



Claimant was injured on December 9, 2005, in the course and scope of her employment while working for Employer. She began receiving workers' compensation benefits pursuant to a Notice of Compensation Payable (NCP) for an injury described as "coccyx contusion, slipped and fell on ice." In 2007, Claimant filed a review petition alleging that the NCP was incorrect and should be amended to include a fracture of the coccyx, aggravation of lumbar degenerative joint disease, enlargement of lumbar disc protrusion, lumbar radiculopathy, sacroiliac dysfunction as well as cervical, thoracic and lumbar strain. Employer filed an answer denying the allegations. Employer also filed a termination petition alleging that as of March 7, 2007, Claimant had fully recovered from her work injury.<sup>2</sup>

The petitions were consolidated for hearing before the WCJ. In support of her review petition claiming additional injuries, Claimant offered the expert medical testimony of Dr. Littman, a board certified internist, who began treating Claimant on March 31, 2006, for her work injury. Dr. Littman stated that Claimant told him that she fell backwards on black ice injuring her tailbone and lower back region. During his exam on March 31, 2006, Dr. Littman found tenderness in Claimant's lower lumbar spine and the sacral region and coccygeal tenderness at the site of what he referred to as the fracture shown on the post-injury MRI study. He indicated that she had limited forward flexion and positive straight leg raising testing bilaterally. During that exam, Claimant informed him that she

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<sup>2</sup> Employer also filed a modification/suspension petition alleging that as of February 29, 2008, work was generally available to Claimant which she was capable of performing. The WCJ determined that this petition was moot, and the issue on appeal does not deal with this petition so we will not discuss it in detail.

had a prior back injury in 2004 and an MRI for that injury on April 6, 2004. He stated that Claimant also had an MRI performed in 2005 after the work injury and another performed in 2006. When he reviewed the 2006 MRI, it confirmed a fracture of the tailbone and a median broad-based left foraminal/extra-foraminal protrusion displacing the L3 nerve root, both findings not shown in the previous MRI studies. At the time of her injury, he diagnosed her with post-traumatic syndrome, coccygeal fracture, acute lumbosacral sprain and anxiety reaction. Due to her pain level, Dr. Littman stated that he sent Claimant to a neurologist who provided Claimant with numerous epidural injections under fluoroscopy. Dr. Littman stated that he generally saw Claimant once a week and provided passive modalities on her lower back. Dr. Littman testified that he last examined Claimant on November 30, 2007, and that she was still suffering from pain from the coccyx fracture and bilateral lumbar radiculopathy as well as lumbosacral sprain and strain. It was his opinion that these injuries were caused by the December 9, 2005 work injury, and that she was fully disabled from returning to her pre-injury job as a bus driver.

On cross-examination, Dr. Littman stated that Claimant's back injury from the 2004 accident had not resolved at the time of her work injury on December 9, 2005, and that she had given him a history of a prior herniated disc when she was first seen at the hospital. However, he also admitted that the records from the hospital showed that she was seen there on August 1, 2005, complaining of low back problems for the past three years and that she was considering a breast reduction surgery to reduce her backache. Otherwise, she had a physical exam at the hospital previously on March 7, 2005, that was normal and the complaint was a

backache without weakness. Claimant's testimony that the back pain she suffered after the 2004 car accident was resolved prior to the work injury. Also, Claimant did not injure her neck at work on December 9, 2005, and did not tell him that she hurt her neck. It was Dr. Littman's opinion, however, that Claimant sustained post-traumatic syndrome as a result of this work injury leading to anxiety, headaches and depression.

In support of its termination and suspension/modification petitions, Employer presented the testimony of board certified orthopedic surgeon Richard G. Schmidt, M.D. (Dr. Schmidt) who examined Claimant three different times at Employer's request. At the first independent medical exam (IME) on July 5, 2006, Claimant told Dr. Schmidt that she had fallen and landed on her buttocks, also adding that she had also landed on her lower back and injured her lower back region. She denied any neck or upper extremity pain. She told Dr. Schmidt that she had been in a car accident in 2004 injuring her lower back, but had recovered from that accident. Dr. Schmidt noted that Claimant was 5 feet 3 inches tall and weighted 208 pounds; her neck was non-tender with a full range of motion; her mid-back was non-tender; she had a normal gait; her exam revealed a negative sitting root tension test indicating the absence of sciatica. While Claimant complained of tenderness during the exam, the iliac crest, S1 joints, sciatic notches, sacrum and coccyx were non-tender.

Dr. Schmidt stated that he reviewed an x-ray report dated December 2, 2006, of Claimant's sacrum which showed no evidence of fracture involving the sacrum or coccyx but did show degenerative changes of the lower back which was

previously seen on the January 5, 2006 x-ray. He also stated that the MRI study from March 6, 2006, indicated a subacute to chronically mildly displaced fracture at the upper coccyx. However, he noted that Claimant was not tender on palpation in this region. He stated that he would not interpret that MRI as showing an actual fracture. That same MRI report mentioned moderate degenerative disc changes at 3-4 on the left where there was a medium-broad-based left extra-foraminal protrusion displacing the postganglionic left L-3 nerve root. However, when he examined Claimant, he found no evidence of any radiculopathy. The MRI report of the lower back of April 6, 2005, indicated under impression far left lateral protrusion of the L3-L4 disc with mild foraminal encroachment. Dr. Schmidt stated his exam, however, was within normal limits, and Claimant had fully recovered from her work injury. Based on Claimant's work history, he opined that the work injury was a lumbar strain and sprain with a contusional injury.

Regarding his second IME exam on March 7, 2007, Dr. Schmidt stated that he reviewed updated records from Claimant's treating doctors, but his own exam findings were the same as before and his opinion remained the same that she was fully recovered from her work injury. Claimant had denied any neck or mid-back complaints, but still had complaints of low-back pain. As to his third IME exam on September 10, 2007, he stated that his exam findings were the same although Claimant had complained of a decrease in sensation over her left toes and a poking pain in her low back. He again opined that Claimant was fully recovered from her work injury. It was his opinion that Claimant was not in significant pain, noting that Claimant had take a Vicodin ES one week before the exam. Finally, Dr. Schmidt stated that it was his opinion that none of the disc problems on the

MRI studies were related to Claimant's work injury because the MRI study done before the work injury showed essentially the same changes as the MRI study done after the work injury.

The WCJ granted Employer's termination petition because she found Dr. Schmidt credible and did not find Dr. Littman's testimony credible to the extent it differed from that of Dr. Schmidt's testimony. As for Claimant's review petition, because the WCJ found Dr. Schmidt credible that Claimant had suffered from a lumbar sprain, strain and a coccyx contusion but had fully recovered, she determined that Claimant had met her burden of proving in part that the description on the NCP should be expanded to include just those injuries and granted the review petition in part. Claimant appealed to the Board, which affirmed the WCJ's decision, and this appeal followed.<sup>3</sup>

Claimant now contends that the WCJ erred by not amending her entire review petition to include a fracture of the coccyx, an aggravation of lumbar degenerative disc disease and lumbar radiculopathy<sup>4</sup> based on Dr. Schmidt's testimony. Regarding the fracture of her coccyx, she argues that although Dr. Schmidt testified that the MRI report of March 6, 2006, did not describe a fracture

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<sup>3</sup> Our scope of review of the Board's order is limited to determining whether any constitutional rights were violated, whether an error of law was committed or whether the necessary findings of fact are supported by substantial evidence. *Schemmer v. Workers' Compensation Appeal Board (U.S. Steel)*, 833 A.2d 276 (Pa. Cmwlth. 2003).

<sup>4</sup> "Radiculopathy" is defined as "disease of the spinal nerve roots." *Stedman's Medical Dictionary* 1308 (25<sup>th</sup> ed. 1990).

but only a displacement between C-1 and C-2, the actual MRI report stated that there was a “late subacute to chronic mild anteriorly displaced fracture at S1.” Additionally, the MRI showed on the left a medium broad-based left foraminal/extra-foraminal protrusion that “displaces the postganglionic left L3 nerve root.” The pre-work injury MRI taken on April 6, 2005, did not show any findings involving the sacrococcygeal area of the spine. Therefore, Dr. Schmidt’s finding that Claimant did not sustain a fracture of the coccyx or lumbar nerve root involvement was not supported by the MRIs in the evidence, and the WCJ’s reliance on his views are in error.

What Claimant actually is doing is questioning a credibility determination by the WCJ. The WCJ is the ultimate factfinder and determiner of credibility in workers’ compensation cases. *Shannopin Mining Company v. Workers’ Compensation Appeal Board (Sereg)*, 11 A.3d 623 (Pa. Cmwlth. 2011). Here, the WCJ found Dr. Schmidt, a board-certified orthopedist, most credible. Dr. Schmidt reviewed two x-rays from 2006, one in January and one in December, and found no evidence of a fracture of the coccyx. When he specifically was asked regarding the difference between the two x-rays and the 2006 MRI report of March 6, 2006, which stated there was a fracture, he responded as follows:

Q. Doctor, I have a couple of questions to ask you. How come the x-ray report demonstrated no evidence of fracture, but the MRI report noted that there was a subacute to chronically mildly displaced fracture at the upper coccyx?

A. Well the x-rays obviously showed no fracture. If you look at the actual report of the MRI, it does not actually specifically say fracture. It says displacement at C1-C2.

So I would say from an orthopedic standpoint, I would not interpret the MRI as showing an actual fracture. It does not describe a fracture, but it describes a displacement between C-1 and C-2.

(Dr. Schmidt's November 12, 2007 deposition testimony at 15.)

As to Claimant's alleged aggravation of lumbar degenerative disc disease, Dr. Schmidt testified that he reviewed the two MRI reports from April 6, 2005, and March 6, 2006. The 2005 report mentioned "far left lateral protrusion of the L3-L4 disc with mild foraminal encroachment" and the 2006 report indicated "moderate degenerative disc changes at 3-4 on the left." (Dr. Schmidt's November 12, 2007 deposition at 14.) Nowhere in any of Dr. Schmidt's testimony does he state that there has been an "aggravation" of Claimant's lumbar degenerative disc disease. In fact, when Dr. Schmidt was asked if any of Claimant's disc problems were related to her work-injury, he stated that they were not, "Because the MRI done before [the work injury] demonstrates essentially the same changes as the MRI done after the slip at work." (Dr. Schmidt's November 12, 2007 deposition at 37.)

Finally, regarding Claimant's allegation of lumbar radiculopathy, Dr. Schmidt stated that during each of his three exams, Claimant had no complaints of mid-back pain, no tenderness of the sacrum and coccyx upon palpation and only complained of some mild tenderness on palpation over the lower back muscles. Specifically, in his report after his first exam of Claimant, Dr. Schmidt noted that "there is no evidence on clinical examination today of any radiculopathy or any



impairment by MRI study of any motor nerve root disc disfunction.” (Report of July 5, 2006.) His opinion did not change on his two subsequent exams.

Consequently, because Dr. Schmidt, as an orthopedist, found that Claimant did not have a fracture of the coccyx, an aggravation of lumbar degenerative disc disease and lumbar radiculopathy, and made this determination after three exams, reviewing x-rays, MRIs and medical records, and the WCJ found him most credible, we will not disturb the WCJ’s credibility determination.<sup>5</sup>

Accordingly, the order of the Board is affirmed.

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DAN PELLEGRINI, JUDGE

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<sup>5</sup> Claimant also argues that because Dr. Schmidt misread the MRIs, his understanding of the nature and extent of Claimant’s work injury was wrong. Therefore, the WCJ’s reliance upon Dr. Schmidt’s testimony in finding that Claimant was fully recovered was in error and the termination petition should not have been granted. However, based on how we decided the first issue, Claimant’s argument is without merit.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jacqueline Alford,	:
Petitioner	:
	:
v.	: No. 2598 C.D. 2010
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Workers' Compensation Appeal	:
Board (Southeastern Pennsylvania	:
Transportation Authority/SEPTA),	:
Respondent	:

**ORDER**

AND NOW, this 14<sup>th</sup> day of June, 2011, the order of the Workers' Compensation Appeal Board, dated November 17, 2010, at No A09-0657, is affirmed.

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DAN PELLEGRINI, JUDGE