

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Barry Collier, :
Petitioner :
 :
v. : No. 634 C.D. 2010
 : Submitted: September 17, 2010
Workers' Compensation Appeal :
Board (Commissioners of York), :
Respondent :

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: October 14, 2010

Barry Collier (Claimant) appeals from the determination of the Workers' Compensation Appeal Board (Board) affirming the decision of the Workers' Compensation Judge (WCJ) denying his claim petition and penalty petition. For the reasons that follow, we affirm.

Claimant worked as a corrections officer at York County Prison (Employer). As part of his job duties, Claimant was required to have a yearly weapons training and qualification. On August 23, 2000, after he had finished his yearly training, he felt an unusual sensation in his ears accompanied with some hearing loss. He had never had any problems with his ears or hearing before. The

next day, after the problem had not gone away, Claimant filed a formal incident report with his supervisor. What happened next is in dispute.

According to Claimant's testimony before the WCJ in conjunction with a 2005 penalty petition and 2006 claim petition, Employer's insurance agency (which also will be referred to as Employer) immediately began paying his medical bills incurred in visits to an ear, nose and throat doctor.¹ Claimant saw the doctor various times in 2000, then once a year beginning in 2001. Claimant never received any information from Employer, either oral or written, concerning his claim, and assumed he was receiving workers' compensation because his medical bills were being paid.² The last bill that Employer paid was on July 16, 2002. Then, following his 2003 doctor visit, he got a small bill from the doctor's office, which he thought was unusual but paid anyway. Following his 2004 visit, he received a notice from his personal insurance carrier that it would not pay for that visit because he did not meet his minimum deductible. He then contacted the doctor's office, which informed him for the first time that he had been "taken off" workers' compensation. In 2005, he contacted his attorney, who obtained a copy of a Notice of Workers' Compensation Denial (Denial) dated September 12, 2000, that Claimant had never seen before. At that time, he filed his penalty petition alleging that Employer failed to timely accept or deny his claim on October 7,

¹ The proceedings were bifurcated into two sections – statute of limitations issues and the substance of the claim. Only the statute of limitations phase has been litigated to this point because of the way the WCJ ruled.

² Claimant's injury did not cause him to miss any time at work.

2005, and his claim petition alleging the work-related hearing loss on March 22, 2006.

Randi Baker-Turner, Employer's Senior Workers' Compensation Adjustor, who worked on Claimant's case from the beginning, offered very different testimony before the WCJ. She testified that she spoke with Claimant on the telephone on September 11, 2000, and informed him that his claim had been denied. Work logs made contemporaneously corroborated this testimony. The next day, she issued a Denial and instructed her staff to mail it via regular mail to Claimant, Employer and the Workers' Compensation Bureau, per regular office procedure. The WC Bureau indicated receipt of the Denial on September 13, 2000. Shortly afterwards, Ms. Baker-Turner indicated that she called Claimant a second time to ask for medical records. This phone call was also documented contemporaneously in the log. She then reviewed the medical records but did not change Claimant's status from denied. Because the claim was denied, Employer did not pay for Claimant's initial doctor visits. However, Employer then decided to pay Claimant's initial bills only because it is its policy to occasionally pay for the initial treatment from a panel provider even in situations where a claim has been denied. In order to allow the payments to go through, Ms. Baker-Turner had to change a setting on her computer system. She inadvertently did not change the setting back following payment of the initial bills, so the system automatically issued payments for Claimant's 2001 and 2002 doctor visits. After Claimant's 2003 doctor visit, Ms. Baker-Turner noticed the mistake and fixed it so that no more payments would be made. She did not notify Claimant of this computer error

or its resolution. At no time in this process did Employer ever accept Claimant's claim that his hearing loss was the result of a work injury.

The WCJ found Ms. Baker-Turner's testimony credible in all respects. She found Claimant's testimony credible only to the limited extent that it was corroborated either by Ms. Baker-Turner or by contemporaneous records. She concluded that Claimant did not file a claim petition within three years of the date of the alleged injury and that his claim was now time-barred.³ Furthermore, the WCJ ruled that Claimant did not meet his burden of proof that Employer intended the medical bills to be in lieu of compensation or that Employer lulled him into believing that his claim had been accepted.⁴ Claimant appealed to the Board, which affirmed in all respects and also added that because more than three years had passed between Employer's last payment and Claimant's petitions, his claim would also be barred by the statute of limitations for that reason. Claimant then appealed to this Court.⁵

³ Section 315 of the Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §602, provides, in relevant part:

In cases of personal injury all claims for compensation shall be forever barred, unless, within three years after the injury, the parties shall have agreed upon the compensation payable under this article; or unless within three years after the injury, one of the parties shall have filed a petition as provided in article four hereof.

⁴ The WCJ also held that Claimant's attorney fees of \$150 per hour, which Claimant sought to have paid by Employer due to an alleged unreasonable contest, were too high. Claimant appealed from this ruling, but due to the way we resolve the case, we need not consider this issue.

⁵ This Court's review is limited to determining whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence, and whether **(Footnote continued on next page...)**

On appeal, Claimant first contends that the WCJ erred in finding that he was properly notified of the denial of his claim was not supported by substantial evidence. However, the extensive testimony by Ms. Baker-Turner detailed above, the supporting logs that contemporaneously indicated that the calls to Claimant had been made, and the receipt by the WC Bureau of the identical Denial that Ms. Baker-Turner testified was sent both to the WC Bureau and to Claimant, constitutes substantial evidence that Claimant was properly notified of the denial of his claim.⁶ What Claimant is asking us to do is reverse the WCJ's credibility determination to instead find Claimant credible and Ms. Baker-Turner not credible despite the well-settled precedent that the WCJ has complete discretion on matters concerning the credibility of witnesses, and that such findings will not be disturbed on appeal. *Harding v. Workers' Compensation Appeal Board (Arrowhead Industrial)*, 706 A.2d 896 (Pa. Cmwlth. 1998).

Claimant next argues that the WCJ erred in finding that Employer's payments for Claimant's medical treatments were not intended to be in lieu of workers' compensation and failing to apply principles of estoppel and equity to toll the statute of limitations until Claimant had notice that his workers' compensation claim had been denied. However, both of these arguments presuppose that

(continued...)

constitutional rights were violated. *Sysco Food Services of Philadelphia v. Workers' Compensation Appeal Board (Sebastiano)*, 940 A.2d 1270 (Pa. Cmwlth. 2008).

⁶ Substantial evidence is relevant evidence that a reasonable person might accept as adequate to support a conclusion. *Findlay Township v. Workers' Compensation Appeal Board (Phillis)*, 996 A.2d 1111 (Pa. Cmwlth. 2010).

Claimant had no notice that his workers' compensation claim had been denied until 2003 or 2004, which is contrary to the WCJ's finding that Claimant had both written and oral notice in September 2000 that his claim was denied. In any event, even if Employer's voluntary payments were made in lieu of compensation, Section 315 of the Act provides:

Where, however, payments of compensation have been made in any case, said limitations [that is, the time-barring of a petition] shall not take effect until the expiration of three years from the time of the making of the most recent payment prior to the date of filing such petition.

Here, it is undisputed that the last payment Employer made was on July 16, 2002. Claimant did not file his penalty petition until October 7, 2005, or his claim petition until March 22, 2006, both of which were more than three years following the last payment. Therefore, even if the payments were in lieu of compensation, Claimant's petition would still be time-barred.

For the foregoing reasons, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

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ORDER

AND NOW, this 14th day of October, 2010, the order of the
Workers' Compensation Appeal Board dated September 29, 2009, is affirmed.

DAN PELLEGRINI, JUDGE