

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Desmond Fields,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation	:	
Appeal Board (Abington School	:	
District),	:	No. 2370 C.D. 2010
	:	Submitted: July 22, 2011
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: September 7, 2011

Desmond Fields (Claimant) petitions this Court for review of the September 20, 2010 order of the Workers' Compensation Appeal Board (Board) affirming the decision of the Workers' Compensation Judge (WCJ) granting the Termination Petition of the Abington School District (Employer), and denying and dismissing Claimant's Review Petition. Claimant presents two issues for this Court's review: (1) whether there was substantial evidence to support the termination of Claimant's benefits, and (2) whether Claimant met his burden of proving that the Notice of Compensation Payable (NCP) should have been amended to include additional injuries. For reasons that follow, we affirm the Board's order.

Claimant sustained a work-related injury on February 20, 2007, that was described in the Notice of Temporary Compensation Payable as a contusion of the right hand and left foot. On July 10, 2007, Employer filed a Termination Petition.

On September 21, 2007, Claimant filed a Review Petition alleging an incorrect injury description. On October 11, 2007, Employer filed a Suspension Petition alleging a specific job was offered to Claimant that Claimant was able to perform. On March 27, 2008, Employer filed a second Termination Petition. On April 18, 2008, Claimant filed a second Review Petition alleging Claimant's injury should include an aggravation of left lateral epicondylitis. Timely answers were filed to all petitions denying all allegations.

On July 21, 2009, the WCJ granted Employer's initial Termination Petition, denied and dismissed Claimant's Review Petitions, and dismissed as moot, Employer's subsequent Termination and Suspension Petitions. Claimant appealed to the Board. On September 20, 2010, the Board affirmed the WCJ's order. Claimant appealed, pro se, to this Court.¹

Claimant argues that the Board erred in determining that there was substantial evidence to support the finding that Claimant had fully recovered from his work-related injury. We disagree.

It is well established that the WCJ, as fact finder, has exclusive province over questions of credibility and evidentiary weight, and the WCJ's findings will not be disturbed when they are supported by substantial, competent evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The WCJ is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. It is not the function of this Court to reweigh evidence and to substitute its judgment for that of the WCJ.

¹ This Court's review is limited to determining whether an error of law was committed, whether the findings of fact are supported by substantial evidence and whether there was a violation of constitutional rights. *Sysco Food Servs. of Phila. v. Workers' Comp. Appeal Bd. (Sebastiano)*, 940 A.2d 1270 (Pa. Cmwlth. 2008).

Supervalu, Inc. v. Workers' Comp. Appeal Bd. (Bowser), 755 A.2d 715, 720 (Pa. Cmwlth. 2000) (citations omitted).

Here, in response to the question, "Based on your review of [Claimant's] history, your review of his medical records, and the physical examination that you conducted of him on May 25, 2007, were you able to render a diagnosis within a reasonable degree of medical certainty for Mr. Fields," John P. Nolan, Jr., M.D., Employer's expert in orthopedic medicine, testified as follows. "Yes. To the degree that he sustained injuries to his ankle and/or left or right hands, that he had recovered by the time that I saw him." Nolan Notes of Deposition Testimony, December 6, 2007 at 62.

In addition, William H. Kirkpatrick, M.D., Employer's expert in orthopedic surgery with added qualifications in upper extremity disorders, testified that, although, as of August 4, 2008, the date he evaluated Claimant, he still was in need of ongoing treatment and restrictions, "they were not related to the [February 20, 2007] fall." Kirkpatrick Notes of Deposition Testimony, October 13, 2008 at 42.

Clearly, the above testimony is such relevant evidence as a reasonable mind might accept as adequate to support the conclusion that Claimant had fully recovered from his work-related injury. Further, the WCJ specifically found the testimony of both Dr. Nolan and Dr. Kirkpatrick "credible." Claimant's Br. App. B at 9. Thus, the WCJ's findings cannot be disturbed. Accordingly, the Board did not err in terminating Claimant's benefits.

Claimant next argues that he met his burden of proving that the Notice of Compensation Payable (NCP) should have been amended to include an aggravation of injuries to his left elbow and shoulder caused by the overuse of his left side due to the injury of his right side. Specifically, Claimant contends that his injury should have been amended to include lateral epicondylitis in his left elbow, and tendonitis in

his left shoulder, based on the testimony of Claimant's expert witnesses, Robert E. Manherz, M.D. (Dr. Manherz) and Joseph J. Thoder, M.D. (Dr. Thoder). We disagree.

The WCJ specifically found that "[t]he testimony of Dr. Manherz that Claimant developed a problem with his left elbow as a result of overuse is neither credible nor convincing." Claimant's Br., Appendix B at 9. The WCJ further noted that "Claimant testified in November 2007 that he used his *right* hand, and not his left hand, in performing his activities of daily living, and the surveillance demonstrates that Claimant consistently used both upper extremities in his daily activities." *Id.* In addition, the WCJ specifically found that:

The testimony of Dr. Thoder is neither credible nor convincing that Claimant sustained an aggravation of his lateral epicondylitis as a result of the work injury that necessitated the April of 2008 surgery. Dr. Thoder's testimony that Claimant had been working without complaint with the elbow under control until the work injury is not supported by either the testimony of Dr. Manherz or Claimant's testimony. Both Dr. Manherz and Claimant testified that, although Claimant was working his pre-injury job prior to February 2007, he was doing so with some self-restrictions and with continued left elbow pain.

Id. As established above the WCJ "has exclusive province over questions of credibility . . . [and] is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part." *Supervalu, Inc.*, 755 A.2d at 720. The WCJ clearly rejected the testimony of both Dr. Manherz and Dr. Thoder. Thus, the Board did not err in denying Claimant's Review Petition seeking to amend his injury.

For all of the above reasons, the Board's order is affirmed.

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Desmond Fields,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation	:	
Appeal Board (Abington School	:	
District),	:	No. 2370 C.D. 2010
Respondent	:	

ORDER

AND NOW, this 7th day of September, 2011, the September 20, 2010 order of the Workers' Compensation Appeal Board is affirmed.

JOHNNY J. BUTLER, Judge