

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paul Morlock,	:	
	:	
Petitioner	:	No. 357 C.D. 2010
	:	
v.	:	Submitted: August 13, 2010
	:	
Workers' Compensation Appeal	:	
Board (Bantek West),	:	
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: December 6, 2010

Paul Morlock (Claimant) appeals from the February 9, 2010, order of the Workers' Compensation Appeal Board (Board), which affirmed the decision of the workers' compensation judge (WCJ) denying Claimant's claim petition. We affirm.

Claimant worked as an automated teller machine (ATM) technician for Bantek West (Employer). Claimant's duties involved replenishing free standing ATMs with money and supplies, such as receipt rolls and envelopes, which he carried in canvas bags that weighed twenty-five pounds or more. He and his co-worker, Robert Krumin, travelled in an armored truck, and they shared the driving duty. Claimant serviced an average of twenty-five ATMs per day.

On January 10, 2008, Claimant experienced a sudden cardiac arrest after servicing an ATM. The local police chief rendered aid and resuscitated Claimant

using an automated external defibrillator. (Reproduced Record (R.R.) at 123a.) Claimant then was transported by ambulance to a hospital, where he was placed on life support and remained unconscious for two days. Claimant was hospitalized for a total of seven days, and during his hospitalization, he was diagnosed with cardiomyopathy.¹ Claimant underwent surgery on January 28, 2008, and has not returned to work.

Claimant filed a claim petition alleging that he sustained a work-related myocardial infarction on January 10, 2008.² (R.R. at 1.) Employer filed an answer denying Claimant's allegations, and the claim petition was assigned to the WCJ for adjudication.

In support of his petition, Claimant testified that, while servicing an ATM in Lebanon, Pennsylvania, he began to feel tired and was sweating. (Finding of Fact No. 7(c).) Claimant stated that, when he finished servicing the ATM, he returned to the armored truck and began to feel dizzy and nauseous, and he felt a heavy pain in his chest. (*Id.*) Claimant testified that, shortly thereafter, he sat back in the seat of the truck and lost consciousness. (*Id.*)

Claimant also testified that he did not have a history of heart problems, and the only time he was told that he had high blood pressure was in December of 2007, when it was detected during emergency room treatment for a motor vehicle accident. (Finding of Fact No. 7(f).) Claimant stated that he followed up on the high blood pressure issue with his family physician, Gene Geld, M.D., who examined and cleared him. (*Id.*) Regarding his ability to work, Claimant testified that he has not

¹ Cardiomyopathy is defined as damaged heart muscle, most commonly caused by insufficient blood supply to the heart. Steadman's Medical Dictionary 248-49 (25th ed. 1990).

² Claimant also filed two penalty petitions, which are not at issue in this appeal.

worked since January 10, 2008, because of fatigue, the side effects of medication, and because his cardiologist did not release him to return to work. (Finding of Fact No. 7(h).)

Claimant also presented the deposition testimony of his treating physician, Daniel Frisch, M.D., who is board certified in internal medicine cardiology and cardio electrophysiology. Dr. Frisch stated that Claimant did not have a traditional heart attack caused by a blocked artery but rather sustained a cardiac arrest due to cardiomyopathy, a condition that existed prior to the episode of cardiac arrest on January 10, 2008. (Finding of Fact No. 8(f).) Dr. Frisch testified that he surgically implanted an internal defibrillator that is intended to prevent future cardiac arrests and that Claimant also takes medications called beta blockers. (Findings of Fact Nos. 8(i), 8(j).) Dr. Frisch opined that Claimant's January 10, 2008, cardiac arrest and the resulting sequella were caused by the physical requirements of Claimant's job and by his stressful work environment. (Finding of Fact No. 8(l).) He further opined that Claimant is not able to continue to work and that his prognosis is guarded. (Finding of Fact No. 8(k).)

Employer introduced the deposition testimony of J. Edward Pickering, M.D., who is certified in internal medicine with a subspecialty in cardiovascular diseases. Based on his review of Claimant's medical records, the history Claimant provided, and his examination of Claimant, Dr. Pickering concluded that Claimant suffered from hypertension, obesity, and preexisting cardiomyopathy. (Findings of Fact Nos. 9(e), 9(i).) Dr. Pickering reviewed hospital records, which indicated that Claimant was laughing, joking, and doing fine immediately prior to the cardiac arrest, as well as the medical records of Dr. Geld, which do not reflect any office visits between December 2007 and January 10, 2008, or any treatment for hypertension.

(Findings of Fact Nos. 9(f), 9(g).) Dr. Pickering opined that Claimant's cardiac arrest was caused by his hypertension, obesity, and cardiomyopathy, all of which overburdened his heart, and that Claimant's work activities were not a substantial contributing factor toward the development of the cardiac arrest. (Findings of Fact Nos. 9(i), 9(m).) According to Dr. Pickering, the type of activities that would precipitate a sudden cardiac arrest include activities such as carrying an object in the range of fifty pounds, exposure to sub zero temperatures, running, or some other physically demanding conduct, and there is no evidence of any such environmental precipitator in the record. (Findings of Fact Nos. 9(j), 9(k).)

After reviewing the evidence, the WCJ rejected Claimant's testimony that he followed up with Dr. Geld regarding his high blood pressure condition. Moreover, the WCJ found the opinions of Dr. Pickering to be more credible and persuasive than those of Dr. Frisch, and he rejected the testimony of Dr. Frisch insofar as it was inconsistent with that of Dr. Pickering. Based on the credible evidence, the WCJ found as fact that Claimant's work activities were not a substantial factor leading to Claimant's cardiac arrest. Accordingly, the WCJ denied Claimant's claim petition, and the Board affirmed.

On appeal to this Court,³ Claimant contends that the WCJ erred by concluding that he failed to satisfy his burden to prove that his work activities were a substantial contributing factor leading to his cardiac arrest or aggravating his underlying cardiomyopathy condition. Claimant also contends that the WCJ relied

³ Our scope of review is limited to determining whether findings of fact were supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated. Meadow Lakes Apartments v. Workers' Compensation Appeal Board (Spencer), 894 A.2d 214 (Pa. Cmwlth. 2006).

upon hearsay evidence and failed to make necessary findings of fact regarding the substantial contributing factor issue.

In a claim petition proceeding, the burden is on the claimant to establish all the necessary elements to support an award of compensation, Inglis House v. Workmen's Compensation Appeal Board (Reedy), 535 Pa. 135, 141, 634 A.2d 592, 595 (1993). In cardiac cases where there is no obvious causal connection between an injury and the alleged cause, the connection must be established by unequivocal medical testimony. Haddon Craftsmen, Inc. v. Workers' Compensation Appeal Board (Krouchick), 809 A.2d 434 (Pa. Cmwlth. 2002).

A heart attack that results from a preexisting cardiac condition that is aggravated by the claimant's employment is compensable, Matlack, Inc. v. Workmen's Compensation Appeal Board (Rennie), 454 A.2d 1172 (Pa. Cmwlth. 1983), and the question of whether a heart attack occurred within the scope of the claimant's employment is a question of law based on factual findings. Haddon Craftsmen. An employer is liable for a disability caused by a combination of work-related and non-work-related factors, so long as the claimant establishes that the work-related cause is a substantial contributing factor to the disability. Gumm v. Workers' Compensation Appeal Board (J. Allan Steel), 942 A.2d 222 (Pa. Cmwlth. 2008).

Claimant argues that the WCJ erred by finding that he failed to prove that his work activities were a substantial contributing factor to his cardiac arrest. He argues that his cardiac arrest is compensable under our decision in Villanova University v. Workers' Compensation Appeal Board (Mantle), 783 A.2d 366 (Pa. Cmwlth. 2001). We disagree.

In Villanova, the claimant presented the testimony of a medical expert who opined that the claimant's acts of walking 800 yards and participating in a picnic with food and recreational activities triggered a fatal heart attack. The WCJ accepted the expert's opinion as credible and found that the claimant sustained a work-related heart attack. In contrast to Villanova, the WCJ in this case rejected Claimant's medical evidence, accepted the contrary opinions of Employer's medical expert, and found as fact that Claimant's cardiac arrest was not work-related. Although Claimant asserts that a comparison of the facts in this case with those in Villanova supports his claim that his cardiac arrest is compensable, Claimant failed to present credible medical evidence that his cardiac condition was work-related. Causation is not obvious here, and it cannot be established by a lay analysis of the facts in different cases.

Next, Claimant contends that the WCJ erred by basing her decision upon hearsay evidence, specifically, the records of Dr. Geld and the consultation report by Dr. Narendra Dhudek, contained in Claimant's hospital records.⁴ (R.R. at 214a; Dr. Pickering Deposition Exhibit 4.)

Over Claimant's objection, the WCJ admitted Dr. Geld's records for the following reasons:

⁴ The rules of evidence are relaxed in workers' compensation proceedings, and hearsay evidence may be admissible and support findings of fact in certain circumstances. Graves v. Workers' Compensation Appeal Board (Philadelphia Housing Authority), 983 A.2d 241 (Pa. Cmwlth. 2009). However, the general rule is that: (1) hearsay evidence, properly objected to, is not competent evidence to support a finding; and (2) hearsay evidence admitted without objection may support a finding of fact if corroborated by competent evidence in the record, but a finding of fact based solely on hearsay cannot stand. Id.

The records of Dr. Geld are admitted for the limited purposes of addressing the dates Claimant was seen by Dr. Geld as these records form the basis of the testimony of both doctors on this issue. Additionally, these records corroborate the testimony of the doctors on this issue.

(WCJ's Finding of Fact No. 10.) We conclude that the WCJ did not err by admitting Dr. Geld's records for this limited purpose.⁵

The record reveals that Employer introduced Dr. Geld's records to show the absence of any entry therein supporting Claimant's testimony that he followed-up with Dr. Geld regarding his high blood pressure, (R.R. at 228a), and Claimant complains that the WCJ erred by considering Dr. Geld's records when assessing the credibility of his testimony in this regard. However, the absence of an entry in a record is not hearsay and may support an inference that the unrecorded event did not occur. Klein v. F.W. Woolworth Co; 309 Pa. 320, 163 A. 532 (1932); Robert v. Chodoff, 393 A.2d 853 (Pa. Super. 1978); Leonard Packel and Ann Bowen Poulin, Pennsylvania Evidence §803(7)-1 (3rd ed. 2007). The admissibility of this type of evidence is governed by the principles of relevance, not hearsay. Pa. R.E. 803(7), official comment.

Moreover, even though Dr. Pickering offered testimony based upon Dr. Geld's records, Claimant never raised a hearsay objection during Dr. Pickering's deposition. (R.R. at 147a, 154a-55a, 159a-60a.) Even Claimant's physician, Dr. Frisch, relied upon the records of Dr. Geld. (R.R. at 68a; 100a-04a.) The WCJ correctly observed that Dr. Geld's records corroborate the testimony of Dr. Pickering

⁵ In light of Finding of Fact No. 10, Claimant's assertion that the WCJ failed to rule upon the hearsay objection to Dr. Geld's records is without merit.

and Dr. Frisch, and they are the kind of records upon which medical professionals customarily rely in the practice of their profession. Empire Steel Castings v. Workers' Compensation Appeal Board (Cruceta), 749 A.2d 1021 (Pa. Cmwlth. 2000).

Claimant also argues that the WCJ erred by considering Dr. Narendra Dhudek's consultation report, which contains the hearsay statements of Claimant's co-worker, Krumin, concerning the events that immediately preceded the cardiac arrest. We note that, although Dr. Dhudek's consultation report was made an exhibit during Dr. Pickering's deposition and was used by him to form his opinion, Claimant raised no hearsay objection to either the report or Dr. Pickering's testimony. (R.R. at 150a-53a.) Furthermore, Dr. Dhudek's consultation report is admissible under the exception to the hearsay rule for records that a physician would customarily rely upon in the practice of medicine, Primavera v. Celotex Corp., 608 A.2d 515 (Pa. Super. 1992), and as a hospital record admissible pursuant to section 422(b) of the Workers' Compensation Act.⁶ Because Claimant was unconscious when he arrived at the hospital and was unable to provide any information on his condition, the statements included in Dr. Dhudek's report are clearly germane to the medical matters in the document. Krumin's statements were the only source of information available to Dr. Dhudek regarding the events and circumstances that immediately preceded Claimant's cardiac arrest.

Finally, Claimant contends that the WCJ failed to make findings of fact as to whether Claimant's work duties over the year prior to his cardiac arrest were a substantial contributing factor that led to the heart injury or aggravated his underlying

⁶ Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §835. Section 422(b) provides in pertinent part that "[t]he records kept by a hospital of the medical or surgical treatment given to an employe in such hospital shall be admissible as evidence of the medical and surgical matters stated therein."

cardiomyopathy. However, a WCJ is only required to make the findings necessary to resolve the issues raised by the evidence and relevant to the decision. Stout v. Workers' Compensation Appeal Board (Pennsbury Excavating, Inc.), 948 A.2d 926 (Pa. Cmwlth. 2008). Here, Claimant alleged in his claim petition that he suffered an injury on January 10, 2008, (R.R. at 1a), not that cumulative trauma over the course of a year caused the cardiac injury, and the evidence presented before the WCJ focused on the factual and medical issues regarding the January 10, 2008, cardiac arrest. Moreover, the WCJ accepted Dr. Pickering's opinion that Claimant's work activities were not a substantial contributing factor toward the development of the cardiac arrest. Therefore, we conclude that the WCJ made all of the findings of fact necessary to resolve the issues in the case.

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

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	:	No. 357 C.D. 2010
v.	:	
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Board (Bantek West),	:	
Respondent	:	

ORDER

AND NOW, this 6th day of December, 2010, the February 9, 2010,
order of the Workers' Compensation Appeal Board is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge