

Appellant-petitioner Gene A. Joiner appeals the decision of the Indiana Worker's Compensation Board (the Board) denying his claim for worker's compensation for medical difficulties he has experienced as a result of exposure to asbestos in the course of his employment for appellee-respondent United States Steel Corporation (U.S. Steel). Joiner argues that the Board erred by finding that his claim was barred by res judicata, law of the case, and the applicable statute of limitations. Finding no error, we affirm.

FACTS

Joiner worked for U.S. Steel from 1968 through 1974, and alleges that he was exposed to asbestos in the course of his employment. On November 13, 2000, Joiner filed his first application for worker's compensation, contending that he became disabled in 1991 as a result of the asbestos exposure. On August 25, 2003, the Board denied his claim, finding it barred by the applicable statute of limitations.

On April 24, 2004, Joiner filed his second application, which raised precisely the same claims as those raised in his first application. On September 30, 2004, a Single Hearing Member denied the claim, finding that it was barred by res judicata and law of the case. Joiner did not appeal to the full Board.

On October 25, 2004, Joiner filed his third application, which was again essentially identical to the first application. On April 25, 2005, a Single Hearing Member denied the claim based on res judicata and law of the case. Joiner did not appeal to the full Board.

On May 12, 2005, Joiner filed a fourth application, which was, again, identical to those he had filed before. On August 4, 2005, a Single Hearing Member granted U.S. Steel's motion to dismiss based upon res judicata and law of the case. On December 21, 2005, the Board affirmed the Single Hearing Member's conclusions.

On December 5, 2008, Joiner requested that the Board reopen his third application, raising the same claims he had been pursuing since 2000. On December 30, 2008, a Single Hearing Member denied the request. Joiner appealed to the Board, which affirmed the Single Hearing Member's refusal to reopen Joiner's third application on June 8, 2009. Joiner now appeals.

DISCUSSION AND DECISION

The sole argument that Joiner raises on appeal is one that is not at issue herein—whether his claim is barred by the applicable statute of limitations. The only issue before us is whether the Board properly concluded that Joiner's claim was barred by res judicata and/or law of the case.

When reviewing a decision of the Board, we will not disturb the Board's factual determinations unless the evidence is undisputed and leads inescapably to a result contrary to the Board's. Inland Steel Co. v. Pavlinac, 865 N.E.2d 690, 697 (Ind. Ct. App. 2007). Thus, we must disregard all evidence unfavorable to the decision and may consider only the evidence and reasonable inferences drawn therefrom that support the Board's findings. Id. Although we need not defer so significantly to the Board's legal

conclusions, we will disturb the Board's conclusions only if it incorrectly interpreted the Worker's Compensation Act. Id.

Determinations by the board of an administrative agency are final for purposes of res judicata if (1) the issue sought to be estopped was within the statutory jurisdiction of the agency; (2) the agency was acting in a judicial capacity; (3) both parties had a fair opportunity to litigate the issues; and (4) the decision of the administrative tribunal could have been appealed to a judicial tribunal. Watson Rural Water Co., Inc. v. Ind. Cities Water Corp., 540 N.E.2d 131, 135 (Ind. Ct. App. 1989). Here, all of these criteria are met by the Board's decision denying Joiner's first application for worker's compensation. Therefore, that decision was final and any further review of that ruling is barred by res judicata. Joiner is not entitled to second, third, or fourth bites of the apple, and the Board did not err by refusing to reopen his application.¹

U.S. Steel asks that we impose fees and sanctions against Joiner to discourage him from filing additional claims and appeals in the future. It could certainly be argued that this appeal is frivolous and/or taken in bad faith. At this juncture, however, we decline to impose fees and sanctions, but caution Joiner that should he raise these issues with this court again in the future, we will not hesitate to impose the sanctions requested by U.S.

¹ Briefly, we note that the applicable statute states that "in all cases of occupational disease caused by the inhalation of asbestos dust, no compensation shall be payable unless disablement . . . occurs within three (3) years after the last day of the last exposure to the hazards of the disease if the last day of the last exposure was before July 1, 1985." Ind. Code § 22-3-7-9(f)(3). Here, Joiner's last day of exposure occurred in 1974, meaning that he was not entitled to relief unless his disability appeared by 1977. He claims he became disabled in 1991. It is evident, therefore, that the Board was correct in finding that this statute of limitations prohibits Joiner from the relief he seeks.

Steel. We also observe that the Board has sanctioned Joiner in the past for continuing to file applications regarding the same claims and note that it may certainly continue to impose such sanctions in the future if Joiner does not heed the Board's warnings. Appellee's App. p. 42.

The judgment of the Board is affirmed.

ROBB, J., and MAY, J., concur.