IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Adecco/Ajilon Finance,	:	
Petitioner	:	
	:	
v.	:	No. 2297 C.D. 2009
	:	Submitted: April 30, 2010
Workers' Compensation Appeal Board (Obeng),	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: June 29, 2010

Adecco/Ajilon Finance (Employer) petitions for review of the November 3, 2009, order of the Workers' Compensation Appeal Board (WCAB), which affirmed the decision of a Workers' Compensation Judge (WCJ) granting the claim petition filed by Richard Obeng (Claimant). We affirm.

In March 2005, Claimant began working for Employer as a temporary senior accountant for Employer's client, Thompson Scientific (Thompson). On June 30, 2005, Claimant began to feel weak and dizzy at work. Claimant told his boss at Thompson, Marilyn Lelek, that he was going to call 911, and Lelek told Claimant to make the call. An ambulance came and took Claimant to Presbyterian Hospital, where he was given blood pressure medicine and released. Still feeling weak, Claimant took a taxi home. After walking up to the front door of his house, the next thing Claimant remembers is being in the intensive care unit at Christiana Hospital.

Claimant was at this hospital for two months before being transferred to Wilmington Hospital for four weeks and then to rehabilitation at Select Specialty Hospital for a month before eventually going home. Claimant has not returned to work since the June 30, 2005, incident. On July 11, 2005, Employer, through its insurer, issued a Notice of Compensation Denial on grounds that Claimant did not suffer a work-related injury.

On April 12, 2007, Claimant filed a claim petition for total disability benefits, stemming from the 2005 incident, alleging that he "developed a stroke as a result of pressure and stress at work." (R.R. at 2a.) Claimant also alleged in his claim petition that he gave Employer notice of this injury on August 31, 2005, as follows: "After I got out of the hospital I called my supervisor and told them [sic] that I felt that my stroke was work related due to pressure and stress." *Id.* On May 7, 2007, Employer filed an Answer denying the material allegations of Claimant's petition, including that Claimant "gave timely statutory notice of a compensable injury." (R.R. at 4a.) However, on May 30, 2007, counsel for both parties entered into a Stipulation of Undisputed Facts providing that, while they did not agree Employer was given timely notice of Claimant's injury within twenty-one days, they did agree Employer was given timely notice of Claimant's injury within 120 days. *See* sections 311 and 312 of the Workers' Compensation Act (Act).[1]

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[1] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§631 and 632. Section 311 of the Act provides in pertinent part:

> Unless the employer shall have knowledge of the occurrence of the injury, or unless the employe or someone in his behalf, or some of the dependents or someone in their behalf, shall give notice thereof to the employer within twenty-one days after the injury, no compensation

(Footnote continued on next page…)

At hearings before the WCJ on Claimant's petition, both parties presented lay and medical evidence to support their respective positions. Claimant testified that, in the week before his stroke, his job duties changed, leading to what he called "panic deadlines." (R.R. at 14a.) Claimant further testified that he was overwhelmed because he had the work of two accountants; he stated that, in his fifteen years as an accountant, he had never been given so many reports to generate in such a short time period, and he was afraid he would lose his job. (R.R. at 15a-16a.)

Claimant also presented the deposition testimony of his treating physician, Larry Wolk, M.D., who practiced family and occupational medicine. Dr. Wolk testified that he first examined Claimant on April 27, 2007, and diagnosed Claimant as having suffered a cerebrovascular accident with left hemiparesis, ambulatory dysfunction, neuropathic pain, and anxiety and depression. (R.R. at 126a.) Dr. Wolk further testified that Claimant's "work conditions . . . directly caused his injury" and that "the stressful position [Claimant] was placed in significantly elevated his blood pressure and, as a consequence of that, caused the

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(continued…)

> shall be due until such notice be given, and, unless such notice be given within one hundred and twenty days after the occurrence of the injury, no compensation shall be allowed.

77 P.S. §631.

Further, section 312 of the Act provides: "The notice referred to in section 311 shall inform the employer that a certain employe received an injury, described in ordinary language, in the course of his employment on or about a specified time, at or near a place specified." 77 P.S. §632.

arterial wall dissection, which led to the stroke and all the subsequent maladies." (*Id.*) Dr. Wolk did not believe that Claimant could return to his work duties as a senior accountant for Employer. (*Id.* at 127a.)

Employer presented the deposition testimony of Richard Katz, M.D., a board-certified neurologist, who examined Claimant on July 24, 2007. Dr. Katz diagnosed Claimant with "left spastic hemiparesis, hemisensory deficit attributed to the stroke that occurred on or around June 30, 2005." (R.R. at 180a.) Dr. Katz testified that, while, theoretically, the role of stress in development of a stroke should be considered,[2] it was not relevant in this instance. Dr. Katz explained that stress was not documented in Claimant's medical or work place records, and Claimant had multiple non-work-related risk factors for stroke. Specifically, Dr. Katz stated that Claimant had "glaring contributory risk factors" of "elevated blood pressure, diabetes mellitus, elevated cholesterol, [and] family history." (R.R. at 177a; 180a.) Dr. Katz noted that, in the Presbyterian Hospital records, Claimant's blood pressure was 201/144, which "reflects accelerated hypertension and would not be explained on the basis of stress," (*id.*); similarly, the Christiana Hospital medical records recorded Claimant's blood pressure as 241/131, which is a "dramatic elevation" that cannot be explained by stress in and of itself, particularly given the Claimant's history and findings. (R.R. at 178a.) Dr. Katz further noted that the hospital records indicated Claimant was not compliant with his anti-hypertensive medication. (*Id.*) According to Dr. Katz, Claimant's stroke bore "no relation to the work place." (R.R. at 180a.)

[2] Dr. Katz later questioned his own statement in this regard. (R.R. at 182a.)

Dr. Katz further testified that Claimant could likely return to full-time employment on a sedentary basis, building up from part-time. (R.R. at 180a.)

In rebuttal to Dr. Katz's testimony, Claimant adduced the deposition testimony of his treating neurologist, Bruce Grossinger, D.O., who opined that, while stress was not the only factor, it was a substantial contributing factor in Claimant's stroke. (R.R. at 277a.)[3] Dr. Grossinger further testified that Claimant cannot return to his time-of-injury job because of speech difficulty, weakness of the left arm, weakness of the left leg with spasticity, and secondary problems with his neck and back. (R.R. at 285a-86a.)

Responding to Dr. Grossinger's testimony, Dr. Katz explained that Dr. Grossinger "appears to discount the conventional risk factors that are now familiar to the nonmedical as well as the medical public" and "cites no literature." (R.R. at 348a.) Dr. Katz reiterated that Claimant's medical records do not document stress sufficient to give rise to stroke, (R.R. at 346a.); he also reiterated that Claimant had major risk factors for stroke. (R.R. at 347a.) Dr. Katz pointed out that Claimant had a three-year history of elevated blood pressure, including blood pressure in 2002 measuring 200/140, and that Dr. Grossinger incorrectly attributed Claimant's

[3] Dr. Grossinger concluded that Claimant's "stress was protracted and unusual and was not irrelevant to the genesis of stroke and did participate, that is, his work stress did contribute to the development of this most important stroke…." (R.R. at 285a.) Even so, Dr. Grossinger acknowledged that Claimant's hypertension, diabetes, gout and cholesterol made Claimant vulnerable and, absent these coexistent risk factors, Claimant might not have suffered the stroke. (R.R. at 299a.)

elevated blood pressure on June 30, 2005, at Presbyterian Hospital to the stroke when the stroke had not fully evolved. (R.R. at 178a; 349a-50a.)

Employer also adduced the deposition testimony of Karen Cooley, who had been a branch manager for Employer. Cooley testified that Claimant had more than once complained to her of voodoo being practiced upon him in the work place, and, although Employer kept message logs relating to Claimant's work-related activities (as Employer did for all of its temporary employees sent to meet with clients), Cooley had an independent recollection of Claimant's work-related voodoo complaints. (R.R. at 60a-63a.) According to Cooley, Claimant stated that people had dolls, or figures of him, in their desks, and Claimant complained that,"People are staring at him. They're making him sick. The voodoo is, you know, preventing him from doing his work." (R.R. at 61a-62a.) Cooley said that, nonetheless, when she checked with Thompson, the company seemed happy with the quality of Claimant's work, and Claimant did not indicate he wanted to be removed from the job. (R.R. at 62a.)

Employer also presented the deposition testimonies of Lelek and Brian Richards, who is in human resources at Thompson. Lelek testified that there were no panic deadlines at Thompson, (R.R. at 326a); Claimant's duties at Thompson did not change, (R.R. at 324a); and Claimant's work was appropriate for one person, (R.R. at 328a). Lelek also stated that Claimant twice reported to her that voodoo was being practiced upon him at Thompson, that he was hearing things and that he felt his reputation was being ruined. (R.R. at 329a.) Richards testified that Claimant told him that a group in Wilmington, Delaware was using voodoo on Claimant. (R.R. at

218a). For his part, Claimant denied ever discussing voodoo with anyone at work. (R.R. at 47a.)[4]

After reviewing the evidence, the WCJ accepted Claimant's testimony over the testimonies of Employer's fact witnesses. The WCJ also accepted the testimonies of Claimant's treating physicians over that of Employer's medical expert. The WCJ then awarded Claimant total disability benefits commencing on June 30, 2005, and continuing indefinitely. On appeal, the WCAB affirmed. Employer now petitions this court for review.[5]

Employer first argues that the WCAB erred by not addressing what it characterizes as Claimant's "complete change in injury description from 2005 to 2007" and, accordingly, whether Claimant met the notice requirements of sections 311 and 312 of the Act. Employer asserts that message logs kept in the course of its business reflect Claimant's statement to Employer, within the 120-day notice period, that Claimant had suffered a stroke from voodoo being practiced upon him at work. (*See* Employer's brief at 19.)[6] Employer specifically asserts that, while it "was amply prepared to litigate the 'voodoo case' because it had knowledge of same

[4] Claimant testified that he is a native of Ghana, but a U.S. citizen, and he has not practiced voodoo. (*Id.*)

[5] Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

[6] We note that Employer does not now argue that Claimant failed to provide notice of injury within the twenty-one-day statutory period, perhaps because Employer issued a Notice of Denial within that time frame.

contemporaneously with the allegation," it "was ill-prepared to litigate the 'change in duties' injury claim, of which it had no knowledge, until after the opportunity for a full and complete investigation had passed[.]" (*Id.* at 20.) We are not persuaded.

Here, Employer does not dispute that it was made aware of Claimant's stroke within the statutorily prescribed time period. However, Employer cites *Gribble v. Workers' Compensation Appeal Board (Cambria County Association for the Blind)*, 692 A.2d 1160 (Pa. Cmwlth.), *appeal denied*, 549 Pa. 719, 701 A.2d 579 (1997), and *City of Philadelphia v. Workmen's Compensation Appeal Board (Wills)*, 618 A.2d 1162 (Pa. Cmwlth. 1992), *appeal denied*, 536 Pa. 635, 637 A.2d 295 (1993), for the proposition that, to satisfy the Act's notice requirements, a claimant must inform an employer of the causal relationship between his injury and his work.[7] Employer contends that it did not know until Claimant filed his 2007 claim petition that he was alleging a stroke due to stress arising from a change in his work duties, as opposed to a stroke occasioned by voodoo in the work place and, therefore, Claimant failed to provide the required notice. The problem with Employer's argument is that, unlike the situations in *Gribble* and *Wills*, Claimant in this matter credibly testified that he timely informed his employer that he was sick and that his disease was work-related. (R.R. at 20a-21a; 45a-47a.) The parties' Stipulation of Undisputed Facts also indicates notice to Employer within 120 days. (R.R. at 56a.) Moreover, neither

[7] In *Gribble*, the claimant merely told his employer that he could not work due to back pain; he did not state that he had suffered a work-related injury until after 120 days had passed; therefore, we held timely notice was not given to the employer. Likewise, in *Wills*, the claimant did not inform the employer within 120 days that his collapse at work was work-related; we therefore held that, even though his supervisor had called for medical assistance, timely notice was not given to the employer.

Gribble nor *Wills* stands for the proposition that an employer that misapprehends the source of a claimant's work injury does not have adequate notice thereof.[8] Accordingly, we disagree with Employer that Claimant's notice of injury was defective or failed to comport with the requirements of the Act.

Second, Employer argues that the WCAB erred by not deeming Claimant's expert testimony incompetent with respect to the work-related nature of Claimant's injury.[9] Employer points out that neither Dr. Wolk nor Dr. Grossinger evaluated Claimant's previous medical records that were directly relevant to the issue of causation. Employer complains that, in a complex case such as this one, which involved many pre-existing risk factors for stroke, including longstanding, severe hypertension, this failure automatically rendered their opinions incompetent. In support of this argument, Employer cites *Chik-Fil-A v. Workers' Compensation Appeal Board (Mollick)*, 792 A.2d 678 (Pa. Cmwlth. 2002), wherein the claimant's expert testified on cross-examination that, if the history he was given was incomplete, his opinion would not be valid. However, Employer's reliance on *Chik-Fil-A* is misplaced.

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[8] Regardless, Employer was clearly not prejudiced by any change in theory as it adduced unequivocal medical evidence countering Claimant's assertion that his stroke was work-related.

[9] "Although it is solely the role of the WCJ to assess credibility and resolve conflicts in the evidence, the question of the competency of the evidence is one of law and fully subject to our review." *Cerro Metal Products Company v. Workers' Compensation Appeal Board (Plewa)*, 855 A.2d 932, 937 (Pa. Cmwlth. 2004) (citation omitted), *appeal denied*, 582 Pa. 678, 868 A.2d 1202 (2005).

Here, during cross-examination, Dr. Wolk in no way retracted his opinion that work-related stress was a substantial factor in causing Claimant's stroke. Rather, Dr. Wolk stated that he preferred to rely on his history intake instead of former medical records, (R.R. at 136a), that the cause of Claimant's stroke was "multifactorial," (R.R. at 149a-52a), and that he could rule out Claimant's risk factors of hypertension and diabetes as "solely" causing the Claimant's stroke based on the history Claimant gave him. Further, contrary to Employer's contention that Dr. Grossinger failed to acknowledge Claimant's longstanding history of hypertension, Dr. Grossinger's testimony reflects that he had some knowledge of Claimant's previous medical problems, and he recognized that, along with Claimant's level of work-related stress, there were coexistent stroke risk factors. (R.R. at 299a.) In any event, the law is clear that the fact that a medical expert does not have all of a claimant's medical records goes to the weight of the evidence rather than its competency. *Huddy v. Workers' Compensation Appeal Board (U.S. Air),* 905 A.2d 589 (Pa. Cmwlth. 2006). For these reasons, Employer's second argument fails.

Next, Employer argues that the WCAB erred by failing to decide that Claimant's expert opinions were based on fiction rather than reality. In this regard, Employer asserts that the WCJ's decision that Claimant's stroke was related to his allegedly stressful work environment "was akin to linking the consumption of bananas to the development of a stroke." (Employer's brief at 28.) Employer is correct that "a WCJ can not accept 'fiction at the expense of factual reality.'" *Cerro Metal Products Company v. Workers' Compensation Appeal Board (Plewa),* 855 A.2d 932, 937 (Pa. Cmwlth. 2004) (citation omitted), *appeal denied*, 582 Pa. 678, 868 A.2d 1202 (2005). However, the fact that Claimant's medical experts could not

cite medical authority documenting a direct relationship between stress and stroke does not invalidate their testimonies that stress leads to hypertension, which, in turn, leads to stroke.[10] For this reason, Employer's third argument fails.

Finally, Employer argues that the WCAB should have concluded the WCJ's credibility determination of Claimant based on Claimant's demeanor was in contravention of the reasoned decision requirement set forth in section 422(a) of the Act, 77 P.S. §834, because Claimant's testimony was contradicted by several witnesses as well as the medical records. However, the WCJ had the advantage of seeing Claimant testify and assessing his demeanor. In *Daniels v. Workers' Compensation Appeal Board (Tristate Transport)*, 574 Pa. 61, 77, 828 A.2d 1043, 1053 (2003), our supreme court stated that, "in a case where the fact-finder has had the advantage of seeing the witnesses testify and assessing their demeanor, a mere conclusion as to which witness was deemed credible, in the absence of some special circumstance, could be sufficient to render the decision adequately 'reasoned.'" We decline to hold that this case presents a special circumstance that would somehow vitiate the WCJ's subjective authority to render a demeanor-based credibility determination.

[10] For example, Dr. Wolk testified: "I believe the stressful position he was placed in significantly elevated his blood pressure and, as a consequence of that, caused the arterial wall dissection, which led to the stroke and all the subsequent maladies." (R.R. at 126a.) Further, Dr. Grossinger testified that "the medical literature links stress and hypertension, and it is well-developed." (R.R. at 283a.) Dr. Grossinger further explained: "I have concluded that his stress was protracted and unusual and was not irrelevant to the genesis of stroke and did participate, that is, his work stress did contribute to the development of this most important stroke for Mr. Obeng." (R.R. at 285a.)

Admittedly, this is a close case on a number of levels. Even so, we simply cannot say that, on this record, the WCAB erred in upholding the award of total disability benefits to Claimant. We note that the Act's provisions are remedial in nature and should be liberally construed, with even borderline interpretations favoring injured employees. *Long v. Workmen's Compensation Appeal Board (Anchor Container Corporation)*, 505 A.2d 369, 372 (Pa. Cmwlth. 1986).

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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v.	:	No. 2297 C.D. 2009
Workers' Compensation Appeal Board (Obeng), Respondent	:	

O R D E R

AND NOW, this 29th day of June, 2010, the order of the Workers' Compensation Appeal Board, dated November 3, 2009, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge