IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Chestnut Ridge Foam, Petitioner	:	
v.	:	No. 321 C.D. 2010
Workers' Compensation Appeal Board (Clawson, Jr.), Respondent	:	Submitted: August 13, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: October 29, 2010**

In this appeal, we consider whether the Workers' Compensation Appeal Board (Board) erred in affirming an order of a Workers' Compensation Judge (WCJ) that granted Aneurin D. Clawson, Jr. (Claimant) disability benefits under the Workers' Compensation Act (Act)[1] for a closed period of approximately seven and a half months, followed by a suspension. Chestnut Ridge Foam (Employer) argues that Claimant's medical evidence was not competent to support an award of benefits, and that the WCJ erred in failing to issue a reasoned decision. Discerning no merit in these assertions, we affirm.

Claimant worked for Employer as a laborer. Claimant's job duties required lifting, bending, crouching, squatting, and kneeling. He applied glue to foam mattresses and operated machines. When working on the dip line, Claimant

[1] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-1041.4, 2501-2708.

lifted pieces of foam, which were dipped in fire retardant. At times, Claimant lifted foam weighing 80-90 pounds without assistance and moved mattresses weighing 128 pounds with a co-worker.

In February 2008, Claimant filed a claim petition alleging he suffered a work injury, specifically a cracked vertebrae at T12. Employer denied Claimant's injury was work-related. Hearings ensued before a WCJ.

At hearing, Claimant testified he slipped and fell at work on December 17, 2007. Claimant testified he slipped on a smooth part of the floor by the dip line, his legs split out to the sides and he twisted when he grabbed the conveyor belt to break his fall. Claimant further testified he was unable to stand up or lower himself to the floor and dropped approximately one foot to the floor. On the same day, Claimant advised his supervisor of the fall.

Claimant continued to work without restrictions for approximately two weeks, although symptoms continued. During this time, Claimant treated with his chiropractor, John Soforik, D.C., (Claimant's Chiropractor), and his family physician, Francis Meyers, D.O., (Claimant's Family Physician).

In January 2008, Claimant developed excruciating back pain. An ambulance transported Claimant to the hospital, where he underwent an MRI and received pain medication. Eventually, Richard M. Spiro, M.D. (Claimant's Neurosurgeon), a board certified neurosurgeon and Chief of Spine Surgery at UPMC, operated on Claimant for a herniated T12-L1 disc.

In support of his claim petition, Claimant presented the deposition testimony of his Neurosurgeon, who opined Claimant's T12-L1 disc herniation occurred as a result of the December 2007 work injury.

Claimant also offered the deposition testimony of his Family Physician, who initially diagnosed a lumbar sprain. Claimant treated with his Family Physician after the work injury, complaining of low back pain in the lumbar spine and pain in both legs. After reviewing Claimant's hospital records, Claimant's Family Physician diagnosed Claimant with a herniated disc, which he related to the December 2007 work injury.

In addition, Claimant offered the deposition testimony of his Chiropractor, who treated him for neck and low back pain prior to the work injury. Claimant treated with his Chiropractor several times after the work injury and did not mention the fall at work, a change in symptoms or an increase in back pain. Even when Claimant reported improvement in his back pain, however, Claimant's Chiropractor noted the presence of spasms. Claimant rarely reported radicular symptoms to his Chiropractor during office visits.

In opposition to the claim petition, Employer presented the deposition testimony of Thomas D. Kramer, M.D. (Employer's Orthopedist), a board certified orthopedic surgeon, who opined Claimant suffered a lumbar sprain as a result of the work incident from which Claimant fully recovered. Employer's Orthopedist opined that the herniation of Claimant's disc occurred near the time of his admission to the hospital in January 2008.

Ultimately, the WCJ credited Claimant's Neurosurgeon's testimony that Claimant's disc herniation at level T12-L1 was work-related. Thus, the WCJ awarded Claimant disability benefits for a period of approximately seven and a half months. The WCJ determined Claimant's return to work in August 2008 entitled Employer to a suspension, as the record did not establish Claimant fully recovered.

On appeal by Employer, the Board affirmed. Employer now petitions for review.

On appeal,[2] Employer asserts the WCJ erred in determining Claimant's Physician's testimony was competent to support an award of benefits. Employer also contends the WCJ erred in failing to issue a reasoned decision.

As the ultimate fact-finder in workers' compensation cases, the WCJ is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. Milner v. Workers' Comp. Appeal Bd. (Main Line Endoscopy Ctr.), 995 A.2d 492 (Pa. Cmwlth. 2010). Determinations of credibility and evidentiary weight are within the WCJ's exclusive province. Ward v. Workers' Comp. Appeal Bd. (City of Phila.), 966 A.2d 1159 (Pa. Cmwlth.), appeal denied, 603 Pa. 687, 982 A.2d 1229 (2009).

[2] Our review is limited to determining whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence and whether constitutional rights were violated. Ward v. Workers' Comp. Appeal Bd. (City of Phila.), 966 A.2d 1159 (Pa. Cmwlth.), appeal denied, 603 Pa. 687, 982 A.2d 1229 (2009).

We must affirm a WCJ's decision where the WCJ's findings are supported by substantial, competent evidence, notwithstanding the existence of evidence to the contrary. Cittrich v. Workmen's Comp. Appeal Bd. (Laurel Living Ctr.), 688 A.2d 1258 (Pa. Cmwlth. 1997). Further, we view the evidence in a light most favorable to the party who prevailed before the WCJ. Waldameer Park, Inc. v. Workers' Comp. Appeal Bd. (Morrison), 819 A.2d 164 (Pa. Cmwlth. 2003). Also, we draw all reasonable inferences deducible from the evidence in favor of the prevailing party. Id.

In a claim proceeding, the claimant bears the burden of proving all elements necessary for an award. Watson v. Workers' Comp. Appeal Bd. (Special People in Northeast), 949 A.2d 949 (Pa. Cmwlth. 2008). Specifically, a claimant must establish he sustained an injury during the course and scope of his employment and the injury is causally related to the employment. Id. A claimant must also prove the work injury resulted in a disability that continues for the period for which benefits are sought. Id.

I.

Employer first argues Claimant's Neurosurgeon did not understand the mechanism of Claimant's injury or Claimant's history; therefore, Claimant's Neurosurgeon's testimony was not competent to establish Claimant's injury was work-related.

Whether medical evidence is competent is a conclusion of law reviewable on appeal. Pryor v. Workers' Comp. Appeal Bd. (Colin Serv. Sys.),

923 A.2d 1197 (Pa. Cmwlth. 2006). Determining the competency of medical evidence requires review of whether the expert's opinion is sufficiently definite and unequivocal to render it admissible. Id. If a medical expert, after providing a foundation, testifies that in his medical opinion he thinks the facts exist, then the medical evidence is unequivocal. Martin v. Workers' Comp. Appeal Bd. (Red Rose Trans. Auth.), 783 A.2d 384 (Pa. Cmwlth. 2001). Unequivocal medical testimony is testimony that in the professional opinion of the medical expert, the claimant's condition, in fact, resulted from the work experience. Johnson v. Workers' Comp. Appeal Bd. (Abington Mem'l Hosp.), 816 A.2d 1262 (Pa. Cmwlth. 2003).

Here, with regard to the mechanism of Claimant's injury, the WCJ found that Claimant told Claimant's Neurosurgeon:

> that he slipped at work, did a split, and subsequently landed on his back. [Claimant] did not tell [Claimant's Neurosurgeon] of his prior complaints of back pain or of his chiropractic treatment for low back pain by [Claimant's Chiropractor] before the work injury. He did not describe the level of work performed by him at Employer. [Claimant] did tell [Claimant's Neurosurgeon] that he had a sudden onset of severe pain on January 7, 2008, when he placed his left foot on his right thigh to dry off his foot after taking a shower. In his initial examination, [Claimant's Neurosurgeon] noted [Claimant] had significant left foot drop with significant weakness in his foot, difficulty with sensory recognition, slight increases in reflexes, and positive Babinski sign. He interpreted [Claimant's] MRI as showing large disc herniation with severe spinal cord compression at the level of T12-L1. [Claimant's Neurosurgeon] related [Claimant's] acute thoracolumbar disc herniation and spinal cord compression to the December 17, 2007 fall at work. [Claimant's Neurosurgeon] did not change his

> opinion after learning of [Claimant's] chiropractic treatment on [sic] [Claimant's Family Physician's] normal physical examination. He related the herniation to the fall because T12-L1 herniations are not caused by twisting the wrong way, but by fairly high force injury, [Claimant's] description of the fall was consistent with the mechanics of herniated T12-L1 disc, and the temporal relationship of the December 17, 2007, to the herniation made "perfect medical sense." Although [Claimant's Neurosurgeon] would have preferred to have been informed of the prior low back history, he felt the history of the prior back problems did not change his opinions due to the temporal relationship of the fall and the significant injury. He, also, felt [Claimant's] comments to [Claimant's Chiropractor] about improvement in his back pain did not affect his opinion as the symptoms could wax and wane. He did not place any significance on [Claimant's] continuing to perform heavy work between December 17, 2007, and January 7, 2008, because [Claimant] had demonstrated himself to be "a pretty stoic person" since he required very little pain medication after two huge operations. [Claimant's Neurosurgeon] felt [Claimant] could have worked through a lot of pain, some numbness and weakness. He also felt that it was very likely that [Claimant] had signs of the spinal cord compression after the December 17, 2007 injury that went unnoticed by his PCP and chiropractor.

WCJ Op., 6/18/09, Finding of Fact (F.F.) No. 13 (emphasis added).

The WCJ's finding is adequately supported. More specifically, Claimant's Neurosurgeon testified Claimant described his work-related fall to him. F.F. No. 13; see Reproduced Record (R.R.) at 244a. Claimant's Neurosurgeon's review of the manner in which the fall occurred and Claimant's resultant injury "made perfect medical sense." F.F. No. 13, R.R. at 248a..

Further, Claimant's Neurosurgeon's testimony remained unequivocal, even when additional history was provided to him. F.F. Nos. 13, 15. Specifically, "[Claimant's Neurosurgeon] clearly testified that the additional information regarding the chiropractic treatment received by [Claimant] before the December 17, 2007, event and [Claimant's] statements to [Claimant's Chiropractor] regarding improvement in his back pain following the December 17, 2007 event did not change his opinion." F.F. No. 15; R.R. at 255a. Similarly, Claimant's Neurosurgeon did not change his opinion after learning of Claimant's Family Physician's initial examination. F.F. No. 13; R.R. at 238a-239a. Based on Claimant's history and review of records, Claimant's Neurosurgeon opined Claimant's disc herniation and spinal cord compression was "a hundred percent related to his work-related fall of December of 2007." R.R. at 237a.

Nevertheless, citing Newcomer v. Workmen's Compensation Appeal Board (Ward Trucking Corporation), 547 Pa. 639, 692 A.2d 1062 (1997) and Southwest Airlines/Cambridge Integrated Service v. Workers' Compensation Appeal Board (King), 985 A.2d 280 (Pa. Cmwlth. 2009), Employer argues Claimant's Neurosurgeon did not have an accurate medical history or factual account of the accident, and, therefore, his testimony was not competent. We disagree.

Specifically, in Newcomer, the claimant's description of the injury was not supported by the underlying facts or medical records. Further, the claimant's medical expert relied solely on a false medical history supplied to him by the claimant, which had no other basis in fact. Newcomer.

Similarly, in Southwest Airlines, the medical expert failed to review the claimant's medical records. In Southwest Airlines, claimant's medical history and records included prior injuries and symptoms similar to the litigated claim. In both Newcomer and Southwest Airlines, the opinions of the medical experts were deemed incompetent, and absent competent medical evidence on the issue of causation, an award of benefits could not stand.

Here, unlike in Newcomer and Southwest Airlines, Claimant's Neurosurgeon had an accurate understanding of Claimant's medical history and reviewed Claimant's medical records. F.F. 13; R.R. at 231a-233a, 236a, 238a, 242a. Additionally, at the time of Claimant's Neurosurgeon's deposition, he had the records from Claimant's Chiropractor and reviewed Claimant's pre-injury history. R.R. at 236a-238a. Thus, Newcomer and Southwest Airlines are distinguishable.[3]

II.

Employer also argues the WCJ's decision is not "reasoned" because the WCJ's credibility determinations are in conflict. Specifically, Employer asserts the WCJ credited Claimant's Neurosurgeon's testimony that Claimant's Family Physician and Chiropractor "missed something" during their examinations of Claimant after the injury. Employer further maintains that, by also crediting the testimony of Claimant's Physician and Chiropractor, the WCJ's findings must be

[3] Moreover, although Employer focuses on a portion of its cross-examination of Claimant's Neurosurgeon in support of its argument that Claimant's Neurosurgeon was unfamiliar with the mechanism of Claimant's injury, Claimant's Neurosurgeon did not change is opinion on cross-examination. R.R. at 260a.

interpreted to mean Claimant's Family Physician and Chiropractor did not miss anything during their examinations of Claimant. Given this conflict, Employer contends, the WCJ's decision does not satisfy the Act's "reasoned decision" requirement.

Section 422(a) of the Act requires a WCJ to issue a "reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for decisions." 77 P.S. §834. To constitute a reasoned decision within the meaning of Section 422(a), a WCJ's opinion must permit adequate appellate review. Daniels v. Workers' Comp. Appeal Bd. (Tristate Transp.), 574 Pa. 61, 828 A.2d 1043 (2003).

Employer's argument that the WCJ's findings are in conflict stems from the finding in which the WCJ credited the testimony and opinions of Claimant's Neurosurgeon. In so doing, the WCJ stated:

> 15. This [WCJ] finds, based on the credible and persuasive opinion of [Claimant's Neurosurgeon], that the T12-L1 disc herniation occurred as a result of the December 17, 2007, injury. [Claimant's Neurosurgeon] is a board certified neurosurgeon and the Chief of Spine Surgery at UPMC. He does clinical teaching in the operating room. In rendering his opinion, [Claimant's Neurosurgeon], also, considered [Claimant's] ability to deal with pain. He observed that [Claimant] required very little pain medication following two major surgeries. Therefore, he felt that [Claimant] was a stoic individual who would have worked through his pain. [Claimant's Neurosurgeon], also, felt that both [Claimant's Family Physician] and [Claimant's Chiropractor] may have missed any neurological deficits caused by the herniated

> disc. [Claimant's] failure to be less than honest with [Claimant's Neurosurgeon] regarding his pre-existing back pain and treatment does not detract from [Claimant's Neurosurgeon's] credibility. …

F.F. No. 15 (emphasis added).

Contrary to Employer's assertions, the WCJ made no finding that Claimant's Family Physician and Claimant's Chiropractor "did not miss anything" in their examinations of Claimant. Therefore, Employer's argument that the WCJ made conflicting findings lacks merit.

Further, our review of the WCJ's findings regarding Claimant's medical experts reveals no conflicts. Specifically, the WCJ found Claimant's Neurosurgeon's opinions competent and credible to establish a causal connection between Claimant's work injury and his resultant disability. F.F. No. 15.

With regard to the testimony of Claimant's Family Physician, the WCJ found Claimant treated with his Family Physician for low back pain and pain in both legs after his work-related fall. F.F. No. 12; R.R. at 197a. Claimant's Family Physician is not a specialist in neurology, orthopedics, or pain management. R.R. at 196a. No spine specialist or neurologist examined Claimant at the time of his injury. R.R. at 251a. Also, Claimant's Family Physician's diagnostic tests were x-rays of Claimant's spine, as compared to Claimant's Neurosurgeon's examination of Claimant's MRI. F.F. Nos. 12, 13, R.R. at 197a, 232a. Moreover, the WCJ found, "[a]lthough [Claimant's Family Physician] did not initially diagnose a herniated disc, he did so after reviewing [Claimant's] hospital records." F.F. No. 17; R.R. at 199a. Further, Claimant's Family

Physician related the herniation to Claimant's work injury. Id.; R.R. at 201a-202a. The WCJ found Claimant's Family Physician's opinion credible because "it is supported by [Claimant's Neurosurgeon's] opinion." F.F. No. 17.

With regard to the testimony of Claimant's Chiropractor, the WCJ found Claimant's Chiropractor did not offer a diagnosis as to Claimant's condition; rather, he treated Claimant's pain symptoms. F.F. Nos. 10, 11; R.R. at 280a. Further, although Claimant did not mention an increase in back pain to his Chiropractor after the injury, Claimant's Neurosurgeon testified Claimant's symptoms could "wax and wane." F.F. Nos. 11, 13; R.R. at 254a, 259a. This finding is consistent with the WCJ's findings regarding Claimant high tolerance for pain and his ability to deal with pain. F.F. Nos. 13, 15, 16; R.R. at 235a, 249a.

In short, based on our review of the WCJ's findings and the record, we discern no conflict in the WCJ's decision. Therefore, we reject Employer's contention that the WCJ's decision does not comport with Section 422(a)'s reasoned decision requirement. The WCJ considered the entire record, weighed the evidence and explained her credibility determinations, which are rational and consistent.

Accordingly, we affirm.

ROBERT SIMPSON, Judge

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Workers' Compensation Appeal Board (Clawson, Jr.), Respondent	:	

O R D E R

AND NOW, this 29th day of October, 2010, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

ROBERT SIMPSON, Judge