**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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| County of Delaware,<br>Petitioner | :<br>: | |
| | : | |
| v. | : | No. 1633 C.D. 2009 |
| | : | Submitted: January 29, 2010 |
| Workers' Compensation Appeal<br>Board (Bray),<br>Respondent | :<br>:<br>: | |

**BEFORE: HONORABLE BERNARD L. McGINLEY, Judge**
**HONORABLE P. KEVIN BROBSON, Judge**
**HONORABLE JIM FLAHERTY, Senior Judge**

***OPINION NOT REPORTED***

**MEMORANDUM OPINION**
**BY JUDGE BROBSON** **FILED: April 29, 2010**

Petitioner County of Delaware (Employer) petitions for review of an order of the Workers' Compensation Appeal Board (Board), which reversed in part and affirmed in part a decision and order of a Workers' Compensation Judge (WCJ), granting a claim petition. For the reasons stated below, we now affirm.

Respondent Niema Bray (Claimant) filed a claim petition alleging that she sustained an injury to her left hand and wrist while in the course and scope of her employment on August 22, 2006. Employer had initially issued a notice of temporary compensation payable (NTCP), but it subsequently filed a notice of compensation denial (NCD) on September 21, 2006, stating that Claimant had not submitted "unequivocal evidence" or "competent credible evidence" of an injury or continuing disability. Employer filed an answer to Claimant's claim petition, denying all material allegations of a work incident and any resulting disability.

At the time of her injuries, Claimant was employed by Employer as a certified nursing assistant (CNA) at the Fair Acres Geriatric Center. Claimant's job duties included assisting patients from their beds to wheelchairs and operating a Hoyer lift.[1]

The WCJ conducted a hearing, during which Claimant testified. Claimant testified that on the date of her alleged injury a partially paralyzed patient fell on Claimant's left arm while she was transferring the patient from the toilet to a wheelchair. (R.R. 17a-18a.) Claimant stated she experienced immediate pain in her fingers and wrist and swelling after she went home from completing her shift. (R.R. 18a-19a.) The following morning Claimant informed her supervisor that she hurt her wrist while transferring a patient. Claimant's supervisor instructed her to complete an accident report form and submit the form to Employee Health.
(R.R. 20a.) A security guard took Claimant to Taylor Hospital, where a doctor prescribed her a brace and Motrin. The doctor instructed Claimant not to lift anything, and she was referred for physical therapy. (R.R. 21a-22a.) Claimant testified that she attended physical therapy four or five times a week for two weeks. (R.R. 22a.) After Claimant's physical therapy ended, she had a follow-up appointment with Dr. Maranzini, a panel doctor, who gave her a notice to return to work. (R.R. 23a-24a.) Claimant testified that she continues to experience pain when lifting and flexing her left wrist and does not feel capable of returning to work in her pre-injury job. (R.R. 27a.)

Claimant presented the deposition testimony of Scott H. Jaeger, M.D., a board certified orthopedic surgeon who specializes in upper extremities. Claimant went to Dr. Jaeger on December 5, 2006, for further evaluation and

[1] A Hoyer lift is a mechanical lift. (Reproduced Record (R.R.) 16a.)

treatment. (R.R. 49a.) Dr. Jaeger testified that he had seen Claimant on three occasions. (R.R. 46a.) Dr. Jaeger performed a physical examination of Claimant, and the results of the examination showed that she had significant weakness and a positive supra clavicucular Tinel's sign in her left upper extremity.
(R.R. 46a-51a.) Dr. Jaeger recommended that Claimant have a second EMG to confirm his diagnosis of brachial plexopathy because Claimant's symptoms had matured. (R.R. 54a.)[2] On December 15, 2006, Dr. Katz, a neurologist, performed an EMG, which showed mild to moderate traction brachial plexopathy. The EMG findings of Dr. Katz were consistent with Dr. Jaeger's findings of brachial plexopathy upon examination. (*Id.*)

Dr. Jaeger testified that Claimant's nerve damage or traction injury occurred when a large patient lost the ability to stand and sat on Claimant's hand and crushed it. Claimant attempted to pull her hand out from under the patient and stretched the nerves. (R.R. 59a.) Dr. Jaeger opined that as a result of the work injury, Claimant suffered a traction left brachial plexopathy, left periscapular trigger points due to the guarding posture, and a sprain and strain of the left wrist. (R.R. 65a.) Dr. Jaeger testified that Claimant remains disabled from returning to work in her pre-injury job by reason of the work injury. (R.R. 66a.)

Employer presented the deposition testimony of Noubar A. Didizian, M.D., a board certified orthopedic surgeon who stopped performing surgery in 2003. Dr. Didizian examined Claimant on one occasion on January 18, 2007. (R.R. 108a.) Dr. Didizian reviewed the NTCP, records from Taylor Hospital, and outpatient physical therapy progress notes. He concluded that Claimant was

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[2] The record indicates that a Dr. Alexander performed an initial EMG on Claimant on October 26, 2006. (R.R. 125a.)

originally treated for a contusion severe sprain/strain of the wrist. (R.R. 120a-21a.) Dr. Didizian testified that based upon his impression, Claimant was not suffering from any ligament, tendon, or joint injury to her left wrist or hand. (R.R. 121a.) Dr. Didizian opined that Claimant was fully recovered from the contusion and strain/sprain of the left wrist and was capable of returning to work in her pre-injury position. He further opined that Claimant was not in need of any further medical treatment related to the work injury. (R.R. 121a-23a.)

Dr. Didizian also testified that after his review of the first EMG performed by Dr. Alexander, he determined that Claimant did not exhibit any peripheral neuropathy symptoms. (R.R. 125a.) He testified that his review of the second EMG performed by Dr. Katz on December 15, 2006, did not support the presence of any brachial plexopathy. (R.R. 128a.) Dr. Didizian opined that the mechanism of injury did not include a traction pull on Claimant's left side because her arm was not pulled away from her body during the August 22nd incident; rather, her arm was against her body when the patient sat on her hand. (R.R. 151a.-52a.)

In a decision and order dated April 22, 2008, the WCJ concluded that Claimant's testimony was credible that she sustained an injury while performing her work duties as a CNA on August 22, 2006, and that the injury disabled her from returning to work from that date until the present and ongoing. (WCJ's Opinion, Finding of Fact No. 11.) The WCJ also concluded that the testimony of Dr. Jaeger was more credible that Dr. Didizian's testimony based upon the observation that Dr. Jaeger's opinions were supported by his impression of the EMG study that corresponded with Claimant's ongoing injuries. The WCJ found, in part, as follows:

> Dr. Jaeger examined the claimant on multiple occasions and his testimony that her symptoms continued was also found persuasive. Dr. Didizian's opinion that none of the claimant's conditions are work related is rejected as neither credible nor convincing.

(WCJ's opinion, p. 3.)

Based on the above, the WCJ granted Claimant's claim petition and ordered Employer to pay unreasonable contest fees.[3] Employer appealed the WCJ's decision to the Board. By order dated July 23, 2009, the Board reversed the WCJ's award of unreasonable contest fees. The Board affirmed the WCJ's decision and order in all other respects. Employer then filed the subject petition for review with this Court.

On appeal,[4] Employer argues that the Board erred in affirming the WCJ's decision and order to the extent it granted Claimant's claim petition. Specifically, Employer challenges the Board's holding that the WCJ issued a reasoned decision in accordance with Section 422(a) of the Workers'

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[3] Employer and/or its carrier had access to medical information from Employee Health and the designated panel physician, substantiating that an injury occurred. Employer still chose to deny the claim.

[4] Our standard of review in a workers' compensation appeal is limited to determining whether an error of law was committed, constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704. We acknowledge our Supreme Court's decision in *Leon E. Wintermyer, Incorporated v. Workers' Compensation Appeal Board (Marlowe)*, 571 Pa. 189, 812 A.2d 478 (2002), wherein the Court held that "review for capricious disregard of material, competent evidence is an appropriate component of appellate consideration in every case in which such question is properly brought before the court." *Wintermyer*, 571 Pa. at 203, 812 A.2d at 487.

Compensation Act (the Act).[5] Employer, also argues that, contrary to the Board's conclusion, the WCJ's decision is not supported by substantial evidence.

With regard to Employer's first argument, Section 422(a) of the Act provides:

> Neither the board nor any of its members nor any workers' compensation judge shall be bound by the common law or statutory rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based upon sufficient competent evidence to justify same. 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.

77 P.S. § 834.

"A decision is reasoned for purposes of Section 422(a) of the Act if it allows for adequate review by the Board without further explanation and if it allows for adequate review by the appellate courts under applicable review standards. A reasoned decision is no more, and no less." *Daniels v. Workers'*

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

*Comp. Appeal Bd. (Tristate Transp.),* 574 Pa. 61, 76, 828 A.2d 1043, 1053 (2003). A reasoned decision does not require a WCJ to give a line-by-line analysis of each piece of evidence. *Acme Mkts., Inc. v. Workers' Comp. Appeal Bd. (Brown),* 890 A.2d 21 (Pa. Cmwlth. 2006). "[T]he 'reasoned decision' requirement of [Section 422(a)] does not require the WCJ to discuss all evidence presented; rather, the WCJ must make findings that are necessary to resolve the issues presented by the evidence and that are relevant to the decision." *Pryor v. Workers' Comp. Appeal Bd. (Colin Serv. Syst.)*, 923 A.2d 1197, 1202 (Pa. Cmwlth. 2006).

The WCJ is the sole arbitrator of the credibility and the weight of testimony and other evidence, and he or she is free to reject or accept the testimony of any witness in whole or in part. *O'Donnell v. Workers' Comp. Appeal Bd. (United Parcel Service)*, 831 A.2d 784, 789 (Pa. Cmwlth. 2003). So long as the findings of the WCJ are supported by substantial evidence, they must be accepted as conclusive on appeal. *Id.*

When testimony is presented by way of deposition the WCJ must convey the reasons why one witness' testimony was credited over another's. *Id.* at 790. The WCJ must clearly state its reasons for credibility determinations on deposition testimony so that the reviewing body may determine whether those reasons are set forth in the record. *Id*. Section 422(a) of the Act does not permit a party to challenge or second-guess the WCJ's reasons for credibility determinations. *Dorsey v. Workers' Comp. Appeal Bd. (Crossing Const. Co.)*, 893 A.2d 191, 195 (Pa. Cmwlth. 2006), *allocatur denied.*, 591 Pa. 667, 916 A.2d 635 (2007). Unless made arbitrarily or capriciously, a WCJ's credibility determinations will be upheld on appeal. *Empire Steel Castings, Inc. v. Workers' Comp. Appeal Bd. (Cruceta)*, 749 A.2d 1021 (Pa. Cmwlth. 2000).

In this case, Employer argues the findings rendered by the WCJ are insufficient because the WCJ merely summarized the testimony of all of the witnesses. Employer contends that the WCJ's summaries are "sketchy" regarding the multiple examinations and in establishing a correlation between Claimant's injury and symptoms. Employer directs our attention to Finding of Fact number 11, wherein the WCJ found credible the testimony of Claimant that she sustained an injury while performing her work duties as a CNA. Employer argues that the WCJ merely restated the testimony by Claimant without providing a reason why Claimant's testimony was credible or commenting on Claimant's demeanor during the live testimony. Employer also points to Finding of Fact number 12, in which the WCJ found the testimony of Dr. Jaeger, on the issues of causal connection and ongoing disability, more credible than that of Employer's expert, Dr. Didizian. Employer argues that the WCJ again restated what she found credible without providing a reason why she found the testimony credible. The fact that Dr. Jaeger's opinions are supported by his impression of the EMG are not adequate because Dr. Didizian testified that the results of the two EMG studies are in conflict. (R.R. 124a-126a.) Employer maintains that the WCJ did not specify as to which EMG study he found Dr. Jaeger's testimony to be consistent with or why the WCJ rejected Dr. Didizian's analysis of the EMG studies. (WCJ's opinion, p. 3.)

Our review of the record and the WCJ's decision and order reveals that the WCJ adequately explained her rationale and provided a reasoned decision under Section 422(a) of the Act for the grant of Claimant's petition. In a case where a witness testifies live before the WCJ, allowing the WCJ to assess the witness's demeanor, a conclusion concerning the witness's credibility is sufficient to render the decision reasoned. *Daniels*, 574 Pa. at 78, 828 A.2d at 1054.

Moreover, the Act does not require the WCJ to explain subjective credibility determinations according to a formula or detail the determination to the "nth" degree. *Id.* at 78, 828 A.2d at 1054. In Finding of Fact number 11, the WCJ found credible Claimant's testimony that she sustained an injury at work, which disabled her from returning to work. The WCJ based her determination on a review of the evidentiary record as a whole. Claimant testified live in front of the WCJ, and the WCJ was not required to provide further justification for finding Claimant's testimony credible.

The WCJ also gave adequate reasoning for finding Dr. Jaeger's testimony more credible than Dr. Didizian's testimony. In Finding of Fact number 12, the WCJ stated that Dr. Jaeger's testimony was more persuasive than Dr. Didizian's because Dr. Jaeger examined Claimant on multiple occasions and Dr. Jaeger's testimony was supported by the impression of the EMG study and his correlation between the ongoing symptoms and the mechanism of injury. The WCJ further illustrated her reasons for selecting the opinion of Dr. Jaeger by determining in Finding of Fact number 8 that the EMG conducted by Dr. Katz on December 15, 2006, was consistent with Dr. Jaeger's findings upon physical examination. In response to Employer's claim that the two EMG's were in conflict, Dr. Jaeger testified that the two EMG's reported the same raw data that could be interpreted differently, but they were conclusive in identifying the same set of nerves, C7, C8 and T1, as being impaired. (R.R. 56a, 58a.) Therefore, the WCJ properly summarized the testimony of the witnesses and gave adequate reasons under Section 422(a) of the Act for finding Dr. Jaeger more credible that Dr. Didizian.

Next, Employer contends that the WCJ's decision is not supported by substantial evidence because Dr. Jaeger's opinions are not sufficient to establish Claimant's claim for benefits. This Court has explained the concept of "substantial evidence" in *Empire Steel Castings*, as follows:

> Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Bethenergy Mines v. Workmen's Compensation Appeal Board (Skirpan), 531 Pa. 287, 612 A.2d 434 (1992). Additionally, in performing a substantial evidence analysis, this court must view the evidence in a light most favorable to the party who prevailed before the factfinder. Birmingham Fire Ins. Co. v. Workmen's Compensation Appeal Board (Kennedy), 657 A.2d 96 (Pa.Cmwlth.1995). Moreover, the party prevailing before the factfinder is entitled upon appellate review to "have the benefit of the most favorable inferences deducible from the evidence[.]" Flexer v. Workmen's Compensation Appeal Board (Wilson), 12 Pa.Cmwlth. 405, 317 A.2d 53, 53 (1974). Furthermore, it does not matter that there is evidence in the record which supports a factual finding contrary to that made by the WCJ, rather, the pertinent inquiry is whether there is any evidence which supports the WCJ's factual finding. Grabish v. Workmen's Compensation Appeal Board (Trueform Foundations), 70 Pa.Cmwlth. 542, 453 A.2d 710 (1982). It is solely for the WCJ, as the factfinder, to assess credibility and to resolve conflicts in the evidence. Bethenergy Mines. In addition, it is solely for the WCJ, as the factfinder, to determine what weight to give to any evidence. Dana v. Workers' Compensation Appeal Board (Hollywood), 706 A.2d 396 (Pa.Cmwlth.1998), allocatur denied, 556 Pa. 696, 727 A.2d 1123 (1998). As such, the WCJ may reject the testimony of any witness in whole or in part, even if that testimony is uncontradicted. Id.

*Empire Steel Castings, Inc.*, 749 A.2d at 1024.

Employer specifically argues that Dr. Jaeger's initial examination did not indicate a brachial plexus abnormality. Dr. Jaeger's diagnosis of a traction injury based on Claimant's arm being pulled out from under the patient does not match Claimant's description of the incident. Claimant testified that the patient "fell on my arm, and I had to take my arm out of her left side." (R.R. 18a.) Dr. Didizian testified that a traction injury occurs when the arm is pulled away from the body; in this particular case, the arm was against the body when the patient sat on Claimant's hand. (R.R. 152a.) Claimant told Dr. Didizian that her initial complaints were only discomfort in the left wrist. (R.R. 109a.) Employer concludes, based on these facts, that Dr. Jaeger's diagnosis is not based on material fact of record, and, therefore, the WCJ's decision is not supported by substantial evidence.

Claimant maintains that Dr. Jaeger's testimony, which the WCJ found credible, was supported by objective evidence of record, noting the significant grip test, positive Tinels sign, positive Adson's test, and positive Wrights's test performed on Claimant to support his diagnosis of brachial plexopathy. (R.R. 50a-52a.) Dr. Jaeger's diagnosis is supported by Dr. Katz's EMG of December 15, 2006, which evidenced traction brachial plexopathy. (R.R. 54a, 96a-98a.)

Based upon our review of the testimony of Dr. Jaeger, which is summarized above, we agree with Claimant that there is substantial evidence of record to support the WCJ's findings related to Dr. Jaeger's diagnosis of Claimant's work related injury. Viewing Dr. Jaeger's testimony in the light most favorable to Claimant, the prevailing party, we must conclude that Dr. Jaeger's testimony constitutes "relevant evidence that a reasonable mind might accept as

adequate to support a conclusion"[6] that Claimant suffered a work-related injury in the form of "traction left brachial plexopathy, left periscapular trigger points due to the guarding posture, and a sprain and strain of the left wrist."[7] It is irrelevant whether other evidence in the record, specifically the testimony of Dr. Didizian which the WCJ determined to be not credible, could support a contrary conclusion. *Empire Steel Castings*, 724 at 1024. Employer's argument to the contrary on this issue is merely an attempt to relitigate the credentials of Dr. Didizian and Dr. Jaeger and to persuade this Court to reweigh the evidence and examine the credibility determinations made by the WCJ, which we will not do.

Accordingly, we must affirm the Board's order.

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P. KEVIN BROBSON, Judge

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[6] *Empire Steel Castings*, 749 A.2d at 1024.

[7] (WCJ's decision and order, finding of fact no. 13.)

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***O R D E R***

NOW, this 29th day of April, 2010, the order of the Workers' Compensation Appeal Board is hereby affirmed.

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P. KEVIN BROBSON, Judge