IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Edgar Griffith,	:	
Petitioner	:	
	:	
v.	:	No. 1192 C.D. 2009
	:	SUBMITTED: November 13, 2009
Workers' Compensation Appeal	:	
Board (York Waste Disposal),	:	
Respondent	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER,** President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER **FILED:** February 9, 2010

Claimant, Edgar Griffith, petitions for review of the June 3, 2009 order of the Workers' Compensation Appeal Board (Board) that affirmed the decision of the Workers' Compensation Judge (WCJ) to grant his June 22, 2004 claim petition and to terminate his benefits as of March 24, 2005. The Board also affirmed the WCJ's denial of Claimant's August 25, 2005 claim petition. We affirm.

Claimant worked as a driver/loader for Employer, York Waste Disposal. In both claim petitions, Claimant sought total disability benefits from January 26, 2004 and into the future. In his June 2004 claim petition, Claimant alleged that he sustained a back injury at work during the first quarter of 2003

while bending over to bleed air tanks on a garbage truck.[1] In the August 2005 claim petition, Claimant alleged that he sustained an aggravation of pre-existing arthritis on January 26, 2004 as a result of constantly lifting, bending and twisting in the course of his job. Employer filed timely answers denying the material allegations of each petition. In support of his claim petitions, Claimant testified on his own behalf and presented the testimony of David Forney, a rear loader residential supervisor with Employer, and Jonathan Costa, M.D., a physician board-certified in physical medicine and rehabilitation.

Claimant testified that he injured himself at work when he bent down to drain his truck's air tanks. He advised his supervisor of the incident and went home, returning to work the next day. Claimant admitted that he thereafter worked for a year without receiving medical treatment, but he also represented that he needed assistance in performing some of his loading duties during that time period. Claimant has not worked since January 26, 2004, when he found himself unable to get out of bed in order to go to work.

Mr. Forney testified that he learned of the work-related incident on the day that it happened and advised Claimant to fill out an incident report. In addition, Mr. Forney indicated that Claimant occasionally complained of back pain in the year that followed and that co-workers sometimes would assist him with his work. Mr. Forney, however, was out of work due to his own injury from June 2003 through November 2003.

Dr. Costa testified that he first saw Claimant on May 4, 2004, at which time "[h]e diagnosed Claimant with a work-related twisting injury, with an

[1] In a notice of workers' compensation denial, Employer listed the alleged injury date as January 20, 2003.

injury to the ligaments associated with T12 and L1, as well as a sacroiliac joint injury, myofacial syndrome and piriformis syndrome." Board's April 15, 2008 Decision at 4. Dr. Costa did not believe that Claimant's weight of approximately 300 pounds or arthritic changes in his spine contributed to his symptoms, but opined that he should be off from work and that his potential to return to work at any job was poor.

Employer presented the testimony of John F. Perry, M.D., a board-certified orthopedic surgeon. Dr. Perry conducted an independent medical evaluation of Claimant on March 24, 2005, the results of which the Board summarized as follows:

> He diagnosed the cause of Claimant's complaints as degenerative arthritis of the lumbar spine and possible early diabetic neuropathy involving his left leg. He opined that Claimant suffered no residuals from a January 2003 work injury, noting that Claimant's history indicated that his spine had become asymptomatic within a month of the injury, although Claimant would require 20-pound lifting restrictions as well as twisting, turning and bending restrictions for his non work-related degenerative condition. He further opined that the work incident was not preventing Claimant from performing his job duties, although Claimant's overall complaints that he could not do his job were "not unreasonable."

Board's April 15, 2008 Decision at 5.

Employer also presented the testimony of Fred W. Olsen, site manager for its Lancaster facility. Mr. Olsen testified that although Claimant had advised him that he pulled a muscle in his back while bending over to drain air tanks, Claimant did not miss any time from work due to the incident and performed his regular duties until January 2004. Further, Mr. Olsen stated that it was his

understanding that Claimant's absence from work from January 26, 2004 onwards was the result of a non-work related issue.

The WCJ accepted as credible the testimony of Claimant as to his work duties and the details of his January 2003 work injury. She accepted Mr. Forney's testimony as to the details of the duties that prompted Claimant's injury. She chose to accept, however, Mr. Olsen's testimony as to Claimant's performance of his regular duties subsequent to the work incident.

As for the medical testimony, the WCJ accepted Dr. Costa's testimony as to his diagnosis of Claimant's work-related condition. She rejected, however, Dr. Costa's testimony to the extent that he opined that Claimant's arthritic condition and weight played no role in his symptoms and that the January 2003 work injury prevented Claimant from performing his job duties after January 2004. Instead, the WCJ accepted the testimony of Employer's medical expert, Dr. Perry, that, as of the March 24, 2005 evaluation, Claimant did not have evidence of any residuals, he had made a recovery from the January 2003 work injury, and the cause of his problems was "the combination of . . . multiple levels of arthritic changes, progression to an older age, weight of almost 300 pounds for his five feet five inch height and tremendous amount of [bodily] stress." WCJ's September 11, 2008 Decision, Finding of Fact No. 33.

In an April 2007 decision, the WCJ granted Claimant's June 2004 claim petition and denied his August 2005 petition. In granting the first claim petition, she concluded that Claimant had sustained a work-related injury on January 20, 2003. She determined, however, that he did not have any injury-related absences from work, that there was no connection between that injury and his inability to perform his pre-injury job after he stopped working on January 26,

2004, and that he had fully recovered from his work injury as of a March 24, 2005 independent medical evaluation. She, therefore, "conclude[d] that [Employer] may suspend and may have suspended [his] workers' compensation benefits on and after January 20, 2003. . . ." WCJ's April 20, 2007 Decision, Conclusion of Law No. 4. In denying the second claim petition, the WCJ concluded that Claimant's employment did not cause or aggravate his pre-existing arthritis.

Upon Claimant's appeal and Employer's cross appeal, the Board affirmed the WCJ's April 2007 decision as adequately reasoned but vacated it with regard to potentially determinative findings as to the reasonableness and necessity of medical treatment. In addition, it remanded the matter to the WCJ for further findings regarding costs and for the termination of benefits as of March 24, 2005.

On remand, the WCJ renewed her grant of the June 2004 claim petition and her denial of the August 2005 claim petition. She also terminated all liability of Employer effective March 24, 2005. In addition, she rejected Employer's arguments as to costs. Upon both parties' appeals, the Board affirmed. Claimant's appeal followed.

As an initial matter, we note the well-established law that in claim petition proceedings, a claimant bears the burden of establishing his right to compensation and all of the elements necessary to support an award of benefits, including a causal relationship between a work-related incident and the alleged disability and the duration of an alleged disability. *Rife v. Workers' Comp. Appeal Bd. (Whitetail Ski Co.)*, 812 A.2d 750 (Pa. Cmwlth. 2002); *Innovative Spaces v. Workmen's Comp. Appeal Bd. (DeAngelis)*, 646 A.2d 51 (Pa. Cmwlth. 1994). In addition, benefits may properly be terminated when the evidence establishes either that the claimant's disability has ceased or that any current disability arises from a

cause unrelated to the work injury. *Campbell v. Workers' Comp. Appeal Bd. (Antietam Valley Animal Hosp.)*, 705 A.2d 503 (Pa. Cmwlth. 1998).

In support of his position, Claimant argues that the WCJ's September 2008 decision is inconsistent and unsupported by the record. He cites two sets of allegedly conflicting fact-findings. Concerning Claimant's job duties, the WCJ found in Finding of Fact No. 6 that Claimant regularly lifted heavy items for ten to twelve hours per day. In Finding of Fact No. 23, she found that the evidence did not establish that Claimant lifted items over twenty pounds in the regular course of his duties. Concerning Claimant's ability to work, the WCJ in Finding of Fact No. 21 found that Claimant could work on March 24, 2005, but that his complaints regarding his inability to perform his pre-injury job were not unreasonable.

Claimant further argues that the fact-findings are incomplete in that the WCJ failed to address crucial testimony elicited from several key witnesses. Claimant cites his testimony and that of Mr. Forney to the effect that, after the January 20, 2003 work injury, Claimant continued to work through constant pain and regularly required assistance from co-workers. Further, Claimant maintains that the WCJ improperly credited the testimony of Mr. Olsen that Claimant could work his regular duties until January 2004. Claimant contends that such deference was inconsistent with other testimony and that the WCJ's decision to give such weight to Mr. Olsen's testimony was unwarranted given the fact that he was not a medical expert and that Mr. Forney worked closely with Claimant on a regular basis.

Moreover, Claimant alleges that the WCJ failed to address all of the issues necessary to arrive at a reasoned decision. Specifically, he maintains that she mischaracterized his decision to work for one year after his injury to mean that

he was feeling better, not that he was being a loyal employee and provider to his family. In addition, he contends that she failed to fully address his obvious aggravation of pre-existing arthritis, as supported by his testimony and that of Dr. Perry. Finally, Claimant alleges that the WCJ ignored the credible testimony of Dr. Costa indicating his continued disability from the work injury.

First, we note that any inconsistency between Finding of Fact No. 6 (Claimant‘s regularly lifting heavy items) and Finding of Fact No. 23 (evidence did not establish that Claimant regularly lifted items in excess of twenty pounds) is of no consequence, as the issue here was the effect of Claimant's job duties on his condition. With regard to any inconsistency in the fact-findings concerning Claimant's ability to work, the WCJ accepted Dr. Perry's testimony that Claimant's non-work related conditions were causing his symptoms. Therefore, it was not inconsistent for the WCJ to determine that Claimant could have performed his work, albeit with the non-work related restrictions suggested by Dr. Perry, but that Claimant's complaints regarding his inability to perform his pre-injury job were not unreasonable in light of the symptoms from those non-work related conditions.

As for the WCJ's failure to address and/or consider certain portions of testimony, we note that the WCJ is not required to address every bit of evidence as long as she makes the crucial findings and gives proper reasons for her decision. *Pistella v. Workmen's Comp. Appeal Bd. (Samson Buick Body Shop)*, 633 A.2d 230 (Pa. Cmwlth. 1993). Indeed, the WCJ need not specifically evaluate each and every line of testimony offered. *Acme Mkts., Inc. v. Workers' Comp. Appeal Bd. (Brown)*, 890 A.2d 21, 26 (Pa. Cmwlth. 2006) ("[a] reasoned decision does not

require the WCJ to give a line-by-line analysis of each statement by each witness, explaining how a particular statement affected the ultimate decision.")

Finally, we note that the WCJ as the ultimate arbiter of evidence was empowered to weigh the evidence and to determine the weight to be accorded thereto. *Roccuzzo v. Workers' Comp. Appeal Bd. (Sch. Dist. of Phila.)*, 721 A.2d 1171 (Pa. Cmwlth. 1998). Accordingly, the WCJ was free to credit Mr. Olsen's testimony and to accept or to reject, in whole or in part, the testimony of other witnesses. *Joy Global, Inc. v. Workers' Comp. Appeal Bd. (Hogue)*, 876 A.2d 1098 (Pa. Cmwlth. 2005).

For the above reasons, therefore, we affirm.[2]

BONNIE BRIGANCE LEADBETTER,
President Judge

[2] Counsel for Employer maintains that Claimant's appeal is sufficiently frivolous, lacking in any basis in law or in fact and obdurate and vexatious such that an award of counsel fees is warranted. Although it is true that Claimant's grounds for appeal primarily consist of requests to reweigh the evidence and disturb credibility determinations, there is no statutory authorization for an award of attorney fees against claimants. *Phillips v. Workmen's Comp. Appeal Bd. (Century Steel)*, 554 Pa. 504, 721 A.2d 1091 (1999). Accordingly, we deny Employer's request.

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O R D E R

AND NOW, this 9th day of February, 2010, the order of the Workers' Compensation Appeal Board in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge