IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Proform Powdered Metals and Le Mars Insurance Company, Petitioners	:	
v.	:	No. 895 C.D. 2025
Vernon Swarr (Workers' Compensation Appeal Board), Respondent	:	Submitted: September 14, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: November 17, 2026

Proform Powdered Metals and Le Mars Insurance Company (Employer) petitions for review of the June 23, 2025 order of the Workers' Compensation Appeal Board (Board), reversing the portion of the order of a Workers' Compensation Judge (WCJ), which had concluded that the Modification, Reinstatement, Review, and Penalty Petitions filed by Vernon Swarr (Claimant) were barred by the doctrines of *res judicata* and collateral estoppel. Upon review, we affirm.

I. Background

Claimant had a long-standing pre-injury history of insulin-dependent diabetes which caused him to suffer from peripheral neuropathy issues in his lower extremities. (Reproduced Record (R.R.) at 63a-64a.) On October 31, 2017, Claimant began working for Employer as a Quality Control Auditor. On November 13, 2017,

Claimant developed a blister on his left great toe from continuously standing and walking in steel-toed boots. The blister became infected. On December 1, 2017, Claimant's great left toe was amputated. Claimant filed a Claim Petition on February 23, 2018, alleging a left great toe amputation injury, balance issues, and an acute kidney injury caused by the medications that were prescribed for his infection. Employer filed an Answer, denying the allegations. Hearings were conducted on April 4, 2018, May 26, 2018, September 19, 2018, December 20, 2018, and April 25, 2019.

In a decision circulated October 7, 2019, the WCJ awarded Claimant temporary total disability benefits for the closed "healing period" of seven and three-sevenths' weeks for his total disability on November 14, 2017, and from November 21, 2017, through January 31, 2018. (WCJ Decision, 10/7/19, Conclusion of Law (C.O.L.), No. 2.) The WCJ also awarded Claimant 40 weeks of total disability benefits for the specific loss of use of his left great toe pursuant to Section 306(c)(25) of the Workers' Compensation Act (Act).[1] *Id.*, C.O.L. No. 3.

In his October 7, 2019 decision, the WCJ found that Claimant's work injury was "confined to the loss of his left great toe." *Id.*, Finding of Fact (F.F.) No. 35.) The WCJ also found that Claimant suffered no separate and distinct injuries or disability as a result of this work injury. *Id.*, F.F. Nos. 35, 36. The WCJ further accepted the testimony of Employer's medical expert, Dr. Jeffrey Kann, over the opinions of

[1] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S § § 513(25). Section 306(c)(25) of the Act provides for payments for a healing period in addition to the specific weeks awarded for the loss. 77 P.S. § 513(25). Pursuant to Section 306(c)(17) of the Act, loss of a great toe entitles an employee to 40 weeks of specific loss benefits and a 12-week healing period. 77 P.S. § 513(17). The term specific loss refers to "'either (1) the loss of a body part by amputation or (2) the permanent loss of use of an injured body part for all practical intents and purposes.'" *Pocono Mountain School District v. Workers' Compensation Appeal Board (Easterling)*, 113 A.3d 909, 913 (Pa. Cmwlth. 2015) (emphasis omitted) (quoting *Schemmer v. Workers' Compensation Appeal Board (U.S. Steel)*, 833 A.2d 276, 279 n.5 (Pa. Cmwlth. 2003)).

Claimant's primary care physician, Dr. Brandon M. Roscoe, and his post-amputation treating physician, Dr. Tuesdae Stainbrook, in finding that Claimant had fully recovered from his left toe amputation surgery and had no subsequent pain complaints. The WCJ further noted that the wound was well-healed. *Id.*, F.F. No. 35. The WCJ also accepted the testimony of Dr. Kann that none of Claimant's alleged post-injury balance issues due to the level of surgical amputation caused him to be disabled from returning to his time-of-injury job. *Id.* Finally, the WCJ found that "any problems which [Claimant] may sustain in the future with respect to his left foot are due to [Claimant's] underlying diabetes and not related to the loss of [Claimant's] left great toe which was healed without complication." *Id.*, F.F. No. 38.

Claimant appealed to the Board, arguing that the WCJ erred by failing to recognize that he had sustained a separate and distinct disabling acute kidney injury, which caused him to be disabled, and that he was only entitled to a healing period of seven and three-sevenths weeks. By opinion and order dated November 12, 2020, the Board found that substantial, competent evidence supported the WCJ's decision and affirmed.

On June 13, 2023, Claimant filed Modification, Reinstatement, Review, and Penalty Petitions, alleging that his work-related injury had progressed to require additional amputations of his left lower leg below the knee and possibly the amputation of his entire left leg and right leg, and that Employer had failed to pay for ongoing medical treatment and failed to reinstate his benefits. In opposition, Employer argued that Claimant's Petitions were barred by *res judicata* and collateral estoppel because the WCJ had previously found that Claimant's exclusive work-related injury was a left great toe amputation and that any future problems would be related to his long-standing and non-work-related diabetes condition. Hearings were conducted on July 14, October

17 and December 5, 2023.[2] Claimant presented a one-page medical report from his foot doctor, Dr. Brian Elias, dated October 16, 2023. Dr. Elias stated he treated Claimant from November 2017 until most recently on September 5, 2023. Dr. Elias opined that Claimant's loss of function due to the amputation of his great left toe worsened Claimant's circulation, which in turn caused further ulceration and ultimately the amputation of the entire left leg and possible need to amputate the entire right leg.

On March 26, 2024, the WCJ issued her decision dismissing Claimant's Modification, Penalty, Reinstatement, and Review Petitions based on (1) Claimant's failure to sustain his medical burden of proof that the amputation of the lower portion of his left leg was related to the November 13, 2017 work-related injury, as opposed to being due solely to his ongoing diabetes; and (2) *res judicata* and collateral estoppel. Regarding Claimant's burden to prove a progression of his original accepted work injury, the WCJ found Dr. Elias's opinion not credible because there was no indication in his report as to his knowledge or understanding of Claimant's significant diabetic condition or how the left toe amputation, which had resolved, somehow resulted in the amputation of Claimant's entire left leg. (WCJ Decision, 3/26/24, at 4.) Regarding the *res judicata* and collateral estoppel arguments, the WCJ noted that the issues raised in Claimant's new petitions asserting he had an injury separate and apart from the specific loss of his left great toe were already addressed and decided in the WCJ's prior October 7, 2019 order, and upheld by the Board. Specifically, the WCJ pointed out that evidence of potential problems and risks of other ulcerations of his foot was previously rejected by the WCJ, who specifically found that "any problems which the Claimant may sustain in the future with respect to his left foot are due to Claimant's underlying

[2] Sadly, Claimant died on January 28, 2024.

diabetes and are not related to the loss of the Claimant's left great toe, which has healed without complication." *Id.* (quoting WCJ's Decision, 10/17/19, F.F. No. 38.)

Claimant appealed to the Board, which issued its opinion on June 23, 2025. The Board concluded that the WCJ erred in concluding that Claimant's Modification, Penalty, Reinstatement, and Review Petitions were barred by *res judicata* and collateral estoppel. It explained:

> Here, the WCJ determined that Claimant had previously litigated any problems outside the amputation of his left great toe in the previous proceedings before [the] WCJ [], and thus, was precluded from now re-litigating those allegations. However, the main allegation Claimant presents here is that his injury progressed into further amputations beyond his left great toe and resulted eventually in the amputation of his left leg below the knee. This occurred following [the] WCJ['s] Decision and Order in 2019. We note that in workers' compensation, claimants are permitted to file review petitions alleging consequential injuries related to the original work incident. *Cinram* [*Manufacturing*]*, Inc, v.* [*Workers' Compensation Appeal Board*] *(Hill)*, 975 A.2d 577 (Pa. 2009). Furthermore, the doctrine of *res judicata* only forecloses litigation of matters that were already litigated or matters that could have been litigated. [*Cytemp Specialty Steel v. Workers' Compensation Appeal Board (Crisman*), 39 A.3d 1028 (Pa. Cmwlth. 2012)]. Here, because the further amputations occurred after the previous litigation, Claimant could not have litigated the alleged consequential work injuries during that litigation and was permitted to file the instant Review Petition alleging the additional work injuries. Thus, we determine the WCJ erred in denying Claimant's Petitions based upon *res judicata*/collateral estoppel.

(Board Op., 6/23/25, at 3-4.) However, despite this error, the Board ultimately affirmed the WCJ's denial of Claimant's Modification, Penalty, Reinstatement, and Review Petitions on the alterative ground that Claimant failed to prove through unequivocal,

medical evidence, that he sustained additional work injuries and that they caused a wage loss.

Employer now appeals.[3] It asks this Court to reverse the portion of the Board's order which concluded that Claimant's Modification, Penalty, Reinstatement, and Review Petitions were not barred by the doctrines of *res judicata* and collateral estoppel. Employer argues that the WCJ's previous finding, upheld by the Board, that Claimant suffered exclusively from a great left toe injury that had healed without complications barred any further litigation regarding the scope of the work injury.

II. Discussion

At the outset, we note that Employer prevailed below. Although the Board ruled against Employer on the *res judicata*/collateral estoppel issue, it ultimately upheld the WCJ's dismissal of Claimant's Modification, Penalty, Reinstatement, and Review Petitions. "When one issue in a case is decided against a party, but the party prevails on the other issues and wins the case in chief, the party cannot claim to have been 'aggrieved' by the decision; he therefore lacks standing to appeal the single issue decided against him." *Burchanowski v. County of Lycoming*, 378 A.2d 1025, 1027 (Pa. Cmwlth. 1977). Employer does not even attempt to explain how it has standing to appeal to this Court.

Nevertheless, we are not at liberty to dismiss an appeal for lack of standing *sua sponte*. A party's failure to raise standing either in a motion to quash or dismiss or in its appellate brief results in waiver of the issue. *In re Smith*, 231 A.3d 59, 60 n.1 (Pa. Cmwlth. 2020). Here, Claimant did not file a motion to dismiss and did not raise

[3] This Court's review is limited to determining whether the necessary findings of fact were supported by substantial evidence, constitutional rights were violated, or errors of law were committed. *Borough of Heidelberg v. Workers' Compensation Appeal Board (Selva)*, 928 A.2d 1006, 1009 (Pa. 2007). Where the issue presented involves a question of law, our standard of review is *de novo* and our scope of review is plenary. *Id.*

Employer's lack of standing in his brief. Therefore, we are constrained to consider the merits of Employer's *res judicata*/collateral estoppel claim.

This Court has explained:

> The judicial doctrine of *res judicata* "bars actions on a claim, or any part of a claim, which was the subject of a prior action, or could have been raised in that action." *Appeal of Coatesville Area School District*, [] 244 A.3d 373, 378 ([Pa.] 2021). For the bar of *res judicata* to apply, both actions must have "an identity of issues, an identity of causes of action, identity of persons and parties to the action, and identity of the quality or capacity of the parties suing or being sued." *Id.* at 379 (citations and internal quotation marks omitted). . . .
>
> Collateral estoppel bars re-litigation of an issue decided in a prior action. [*Id.*] at 379. Collateral estoppel may be applied only if both cases involve the same issue, the prior action was litigated to a final judgment on the merits, the party to be estopped was a party or was in privity with a party to the prior action and had a full and fair opportunity to litigate the issue in the prior action, and "resolution of the issue in the prior proceeding was essential to the judgment." *Id.*

Pocono Mountain School District v. Kojeszewski (Workers' Compensation Appeal Board), 280 A.3d 12, 17-18 (Pa. Cmwlth. 2022). Thus, "where particular questions of fact essential to the judgment are actually litigated and determined by a final valid judgment, the determination is conclusive between the parties in any subsequent action on a different cause of action." *Williams v. Workers' Compensation Appeal Board (South Hills Health System)*, 877 A.2d 531, 535 (Pa. Cmwlth. 2005) (quoting *Patel v. Workmen's Compensation Appeal Board (Sauquoit Fibers Co.)*, 488 A.2d 1177, 1179 (Pa. Cmwlth. 1985)). "Application of [*res judicata* or] collateral estoppel in a particular case is a question of law[.]" *Pennsylvania Board of Probation & Parole v. Pennsylvania Human Relations Commission*, 66 A.3d 390, 395 (Pa. Cmwlth. 2013).

Employer generally argues the Board erred in not upholding the WCJ's conclusion that Claimant's Modification, Penalty, Reinstatement, and Review Petitions were barred by "the legal doctrines of *res judicata*/collateral estoppel." (Employer's Br. at 4, 11-14.) It argues generically that the WCJ's October 7, 2019 decision, affirmed by the Board on November 12, 2020, constituted a final decision which may not be relitigated. (Employer's Br. at 12-13).

Aside from these conclusory assertions, Employer does not otherwise provide any legal authority to support its argument. *See id.* It does not cite one case or provision of the Act in the argument section of its brief. It offers no argument as to which of the two related, but distinct principles apply here, or how the elements of either were met,[4] or why Claimant was precluded from alleging that his injury progressed into further amputations beyond his left great toe. It does not address any of the cases cited by the Board, in particular *Cinram*, wherein the Supreme Court recognized that claimants are permitted to file review petitions alleging consequential injuries related to the original work incident, or include any discussion or legal analysis of how the Board erred.

The Rules of Appellate Procedure state unequivocally that each question an appellant raises is to be supported by discussion and analysis of pertinent authority. *See* Pa.R.A.P. 2119(a) (providing that the argument section "shall" include "discussion and citation of authorities as are deemed pertinent"). This Court has repeatedly held

[4] For example, Employer offers no analysis as to whether the WCJ's statement that "any problems **which the Claimant may sustain in the future** with respect to his left foot are . . . not related to the loss of the Claimant's left great toe, which has healed without complication" was "essential to the judgment" or "material to the adjudication of" the Claim Petition, or if it was merely "*dicta*," as in *Wright v. Workmen's Compensation Appeal Board (Adam's Mark Hotel)*, 639 A.2d 1347, 1350, n.5 (Pa. Cmwlth. 1994) (holding that for purposes of collateral estoppel the finding of the referee that the claimant's disability had ended on a certain date, was neither essential to the judgment nor material to the adjudication of setting aside the final receipt but was merely *dicta*).

that we will not consider the merits of an issue that is not properly raised and developed in a brief. *See American Rock Mechanics, Inc. v. Workers' Compensation Appeal Board (Bik & Lehigh Concrete Technologies)*, 881 A.2d 54, 56 (Pa. Cmwlth. 2005) (failure to cite any authority supporting argument resulted in waiver); *Browne v. Commonwealth*, 843 A.2d 429, 435 (Pa. Cmwlth. 2004) ("At the appellate level, a party's failure to include analysis and relevant authority results in waiver.") 20 G. RONALD DARLINGTON ET AL., PENNSYLVANIA APPELLATE PRACTICE § 301:19 (2025-2026) (issue waived if no relevant authority cited). *See, also, Commonwealth v. Rompilla*, 983 A.2d 1207, 1210 (Pa. 2009) (appellant's failure to adequately develop its arguments or support its bald assertions with sufficient citation to legal authority impedes meaningful judicial review of its claims). When a party fails to satisfy this requirement, the Court is "neither obliged, nor even particularly equipped, to develop an argument for them." *Skytop Meadow Community Association, Inc. v. Paige*, 177 A.3d 377, 385 (Pa. Cmwlth. 2017) (citation omitted).

Accordingly, based on Employer's failure to appropriately develop its *res judicata*/collateral estoppel argument in any meaningful manner or cite to any legal authority, we find this issue waived.

The order of the Board is affirmed.

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PATRICIA A. McCULLOUGH, Judge

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ORDER

AND NOW, this 17th day of November, 2026, the June 23, 2025 order of the Workers' Compensation Appeal Board is AFFIRMED.

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PATRICIA A. McCULLOUGH, Judge