IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cognex, Inc., Petitioner	:	
v.	:	No. 1556 C.D. 2009
	:	Submitted: January 22, 2010
Workers' Compensation Appeal Board (Scott), Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: March 26, 2010

Cognex, Inc. (Employer) petitions for review of a final order of the Workers' Compensation Appeal Board (Board), which affirmed the decision of a workers' compensation judge (WCJ), granting Richard Scott's (Claimant) claim petition and awarding him ongoing total disability benefits, denying Claimant's penalty petition, and denying Employer's modification petition. We affirm.

Claimant, a California resident, worked for Employer as a field service engineer. On February 16, 2005, Claimant filed a claim petition alleging that he sustained an injury in the course and scope of his employment on April 8, 2002, when he fell and caught himself, injuring his low back, left shoulder, wrist and left thumb, and sustaining a herniated disc in his neck, at a worksite in Hazleton, Pennsylvania. Claimant further alleged that he was fully disabled as of

August 12, 2002. Employer did not appear at the WCJ hearing on April 5, 2005 and did not file an answer to the claim petition until April 20, 2005.

At the hearing, Claimant moved for an order granting his petition pursuant to Section 416 of the Workers' Compensation Act[1] (Act) and Yellow Freight System, Inc. v. Workmen's Compensation Appeal Board (Madara), 423 A.2d 1125 (Pa. Cmwlth. 1981) (in the absence of an adequate excuse, an employer's failure to file a timely answer constitutes an admission of the factual allegations in the petition). The WCJ determined that the allegations of the claim petition were deemed to be admitted by Employer's failure to timely file its answer. Based upon the admitted allegations, the WCJ found that Claimant was injured in the course and scope of his employment with Employer on April 8, 2002 and was fully disabled as of August 12, 2002. By order dated May 3, 2005, the WCJ granted Claimant's claim petition and awarded total disability benefits as of August 12, 2002, medical expenses, and unreasonable contest fees. Employer appealed to the Board.

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[1] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §821. This section provides:

> Within twenty days after a copy of any claim petition or other petition has been served upon an adverse party, he may file with the department or its workers' compensation judge an answer in the form prescribed by the department.
>
> Every fact alleged in a claim petition not specifically denied by an answer so filed by an adverse party shall be deemed to be admitted by him. But the failure of any party or of all of them to deny a fact alleged in any other petition shall not preclude the workers' compensation judge before whom the petition is heard from requiring, of his own motion, proof of such fact. If a party fails to file an answer and/or fails to appear in person or by counsel at the hearing without adequate excuse, the workers' compensation judge hearing the petition shall decide the matter on the basis of the petition and evidence presented.

Before the Board, Employer argued that the WCJ erred in granting Claimant's claim petition on the basis of the allegations contained therein; by ignoring Employer's late answer and not permitting it to present an excuse for the delay; and by not finding that Claimant committed fraud by failing to disclose a similar claim he filed in Kentucky seeking benefits for an injury in August 2002. Employer also argued that it should have been allowed to contest the duration of Claimant's work-related disability. By order dated October 26, 2006, the Board affirmed in part and vacated in part. The Board affirmed the WCJ's application of Section 416 of the Act and the award of benefits through March 23, 2005. The Board vacated the WCJ's award of ongoing indemnity benefits and unreasonable contest attorney's fees. The Board determined that Employer' failure to file a timely answer is only an admission of disability until the last day that an answer could have been filed, i.e., March 23, 2005. The Board remanded the matter to the WCJ to allow Employer to present evidence to rebut the presumption of disability or entitlement to benefits after March 23, 2005, for findings as to any receipt of benefits under Kentucky law and a finding as to a possible credit under Section 305.2(b) of the Act,[2] and for reconsideration of the reasonableness of Employer's contest.[3]

Before the remand hearing, the parties filed additional petitions. On January 25, 2007, Employer filed a modification petition, alleging that work was generally available to Claimant. Claimant filed an answer denying the material averments contained therein. On June 11, 2007, Claimant filed a penalty petition,

[2] Added by the Act of December 5, 1974, P.L. 782, 77 P.S. §411.2(b).

[3] From this decision, Employer filed an appeal with this Court, which was dismissed as interlocutory because the matter was remanded to the WCJ for further proceedings.

alleging that Employer violated the Act by failing to pay reasonable and necessary medical expenses. Employer filed an answer denying the material averments contained therein. These petitions were consolidated with the remanded claim petition.

At the remand hearing, Claimant testified and presented the deposition testimony of Mannie Joel, M.D., who is board certified in anesthesiology and pain management. Employer presented the deposition testimony of Robert McIvor, M.D., a board certified orthopedic surgeon.

Based upon the testimony and evidence presented, the WCJ found that Claimant's April 2002 work injury in Pennsylvania was a significant and meaningful cause of his current condition, that his second work injury in August 2002 in Kentucky would not have happened the way it did were it not for the first injury, and that his condition was the result of both injuries plus surgery undertaken for one of those injuries. The WCJ found that Claimant initially filed a claim in Kentucky for workers' compensation benefits alleging that his disability was caused by the August 2002 injury; Employer paid temporary total disability benefits totaling $37,287.47; the Kentucky claim was ultimately denied. The WCJ further found that Employer's contest of the claim for ongoing benefits was reasonable, based upon the testimony of its medical expert that Claimant's disability was not the result of his April 2002 work injury. The WCJ found that Employer did not establish that work was available to Claimant and that its contest in the modification petition was unreasonable. Lastly, the WCJ determined that Claimant presented no evidence that the medical bills in question were submitted in accordance with the requirements of the Act.

By order dated April 9, 2008, the WCJ granted the claim petition, ordered Employer to pay total disability benefits until further order or agreement,

with a credit of $37,287.47 for benefits already paid under Kentucky law, and Claimant's medical expenses for his work injury. The WCJ denied Claimant's penalty petition and Employer's modification petition. Employer appealed. The Board affirmed. This appeal now follows.[4]

Employer raises the following issues for our review:

1. Whether the WCJ had jurisdiction to award Pennsylvania disability benefits where Claimant presented evidence, accepted by the WCJ, that his disability was caused by a subsequent Kentucky injury as a matter of law.

2. Whether the WCJ erred by granting the claim petition because the award was procured by fraud and improper conduct where Claimant failed to disclose on his claim petition, or to the WCJ, that he was litigating a claim for the same period of disability in Kentucky and had actually received disability benefits in Kentucky for the same period of disability.

3. Whether the Board erred, in its first opinion, by failing to remand the case to the WCJ to give Employer the opportunity to present evidence on whether it had an adequate excuse for its late answer, and instead issued its own findings of fact, not based upon any evidentiary record, that Employer did not have an adequate excuse for its late answer.

4. Whether the WCJ erred by granting the claim petition because Employer had an adequate excuse for the late answer where Employer was not afforded sufficient notice under the Act due to the actions of the Bureau of Workers' Compensation (Bureau) of the Department of Labor and Industry (Department) and Claimant.

[4] 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. Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995).

5. Whether the WCJ erred, in her first decision, by determining that Claimant met his burden of proof on the issue of notice based upon the allegation in his claim petition where he did not identify whether the individual notified was a supervisor or someone else to whom notice can be properly given.

6. Whether the WCJ erred as a matter of law by awarding disability benefits after March 23, 2005 based upon Claimant's April 8, 2002 work injury in Pennsylvania where Claimant continued to work without wage loss and sought no medical treatment for his injury until after he suffered a second work injury to the same body part in Kentucky on August 6, 2002 and where Claimant's medical expert testified that the Kentucky injury aggravated Claimant's Pennsylvania injury, and that the Kentucky injury actually caused Claimant's disability.

7. Whether the WCJ erred by failing to issue a reasoned decision where she did not address nor make any findings of fact regarding sixteen defense exhibits submitted into evidence to show that Claimant's disability was attributable to the subsequent Kentucky injury.

First, Employer contends that WCJ did not have jurisdiction to award Pennsylvania disability benefits where Claimant presented evidence, accepted by the WCJ, that his disability was caused by a subsequent Kentucky injury. We disagree.

Subject matter jurisdiction relates to the competency of a court or tribunal to hear and determine controversies of the general nature of the matter involved. Chiro-Med Review Co. v. Bureau of Workers' Compensation, 908 A.2d 980 (Pa. Cmwlth. 2006). It is well-settled that parties cannot confer subject matter jurisdiction on a tribunal by agreement or stipulation. Zuver v. Workers' Compensation Appeal Board (Browning Ferris Industries of PA, Inc.), 755 A.2d 112 (Pa. Cmwlth. 2000). An objection to subject matter jurisdiction can

never be waived; it may be raised at any stage of the proceedings or by a court *sua sponte*. Stover v. Workmen's Compensation Appeal Board (SCI Graterford), 671 A.2d 1217 (Pa. Cmwlth.), petition for allowance of appeal denied, 546 Pa. 687, 686 A.2d 1315 (1996).

Section 416 of the Act, 77 P.S. §821, provides that within twenty days after a copy of any claim petition or other petition has been served upon an adverse party, he may file with the Department or the WCJ an answer in the form prescribed by the Department. Where an employer fails to file a timely answer without adequate excuse, every fact alleged in a claim petition shall be deemed admitted. Section 416 of the Act. The failure to file a timely answer precludes an employer from presenting any evidence in rebuttal or as an affirmative defense with respect to those alleged facts. Greeley v. Workmen's Compensation Appeal Board (Matson Lumber Co.), 647 A.2d 683 (Pa. Cmwlth. 1994), petition for allowance of appeal granted, 540 Pa. 607, 655 A.2d 994 (1995) (appeal discontinued July 19, 1995); Yellow Freight. The WCJ may only consider the allegations set forth in the claim petition and any additional evidence presented by the claimant. Id.

While Section 416 provides a claimant the advantage of establishing certain facts, it does not operate to automatically satisfy a claimant's burden of proof. Dandenault v. Workers' Compensation Appeal Board (Philadelphia Flyers, Ltd.), 728 A.2d 1001 (Pa. Cmwlth. 1999); Heraeus Electro Nite Co. v. Workmen's Compensation Appeal Board (Ulrich), 697 A.2d 603 (Pa. Cmwlth. 1997), petition for allowance of appeal granted, in part, 551 Pa. 431, 710 A.2d 1139 (1998), and appeal dismissed, 554 Pa. 512, 721 A.2d 1095 (1999); Greeley. In every claim proceeding, the claimant bears the burden of proving all elements necessary to support an award of compensation, including proof of a causal relationship

between the claimant's injury and his disability. Inglis House v. Workmen's Compensation Appeal Board (Reedy), 535 Pa. 135, 634 A.2d 592 (1993).

Only factual allegations listed in workers' compensation claim petition, as opposed to conclusions of law, are deemed admitted based on a late answer to the claim petition. Neidlinger v. Workers' Compensation Appeal Board (Quaker Alloy/CMI Intern.), 798 A.2d 334 (Pa. Cmwlth. 2002). A claimant is only entitled to a rebuttable presumption that his disability continues after the last date that Employer should have filed an answer. Chik-Fil-A v. Workers' Compensation Appeal Board (Mollick), 792 A.2d 678 (Pa. Cmwlth. 2002); Heraeus. Employer is not barred, therefore, from presenting evidence itself, or attempting to discredit the Claimant's evidence, to rebut the presumption that Claimant's disability continues into the indefinite future. Id. The instant matter was remanded to the WCJ to determine just that.

Here, by virtue of its failure to file a timely answer, Employer admitted that Claimant sustained a work injury in Pennsylvania. Claimant pled and the WCJ found that Claimant was injured on April 8, 2002 while working as a field service engineer for Employer resulting in injury to the left shoulder, neck, low back wrist and left thumb and in a herniated disc in his neck, fully disabling Claimant from August 12, 2002 and ongoing. These admitted allegations bestow subject matter jurisdiction on the WCJ and support a conclusion that Claimant's injury arose in the course and scope of Pennsylvania employment and was related thereto. The fact that Claimant incurred a subsequent injury on August 6, 2002 while working for Employer in Kentucky, which contributed to Claimant's disability, did not deprive the WCJ of jurisdiction in determining whether Claimant suffered a loss of earning power as a result of the Pennsylvania injury. We, therefore, conclude that the WCJ did not err in this regard.

Next, Employer contends that the WCJ erred by granting the claim petition because the award was procured by fraud and improper conduct where Claimant failed to disclose on his claim petition, or to the WCJ, that he was litigating a claim for the same period of disability in Kentucky and had actually received disability benefits in Kentucky for the same period of disability. We disagree.

A person commits a fraudulent offense by "[k]nowingly and with the intent to defraud … files … a document that contains false, incomplete or misleading information concerning any fact or thing material" to the workers' compensation insurance claim. Section 1102 of the Act, 77 P.S. §1039.2.[5] The claim petition questionnaire asked whether "there is other pending litigation in this case" to which Claimant responded "no". While it is true that Claimant litigated a claim for the same period of disability in Kentucky and had received disability benefits in Kentucky for the same period of disability, the Kentucky case is not "this case." The Kentucky claim involved a different injury and was ultimately dismissed. Employer was credited for compensation that was paid under the Kentucky claim.[6] We conclude that Claimant's failure to recount the Kentucky litigation does not amount to fraud.

Employer contends that the Board erred by failing to remand the case to the WCJ to give Employer the opportunity to present evidence on whether it had

[5] Added by the Act of July 2, 1993, P.L. 1904, as amended.

[6] Payment of compensation benefits under the laws of another jurisdiction, for an injury otherwise compensable under the Act, does not bar the receipt of benefits under the Act, although the benefits paid or awarded to the employee under the laws of the other jurisdiction are to be credited against the amount due under the Act. Section 305.2(b) of the Act, 77 P.S. §411.2(b).

an adequate excuse for its late answer, and instead issued its own findings of fact, not based upon any evidentiary record, that Employer did not have an adequate excuse for its late answer. Employer contends it had an adequate excuse for the late answer because it was not afforded sufficient notice under the Act due to the actions of the Bureau and Claimant. We disagree.

As discussed above, the failure to file a timely answer to a claim petition results in admission of the facts alleged in that petition. Section 416 of the Act, 77 P.S. §821; William J. Donovan Sheet Metal v. Workers' Compensation Appeal Board (McCollum), 789 A.2d 344 (Pa. Cmwlth. 2001), petition for allowance of appeal denied, 569 Pa. 688, 800 A.2d 936 (2002); Yellow Freight. An employer may avoid the consequences of Section 416 by presenting an adequate excuse for its late answer. Ghee v. Workers' Compensation Appeal Board (University of Pennsylvania), 705 A.2d 487 (Pa. Cmwlth. 1997), petition for allowance of appeal denied, 555 Pa. 734, 725 A.2d 184 (1998); Straub v. Workmen's Compensation Appeal Board (City of Erie), 538 A.2d 965 (Pa. Cmwlth. 1988), aff'd, 528 Pa. 347, 598 A.2d 27 (1991). An adequate excuse does not include factors within the control of the party responsible for filing the answer. City of Philadelphia v. Workers' Compensation Appeal Board (Candito), 734 A.2d 73 (Pa. Cmwlth.), petition for allowance of appeal denied, 561 Pa. 661, 747 A.2d 902 (1999). The failure to properly serve an employer with a copy of the claim petition can constitute an adequate excuse for an untimely answer. Abex Corp. v. Workmen's Compensation Appeal Board (Scears), 665 A.2d 845 (Pa. Cmwlth. 1995), petition for allowance of appeal denied, 545 Pa. 671, 681 A.2d 1343 (1996).

With regard to service, Section 775 of the Act, 77 P.S. §414, provides:

> Whenever a claim petition or other petition is presented to the department, the department shall, by general rules or special order, assign it to a workers' compensation judge for hearing. …
>
> The department ***shall serve*** upon each adverse party a ***copy of the petition, together with a notice that such petition will be heard by the workers' compensation judge to whom it has been assigned*** (giving his name and address) as the case may be, and shall mail the original petition to such workers' compensation judge, together with copies of the notices served upon the adverse parties.

Pursuant to the Special Rules of Administrative Practice and Procedure before Workers' Compensation Judges, a moving party, concurrently with filing the petition with the Bureau, must serve a copy of the petition "upon all other parties, including the insurance carrier, if known, ***and on the attorneys of all other parties, if the attorneys are known.***" 34 Pa. Code. §131.32(c) (emphasis added).

In Abex, the claimant filed a claim petition on August 26, 1985, alleging a work-related injury. The claimant failed to send a copy to the employer. Additionally, the Bureau's notice of assignment and the scheduling of a hearing, sent on August 29, 1985, was not properly addressed to either the employer's place of business, or its insurance carrier, because its plant was closed for over one year and only reached the employer's attorney on September 28, 1985. An answer by the employer was then filed on October 2, 1985, four days later. The WCJ held that the employer failed to offer an adequate excuse for its delayed answer because it could not prove there was an error on the part of the United States Postal Service. The Board affirmed.

On appeal to this Court, we held that the claimant was obligated, but failed, to send copies of the petition to the employer, the insurance carrier or the employer's counsel, despite clearly knowing where to reach each of these entities. Abex. The claimant knew the identity of the employer's attorney because the claimant averred that ongoing discussions on discovery matters were held by the parties prior to the filing of the petition. Id. The claimant also failed to provide the Bureau with a complete address for the employer or identification of the insurance carrier. Id. We concluded that the claimant's failure to serve the employer constituted an adequate excuse for the employer's late answer. Id.

In Heraeus, the Bureau failed to mail a copy of the petition and notice of assignment to the insurer, but did send the same to the employer. While the employer argued that the failure to serve the insurer constituted defective service and thus an adequate excuse for the untimely answer, we disagreed. Heraeus. We opined that not every failure by the Bureau to properly serve an adverse party automatically results in an adequate excuse for a late answer under Section 416 of the Act. Id. We held:

> [W]hen there is service of a claim on the employer by the Department, the Department's noncompliance with statutory formality by failing to notify the employer's insurance carrier does not provide an adequate excuse to forgive an employer for filing a late answer. The employer, as the entity in the best position to identify the proper carrier, is responsible for providing actual notice to its own insurance carrier so that an answer may be timely filed.

Id., 697 A.2d at 607. We determined that the Department's notice to the wrong carrier and then its subsequent failure to directly notify the insurer did not serve as an act or omission that interfered with either the employer's or the insurer's ability to effectuate a timely filing. Id. at 608.

In Ghee, we opined that the failure of a claimant to serve a copy of the claim petition on the employer at the time he or she files the petition with the Bureau does not act as an automatic indefinite stay of proceedings for the employer to file the answer. An "adequate excuse" is not a license for an employer to sit back and leisurely file its answer. Ghee. Thus, an adequate excuse was not found where although the claimant failed to send a copy of her petition to the employer, the Bureau properly served a copy of the petition on the employer in a timely fashion. Id.

Here, Employer filed its answer well beyond the twenty-day time limit prescribed by the Act and after the hearing before the WCJ was held. Neither the answer nor the letter which accompanied it acknowledged or provided an explanation for the untimeliness. Reproduced Record (R.R.) at 8a-11a. While Employer requested the Board to remand the case to the WCJ to give Employer the opportunity to present evidence on whether it had an adequate excuse for its late answer, the adequacy of Employer's excuse can be determined as a question of law.

Employer offered multiple reasons for its untimely answer. First, Employer claimed that the Bureau did not properly serve Employer with a copy of the claim petition. There is no dispute that the notice of assignment was served on both Employer and its insurer. While a copy of the petition was only served on the insurer, not Employer, such omission on its own does not automatically excuse the delay. The notice of assignment put Employer on notice that Claimant filed a claim petition, which was assigned to a WCJ for hearing. The notice in and of itself alerted Employer to defend itself and at the very least inquire further with the Bureau or Employer's insurer, which was properly served with the notice of assignment and the petition. Further, Employer admitted that both Employer and

its insurer were served with a copy of the claim petition by Claimant's counsel. The Bureau's omission in light of the other service made is not an adequate excuse for Employer's untimely answer.

Second, Employer contends that its late answer should be excused because Claimant did not serve a copy of the claim petition on Employer's attorney. Service upon the attorney is only required if the attorney is known. 34 Pa. Code. §131.32(c). While Claimant knew the identity of the attorney who was handling the Kentucky claim, there is no indication that Claimant knew or should have known which attorney would represent Employer in Pennsylvania. Even if Employer was able to establish that the Kentucky attorney should have been served, unlike the situation in Abex, Employer and its insurer received service of the claim petition and the notice of assignment, albeit not in strict compliance with the regulatory requirements. In light of the service made, any failure to serve Employer's Kentucky attorney does not excuse Employer's untimely response.

Lastly, Employer claims that its employees and insurer's agents confused this case with the Kentucky case. The inability to distinguish between a Pennsylvania claim and a Kentucky claim is attributable to Employer and its agents, not Claimant. Delays attributable to, and within the control of, the party failing to timely answer have been held to be inadequate. Candito (the employer was unable to show that the excuse for the delay was attributable to anyone other than itself); Ghee (delay attributed to employer's mailroom practices was found not acceptable); Metro Ambulance v. Workmen's Compensation Appeal Board (Duval), 672 A.2d 418 (Pa. Cmwlth. 1996) (delay attributed to inability to obtain legal representation not adequate); Straub (only excuse offered by the employer for the lateness was its assertion that the delay did not prejudice the claimant).

The Board properly determined that the excuses offered by Employer, even if supported by evidence, were inadequate as a matter of law. We conclude that the Board did not err by disposing of the issue without remanding the matter to the WCJ for an evidentiary hearing.[7]

Employer contends that the WCJ erred, in her first decision, by determining that Claimant met his burden of proof on the issue of notice based upon the allegation in his claim petition where he did not identify whether the individual notified was a supervisor or someone else to whom notice can be properly given. We disagree.

A claimant bears the burden of proving timely notice to the employer. Gribble v. Workers' Compensation Appeal Board (Cambria County Association for the Blind), 692 A.2d 1160 (Pa. Cmwlth.), petition for allowance of appeal denied, 549 Pa. 719, 701 A.2d 579 (1997). By failing to provide timely notice, a claimant forfeits his entitlement to compensation. Id. Section 311 of the Act provides:

> Unless the employer shall have knowledge of the occurrence of the injury, or unless the employe or someone in his behalf, or some of the dependents or someone in their behalf, shall give notice thereof to the employer within twenty-one days after the injury, ***no compensation shall be due until such notice be given, and, unless such notice be given within one hundred and twenty days after the occurrence of the injury, no compensation shall be allowed***.

77 P.S. §631 (emphasis added). Notice can be achieved either by proof of notice from a claimant or an employer's actual knowledge of the injury. Miller v. Workmen's Compensation Appeal Board (Atlas Powered Co.), 466 A.2d 787

[7] Had the Board found Employer's explanation legally sufficient, a remand would have been necessary to establish an evidentiary record in support thereof.

(Pa. Cmwlth. 1983). The notice must inform the employer that a certain employee received an injury, described in ordinary language, in the course of his employment on or about a specified time, at or near a place specified. Section 312 of the Act, 77 P.S. §632. The notice "may be given to the immediate or other superior of the employe, to the employer, or any agent of the employer regularly employed at the place of employment of the injured employe." Section 313 of the Act, 77 P.S. §633. "Knowledge of the occurrence of the injury on the part of any such agents shall be the knowledge of the employer." Id.

Here, Claimant alleged notice of his injury was served on Employer on April 8, 2002 in the following manner "reported to the customer, Mike Yard, and to Larone Smith at Cognex, Alameda," which is Employer's corporate address. R.R. at 5a. In the absence of a timely answer, these facts were admitted. While Claimant did not identify the position held by Larone Smith, Claimant's allegations in the claim petition are legally sufficient to meet Claimant's burden of proof that Employer was timely and properly notified. We, therefore, conclude that the WCJ did not err in determining that Claimant established notice.

Employer contends that the WCJ erred as a matter of law in determining that Claimant's disability after March 23, 2005 is the result of the Claimant's April 8, 2002 work injury in Pennsylvania. We disagree.

The WCJ, as the ultimate fact finder in workers' compensation cases, has exclusive province over questions of credibility and evidentiary weight, and is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. General Electric Co. v. Workmen's Compensation Appeal Board (Valsamaki), 593 A.2d 921 (Pa. Cmwlth.), petition for allowance of appeal denied, 529 Pa. 626, 600 A.2d 541 (1991). Determinations as to witness credibility and evidentiary weight are not subject to appellate review. Hayden v.

Workmen's Compensation Appeal Board (Wheeling Pittsburgh Steel Corp.), 479 A.2d 631 (Pa. Cmwlth. 1984).

At the remand hearing, Claimant testified that on April 8, 2002, he felt a pull in his left shoulder which was initially quite painful, but that the pain subsided from one day to the next. The pain was continuous through August 2002. Claimant testified that he continued working even though he was in pain. Claimant testified that he kept contacting Employer's human relations department so that he could get medical treatment from the company doctor prior to August 2002, but was unable to get a response from them. Claimant testified that on August 6, 2002, while working for Employer in Kentucky, he injured himself while attempting to break free frozen nuts on a light fixture. Claimant testified that as he pulled back, his left arm pulled out of the socket and when it went back, it didn't go back in the same place. Claimant experienced extreme pain and saw his doctor about four days later on August 12, 2002 upon returning to California.

Claimant's medical expert, Dr. Joel, testified that he first saw Claimant on February 10, 2003. Dr. Joel diagnosed Claimant with brachial plexoplathy based on neuropraxia, cervical disc disease, shoulder arthropathy and complex regional pain syndrome (CRPS). Dr. Joel opined that both injuries were essential elements in the development of Claimant's current problems and opined that Claimant is unable to return to work. Dr. Joel opined that the Kentucky injury would not have resulted in Claimant's physical condition if Claimant was not set up by the previous injury in Pennsylvania. Dr. Joel opined that if the Pennsylvania injury did not occur, the Kentucky injury would not have happened or if it did happen, would not have had such significance in the long run.

While Employer's expert, Dr. McIvor, testified that Claimant's condition and disability resulted from the Kentucky injury in August 2002, the

WCJ found the testimony of Dr. Joel to be more credible than the medical opinions offered by Dr. McIvor. The WCJ specifically credited Dr. Joel's opinions regarding Claimant's work-related diagnosis and his opinion that the injury in Pennsylvania on April 8, 2002 was a significant and meaningful cause of Claimant's current condition. The WCJ explained that Dr. McIvor admitted that his diagnosis of Claimant would not show up overnight, but would take months or even years to develop subsequent to an injury; he further admitted that the Pennsylvania injury was a factor in Claimant's disability, although he would only apportion 10%. These findings support the WCJ's conclusion that Claimant's ongoing disability is the result of the Claimant's April 8, 2002 work injury in Pennsylvania. The fact that Claimant was able to keep working following the April 2002 injury without wage loss and did not seek medical treatment for his injury until after he suffered a second work injury in August 2002 is not dispositive. We, therefore, conclude that the WCJ did not err in this regard.

Finally, Employer contends that the WCJ erred by failing to issue a reasoned decision where she did not address nor make any findings of fact regarding sixteen defense exhibits submitted into evidence to show that Claimant's disability was attributable to the subsequent Kentucky injury. We disagree.

Section 422(a) of the Act, 77 P.S. §834, provides, in pertinent part, that "[a]ll 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…", and "[t]he adjudication shall provide the basis for meaningful appellate review…" Section 422(a) of the Act requires a WCJ to set forth the rationale for the decision by specifying the evidence relied upon and reasons for

accepting it. When faced with conflicting evidence, the WCJ must adequately explain the reasons for rejecting or discrediting competent evidence. Section 422(a) of the Act. The WCJ may not reject uncontroverted evidence without reason or for an irrational reason, but must identify such evidence and explain adequately the reasons for its rejection. Id.

Section 422(a) does not require the WCJ to discuss all of the evidence presented. Stout v. Workers' Compensation Appeal Board (Pennsbury Excavating, Inc.), 948 A.2d 926 (Pa. Cmwlth.), petition for allowance of appeal denied, 599 Pa. 684, 960 A.2d 457 (2008); Montgomery Tank Lines v. Workers' Compensation Appeal Board (Humphries), 792 A.2d 6 (Pa. Cmwlth. 2002). The WCJ is only required to make the findings necessary to resolve the issues raised by the evidence and relevant to the decision. Id.

Here, Employer contends that its defense exhibits, which show that Claimant and his treating physicians attributed his condition to the Kentucky injury, were not addressed by the WCJ. Contrary to Employer's claims, the WCJ did address this evidence. The WCJ was presented with conflicting evidence. The WCJ chose to rely upon the testimony of Dr. Joel. The WCJ found that "[i]t did not surprise Dr. Joel that Claimant may have used the Kentucky date as the time when things really went downhill for him." WCJ's April 9, 2008 Decision, Finding of Fact (F.F.) at 32. "Dr. Joel admitted on cross exam that some of his reports indicate that Claimant's major problem was the Kentucky injury, but he explained that he wrote that from the patient's point of view." Id., F.F. at 33. Dr. Joel's testimony did not waiver that the Pennsylvania injury was an essential element in the development of Claimant's disability; but for the Pennsylvania injury, the Kentucky injury would not have occurred or would not have been significant. The WCJ specified the evidence relied upon and the reasons for

accepting it and clearly set forth the reasons for her decision. We, therefore, conclude that the WCJ's decision is reasoned.

Accordingly, the order of the Board is affirmed.

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JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cognex, Inc., Petitioner	:	
v.	:	No. 1556 C.D. 2009
Workers' Compensation Appeal Board (Scott), Respondent	:	

O R D E R

AND NOW, this 26th day of March, 2010, the order of the Workers' Compensation Appeal Board at Case No. A08-0768, dated July 10, 2009, is AFFIRMED.

JAMES R. KELLEY, Senior Judge