

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Zoraida Davis, :  
 :  
 : Petitioner :  
 :  
 : v. : Nos. 2607 and 2608 C.D. 2010  
 : SUBMITTED: April 29, 2011  
 :  
 Workers' Compensation Appeal :  
 Board (Synthetic Thread :  
 Company, Inc.), :  
 : Respondent :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: July 6, 2011**

Zoraida Davis petitions for review of the order of the Workers' Compensation Appeal Board (Board), which affirmed the order of the Workers' Compensation Judge (WCJ) to grant two termination petitions of the Synthetic Thread Company, Inc. (Employer). We affirm.

This case involves two separate work-related injuries. The first, acknowledged by Employer in November of 2003, was initially described as left carpal tunnel syndrome. Benefits for this injury were suspended for a period of time on the basis of Davis' return to work, but were reinstated in a Supplemental Agreement for Compensation due to a recurrence of disability that was described

as left ulnar impaction syndrome. The second injury, acknowledged by Employer in 2004, was a right wrist strain.

In 2009, Employer filed termination petitions for both injuries, in both cases alleging full recovery. The petitions were consolidated and heard before the WCJ. The WCJ granted the petitions, and the Board affirmed. An appeal to this court followed.

On appeal, Davis makes two arguments, both related to the testimony of Employer's expert, Dr. Stanley R. Askin, M.D. She argues that, with regard to the left wrist injury, Dr. Askin's testimony was improperly accepted by the WCJ because it did not address the specific acknowledged injury and did not recognize that it was work-related. With regard to the right wrist injury, Davis argues that Dr. Askin's testimony was non-responsive to evidence she presented of nerve damage.

In relation to the 2003 left wrist injury, Dr. Askin related the history of the injury, including that Davis had heard a popping noise and felt pain in the wrist at the time of the initial injury. Dr. Askin testified that Davis subsequently had two surgeries on the wrist, and that he conducted a full examination of the joint. He further testified that, in his opinion, the surgeries had been unnecessary and unrelated to the work injury, and that Davis' initial injury was, if anything, discomfort from overuse. Dr. Askin went on to testify that Davis had reached maximum medical improvement and had fully recovered from her left wrist injury. The WCJ rejected Dr. Askin's conclusion that the surgery was unrelated to the work injury, but accepted his findings that Davis had fully recovered. She did not accept the conclusions of Davis' expert, Dr. John Williams, who opined that Davis still had symptoms of the injury.

Davis argues that Dr. Askin's testimony was insufficient for two closely related reasons: first, Dr. Askin did not specifically state that Davis had recovered from the acknowledged injury, which Davis maintains is carpal tunnel syndrome, despite the fact that the Supplemental Agreement identified the injury as left ulnar impaction syndrome; second, that Dr. Askin's opinion was not competent because he doubted that the injury had happened at all.

While it is true that in a termination petition, the nature of the injury is not to be re-litigated, and that the employer's burden is to prove that the claimant has recovered from the acknowledged injury, this court has held that the testimony of doctors who are skeptical of the initial diagnosis can meet that burden in some situations. In *To v. Workers' Compensation Appeal Board (Insaco, Inc.)*, 819 A.2d 1222 (Pa. Cmwlth. 2003), we affirmed the grant of a termination petition when employer's expert opined that it was impossible for the claimant to have been injured in the manner acknowledged. However, the expert went on to testify that the claimant had made a full and complete recovery from any injury he may have sustained. This court found the expert's testimony competent to support the termination petition. In a similar case, this court found competent the testimony of a medical expert who doubted the existence of an injury, but stated that if there had been an injury, it was resolved. *Jackson v. Workers' Comp. Appeal Bd. (Res. for Human Dev.)*, 877 A.2d 498 (Pa. Cmwlth. 2005).

Like the testimony at issue in *Jackson* and *To*, Dr. Askin's testimony in this case is competent to support the termination petition. Dr. Askin did doubt the diagnosis given to Davis' injury, and whether the treatment provided for it was appropriate, but he also stated that, based on his examination, he believed that Davis had fully recovered from her left wrist injury. See Deposition Testimony of

Dr. Askin, attached to Employer's brief as Exhibit B, at 31. This testimony, which was found to be credible by the WCJ, along with the other facts found by the WCJ, is sufficient to support the conclusion that Davis has fully recovered from her left wrist injury.

With regard to the 2004 right wrist injury, Davis again argues that Dr. Askin's testimony, which was credited by the WCJ, was insufficient to support a finding of full recovery. For support, she points to the testimony of her expert, Dr. Williams, who opined that there was evidence of nerve damage in the wrist. Davis argues that Dr. Askin's failure to rebut this testimony somehow renders his opinion incompetent. However, the WCJ discredited Dr. Williams' testimony that Davis has ongoing symptoms in either wrist and that she is not fully recovered. *See* WCJ Opinion, Finding of Fact Nos. 14, 15. The WCJ did accept Dr. Askin's opinion, based on his physical examination, that Davis had fully recovered from the second acknowledged injury, a right wrist strain. *Id.*, Finding of Fact No. 16. The WCJ's findings in this regard are sufficient to support the WCJ's conclusion that Davis has fully recovered from her right wrist injury.

For all the foregoing reasons, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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	:	
Respondent	:	

**ORDER**

AND NOW, this 6th day of July, 2011, the order of the Workers' Compensation Appeal Board in the above-captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge