

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Marsha Webb,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2456 C.D. 2010
	:	SUBMITTED: February 25, 2011
Workers' Compensation Appeal	:	
Board (American Cancer Society),	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge**  
**HONORABLE PATRICIA A. McCULLOUGH, Judge**  
**HONORABLE JOHNNY J. BUTLER, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: May 19, 2011**

Petitioner, Marsha Webb, proceeding *pro se*, petitions for review of the order of the Workers' Compensation Appeal Board affirming the decision of the Workers' Compensation Judge (WCJ) terminating her workers' compensation benefits. We affirm.

Petitioner was employed by the Somerset County office of the American Cancer Society as an administrative assistant. On September 25, 2006, Petitioner sustained a work-related injury when she bumped her head on a low ceiling. Petitioner was treated at the Somerset Hospital emergency room for a superficial abrasion, without loss of consciousness. Diagnostic tests taken at this

time were normal. Petitioner received medical benefits after Employer issued a notice of compensation denial, which confirmed the injury, but denied resulting liability. On October 1, 2007, Petitioner struck her left temple on the side of a desk. She was treated again at the emergency room after experiencing dizziness and nausea. Diagnostic tests were normal. Employer recognized her injury. At the time of her injury Petitioner earned an average weekly wage of \$233.40 from Employer and an average weekly wage of \$203.15 through concurrent employment at Starbucks Coffee Company. Petitioner's total disability rate was \$389.50.

On January 1, 2008, Employer filed a termination petition relative to the October 1, 2007 injury alleging that Petitioner had fully recovered as of December 14, 2007. Employer subsequently amended the termination petition to include the September 25, 2006 injury. Petitioner filed a petition to review compensation benefits and a petition for penalties. All these petitions were consolidated by the WCJ. The WCJ held a hearing on February 14, 2008, at which Petitioner testified. Subsequently, Employer submitted the deposition testimony of Dr. Richard B. Kasdan, board-certified in neurology. Petitioner submitted the deposition testimony of her treating physicians, Dr. Michael Mazowiecki, board-certified in psychiatry and neurology, and Dr. Thomas Franz, board-certified in physical medicine and rehabilitation.

Petitioner testified that she has developed migraine headaches, experienced blurred vision, ongoing pain and a memory fog since the injuries, and was unable to return to work. Petitioner denied that she had migraine headaches prior to the September 25, 2006 injury, but acknowledged a history of sinus headaches with sensitivity to light.

Dr. Mazowiecki first evaluated Petitioner in September 2007. He diagnosed her with post-traumatic headaches attributable to the September 25, 2006 injury. Dr. Mazowiecki relied upon Petitioner's subjective complaints and history in reaching his diagnosis. Dr. Mazowiecki acknowledged that Petitioner had a history of headaches, which she had self-diagnosed as sinus headaches. On October 12, 2007, Dr. Mazowiecki evaluated Petitioner again. He noted a normal neurological examination and spasms on her left side and treated her with Relpax and Topamax. Dr. Mazowiecki referred Petitioner to the University of Pittsburgh Medical Center's Headache Clinic, with a diagnosis of post-concussive syndrome with resultant headaches and an underlying transform migraine related to both injuries. This diagnosis was also based upon Petitioner's subjective history and complaints, which included 26 ongoing symptoms. Dr. Mazowiecki testified that Petitioner told him that she could not perform her work and the essential functions of her job. He explained that Petitioner required a functional capacity evaluation to objectively determine if she could perform her pre-injury job. Dr. Mazowiecki also testified that whether a closed head injury can cause a series of migraine headaches is a hotly contested issue among neurologists, but he has seen many instances of closed head trauma worsening existing migraine diagnoses.

Dr. Franz first treated Petitioner in March 2008. Petitioner reported ringing in her ears, vision changes, loss of taste, neck pain, and migraines. Dr. Franz testified that Petitioner's physical examination was relatively normal, but noted mild memory deficiencies, decreased range of motion in her neck, as well as mild weakness and mild loss of balance. He prescribed physical therapy for the cervical complaints. The cervical complaint was not recognized by Employer and was not subject to review under any petition. Dr. Franz opined that Petitioner was

totally disabled as a result of daily migraine headaches attributable to her work injuries. Dr. Franz opined unequivocally that even a minor bump could lead to ongoing migraines.

Dr. Kasdan testified that Petitioner reported a myriad of subjective complaints, but her physical examination and diagnostic studies were within normal limits. Dr. Kasdan did not find any evidence of fracture or intracranial bleeding and concluded that Petitioner suffered nothing more than minor, closed head injuries, i.e., bumps on the head. Dr. Kasdan testified that the migraine Petitioner suffered on October 3, 2007 could have been a result of the injury that occurred on October 1, but specifically denied that any subsequent migraines could have been related to the October 1 injury. Dr. Kasdan opined unequivocally that Petitioner had fully and completely recovered from both injuries, did not require further medical treatment, and was capable of returning to work without restriction.

Petitioner submitted an itemization of unpaid medical expenses, a bill of costs, and her statement of wages for concurrent employment with Starbucks. Employer's counsel objected to the statement of wages and unpaid medical expenses itemization. Employer's counsel asserted that the medical bills, pharmacy invoices and laboratory bills were not supported by medical evidence of record.

The WCJ concluded that Employer had carried its burden of proof in establishing that Petitioner was fully recovered from her injuries and capable of returning to work without restriction, and, therefore, terminated Petitioner's benefits as of December 14, 2007. The WCJ credited the testimony of Dr. Kasdan over the testimony of Dr. Mazowiecki and Dr. Franz. The WCJ further concluded that Petitioner had failed to establish compensability of the submitted medical bills,

finding that the prescribed medications and physical therapy were unrelated to Petitioner's work-related injuries. The WCJ also determined that Petitioner had carried her burden of proving concurrent employment. Finally, the WCJ denied the penalty petition concluding that Employer had not acted in bad faith when attempting to ascertain Petitioner's correct average weekly wage (including her concurrent employment) once it became aware of her employment with Starbucks.

Petitioner, proceeding *pro se*, appealed to the Board. Petitioner asserted that the WCJ's findings regarding the unpaid medical bills were not supported by substantial evidence, that the WCJ erred in failing to find bad faith with regard to Petitioner's concurrent employment, and that the termination of benefits was not supported by substantial evidence. The Board affirmed the WCJ's decision. This appeal followed.<sup>1</sup>

Petitioner asserts that the WCJ's decision is not supported by substantial evidence and that the failure to hold a mandatory mediation conference was error. Employer argues that Petitioner has waived the mandatory mediation issue or, alternatively, the evidence demonstrates that mediation would have been futile.

A claimant's benefits may be terminated where the employer proves by unequivocal, competent medical evidence that the claimant is fully recovered from the work injury and has no remaining disability that relates to the work injury. *Hall v. Workers' Comp. Appeal Bd. (Am. Serv. Group)*, 3 A.3d 734, 740 (Pa. Cmwlth. 2010). The WCJ is the ultimate finder of fact in compensation cases

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<sup>1</sup> Our scope of review is limited to determining whether the adjudication is in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. *Pizza Hut, Inc. v. Workers' Comp. Appeal Bd. (Mahalick)*, 11 A.3d 1067, 1069 (Pa. Cmwlth. 2011).

and has exclusive authority over questions of credibility and evidentiary weight. *Davis v. Workers' Comp. Appeal Bd. (City of Philadelphia)*, 753 A.2d 905, 909 (Pa. Cmwlth. 2000). The WCJ is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. *Michel v. Workers' Comp. Appeal Bd.(U.S. Steel Corp.)*, 966 A.2d 643, 652 (Pa. Cmwlth. 2009). This Court will not disturb a WCJ's findings when those findings are supported by substantial evidence. *Nevin Trucking v. Workmen's Comp. Appeal Bd. (Murdock)*, 667 A.2d 262 (Pa. Cmwlth. 1995).

Petitioner contends that the WCJ's decision is not supported by substantial evidence because Dr. Mazowiecki and Dr. Franz unequivocally opined that her migraines were a symptom of post-concussion syndrome, which were caused by the two closed head injuries she suffered at work. However, the WCJ credited the testimony of Dr. Kasdan over the testimony of Dr. Mazowiecki and Dr. Franz, and adopted Dr. Kasdan's conclusion that the migraines Petitioner suffered subsequent to her injuries were not causally related to her work injuries. The WCJ explained that Dr. Kasdan's testimony was more credible because his testimony was based upon not only Petitioner's normal physical examination, but also a careful analysis of the medical records connected with the work injuries. Petitioner is simply asking this court to reweigh the evidence and find the testimony of Drs. Mazowiecki's and Franz's testimony more credible than the testimony Dr. Kasdan, which we may not do.

Petitioner also contends that the WCJ erred in failing to order mandatory mediation of her claim. Petitioner did not raise the issue of mandatory mediation in either her appeal to the Board or in her petition for review filed with

this court. Failure to raise an issue before the Board results in waiver of the issue.  
*Hall*, 3 A.3d at 744.<sup>2</sup>

We affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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<sup>2</sup> In her brief, for the first time, Petitioner asserts that she was denied her constitutional rights to counsel and due process because the Board refused to continue her appeal until she obtained counsel. The constitutional right to counsel is applicable in the criminal law context only. *Smith v. Commonwealth*, 524 Pa. 500, 574 A.2d 558 (1990). Although Section 502 of the Administrative Agency Act, 2 Pa. C.S. § 502, permits parties to be represented before administrative agencies, Section 502 does not guarantee representation.

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**ORDER**

AND NOW, this 19th day of May, 2011, the order of Workers' Compensation Appeal Board is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge