doctrine of res judicata does not prevent administration of a new claim which involves symptoms in the same body parts involved in a rejected claim, but which is the result of a new disease process. ...*In re Amy Poe*, BIA Dec., 03 11095 (2004)

Scroll down for order.

1 prior rejection order did not bar it from allowing this claim. Furthermore, based on the medical
2 evidence presented, we conclude Ms. Poe developed right epicondylitis as a natural and proximate
3 result of her employment at Apogee. We affirm the January 6, 2003 order allowing the claim.
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5 The facts most relevant to our decision are as follows. Ms. Poe is a young woman (21 years
6 old at the time of the hearing) who went to work for Apogee in June 2000, immediately after
7 graduating from high school. She worked for this employer until October 2002. She worked as a
8 sewing assistant in a company that manufactured dog beds and reptilian cages. This position
9 involved repetitive bending and lifting of bales of cloth weighing around 25 pounds, and bundles of
10 finished products from bins. She also had to prepare and make zippers and package the products.
11 She developed soreness in her arms, wrists, neck, and upper back in December 2000. She sought
12 medical attention from Roger E. Sharf, M.D., a family practice physician, who filed Claim
13 No. N-968440, in February 2001, for myofascial pain in Ms. Poe's right shoulder, upper back, and
14 right wrist. This claim was filed as an occupational disease and was rejected on March 16, 2001.
15 The order rejecting the claim did not list any specific basis for the decision, other than boiler plate
16 language that Ms. Poe had not sustained an industrial injury or developed an occupational disease.
17 The March 2001 order was never appealed and became final and binding.
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25 Ms. Poe continued to work for Apogee as a sewing assistant until October 2002. Her arm,
26 shoulder, and neck problems worsened, and she sought treatment from Kenneth H. Spady, M.D.,
27 another family practice physician. Dr. Spady filed the current claim. On January 6, 2003, the
28 Department allowed the claim for right lateral epicondylitis. Dr. Spady also referred Ms. Poe to
29 Amir Jalali, M.D., a physiatrist. Dr. Jalali examined Ms. Poe in February 2003. At that time, he
30 found objective findings of impairment, including right scapular asymmetry and dysfunction, right
31 shoulder muscle tightness and weakness, and cervical muscle tightness and weakness. He also
32 found Ms. Poe had a positive right shoulder impingement finding and decreased range of motion in
33 her right shoulder and cervical spine. He diagnosed (1) right shoulder mechanical pain with very
34 significant notable biomechanical abnormalities (including shoulder position and scapular
35 asymmetry), (2) myofascial soft tissue upper back and right shoulder pain, and (3) upper extremity
36 bilateral tenosynovitis at the epicondyles (i.e. elbows, wrists, and fingers). Dr. Jalali and Dr. Spady
37 testified that Ms. Poe's right shoulder and upper extremity problems, as well as her cervical/back
38 pain, were caused by her work as a sewing assistant.
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46 James F. Green, M.D., a forensic witness called by the employer, admitted that Ms. Poe had
47 objective findings of shoulder and cervical problems when Dr. Jalali examined her in 2003. He also

1 admitted there were no objective findings of impairment in 2001, when Ms. Poe's first claim was
2 rejected. Dr. Sharf also testified he noted no objective findings of any impairment during his
3 examinations during the winter of 2001. Hence, the medical testimony clearly establishes that
4 Ms. Poe's right arm, shoulder, and cervical conditions worsened between 2001 and 2003. During
5 this period, her myofascial pain continued and became aggravated, but she also developed new
6 conditions, namely biomechanical right shoulder abnormalities and right upper extremity
7 tenosynovitis or epicondylitis. The medical testimony linking these conditions to Ms. Poe's work for
8 Apogee is entirely convincing, given her singular work history.
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11 Our industrial appeals judge rejected this claim on the grounds that res judicata principles
12 precluded the Department from allowing this claim, because it had rejected her original claim. Res
13 judicata is a legal doctrine designed to curtail relitigation of issues that have already been
14 determined. For the March 2001 order to preclude allowance of this current claim we must decide it
15 (1) became final and binding, and (2) this appeal concerns the identical subject matter, cause of
16 action (or claims), and parties involved in the Department decision to reject the prior claim. *Somsak*
17 *v. Criton Technologies/Heath Tecna, Inc.*, 113 Wn.App. 84, at 92 (2002). There is no question the
18 March 16, 2001 order became final and binding. However, as we have recently noted "an
19 unappealed Department order is only res judicata regarding issues that were clearly addressed by
20 the terms of the order. *Somsak* at 92, citing *Kingery v. Department of Labor & Indus.*, 132 Wn.2d
21 162, 169 (1997), and *King v. Department of Labor & Indus.*, 12 Wn. App. 1, 4 (1974). Fundamental
22 fairness requires that the application of the doctrine 'does not work an injustice on the party against
23 whom it is to be applied.' " *Winchell's Donuts v. Quintana*, 65 Wn. App. 525 at 29-30 (1992)." *In re*
24 *David Flanigan*, BIIA Dec., 02 18511 (July 24, 2003).
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27 The Department did not address the same conditions in these two claims. Ms. Poe
28 developed new conditions, including the right upper extremity epicondylitis or tenosynovitis, by the
29 time this second claim was filed. This condition had not been diagnosed when her first claim was
30 rejected. By the time the Department allowed this claim, she had worked an additional 20 months
31 since she filed her first claim. The majority of the medical witnesses clearly linked Ms. Poe's
32 epicondylitis to her repetitive work conditions. Accordingly, we are persuaded this condition was
33 the natural and proximate result of Ms. Poe's work as a sewing assistant. The Department order
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1 allowing the claim for Ms. Poe's epicondylitis was, therefore, correct. *Dennis v. Department of*
2 *Labor & Indus.*, 109 Wn.2d. 467 (1987).¹
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4 In summary, the Department's decision to allow this claim is entirely correct because
5 Ms. Poe had further occupational exposure, which resulted in a new condition, epicondylitis, which
6 was allowed in the current claim. Therefore, based on our careful review of the record, the Petition
7 for Review, and the employer's Reply Brief, we have determined the January 6, 2003 order allowing
8 the claim should be affirmed.
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10 **FINDINGS OF FACT**

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- 12 1. On April 22, 2002, Ms. Poe filed an application for benefits with the
13 Department of Labor and Industries alleging that she had sustained an
14 industrial injury to multiple parts of her body on December 29, 2000,
15 during the course of her employment with Apogee Enterprises, Inc.
16 (Apogee). On July 30, 2002, the claim was rejected on the grounds that
17 Ms. Poe's condition was not an occupational disease. On August 12,
18 2002, Ms. Poe filed a Protest and Request for Reconsideration with the
19 Department from the July 30, 2002 order. On August 14, 2002, the
20 Department affirmed its July 30, 2002 order.
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23 On August 19, 2002, Ms. Poe filed an appeal with the Board of Industrial
24 Insurance Appeals from the August 14, 2002 order (Docket
25 No. 02 18196). On September 19, 2002, the Department reassumed
26 jurisdiction of the claim, and held the August 14, 2002 order for naught.
27 On September 20, 2002, the Department set aside and held for naught
28 the July 30, 2002 order. On September 23, 2002, the Board issued an
29 order returning the case to the Department for further action (Docket
30 No. 02 18196).
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32 On January 6, 2003, the Department issued an order in which it allowed
33 the claim as an occupational disease for right lateral epicondylitis, with a
34 date of manifestation of December 29, 2000. In its order, the
35 Department assigned 100 percent of the liability for the claim costs to
36 Apogee. On January 27, 2003, Apogee filed a Notice of Appeal with the
37 Board from the January 6, 2003 order. On February 14, 2003, the
38 Board issued an order granting the appeal and assigning it Docket
39 No. 03 11095.
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¹ Since this is an employer appeal from a Department order allowing the claim solely for right lateral epicondylitis, we will not address whether the Department was barred from accepting any of Ms. Poe's other conditions in this claim.

- 1 2. Ms. Poe began working for Apogee in June 2000, immediately after
2 graduating from high school. She worked for Apogee until
3 October 2002, as a sewing assistant. Apogee manufactures dog beds
4 and reptilian cages. Her position involved repetitive bending and lifting
5 of bales of cloth, weighing around 25 pounds, and bundles of finished
6 products from bins. She also had to prepare and make zippers and
7 package the products.
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- 9 3. In February 2001, approximately eight months after she started working
10 for Apogee, Ms. Poe filed Claim No. N-968440 with the Department.
11 This claim was filed as an occupational disease. The Department
12 rejected the claim on March 16, 2001, on the grounds that Ms. Poe had
13 not sustained an industrial injury or developed an occupational disease.
14 This order was never appealed and became final and binding.
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- 16 4. Ms. Poe continued to work for Apogee as a sewing assistant. She filed
17 the current claim in April 2002, alleging she developed hand, arm,
18 shoulder, and neck conditions due to her repetitive work as a sewing
19 assistant.
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- 21 5. In February 2003, Ms. Poe was diagnosed as having upper extremity
22 bilateral tenosynovitis at the epicondyles (i.e., the elbows, wrists, and
23 fingers). This condition was not diagnosed when the Department issued
24 its March 2001 order rejecting her prior claim.
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- 26 6. Ms. Poe developed right lateral epicondylitis, or tenosynovitis, as a
27 natural and proximate result of her employment as a sewing assistant
28 for Apogee.
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CONCLUSIONS OF LAW

- 30 1. The Board of Industrial Insurance Appeals has jurisdiction over the
31 parties to and the subject matter of this timely filed appeal.
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- 33 2. The doctrine of res judicata does not bar Ms. Poe from having this claim
34 allowed for a newly diagnosed condition of right lateral epicondylitis or
35 tenosynovitis.
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- 37 3. Ms. Poe's right lateral epicondylitis or tenosynovitis constitutes an
38 occupational disease, within the meaning of RCW 51.08.140.
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1 4. The January 6, 2003 Department order is correct and is affirmed.
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3 It is so ORDERED.
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5 Dated this 13th day of July, 2004.
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7 BOARD OF INDUSTRIAL INSURANCE APPEALS
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11 /s/ _____
12 THOMAS E. EGAN Chairperson
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16 /s/ _____
17 FRANK E. FENNERTY, JR. Member
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