

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ramiz Omerovic,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation Appeal	:	
Board (Archer Daniels Midland	:	
Company),	:	No. 1473 C.D. 2009
	:	
Respondent	:	Submitted: November 13, 2009

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: February 9, 2010

Ramiz Omerovic (Claimant) petitions for review of the July 7, 2009 Order of the Workers' Compensation Appeal Board (Board) that affirmed the Workers' Compensation Judge's (WCJ) decision granting Archer Daniels Midland Company's (Employer) termination petitions, dismissing as moot Claimant's review medical petition, and granting Employer's request for an offset of short-term disability benefits. The issues before this Court are as follows: (1) whether the Board erred in affirming the WCJ's decision granting the Employer's termination petitions; and, (2) whether the Board erred in dismissing, as moot, Claimant's review medical

petition.¹ The essence of the issue before this Court is whether the decision of the WCJ is a reasoned decision. For the reasons that follow, we affirm the Board's order.

This case involves two complete sets of adjudicatory proceedings before the WCJ and the Board.² In the initial proceedings, Claimant filed a claim petition and an amended claim petition. Employer filed answers to same, denying the claims. Employer then filed a termination petition. The WCJ consolidated, for purposes of hearing, the claim petitions and the termination petition. He granted the Claimant's claim petitions and denied the Employer's termination petition. The Employer appealed to the Board. The Board, *inter alia*, affirmed the WCJ's decision granting Claimant's claim petition and denying Employer's termination petition, and remanded the matter to the WCJ. In the interim, while the decision of the Board was pending, Employer filed two termination petitions and Claimant filed a review medical petition. These petitions were consolidated before the WCJ, along with the remand order of the Board. The WCJ then granted Employer's termination petitions, dismissed Claimant's review medical petition as moot, and granted Employer's request for an offset of short-term disability benefits. Claimant then filed this instant appeal with this Court.³

A review of Claimant's "Statement of [four] Questions Involved," and Claimant's three "Arguments" reveals two specific issues/arguments that Claimant now raises on appeal. (Claimant's Br. at 4, 13). With regard to the WCJ's decision

¹ There were three components to the WCJ's decision. Claimant does not seek a review of the third aspect of the WCJ's decision, i.e., the granting of an offset of short-term disability benefits.

² The complete procedural history of this case can be gleaned from the opinion of the Board in this matter. *See* Board Op. at 2-3.

³ "The Court's review of the Board's order is limited to determining whether Claimant's constitutional rights have been violated, whether an error of law has been committed or whether the necessary findings of fact are supported by substantial evidence." *ESAB Welding & Cutting Prods. v. Workers' Comp. Appeal Bd. (Wallen)*, 978 A.2d 399, 401 n.2 (Pa. Cmwlth. 2009).

granting Employer's termination petition, Claimant implicitly argues that the decision is not a "reasoned decision" as required by Section 422(a) of the Workers' Compensation Act (Section 422(a)).⁴ With regard to the WCJ's decision dismissing, as moot, Claimant's medical review petition, Claimant explicitly argues that the decision is not a "reasoned decision." Addressing Claimant's arguments, this Court will first consider the legal requirements for a reasoned decision. Next this Court will analyze the issue of the "mootness" of the Claimant's review medical petition, in light of the granting of Employer's termination petitions. Finally, this Court will address the matter of the alleged "abuse of discretion" by the WCJ in his failure to receive evidence regarding the review medical petition.

Reasoned Decision

The workers' compensation jurisprudence regarding "reasoned decision" is quite explicit.

All parties to an adjudicatory proceeding are entitled to a **reasoned decision** containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. Uncontroverted evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

⁴ Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. § 834.

Section 422(a) (emphasis added).

This Court agrees fully with the observation of the Board in its “reasoned decision” analysis:

The judge accepted the opinions of Defendant’s medical experts that Claimant had fully recovered from his work injuries as of March 27, 2007 and thus, his Decision granting Defendant’s Termination Petitions and denying Claimant’s Medical Review Petition is supported by evidence of record.

(Board Op. at 6).

The WCJ Decision in this case consisted of sixty-four specific findings of fact and four specific conclusions of law, virtually all of which addressed evidentiary matters related to competence, credibility and weight of the expert testimony of the parties and the testimony of Claimant. Several of those findings are absolutely unequivocal as they relate to the crediting of Employer’s evidence and the discrediting of Claimant’s evidence. *See, e.g.*, WCJ Decision, Findings of Fact ¶¶ 6, 27, and 56-61. Moreover, paragraphs 62 and 63 of the WCJ’s Findings of Fact and paragraphs 2 and 3 of the WCJ’s Conclusions of Law succinctly and clearly addressed the underlying legal issues. Within the context of this case, it is quite clear that the WCJ issued a “reasoned decision.” *See generally*, WCJ Decision.

Review Medical Petition and the Issue of Mootness

The primary focus of Claimant’s brief seems to be on the notion of “reasoned decision” within the context of the WCJ’s dismissal of the review medical petition for mootness. With regard to the review medical petition, Claimant argues as follows:

Except for acknowledging that the Claimant had filed a Review Medical Petition, [the WCJ] did not further discuss it in his 64 findings of fact and only mentioned that it was moot in his conclusions of law

The Claimant's appeal should be granted . . . because it precludes effective appellate review by the absence of any explanation of why or on what basis WCJ Weyl based his conclusion and order that the Claimant's medical treatment petition [was moot].

(Claimant's Br. at 13) (citations omitted).

In the view of this Court, there are two threshold matters that must be addressed within the context of Claimant's argument regarding reasoned decision and mootness.

First and foremost, there was virtually no evidence of record presented by Claimant in support of his review medical petition. It is axiomatic that Claimant had the burden of proof as it related to his review medical petition. *Thomas Jefferson University Hospital v. Workers' Comp. Appeal Bd. (O'Hara)*, 745 A.2d 709, 711-12 (Pa. Cmwlth. 2000). So, it is inconceivable that the WCJ could issue a decision, reasoned or otherwise, related to the review medical petition, if Claimant, the proponent of the petition, failed to present any evidence prior to the close of the record and prior to the WCJ issuing a decision finding Claimant had fully recovered from the work injuries in question. So, Claimant's citation to, and reliance upon *Daniels* and *Higgins*, is not relevant, since there was substantial competent evidence of record in both of those cases, as distinguished from the absence of relevant, competent evidence of record in this case.

Secondly, there is a matter of logic that must be considered, which matter was addressed by the Board.

The Judge granted Defendant's Termination Petitions, terminating benefits for both work injuries effective March

27, 2007. He dismissed the Medical Review Petition after concluding that the medical treatment Claimant did or will receive after March 27, 2007 was not related to the work injuries.

(Board Op. at 3-4) (emphasis added).

So, the decision of the WCJ, as affirmed in the opinion of the Board, with regard to the review medical petition, fully comports with the governing legal standards for “reasoned decisions” as set out in Section 422(a), and the relevant judicial opinions.

Abuse of Discretion

Related to Claimant’s argument regarding the WCJ’s dismissal of Claimant’s review medical petition for mootness, is the issue of whether the WCJ abused his discretion within the context of 34 Pa. Code § 131.13 (m)(1) in failing to “reopen the record” on October 15, 2008, to receive the medical report related to the review medical petition. The Board, comprehensively analyzed this issue.

The duty of a WCJ is to resolve the claims before him in a fair and efficient manner and a judge’s decision to reopen or not to reopen a record in a particular case will not be reversed absent an abuse of discretion.

. . . .

Claimant argues that the Judge should have waited to receive the October 15, 2008 report of his medical expert and requests that the Decision be vacated and the case be remanded so that the Judge can consider this report before once again deciding the merits of the Termination Petitions.^{5]} We cannot agree that the Judge abused his discretion in failing to wait for Claimant to submit

⁵ The gist of Claimant’s argument regarding the review medical petition is that there was a worsening of his medical condition as a result of the medication prescribed for the pain he was experiencing as a result of the work injury.

additional evidence and therefore, we must decline Claimant's request.

As indicated, Claimant had filed his Review Petition on February 27, 2008 and by the time of the April 4, 2008 hearing, had not yet scheduled the deposition of any expert regarding the drug addiction issue. During that April 4, 2008 hearing, the Judge indicated that he would be open to considering a continuance if such request was made in a timely manner. However, there is no evidence that such a request for extension was ever made by Claimant.¹ Given these circumstances, we do not believe that the Judge abused his discretion in not waiting for the submission of Claimant's additional medical evidence and deciding the merits of the Review and Termination Petitions based on the evidence of record.

(Board Op. at 4-6) (citations and footnote omitted).

This Court agrees with the analysis and conclusion of the Board affirming the WCJ's "reasoned decision" in granting Employer's termination petition, and dismissing, as moot, Claimant's review medical petition.⁶ Accordingly, the Board's order is affirmed.

JOHNNY J. BUTLER, Judge

⁶ This Court acknowledges that Employer is of the view that Claimant has waived his right to raise this issue on appeal. (Employer's Br. at 12). However, in this Court's view the Claimant implicitly addresses this issue on pages 15 and 16 of his brief. Even though he focuses on 34 Pa. Code § 131.13(m)(1), within the context of the language, "upon the making of appropriate findings of fact," he does make a request that we "reverse, vacate and remand" to take further evidence on the review medical petition.

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ORDER

AND NOW, this 9th day of February, 2010, the July 7, 2009 Order of the Workers' Compensation Appeal Board is affirmed.

JOHNNY J. BUTLER, Judge