

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Fred Mason, :
Appellant :
v. : No. 1255 C.D. 2010
Upper Providence Township : Submitted: October 1, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: March 17, 2011

Fred Mason appeals from the June 7, 2010, order of the Court of Common Pleas of Delaware County (trial court), which affirmed a decision of the Upper Providence Township Council (Council) terminating Mason's benefits under the act commonly known as the Heart and Lung Act (HLA).¹ We affirm.

Mason is employed as a police officer by Upper Providence Township (the Township). On June 20, 2007, Mason was involved in a work-related motor vehicle accident and sustained injuries to his neck, low back, and shoulders. The accident rendered Mason unable to perform his police duties, and the Township

¹ Act of June 28, 1935, P.L. 477, as amended, 53 P.S. §§ 637-38. The HLA provides full salary benefits to employees temporarily disabled by injuries sustained in the performance of police work, firefighting or other jobs involving public safety. Soppick v. Borough of West Conshohocken, 6 A.3d 22 (Pa. Cmwlth. 2010).

provided him with full salary benefits pursuant to the HLA, as well as benefits under the Workers' Compensation Act.²

On August 13, 2008, Gregory Maslow, M.D., a board certified orthopedic surgeon, examined Mason on behalf of the Township. Dr. Maslow determined that Mason sustained a cervical sprain with cervical radiculitis and a lumbar strain with exacerbation of degenerative disc problems as a result of the June 20, 2007, accident. (Reproduced Record (R.R.) at 30a.) Dr. Maslow opined that Mason fully recovered from those injuries and was capable of working as a police officer. (*Id.*) Based on Dr. Maslow's opinion, the Township ordered Mason to report for work on October 9, 2008. (R.R. at 32a.) Mason did not report for work; and the Township notified Mason of its intent to terminate his HLA benefits. (R.R. at 33a.) In response, Mason requested a hearing in this matter, which took place on March 26, 2009.

At the hearing, the Township presented the testimony of its manager, Anthony Hamaday, who explained the history of Mason's injury and the Township's attempt to return Mason to work as a police officer. (R.R. at 14a-16a.) The Township also introduced the deposition testimony of Dr. Maslow, who opined that Mason could return to full-duty work as a police officer without restriction. (R.R. at 56-57.)

In opposition to the termination, Mason testified to the circumstances of his injury, his medical treatment, and his medical condition and symptoms. (R.R. at

² Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1--1041.4, 2501--2708. An employer's obligation to pay HLA benefits is concurrent with its obligation under the workers' compensation scheme, City of Erie v. Workers' Compensation Appeal Board (Annunziata), 575 Pa. 594, 838 A.2d 598 (2003), and when an employee is receiving both types of benefits, wage loss payments made by the workers' compensation insurance carrier are generally turned over to the employer. Findlay Township v. Workers' Compensation Appeal Board (Phillis), 996 A.2d 1111 (Pa. Cmwlth. 2010).

18a-22a.) Mason stated that he is not physically or medically capable of returning to work as a police officer. (R.R. at 22a.) Furthermore, Mason introduced the deposition of his treating physician, James F. Bonner, M.D., who is board certified in physical medicine and rehabilitation. Dr. Bonner testified that Mason suffers from cervical strain with cervical radiculitis, lumbar strain, and a herniated lumbar disc with radiculopathy at L4-5. (R.R. at 87a-88a.) Dr. Bonner opined that Mason has not recovered from the injuries he sustained on June 20, 2007, and is incapable of performing the duties of a police officer. (R.R. at 86a-87a.)

On May 29, 2009, Council voted to terminate Mason's HLA benefits and ordered Mason to return to work. (R.R. at 6a.) Mason appealed the adjudication to the trial court, which ordered Council to produce a statement of the reasons for the adjudication. (R.R. at 11a.) On or about June 12, 2009, Council issued an adjudication that included a detailed summary of the medical evidence and the conclusion that Mason was able to resume all normal police duties and that his HLA benefits should be terminated. (R.R. at 132a-42a.) Mason appealed Council's decision to the trial court.

Concurrent with the HLA litigation, the parties were also litigating Mason's right to continuing workers' compensation benefits. During the hearings on the Township's suspension and termination petitions, the parties introduced into evidence the deposition testimony of Mason and the depositions of Dr. Maslow and Dr. Bonner. On January 20, 2010, while Mason's appeal to the trial court was pending, a workers' compensation judge (WCJ) circulated a decision denying the Township's petitions. (R.R. at 154a-60a.) The WCJ found the opinions of Dr. Bonner to be more credible than those of Dr. Maslow; the WCJ also found the testimony of Mason to be credible. Based on those credibility determinations, the

WCJ found that Mason had not recovered from his injuries and was unable to return to work as a police officer. The Township did not appeal the WCJ's decision.

On June 4, 2010, the trial court denied Mason's appeal from Council's HLA decision.

On appeal to this Court,³ Mason first contends that Council's adjudication does not comply with section 555 of the Local Agency Law (Law), which provides that "[a]ll adjudications of a local agency *shall be in writing, shall contain findings and the reasons for the adjudication*, and shall be served upon all parties or their counsel personally, or by mail." 2 Pa. C.S. §555 (emphasis added). Mason complains that the adjudication does not comply with section 555 of the Law because it failed to consider all of the evidence he presented, particularly the opinions of Dr. Bonner.

However, in applying section 555, this Court has not demanded a particular format for an agency's findings and rationale so long as the decision, read in its entirety, is sufficient to demonstrate that the agency considered and weighed the evidence:

We note that pursuant to Section 555 of the Local Agency Law, 2 Pa. C.S. § 555, an adjudication of a local agency is required to contain 'findings and the reasons for the adjudication. . . .' The Board's findings are expressed more as a summary of all of the evidence presented on both sides than as formal findings specifically resolving credibility conflicts. We do not believe, however, that the Board's format here is fatal to its twenty-six page decision, because

³ Where, as here, a complete record is developed before the local agency, our scope of review is limited to determining whether constitutional rights were violated, whether there was an error of law or violation of agency procedure, and whether necessary findings of fact are supported by substantial evidence. Gilotty v. Township of Moon, 846 A.2d 195 (Pa. Cmwlth. 2004).

it is obvious from the Board's detailed conclusion that it resolved credibility questions in favor of Camden. We note in addition that the competency or sufficiency of Camden's evidence supporting conclusion of law number six is not challenged. When considering sufficiency of the facts our Supreme Court has required that '[e]nough must be stated to enable the Court to see that there was due consideration and weighing of the evidence in its legal relations.' Lindquist Appeal, 364 Pa. 561, 564-65, 73 A.2d 378, 381 (1950). We hold that the Board's adjudication when read in its entirety meets this test, and hence dismiss the Committee's challenge on this ground.

Ad Hoc Committee for Betterment of Port Richmond v. Zoning Board of Adjustment of Philadelphia, 518 A.2d 614, 617 (Pa. Cmwlth. 1986). Compare Turner v. Civil Service Commission, 462 A.2d 306 (Pa. Cmwlth. 1983) (in a civil service matter involving the firing of a police officer for misconduct, the Court held that the commission's decision failed to comply with section 555 of the law because it contained no findings of fact regarding which charges against the officer were substantiated by the evidence, what facts that constituted just cause for termination of employment, or the credibility of the testimony).

In the instant case, Council issued a written adjudication, containing twenty-four findings of fact and a lengthy, detailed discussion of the evidence that explains the basis and rationale of its decision. Contrary to Mason's argument, Council discussed Dr. Bonner's treatment of Mason extensively. (R.R. at 134a-36a, 139a-40a.) Even if Council had not discussed Dr. Bonner's opinion, the failure to mention testimony in a decision does not compel a conclusion that it was not considered. Colt Industries v. Workmen's Compensation Appeal Board, 415 A.2d 972 (Pa. Cmwlth. 1980). Moreover, it is obvious from the adjudication that Council resolved all issues regarding the weight and credibility of the medical evidence in

favor of the opinions of Dr. Maslow.⁴ Although Mason disagrees with Council's determination, matters involving the weight and credibility of the evidence are within the exclusive province of the fact finder. In re: Appeal of Nevling, 907 A.2d 672 (Pa. Cmwlth. 2006). Therefore, we conclude that the Council's adjudication complies with section 555 of the Law and is sufficient to permit meaningful appellate review.

Mason also argues that his due process rights were violated because only three of the five members of Council conducted his HLA hearing and only three members signed the adjudication. However, no provision of the Law prevents a local agency from assigning the duty to conduct a hearing to a committee comprised of fewer than all its members. The record shows that Council voted to terminate Mason's benefits at a Council meeting and that a majority of the members of Council signed the adjudication. (R.R. at 3a, 153a; Mason's brief at 6.) The record also establishes that Mason was afforded notice and opportunity to be heard, and he had an opportunity at the hearing to present evidence and question witnesses. (R.R. at 12a-26a, 34a.) Therefore, we conclude that Mason's due process rights were not violated.

Next, Mason contends that the trial court erred by concluding that Council was not collaterally estopped from terminating Mason's HLA benefits in

⁴ In contrast to the reasoned decision requirements governing workers' compensation cases, there is no per se requirement that all agency decisions involving conflicting evidence must provide the same level of detail for the rejection of testimony as demanded by section 422(a) of the Workers' Compensation Act, 77 P.S. §834. Bethea-Tumani v. Bureau of Professional and Occupational Affairs, State Board of Nursing, 993 A.2d 921 (Pa. Cmwlth. 2010).

light of the WCJ's decision denying the Township's termination and suspension petitions.⁵ We disagree.

The doctrine of collateral estoppel is not retrospective in nature, but rather precludes *future* litigation of issues of fact or law, which were litigated and necessary to a previous final judgment. Volkswagon of America v. Workers' Compensation Appeal Board (Bennett), 858 A.2d 151 (Pa. Cmwlth. 2004). Collateral estoppel only forecloses the relitigation of facts or issues of law that *have been determined* by a final judgment on the merits. Department of Corrections v. Workers' Compensation Appeal Board (Wagner-Stover), 6 A.3d 603 (Pa. Cmwlth. 2010).

Here, Council issued its decision terminating Mason's HLA benefits more than six months *before* the WCJ issued her decision. The WCJ's findings and credibility determination in favor of Mason were not in existence when Council terminated Mason's HLA benefits. Although Mason argues that the Township presented the same evidence in both the HLA and workers' compensation proceedings and litigated them simultaneously, this does not alter the fact that no final judgment on the merits of the workers' compensation petitions existed at the

⁵ Collateral estoppel is a legal doctrine intended to preclude the relitigation of issues of law or fact in a subsequent action. Galloway v. Workmen's Compensation Appeal Board (Pennsylvania State Police), 690 A.2d 1288 (Pa. Cmwlth. 1997). Collateral estoppel prevents the relitigation of an issue of law or fact when the following factors are demonstrated: (1) the legal or factual issues are identical; (2) they were actually litigated; (3) they were essential to the judgment; and (4) they were material to the adjudication. Id.

time Council issued its decision. Therefore, we conclude that collateral estoppel is inapplicable here.⁶

Accordingly, the trial court's order is affirmed.⁷

PATRICIA A. McCULLOUGH, Judge

⁶ For a thorough discussion of the preclusive effect of an agency adjudication in a subsequent proceeding and the interplay between full salary compensation and the Workers' Compensation Act, see Wagner-Stover.

We also note that Mason's reliance upon Kohut v. Workmen's Compensation Appeal Board (Township of Forward), 621 A.2d 1101 (Pa. Cmwlth. 1993), is misplaced. Unlike the instant case, in Kohut, the township terminated HLA benefits on the ground that Kohut was permanently disabled and then successfully terminated workers' compensation benefits on the contradictory ground that Kohut was not disabled at all. Applying collateral estoppel, we held that the township was not permitted to assert a contrary position in the workers' compensation proceeding for the same period of time. See Benginia v. Workers' Compensation Appeal Board (City of Scranton), 805 A.2d 1272 (the holding in Kohut merely prevents the employer from arguing contrary positions for the same time period in order to satisfy different legal standards). Moreover, we have specifically limited the holding in Kohut to its facts. City of Pittsburgh v. Workers' Compensation Appeal Board (McGrew), 785 A.2d 170 (Pa. Cmwlth. 2001).

⁷ Mason also contends that Council's adjudication is unsupported by substantial evidence. However, the record reflects that Mason did not raise that issue in his notice of appeal to the trial court, (R.R. at 4a-5a), and thus it is waived. DiCiaccio v. Civil Service Commission of City of Philadelphia, 389 A.2d 703 (Pa. Cmwlth. 1978) (issues which have not been raised in the lower court are waived and cannot be raised for the first time on appeal). Even if the issue was properly before us, we would conclude that Council's findings are amply supported by the evidence.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Fred Mason,	:	
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Appellant	:	
	:	No. 1255 C.D. 2010
v.	:	
	:	
Upper Providence Township	:	

ORDER

AND NOW, this 17th day of March, 2011, June 7, 2010, order of the Court of Common Pleas of Delaware County is hereby AFFIRMED.

PATRICIA A. McCULLOUGH, Judge