BRB No. 12-0150
Case Nos. 2011-LHC- 00774/00775
OWCP Nos. 14-144931/154141

IN RE: BRADLEY ROWLAND MARSHALL	)	DATE ISSUED: 12/12/2013
Petitioner	)	ORDER

Petitioner filed an appeal of Administrative Law Judge Gee's "Order re: Disqualification of Claimant's Representative."[1] On June 21, 2012, the Board granted the motion of the Director, Office of Workers' Compensation Programs (the Director), to hold this appeal in abeyance pending the outcome of *Marshall v. Purcell*, No. 2:12-cv-84-RMG, in which the defendants had petitioned the United States District Court for the District of South Carolina for summary affirmance of the administrative law judge's decision. The District Court issued its order granting the defendants' motion for summary judgment in *Marshall* on December 11, 2012, *Marshall v. Purcell*, No. 2:12-cv-84-RMG, 2012 WL 6139379 (D.C.S.C. Dec. 11, 2012), and denied the plaintiff's subsequent motion to amend its decision, *Marshall v. Purcell*, No. 2:12-cv-84-RMG (Jan. 2, 2013). The United States Court of Appeals for the Fourth Circuit affirmed the judgment for the defendants. *Marshall v. Purcell*, 521 F.App'x 200 (4th Cir. May 28, 2013), *reh'g denied*, 2013 WL 2303394 (Aug. 6, 2013). The District Court held that the Office of Administrative Law Judges (OALJ) committed no error in relying on the disbarment decision of the Washington Supreme Court to disqualify petitioner from appearing before the OALJ. As the court proceedings in *Marshall* are complete, petitioner requests that the Board lift the abeyance in this appeal, and the Director agrees. In light of the completion of the court proceedings, we shall lift the abeyance and proceed with the appeal.

The Director moves for dismissal of the appeal. Petitioner has not responded to the motion. The Director contends that federal courts have already addressed and resolved the legality of the orders disqualifying petitioner from representing this, or any, claimant before the OALJ, the sole issue herein, and therefore the Board need not re-visit the issue, as re-litigation is precluded. The doctrine of *res judicata* is one of claim preclusion whereas collateral estoppel is one of issue preclusion. The doctrine of *res judicata* prevents the relitigation of a claim in a second forum if: 1) the parties in the current action are the same or are in privity with the parties in the prior action; 2) the court that rendered the prior judgment was a court of competent jurisdiction; 3) the prior

[1]This appeal was formerly captioned *Kalvin Brown v. APM Terminals.* As claimant and employer are not parties to the appeal filed by the petitioner, we have reformed the caption.

action must have terminated with a final judgment on the merits; and 4) the same claim or cause of action must be involved in both actions. *See, e.g., Holmes v. Shell Offshore, Inc.*, 37 BRBS 27 (2003). Under the principle of collateral estoppel, or issue preclusion, a party is barred from re-litigating an issue if: (1) the issue at stake is identical to the one alleged in the prior litigation; (2) the issue was actually litigated in the prior litigation; and (3) the determination of the issue in the prior litigation was a critical and necessary part of the judgment in the earlier action. *See, e.g., Bath Iron Works Corp. v. Director, OWCP [Acord]*, 125 F.3d 18, 22, 31 BRBS 109, 112(CRT) (1st Cir. 1997); *Figueroa v. Campbell Industries*, 45 F.3d 311 (9th Cir. 1995). The concept of *res judicata* includes both claim preclusion and issue preclusion. *Holmes*, 37 BRBS at 28.

In this case, as it pertains to petitioner's status as legal representative, the District Court held, and the Fourth Circuit affirmed, that the OALJ did not err in relying on the disbarment decision by the Washington Supreme Court to disqualify petitioner from appearing before the OALJ. Petitioner's suit in federal court contested the legality of the OALJ orders, as does the present appeal before the Board. The federal courts were of competent jurisdiction, the same claim was at issue, and the action ended with a final decision adverse to petitioner. *See, e.g., Vulcan Chemical Technologies, Inc. v. Barker*, 297 F.3d 332 (4th Cir. 2002); *Sider v. Valley Lines*, 857 F.2d 1043 (5th Cir. 1988). Thus, by virtue of *res judicata*, petitioner is not permitted to re-litigate the propriety of the OALJ orders. As there are no other issues for the Board to address in this appeal, we grant the Director's motion to dismiss petitioner's appeal. *See Vulcan Chemical*, 297 F.3d 332; *Ingalls Shipbuilding, Inc. v. Director, OWCP*, 976 F.2d 934, 26 BRBS 107(CRT) (5th Cir. 1992); *Sider*, 857 F.2d 1043; *Sears v. Norquest Seafoods, Inc.*, 40 BRBS 51 (2006).

Accordingly, petitioner's motion to lift the abeyance is granted. The Director's motion to dismiss this appeal is granted. 20 C.F.R. §802.219.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge