

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:	
SCI-Camp Hill,	:	
Petitioner	:	
	:	
v.	:	No. 1890 C.D. 2010
	:	Submitted: September 23, 2011
Workers' Compensation Appeal	:	
Board (Frazier),	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: December 8, 2011

The Department of Corrections, SCI-Camp Hill (Employer) petitions for review from the Worker’s Compensation Appeal Board (Board) order that, after remand, affirmed a Workers’ Compensation Judge’s (WCJ) order granting benefits to Delores Frazier (Claimant) for her knee injury pursuant to the Workers’ Compensation Act¹ (WC Act). Claimant also submitted a claim for benefits under the Heart & Lung Act² (H&L Act) for the same injury. Employer contends the WCJ was estopped from awarding benefits because the Secretary of the Department of Corrections (DOC) denied Claimant benefits under the H&L Act. Employer also argues the WCJ failed to issue a reasoned decision. Upon review, we affirm.

¹ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-1041.4; 2501-2708.

² Act of June 28, 1935, P.L. 477, as amended, 53 P.S. §§637-638.

Background

As a correctional officer for Employer, Claimant performed fence and gravel zone checks outdoors. After 10:00 P.M., on July 7, 2004, Claimant went outdoors to perform the outside fence and gravel checks. Claimant alleges she slipped and fell on slick gravel, injuring her left knee. Claimant reported to her shift the next day. On July 9, again while performing foot patrol, Claimant tripped over a concrete step, causing her to twist her left knee. She completed her shift while in pain and sought treatment for her knee the next day. Claimant then filed a claim petition seeking benefits under the WC Act for her injuries.

Claimant previously injured her knee in a non-work related car accident, for which she filed a civil suit. She underwent surgery on her left knee in May 2004 and was out of work until mid-June 2004.

The WCJ held hearings on the matter. Claimant testified on her own behalf and submitted the deposition testimony of Dr. Robert Kaneda (Claimant's Treating Physician). Employer submitted the deposition testimony of two doctors from the same office, Dr. Robert Mauer and Dr. John Rychak. Dr. Mauer performed an independent medical examination (IME) on Claimant for her car accident, offering facts (Employer's Physician). Dr. Rychak performed an IME, offering expert testimony about Claimant's injury (Employer's Medical Expert).

Employer submitted testimony of several of Claimant's co-workers. Officer Kevin Mains and Sergeant Brenda Ewan testified in person, and the WCJ

received transcript testimony of five co-workers who testified in the H&L Act case.

Claimant testified she slipped and fell on July 7, 2004, injuring her knee, and then twisted her knee two days later. Claimant did not complete an injury report for her injuries because she was not asked to do so. She reported her fall on July 7 to Lieutenant DeLeon and Sergeant Murdock, filled out a leave slip for the remainder of her shift and went home. Claimant testified she first sought treatment July 10 when she received a medical evaluation by Lieutenant Julie Carr.

Claimant's Treating Physician testified that he operated on Claimant for knee injuries related to her car accident. He testified he saw Claimant again at the end of June 2004 once she completed physical therapy. Days after the claimed work injuries, Claimant's Treating Physician found she sustained injuries to her left knee. He opined that Claimant reinjured her knee in July 2004 because she had a "decreased range of motion ... medial and lateral joint line tenderness ... fluid in the knee and a positive Apley's compression test." WCJ Op., 3/31/06, Finding of Fact (F.F.) No. 51. He operated on Claimant's knee on August 19, 2004 as a result of her July 2004 injuries. He also scheduled another arthroscopic surgery for December 28, 2004, because her knee pain worsened.

Employer's Physician testified that when he performed an IME related to the car accident, Claimant did not mention her post-accident work injuries. Employer's Medical Expert testified that he performed an IME in early 2005, but he did not generate a report until months later. He also testified that there were no

degenerative changes in Claimant in May 2004; however, when comparing the May and August 2004 records, Employer's Medical Expert viewed Grade III and Grade IV changes.

Officer Mains testified he was familiar with Claimant and recalled her making a statement on July 7, 2004, about going home. He conceded that Claimant put in a leave slip and that he would not have walked with her that night. Officer Mains described Claimant as "bitchy." F.F. No. 19. Officer Mains testified that he was aware Claimant underwent surgery on her leg in May 2004, and that was around the time she became "bitchy." F.F. No. 25.

Sergeant Ewan testified she worked on July 7, 2004, and was in communication with Claimant by radio that evening. She recalled Claimant asking about an injury report and that Claimant went in search of ice. When she could not find ice, she got a leave slip to go home. Ewan testified, "I assumed she had an injury." F.F. No. 35. The WCJ noted Ewan testified that when she asked Claimant about her knee the next day, Claimant was nasty to her. Ewan admitted that Lieutenant Carr sent Claimant to get ice for her "ankle injury." F.F. No. 38.

Of the five H&L Act claim witnesses, the WCJ noted Todd Kushner testified he was working on July 9, 2004. He saw Claimant trip and get her left foot caught. Kushner testified that, immediately after tripping, Claimant appeared and sounded upset and seemed to be in pain. He further testified that "she was limping." F.F. No. 46. The WCJ noted Lieutenant Santiago DeLeon testified about Claimant coming to get ice at the dispensary on July 7, 2004. The WCJ

stated that in Claimant's employee performance review, dated a few weeks before her alleged injuries, DeLeon commented favorably on Claimant's demeanor and willingness to perform tasks. The record in the case closed on January 23, 2006.

The WCJ issued a decision and order dated March 31, 2006, awarding benefits to Claimant (Original Decision). The WCJ also determined Employer engaged in an unreasonable contest and awarded fees. Employer appealed to the Board arguing the WCJ's findings were not supported by substantial competent evidence and the WCJ did not issue a reasoned decision.

On June 23, 2008, the Board reversed the WCJ's order as to unreasonable contest, and remanded to the WCJ to explain his decision. The Board did not vacate or otherwise alter the WCJ's order awarding WC benefits. However, the Board ruled the WCJ did not issue a reasoned decision, emphasizing the WCJ did not explain his rejection of Employer's live and H&L Act witnesses' testimony, and did not articulate objective reasons for not crediting their testimony. Board Op., 6/23/08, at 11-12. The Board declined to decide whether the decision was based on substantial evidence as the WCJ could change his decision on remand.

While the remand decision was pending, on October 23, 2008, DOC's hearing examiner recommended DOC deny H&L Act benefits (Recommendation). The hearing examiner did not find credible Claimant's testimony about her alleged knee injuries. Employer submitted the Recommendation to the WCJ by letter. On February 23, 2009, DOC adopted the Recommendation and denied the claim. Claimant did not appeal DOC's decision. By letter dated March 12, 2009,

Employer submitted the DOC decision to the WCJ requesting denial of the claim based on collateral estoppel. Employer asked the WCJ to enter the decision in the record. However, the legal basis for including the decision remains unclear as the record was closed, and Employer did not file a request to reopen it.

On May 12, 2009, the WCJ issued his remand decision limited to explaining why he found Claimant credible and why he found Employer's witnesses lacked credibility given their hostility toward the Claimant. Employer appealed the WCJ's decision to the Board, challenging the WCJ remand decision for: (1) not addressing the Board's remand order to issue a "reasoned decision;" (2) not addressing the alleged collateral estoppel effect of the H&L Act decision; and, (3) lacking substantial evidence for his post-remand and initial decisions.

The Board determined collateral estoppel did not apply since the WCJ issued his Original Decision regarding Claimant's work injury on March 31, 2006, prior to DOC's decision. The Board deemed the WCJ's remand decision a supplement to the Original Decision. The Board concluded the WCJ issued a reasoned decision because he offered additional rationale for his credibility determinations. The Board specifically noted the WCJ found Employer's witnesses less credible than Claimant due to their apparent hostility toward Claimant. Employer filed a petition for review with this Court.³

³ Although Employer asserted the WCJ's decision lacked substantial evidence in its petition, it failed to argue this issue in its brief; thus, the issue is waived. See Pa. R.A.P. 2119.

Discussion

Employer presents two issues for this Court's review:⁴ (1) whether DOC's decision collaterally estops the WCJ's decision so that it cannot stand; and, (2) whether the WCJ failed to issue a "reasoned decision" under Section 422(a).

1. Collateral Estoppel

Employer asserts that pursuant to this Court's en banc decision in Department of Corrections v. Workers' Compensation Appeal Board (Wagner-Stover), 6 A.3d 603 (Pa. Cmwlth. 2010), DOC's H&L Act decision precluded the WCJ from awarding benefits. In Wagner-Stover, this Court held the doctrine of collateral estoppel bars re-litigating the question of full recovery in an Act 632⁵ case after that issue was fully litigated and decided through an administrative proceeding pursuant to the General Rules of Administrative Practice and Procedure. DOC's finding in the Act 632 case that the claimant fully recovered from her injury thus compelled the WCJ to grant DOC's termination petition in the WC case.

"Collateral estoppel relieves parties of the cost and vexation of multiple lawsuits, conserves judicial resources, and, by preventing inconsistent decisions, encourages reliance on adjudication." Shaffer v. Smith, 543 Pa. 526,

⁴ This Court's review is limited to whether there was a violation of constitutional rights or error of law, and whether necessary findings of fact were supported by substantial evidence. Hershgordon v. Workers' Comp. Appeal Bd. (Pepboys), 14 A.3d 922 (Pa. Cmwlth. 2011).

⁵ Act 632, Act of December 8, 1959, P.L. 1718, No. 632, as amended, 61 P.S. §951, provides compensation when the injury is caused by an inmate. Act 632 benefits are virtually identical to those afforded by the H&L Act, and thus the case law may be used for purposes of **(Footnote continued on next page...)**

532, 673 A.2d 872, 874 (1996) (quoting Allen v. McCurry, 449 U.S. 90 (1980)). The doctrine of collateral estoppel prevents relitigation of issues in a subsequent case when the following factors are shown: (1) the issue decided in the prior case is identical to that of the subsequent case; (2) there was a final judgment on the merits in the prior case; (3) the party against whom the doctrine is asserted was a party (or in privity) and had a full opportunity to litigate the issue; and, (4) the prior case's determination was essential to the final decision. Benginia v. Worker's Comp. Appeal Bd. (City of Scranton), 805 A.2d 1272 (Pa. Cmwlth. 2002).

Employer asserts the issue of whether Claimant suffered an injury under the H&L Act is identical to the issue of whether Claimant suffered an injury under the WC Act. "Disability" has "the same meaning under both acts." Kohut v. Workmen's Comp. Appeal Bd., 621 A.2d 1101, 1104 (Pa. Cmwlth. 1993). The hearing examiner found that Claimant did not suffer an injury for purposes of the H&L Act. Employer argues this finding should preclude the WCJ from awarding benefits for any injury because the Supreme Court ruled "a fact is a fact" in Rue v. K-Mart Corp., 552 Pa. 13, 19, 713 A.2d 82, 85 (1998). The parties do not dispute that the finding of an injury is essential to an award of benefits under either the WC Act or H&L Act. As the parties are identical in both claims, the parties focus their dispute on identifying the final judgment in the "prior case."

This case is unique in that the parties litigated the WC and H&L Act cases simultaneously. The date and impact of the final fact-finder's decision thus

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analyzing H&L Act cases. Cantarella v. Dep't of Corr., 835 A.2d 870, 874 n.6 (Pa. Cmwlth. 2003) (en banc) (citing Gribble v. Dep't of Corr., 711 A.2d 593 (Pa. Cmwlth. 1998)).

dictates preclusive effect. The WCJ is the ultimate fact-finder for the WC case, whereas the Secretary for DOC is the ultimate fact-finder for the H&L Act case. See Duvall v. Dep't of Corr., 926 A.2d 1220 (Pa. Cmwlth. 2007) (WCJ's suspension of benefits barred contrary DOC finding). The WCJ found that Claimant was credible and that she suffered a work-related compensable injury. By contrast, the DOC Secretary adopted the hearing examiner's finding that Claimant fabricated her work injury. The two fact-finders⁶ findings and conclusions are thus diametrically opposed.

Employer's collateral estoppel argument presumes the H&L Act action is the "prior case." Employer contends that since DOC's H&L Act decision pre-dates the WCJ's remand decision, and Claimant did not appeal DOC's decision, only the H&L Act case reached final judgment. Claimant argues the WCJ's original March 31, 2006 decision awarding her WC benefits is final in the estoppel context because the WCJ found she suffered a compensable injury. Employer argues the Original Decision is not final because: (1) Employer appealed it to the Board; and, (2) the Board remanded it to the WCJ to issue a "reasoned decision" under the WC Act.

The mere fact that Employer appealed a WCJ's decision does not affect the finality of the WCJ's order awarding benefits for collateral estoppel

⁶ Scierka v. Department of Corrections, 852 A.2d 418 (Pa. Cmwlth. 2004) also involved two fact-finders who came to opposite conclusions regarding a claimant's credibility. This Court held that estoppel did not preclude DOC from making findings contrary to those made by a WCJ when the WCJ found claimant suffered a compensable injury. See also Cantarella (holding WCJ's award of WC benefits does not bind DOC in an Act 632 claim); contra Heath v. Pa. Bd. of Prob. & Parole, 869 A.2d 39 (Pa. Cmwlth. 2005) (upholding collateral estoppel effect of WCJ's denial of benefits in H&L proceeding).

purposes. Yonkers v. Donora Borough, 702 A.2d 618 (Pa. Cmwlth. 1997). Yonkers stands for the proposition that a “pending appeal does not ... destroy the finality of a decision for purposes of collateral estoppel.” Id. at 620. The mere fact of the appeal to the Board is of no moment because an appeal of a decision does not impair the initial decision’s finality “unless and until it is **reversed** on appeal.” Id. (emphasis in original).

The WCJ issued his Original Decision with 70 findings of fact and 17 conclusions of law on March 31, 2006, finding a work injury and awarding benefits. The Board remanded to the WCJ on July 23, 2008, but did not reverse or vacate his findings. DOC issued its H&L Act decision on February 23, 2009, finding no work injury and denying benefits. The WCJ issued his remand decision on May 12, 2009 without reopening the record. The Board did not reverse the WCJ’s decision on benefits or vacate his findings of fact initially, and affirmed his decision on appeal. The WCJ thus issued his “final” decision, including a finding that Claimant suffered a work injury, prior to the DOC decision, not subsequent to it.

The effect of a remand order on the finality of a WCJ decision depends on the language of the remand order as opposed to the date when the decision is issued. Repash v. Workers’ Comp. Appeal Bd. (City of Phila.), 961 A.2d 227 (Pa. Cmwlth. 2008). Remand proceedings are restricted to the purpose indicated by the Board’s remand order. Id. The WCJ is required to stay within the confines of a remand order. Teter v. Workers’ Comp. Appeal Bd. (Pinnacle Health Sys.), 886 A.2d 721 (Pa. Cmwlth. 2005).

The Board remanded to the WCJ to support his decision in accordance with Daniels v. Workers' Compensation Appeal Board (Tristate Transp.), 574 Pa. 61, 828 A.2d 1043 (2003) and Section 422(a) of the WC Act. Specifically, the Board remanded “with instructions for the WCJ to explain why he rejected [Employer’s] fact witnesses who testified at Claimant’s [H&L Act] hearing,” including with regard to their credibility. Board Op., 6/23/08, at 14.

On remand, the WCJ did not make additional findings or take additional evidence. Rather, the WCJ stayed within the confines of the Board’s instructions by providing additional rationale for his original findings. The remand decision thus may be construed as more support for the Original Decision. The WCJ has exclusive province over questions of credibility and evidentiary weight, and his findings are binding if they are supported by substantial competent evidence. Anderson v. Workers' Comp. Appeal Bd. (Penn Center for Rehab), 15 A.3d 944 (Pa. Cmwlth. 2010). The Board’s decision upholding the WCJ effectively made his findings binding as of the date of the Original Decision. Consequently, DOC’s decision is not a prior case that binds the WCJ or the Board.

2. Reasoned Decision

Employer also argues the WCJ failed to issue a reasoned decision. For the reasons that follow, we disagree.

To satisfy Section 422(a) of the WC Act, a WCJ’s decision must permit adequate appellate review. Gumm v. Workers' Comp. Appeal Bd. (Steel), 942 A.2d 222 (Pa. Cmwlth. 2008). The law does not require the WCJ to discuss all the evidence presented or analyze each witness statement line-by-line. Id. It only requires that the WCJ make the findings necessary to resolve issues raised by

the evidence and relevant to the decision to spare a reviewing court from having to imagine why the WCJ believed one witness over another. Id.

“[T]he WCJ's prerogative to determine the credibility of witnesses and the weight to be accorded evidence has not been diminished by the amendments to Section 422(a).” PEC Contr. Eng'rs v. Workers' Comp. Appeal Bd. (Hutchison), 717 A.2d 1086, 1089 (Pa. Cmwlth. 1998). According to Daniels, “some articulation of the actual objective basis for the credibility determination must be offered for the decision to be a ‘reasoned’ one.” Daniels, 574 Pa. at 78, 828 A.2d at 1053. These objective factors must be identified and articulated. Id.

Claimant testified live before the WCJ, as did Officer Mains and Sergeant Ewan. Because he observed their testimony, the WCJ need only state who he found more credible. U.S. Steel Mining Co., v. Workers' Comp. Appeal Bd. (Goretsky), 874 A.2d 711 (Pa. Cmwlth. 2005). The WCJ observed Claimant’s demeanor and credited her testimony. He decided to award benefits based on his credibility determination. The WCJ explained that he found Claimant more credible because he found Employer’s witnesses showed “extreme hostility toward [Claimant].” WCJ Remand Decision, 5/12/2009, at 1. Hostility qualifies as an objective basis for finding that Employer’s witnesses lack credibility.

Although Employer disagrees with the WCJ’s credibility determinations, such disagreement is not a basis for setting them aside. Hall v. Workers' Comp. Appeal Bd. (Am. Serv. Grp.), 3 A.3d 734 (Pa. Cmwlth. 2010). Unless made arbitrarily or capriciously, a WCJ’s credibility determinations will be upheld on appeal. Gumm.

Here, the WCJ's credibility determinations are neither arbitrary nor capricious. The WCJ noted throughout his findings that Claimant's co-workers referred to her as "bitchy" and nasty with a poor attitude. F.F. Nos. 19, 25. The WCJ specifically noted after each reference that these characterizations were inconsistent with Claimant's performance review dated only three weeks earlier. F.F. Nos. 21, 45. Moreover, this Court notes that, contrary to Employer's representations, the WCJ referred to a number of witnesses who provided testimony in the H&L Act case, including crediting Kushner. For these reasons, we hold the WCJ's decision meets the WC Act's reasoned decision requirements.

Based on the foregoing, we affirm.

ROBERT SIMPSON, Judge

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	:	
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ORDER

AND NOW, this 8th day of December, 2011, the Order of the Workers' Compensation Appeal Board dated August 17, 2010 at No. A09-0985 is **AFFIRMED**.

ROBERT SIMPSON, Judge