IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charles Nilsson,	:	
Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation Appeal	:	
Board (Warren County Commissioners	:	
and PComp Insurance),	:	No. 1861 C.D. 2009
Respondents	:	Submitted: February 19, 2010

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: June 4, 2010

Charles Nilsson (Claimant) petitions for review of the order of the Workers' Compensation Appeal Board (Board) which affirmed the decision of the Workers' Compensation Judge (WCJ) who granted Claimant's claim petition but denied benefits and terminated any compensation effective November 1, 2005.

Claimant worked as a Caseworker II in the Children and Youth Services Department of Warren County (Employer). On February 4, 2003, Claimant was returning to the office from a house call when his vehicle was struck in the driver's side rear by another vehicle. Claimant returned to work on February 6, 2003. On February 26, 2003, he submitted his resignation to Employer after a meeting in which he was informed that his office was scheduled to be moved. Shortly thereafter his attempt to rescind his resignation was rejected by Employer.

On November 5, 2004, Claimant petitioned for benefits and alleged that he suffered "injuries to his head, neck, back and ankles. Said injuries include whiplash and a concussion. As a result of the accident Claimant has also suffered inflamation [sic] of the nervous system throughout his body" due to the automobile accident. Claim Petition, November 5, 2004, at 1.

Claimant testified that on February 4, 2003, as he traveled back to the office on Route 6 on a snowy day he encountered vehicles stopped on the roadway. He stopped and put on his flashers. He then observed that a car had rolled over in a field on the side of the road and "a handful of people crawling around in the snow." Notes of Testimony, March 16, 2005, (N.T.) at 13. While Claimant called 9-1-1 on his cellular telephone to request assistance, he was struck by another vehicle. N.T. at 14. Claimant felt "numb" after the accident. N.T. at 15. When he bent down to pick up his broken bumper, he felt a "big twinge in my . . . lower back." N.T. at 16. Claimant's vehicle was towed. He did not go in to work the next day. N.T. at 17-18. He went to the emergency room that day with a headache, his back hurting, and a very stiff neck. N.T. at 19. Claimant returned to work on February 6, 2003. N.T. at 21. Claimant testified that Dr. Nguyen took him out of work on February 28, 2003. N.T. at 24.

Claimant testified that on February 26, 2003, he met with his supervisors and was told:

> the girls in your office are complaining, you're withdrawn and you're quiet and not communicating, and I said I'm hurt. . . . And I tried to communicate to them that like for the past three weeks I've been crawling in

> the workplace, basically crawling back home and falling asleep. I tried to do my job, but I was hurt.

N.T. at 27-28.

When his supervisor suggested that Claimant move to another office, Claimant did not agree and submitted a letter of resignation effective February 28, 2003. N.T. at 28-29. On February 27, 2003, Claimant reconsidered his decision to resign and went to his union steward who contacted his supervisor. Claimant believed that his letter of resignation could be converted to medical leave. N.T. at 29-31. On March 3rd or 4th, 2003, Claimant was informed that his request to withdraw his resignation was denied. N.T. at 33.

Claimant continued to experience "headache problems . . . . problems processing errors, balance issues, sleep issues, stamina issues, [in]ability to work for long periods of time." N.T. at 37-38. Claimant operated a business providing information systems to foresters, natural resource managers, and environmental professionals. N.T. at 38-39. Claimant believed he could not perform his time of injury job because it would be difficult to physically deal with the volatile adolescent boys with whom he worked:

> I have restraint training certifications in both New York and Pennsylvania, which I was trained to protect not only myself but the kids themselves, so they don't hurt themselves. As far as restraining a kid, you're there alone. You may have to do it by yourself. And right now with my back and my neck, I could not do that.

N.T. at 41.

Claimant also believed he could not perform his time of injury job because of "Verbal slurs and errors that I make would hinder not only my ability to communicate with them but . . . kids jump on any weakness that they can find. So it would be difficult keeping their respect when using words backwards or wrong words." Notes of Testimony, May 18, 2005, (N.T. 5/18/05) at 6. Claimant could not concentrate for more than three to four hours at a time. N.T. 5/18/05 at 7.

On cross-examination, Claimant disagreed with the police report which indicated that he was uninjured in the accident. N.T. 5/18/05 at 20. He also disagreed with the police report which indicated that his vehicle did not move after it was struck. N.T. 5/18/05 at 23. Claimant believed he could rescind his resignation because he knew a coworker, Constance Marie Weikert (Weikert), had done the same thing three times. N.T. 5/18/05 at 42. Claimant testified that he was diagnosed with a concussion on March 3, 2003, by emergency room physicians at Warren General Hospital. N.T. 5/18/05 at 49. When asked whether he received treatment for reflex sympathetic dystrophy, Claimant replied, "I think you'll have to ask my doctors that because I really don't know exactly what their thinking is." N.T. 5/18/05 at 72.

Claimant testified he disagreed with his former co-workers' statements that he did not follow office procedures or directions. Notes of Testimony, December 20, 2005, (N.T. 12/20/05) at 7. He never cried at work. N.T. 12/20/05 at 17. When he submitted his resignation, Claimant was not thinking clearly which he "attribute[d] to the accident." N.T. 12/20/05 at 21. Claimant estimated he worked about thirty hours per week on his business. N.T.

12/20/05 at 22. He believed that the driving required in his time of injury job caused him "a lot of stress." N.T. 12/20/05 at 24. Also, he could not physically protect himself and had difficulty with paperwork due to his confusion. N.T. 12/20/05 at 25.[1]

Claimant presented the deposition testimony of Albert Persia, M.D. (Dr. Persia), board-certified in family practice and Claimant's treating physician. Dr. Persia first treated Claimant after the February 3, 2003, automobile accident in October 2003. Dr. Persia diagnosed Claimant with post-motor vehicle accident syndrome.[2] Deposition of Albert Persia, M.D., October 2, 2006, (Dr. Persia Deposition) at 14-15. Claimant reported to Dr. Persia that he experienced pain sensations as well as neurologic disturbances. Dr. Persia Deposition at 17. Claimant's attorney asked Dr. Persia, "have you been able to come up with any diagnosis or specific name for these complaints, or any form of treatment that's been pursued to resolve these pain complaints?" Dr. Persia Deposition at 18. Dr. Persia responded:

> there is a possibility that he has a generalized RSD [reflex sympathetic dystrophy]. . . . He certainly has some symptoms that correlate with migraine headache disorder and muscle contraction headaches. He has some symptoms of depression and anxiety which may have been precipitated by the accident as well. And has some

[1] Donald Ross Dove (Dove) who was Claimant's supervisor at Gustavus Adolphus Child and Family Services in Jamestown, New York, a prior employer of Claimant, testified that on occasion Claimant had difficulty working with his co-workers, but that, on the whole, there were no major problems. N.T. 12/20/05 at 54-55.

[2] Dr. Persia defined "motor vehicle accident syndrome" as "a complex symptom group which includes neurologic to muscular to mental health related symptoms." Dr. Persia Deposition at 35-36.

> regional myofascial pain which developed after the accident.

Dr. Persia Deposition at 18-19.

Dr. Persia opined that Claimant could not perform his time of injury job but could perform a non-strenuous job that did not require sustained concentration for long periods and was flexible in terms of hours. Dr. Persia Deposition at 22-23. Dr. Persia attributed Claimant's problems to the February 4, 2003, accident. Dr. Persia Deposition at 24-25.

On cross-examination, Dr. Persia admitted that every medical test taken by Claimant was normal except for a showing of mild degenerative arthritis. Dr. Persia Deposition at 32. Dr. Persia also admitted that he thought Claimant worked as a forest ranger. When asked whether he had any idea what Claimant's real job was, Dr. Persia replied, "Not specifically." Dr. Persia Deposition at 52.

Charlotte Uber (Uber), formerly children and youth director for Employer, testified on Employer's behalf. Uber supervised Claimant's supervisor. Notes of Testimony, July 19, 2005, (N.T. 7/19/05) at 9. Uber explained that Claimant experienced difficulty relating to his co-workers. N.T. 7/19/05 at 11. Uber further explained that Claimant's co-workers "felt that Charles [Claimant] had delusions of persecution and they were feeling extremely uncomfortable with him in the office, saying that he really didn't speak to people, he liked to be in control. That he was yelling at his secretaries, and that he was making a lot of efficiency lists." N.T. 7/19/05 at 13-14. In January 2003, Claimant's supervisor, Kim Kibby, counseled him concerning his job performance. N.T. 7/19/05 at 15.

Weikert testified that she was allowed to come back to work for Employer after she resigned. N.T. 7/19/05 at 43. She felt uncomfortable with Claimant in the same office area. N.T. 7/19/05 at 44. Weikert observed Claimant's "angry outbursts and he would cry or get angry." N.T. 7/19/05 at 47.

Sandra Hoffner (Hoffner), a clerical employee for Employer, testified that common pleas court judges liked to have court papers signed in blue ink which Claimant refused to do. N.T. 7/19/05 at 71. Hoffner also explained how Claimant handled files: "when we get new files, they're put in a basket on my desk. And then when I get time, I make them into files. And he didn't like to leave his file there. He wanted it in his desk." N.T. 7/19/05 at 72.

Susan Kern (Kern), human resources director for Employer, testified that she believed that there was a "strong possibility that he [Claimant] would not make it through the probationary period." Notes of Testimony, September 20, 2005, (N.T. 9/20/05) at 35. Kern corroborated testimony regarding Claimant's job performance and resignation. Kern testified that she received a note from Claimant's physician taking him off work for two weeks after Employer had already accepted Claimant's resignation. N.T. 9/20/05 at 60.

Employer presented the deposition testimony of J. William Bookwalter, III, M.D. (Dr. Bookwalter), a board-certified neurosurgeon. On November 1, 2005, Dr. Bookwalter examined Claimant, took a history, and reviewed medical records. Dr. Bookwalter diagnosed Claimant: "It was my opinion that he appeared to have had a motor vehicle accident, and I felt it was

reasonable to surmise that he may have suffered cervical and lumbar strains." Deposition of J. William Bookwalter, III, M.D., October 24, 2006, (Dr. Bookwalter Deposition) at 21. Dr. Bookwalter found no residue evidence of either a cervical or a lumbar strain, no evidence of a concussion, no evidence of a lingering effect of an automobile accident, and no evidence of reflex sympathetic dystrophy. Dr. Bookwalter Deposition at 21-23. Dr. Bookwalter believed Claimant was fully recovered from any injury he suffered in the motor vehicle accident and was able to return to work without limitation. Dr. Bookwalter Deposition at 24.

The WCJ granted the claim petition but did not award any benefits. The WCJ terminated all compensation effective November 1, 2005, the date of Dr. Bookwalter's examination. The WCJ made the following relevant findings of fact:

> . . . .
> I have carefully considered all of the testimony in the record. I have found the Claimant's testimony to be at best, evasive, not responsive, self serving and unreliable.
>
> On the other hand, I found the Defendant's [Employer] lay witnesses, to be generally credible and their testimony consistent with one another.
>
> I have found the testimony of Dr. Persia, to be vague, unsupported, illogical, and based primarily on what the Claimant told him. On the other hand, I found the testimony of Dr. Bookwalter, to be straightforward, extremely logical and convincing and supported by his examination and the various diagnostic studies, which the Claimant underwent.
>
> As a result of the foregoing, I found that the Claimant did suffer a strain or sprain to his lumbar and cervical regions on February 4, 2003. However, I further find that the Claimant did not suffer any disability or loss of earnings

> as a result of the said injury. I have further found that the only medical treatment that was necessary, was the Claimant's visit to the emergency room, shortly after the said accident. I have further determined, that the Claimant voluntarily removed himself from employment, which was available to him and which he was physically capable of performing. I found that the Defendant [Employer] was justified in not permitting the Claimant to withdraw his resignation.

WCJ's Decision, September 13, 2007, (Decision), Discussion at 1-2.

Claimant appealed to the Board which affirmed.

Claimant contends that Employer accepted financial responsibility for Claimant's work-related injuries by failing to issue a notice of compensation denial by the required date, by accepting financial responsibility for his injuries, and by paying his medical bills for the first five months (Issue #1). Claimant also contends that Employer engaged in activities that violated the Americans with Disabilities Act, the Workers' Compensation Act, and/or standard civil and criminal law (Issue #2). Claimant contends that Employer obtained copies of his medical records without his knowledge, permission, and/or signed releases so therefore all accident-related medical records "should be included as a reprimand." (Issue #3). Claimant's Brief at 7. Claimant contends that the WCJ had a conflict of interest because he was previously represented by Employer's counsel in disbarment proceedings and should have recused himself (Issue #4). Claimant contends that the WCJ pressed Claimant's counsel to quickly end cross-examination which prevented Claimant from fully presenting his case and denied him his constitutional right to a fair, unbiased hearing (Issue #5). Claimant further contends that the WCJ's findings of fact were not based upon substantial medical

evidence and were contradictory (Issue #6). Claimant also contends that the Board erred when it accepted the WCJ's decision without taking into account the WCJ's conflict of interest and his failure to allow Claimant adequate cross-examination (Issue #7). Finally, Claimant asks this Court to "see other legal issues or errors of law (given that the Appellant [Claimant] is not an attorney and has no legal training) that invalidate the findings/orders of the WCJ and/or WCAB [Board]." (Issue #8). Claimant's Brief at 7.[3]

Claimant failed to raise and preserve all of these issues before the WCJ and the Board except for Issue six.[4] Claimant did not raise issues one through five before the WCJ and/or the Board.[5] In Budd Baer, Inc. v. Workers' Compensation Appeal Board (Butcher), 892 A.2d 64, 67 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 588 Pa. 784, 906 A.2d 544 (2006), this Court

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[3] This Court's review is limited to a determination of whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence, or whether constitutional rights were violated. Vinglinsky v. Workmen's Compensation Appeal Board (Penn Installation), 589 A.2d 291 (Pa. Cmwlth. 1991).

[4] Issue six has two parts: 1) whether the WCJ's decision was supported by substantial evidence and 2) whether the WCJ's decision was contradictory.

[5] In his appeal to the Board, Claimant asserted that the WCJ erred for the following reasons:

> improperly characterizes the claimant's impaired cognative [sic] state, due to the auto accident/work injury, at the time of resignation, erroneouly [sic] states claimant voluntarily removed himself from the work force, fails to acknowledge the importance of the only disinterested witness [Dove] . . . but accepts as credible the inconsistent and biased testimony of the employers witnesses. . . .

Appeal from Judge's Findings of Fact and Conclusions of Law, October 3, 2007, at 1-2. Claimant also attacked the credibility determinations of the WCJ with respect to the medical witnesses and Employer's lay witnesses.

stated, "Issues not raised before the WCJ and the Board are deemed waived on appeal to this Court."

Issue #7 is a rephrasing of issues 4 and 5 and is waived as well. In Issue #8, Claimant asks this Court to act as his attorney because he has no legal training. This Court may not do so. This Court has stated, "[a]ny lay person who chooses to represent himself in a legal proceeding must assume the risk that his lack of expertise and legal training may prove to be his undoing." Daly v. Unemployment Compensation Board of Review, 631 A.2d 720, 722 (Pa. Cmwlth. 1993).

Claimant is left with the following issues for this Court's review: were the WCJ's findings supported by substantial medical evidence and were they contradictory?

In a claim petition, the claimant bears the burden of proving all elements necessary to support an award. Innovative Spaces v. Workmen's Compensation Appeal Board (DeAngelis), 646 A.2d 51 (Pa. Cmwlth. 1994). To sustain an award, the claimant has the burden of establishing a work-related injury which resulted in disability. If the causal relationship between the claimant's work and the injury is not clear, the claimant must provide unequivocal medical testimony to establish a relationship. Holy Family College v. Workmen's Compensation Appeal Board (KYCEJ), 479 A.2d 24 (Pa. Cmwlth. 1984).

Here, Claimant bore the burden of proving that he suffered a work-related injury which resulted in disability. The WCJ did not find Claimant credible. Further, the WCJ did not find Claimant's medical witness, Dr. Persia credible. In contrast, the WCJ found Claimant's co-workers credible regarding his problems in the workplace and his resignation. The WCJ also accepted Dr. Bookwalter's opinion that Claimant suffered nothing more than cervical and/or lumbar strains which were completely resolved by the time Dr. Bookwalter examined him. As a result of his credibility determinations, the WCJ concluded that Claimant suffered a work-related injury but did not incur any disability.[6] The WCJ further found, based on the testimony of Employer's witnesses that Claimant withdrew from the workforce when he submitted his resignation and that the resignation was not related to the work-related injury.

The WCJ as the ultimate finder of fact 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). This Court will not disturb a WCJ's finding when those findings are supported by substantial evidence. Nevin Trucking v. Workmen's Compensation Appeal Board (Murdock), 667 A.2d 262 (Pa. Cmwlth. 1995).

[6] For workers' compensation purposes, disability is equated with a loss of earning power. Inglis House v. Workmen's Compensation Appeal Board (Reedy), 535 Pa. 135, 634 A.2d 592 (1993).

Claimant also contends that the WCJ's conclusions of law were contradictory because the WCJ made the following three conclusions of law: "1. The Claimant has met his burden in proving an injury in the course of his employment with the Defendant [Employer] and related thereto. 2. No compensation is due Claimant, in that he did not suffer a loss of earnings as a result of his said injury. 3. The Defendant [Employer] is entitled to termination of compensation as of November 1, 2005." Decision, Conclusions of Law Nos. 1-3 at 13.

The WCJ explained in the course of his decision that Claimant established that he suffered a work-related injury in the accident but did not suffer a loss of earnings as a result of the injury because Claimant voluntarily removed himself from employment when he resigned for reasons unrelated to the work-related injury. The WCJ terminated any benefits as of November 1, 2005, which was the date Dr. Bookwalter examined him and found him to be fully recovered. Though perhaps not clear to Claimant, the WCJ's conclusions were not contradictory. This Court finds no error.

Accordingly, this Court affirms.

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BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charles Nilsson, Petitioner	:	
v.	:	
Workers' Compensation Appeal Board (Warren County Commissioners and PComp Insurance), Respondents	:	No. 1861 C.D. 2009

O R D E R

AND NOW, this 4th day of June, 2010, the order of the Workers' Compensation Appeal Board in the above-captioned matter is affirmed.

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BERNARD L. McGINLEY, Judge