IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Country Club of Scranton and Amerihealth Casualty Services, Petitioners	:	
v.	:	No. 1247 C.D. 2009
	:	Submitted: December 11, 2009
Workers' Compensation Appeal Board (Davidson), Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: February 17, 2010**

In this appeal, we consider whether the Workers' Compensation Appeal Board (Board) erred in affirming an order of a Workers' Compensation Judge (WCJ) that awarded Andrew Davidson (Claimant) disability benefits for the closed period of September 29, 2004 through July 12, 2005, followed by a termination of benefits. Before the Board, the Country Club of Scranton (Employer) maintained Claimant failed to offer unequivocal medical evidence proving a causal connection between the work incident and Claimant's disability. The Board concluded the causal connection between Claimant's work-related injury and resulting disability was obvious and, therefore, Claimant was not

required to present unequivocal medical testimony to meet his burden of proof on the claim petition. We affirm on other grounds.[1]

Claimant worked for Employer as a grounds keeper. In September, 2004, he slipped and fell on wet grass while cutting golf greens across the side of a hill. As a result of the fall, Claimant immediately felt a "sharp, piercing, biting pain" in the middle of his back and experienced cramping in his left leg. WCJ Dec., 2/6/08, Finding of Fact (F.F.) No. 2.

In April, 2005, Claimant filed a claim petition seeking ongoing total disability benefits as of September 29, 2004. Claimant alleged that as a result of the fall, he sustained a lumbar strain superimposed upon lumbar degenerative disc disease, radiculopathy, and a left hamstring pull. Employer filed a timely answer denying the material allegations. Hearings before the WCJ ensued.

At the first WCJ hearing, Claimant testified that his work duties included cutting grass and tree limbs, and tending to the general maintenance of the golf greens. Claimant further testified to the treatment he sought following the injury.

Immediately following his injury, Claimant reported the injury to his supervisor and sought treatment from Dr. Stephen Jaditz (Employer's Panel

[1] This Court is able to affirm the order of the Board regardless of the reasons given, if the order is correct for any reason. Wolf v. Workers' Comp. Appeal Bd. (County of Berks/Office of Aging), 705 A.2d 483 (Pa. Cmwlth. 1997).

Physician). However, Employer's Panel Physician had already closed his office for the day; thus, Claimant sought treatment at a hospital emergency room. The hospital x-rayed Claimant and discharged him with instructions to see his family physician. Claimant returned to work that day.

The next day, Claimant sought treatment from Employer's Panel Physician, who prescribed medication and imposed a 10-pound lifting restriction. Significantly, Employer's Panel Physician also instructed him to take a few days off work.

That same day, Claimant also consulted with Dr. Barry Eisenberg (Family Physician), a board-certified family physician. Family Physician performed a physical examination of Claimant; however, he did not treat Claimant because he was already under the active care of Employer's Panel Physician.

After taking several days off, Claimant returned to work. The record indicates, however, Employer disregarded Claimant's lifting restriction causing him to experience an increase in his symptoms while working. Claimant again sought treatment from Employer's Panel Physician, who referred him to Dr. Christopher Metzger (Orthopedic Specialist), a board-certified orthopedic specialist. Employer's Panel Physician released Claimant to return to work with the same lifting restriction and an additional restriction on twisting.

Upon Claimant's return to work, Employer again disregarded the lifting restriction and required Claimant to perform work tasks which caused an

increase in lower back pain. As a result, Claimant once more consulted Employer's Panel Physician, who gave him a prescription for a lumbar MRI. Significant to our discussion below, Employer's Panel Physician again excused Claimant from work until the consult with Orthopedic Specialist.

Orthopedic Specialist performed the MRI and sent Claimant to physical therapy. Claimant received physical therapy for a time and returned to Orthopedic Specialist for follow-up treatment. Orthopedic Specialist then prescribed epidural injections. Claimant testified he did not receive the injections due to scheduling conflicts. In early November, Orthopedic Specialist released Claimant for light duty work. However, Employer laid Claimant off prior to Orthopedic Specialist's release to light duty work. Following the release, Claimant did not seek further treatment for his injuries for nine months.[2]

At the second WCJ hearing, Claimant testified that in July, 2005, he began experiencing pain in his left leg, and thus he sought treatment with Family Physician. Claimant testified, however, that Family Physician did not prescribe any medications, nor did he refer Claimant to any other physicians. Claimant further testified that in August, 2005, he returned to work for a different employer performing light duty work.

[2] Claimant testified it was unusual to be laid off in November since Employer typically did not perform its seasonal lay offs until late December. Notes of Testimony, 5/13/05, at 27. In April, 2005, Claimant learned Employer permanently laid him off work.

Claimant presented the deposition testimony of Family Physician, who opined that Claimant has not fully recovered from his work injury. This testimony, however, was not accepted by the WCJ.

In opposition to the claim petition, Employer presented the deposition testimony of Dr. Michael Dawson (Employer's Medical Expert), a board-certified orthopedic surgeon, who performed an independent medical examination (IME) of Claimant in July, 2005. Employer's Medical Expert testified to Claimant's injury, and opined that Claimant sustained a lumbar strain and sprain as a result of his fall. However, Employer's Medical Expert further opined that at the time of his IME, Claimant fully recovered from the work injury and any ongoing symptoms are related to a pre-existing degenerative disc condition.

Accepting Claimant's testimony in part and the testimony of Employer's Medical Expert as credible, the WCJ determined Claimant sustained a work-related lumbar strain superimposed on a pre-existing degenerative disc disease and a left rotator cuff strain. The WCJ concluded Claimant became disabled as a result of this injury and he continued to be disabled until July 12, 2005, the date of Employer's Medical Expert's IME. Thus, the WCJ granted Claimant's petition for benefits for the closed period of September 29, 2004, through July 12, 2005, followed by a termination of benefits.

Employer appealed, contending Claimant "failed to present medical evidence establishing any compensable disability related to his September 2004

injury."[3] Bd. Dec., 6/01/09, at 8. The Board affirmed the WCJ's grant of Claimant's claim petition. The Board reasoned the connection between Claimant's work injury and disability was obvious. Thus, the Board concluded unequivocal medical testimony regarding the causal connection was unnecessary.

In this appeal, Employer contends Claimant did not prove through unequivocal medical testimony that his work injury resulted in a disability. After reviewing the record, we disagree.[4]

In a claim petition proceeding a claimant bears the burden of proving not only that he sustained a work-related injury but that such injury resulted in a disability. Odd Fellow's Home of Pa. v. Workmen's Comp. Appeal Bd. (Cook), 601 A.2d 465 (Pa. Cmwlth. 1991). For workers' compensation purposes, disability is synonymous with a loss of earning power. Eljer Indus. v. Workers' Comp. Appeal Bd. (Evans), 707 A.2d 564 (Pa. Cmwlth. 1998).

Unless the causal connection between the injury and the disability is obvious, unequivocal medical evidence is required to establish that connection.

[3] Claimant also appealed to the Board and asserted error in the conclusion that he was a seasonal employee under Section 309(e) of Workers' Compensation Act, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §582(e). The Board affirmed the WCJ; Claimant did not appeal.

[4] Our review is limited to determining whether the record supported the necessary findings of fact, whether errors of law were made, or whether constitutional rights were violated. Lahr Mech. & State Workers' Ins. Fund v. Workers' Comp. Appeal Bd. (Floyd), 933 A.2d 1095 (Pa. Cmwlth. 2007).

Cardyn v. Workmen's Comp. Appeal Bd. (Heppenstall), 517 Pa. 98, 534 A.2d 1389 (1987).

Medical evidence is equivocal if it is vague and leaves doubt. Reinforced Molding Corp. v. Worker's Comp. Appeal Bd. (Haney), 717 A.2d 1096 (Pa. Cmwlth. 1998). In describing what constitutes unequivocal medical testimony, this Court explained that "it is sufficient that [the claimant's] medical expert, after providing a foundation, testify that in his professional opinion or that he believes or that he thinks the facts exist." Phila. Coll. of Osteopathic Med. v. Workmen's Comp. Appeal Bd. (Lucas), 465 A.2d 132, 134-135 (Pa. Cmwlth. 1983) (emphasis added).

In addition, in reviewing an expert's testimony, it must be taken as a whole, and a final decision "should not rest upon a few words taken out of the context of the entire testimony." Lewis v. Commonwealth, 508 Pa. 360, 366, 498 A.2d 800, 803 (1985). "[T]he requirement that medical evidence be unequivocal cannot reasonably be viewed as a demand for perfect testimony from members of the medical profession." Children's Hosp. of Phila. v. Workmen's Comp. Appeal Bd. (Washington), 547 A.2d 870, 872 (Pa. Cmwlth. 1988).

Here, Employer concedes it is obvious that Claimant sustained a work-related injury. However, Employer contends the connection between the injury and the resulting disability is not obvious.

We agree with Employer that the causal connection between Claimant's injury and resulting disability is not obvious. See Odd Fellow's Home of Pa.; see also 6 Pennsylvania Workers' Compensation: Law and Practice §4:54 (2008) ("[A] worker's onset of acute, disabling pain at the time of heavy lifting may well have an obvious causal connection to such activity, but the worker's ongoing inability to work some six months later will almost invariably require unequivocal expert testimony.").

Nonetheless, we believe Employer presented unequivocal medical evidence of the causal connection between Claimant's injury and his resulting disability in the form of its own Medical Expert's IME report.

While Claimant had the burden of proof in this matter, the evidence required to satisfy that burden did not have to be presented by him. A party's burden may be met where the necessary proof is introduced by his adversary. See SKF USA, Inc. v. Workers' Comp. Appeal Bd. (Smalls), 728 A.2d 385 (Pa. Cmwlth. 1999); see also Summit Fasteners, Inc. v. Harleysville Nat'l Bank & Trust Co., 599 A.2d 203, 208 (Pa. Super. 1991) ("Evidence is no less effective in support of a party's case merely because it came into the case through an adversary rather than through the party."). Furthermore, the party who prevailed before the WCJ is entitled to the benefit of the most favorable inferences to be drawn from the evidence in the record. See Fulton v. Workers' Comp. Appeal Bd. (Sch. Dist. of Phila.), 707 A.2d 579 (Pa. Cmwlth. 1998).

We believe Employer's Medical Expert's IME report offers sufficient evidence that Claimant was incapable of working for the period of September 29, 2004 to July 12, 2005. Employer's Medical Expert reviewed Claimant's medical records and recognized:

> Records of [the Community Medical Center Healthcare System note] an injury to the back and shoulder sustained one day previously and the diagnosis was a lumbar strain/sprain. He was prescribed [pain medication] and no work.
>
> Two notes from [Employer's Panel Physician:] a note of September 28, 2004, [imposing a requirement] of no lifting more than 10 pounds and a further note of September 26, 2004, [provides] no work until seen by [Orthopedic Specialist] on October 6, 2004.

Dep. of Michael Dawson, M.D., Ex. 2 at 4 (emphasis added). Accordingly, Employer's Medical Expert acknowledged in his IME report that Claimant suffered a lumbar strain or sprain and, as a result, Employer's Panel Physician imposed a 10-pound lifting restriction and eventually released him from work altogether.

In addition, Employer's Medical Expert acknowledged that despite Claimant's repeated attempts to return to work, he was unable to perform his work duties. Id. at 8; Notes of Testimony, 5/13/05, at 16-21.

Thus, based on Claimant's medical records and his understanding of Claimant's history, Employer's Medical Expert determined:

> [H]aving examined [Claimant], taken his history and reviewed the available records, it … appears that [Claimant] worked successfully as a greens keeper [for Employer] for eight years until he slipped on wet grass on September 15, 2004, and he developed progressive numbness in the left leg.
>
> ….
>
> [Claimant] can return to his previous occupation without restriction.

Id., Ex. 2 at 4-5 (emphasis added).

Employer's Medical Expert's conclusions are not phrased in terms of conjecture or possibilities. Reading Employer's Medical Expert's IME report in a light most favorable to the prevailing party, we conclude it is sufficient to support the following findings: that Claimant became disabled as of his September 29, 2004 work injury and was for the first time unable to successfully work as a greens keeper, but as of July 12, 2005, the date of Employer's Medical Experts IME, Claimant had fully recovered. As a result, we conclude Claimant established through unequivocal medical evidence the causal connection between his injury and resulting disability.

Accordingly, the order of the Board is affirmed.

ROBERT SIMPSON, Judge

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O R D E R

AND NOW, this 17th day of February, 2010, the Workers' Compensation Appeal Board's order is **AFFIRMED**.

ROBERT SIMPSON, Judge