

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Deborah Graham, :  
Petitioner :  
 :  
v. : No. 63 C.D. 2011  
 : Submitted: May 20, 2011  
Workers' Compensation :  
Appeal Board (Healthcare :  
Service Group), :  
Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: December 8, 2011

Deborah Graham (Claimant) petitions for review of an adjudication of the Workers' Compensation Appeal Board (Board) granting Healthcare Service Group's (Employer) termination petition. In doing so, the Board affirmed the decision of the Workers' Compensation Judge (WCJ) that Claimant had fully recovered from her work-related injury. Finding no error, we affirm.

Claimant, who was employed as a housekeeper for Employer, suffered a left wrist and low back injury on November 11, 2007, when she slipped and fell while cleaning a nurses' station. The injury was described as contusions to the low back and left wrist and accepted by way of a Notice of Temporary Compensation Payable, which converted to a Notice of Compensation Payable (NCP) by operation of law.

Employer filed a petition requesting a termination of Claimant's benefits as of August 18, 2008, the date on which she was found to be fully recovered. In her answer, Claimant denied that she was fully recovered.<sup>1</sup> The termination petition was assigned to the WCJ, who held a hearing on July 8, 2009. At the hearing, Claimant stipulated that she had recovered from her wrist injury but denied that she had fully recovered from her back injury.

Claimant testified on her own behalf, both in person at the hearing and by deposition. She testified that in 2006, prior to her work injury, she was in a car accident and injured her upper back. As a result of her work injuries, she now has pain radiating down into her buttocks and legs.

Claimant submitted the deposition testimony of Dr. Michael Yoon, a board certified neurosurgeon, who saw Claimant in April 2008 for what she described as chronic low back pain. Dr. Yoon reviewed a November 19, 2007, MRI taken approximately a week after the work injury. This MRI revealed a bulging disc at L4-L5 and a herniation at L5-S1, which were degenerative in nature. Dr. Yoon also reviewed a July 21, 2008, MRI, which did not reveal any significant changes from the 2007 MRI. Dr. Yoon opined that Claimant's work injury aggravated her pre-existing degenerative disc disease. However, because he had not treated Claimant prior to her work injury, Dr. Yoon admitted that he lacked the information necessary to set a baseline to her degenerative condition. Accordingly, he could not confirm a deterioration in her disc disease caused the work injury. He based his diagnosis on Claimant's subjective complaints. During

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<sup>1</sup> Claimant also filed a utilization review petition to determine the reasonableness and necessity of a dorsal spinal column stimulator as well as a review petition challenging the description of the work injury. The WCJ denied these petitions and they are not at issue on appeal.

his deposition, Dr. Yoon was shown an October 2006 MRI report, which pre-dated the injury and showed degenerative changes in the lumbar spine. Dr. Yoon could not discern a change in Claimant's degenerative disc disease between the 2006 MRI and the post-work injury MRI.

Employer submitted the deposition testimony of Dr. Bong Lee, a board certified orthopedic surgeon. On August 18, 2008, Dr. Lee did an independent medical examination of Claimant, and he did an extensive review of Claimant's medical records. Dr. Lee diagnosed claimant with a "sprain and strain which was superimposed with a pre-existing degenerative discogenic disease of [the] lumbar spine." Dr. Lee deposition at 17; Reproduced Record at 53a (R.R. \_\_\_\_). Dr. Lee reviewed the November 2007 MRI report and testified that it showed long standing age-related degenerative changes with no acute injuries or fracture. Dr. Lee opined that Claimant's work injury was fully resolved and that her remaining complaints were attributable to her pre-existing degenerative condition.

Next, Employer offered treatment records from Medical Rehabilitation Centers of Pennsylvania. Included in the records were notes of Dr. Cavoto, who treated Claimant for the injuries she sustained in the 2006 car accident. Those notes referenced a 2006 MRI which showed an L4-L5 herniated disc with annular tear; an L5-S1 herniated disc with annular tear; left stenosis and degenerative disc disease. Dr. Cavoto's report also noted that Claimant would have flare ups indefinitely.

Finally, Employer offered a copy of Claimant's deposition testimony in a lawsuit connected with the 2006 car accident. There, Claimant testified that

she first hurt her lower back in the car accident. She expressly stated that she had pain going down into her legs as a result of the accident.

The WCJ terminated Claimant's benefits as of August 18, 2008. The WCJ found Dr. Lee's testimony to be credible and convincing and found Claimant's low back injury to be a strain and sprain superimposed on a pre-existing degenerative condition. The WCJ also found that the strain and sprain had fully resolved. WCJ Decision, March 31, 2010, at 6, Finding of Fact 16 (WCJ Decision, at \_\_, F.F. \_\_).

The WCJ explained that she accepted Dr. Lee's testimony over that of Dr. Yoon, because

[Dr. Lee] had the opportunity to review numerous medical records, *including reports of the MRIs that predated the work injury*. Claimant's history of low back complaints and significant degenerative findings were well documented in both the medical records and the diagnostic studies that predated and postdated the work injury. His testimony is credible that the diagnostic studies did not show any significant change subsequent to the work injury.

*Id.* (emphasis added). Conversely, the WCJ did not credit Dr. Yoon's opinion that Claimant sustained an aggravation because

prior to his deposition, [Dr. Yoon] did not review reports of the two MRIs of the lumbar spine that were done prior to the work injury, and he testified that he was not in a position to quantify the level of degenerative disc disease that existed prior to the work injury. After having the opportunity to review the October 5, 2006 MRI report during his deposition, he testified that it would be hard to say there was any appreciable change in Claimant's pre-existing disc disease on a radiographic basis after the work injury.

WCJ Decision, at 7, F.F. 17. In addition, the WCJ rejected Claimant's testimony that her back pain was related to her work injury.

Claimant appealed to the Board, arguing that the WCJ's findings of fact were not based upon substantial evidence and that the decision was not reasoned because it lacked the proper credibility determinations. In affirming the WCJ, the Board found that the WCJ credited the testimony of Dr. Lee over Dr. Yoon and explained her reasons for doing so. In particular, the Board noted that Claimant's low back complaints and degenerative condition were well documented by various medical records from before and after her work injury. The Board held that the WCJ issued a reasoned decision supported by substantial evidence. Claimant now petitions for this Court's review.<sup>2</sup>

On appeal, Claimant sets forth two questions for our review. First, Claimant contends that Employer did not meet its burden of proof on the termination petition. Second, Claimant argues that the WCJ did not issue a reasoned decision.

In her contention that Employer did not meet its burden of proof, Claimant challenges the competency of Dr. Lee's opinion that Claimant had fully recovered. Specifically, Claimant points out that Dr. Lee diagnosed Claimant with a sprain and strain superimposed on her degenerative condition but had no knowledge of Claimant's baseline condition prior to her work injury. Further, Dr.

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<sup>2</sup> Our scope of review is limited to determining whether there has been a violation of constitutional rights, whether errors of law were committed, or whether necessary findings of fact are supported by substantial evidence. *City of Philadelphia v. Workers' Compensation Appeal Board (Smith)*, 860 A.2d 215, 220 n.8 (Pa. Cmwlth. 2004). Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.*

Lee reviewed the post-injury MRI reports, but not the actual films. Accordingly, Claimant contends that Dr. Lee was not capable of offering a competent opinion on her recovery.

In a termination proceeding the burden of proof is on the employer to prove that the claimant is fully recovered from the work injury. *GA & FC Wagman, Inc. v. Workers' Compensation Appeal Board (Aucker)*, 785 A.2d 1087, 1091 (Pa. Cmwlth. 2001). An employer meets this burden by offering unequivocal testimony, of a medical expert, that the claimant's work injury is resolved. *Id.* However, in cases involving an aggravation of a pre-existing condition, the relevant inquiry is whether the claimant has returned to his baseline. Accordingly, knowledge of, and testimony regarding, the claimant's baseline is required. *See Hill v. Workers' Compensation Appeal Board (Ballard, Spahr, Andrews Ingersoll)*, 569 Pa. 491, 493, 805 A.2d 509, 510 (2002). The fact that a medical expert did not review every one of claimant's medical records does not render the expert's testimony incompetent. *Samson Paper Co. & Fidelity Engraving v. Workers' Compensation Appeal Board (Digiannantonio)*, 834 A.2d 1221, 1224 (Pa. Cmwlth. 2003). Rather, it affects the weight to be given to the expert's opinion. *Id.*

Here, Dr. Lee testified that Claimant's work injury caused a "sprain and strain which was superimposed with a preexisting degenerative discogenic disease of [the] lumbar spine." Dr. Lee deposition at 17; R.R. 53a. The radiologist's report from an MRI taken shortly after Claimant fell at work reported only long standing age-related changes and no acute injuries. Dr. Lee further stated that Claimant showed no signs of the sprain and strain when he examined her. Accordingly, he opined that she was continuing to suffer from "an ongoing,

longstanding, preexisting degenerative discogenic disease which is an aging condition of the spine” and not the result of her work injury. *Id.*

Dr. Lee’s testimony was quite clear that Claimant’s work injury was *superimposed* upon her pre-existing condition. As such, it was not an *aggravation* of that condition, but rather a new injury separate from her degenerative condition. Dr. Lee did not need to know Claimant’s baseline because he was not trying to show an aggravation. He concluded that Claimant’s underlying condition was degenerative, rather than acute, because of the radiologist’s MRI reports, which reported herniated discs, but did not state that the herniations were acute. Dr. Lee explained that the difference between a traumatic acute herniation and chronic degenerative disc herniation can be recognized on an MRI. Silence as to the type of herniation denotes a chronic condition. Dr. Lee, as a medical expert, was free to use the report and render his opinion based on it. *Westinghouse Electric Corporation/CBS v. Workers’ Compensation Appeal Board (Burger)*, 838 A.2d 831, 838 (Pa. Cmwlth. 2003). The particular interpretation Dr. Lee gave of the MRI report goes to the weight to be assigned to his opinion, not its competency.<sup>3</sup> *Id.*

Ironically, it is Dr. Yoon’s testimony that suffers from the infirmity Claimant attributes to Dr. Lee’s testimony. Dr. Yoon opined that Claimant’s work injury caused an aggravation of her pre-existing condition, but he admitted that he did not know what her baseline condition was prior to the injury. In fact, when shown an MRI report that pre-dated the injury, Dr. Yoon could see no change in her disc disease after comparing pre-work injury tests to tests done after her work

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<sup>3</sup> It is worth noting that the pre-injury radiographic studies show herniated discs at the same levels in Claimant’s back, so they were obviously pre-existing.

injury. Claimant's own medical evidence, then, supports Dr. Lee's opinion that the work injury did not cause a change in her degenerative disc disease.

In short, Claimant's attacks on the competency or Dr. Lee's opinion lack merit. Dr. Lee's testimony constitutes substantial evidence to support the critical findings of fact made by the WCJ to grant the termination of benefits.

Next, Claimant contends that the WCJ did not issue a reasoned decision. In her decision, the WCJ stated that Dr. Lee had reviewed pre-injury diagnostics, *i.e.*, MRI reports from before the work injury. This was a mistake because Dr. Lee reviewed only post-work injury MRI reports. The WCJ, according to Claimant, placed great importance on the experts' knowledge of Claimant's pre-injury condition, and that was the sole reason the WCJ found Dr. Lee's testimony credible. Further, the WCJ used Dr. Yoon's failure to review pre-injury radiographic studies to justify her rejection of his opinion, but as it turns out, Dr. Lee's opinion suffers from the same deficiency. Because of this mistake, Claimant argues that a remand is warranted for the WCJ to re-evaluate the medical evidence. We disagree.

Section 422(a) of the Workers' Compensation Act (Act),<sup>4</sup> requires the WCJ to issue a reasoned decision. In order for a decision to be "reasoned" our

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<sup>4</sup> Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §834. In relevant part, Section 422(a) provides that:

All parties to an adjudicatory proceeding are entitled to 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 the decisions ... The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it ... When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence.

**(Footnote continued on the next page . . .)**



Supreme Court has held that the WCJ must explain his or her reasons for credibility determinations as to deposition testimony, where the WCJ does not observe the demeanor of the witness providing the testimony.<sup>5</sup> See *Daniels v. Workers' Compensation Appeal Board (Tristate Transport)*, 574 Pa. 61, 77-79, 828 A.2d 1043, 1053-1054 (2003). In *Casne v. Workers' Compensation Appeal Board (Stat Couriers, Inc.)*, 962 A.2d 14, 19 (Pa. Cmwlth. 2008), we stated that credibility determinations are more than a series of individual findings, as they represent the evaluation of all of the testimony and evidence in the record. Thus, they are entitled to substantial deference. *Id.* We review the reasoning of the WCJ *as a whole* and will only overturn a credibility determination “if it is arbitrary and capricious or so fundamentally dependent on a misapprehension of material facts, or so otherwise flawed, as to render it irrational.” *Id.* Stated simply, one incorrect statement of fact does not render a WCJ’s decision unreasoned, especially if there are other valid reasons to support the credibility determination.

Applying those principles here, we find the WCJ’s statement that Dr. Lee reviewed pre-injury diagnostics to be harmless error. Contrary to Claimant’s assertions, the WCJ did not credit Dr. Lee’s testimony for the sole reason that he allegedly reviewed pre-injury MRI reports. Rather, the WCJ credited Dr. Lee’s testimony for several reasons. For example, the WCJ stated that she found Dr. Lee credible because

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**(continued . . .)**

77 P.S. §834.

<sup>5</sup> The reasoned decision requirement under Section 422(a) of the Act does not alter the fact that the WCJ is the ultimate arbiter of credibility. See *Rocuzzo v. Workers' Compensation Appeal Board (School District of Philadelphia)*, 721 A.2d 1171, 1175 (Pa. Cmwlth. 1998).

[he] is a board certified orthopedic surgeon . . . [He] had the opportunity to review *numerous medical records* . . . [and] Claimant's history of low back complaints and significant degenerative findings were well documented . . . .

WCJ Decision, at 6, F.F. 16 (emphasis added). There was sufficient evidence on the record to support Dr. Lee's assertions, even if he had not independently reviewed pre-injury MRI films or reports, as mistakenly recited by the WCJ.

Further, the WCJ did not reject Dr. Yoon's testimony solely because he did not review the pre-injury diagnostics prior to his deposition. The WCJ also rejected his opinion because when shown the pre-injury 2006 MRI report, Dr. Yoon did not see an appreciable difference from Claimant's current degenerative condition.

Because the evidence of record supports the WCJ's decision to credit Dr. Lee's testimony over that of Dr. Yoon, Claimant's challenge becomes an issue of evidentiary weight. It is well-settled that the WCJ is the "ultimate finder of fact and the exclusive arbiter of credibility." *Daniels*, 574 Pa. at 76, 828 A.2d at 1052. As such, this Court cannot reweigh the evidence or make credibility determinations. *See Marincov v. Workmen's Compensation Appeal Board (City of Washington)*, 454 A.2d 670, 673 (Pa. Cmwlth. 1983). Because this Court does not reweigh the evidence the WCJ's determination must stand as a reasoned decision, especially in light of the fact that the WCJ expressly gave multiple reasons why she credited Dr. Lee's testimony and discredited that of Dr. Yoon.

For all of the foregoing reasons, we affirm the Board's adjudication.

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MARY HANNAH LEAVITT, Judge

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Appeal Board (Healthcare	:	
Service Group),	:	
Respondent	:	

**ORDER**

AND NOW, this 8<sup>th</sup> day of December, 2011, the order of the Workers' Compensation Appeal Board, dated December 15, 2010, in the above-captioned matter is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge