IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Michael DeSalvo, Sr., Petitioner | : | |
| v. | : | |
| Workers' Compensation Appeal Board (Daily's Juice), Respondent | : | No. 488 C.D. 2010 |
| | : | Submitted: July 9, 2010 |

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: August 18, 2010

Michael DeSalvo, Sr. (Claimant) seeks review of the February 25, 2010 order of the Workers' Compensation Appeal Board (Board) reversing the decision of a Workers' Compensation Judge (WCJ) granting his claim petition. Claimant presents three issues for this Court's review: (1) whether Claimant had met his burden of proving abnormal working conditions which resulted in his mental stress, (2) whether remand is required, and (3) whether the WCJ issued a well-reasoned decision. For reasons that follow, we affirm the Board's order.

On June 2, 2005, Claimant filed a claim petition against Daily's Juice (Employer) alleging that as of October 20, 2004, he sustained a work-related aggravation of a pre-existing dysthmic disorder and major depressive disorder after experiencing work-related stress. On July 14, 2008, the WCJ granted Claimant's

petition. Employer appealed to the Board, and the Board reversed the decision and order of the WCJ. Claimant appealed to this Court.

Claimant argues that the Board erred in reversing the WCJ and finding that he had not met his burden of proving abnormal working conditions which resulted in his mental stress. We disagree.

In determining whether the Board properly reversed the WCJ,

> [o]ur formulations of these review standards are clear-cut. Where the party with the burden of proof is the *only* party to present evidence and yet loses before the factfinder, the appropriate standard of review is the 'capricious disregard' test. A capricious disregard of evidence will be found when there is a willful and deliberate *disregard* of competent testimony and relevant evidence which one of ordinary intelligence could not possibly have avoided in reaching a result. However, when both parties present evidence before the factfinder, however limited, our scope of review is limited to a determination of whether constitutional rights have been violated, an error of law committed, or whether any necessary finding of fact is unsupported by substantial evidence. Substantial evidence is that quantum of relevant evidence which a reasonable mind would deem adequate to support a conclusion. . . . [T]here is no requirement that this 'evidence' include medical testimony.

*Campbell v. Workers' Comp. Appeal Bd. (Antietam Valley Animal Hosp.)*, 705 A.2d 503, 506 (Pa. Cmwlth. 1998) (citations and footnotes omitted). Based on the above, because both parties presented evidence, the substantial evidence standard of review applies. Thus, the issue becomes whether there was substantial evidence to support the WCJ's finding that Claimant met his burden of proving that his work environment

created abnormal working conditions, and that the conditions were objective and not merely perceived or imagined.[1]

"A claimant's burden of proof to recover workmen's compensation benefits for a psychiatric injury is . . . twofold; he must prove by objective evidence that he has suffered a psychiatric injury and he must prove that such injury is other than a subjective reaction to normal working conditions." *Martin v. Ketchum, Inc.*, 523 Pa. 509, 519, 568 A.2d 159, 164-65 (1990) (quoting *Russella v. Workmen's Comp. Appeal Bd. (Nat'l Foam Sys., Inc.)*, 497 A.2d 290, 292 (Pa. Cmwlth. 1985)). Here, Claimant suffered from a hereditary mental disorder prior to obtaining employment with Employer. His alleged abnormal working conditions, which he claims aggravated his mental disorders, consist of his being on-call 24 hours a day, seven days a week, and having working conditions which were not conducive to his job. Claimant was hired as a troubleshooter for a company who ran a 24/7 production schedule, and it was everybody's priority to maintain production.[2]

Claimant contends his abnormal working conditions included the fact that he had to wear a beeper and was on-call 24/7 because the collective bargaining agreement required that he be called first due to his seniority, leading in large part to his work-related mental stress. However, this could not be considered abnormal as the WCJ found "it significant that Mr. White[3] stated that he was also required to wear a beeper at times . . . ." Reproduced Record (R.R.) at 600a. In addition, Claimant was subsequently relieved from wearing his beeper. Moreover, pursuant to

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[1] This Court notes this is not a case where there is conflicting testimony per se; it is the WCJ's conclusions, not his credibility determinations, that are at issue.

[2] Claimant's previous jobs also consisted of troubleshooting.

[3] John White, Jr. is an electronics technician trainee/mechanic in Employer's maintenance department. When Claimant started working in 1999, Mr. White showed him the ropes.

the testimony of Kurt Kalkstein (Kalkstein), Claimant's co-worker and president of the union, although Claimant was required to be called first when there was a problem, he had the option of declining. Kalkstein testified however, that he believed that Claimant believed he was on call 24 hours a day. The WCJ found Claimant's and Kalkstein's testimony to be consistent. Such evidence would establish a perceived working condition, not an objective one.

Claimant also contends his abnormal working conditions included his work environment which was not conducive to his productivity. Specifically, Claimant contends he was in need of an office, a desk and a phone. However, according to the testimony of Kalkstein, nobody under the collective bargaining agreement had an office, and Claimant did have access to a telephone. There was no evidence that Claimant's working conditions prevented him from doing his job.

Claimant further contends his period of disability establishes a level of stress above one's normal working conditions. Specifically, Claimant contends his second period of disability occurred after an incident involving a computer crashing and Claimant taking the computer home to work on it and receiving a call from his supervisor the next day which hurt his feelings. Claimant subsequently returned to work, and when the computer crashed again, Claimant left and did not return thereafter with the exception of one day which he worked to receive holiday pay.

Claimant's testimony does not indicate a level of stress above one's subjective reaction to normal working conditions. Claimant is a computer technician employed to do troubleshooting. A computer crashing clearly is not sufficient to prove an objective event causing work-related mental stress. This Court cannot find relevant evidence to support the conclusion that Claimant's work environment created *abnormal* working conditions, and that the conditions were *objective* and not

merely perceived or imagined. Accordingly, the Board did not err in finding that Claimant did not meet his burden of proving abnormal working conditions which resulted in his mental stress.

Claimant next argues that there is sufficient proof of disability if this Court were to reverse the Board, such that a remand would not be necessary. Specifically, Claimant contends that the Board noted in its decision that if it were to affirm the WCJ's decision it would have to remand notwithstanding, to ascertain whether Claimant had actually proven continued disability. However, what the Board stated was: "The WCJ's credibility determinations were not entirely explicit and that would normally warrant a remand for reasoned decision purposes. However, the WCJ did give 'extra weight' to the testimony of Drs. Slayton and Garbutt, indicating to us that he accepted their testimony over that of Dr. Burstyn." R.R. at 628a. In other words, the remand is not necessary because the Board could infer the WCJ's reasoning from that statement. As the Board did not suggest, nor do we, that there be a remand, and as the Board and this Court are in agreement, this issue is moot.

Claimant finally argues that the WCJ's credibility determinations were appropriately expressed such that they are capable of meaningful appellate review and result in a reasoned decision. Whether the WCJ's decision is well-reasoned is not an issue before this Court as we held the Board did not err in finding that Claimant had not met his burden in proving abnormal working conditions which resulted in his mental stress.

For all of the above reasons, the order of the Board is affirmed.

JOHNNY J. BUTLER, Judge

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O R D E R

AND NOW, this 18th day of August, 2010, the February 25, 2010 order of the Workers' Compensation Appeal Board is affirmed.

JOHNNY J. BUTLER, Judge