IN THE COMMONWEALTH COURT OF PENNSYLVANIA

US Airways and Chartis Insurance, Petitioners	:	
	:	No. 1602 C.D. 2010
v.	:	
	:	Submitted: January 14, 2011
Workers' Compensation Appeal Board (Robinson), Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: June 30, 2011

U.S. Airways (Employer) petitions for review of the July 7, 2010, order of the Workers' Compensation Appeal Board (Board), which affirmed the workers' compensation judge's (WCJ) decision to grant Isaac Robinson's (Claimant) claim petition. We affirm.

Claimant worked for Employer as a flight attendant for twenty-six years. Claimant's job duties included assisting passengers with luggage, which involved lifting weights of fifty to seventy-five pounds. On April 15, 2006, while attempting to help a passenger store luggage in an overhead compartment, Claimant felt a sharp pain in his shoulder going to his low back. Claimant filled out an injury report and received treatment at Crozer Hospital for shoulder pain radiating down the right side of his body. He also received treatment for his right shoulder at Employer's medical office in Arizona. Claimant returned to work without restrictions on April 26, 2006.

On June 1, 2006, Claimant was pulling a cart while working in the scope of his employment when he heard a pop and felt a sharp pain in his right shoulder. Claimant informed Employer of the injury and was referred to a panel physician for treatment. Claimant received medical treatment and ultimately underwent surgical replacement of his shoulder joint. Claimant has not worked since June 2, 2006.

With regard to the April 15th injury, Employer filed a notice of temporary compensation payable (NTCP); however, it stopped temporary compensation and issued a notice of compensation denial, alleging that Claimant sustained a non-disabling injury.[1] Employer did not deny that it received notice of an injury, but rather disputed notice of a shoulder injury.

Furthermore, with regard to the June 1st injury, Employer filed a notice of compensation denial alleging that Claimant did not suffer a work-related injury.

Claimant filed separate claim petitions for the April 15th and June 1st injuries. He averred in the petitions that he sustained injuries in the nature of an internal derangement of his right shoulder and an aggravation of a pre-existing condition in the course of his employment on April 15, 2006, and June 1, 2006. He requested total disability benefits for a closed period from June 2, 2006 through June 2, 2007. Claimant stipulated during the proceedings that his claim was limited to a maximum of fifty-two weeks.[2] (WCJ's Decision, 1/25/2008, Finding of Fact No. 4.)

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[1] Even though it filed a NTCP, Employer states in its brief that Claimant never received any compensation payments. Employer explains that, because Claimant was receiving contractual salary continuation benefits during the period the NTCP was in force, the insurance carrier sent the compensation checks to Employer's payroll department to offset the salary continuation benefits. (Employer's brief at 30, fn. 5.)

[2] Section 422(c) of the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, added by the Act of June 26, 1919, P.L. 642, as amended, provides as follows:

(Footnote continued on next page…)

The parties deposed Claimant, who testified to the facts and circumstances of his injury, his medical treatment, and his condition, as described *supra*. Claimant also introduced a packet of medical records that contained reports by M. S. MacCollum, M.D., and James Davidson, M.D. In his July 18, 2006, report, Dr. MacCollum describes Claimant's incident at work, diagnoses right shoulder injuries, and concludes that Claimant's shoulder problems "became symptomatic as a result of two different injuries that occurred while working and for that reason, his current diagnosis is industrial-related." (R.R. at 61a-62a.). In a report dated August 2, 2006, Dr. Davidson opined:

> The patient has right shoulder pain and dysfunction. He states that he had no problem until an on-the-job injury. His x-rays and MRI show some chronic findings.
>
> Based on his history of relatively acute problems and his studies showing chronic problems, this falls into a 'straw that broke the camel's back' picture. He was coping with

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(continued…)

> Where any claim for compensation at issue before a workers' compensation judge involves fifty-two weeks or less of disability, either the employe or the employer may submit a certificate by any health care provider as to the history, examination, treatment, diagnosis, cause of the condition and extent of disability, if any, and sworn reports by other witnesses as to any other facts and such statements shall be admissible as evidence of medical and surgical or other matters therein stated and findings of fact may be based upon such certificates or such reports. Where any claim for compensation at issue before a workers' compensation judge exceeds fifty-two weeks of disability, a medical report shall be admissible as evidence unless the party that the report is offered against objects to its admission.

77 P.S. §835. The record does not explain why Claimant elected to limit his claim to fifty-two weeks.

> the problem well until an injury, and now he is no longer coping or able to work comfortably with his arm overhead.

(R.R. at 64a.) Dr. Davidson's records report that he performed a total replacement of Claimant's shoulder with rotator cuff repair and biceps tenodesis. (R.R. 76a-77a.)

Claimant also presented the office records of Melanie Lane, M.D., Karla Birkholz, M.D., and other providers employed by a practice known as Your Family Physician, which document treatment of Claimant's right shoulder.

Employer introduced an affidavit of Robert Semich, an administrative supervisor, who acknowledged receiving notice of Claimant's April 16, 2006, injury but denied receiving notice of Claimant's right shoulder pains. Also, Employer introduced an affidavit from its workers' compensation claims adjuster, Anita Stricklin, who averred that Claimant's April 15, 2006, injury was accepted as a medical-only low back strain and that Claimant failed to report an injury on June 1, 2006.

In addition, Employer introduced a report by Roy Stahlman, M.D., who opined that Claimant's right shoulder pain was not work-related.

After reviewing the evidence, the WCJ found Claimant's testimony, the opinions of Dr. Davidson, and Claimant's medical records to be credible and persuasive. The WCJ rejected the opinions of Dr. Stahlman insofar as they differed from those of Dr. Davidson. Based on the credible evidence, the WCJ found that Claimant sustained a right shoulder injury on April 15, 2006, with an aggravation of a pre-existing degenerative condition on June 1, 2006, and that Claimant notified Employer of the injuries in a timely manner. The WCJ also found that Claimant was totally disabled for the closed period of June 2, 2006, through June 1, 2007, and was entitled to compensation at the rate of $611.79 per week, based on his average weekly wage of $917.79. Claimant's benefits were suspended thereafter.

Employer appealed to the Board, which observed that the WCJ failed to make specific credibility determinations with regard to Dr. MacCollum and Dr. Birkholz. The Board concluded that such determinations were necessary because Dr. Davidson did not offer an express opinion regarding causation. Accordingly, the Board vacated the WCJ's decision and remanded for additional findings of fact.

On remand, the WCJ found the opinions of Dr. MacCollum and the medical records of the physicians from Your Family Physician to be credible. The WCJ observed that "Dr. MacCollum candidly acknowledges that Claimant had a preexisting right shoulder problem but notes that it became symptomatic as a result of the April 15, 2006 and June 1, 2006 work incidents." (WCJ's decision, 8/28/2009, Finding of Fact No. 2.) The WCJ reaffirmed her prior order granting Claimant benefits. Employer appealed to the Board, which affirmed the WCJ's order.

On appeal, Employer contends that the Board erred by relying upon the report of Dr. MacCollum. Employer argues that Dr. MacCollum was unaware that Claimant had a history of a prior right shoulder injury and that Dr. MacCollum never reviewed contemporaneous medical records and an injury report that contradict the history provided by Claimant. Employer asserts that these deficiencies render Dr. MacCollum's opinion incompetent. We disagree.

A medical expert's opinion is rendered incompetent only if it is based solely on inaccurate or false information. DeGraw v. Workers' Compensation Appeal Board (Redner's Warehouse Markets, Inc.), 926 A.2d 997 (Pa. Cmwlth. 2007). The fact that a medical expert does not have all of the claimant's medical information goes to the weight to be given to that individual's testimony, not its competency. Id.; Saville v. Workers' Compensation Appeal Board (Pathmark Stores, Inc.), 756 A.2d 1214 (Pa. Cmwlth. 2000). The WCJ is the ultimate fact finder, and the determination

of the weight and credibility of evidence is a matter within the exclusive province of the WCJ to decide. Washington v. Workers' Compensation Appeal Board (Commonwealth of Pa. State Police), 11 A.3d 48 (Pa. Cmwlth. 2010).

Here, although Employer asserts that Dr. MacCollum was unaware of Claimant's medical history and contrary medical records, the history set forth in Dr. MacCollum's report is generally consistent with Claimant's testimony, which was found credible by the WCJ. Furthermore, Dr. MacCollum stated in his report that he conducted a physical examination, reviewed an MRI study dated June 14, 2006, and reviewed x-rays. Therefore, even assuming that Dr. MacCollum did not fully understand Claimant's medical history and/or review all of Claimant's medical records, Dr. MacCollum's opinion was not based on inaccurate or false information. Employer's argument goes to the weight and credibility of Dr. MacCollum's opinion, not its competency, and the assessment of the weight and credibility evidence is a question within the sole province of the WCJ to resolve. Saville.

Employer also argues that the WCJ and the Board inaccurately summarized Dr. MacCollum's report by finding that Claimant's right shoulder became symptomatic as a result of the April 15, 2006, and June 1, 2006, work incidents. (WCJ's Decision, 8/28/2009, Finding of Fact No. 2.) However, our function in reviewing a final order from a workers' compensation proceeding is to view the record in the light most favorable to the prevailing party, drawing all reasonable inferences deducible from the evidence, to ascertain if there is sufficient support for the WCJ's determination. Lake v. Workers' Compensation Appeal Board (Whiteford National Lease), 746 A.2d 1183 (Pa. Cmwlth. 2000). Further, where evidence is subject to interpretation, we are required to accept the interpretation which supports the WCJ's decision. Id.

In this case, although Dr. MacCollum did not include specific dates of injury in his report, it is clear Dr. MacCollum understood that Claimant experienced two incidents at work involving his shoulder. Specifically, Dr. MacCollum observed in his report that: (1) Claimant developed pain in his shoulder while lifting a bag into an overhead compartment of an airplane; (2) Claimant was released to return to work and did so; and (3) Claimant's pain manifested again after he returned to work. (R.R. at 60a.) Dr. MacCollum unequivocally opined that Claimant's shoulder problems "became symptomatic as a result of two different injuries that occurred while working and for that reason, his current diagnosis is industrial-related." (R.R. at 61a-62a.) Therefore, reading Dr. MacCollum's report in the light most favorable to Claimant, the prevailing party, and accepting the WCJ's reasonable interpretation of the report, we conclude that the WCJ's findings are supported by the record.

Employer contends that Claimant presented no medical evidence to establish that he injured his right shoulder on April 15, 2006. Again, we disagree. Dr. MacCollum's report is sufficient to support the existence of the injury for the reasons set forth above. Moreover, Claimant credibly testified that, on April 15, 2006, he experienced sharp shoulder pain while lifting luggage into an overhead compartment and that he subsequently experienced shoulder pain on June 1, 2006, while pulling a cart. (WCJ's Decision, 1/25/2008, Findings of Fact Nos. 5(b), 5(e).) (R.R. at 16a, 21a.) Where, as here, the claimant contemporaneously experiences pain in the course of lifting an object, the causal connection to his or her employment is obvious. Davis v. Workmen's Compensation Appeal Board (United Parcel Service), 499 A.2d 703 (Pa. Cmwlth. 1985) (holding that an obvious causal connection existed when claimant's back injury immediately manifested itself after claimant engaged in heavy lifting); Sacks v. Workmen's Compensation Appeal Board, 402 A.2d 293 (Pa.

Cmwlth. 1979) (holding obvious causal relationship established when claimant suffers back pain after lifting 140 pound child on to a school bus). Our Supreme Court explained in Morgan v. Giant Markets, Inc., 483 Pa. 421, 397 A.2d 415 (1979), that

> [w]here one is doing an act that requires force or strain and pain is experienced at the point of force or strain, the injury may be found to have been established. Pain is an excellent symptom of an injury. Of course, the trier of fact will determine the credibility of the witness's testimony as to the total situation. We, therefore, find substantial competent evidence in the record to support the conclusion of the Workmen's Compensation Board of Appeals, that the above facts establish a causal connection between the work incident and appellant's injury.

Id. at 424, 397 A.2d at 416. The instant case, in our view, comes within this rule.

Employer further asserts that there are medical records and documents in the record that do not support Claimant's claim that he sustained a right shoulder injury on April 15, 2006. Specifically, Employer argues that contemporaneous medical records and the flight attendant accident report confirm that Claimant did not sustain the claimed shoulder injury. However, although the existence of conflicting and corroborating evidence bears upon the factual determinations of credibility and weight of the evidence, such determinations are a matter within the exclusive authority of the WCJ to decide and may not be reviewed on appeal. Washington. Moreover, where the facts actually found by the WCJ are supported by substantial evidence, it is irrelevant that the record contains other evidence that could support a contrary finding of fact. Williams v. Workers' Compensation Appeal Board (USX Corporation-Fairless Works), 862 A.2d 137 (Pa. Cmwlth. 2004).

Next, Employer contends that Claimant failed to present any medical evidence to establish that he was disabled after January 31, 2007. However, Dr. MacCollum stated in his report that Claimant was incapable of working as a flight attendant and that he placed Claimant on "no work status." (R.R. at 62a.) As observed by the Board, the record does not indicate that Claimant's "no work" status was subsequently removed by his physicians. Also, Claimant credibly testified that he has not worked since June 2, 2006, (WCJ's Decision, 1/25/2008, Finding of Fact No. 5(g)), and the WCJ did not find that Claimant returned to work during the fifty-two week benefit period from June 2, 2006, through June 1, 2007. Therefore, we conclude that this contention is without merit.

Employer contends that Claimant did not provide it with notice of his June 1, 2006, injury until September 1, 2006, and that Claimant is not entitled to benefits for that closed period of time. However, Claimant testified that he provided Employer with notice of the injury:

> Q. And what happened on June the 1st?
>
> A. Again, I was in Manchester Flying to Philadelphia. The Duty Free Cart, I was helping to pull it out to check stock and I felt a pain in my right shoulder area.
>
> Q. ***When this incident occurred*** did you report it to anyone?
>
> A. ***Yes, I did***.
>
> Q. Who did you report it to?
>
> A. Bob Samich [an administrative supervisor].
>
> ….
>
> Q. What did you tell Bob…?

> A. ***I told Bob I was on the aircraft and I was attempting to pull the cart out to check the stock and I felt a sharp pain in my right shoulder area***.

(R.R. at 21a.) (Emphasis added.) Claimant's testimony, which the WCJ found credible and persuasive, demonstrates that, when the incident occurred, Claimant informed Employer that he sustained a shoulder injury at a certain place and time while performing a work activity. Gribble v. Workers' Compensation Appeal Board (Cambria County Association for the Blind), 692 A.2d 1160 (Pa. Cmwlth. 1997) (stating that a claimant provides proper notice of an injury when the employer is informed, described in ordinary language, that a certain employee received an injury in the course of employment on or about a specified time, at or near a specified place). Therefore, the WCJ's finding that Claimant provided notice of the June 1, 2006, injury is supported by substantial evidence.[3]

Finally, Employer contends that the WCJ awarded benefits based on an elevated average weekly wage (AWW). The record reflects that Claimant filed separate claim petitions for injuries occurring on April 15, 2006, and June 1, 2006. Employer stipulated that the AWW for the April 15th injury was $917.79, resulting in a weekly compensation rate of $611.79, (R.R. at 13a), and it issued a statement of wages supporting that calculation. (R.R. at 126a.) The statement of wages calculated

[3] Employer argues that it presented evidence to show that Claimant did not provide notice of the June 1, 2006 injury until September 2006, but that the WCJ failed to reference that evidence or make necessary credibility findings. As previously indicated, where the facts actually found by the WCJ are supported by substantial evidence, it is irrelevant that the record contains other evidence that could support a contrary finding of fact. Williams. Furthermore, our review of Employer's "Appeal From Judge's Findings of Fact and Conclusions of Law" form reveals that, although Employer challenged the WCJ's finding on notice, Employer did not specifically argue therein that the WCJ failed to make credibility determinations regarding its notice evidence.

for the June 1st injury shows an AWW of $875.09, with a weekly benefit rate of $583.39. (R.R. at 127a.) The record does not reflect that Claimant objected to Employer's wage and benefit calculations.

Here, although Claimant's disability followed the June 1, 2006, injury, Dr. MacCollum credibly opined that Claimant became symptomatic as a result of *both* injuries he sustained while working for Employer. (R.R. at 62a.) (WCJ's Decision, 8/28/2009, Finding of Fact No. 2.) The record does not establish, and the WCJ did not find, that Claimant's disability was solely attributed to the work injury that occurred on June 1, 2006. Therefore, we conclude that the WCJ did not err by awarding compensation based on the AWW calculated for the April 15th injury.

Accordingly, the Board's decision is affirmed.

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PATRICIA A. McCULLOUGH, Judge

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Petitioners	:	
	:	No. 1602 C.D. 2010
v.	:	
	:	
Workers' Compensation Appeal Board (Robinson),	:	
Respondent	:	

ORDER

AND NOW, this 30th day of June, 2011, the July 7, 2010, order of the Workers' Compensation Appeal Board is hereby AFFIRMED.

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PATRICIA A. McCULLOUGH, Judge