Marco v. Doherty: Forcing an Agency to Play by Its Own Rules: Administrative Res Judicata

Matt Bove

Follow this and additional works at: https://digitalcommons.pepperdine.edu/naalj

Part of the Administrative Law Commons, Civil Procedure Commons, and the Courts Commons

Recommended Citation

This Note is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized editor of Pepperdine Digital Commons. For more information, please contact Katrina.Gallardo@pepperdine.edu, anna.speth@pepperdine.edu.
The Illinois Appellate Court recently issued a decision expanding the scope of administrative res judicata\(^1\) and collateral estoppel\(^2\) in *Marco v. Doherty*.\(^3\) The holding applies the doctrines of res judicata and collateral estoppel to administrative decisions. The application of these doctrines appears to be simple; if the party before the agency is bound by the decision, then so is the agency. While not a radical departure from traditional law, the decision affects administrative agencies which issue a final decision in error, and precludes the correction of the error. Arguably, the appellate court's decision contradicts the agency's power to modify its final decision as statutorily granted.

II. BACKGROUND

A. United States Supreme Court Cases

The Supreme Court made its first major pronouncement about res judicata in the administrative context in 1966 when it decided *United States v. Utah Construction and Mining Co.*\(^4\) The Atomic Energy Commission contracted with the Utah Construction Co. to build an assembly and maintenance facility.\(^5\) The contract authorized the government's contracting officer to decide any disputes concerning questions of fact arising out of the contract. Any decisions made by the contracting

---

\(^1\) BLACK'S LAW DICTIONARY 1305 (6th ed. 1990). "Res judicata" is defined as "a thing or matter settled by judgment," also referred to as claim preclusion.

\(^2\) Id. at 261. "Collateral estoppel" is defined as "a bar to relitigating an issue which has been tried between the same parties," also referred to as issue preclusion.

\(^3\) 657 N.E.2d 1165 (Ill. App. 5 Dist. 1995).


\(^5\) Id. at 400.
officer regarding such facts were final and conclusive pending an appeal to the Advisory Board of Contract Appeals. After the administrative hearing, either the court of claims or the circuit court could review the decision.

The Utah Construction Co. filed claims with the contracting officer which were denied, subsequently the officer’s findings and ruling were affirmed by the Board. Utah Construction filed suit in the Court of Claims for breach of contract. The Court of Claims conducted a de novo review, disregarding the Board’s factual findings of the Board and basing its decision solely on the contractual terms.

On appeal, the United States Supreme Court reversed, concluding that the Court of Claims failed to accept the finality of the Board’s factual findings. According to the Court, the Board’s conclusions of fact were binding on the same parties that were to litigate the same issue before the court of claims. Furthermore, the Court concluded that collateral estoppel applies to an administrative agency when it has acted in a “judicial capacity” and has resolved issues of fact properly before it “which the parties have had an adequate opportunity to litigate.”

In 1986, the Supreme Court expanded the scope of its holding in *Utah Construction* when it included state agencies in *University of Tennessee v. Elliott*. The Court considered whether the decision of a state administrative law judge had res judicata effect in federal court. The state administrative law judge determined that Elliott’s discharge from the University of Tennessee was not racially motivated. Relying on this finding, the federal district court dismissed his

---

6 Hereinafter, The Board.
8 *Id.*
9 *Id.* at 423.
10 *Id.* at 422.
11 *Id.*
13 *Id.* at 790.
14 *Id.* at 791.
subsequent Title VII claim.\textsuperscript{15}

On review, the Supreme Court relied upon its holding in \textit{Utah Construction} and concluded that adhering to administrative findings of fact served the general principles of collateral estoppel.\textsuperscript{16} According to the Court, repose serves the interests of all involved parties by "avoiding repetitive litigation" and "conserving judicial resources."\textsuperscript{17} In essence, the Court held that these interests would be served equally in either the federal or the state context.

Most recently, in \textit{Astoria Federal Savings and Loan Association v. Solimino}\textsuperscript{18}, the Supreme Court held that Congress may contradict the enforcement of res judicata in administrative decisions by statutory enactment.\textsuperscript{19} The New York State Division of Human Rights\textsuperscript{20} adjudicated an age discrimination claim, finding no reason to believe that the plaintiff was terminated based on his age. The New York State Human Rights Appeal Board affirmed. Solimino then sought review in federal district court under the Age Discrimination in Employment Act.\textsuperscript{21}

The district court was faced with the issue of whether the state administrative findings had preclusive effect as to the federal claims.\textsuperscript{22} Since the state findings were grounded in the same factual allegations as the federal claims, the district court gave preclusive effect to the state administrative findings and granted Astoria's motion for summary judgement. The court of appeals reversed, implying that the ADEA does not give preclusive effect to state administrative agency

\textsuperscript{15} \textit{Id.} at 792.
\textsuperscript{16} \textit{Id.} at 798. The court discussed the full faith & credit clause requirement that states accord preclusive effect to agencies fact findings of sister state administrative agencies. By analogy the Federal Courts should accord similar treatment.
\textsuperscript{17} \textit{Id.}
\textsuperscript{19} \textit{Id.} at 108.
\textsuperscript{20} Hereinafter, the Division.
\textsuperscript{21} Hereinafter, ADEA.
findings.\textsuperscript{23}

The Supreme Court criticized the district court’s decision, concluding that judicially unreviewed state administrative findings had no preclusive effect in federal court.\textsuperscript{24} The Court based its finding on a careful analysis of the intent of the ADEA. In making this analysis, the Court stated a “losing litigant deserves no rematch after a defeat fairly suffered.”\textsuperscript{25} According to the Court, there is an assumption of collateral estoppel and res judicata unless there is a statutory purpose to the contrary.\textsuperscript{26} Therefore, the legislature may preclude collateral estoppel and res judicata by statutory enactment. Under \textit{Astoria} then, the enactment by the legislature need not be a clear statement directly addressing the presumption of preclusion, rather, the statement can be an implied repeal of these doctrines.\textsuperscript{27}

“Although administrative estoppel so favored as a matter of general policy, its suitability may vary according to the specific context of the rights at stake, the power of the agency and the relative adequacy of agency procedures.”\textsuperscript{28}

\textbf{B. Illinois Cases}

Illinois has recognized administrative res judicata and collateral estoppel in certain circumstances,\textsuperscript{29} as in \textit{Goddare v. Sterling Steel Casting Co.}, when “determinations are made for a purpose similar to those of a court” and the proceedings are “adjudicatory,” “judicial” or “quasi-judicial” in nature.\textsuperscript{30} However, in \textit{Goddare}, the necessary identity of issues required for worker’s compensation

\begin{footnotesize}
\textsuperscript{23} \textit{Id.}
\textsuperscript{24} \textit{Id.} at 114.
\textsuperscript{25} \textit{Id.} at 107.
\textsuperscript{26} \textit{Id.} at 108.
\textsuperscript{27} \textit{Id.}
\textsuperscript{28} \textit{Id} at \#109
\end{footnotesize}
claims to have res judicata effect were not present. The court concluded that the
issues involved in determining eligibility under the worker’s compensation statute
differed from those in a private pension agreement. Thus, the determination of
incapacity for worker’s compensation could not apply to the plaintiff’s private
pension agreement with different standards; therefore, res judicata could not apply.

C. Restatement of Judgments

According to the Restatement of Judgments, courts should apply res
judicata when final administrative adjudications have the same effect as a judgement
of a court. These administrative proceedings must have the “essential elements of
adjudication.” The Restatement defines these essential elements as: (1) adequate
notice to those who are to bound by the decision; (2) the right to present evidence
and legal arguments; (3) issues of law and fact applied to specified parties in specific
circumstances; and, (4) a point of finality specified by the agency, where they enter
a final decision.

III. DISCUSSION AND ANALYSIS

A. Facts of the Case

The Illinois Director of Employment Security made a $7,225.41
assessment against Marco for unpaid unemployment insurance contributions,
penalties, and interest. After a hearing, the ALJ issued a recommendation for
reduction of the assessment to $869.69. The Director later issued a final decision,
and Marco did not appeal.

Marco then sought a refund of the balance $6,355.72. The agency
 refunded her only $1,520.58, stating that the partial denial of the refund was based
on a retroactive adjustment of Marco’s contribution rate. Originally, the Agency had computed Marco’s contributions at a rate of 0.6% of taxable wages, the rate for experienced employers. Subsequently, the Agency decided that Marco was not eligible for this rate, and instead applied a rate of 3.3% of taxable wages.37

After a second administrative hearing, the hearing officer affirmed the retroactive rate adjustment, and the Agency adopted his findings and sustained the partial denial of the refund. Subsequently, Marco appealed to the Madison County circuit court, pursuant to section 2205 of the Unemployment Insurance Act.38 The circuit court held that the Agency’s initial decision on July 9, 1993 was final and binding on all parties. Consequently, the court concluded that the decision could not be retroactively modified. Thus, the circuit court reversed the Agency’s second decision, ordered the Department to pay the plaintiff $4,835.14 plus interest, and the defendants appealed.39

B. Appellate Court’s Opinion

The appellate court affirmed the district court’s ruling, holding that the agency’s decision was, in fact, final, conclusive, and binding on all parties.40 The court concluded that res judicata and collateral estoppel should apply. This conclusion appears to be justifiable, nonetheless, the opinion lacks clarity on several important issues. First, and most importantly, the appellate court failed to address the possibility of legislative preclusion of res judicata and collateral estoppel. Rather, the court limited its focus to the procedures involved, the finality of the decision, and the applicability of res judicata and collateral estoppel. Second, the appellate court failed to address the Agency’s argument that estoppel is only

37 Id. The unemployment insurance contribution (tax rate) for an employer, who had not prior employment experience for which it had incurred liability for payment of contribution, is set by statute at 3.3%. ILCS 405/1500 et seq.
38 [hereinafter, the Act]
40 Id. at 1168.
applicable in extraordinary circumstances to prevent the collection of taxes legally due. Apparently, the court decided that this was an extraordinary circumstance that would prevent the collection of taxes. Nonetheless, the court failed to articulate this conclusion in its opinion.

1. Procedure of the hearing

In Marco, the court properly determined that the Department of Employment Security acted within a judicial capacity when making its decision. In acting within its judicial capacity, the Department apprised Marco of the hearing, thus fulfilling the notice requirement. The Department was resolving issues properly before it since the Director of Employment Security is authorized to collect unemployment insurance contributions. The Director properly conducted a trial type hearing and allowed Marco and the Department to present evidence and make legal arguments. Further, the hearing dealt with a specific party (Marco) and a specific situation (contributions for the years of 1986 to 1991). A point of finality was specified by the Agency, after a review of the administrative hearings the Director could issue a final decision.

2. Finality of Director’s Decision

The complexity of this case and decision arises in the context of whether the Director issued a final decision that could not be retroactively modified. The administrative hearing resolved issues of fact, and the representative made a recommendation to the Director, who in turn, issued a final decision. The crux of the problem is a contradiction in application of the statutes governing the Director’s decision.

Section 2204 of the Act states that any decision made by the Director “shall be final and conclusive, unless reversed pursuant to Section 2205.” But Section 2205 of the Act provides for judicial review of the Director’s decisions in the circuit

---

41 ILL. COMP. STAT. ANN. CH. 820, § 405/2204 (West 1993).
court of the county.\textsuperscript{42} Section 2200 states, however, that if it appears that the Director has made a final assessment and failed to include all contributions payable by the employer, he may determine and assess the additional amount.\textsuperscript{43} This decision becomes final unless the employer files a written protest of the assessment and requests a hearing within twenty days of the date of service.\textsuperscript{44} Section 2200 further provides that the Director may amend his determination at any time before it becomes final.\textsuperscript{45}

Thus, since Marco did not appeal the Director's final decision, according to Section 2200, the decision would become final after twenty days.\textsuperscript{46} Notably, the section does not specifically state that the Director is bound, but it does state that the decision is final as applied to the employer.\textsuperscript{47} Therefore, the court should have looked to the legislative intent of the statute in order to determine whether the Director should have been bound by her own final decision.

3. Applicability of Res Judicata and Collateral Estoppel

The appellate court failed to address the Supreme Court's holding in Astoria Federal, which requires an inquiry as to whether the legislature has precluded the application of res judicata and collateral estoppel. The argument for preclusion stems out of Section 2200 of the Act, which allows the Director to amend the determination and assessment at any time before it becomes final. Thus, even after the final decision is rendered, the Director may amend her decision. Arguably, the court should have made an inquiry to determine if the legislature wished to preclude res judicata and collateral estoppel, therefore binding only the employer and not the Director.

\textsuperscript{42} ILL. COMP. STAT. ANN. CH. 820, § 405/2205 (West 1993).
\textsuperscript{43} ILL. COMP. STAT. ANN. CH. 820, § 405/2200 (West 1993).
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} Id.
\textsuperscript{47} Id.
While the court did not directly address the issue of preclusion, it did state that failure to bind the Director would undermine the usefulness of the administrative hearing process. For example, if the Department had rendered a final decision, but later decided that it did not like the result, the Department could amend its decision. According to the court, this circumvention of finality would offer no incentive to the plaintiff requesting an administrative hearing because any remedy would be a "mere illusion" and in essence "a mirage." Thus, the court concluded that the final decision must bind all parties involved in the hearing process.

While the court's articulation seems logical, the failure to address the possibility of legislative preclusion leaves open the possibility that the legislature intended finality only to apply to the employer. This would allow retroactive modification even after the Director has issued the final decision. Thus, the Director could reassess the amount of the tax in situations where she had made a mistake, allowing the employer to pay the correct tax.

IV. CONCLUSION

The appellate court's holding in Marco implies that when a party is bound under an agency decision, then so, too, is the agency. While the court's decision in Marco may be a logical extension of res judicata and collateral estoppel in administrative decisions, the important issue of legislative preclusion remains unaddressed. Most likely, had the court conducted an analysis of the legislative intent of the Act, it would have still concluded that the Director's decision was final, conclusive, and binding on the agency as well as the employer. Such an analysis should have been performed since the legislature could have intended to preclude the application of res judicata and collateral estoppel as applied to the Department.

48 657 N.E.2d 1165, 1169 (Ill. App. 5 Dist. 1995).