CAROL HEGGE, Employee/Petitioner, vs. ROSEMOUNT, INC., Self-Insured, ADMIN'D BY BERKLEY RISK ADM'RS CO., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 1, 2001

No. [REDACTED SSN]

HEADNOTES

VACATION OF AWARD–SUBSTANTIAL CHANGE IN MEDICAL CONDITION. Where there was little change of diagnosis, no evidence of a change in the employee's ability to work, no permanent partial disability, insufficient information of medical care more costly and extensive than initially anticipated, and the employee had not yet established a causal relationship between her current complaints and her work-related injuries, the employee has not shown good cause to vacate the Findings and Order at issue on the basis of a substantial change in medical condition.

PRACTICE & PROCEDURE–RES JUDICATA. Where the employee's claim for an injury admitted to have occurred on May 11, 1992, had not been litigated with a prior claim for a different date of injury, res judicata does not bar claims based upon the May 11, 1992, injury.

Petition to vacate denied and motion to dismiss claim petition affirmed.

Determined by: Rykken, J., Wheeler, C.J., and Johnson, J.
Compensation Judge: Jeanne E. Knight

OPINION

MIRIAM P. RYKKEN, Judge

The employee petitions this court to vacate and set aside the Findings and Order served and filed June 25, 1998. The self-insured employer appeals from the Order on Motion to Dismiss Claim Petition served and filed October 17, 2000. We deny the employee's petition to vacate and affirm the Order on Motion to Dismiss Claim Petition.

BACKGROUND

On May 11, 1992, Carol Hegge, the employee, sustained an admitted injury to her upper extremities which arose out of and in the course and scope of her employment with Rosemount, Inc., the employer. On that date, the employer was self-insured for its workers' compensation liability, with such insurance administered by Berkley Risk Administrators Company.

Following the employee's 1992 injury, the employee was diagnosed with mild bilateral wrist tendinitis. She was recommended a new chair with arm rests; her symptoms

diminished, but by August 1992, the employee noted increasing pain in both wrists, which her physician felt may have been attributable to increased work activity. On August 5, Dr. Charles Hipp determined that the employee's wrist tendinitis had completely resolved without limitation, without physical work restrictions and without permanent partial disability and that the employee had reached maximum medical improvement (MMI). There are no medical reports in the record of any ongoing medical treatment received by the employee between August 5, 1992 and February 5, 1997. However, in August 1992, the employee was apparently referred to physical therapy for six weeks, and the employee later reported to her physicians that she has noted wrist pain and numbness in her upper extremities between 1992 and 1997.

On February 5, 1997, the employee sustained an additional work-related injury to her neck, back and arms, with such injury also arising out of and in the course and scope of her employment with the employer. Following that injury, the employee received medical care at the Airport Medical Clinic on February 19, 1997; Dr. Kevin O'Connell diagnosed bilateral forearm strain related to work station positioning and repetitive stress. Dr. O'Connell prescribed anti-inflammatory medication and recommended modified work activities through at least March 5, 1997. The employee requested approval by Dr. O'Connell to continue chiropractic treatment; he approved that treatment for two weeks, and recommended a two-week program of occupational therapy, if needed, for stretching and strengthening. The record contains no additional records from Airport Medical Clinic. The employee underwent chiropractic treatment for her symptoms, provided by Dr. Glori Hinck, D.C., from January 31, 1997, until at least September 1998.

According to Dr. Hinck's letter dated April 14, 1998, the employee was able to control her symptoms by limited keying tasks. She reported exacerbations of her symptoms secondary to a change in work tasks and overtime hours. On January 23, 1998, Dr. Hinck assigned work restrictions of no work beyond 8 hours/day, 5 days/week, 40 hours/week, and recommended job flexibility to allow frequent change of activities, and avoidance of excessive keyboarding and repetitive motions. Chiropractic records reflect occasional exacerbations of symptoms due to an increase in the employee's workload and changes in her work duties. Dr. Hinck determined that the employee was unable to perform the new duties required of her job, and that the employee "is likely to suffer permanent exacerbations if she continues to use a computer mouse. She is not likely to have any significant disability unless she continues in this type of work with heavy workloads." Dr. Hinck also related the employee's injuries to her work with the employer, stating that the employee "did have a previous work related injury to the same area that is likely an underlying cause but she was able to control her symptoms and work to her employer's satisfaction until the implementation of Oracle [software program] in January of 1997."

The employer denied primary liability for the employee's February 5, 1997, injury. On July 3, 1997, the employee filed a claim petition, alleging entitlement to payment of chiropractic expenses and provision of rehabilitation assistance, including an initial rehabilitation consultation. The employee was laid off by the employer in late March 1998[1], and later amended

[1] The record contains varying dates of the employee's layoff: March 28, April 4 and April 6, 1998. The findings and order served and filed on June 25, 1998, specify a layoff date of March 28, 1998; this finding was not appealed.

her claim petition to include claims for temporary partial disability benefits from January 17, 1998, and temporary total disability benefits from March 28, 1998.

On February 4, 1998, at the request of the employer, Dr. Chris Tountas examined the employee. He determined that there were no objective findings for a diagnosis, and that the employee's "overall prognosis [was] good relative to her improvement in subjective complaints, and the fact she has continued to work on a full-time basis without restrictions." Dr. Tountas determined that the employee had reached maximum medical improvement (MMI) and that she could continue to perform her current employment with no physical limitations or restrictions.

A hearing was held before a compensation judge on June 4, 1998, to address the employee's claim petition. At issue at that hearing was the existence of and nature of the employee's February 5, 1997, work-related injury. On June 25, 1998, the judge issued a Findings and Order in which he determined that the employee sustained a Gillette-type injury[2] to her neck, upper/mid back and upper extremities, culminating in disability on or about February 5, 1997, and that such injury was temporary in nature and resolved by February 4, 1998. The compensation judge determined that the employee's termination from employment with the employer on March 28, 1998 was for economic reasons unrelated to her February 5, 1997 injury, and that the employee had failed to prove entitlement to temporary partial disability benefits from January 17 through March 27, 1998, and temporary total disability benefits as claimed from March 28 through May 11, 1998. The compensation judge also denied payment for any additional chiropractic treatment beyond April 25, 1997, as such treatment exceeded the limitations set forth in the permanent medical treatment parameters. The compensation judge also denied the employee's claim for a rehabilitation consultation on the basis that, since the employee had been determined to have sustained a temporary injury with complete resolution, she was not entitled to a rehabilitation consultation. The employee did not appeal from the Findings and Order.[3]

On April 10, 2000, the employee filed a claim petition based on both her May 11, 1992 and February 5, 1997 injuries. She claimed entitlement to temporary partial disability benefits from April 2, 1998 to the present and continuing, medical expenses, rehabilitation assistance and a functional capacities evaluation (FCE) testing as part of that rehabilitation

---

[2] See Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 32 W.C.D. 105 (1960).

[3] The employee was represented by counsel at hearing, but is proceeding with her claim petition and petition to vacate on a *pro se* basis. On July 20, 1998, the employee sent a letter to the Office of Administrative Hearings (OAH), requesting an amendment to the Findings and Order. The employee claims that she later telephoned OAH to inquire whether the compensation judge had received her letter and was advised to call back in three weeks. The employee claims that in follow-up communications with the Office of Administrative Hearings, she was advised that "only an appeal could correct the inaccuracies;" by then, the 30-day appeal period had expired. The employee states that she could not afford to pay the up-front costs required by her attorney's office for an appeal, and that she did not realize that she could have filed an appeal on her own behalf.

assistance. In its answer to the employee's claim petition, the employer denied liability for the claims and moved for a dismissal. The employer also filed a separate motion to dismiss the employee's claim petition, asserting that the medical report upon which the employee relied provided no substantiation of those claims and that the employee's February 5, 1997 injury had been adjudicated to be a temporary aggravation of a preexisting condition which completely resolved by February 4, 1998 without residual disability.

On October 17, 2000, the Office of Administrative Hearings issued an Order on Motion to Dismiss the Claim Petition, in which the compensation judge determined that *res judicata* bars the employee's claims which were specifically addressed at the hearing, including any claims related to her February 5, 1997, injury, and any claim for benefits between April 2 and May 11, 1998. However, the compensation judge determined that the claims based on the employee's May 11, 1992 injury previously had not been litigated and therefore were not barred by *res judicata*. In her memorandum, the judge stated as follows:

> The employee, who is proceeding *pro se*, may have a difficult time separating out what claims she is alleging are due to the May 11, 1992, injury and the February 5, 1997 injury. The better course of action for her would appear to be for her to file a petition to vacate the prior Findings and Order. . . .

(10/17/00 Order, memo. at 4.)

The employer appealed from the compensation judge's Order on Motion to Dismiss Claim Petition. As suggested by the compensation judge in her memorandum, the employee filed a petition to vacate the June 25, 1998, Findings and Order with the Office of Administrative Hearings on or about October 24, 2000. Both the employee's petition to vacate and the employer's appeal from the Order on Motion to Dismiss Claim Petition were consolidated by this court.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

Employee's Petition to Vacate Findings and Order

The employee petitions to vacate the previous Findings and Order, served and filed on June 25, 1998. In her petition to vacate, the employee states three bases for her petition. The first relates to Finding No. 3 of the Findings and Order in which the compensation judge outlines the employee's medical history relative to treatment for her neck, upper back, low back and upper extremities. Whereas Finding No. 3 refers to a June 1982 motor vehicle accident, the employee states that this accident occurred in 1979, and that she required no medical care related to her neck, back or arms following that incident. In her appellate brief, the employee argues that it was erroneous for the compensation judge to assume that she had sustained an injury to her neck, upper back and low back as a result of a motor vehicle accident in 1982.

The second basis asserted for the petition to vacate is that the employee believed that the employer, self-insured for both personal health care and workers' compensation, "manipulated payment" for medical care and chose not to intervene for reimbursement of medical expenses paid under the employee's health insurance policy, all of which "swayed" the compensation judge's decision. The employee asserts that in September 1998, her personal health insurer (through the self-insured employer) denied paying any more claims on the basis that the employee's condition was related to a work injury. However, in May 1999, and again in September 1999, the personal health insurer reviewed the employee's medical records and determined that the employee indeed was eligible for payment for those chiropractic expenses incurred in 1997 and 1998 which were previously denied by the compensation judge, and eventually paid those expenses.

The third basis the employee cites for her petition to vacate is that her condition is not improving, that she needs additional medical treatment and cannot afford to continue that treatment. The employee also argues that her current treating physician, Dr. Alan Bensman, has recommended that she undergo a functional capacities evaluation in order to determine the type of work she is able to perform without causing further injury.[4] The employee also states that based on the findings and order, she is "unable to get personal health insurance without having pre-existing conditions excluded."

This court's authority to vacate an order issued following July 1, 1992, is outlined in Minn. Stat. §§ 176.461 and 176.521, subd. 3. An award, or as in this case findings and order,

[4] The employee underwent an FCE on December 91, 2000, and personally paid the related charges for the examination.

may be set aside if the employee makes a showing of cause to do so. As outlined in Minn. Stat. § 176.461, the phrase "for cause" is limited to the following:

> (1) a mutual mistake of fact;
> (2) newly discovered evidence;
> (3) fraud; or
> (4) a substantial change in medical condition since the time of the award that was clearly not anticipated and could not reasonably have been anticipated at the time of the award.

Although not specifically articulated in the employee's petition to vacate, it appears that she bases her petition to vacate on the fourth "cause", that she has sustained a substantial change in medical condition since the time of the order. In Fodness v. Standard Café, 41 W.C.D. 1054 (W.C.C.A. 1989) this court identified a number of factors that it may consider in deciding whether to vacate an award based on a substantial change in medical condition. These factors include

> (1) changes in diagnosis;
> (2) changes in employee's ability to work;
> (3) additional permanent partial disability;
> (4) the necessity of more costly and extensive medical care/nursing services than was initially anticipated; and
> (5) the causal relationship between the work injury and current worsening of the condition.

Fodness, 41 W.C.D. at 1060-61. In the present case, the employee argues that her symptoms have persisted since her 1992 injury and that she continues to have physical limitations as a result of her 1992 and 1997 work-related injuries. She also argues that she has worked part-time jobs since her layoff from the employer, but has been unable to either work full-time or to find a job where she does not continue to experience discomfort. We further address each of the Fodness factors below.

Diagnosis

In medical and chiropractic reports generated after the employee's 1997 injury, the employee's diagnosis is listed, variously, as bilateral forearm strain and carpal tunnel syndrome with associated shoulder/wrist/hand segmental dysfunction, cervical vertebral subluxation and myofascitis. The employee initially consulted Dr. Alan Bensman at the referral of Dr. Glori Hinck, D.C., on June 8, 1998. In his report of that date, Dr. Bensman outlined his multiple diagnoses:

> Clinically she presents with findings compatible with the work related injuries as described. These have resulted in the bilateral deltoid and extensor carpi radialis myofascial trigger point irritation. The type of work she describes doing would affect these muscles. The improvement noted since stopping work is also compatible with

> her history. By history she has had mild right median nerve carpal tunnel involvement. At the present time this is relatively quiescent.

The employee again consulted Dr. Bensman on August 28, 2000. In his report of that date, Dr. Bensman listed a diagnosis as follows:

> Clinically she presents with myofascial involvement of the bilateral upper trapezius, bilateral middle deltoid right scaline, right paracervical, left infraspinatus and left extensor carpi radialis muscles. There is also residual cervical interspinous ligament irritation. She is situationally stressed and most likely depressed. In addition, she has become deconditioned due to a lack of exercise.

In his report of January 16, 2001, Dr. Bensman listed a diagnosis of

> . . .residual myofascial involvement in the areas as noted [neck, right and left scaline muscles, left paracervical muscles, upper trapezius and infraspinatus muscles, shoulder and middle deltoid muscles] and also persist in cervical interspinous ligament irritation. There is limitation of neck lateral flexion and a slight limitation of shoulder flexion and abduction.

Based on our review of the medical reports in the record, we conclude that these reports demonstrate little change in diagnosis between these exams; there are no other medical records to compare from this time period, on which to base a conclusion that the diagnosis changed to the extent that would require a vacation of the findings and order.

<u>Ability to work</u>. At the time of the hearing on June 4, 1998, the employee was not working, having been laid off from her employment with the employer in March 1998. The hearing record does not contain any contemporaneous information concerning the employee's ability to work as of the date of the hearing, other than a statement in compensation judge's memorandum that the employee testified to having looked at newspapers and to having made one job application since her layoff, but that the employee felt that she was "damaged goods" and that it was unfair for her to seek employment with a new employer under the circumstances. The hearing record does not contain any information from a QRC or a vocational expert concerning the employee's ability to work at the time of the hearing.

The judgment roll, however, does contain Dr. Bensman's June 8, 1998, report in which he recommended that the employee avoid repetitive arm activities, avoid reaching with her elbows extended, and modify her positioning. He also recommended that the employee participate in a reconditioning exercise program as she was "significantly deconditioned." He advised against doing computer or other keying type work, and limited the employee to a maximum lift/carry limit of 20 pounds.

Dr. Bensman issued a report on August 11, 1998, after he reviewed a description of a prospective receptionist job for which the employee applied. Dr. Bensman stated that the employee was physically capable of performing that job "providing that she can have a properly ergonomically designed work site and work at her own pace" and had a headset available. In a report dated May 4, 1999, Dr. Bensman reports the employee's history that her job duties in a clothing sales department caused an increase in her left shoulder symptoms; as a result, Dr. Bensman requested an FCE to determine her capabilities and restrictions.

As to documents in the record concerning the employee's current ability to work, there are two medical reports from Dr. Bensman available for this court to review, in order to analyze whether there is any change in the employee's ability to work since the June 25, 1998 findings and order were issued. In his report of August 28, 2000, Dr. Bensman states:

> It is my opinion that she has the potential to return to a meaningful level of function both during her daily activities and at work. Based on the findings on the FCE, and with the help of a QRC or vocational counselor a meaningful full-time job could be identified within her restrictions.

Following the employee's FCE on December 19, 2000, Dr. Bensman issued a report dated January 16, 2001, and recommended physical work restrictions as follows:

> Specifically I recommended that she change position every 30 minutes and very [sic] her work activities between sitting standing and walking. She is also to avoid fixed neck flexion, lateral flexion and rotation activities. I recommended that if an appropriate job is identified that she initially work 4 hours per day and if no complications occur then she could increase her work hours to 8 hours per day over a 6 week period of time.
>
> The study [FCE] identified that she could occasionally lift and carry a maximum of 8 pounds, and it is important that she be able to do this with good body mechanics and at her own discretion.

Based upon our comparison of Dr. Bensman's work restrictions recommended in 1998 and in August 2000 and January 2001, and based upon the similarities contained therein, we believe that the record does not contain information on any change in ability to work since June 1998 that is sufficient to form a basis for vacation of the findings and order.

Permanent Partial Disability

The record contains no medical opinions stating that the employee has sustained a permanent partial disability of the body as a whole as a result of her 1992 or 1997 work-related injuries.

Medical Care

Limited medical and chiropractic records are in the record. The records do reflect, however, that the employee received approximately 44 chiropractic treatments during the six months following her February 5, 1997, injury, and approximately 12 treatments in the subsequent twelve months, through September 1998. Those chiropractic treatments decreased in frequency; this is consistent with the employee's testimony that her follow-up medical treatment has been limited because payment for such treatment was denied.

On April 14, 1998, Dr. Hinck, the employee's treating chiropractor, responded to an inquiry concerning the nature and extent of future treatment recommendations. She stated that

> If she does not work with keyboarding or using a mouse she will be unlikely to need significant chiropractic care. She will likely need occasional treatment for the near future until the residual effects of her job are taken care of. I do not anticipate this to be more than $500 as a maximum. If she returns to a job that requires computer work, she will likely continue to need chiropractic care.

At the referral of Dr. Bensman, the employee underwent eight biofeedback treatments in November and December 1998, in attempt to reduce her pain symptoms. Other medical treatment since then has consisted of three additional consultations with Dr. Bensman, on May 4, 1999, August 28, 2000, and January 16, 2001. We conclude that information in the record does not document medical treatment that could be considered as more costly and extensive than initially anticipated, and therefore conclude that insufficient information concerning medical treatment exists to support vacation of the findings and order.

Causation

The record contains divergent medical opinions concerning causation of the employee's condition. Dr. O'Connell, who initially examined the employee following her February 5, 1997, injury, issued a report on February 19, 1997, and determined that the employee's bilateral forearm strain was related to her work station positioning and repetitive stress. The record contains no additional records from Dr. O'Connell after February 1997. Dr. Hinck, the employee's treating chiropractor, determined that the employee's keyboarding work caused and later aggravated her symptoms. Dr. Bensman, whom the employee consulted at the referral of Dr. Hinck, concluded that the type of work she performed resulted in "bilateral deltoid and extensor carpi radialis myofascial trigger point irritation," and that she should avoid repetitive arm activities, including reaching with elbows extended.

Dr. Tountas, who examined the employee on February 4, 1998, concluded that the employee's work activities did not constitute a substantial contributing factor to the development, aggravation, or acceleration of her subjective complaints, and that no objective findings support a diagnosis relative to her upper extremities. However, no current opinion exists in the record

documenting a causal relationship between the employee's work injuries and any current worsening of her condition.[5]

It is not proper to set aside a workers' compensation order on grounds of substantial change of condition when the medical records have suggested either a difference in opinion as to the extent of disability rather than a substantial deterioration in physical condition. Stewart v. Rahr Malting Co., 435 N.W.2d 538 (Minn. 1989). The compensation judge reviewed the employee's medical and chiropractic records in connection with the hearing held in 1998 and concluded that the employee's February 5, 1997 work-related injury was temporary in nature, and that the employee was not entitled to any benefits thereafter. The compensation judge relied upon the medical opinion of Dr. Tountas, who examined the employee on behalf of the employer and insurer. In Dr. Tountas's opinion, the employee had no objective clinical findings that would support her subjective complaints of pain and also determined that no physical work restrictions were necessary, that the employee had sustained no permanent partial disability as a result of her work injury, and that she had reached maximum medical improvement. Whereas other opinions from the employee's chiropractor contradicted Dr. Tountas's opinion, the compensation judge had discretion to choose between conflicting medical expert opinions, and therefore it was reasonable for the compensation judge to rely upon Dr. Tountas's report in reaching specific determinations concerning the employee's medical condition. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985).

Although the employee very effectively has outlined her ongoing symptoms and physical limitations, based on the medical reports existing in the record we are not persuaded that any change in the employee's condition has been shown to be substantial enough to constitute good cause to vacate the Findings and Order at issue. In addition, based on the information in the record, the employee has not yet established that there is a causal relationship between her current complaints and her work-related injuries. We therefore deny the employee's petition to vacate and set aside the Findings and Order served and filed June 25, 1998.

Res Judicata Effect of Findings and Order

The employee has filed a claim petition alleging ongoing entitlement of certain benefits, from and after April 2, 1998, as a result of her two work-related injuries of May 11, 1992 and February 5, 1997. In its answer to the claim petition, the employer and insurer denied the claims, alleging that the employee's claims were barred by *res judicata*. In an Order on Motion to Dismiss Claim Petition, a compensation judge determined that a portion of the employee's current claims, those related to the employee's February 5, 1997, injury are barred by the doctrine of *res judicata*, but that all claims related to a claimed May 11, 1992, injury are not barred. In addition, the compensation judge found that all claims for benefits between April 2 and May 11, 1998, are

[5] At oral argument, the employee also provided the court with a chiropractic report dated March 1, 2001, in which the issue of causation was addressed. This court did not consider the opinions set forth in that untimely report, as we may consider only those documents in the record or filed as part of the pleadings related to the petition to vacate.

dismissed, since the claims at issue at the 1998 hearing were based on the February 5, 1997, injury and extended through and included May 11, 1998. We affirm.

The doctrine of *res judicata* bars litigation of issues previously litigated. Westendorf v. Campbell Soup Co., 309 Minn. 550, 550-551, 243 N.W.2d 157, 158, 28 W.C.D. 460, 460 (1976) (per curium). "[P]rinciples of *res judicata* apply in workers' compensation matters in some instances, but they do not bar further proceedings to determine claims not litigated in the prior hearing." Erickson v. Hulcher Emergency Servs., 40 W.C.D. 140, 140 (Minn. 1994) (order opinion) (citing Westendorf v. Campbell Soup Co., 309 Minn. 550, 550-51, 243 N.W.2d 157, 158, 28 W.C.D. 460, 460 (1976)); see Fischer v. Saga Corp., 498 N.W.2d 449, 450, 48 W.C.D. 368, 368 (Minn. 1993) ("*[R]es judicata* does not apply if the issue at stake was not specifically decided in the prior proceeding[.]") (quoting 3 Arthur Larson, The Law of Workmen's Compensation § 79.72(f) at 15-426.272(100) (1992)). As the compensation noted in her memorandum, the claim for an injury admitted to have occurred on May 11, 1992, has not been litigated. Although Finding No. 3 in the findings and order served and filed June 25, 1998, would appear to dispose of this injury, by indicating it had fully resolved by August 1992, that Finding also makes it clear that the injury of May 11, 1992, was *not* part of the litigation. The compensation judge specifically stated that

> [T]hat on or about May 11, 1992, employee sustained injury to her upper extremities, bilaterally (not being the subject matter of those proceedings) for which she sought medical treatment with Dr. Hipp, M.D. (Airport Medical Clinic) who diagnosed mild bilateral wrist tendinitis and prescribed medication and temporary work restriction with respect to the number of keyboarding hours per day.

(Finding No. 3, Findings and Order, June 25, 1998, emphasis added.)

Res judicata bars only the claims presented as of the date of the prior decision. Saenger v. Liberty Carton Co., 34 W.C.D. 499, 316 N.W.2d 738 (1982). At the hearing on June 4, 1998, the employee asserted no claims based on her May 11, 1992, injury. Therefore, her claims remain open as to that injury, and are not barred by *res judicata*. Accordingly, we affirm the Order on Motion to Dismiss Claim Petition and order that the employee may proceed with that portion of her claim petition which relates to her May 11, 1992, injury, and which relates to benefits claimed after May 11, 1998.