

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Allentown, :  
Petitioner :  
v. : No. 1039 C.D. 2011  
Workers' Compensation Appeal : Submitted: October 28, 2011  
Board (Porter), :  
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: December 21, 2011

City of Allentown (Employer) petitions for review of an order of the Workers' Compensation Appeal Board (Board), which affirmed the decision of a workers' compensation judge (WCJ) granting William Porter's (Claimant) Claim Petition.<sup>1</sup> We affirm.

On May 13, 2009, Claimant filed a Claim Petition alleging that he sustained a work-related injury in the nature of a pain in the lower back down to the left calf on February 12, 2009 while working for Employer. In response,

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<sup>1</sup> Claimant, having failed to timely file a brief, was precluded from doing so.

Employer filed an answer denying the material allegations contained therein. A hearing on the Claim Petition then ensued before the WCJ.

At the hearing, Claimant, who appeared *pro se*, testified, presented two fact witnesses and submitted medical reports. Employer submitted a medical report and brief.

Claimant testified that on February 12, 2009, he was assisting his co-worker, Ashley Baringer, in lifting a tamper into the back of a service truck. Claimant felt a pull in his low back as he leaned to maneuver the tamper into the truck. After he felt the low back pain, he sat in the back of the truck. On the same day, Claimant reported to his supervisor, William Brogan, that he was placing a tamper into a truck and that he hurt his back. Claimant testified he went on a pre-scheduled vacation the following two weeks and used a wheelchair. Claimant testified he underwent medical treatment with his family physician, Dr. Robert Matta. Dr. Matta referred Claimant to a pain management physician. Claimant underwent acupuncture treatment and took pain medication. Claimant testified that he incurred \$500 in medical expenses. Claimant continued to perform his pre-injury job duties.

Baringer and Brogan corroborated Claimant's testimony. Baringer testified that he was helping Claimant lift the tamper on February 12, 2009. As the two men lifted the tamper, Baringer testified that Claimant "pulled something and it hurt from lifting a tamper." WCJ Decision, 7/29/2010, Finding of Fact (F.F) at 5. Baringer estimated that the tamper weighed approximately 60-70 pounds.

Brogan testified that he believed the tamper weighed at least 100 pounds. Brogan testified that Claimant notified him on February 12, 2009 that he had hurt his back during the course of the day. Brogan offered Claimant medical treatment, which Claimant declined, advising he would "let it go a couple days."

WCJ Decision, 7/29/2010, F.F at 4. In the days after the incident, Baringer testified that Claimant appeared to be in pain.

Claimant submitted medical evidence by report. Dr. Matta diagnosed Claimant with low back strain, radiculitis and a herniated disc. Dr. Matta specifically noted in his notes four days following the work injury that Claimant was engaged in an awkward lifting incident at the time he developed low back pain that brought him in for treatment. Dr. Matta's notes also indicate that Claimant was treated for low back pain in 2008.

Employer submitted an EmergiCenter report of February 16, 2009, which indicated that Claimant complained of low back pain which began during work. According to the EmergiCenter report, Claimant denied a specific incident. The WCJ found that the report, which indicated that Claimant developed low back pain while working, is completely consistent with Claimant's testimony.

The WCJ found the testimony of Claimant and his witnesses to be credible, persuasive and uncontradicted. The WCJ further found Dr. Matta's opinion that Claimant suffered a low back strain, radiculitis and a herniated disc to be credible, persuasive and uncontradicted. Although testimony and evidence revealed that Claimant had a history of back symptoms, there was no evidence to dispute Dr. Matta's notation that Claimant had not been treated for low back discomfort since 2008.

Based upon the testimony and evidence presented, the WCJ concluded that Claimant sustained a work-related injury in the nature of a herniated lumbar disc and radiculitis. However, she found that Claimant failed to establish that the injury resulted in any loss of earnings and, as a result, no disability benefits were awarded. By order dated July 29, 2010, the WCJ granted Claimant's Claim Petition.

From this decision, Employer filed an appeal with the Board, which affirmed. This appeal now follows.<sup>2</sup> Employer raises the issue of whether the Board erred in not requiring unequivocal medical evidence to establish the requisite causal connection between Claimant's work activities and the injury determined to be compensable - "herniated lumbar disc and radiculitis."

In order to prevail on a claim petition, claimant must establish all elements necessary to support an award. Inglis House v. Workmen's Compensation Appeal Board (Reedy), 535 Pa. 135, 634 A.2d 592 (1993). This includes proving a causal connection between the alleged disability and a work-related incident. Section 301(c)(1) of the Workers' Compensation Act (Act);<sup>3</sup> Krawchuk v. Philadelphia Electric Co., 497 Pa. 115, 439 A.2d 627 (1981). Somerset Welding and Steel v. Workmen's Compensation Appeal Board (Lee), 650 A.2d 114 (Pa. Cmwlth. 1994), petition for allowance of appeal denied, 540 Pa. 652, 659 A.2d 990 (1995).

Where there is no obvious causal relationship between a claimant's disability and the work-related activity, unequivocal medical testimony is necessary to establish the requisite causal relationship. Lynch v. Workmen's Compensation Appeal Board (Teledyne Vasco), 545 Pa. 119, 680 A.2d 847 (1996); Lewis v. Commonwealth, 508 Pa. 360, 498 A.2d 800 (1985). But where the existence of a causal connection is so readily discernible to a layman, the need for an expert opinion is not necessary. Weaver v. Workmen's Compensation Appeal Board (Pennsylvania

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<sup>2</sup> This Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995).

<sup>3</sup> Act of June 2, 1915, P.L.736, as amended, 77 P.S. §411(1).

Power Co.), 487 A.2d 116 (Pa. Cmwlth. 1985). An obvious causal relationship exists between the work injury and disability when the nexus is:

so clear that an untrained layperson would not have a problem in making the connection between the injury and a disability. This discernment often involves a “natural and probable” development ... and could sometimes involve an immediacy of occurrence such as an immediate back injury following lifting.

Tobias v. Workmen’s Compensation Appeal Board (Nature’s Way Nursery, Inc.), 595 A.2d 781, 784-85 (Pa. Cmwlth.), petition for allowance of appeal denied, 529 Pa. 628, 600 A.2d 543 (1991). Additionally, we have explained:

An obvious injury is one that immediately manifests itself while a claimant is in the act of doing the kind of work which can cause such an injury. Calcara v. Workers’ Compensation Appeal Board (St. Joseph Hospital), 706 A.2d 1286 (Pa. Cmwlth. 1998). A classic example would be the laborer who grabs his back in pain after lifting his shovel full of wet concrete. In such a case, the causal connection is so clear that a lay person can see the connection. Id. Under such circumstances, the claimant’s testimony is sufficient to connect the injury to the claimant’s employment, and additional medical testimony is not required. Id.

Giant Eagle, Inc. v. Workers’ Compensation Appeal Board (Thomas), 725 A.2d 873, 876 (Pa. Cmwlth. 1999).

In this case, Claimant’s injury was obviously work-related. Claimant’s injury occurred when he was lifting a heavy tamper into a truck. The onset of pain was immediate and Claimant complained of pain to his co-worker. Claimant reported the injury to his supervisor later that day. Since Claimant’s back injury immediately manifested itself while Claimant was doing the kind of heavy work which can cause such an injury, the causal connection was obvious. Claimant’s

testimony, which was fully corroborated by his co-worker and supervisor, was sufficient to connect the injury to the work-related activity. Under these circumstances, we agree with the WCJ and the Board that unequivocal medical evidence was not required to establish the causal connection between the injury and the work-related activity.

Accordingly, the order of the Board is affirmed.

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JAMES R. KELLEY, Senior Judge

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**ORDER**

AND NOW, this 21st day of December, 2011, the order of the Workers' Compensation Appeal Board, dated May 10, 2011, at No. A10-1418, is AFFIRMED.

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JAMES R. KELLEY, Senior Judge