IN THE COMMONWEALTH COURT OF PENNSYLVANIA

St. Joseph's Center,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2062 C.D. 2010
	:	
Workers' Compensation Appeal Board (Williams),	:	Submitted: February 4, 2011
	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: August 23, 2011**

St. Joseph's Center (Employer) petitions for review of the Order of the Workers' Compensation Appeal Board (Board) that: (1) reversed a Workers' Compensation Judge's (WCJ) decision granting Employer's Petition to Suspend/Modify (Suspension Petition) Patricia Williams' (Claimant) disability benefits; (2) affirmed the WCJ's decision denying Employer's Petition to Terminate/Review Benefits (Termination Petition); and (3) affirmed the WCJ's decision granting Claimant's Penalty Petition and directing Employer to pay a twenty-five percent penalty. On appeal, Employer argues that the Board erred by: improperly applying the principle of res judicata to hold that Employer was barred

from challenging Claimant's disability status between September 19, 2007, and January 31, 2008, because of a Stipulation of Facts (Stipulation) submitted and approved by the WCJ on January 31, 2008 (January 2008 Decision); affirming the WCJ's conclusion that Employer did not satisfy its burden of proving that Claimant was fully-recovered from her accepted work-related injuries; and affirming the determination that Employer violated the Workers' Compensation Act[1] (Act) by failing to pay for Claimant's medical treatment of an accepted work injury and was subject to penalties for that violation.

Claimant worked as a resident technician for Employer, a residence for physically and mentally handicapped individuals, and her job duties required her to assist residents with their direct care and personal hygiene, as well as perform cleaning and housework duties and paperwork. (WCJ Decision, June 22, 2009, (June 2009 Decision) Findings of Fact (June 2009 FOF) ¶ 7.) While performing these duties on September 22, 2006, Claimant slipped and fell on a wet floor and injured her left shoulder, left elbow, both hands, and both knees. (June 2009 FOF ¶ 7.) Employer issued a Notice of Compensation Payable (NCP) on October 10, 2006, accepting an injury described as "both hands, both knees" and "contusion." (June 2009 FOF ¶ 3.) Employer and Claimant entered into a Supplemental Agreement (Agreement), in which the injury description was expanded, as of October 19, 2006, to include "L. RADIAL HEAD [(left elbow),] L. ROTATOR CUFF[,] BOTH KNEES[, and] BOTH HANDS," "FRACTURE[,] STRAIN[,] CONTUSION[, and] CONTUSION," respectively. (June 2009 FOF ¶ 3; Supplemental Agreement for Compensation for Disability for Permanent Injury,

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

R.R. at 390a.) Claimant eventually returned to restricted work at no loss of wages, resulting in the suspension of her wage loss benefits, (June 2009 FOF ¶ 7), and continued to seek treatment for her injuries. Subsequently, on September 19, 2007, Claimant was involved in an argument with a co-worker (Co-worker), which led to Claimant telling her husband in a phone conversation at work that she should "get her four [] sons after [Co-worker]." (June 2009 FOF ¶¶ 7, 9, 11.) Co-worker overheard Claimant's statement, considered it a threat, and filed a grievance with Employer. (June 2009 FOF ¶¶ 9, 11.) Claimant was suspended from work and, after an investigation, Employer discharged Claimant on October 1, 2007, for threatening Co-worker on September 19, 2007. (June 2009 FOF ¶¶ 10, 11.)

Prior to the September 19, 2007, incident, Claimant sought a second opinion for her work-related injuries from Glen Feltham, M.D., a board-certified orthopedic surgeon. (June 2009 FOF ¶ 13.) Dr. Feltham examined Claimant on August 27, 2007, taking a history of her injury and treatment, and performing a physical examination. (June 2009 FOF ¶ 13.) After his examination and review of diagnostic films, Dr. Feltham believed that Claimant could have a small tear in her left rotator cuff, which he deemed work-related. (June 2009 FOF ¶ 13.) Ultimately, on October 26, 2007, Dr. Feltham performed a subacromial decompression on Claimant's left rotator cuff, which revealed bone spurs, frayed tissue, and that "the rotator cuff was soft at the point of its attachment to the bone." (June 2009 FOF ¶ 13.)

Sometime in the fall of 2007, after Claimant's discharge and surgery, Claimant filed a Petition to Reinstate Benefits (Reinstatement Petition) and two

Penalty Petitions.[2] A hearing was held before the WCJ on January 7, 2008, at which counsel discussed the Reinstatement Petition and Claimant testified. Following the hearing, Employer and Claimant entered into the Stipulation resolving those petitions. The WCJ, in the January 2008 Decision, approved the Stipulation. The Stipulation stated, in relevant part:

> 1. The parties hereby agree and stipulate that Claimant's indemnity benefits maybe [sic] reinstated to total temporary disability benefits as of September 19, 2007 less unemployment [compensation] benefits in the amount of Two Hundred Eleven ($211.00) per week less partial disability benefits Claimant already received.
>
> 2. Claimant's compensation rate is Three Hundred Seventy-Two Dollars and Fifty Cents ($372.50) per week and Claimant will receive that rate less Two Hundred Eleven Dollars ($211.00) per week received in unemployment compensation benefits and less the amount Claimant already received in partial benefits for the period of September 19, 2007 to present.
>
> 3. Claimant will receive total disability benefits less unemployment [compensation] benefits she is receiving in the amount of Two[] Hundred Eleven Dollars ($211.00) per week until such time as benefits are modified/suspended/terminated or otherwise adjusted in accordance with the [Act].
>
> . . . .
>
> 6. Claimant agrees to withdraw and dismiss any and all pending Penalty Petitions.
>
> 7. The parties agree and stipulate that the [WCJ] may incorporate the within Stipulation in an Order concluding the [Reinstatement] Petition . . . and any and all pending Penalty Petitions.

[2] The record is unclear as to the precise date these petitions were filed with the workers' compensation authorities.

(Stipulation at 1-2, R.R. at 479a-80a.) The January 2008 Decision stated, among other things, that the Stipulation "purports to resolve all the issues pertinent to the pending Penalty and Reinstatement Petitions" and Employer "is obligated to pay and the Claimant is entitled to receive benefits as described in the . . . Stipulation." (January 2008 Decision, Findings of Fact (January 2008 FOF) ¶ 1, and Conclusions of Law (January 2008 COL) ¶ 2, R.R. at 475a.)

On February 6, 2008, Employer filed the Termination Petition and Suspension Petition. In the Termination Petition, Employer sought to terminate Claimant's benefits as of either September 25, 2007, or December 18, 2007, based upon the reports of those dates filed by Thomas Byron, M.D., who opined Claimant was fully recovered from her work injuries. (Termination Petition at 1, R.R. at 3a.) The Termination Petition further alleged that any disability is not related to Claimant's work injuries and that "[a]ny medical treatment, including [treatment] for a rotator cuff problem, is not causally related to the work injur[ies]." (Termination Petition at 1, 3, R.R. at 3a, 5a.) The Suspension Petition sought the suspension of Claimant's benefits as of September 19, 2007, because Claimant's loss of earnings, i.e., disability, was no longer related to her work injuries, but to her being discharged for threatening Co-worker. (Suspension Petition at 1, R.R. at 6a.) Claimant filed timely answers to both petitions, denying the allegations contained in each. Claimant then filed the Penalty Petition on March 7, 2008, asserting that Employer violated the Act by refusing to pay for medical treatment for the injury to Claimant's left rotator cuff, which was accepted by the Agreement. (Penalty Petition at 2, R.R. at 16a.) Employer filed a timely answer denying the averments contained in the Penalty Petition. The petitions

were consolidated and hearings were held before the WCJ, at which Employer and Claimant presented evidence. We will address each petition in turn, as Employer appeals from the determinations related to each.[3]

I. Suspension Petition

In support of its request to suspend Claimant's benefits, Employer presented the testimony of Co-worker, who described the September 19, 2007, incident. According to Co-worker, he and Claimant were working the overnight shift together, Claimant and he had the same duties and he complained to Claimant about her job performance and not "doing her share [of] mopping the floor and other heavy duties." (June 2009 FOF ¶ 9.) Co-worker testified that he did not raise his voice or use abusive language and Claimant walked away at the end of the conversation. (June 2009 FOF ¶ 9.) Co-worker indicated that, after Claimant walked away, he overheard her telling her husband over the phone that "she intended to have her four sons come after [him]." (June 2009 FOF ¶ 9.) He considered this statement threatening, and he filed a grievance with Employer the following day, which he later discussed with Claimant's supervisor (Supervisor). (June 2009 FOF ¶ 9.)

Employer also offered the deposition testimony of Supervisor. Supervisor explained that Co-worker filed a grievance against Claimant based on the events of September 19, 2007, and that he and Employer's human resources representative

[3] "Our review is limited to determining whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence and whether constitutional rights were violated." Sysco Food Services of Philadelphia v. Workers' Compensation Appeal Board (Sebastiano), 940 A.2d 1270, 1273 n.1 (Pa. Cmwlth. 2008).

investigated those events. (June 2009 FOF ¶ 10.) Supervisor testified he informed Claimant on September 20, 2007, that she was "suspended pending the outcome of the investigation." (June 2009 FOF ¶ 10.) According to Supervisor, the investigation supported Co-worker's version of the events; Employer has a policy against harassment and violence in the workplace; Claimant had prior written warnings, two in 2003 and one in 2005; and Employer has a progressive discipline policy, with which he complied when he gave Claimant notice on October 1, 2007, that she was discharged. (June 2009 FOF ¶ 10.)

Claimant, for the most part, did not dispute what occurred on September 19, 2007, indicating that she was aware that Co-worker "was nearby and she knew that he heard [her comment, but] . . . did not want to threaten [Co-worker] . . . 'I just felt like I wanted to show him that I had somebody that would care.'" (June 2009 FOF ¶ 7, quoting WCJ Hr'g Tr. at 38, January 7, 2008, R.R. at 526a.) Claimant indicated that "she believed that [Co-worker] had mistreated her on previous occasions," Employer did not have sufficient workers on night shift, it was "difficult to get anybody to assist her," and she needed "assistance due to her [medical] restrictions." (June 2009 FOF ¶ 7.) Claimant's position was that Employer did not follow its written disciplinary procedure in her case. (June 2009 FOF ¶ 7.)

Noting that there was no dispute that Claimant made the comment regarding having her four sons "go after" Co-worker, which Co-worker overheard and considered a threat, the WCJ found that Claimant was discharged for threatening Co-worker in violation of Employer's policy against workplace harassment and

making threats. (June 2009 FOF ¶ 11.) The WCJ found that Claimant introduced no evidence that her discharge was based on pretext. (June 2009 FOF ¶ 11.) The WCJ held that, but for Claimant's conduct on September 19, 2007, "Claimant would have continued to work for [Employer]" and, therefore, her wage loss after September 19, 2007, was unrelated to her work injury. (June 2009 FOF ¶ 11.) Accordingly, the WCJ concluded that Employer was entitled to the suspension of Claimant's benefits as of September 19, 2007. (June 2009 Decision, Conclusions of Law (June 2009 COL) ¶ 3.) With regard to the Stipulation, the WCJ stated:

> Following the testimony of Claimant, Claimant's counsel asked that the Claimant be reinstated because there was no question that the Claimant was disabled following the October 26, 2007[,] [surgery]. This Judge informed [Employer's] counsel that this would be appropriate. This is the conversation that led to the execution of the Stipulation described in the Findings above.

(June 2009 FOF ¶ 7.)

Claimant appealed to the Board arguing that, because her benefits were reinstated by the January 2008 Decision based on Employer's voluntary acceptance of liability from September 19, 2007, and ongoing, Employer was precluded from asserting in subsequent litigation that she was not disabled as of any date prior to the January 2008 Decision. Claimant asserted that, at the time Employer entered into the Stipulation voluntarily accepting liability from September 19, 2007, Employer was aware of her discharge from her job. The Board agreed, citing Weney v. Workers' Compensation Appeal Board (Mac Sprinkler Systems, Inc.), 960 A.2d 949 (Pa. Cmwlth. 2008), for the proposition that a party is "barred by technical res judicata from raising any matters concerning the [issue that was addressed in a prior stipulation] *of which [the party] was aware*

at the time the parties entered into [the] earlier stipulation [addressing that issue], which stipulation was approved by a judge in disposing of a [prior petition]." (Board Op. at 5 (emphasis in original).) The Board concluded that Claimant's disability status as of September 19, 2007, and ongoing, was at issue during the litigation of Claimant's Reinstatement Petition, which was resolved by Employer voluntarily accepting liability for temporary total disability benefits for that time period through the Stipulation, of which the WCJ approved in the January 2008 Decision. Thus, the Board reversed the WCJ's decision granting the Suspension Petition, stating

> [b]ecause the principle of res judicata applies to the issue of a claimant's disability *as of a given date*, Caggiano[v. Workmen's Compensation Appeal Board, 400 A.2d 1382, 1384 (Pa. Cmwlth. 1979)], we conclude that as the issue of Claimant's disability as of September 19, 2007[,] was already determined in the [January 2008 Decision] . . . that issue is not subject to being re-litigated in this proceeding.

(Board Op. at 9-10 (emphasis in original).) Employer petitions this Court for review of the Board's determination.

Employer argues on appeal that the Board's reliance on the principle of res judicata to reverse the suspension of Claimant's benefits was improper and that this matter is more akin to Norris v. Workers' Compensation Appeal Board (Hahnemann Hospital), 726 A.2d 1 (Pa. Cmwlth. 1999), than Weney. Employer states that Norris allowed for the modification/suspension of a claimant's benefits, even after a stipulation reinstating benefits was entered into because the stipulation was merely an acknowledgment of the undisputed fact that the claimant was entitled to a reinstatement of benefits. Employer asserts the "Stipulation was

entered into after the [WCJ] admonished Defendant/Employer to reinstate benefits or face penalties on the Reinstatement and Penalty Petitions." (Employer's Br. at 14.) Thus, according to Employer, "[e]arlier reinstatement does not preclude a suspension of benefits based on a [c]laimant's misconduct and termination from employment," particularly where the Stipulation specifically contemplated the suspension of Claimant's benefits after their reinstatement. (Employer's Br. at 12-13 (citing Weismantle v. Workers' Compensation Appeal Board (Lucent Technologies), 926 A.2d 1236 (Pa. Cmwlth. 2007)).)[4] Claimant responds that Norris is distinguishable and the Board properly applied the principles of res

[4] Employer also asserts that the Stipulation "had nothing to do with Claimant's disability status on and after September 19, 2007," and did not have any effect on its subsequent Suspension Petition, which was based on Claimant's termination from her employment on October 1, 2007, and the change in her disability status on and after September 19, 2007. (Employer's Br. at 13.) We note that Employer's contention regarding the timing of the effect of the Stipulation is not supported by the Stipulation, which states, "[t]he Parties hereby agree and stipulate that Claimant's indemnity benefits maybe [sic] reinstated to total temporary disability benefits *as of September 19, 2007*." (Stipulation at ¶ 1, R.R. at 391a (emphasis added).) Thus, the Stipulation dealt with the time period *beginning* September 19, 2007, and addressed, *inter alia*, the credit Employer would receive for Claimant's *unemployment compensation benefits*, which occurred *after* Claimant's discharge. However, this does not necessarily affect the outcome of this matter as will be discussed *infra*.

Additionally, Employer argues that the Board erred in retroactively applying Weney where that opinion was filed after the parties here entered into the Stipulation. However, as Claimant points out, Weney was filed prior to the WCJ's June 2009 Decision. Moreover, Weney applied res judicata, collateral estoppel principles, and case law that pre-dated the holding in Weney, which Claimant cites in her brief. See, e.g., Lewis v. Workers' Compensation Appeal Board (Giles & Ransome, Inc.), 591 Pa. 490, 919 A.2d 922 (2007) (holding that, in a termination proceeding, an employer is prevented, under the doctrine of issue preclusion, from challenging the issue of the causation of the injury where that injury previously had been adjudicated as work related); Sharon Tube Company v. Workers' Compensation Appeal Board (Buzard), 908 A.2d 929 (Pa. Cmwlth. 2006) (holding that, where the parties entered into a supplemental agreement specifically acknowledging the recurrence of the claimant's work-related injury, the employer was precluded from seeking to modify benefits payable prior to the date of the agreement).

judicata in reversing the WCJ's decision suspending Claimant's benefits. Alternatively, Claimant points out that, if the Board did err in reversing on res judicata grounds, Claimant became totally disabled as a result of her work-related injuries as of October 26, 2007, following her rotator cuff surgery. (Claimant's Br. at 20.)

"A suspension of benefits is only appropriate where the employee's earning power is no longer affected by the work-related injury." Howze v. Workers' Compensation Appeal Board (General Electric Company), 714 A.2d 1140, 1142 (Pa. Cmwlth. 1998). Where an employee's earning power is diminished by a factor not related to the work injury, an employer is entitled to a suspension of the employee's benefits. See Virgo v. Workers' Compensation Appeal Board (County of Lehigh-Cedarbrook), 890 A.2d 13, 15 (Pa. Cmwlth. 2005) (denying a claimant's reinstatement petition and granting an employer's suspension petition on the grounds that "any loss of earning power was the result of [the claimant's] discharge from employment due to 'bad faith.'"); USX Corporation v. Workmen's Compensation Appeal Board (Hems), 647 A.2d 605 (Pa. Cmwlth. 1994) (holding that the employer was entitled to the suspension of a claimant's benefits where the claimant could have returned to his time-of-injury position but for a non-work-related medical condition); Columbo v. Workmen's Compensation Appeal Board (Hofmann Industries, Inc.), 638 A.2d 477 (Pa. Cmwlth. 1994) (same). Employer's Suspension Petition here is akin to a challenge to a reinstatement petition under Section 413(a) of the Act, which provides in relevant part:

> where compensation has been suspended because the employe's earnings are equal to or in excess of his wages prior to the injury that payments under the agreement or award may be resumed at any time

> during the period for which compensation for partial disability is payable, *unless it be shown that the loss in earnings does not result from the disability due to the injury*.

77 P.S. § 772 (emphasis added). Section 413(a) has been interpreted as precluding the reinstatement of benefits where a claimant, working under suspended benefits, has been discharged for cause because the claimant's loss of earning power is not due to the work-related injury but to their own conduct. Southeastern Pennsylvania Transportation Authority (SEPTA) v. Workmen's Compensation Appeal Board (Pointer), 604 A.2d 315, 317 (Pa. Cmwlth. 1992) (en banc).

In Norris, the claimant returned to work at a reduced number of hours on June 9, 1994, and, on June 17, 1994, the employer filed termination, modification, and suspension petitions alleging that, as of May 5, 1994, the claimant was fully recovered and was capable of returning to her time-of-injury position. Norris, 726 A.2d at 1. While the petitions were pending and hearings were being held, employer and claimant modified the claimant's NCP "to reflect [the] changes in [the c]laimant's earnings due to the increasing number of hours she was able to work following her return to work." Id. at 2. Ultimately, the WCJ granted the termination petition, and the Board affirmed. Id. On appeal to this Court, the claimant argued that the termination of her benefits was erroneous "because of the various supplemental agreements signed by the parties . . . . while [employer's] termination petition was pending and because her counsel and [e]mployer's counsel stipulated to a suspension of benefits," which bound the employer to the fact that claimant was disabled after the date the WCJ found that she had recovered. Id. at 2. This Court disagreed with the claimant, holding:

> that an employer is not precluded from establishing that a claimant could have returned to work without restriction, and thus be entitled to a termination, on the grounds that the parties had voluntarily stipulated that the claimant was entitled to partial disability benefits *because* he or she had actually returned to work earning less than his or her time-of-injury wages. *Such a stipulation, in this case at least, was nothing more than an acknowledgment of an undisputed fact, entitling [the c]laimant to partial disability benefits.*

Id. at 3 (second emphasis added). Employer contends that the Stipulation here is akin to that in Norris and should not be considered anything "more than an acknowledgment of an undisputed fact" that "Claimant was owed benefits less unemployment compensation benefits she received and she was paid those benefits as a result of the Stipulation and the" January 2008 Decision. (Employer's Br. at 14.)

In Weney, the question was whether a claimant was "barred by the doctrines of technical res judicata and/or collateral estoppel"[5] from seeking to add additional

[5] This Court explained these doctrines as follows:

> Under the doctrine of technical res judicata, often referred to as claim preclusion, "when a final judgment on the merits exists, a future suit between the parties on the same cause of action is precluded." [Henion v. Workers' Compensation Appeal Board (Firpo & Sons, Inc.), 776 A.2d 362, 365 (Pa. Cmwlth. 2001)]. In order for technical res judicata to apply, there must be: "(1) identity of the thing sued upon or for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the parties suing or sued." Id. at 366. Technical res judicata may be applied to bar "claims that were actually litigated as well as those matters that *should have been* litigated." Id. (emphasis added). "Generally, causes of action are identical when the subject matter and the ultimate issues are the same in both the old and the new proceedings." Id.
>
> The doctrine of collateral estoppel, often referred to as issue preclusion, "is designed to prevent relitigation of an issue in a later action, despite the fact that the later action is based on a cause of action different from the one previously

(Continued…)

injuries to a NCP where he and the employer, in a prior petition to review compensation benefits, filed a stipulation agreeing to amend the claimant's NCP to add an additional injury, but the claimant did not seek to include in that stipulation the injuries at issue in the second petition to review, even though the claimant knew of those injuries at the time he entered into the stipulation. Weney, 960 A.2d at 951. We concluded that technical res judicata applied in Weney because the subject matter of the claimant's first review petition, which was ended by the stipulation adding an additional injury to his NCP, and the second review petition, in which he sought to include additional injuries to his NCP, was the "nature and extent of the injuries that [the c]aimant sustained as a result of the . . . work incident" and "the ultimate issue in both proceedings was whether the NCP accurately reflected the nature and extent of [the c]laimant's injuries." Id. at 955. This Court held that, although the claimant did not actually litigate the injuries he sought to add in the second proceeding in the first proceeding, the "record evidence clearly establishes that he should have done so" because he was aware of those injuries at the time of the first proceeding. Id. at 955-56. We further held that Section 413(a) of the Act, which provides WCJ's "the authority to amend

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litigated." Pucci v. Workers' Compensation Appeal Board (Woodville State Hosp[ital]), 707 A.2d 646, 647-48 (Pa. Cmwlth. 1998). Collateral estoppel applies where:

> (1) the issue decided in the prior case is identical the one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the doctrine is asserted was a party or in privity with a party in the prior case and had a full and fair opportunity to litigate the issue; and (4) the determination in the prior proceeding was essential to the judgment.

Id. at 648.

Weney, 960 A.2d at 954.

[NCPs] that are determined to be materially incorrect," must be "applied in a manner that is consistent with the doctrines of technical res judicata and collateral estoppel." Id. at 956.

Here, Employer contends that Claimant's loss of earning power, i.e., disability, as of September 19, 2007, was not related to her work-related injuries, but to her discharge for threatening Co-worker. However, in the Stipulation resolving Claimant's Reinstatement Petition, Employer accepted liability for Claimant's loss of earnings, i.e., disability, beginning September 19, 2007. Employer asserts that, notwithstanding the Stipulation that reinstated Claimant's benefits, it is entitled to a suspension of those benefits as of September 19, 2007. We agree with Claimant that, generally, such matters should be raised as a defense to a reinstatement petition. See, e.g., Virgo, 890 A.2d at 18; Pointer, 604 A.2d at 317. Thus, the fact that Employer did not challenge Claimant's Reinstatement Petition on these grounds, of which it was aware at the time it entered into the Stipulation, would normally preclude Employer from raising this defense for the same period of time pursuant to Weney. However, given the unique circumstances of this case, we hold that this matter is more like Norris than Weney. As noted above, this Court looked to the unique facts and purpose of the stipulation in Norris to determine whether the employer was bound by its agreement to pay partial disability on a varying scale. The circumstances here are no less unique.

We acknowledge Claimant's argument that Norris is distinguishable because the stipulations in that case occurred during the pendency of the employer's litigation of its termination, suspension, and modification petitions and there was

no pending Employer petition in this matter. However, Employer argues that the "Stipulation was entered into after *the [WCJ] admonished Defendant/Employer to reinstate benefits or face penalties* on the Reinstatement and Penalty Petitions." (Employer's Br. at 14 (emphasis added).) The transcript from the January 7, 2008, hearing before the WCJ reveals the following discussions between Claimant's counsel (CC), Employer's counsel (EC), and the WCJ (J) regarding the Reinstatement Petition and Employer's desire to challenge that petition:

> J All right, and [C]laimant is not being paid as we speak?
>
> CC Correct, and in fact, [C]laimant's job was taken away. *There was a legitimate dispute as to whether it was for cause or not as of 9/19/07. However, under a guise of a reinstatement petition, I had told [Employer's counsel] last week, frankly that should be done under a petition to suspend with the claimant being reinstated to total disability benefits now and the benefits, less an attorney fee, being made payable* ***while the parties can then go about and litigate back*** *so it would literally change the burden of proof on the pending petitions in the case,* and I had called to confirm with the Bureau, asked for the Bureau documents, and I had called last week to alert [Employer's counsel] specifically about the notice of rejection [of the medical bills associated with the rotator cuff surgery] and no subsequent document having been filed. So, the last document is an agreement keeping [C]laimant on total disability. So I was going to make a motion that [C]laimant's Reinstatement [Petition] be granted for that procedural reason, and then, *I can let [Employer] proceed with their case and bring [C]laimant back to have her testify in rebuttal.*
>
> J Let me just make the housekeeping arrangements here. The [NCP] will be Bureau No. 1; [Agreement] will be Bureau 2; [WCJ] Cummings first decision will be Bureau 3; and the amended decision will be Bureau 4, and are we in agreement that the[se] are all the Bureau documents aside from the one that was rejected by the Bureau.

EC Yes, I mean, I can't obviously disagree with the documents. For some reason or another, I don't know why, I didn't have these in my file, but [Claimant's counsel] had provided them to me today, and obviously, I can't dispute that, Bureau records.

J *[Claimant's counsel], because we started down this road, I'm going to keep it down this road. I understand that we're in a penalty situation and I don't think there's a penalty petition pending, but if you'd like to file one, I'll be glad to consolidate it.*

CC *In fact, I will do that after today. I wanted to, frankly,* when I had reviewed everything and got the Bureau documents for today, that's when this issue cropped up and I will do so because I wanted to hear from the ruling of the Court first.

J *Theoretically, you're right and it becomes [Employer's] burden, but because we set it up this way and we scheduled it this way, I'd like to see the case through this way, if you don't mind.*

CC I do not in the least . . . . [and] am ready to proceed in this fashion.

(WCJ Hr'g Tr. at 5-8, January 7, 2008, R.R. at 493a-96a (emphasis added).) At the end of the hearing, further discussion on the matter occurred:

CC Great, and, Judge, in light of the fact that we still have an open [a]greement, *and even if there is a legitimate employment dispute*, it ends as of 10/26/07 when she had the left shoulder surgery. No doctor says it's not work-related. I am again asking that she be reinstated to total at this stage *and then the parties can work out for that six week period of time, 9/19 through 10/25.*

J *[Employer's counsel] discuss it with your principle because [Claimant's counsel] is right.*

EC *Okay.*

(WCJ Hr'g Tr. at 61, R.R. at 549a (emphasis added).) We note the maxim that "while equity does not demand that its suitors shall have led blameless lives as to other matters, *it does require that they shall have acted fairly* . . . as to the controversy in issue." Lucey v. Workmen's Compensation Appeal Board (Vy-Cal Plastics PMA Group), 557 Pa. 272, 279, 732 A.2d 1201, 1204 (1999) (emphasis added). It would be contrary to fundamental fairness and the principles of equity to permit Claimant, whose counsel not only acknowledged Employer's *legitimate* arguments against the reinstatement of Claimant's benefits, but indicated that he told Employer's counsel that those issues should be raised in a suspension petition, to now use the Stipulation entered into under such circumstances to preclude Employer from following the course of conduct *suggested by Claimant's counsel* at the January 7, 2008, hearing. Indeed, the Stipulation, itself, appears to recognize that future litigation was forthcoming, as the parties included the following paragraph: "Claimant will receive total disability benefits less unemployment compensation benefits . . . until such time as benefits are modified[,] suspended[, or] terminated or otherwise adjusted in accordance with the [Act]." (Stipulation ¶ 3, R.R. at 480a.) Accordingly, we conclude that Employer was not precluded by the Stipulation from challenging Claimant's disability status as of September 19, 2007, and the Board erred in denying the suspension of Claimant's disability benefits as of September 19, 2007, based on Claimant's discharge for cause.

However, this does not end our inquiry because Claimant asserts that, if this Court accepts Employer's argument, her disability became work related again as of October 26, 2007. This is the date of the surgery on her work-related left rotator cuff injury, which resulted in a change in her medical condition that rendered her

unable to perform the jobs she would have been able to do as of the time of her discharge. Having accepted Employer's argument that the Board erred in reversing the WCJ's suspension of Claimant's benefits as of September 19, 2007, we will review Claimant's contention that she once again became eligible for disability benefits on October 26, 2007.

A claimant, whose benefits are suspended or not reinstated due to the claimant's discharge from work for cause is not "eternally preclude[d] benefits where the claimant has a worsening medical condition that is directly attributable to [her] work-related injury rather than to any fault of [the claimant]." Nebroskie v. Workmen's Compensation Appeal Board (Wright's Knitwear Corporation), 651 A.2d 564, 567 (Pa. Cmwlth. 1994) (citing Pointer, 604 A.2d at 318). "[A] claimant who . . . seeks to reinstate [her] benefits [after being discharged for willful misconduct while her benefits were suspended] *must show a change in circumstances, i.e., that [her] medical condition has worsened and that [s]he cannot do jobs [s]he would have been able to do at the time of her discharge*." Pointer, 604 A.2d at 318 (emphasis added). In Pointer, the WCJ found that that the claimant was fired for willful misconduct, but permitted the reinstatement of the claimant's benefits back to the date of discharge because he continued to be medically disabled. This Court, on appeal, rejected that conclusion stating: "[i]f [the c]laimant had demonstrated a change in [her] circumstances [s]he might have been entitled to benefits at a later date. . . . However, no such competent medical evidence was produced." Id.

Here, Dr. Feltham testified that, after the surgery on Claimant's left rotator cuff on October 26, 2007, which he opined was work-related, Claimant was on "no return to work status," but Claimant could return to gainful employment with restrictions after his June 24, 2008, examination of Claimant. (Feltham Dep. at 20, 25, R.R. at 282a, 285a-87a.) The WCJ credited Dr. Feltham's testimony, (June 2009 FOF ¶ 14), although he did not specifically include Dr. Feltham's testimony regarding Claimant's removal from work following the surgery in his findings of fact. The WCJ did, however, cite Dr. Feltham's testimony that he would put restrictions on Claimant's lifting and overhead motions when she returned to work. (June 2009 FOF ¶ 13.) Accordingly, based on Dr. Feltham's credited testimony, Claimant showed "a change in circumstances, i.e., that [her] medical condition has worsened and that [s]he [could not] do [the] jobs [s]he would have been able to do at the time of [her] discharge." Pointer, 604 A.2d at 318. Having done so, Claimant established her entitlement to the reinstatement of her disability benefits as of October 26, 2007, the date of her rotator cuff surgery, through June 24, 2008, the date Dr. Feltham indicated that she could return to gainful employment and the date her loss of earnings once again became the result of her discharge, not her work injury. Thus, Claimant was entitled to disability benefits for the closed period from October 26, 2007, through June 24, 2008, pursuant to Dr. Feltham's testimony that Claimant was on "no return to work status." (Feltham Dep. at 20, R.R. at 282a.) Employer is entitled to credit for any payments it made during that time period to Claimant, as well as an offset for any unemployment compensation or partial disability benefits paid. Accordingly, for these reasons, we reverse the Board's order inasmuch as it ordered the payment of benefits for a period other than the closed period from October 26, 2007, through June 24, 2008, and we

remand to the Board to further remand to the WCJ to calculate any benefits due and owing to Claimant for that closed period.

II. Termination Petition

In support of its Termination Petition, Employer presented the deposition testimony of Dr. Byron, who performed an Independent Medical Examination (IME) of Claimant on July 16, 2007, and authored medical reports on September 25, 2007, and again on December 18, 2007, after reviewing medical records from Dr. Feltham. (June 2009 FOF ¶ 12.) Dr. Byron testified that Claimant's physical examination revealed that she had full range of motion of her shoulders, wrists, elbows, and other parts, but had swelling in her wrists and digits and minor restricted movement in her fingers. (June 2009 FOF ¶ 12.) He indicated that Claimant did not have tenderness over her left elbow joint or radial head and that Claimant's shoulder examination was benign, with only "mildly positive impingement signs on the left." (June 2009 FOF ¶ 12.) Dr. Byron also opined that Claimant was capable of returning to work with a twenty-five pound lifting restriction, which was "consistent with [] Claimant's age, her arthritic condition, and her previous radial head fracture[,] which had healed." (June 2009 FOF ¶ 12.) Dr. Byron indicated that he: was aware of Claimant's October 26, 2007, rotator cuff surgery; believed that the material removed during the surgery was arthritic in nature or related to a rheumatologic condition; did not believe that Claimant sustained a rotator cuff injury on September 22, 2006; and did not think the surgery was related to a work-related injury. (June 2009 FOF ¶ 12.) On cross-examination, Dr. Byron conceded that he did not examine Claimant either immediately before or after the surgery. (June 2009 FOF ¶ 12.) He agreed that he did not examine Claimant's knees and, although he recalled that "Claimant had

told him that her knee problem had subsided and disappeared," the comment was not in his September 25, 2007, report. (June 2009 FOF ¶ 12.) Dr. Byron also acknowledged that an MRI study on Claimant's shoulder taken one month after her fall at work revealed "extensive changes to the bursa and the acromioclavicular joint," but he indicated that he believed that such changes were not abnormal in a person of Claimant's age. (June 2009 FOF ¶ 12.)

Claimant offered Dr. Feltham's deposition testimony in opposition to the Termination Petition. Dr. Feltham examined Claimant for the first time on August 27, 2007, at which time he took a history of Claimant's work injuries and the treatment of those injuries thus far. (June 2009 FOF ¶ 13.) He indicated that his understanding of Claimant's treatment was that it was conservative, namely physical therapy and shoulder injections. (June 2009 FOF ¶ 13.) Dr. Feltham stated that Claimant's physical examination revealed that "Claimant had nearly full passive range of motion," but that such "range of motion was very painful." (June 2009 FOF ¶ 13.) Based on his review of the MRI films and examination, he concluded that "Claimant had inflammation within the subacromial space," and there was "a small tear of the anterior portion of [Claimant's] suraspinatus tendon." (June 2009 FOF ¶ 13.) Dr. Feltham indicated that such injury did "not respond well to conservative treatment." (June 2009 FOF ¶ 13.) Dr. Feltham opined that, as a result of the September 22, 2006, work incident, Claimant sustained a "rotator cuff sprain which resulted in a partial tear of the rotator cuff as well as subacromial inflammation or impingement." (June 2009 FOF ¶ 13.) Dr. Feltham indicated that, after the surgery and physical therapy, Claimant was almost pain free. (June 2009 FOF ¶ 13.) He further indicated that, as of the date of his testimony,

Claimant was not fully recovered, but could return to work with restrictions. (June 2009 FOF ¶ 13.)

After reviewing the two physicians' testimony, the WCJ found Dr. Feltham more credible than Dr. Byron and rejected Dr. Byron's testimony. (June 2009 FOF ¶ 14.) The WCJ noted that Dr. Feltham: is Claimant's treating physician; examined Claimant on multiple occasions where Dr. Byron saw Claimant only once for the purpose of generating testimony; and "is intimately familiar with [] Claimant's left shoulder, having cut it open and looked at it." (June 2009 FOF ¶ 14.) Based on Dr. Feltham's credited testimony, the WCJ found that "Claimant has never, at any time, been fully recovered from her work injury which, according to Dr. Feltham and according to the . . . Agreement . . . included a left rotator cuff injury." (June 2009 FOF ¶ 15.) Accordingly, the WCJ concluded that Employer failed to prove that Claimant was fully recovered from her work injury and was not entitled to a termination of Claimant's benefits. (June 2009 COL ¶ 2.) Employer appealed to the Board, which held that the denial of the Termination Petition was correct based on res judicata and Weney. The Board noted that, when Employer entered into the Stipulation, it was aware of medical evidence that its physician considered Claimant fully recovered, but did not raise that evidence in opposition to Claimant's Reinstatement Petition. (Board Op. at 12-13.) Thus, the Board held that Employer was precluded from raising an issue regarding Claimant's recovery status in 2007 in a subsequent proceeding; however, Employer was *not* precluded from raising that issue regarding Claimant's recovery after December 2007. (Board Op. at 13 (citing Taylor v. Workers' Compensation Appeal Board

(Servistar Corporation), 883 A.2d 710 (Pa. Cmwlth. 2005)).) Employer now petitions this Court for review.

Employer argues that: (1) the Board erred in applying res judicata to preclude Employer's termination of Claimant's benefits as of September 25, 2007, or December 18, 2007, based on the Stipulation; and (2) the WCJ failed "to account for the testimony of Dr. Byron in denying the Termination/Review Petition." (Employer Br. at 18-19.) Employer asserts that Dr. Byron testified that Claimant was fully recovered from her work-related injuries and that the "natural progression of Claimant's underlying degenerative condition could not defeat a termination of benefits." (Employer Br. at 18.) We address Employer's second argument first because, if the WCJ's determination that Employer did not establish its entitlement to the termination of Claimant's benefits is correct, that determination should be affirmed, regardless of whether the Board's reliance on res judicata was proper.

"To succeed in a termination petition, the employer bears the burden of proving that the claimant's disability has ceased and/or that any current disability is unrelated to the claimant's work injury." Paul v. Workers' Compensation Appeal Board (Integrated Health Services), 950 A.2d 1101, 1104 (Pa. Cmwth. 2008). To satisfy this burden, the employer must present "unequivocal and competent medical evidence of the claimant's full recovery from his/her work-related injuries." Id. Because a claimant's disability is presumed to continue until otherwise proven, the employer's burden in a termination proceeding is considerable. Giant Eagle, Inc. v. Workmen's Compensation Appeal Board

(Chambers), 635 A.2d 1123, 1127 (Pa. Cmwlth. 1995). Additionally, in order to terminate benefits, an employer's witness must address all of a claimant's injuries and indicate that those injuries have ceased. Central Park Lodge v. Workers' Compensation Appeal Board (Robinson), 718 A.2d 368, 370 (Pa. Cmwlth. 1998). As the fact finder, the WCJ "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," and those "findings will not be disturbed when they are supported by substantial, competent evidence." Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck), 664 A.2d 703, 706 (Pa. Cmwlth. 1995).

Here, the basis of Employer's Termination Petition is Dr. Byron's opinions and reports that Claimant was fully recovered from the accepted work-related injuries and that Claimant's left rotator cuff injury and surgery were not work related. However, the WCJ rejected this testimony as not credible, choosing instead to credit Dr. Feltham's testimony that Claimant's left rotator cuff injury, a sprain that "resulted in a partial tear of the rotator cuff," was work related and that she was not yet fully recovered from that injury. (June 2009 FOF ¶ 13.) The WCJ, as fact finder, has exclusive province over credibility determinations and those determinations may not be reviewed on appeal. Greenwich Collieries, 664 A.2d at 706. Additionally, the WCJ offered objective reasons for why he found Dr. Feltham's opinions more credible. Furthermore, Employer's contention that the WCJ did not account for Dr. Byron's testimony is not correct because the WCJ clearly considered that testimony where he issued a finding of fact explaining that testimony and gave detailed reasons for rejecting it. Because Employer's evidence

of Claimant's full recovery was not credited, Employer could not satisfy its burden of proving its entitlement to the termination of Claimant's benefits, and the WCJ did not err in denying the Termination Petition.[6]

III. Penalty Petition

In support of her Penalty Petition, Claimant relied upon her own testimony, Dr. Feltham's testimony, and the deposition testimony of a Senior Claims Representative with Employer's third party administrator (Claims Representative). Claims Representative testified that she issued the NCP and Agreement in this matter, and she "conceded that the . . . Agreement recognized injuries to [Claimant's] . . . left rotator cuff." (June 2009 FOF ¶ 16.) She acknowledged that, in November 2006, she began receiving bills related to Claimant's rotator cuff and Claimant underwent surgery on her rotator cuff on October 26, 2007. (June 2009 FOF ¶ 16.) Claims Representative further admitted that, notwithstanding the fact that Employer accepted an injury to Claimant's left rotator cuff, Employer's insurance carrier refused to pay for the surgery to Claimant's left rotator cuff.

[6] Because we conclude that Employer would not have been entitled to terminate Claimant's benefits where its evidence of full recovery was not credited, we will affirm the Board's order on those grounds and not address whether the Board erred in holding that Employer was precluded from challenging Claimant's recovery status until after December 2007. "We may affirm on other grounds where grounds for affirmance exist." Kutnyak v. Department of Corrections, 748 A.2d 1275, 1279 n.9 (Pa. Cmwlth. 2000). We do note, however, that the issue of whether the rotator cuff surgery and associated disability was work-related was raised during the hearing on Claimant's Reinstatement Petition on January 7, 2008, at which Employer did not object to Claimant's counsel's statement that "[n]o doctor says it's not work-related." (WCJ Hr'g Tr. at 61, R.R. at 549a.)

(June 2009 FOF ¶ 16.) Claims Representative stated that she refused to pay for the surgery because of Dr. Byron's opinion; however, she admitted that there had been no supplemental agreement or judicial determination that indicated that Claimant's left shoulder had completely recovered.

Based on Claims Representative's testimony, the WCJ found that Employer "did accept a left rotator cuff injury and then, on the basis of an IME report which had been uncredited by any [WCJ], unilaterally refused to pay for surgery to the body part that had been accepted as injured. This is a violation of the Act." (June 2009 FOF ¶ 17.) Thus, the WCJ concluded that Claimant established that Employer willfully violated the Act and that, in order "to punish and deter such conduct," the WCJ held Employer "liable for a penalty in the amount of twenty-five (25%) of the unpaid medical bills" plus "statutory interest of ten percent (10%) per annum on all past due medical." (June 2009 COL ¶ 4.) Employer appealed to the Board, which affirmed, essentially concluding that the connection between the accepted work injury to the left rotator cuff and the treatment, surgery on the left rotator cuff, was obvious and Employer did not establish that the surgery was unrelated to that injury. (Board Op. at 15.) Employer now challenges that determination.

Employer argues that the Board erred in affirming the award of penalties because the WCJ "ignored and did not discuss the fact that the left rotator cuff injury accepted was a strain, not a surgically treatable condition." (Employer's Br. at 15 (emphasis in original).) Employer contends that it did not violate the Act when it did not pay for Claimant's rotator cuff surgery because it was treatment for

a non-acknowledged injury and it relied upon Dr. Byron's opinion that the surgery was not related to the work injury. Additionally, Employer asserts that: the WCJ improperly expanded Claimant's injury into a surgically treatable condition; the causal connection was not obvious; and, even if it did violate the Act, the WCJ should have, at most, directed Employer to pay the surgical bills and not awarded penalties.

Section 435(d)(i) of the Act, 77 P.S. § 991(d)(i),[7] authorizes the imposition of penalties for violations of the Act and regulations at "a sum not exceeding ten per centum of the amount awarded and interest accrued and payable: Provided, however, That such penalty may be increased to fifty per centum in cases of unreasonable or excessive delays." Id. Section 306(f.1)(1)(i) provides that "[t]he employer shall provide payment in accordance with this section for reasonable surgical and medical services, services rendered by physicians or other health care providers, including an additional opinion when invasive surgery may be necessary, medicines and supplies, as and when needed." 77 P.S. § 531(1)(i). "The imposition of a penalty and the amount of the penalty to be imposed are left to the sound discretion of the WCJ; therefore, the WCJ's decision to impose a penalty will not be overturned on appeal absent an abuse of discretion." McLaughlin v. Workers' Compensation Appeal Board (St. Francis Country House), 808 A.2d 285, 288 (Pa. Cmwlth. 2002). "Once [an] employer's liability for [a] work injury has been established, the employer may not unilaterally stop making benefit payment[s] in the absence of a final receipt, an agreement, a

[7] Section 435(d) was added by Section 3 of the Act of February 8, 1972, P.L. 25, as amended.

supersedeas or any other order of [a] WCJ authorizing such action." Id. Moreover, "[a]n employer who unilaterally stops paying a claimant's medical bills based solely on causation [] assumes the risk of exposure to possible penalty liability contingent upon a [WCJ's] ruling concerning the causal relation of the medical costs." Listino v. Workmen's Compensation Appeal Board (INA Life Insurance Company), 659 A.2d 45, 48 (Pa. Cmwlth. 1995). Thus, in Listino, we held that the WCJ did not abuse his discretion in imposing penalties against the employer where it refused to pay for the claimant's medical treatment based on the employer's contention that the treatment was unrelated to the claimant's work-related injuries. Id. The WCJ in that case concluded that the treatment was causally related to the claimant's work injuries, the employer violated the Act by refusing to pay for that treatment, and the award of penalties was proper given the violation of the Act. Id. at 46-47. In other words, under Listino, an employer may unilaterally cease paying a claimant's medical bills if the employer believes that those bills are unrelated to the work injury; however, if the employer is incorrect in its belief, the employer may be liable for penalties. Id. at 48. Finally, we note that, if an employer contends that a medical bill is not "reasonable" or "necessary" for the treatment of a work-related injury, the employer cannot "unilaterally cease medical payments and indeed is 'retroactively responsible' for medical payments until a [WCJ] makes a determination." Id. at 47 n.6.

Here, there is no dispute that Employer *unilaterally* refused to pay for Claimant's rotator cuff surgery as there had been no final receipt, agreement, supersedeas, or any WCJ order authorizing such refusal. Employer based its decision on its belief that the surgery was not causally related to Claimant's work injury to her rotator cuff, asserting that such accepted injury was a sprain.

However, in doing so without the benefit of a prior determination, Employer assumed the risk that it would be liable for penalties if Claimant's left rotator cuff surgery and subsequent treatment were found to be causally related to the accepted work injury to her left rotator cuff. Id. at 48. The WCJ found that the surgery was causally related to Claimant's work-related injury, crediting Dr. Feltham's testimony that Claimant sustained work-related "rotator cuff sprain which resulted in a partial tear of the rotator cuff as well as subacromial inflammation or impingement," (June 2009 FOF ¶ 13), for which the surgery and subsequent treatment was necessary. With regard to Employer's argument that the WCJ expanded Claimant's injury, we note that the injury did not change but, rather, the diagnosis of that injury changed after Claimant obtained a second opinion from Dr. Feltham. See The Body Shop v. Workers' Compensation Appeal Board (Schanz), 720 A.2d 795, 799 (Pa. Cmwlth. 1998) (holding that, notwithstanding an NCP that accepted an *acute low back strain*, the employer was obligated to pay benefits for the claimant's herniated discs because "after having continued pain and further diagnostic studies were performed, *the diagnosis – not the injury – changed to a herniated disc*" and "the diagnosis of a herniated disc *does not constitute a separate injury but is just another diagnosis of the initial injury*" (emphasis added)). Moreover, Employer's argument that the accepted left rotator cuff injury, a strain, cannot be treated by surgery is the equivalent of challenging the reasonableness and necessity of a particular treatment. Pursuant to Listino, even under these circumstances an employer is not entitled to unilaterally cease payments of medical treatment absent a decision authorizing such cessation and an employer violates the Act in doing so. Listino, 659 A.2d at 47 & n.9. Because the WCJ found that Employer violated the Act by unilaterally refusing to pay for

Claimant's surgery and the related treatment to her left rotator cuff (an area of her body to which there was an accepted work injury), which the WCJ determined to be work related based on Dr. Feltham's credible testimony, the WCJ exercised his discretion and decided to award a twenty-five percent penalty on the medical costs with statutory interest. After reviewing the record, we see no abuse of discretion in doing so.

For the foregoing reasons we: (1) reverse the Board's Order to the extent that it directed Employer to pay Claimant disability benefits for a period other than from October 26, 2007, through June 24, 2008; (2) affirm the denial of Employer's Termination Petition; (3) affirm the grant of Claimant's Penalty Petition; and (4) remand to the Board to remand to the WCJ to calculate the amount of benefits, if any, Claimant is owed for the period from October 26, 2007, through June 24, 2008, taking into account any credits or offsets to which Employer may be entitled.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

St. Joseph's Center,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2062 C.D. 2010
	:	
Workers' Compensation Appeal Board (Williams),	:	
	:	
Respondent	:	

O R D E R

NOW, August 23, 2011, the Order of the Workers' Compensation Appeal Board (Board) in the above-captioned matter is hereby: (1) **REVERSED** to the extent that it directed St. Joseph's Center (Employer) to pay Patricia Williams (Claimant) disability benefits for a period other than from October 26, 2007, through June 24, 2008; (2) **AFFIRMED** to the extent that it affirmed the denial of Employer's Termination Petition; and (3) **AFFIRMED** to the extent that it affirmed the grant of Claimant's Penalty Petition. In addition, this matter is **REMANDED** to the Board to remand to the Workers' Compensation Judge to calculate how much in benefits, if any, Claimant is owed for the period from October 26, 2007, through June 24, 2008, taking into account any credits or offsets to which Employer is entitled.

Jurisdiction relinquished.

RENÉE COHN JUBELIRER, Judge