

EMPLOYMENT LAW

SUPREME COURT HOLDS THAT UNEMPLOYMENT COMPENSATION PROCEEDING DETERMINATIONS ARE NOT ENTITLED TO COLLATERAL ESTOPPEL IN SUBSEQUENT LITIGATIONS

By Randi W. Kochman and Michael N. Morea

The situation is not unusual; a former employee files for unemployment benefits. The employer opposes the claim on the grounds that the employee was not terminated, but left voluntarily. The unemployment compensation proceedings ultimately result in a finding that the employee was not terminated and a denial of benefits. The employee then files a lawsuit alleging wrongful termination. The employer denies the allegations in the lawsuit and seeks to use the doctrine of collateral estoppel to preclude the employee-plaintiff from relitigating her claim that she was terminated. Can the employer prevail on its collateral estoppel argument?

In the recent decision of *Olivieri v. Y.M.F. Carpet, Inc.*, 186 N.J. 511 (2006), the New Jersey Supreme Court settled the question of whether determinations made in unemployment compensation hearings are entitled to preclusive effect in subsequent litigation. The Court's answer was a resounding "no".

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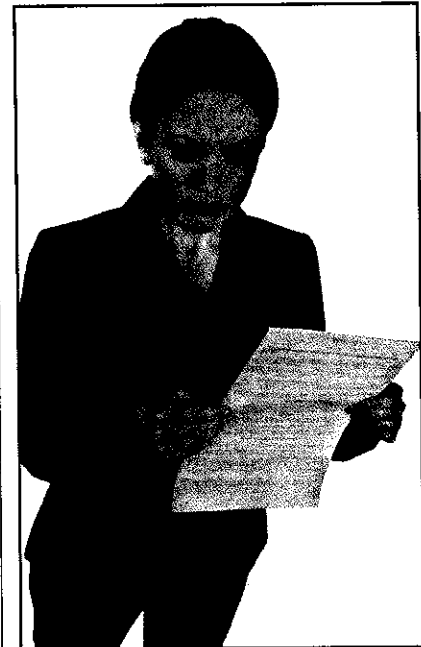
Before *Olivieri* both employees and employers, depending on who prevailed in the unemployment compensation proceeding, would routinely seek to invoke the doctrine of collateral estoppel in subsequent litigation to prevent litigation over whether the employee had been terminated. However, whether collateral estoppel would apply was an unsettled question. Generally, but not uniformly, courts would find against preclusion. For example, in the Appellate Division decision of *Hahn v. Arbat Systems, Ltd.*, 200 N.J. Super. 266 (App. Div. 1995), the court held that a final determination in an unemployment compensation proceeding that the employee had not been

discriminated against was not entitled to preclusive effect in a subsequent litigation. In contrast, in *Ensslin v. Twp. of North Bergen*, 275 N.J. Super. 352 (App Div. 1994), the Appellate Division analyzed the five factors in the Restatement (Second) of Judgments as to whether collateral estoppel bars the relitigation of a claim and held that "judicial determinations by administrative agencies are entitled to preclusive effect if rendered in proceedings which merit such deference." *Id.* at 369.

OLIVIERI

In *Olivieri*, Plaintiff brought suit under the Conscientious Employee Protection Act (CEPA), alleging that Defendant had terminated her because she refused to provide false testimony in a civil action against another employee. Following her separation from employment, Plaintiff filed a claim for unemployment compensation benefits. Her claim was initially denied on the grounds that Plaintiff voluntarily left work without good cause attributable to such work. Plaintiff appealed the denial of benefits and a hearing was conducted by the Appeals Tribunal. At the hearing, Plaintiff was represented by counsel while the employer participated by telephone, without counsel. The Appeals Tribunal determined that Plaintiff did not voluntarily leave work. Defendant appealed the determination to the Board of Review, which affirmed the decision of the Appeals Tribunal.

While the unemployment compensation proceeding was pending, Plaintiff filed her CEPA lawsuit. The matter proceeded through discovery and to trial. At the commencement of the trial, based upon the determination in the unemploy-



ment compensation proceedings, Plaintiff made an *in limine* motion seeking a ruling that she had been terminated as a matter of law. The trial court, relying upon *Ensslin*, applied the five collateral estoppel factors and held that determination of the unemployment compensation proceedings was entitled to preclusive effect. At the conclusion of the trial, the jury found in favor of the Plaintiff. The five factors that preclude the application of collateral estoppel are if:

- (1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action; or
- (2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws; or
- (3) A new determination is warranted by differences in the quality or extensive-

ness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or

- (4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly higher burden than he had in the first action; or
- (5) There is a clear and convincing need for a new determination of the issue. *Olivieri*, 186 N.J. at 523 (citing Restatement (Second) of Judgments §28).

On appeal, the Appellate Division reversed finding that the third factor of the exceptions applied. Specifically, the Appellate Division found that due to the differences in the "quality and extensiveness" of the procedures in the unemployment compensation proceedings compared to the Law Division, the doctrine of

collateral estoppel should not have been applied by the trial court.

On appeal to the New Jersey Supreme Court, the Court held that unemployment determinations are not entitled to collateral estoppel effect. The Court focused on "whether the procedures available in unemployment compensation matters are sufficient to warrant preclusive effect in other forms." *Olivieri*, 186 N.J. at 522. In analyzing the procedures, the Court noted that "[t]here are significant procedural and substantive safeguards that attend an action presided over by either a judge or an administrative law judge ... to which collateral estoppel effect is given." *Id.* at 524. The Court noted that, "[b]y comparison, the paucity of the record concerning the proceedings before the unemployment compensation examiner in this case leads inexorably to the conclusion that the third exception in the Restatement applies[.]" *Id.* The Court specifically noted that there was nothing

to assure that the proceeding had been recorded, the witnesses were not sworn and the remedies sought in the unemployment proceeding differed substantially from those in a CEPA case.

In refusing to find preclusion, the Court also commented on the purpose underlying the unemployment compensation system as a further basis to deny collateral estoppel. That purpose is to provide expedited determinations and payment of claims for individuals who find themselves out of work. The Court found that this purpose has resulted in procedures that result in speedy decision making and a presumption of payment of benefits. *Id.* at 527. Those procedures are "at odds with a process that values a level playing field; and the disparity between what is at stake between an employer and an employee skews the results." *Id.*

Finally, the Court noted that other jurisdictions have refused to grant preclusive effect to unemployment determinations. Based upon all of the considerations, the Court held that, "because of their procedural limitations (their informality and lesser safeguards) and their different purposes (to provide speedy and inexpensive unemployment benefits), unemployment compensation proceedings do not afford litigants a full and fair opportunity to litigate factual issues sufficient to warrant collateral estoppel effect." *Id.* at 529.

CONCLUSION

Even though unemployment compensation proceedings are not entitled to preclusive effect, counsel for both employers and employees would be wise to recognize that statements and evidence from such proceedings can be used in subsequent litigations. See, *Clowes v. Terminix Int'l, Inc.*, 109 N.J. 575 (1988). Accordingly, the importance of being especially well counseled and prepared for unemployment compensation proceedings cannot be understated.

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