IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jay Tucker, Petitioner	:	
v.	:	
Workers' Compensation Appeal Board (Lafayette Supply), Respondent	:	No. 333 C.D. 2011
	:	Submitted: July 22, 2011

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: August 12, 2011

Jay Tucker (Claimant) petitions for review of the February 3, 2011 order of the Workers' Compensation Appeal Board (Board) affirming the decision of a Workers' Compensation Judge (WCJ) granting Lafayette Supply's (Employer) Termination Petition and dismissing its Suspension Petition as moot. The issue before this Court is whether substantial evidence supports the WCJ's termination of benefits. For the reasons that follow, we affirm the Board's order.

Claimant sustained a work-related injury on May 29, 2008 during the course and scope of his employment with Employer. The injury was an aggravation of pre-existing osteoarthritis of the right knee. Claimant received benefits pursuant to a Notice of Compensation Payable dated February 2, 2009. On February 12, 2009, Employer filed a Petition to Terminate/Suspend Compensation Benefits alleging that Claimant was fully recovered from his injury as of January 12, 2009, and that as of

January 26, 2009, Employer has offered Claimant a specific job. Claimant filed an answer denying the allegations.

On April 14, 2010, the WCJ issued a decision granting Employer's termination petition and dismissing its suspension petition as moot. The WCJ found that Employer's medical experts, Stephen M. Horowitz, M.D. (Dr. Horowitz) and Dean W. Trevlyn, M.D. (Dr. Trevlyn), credibly testified that Claimant had pre-existing arthritis in his knee, but that he fully recovered from his work-related injury. The WCJ did not find Claimant's medical expert, Edward Stankiewicz, M.D. (Dr. Stankiewicz), credible. Claimant appealed to the Board. On February 3, 2011, the Board affirmed the WCJ's opinion. Claimant appealed to this Court.[1]

Claimant argues that when the testimony of both of Employer's witnesses is viewed as a whole, a reasonable mind could not conclude that all disability from Claimant's work-related injury had ceased. We disagree.

"In a termination proceeding, the employer bears the burden of proving that the claimant fully recovered from his work injury and has no remaining disability, or that any remaining disability is no longer related to the work injury." *City of Phila. v. Workers' Comp. Appeal Bd. (Smith)*, 946 A.2d 130, 136 n.12 (Pa. Cmwlth. 2008). "[A]n employer is entitled to terminate benefits if it demonstrates that the employee has fully recovered from his or her work-related injury and that any remaining disability is due to a pre-existing condition." *Noverati v. Workmen's Comp. Appeal Bd. (Newtown Squire Inn)*, 686 A.2d 455, 459 (Pa. Cmwlth. 1996).

> This burden can be met by presenting unequivocal and competent medical evidence of a claimant's full recovery

[1] "This Court's scope and standard of review of an order of the Board is limited to determining whether the necessary findings of fact are supported by substantial evidence, whether Board procedures were violated, whether constitutional rights were violated or an error of law was committed." *World Kitchen, Inc. v. Workers' Comp. Appeal Bd. (Rideout)*, 981 A.2d 342, 346 n.5 (Pa. Cmwlth. 2009).

> from a work-related injury. A determination of whether medical testimony is equivocal is a conclusion of law fully reviewable by this Court. Credibility of witnesses, however, is for the [WCJ] to evaluate and he or she may accept the testimony of one witness over that of another.

Koszowski v. Workmen's Comp. Appeal Bd. (Greyhound Lines, Inc.), 595 A.2d 697, 699 (Pa. Cmwlth. 1991) (citations omitted).

Both of the Employer's medical experts testified to a reasonable degree of medical certainty that Claimant had recovered from his work-related injury even though the pre-existing arthritis continues. Specifically, Dr. Horowitz testified:

> assuming that the meniscal tears were aggravated in some way by the accident and they were addressed at the time of surgery. . . . that part of the knee should be better. And, what's left, which would not be correctable by the arthroscopy, would be the underlying arthritis, especially according to the operative report; he did have arthritis in all three compartments of his knee and that would have predated the accident. That takes a long time to develop. So, I felt he had some mild tricompartmental osteoarthritis, which was from before and which would be present even despite the arthroscopy, and that would give him some limitations at work.

Reproduced Record (R.R.) at 49a. Dr. Trevlyn testified that:

> As far as the surgery that was done on the meniscus, it does not show any new meniscus tears. It shows a stable appearance of the surgery that was done to the previous meniscus tears. So I would say that based on this report the surgery that was done for the meniscus seems to have worked out well, but his arthritis has progressed. . . . The appearance of the meniscus tears is stable from the time of surgery, and because of that I feel that that has worked out well. With regard to his meniscus tears I feel that he would be able to return to regular duty work, as I indicated on the paper. So this does not change my opinion in that regard.

R.R. at 101a.

It is clear that both medical experts opined that Claimant had recovered from his work-related injury, and that any current problems with his knee are related solely to his pre-existing arthritis. Employer's expert medical testimony, taken as a whole, is unequivocal and sufficient to support the determination of the WCJ. Because there was substantial evidence to support the WCJ's grant of Employer's Termination Petition, the Board's order is affirmed.

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JOHNNY J. BUTLER, Judge

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O R D E R

AND NOW, this 12th day of August, 2011, the February 3, 2011 order of the Workers' Compensation Appeal Board is affirmed.

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JOHNNY J. BUTLER, Judge