IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Louis Weaver,	:	
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Petitioner	:	
	:	
v.	:	No. 642 C.D. 2009
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Workers' Compensation Appeal Board (Perkasie Industries Corp.),	:	Submitted: November 6, 2009
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: January 28, 2010**

Louis Weaver (Claimant) petitions for review of the March 18, 2009 order of the Workers' Compensation Appeal Board (Board), which affirmed a workers' compensation judge's (WCJ) determination denying his Claim Petition. Claimant asserts that the Board erred in affirming the denial of workers' compensation benefits where: (1) the WCJ and the Board failed to find that Claimant had an ongoing work-related injury where Claimant's injury was obvious such that Claimant did not have to submit medical evidence to support that injury, or where Claimant's emergency room records were sufficient to establish ongoing disability; (2) the WCJ's decision was not reasoned as required by Section 422(a) of the Workers' Compensation Act

(Act);[1] (3) the WCJ capriciously disregarded unrebutted evidence of Claimant's disability; and (4) the WCJ erred by not drawing an adverse inference from Perkasie Industries Corporation's (Employer) failure to produce the report from its Independent Medical Examination (IME).

On October 5, 2007 Claimant filed his Claim Petition asserting that, on July 20, 2007, he injured his lower back while performing his work duties as a die setter for Employer. Employer filed a timely answer denying Claimant's allegations, and the matter was assigned to the WCJ for disposition. The WCJ held several hearings on the matter, and both Claimant and Employer presented testimonial and documentary evidence at the hearings. The WCJ summarized that testimony and documentary evidence as follows:

> 1. [Claimant] testified he was employed as a [die] setter for [Employer] on July 20, 2007. On that date while stooping over to clean scrap metal out of bins he felt pain in his lower back. Because he previously had such pains he did not immediately inform his supervisors of the event as he expected to recover over the weekend; nonetheless, upon awakening on Saturday morning he was in pain. He also indicated that before this event he had back pain on a weekly basis and that the pain he felt on July 20 was no different than pains he had had previously. The pain on Saturday was more severe.
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> 2. [Claimant] testified that on the next Monday he told his supervisor that he hurt his back on Friday and requested to get more sports cream for his back. The supervisor granted that request and the sports cream helped. He stayed at work, but was unable to do the heavy lifting. On the 26th of July he told his supervisor he needed medical care and he went to Grandview Hospital, which is listed as a provider on [Employer's] panel. [Claimant] was treated and released. Thereafter he went back to the hospital on several occasions, but never returned to his

[1] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. § 834.

employment. After three visits he stopped going because there was no one to pay the bill. He has not had treatment since for the same reason.

3. At the time of his testimony on December 12, 2007 [Claimant] still believed himself to be incapable of performing his pre[-]injury work.

4. The only medical evidence produced by [Claimant] was the records of Grandview Hospital. These records establish that [Claimant] appeared first on July 26 complaining of back pain. The history from the first visit is as follows[:] "patient states that he injured his back a week ago at work, resolved with rest, this AM awoke with pain in right upper back, nothing noted to worsen or improve his pain." Percocet was prescribed. The doctor's note from the same date indicates *inter alia* "patient states symptoms started last week. It seems to have been exacerbated by working yesterday. Pain was worse this morning, prompting patient to come to hospital for evaluation . . . patient denies any clear traumatic injury." [Claimant] was directed to follow up at Industrial Medical Clinic the next week and a form was prepared indicating that [Claimant] could return to work with certain restrictions.

5. [Claimant] was next seen on July 30. He gave a history that he was injured while working and was again discharged with instructions to follow up with the Industrial Medicine Clinic. He also received prescriptions for Naprosyn and Flexeril. The diagnosis was a right thoracic strain.

6. [Claimant's] last visit was August 8, 2007. Again the diagnosis was right thoracic strain. Restrictions were continued and physical therapy was recommended. [Claimant] advised that his back felt worse. The doctor commented "patient is symptom magnified and subjective complaints exceed objective findings."

. . . .

9. [Employer] presented the testimony of Douglas Hassinger, a supervisor [(Supervisor)]. He testified that [Claimant] did ask for muscle ointment on Monday, July 23, but did not report a work injury. He confirmed that [Claimant] asked to see a doctor on July 26, but again did not claim that this condition was work related and [Claimant] acknowledged that he would be responsible for the cost of medical treatment. After the 23rd he noticed the claimant wearing a back brace.

> 10. [Claimant] testified in rebuttal. He denied that he reported any injuries outside of work. He reiterated that he had reported a work injury.

(WCJ Decision, Findings of Fact (FOF) ¶¶ 1-6, 9-10.)

After considering the evidence presented, the WCJ found Claimant's testimony generally credible, but found Supervisor's testimony regarding the issue of notice more credible than Claimant's contrary testimony. (FOF ¶ 11.) The WCJ found that, although Supervisor did not receive notice of the work injury from Claimant, it was apparent that Employer received the required notice as it issued a Notice of Workers' Compensation Denial on August 7, 2007. (FOF ¶ 12.) The WCJ found that Claimant's injury was not obvious, (FOF ¶ 8), and, therefore, Claimant had to present an expert medical opinion to establish that his back injury and disability were causally related to his work duties. (WCJ Decision, Conclusions of Law (COL) ¶¶ 2-3.) The WCJ noted that, although the hospital records reiterated Claimant's version of how he was injured, "nowhere in these records [was] any expression of expert opinion that [Claimant's] work caused [his] back complaints." (FOF ¶ 7.) Accordingly, the WCJ concluded that Claimant failed to satisfy his burden of proving a work-related injury and denied the Claim Petition. (COL ¶ 3.) Claimant appealed to the Board, which affirmed. Claimant now petitions this Court for review.[2]

Claimant first argues that the Board erred in affirming the WCJ's denial of benefits because: (1) he was not required to present any medical evidence since the

[2] This Court's review is "limited to whether the findings of fact are supported by substantial evidence and whether there has been any constitutional violation or legal error." Bonegre v. Workers' Compensation Appeal Board (Bertolini's), 863 A.2d 68, 72 n.4 (Pa. Cmwlth. 2004). "Substantial evidence is [such] relevant evidence that a reasonable mind might accept as adequate to support a conclusion." Id.

causal connection between his work duties and his injury was obvious; and (2) Section 422(b) of the Act, 77 P.S. § 835,[3] "clearly and unequivocally allows the introduction of [h]ospital records, even in claims exceeding 52 weeks of indemnity benefits." (Claimant's Br. at 13.)

With regard to Claimant's assertion that there was an obvious connection between his work duties and his injury, we disagree. "In cases where the causal connection" between a work incident and a claimant's disability "is obvious, medical evidence of causation is not necessary." Northwest Medical Center v. Workers' Compensation Appeal Board (Cornmesser), 880 A.2d 753, 755 (Pa. Cmwlth. 2005). "A causal connection is obvious where an individual is doing an act that requires force or strain and pain is immediately experienced at the point of force or strain." Id.

[3] Section 422(b) was added by Section 6 of the Act of June 26, 1919, P.L. 642. In pertinent part, this Section provides:

> Where any claim for compensation at issue before a workers' compensation judge involves fifty-two weeks or less of disability, either the employe or the employer may submit a certificate by any health care provider as to the history, examination, treatment, diagnosis, cause of the condition and extent of disability, if any, and sworn reports by other witnesses as to any other facts and such statements shall be admissible as evidence of medical and surgical or other matters therein stated and findings of fact may be based upon such certificates or such reports. Where any claim for compensation at issue before a workers' compensation judge exceeds fifty-two weeks of disability, a medical report shall be admissible as evidence unless the party that the report is offered against objects to its admission.

77 P.S. § 835.

Here, Claimant testified that the bins that he was emptying **could** weigh between ten pounds and one hundred and fifty pounds; however, Claimant did not describe how much the bins he cleaned out on July 20, 2007 weighed. (WCJ Hr'g Tr. at 5, December 12, 2007, R.R. at a-35.) Claimant did not testify that he felt any strain while he was emptying out the bins. (WCJ Hr'g Tr. at 4-6, R.R. at a-34 - a-36.) Moreover, he stated that he only felt "little pains" while completing his shift that day and that these pains were no different from the typical aches and pains he felt on a daily basis. (WCJ Hr'g Tr. at 5-6, R.R. at a-35 - a-36.) According to Supervisor's credited testimony, Claimant did not inform Employer that he sustained a work-related injury when Claimant returned to work on July 23rd or before seeking treatment on July 26th. (WCJ Hr'g Tr. at 7-8, 13, January 28, 2008 R.R. at a-66, a-67, a-72.) Finally, the history given by Claimant on July 26th to the hospital indicated that Claimant denied any clear traumatic event that caused his injury and that the initial pain had "resolved with rest." (Grand View Hospital Summary Report, July 26, 2007, at 1, R.R. at a-10; ED Physician Documentation, July 26, 2007, R.R. at a-13.) Therefore, we agree with the WCJ and the Board that Claimant's right thoracic strain was not obviously related to any July 20, 2007 incident.

We also reject Claimant's argument that the hospital records here support a claim for ongoing benefits. Because the causal connection between Claimant's injury and the July 20, 2007 incident is not obvious, Claimant needed to present competent, unequivocal medical evidence to establish that causal relationship. Odd Fellow's Home of Pennsylvania v. Workmen's Compensation Appeal Board (Cook), 601 A.2d 465, 467 (Pa. Cmwlth. 1991). As noted by the Board in its opinion affirming the WCJ's determination, "[t]he WCJ did not find the emergency room records

inadmissible, only lacking for purposes of ongoing claims." (Board Op. at 4.) Like the WCJ and the Board before us, our review of the medical records submitted by Claimant revealed no evidence of an expression of opinion **by a medical expert** regarding the cause of Claimant's injury. Rather, any indication in the records that Claimant's injury was caused by the July 20th incident was based merely on Claimant's recitation of the history of the alleged work injury. Accordingly, like the WCJ and the Board, we conclude that the Claim Petition was properly denied based on Claimant's failure to present competent, unequivocal medical evidence establishing a work-related injury.

Claimant next asserts that the WCJ's decision was not reasoned as required by Section 422(a).[4] Claimant maintains that the WCJ's decision was not reasoned because the WCJ did not set forth a fair and accurate summary of the evidence presented and failed to provide reasons for why he credited Supervisor's testimony

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[4] Section 422(a) of the Act provides, in relevant part:

> 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 so that all can determine why and how a particular result was reached. The [WCJ] shall specify the evidence upon which the [WCJ] relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the [WCJ] must adequately explain the reasons for rejecting or discrediting competent evidence. . . . The adjudication shall provide the basis for meaningful appellate review.

77 P.S. § 834.

over Claimant's where Claimant's testimony was corroborated by the medical records. We disagree.

A decision is "'reasoned' for purposes of Section 422(a) if it allows for adequate review by the [Board] without further elucidation and if it allows for adequate review by the appellate courts under applicable review standards." Daniels v. Workers' Compensation Appeal Board (Tristate Transport), 574 Pa. 61, 76, 828 A.2d 1043, 1052 (2003). In a workers' compensation proceeding, the WCJ is the fact-finder and is entitled to "accept or reject the testimony of any witness, including a medical witness, in whole or in part." Minicozzi v. Workers' Compensation Appeal Board (Industrial Metal Plating, Inc.), 873 A.2d 25, 28 (Pa. Cmwlth. 2005). "The WCJ's authority over questions of credibility, conflicting evidence and evidentiary weight is unquestioned," and this Court is "bound by the WCJ's credibility determinations." Id. at 28-29.

A WCJ is not required to address all of the evidence presented in a proceeding; rather, the WCJ is "only required to make those findings necessary to resolve the issues that were raised by the evidence and which are relevant to making the decision." Montgomery Tank Lines v. Workers' Compensation Appeal Board (Humphries), 792 A.2d 6, 13 n.10 (Pa. Cmwlth. 2002). Our review of the record indicates that the WCJ's findings of fact adequately address the testimony and evidence presented, and we are satisfied that he made the findings of fact necessary and relevant for resolving the issues raised and rendering his decision.

Moreover, contrary to Claimant's argument, the WCJ was not required to provide specific reasons for why he credited Supervisor's testimony over the

testimony of Claimant. Where the WCJ "has had the advantage of seeing the witnesses testify and assessing their demeanor, a mere conclusion as to which witness was deemed credible . . . could be sufficient to render the decision adequately 'reasoned.'" Daniels, 574 Pa. at 77, 828 A.2d at 1053. Here, the WCJ had the advantage of seeing both Claimant and Supervisor testify and, based on that live testimony, the WCJ, acting in his role as fact-finder, chose to believe Supervisor instead of Claimant with regard to notice. Such credibility findings may not be reviewed by this Court on appeal. Minicozzi, 873 A.2d at 29.

Claimant next asserts that the Board erred in affirming the WCJ's decision where the WCJ capriciously disregarded unrebutted evidence regarding Claimant's ongoing disability. Again, we disagree. "Capricious disregard [of evidence] occurs only when the fact-finder deliberately ignores relevant, competent evidence." Williams v. Workers' Compensation Appeal Board (USX Corporation-Fairless Works), 862 A.2d 137, 144 (Pa. Cmwlth. 2004). "A capricious disregard of the evidence in a workers' compensation case is a deliberate and baseless disregard of apparently trustworthy evidence." Id. Here, the WCJ did not disregard or deliberately ignore the medical records. Instead, the WCJ considered those records and concluded that they did not support a finding of an ongoing, work-related disability. Moreover, when the WCJ advised Claimant that he would have to submit evidence in addition to the hospital records if he sought ongoing disability benefits beyond 52 weeks, Claimant indicated that he was going to depose his emergency room physicians. Claimant never deposed those physicians and, consequently, the records do not support an ongoing disability. Accordingly, we conclude that the WCJ did not capriciously disregard Claimant's evidence of an ongoing disability.

Finally, we reject Claimant's contention that the WCJ should have drawn an adverse inference from Employer's failure to produce the IME report at the hearing. First, we note that, in a claim petition proceeding, the "[c]laimant bears the burden of establishing entitlement to benefits and establishing all the elements necessary to support an award" of benefits. Old Republic Insurance Co. v. Workers' Compensation Appeal Board (Mascolo), 726 A.2d 444, 449 (Pa. Cmwlth. 1999). Until Claimant satisfied his burden or proof, which he did not do, Employer had **no** obligation to present **any** evidence in rebuttal. Bonegre v. Workers' Compensation Appeal Board (Bertolini's), 863 A.2d 68, 72 (Pa. Cmwlth. 2004). Second, we rejected a similar argument raised by the claimant in Bonegre regarding whether an adverse inference could be drawn from an employer's failure to call a witness during a claim petition proceeding. Id. In Bonegre, the employer did not call several employee witnesses to whom the claimant allegedly had reported his injury, and the claimant requested the workers' compensation judge in that case to draw an adverse inference against the employer. Id. The Court, in Bonegre, concluded that the adverse inference rule did not apply because that "rule only applies in cases where an uncalled witness is 'peculiarly within the reach and knowledge of only one of the parties.'" Id. at 73 (quoting Allingham v. Workmen's Compensation Appeal Board (City of Pittsburgh), 659 A.2d 49, 53 (Pa. Cmwlth. 1995)).

Here, Claimant has not asserted that the IME physician or the IME report were "peculiarly in the reach and knowledge of only one of the parties." Id. Had Claimant wanted to review the IME report and determine whether to offer that evidence on his own behalf, he could have requested the WCJ to issue a subpoena requiring Employer to produce the IME report, as clearly authorized by Sections 418 and 436 of the Act.

77 P.S. §§ 833,[5] 992[6] (authorizing a WCJ to issue subpoenas to compel the production of documents, writings, and papers pertinent to a hearing under the penalty of contempt of court). Thus, we conclude that there was no error in the WCJ's failure to draw an adverse inference here.

Accordingly, the order of the Board is affirmed.

RENÉE COHN JUBELIRER, Judge

[5] Section 418 of the Act was added by Section 6 of the Act of June 26, 1919, P.L. 642.

[6] Section 436 of the Act was added by Section 3 of the Act of February 8, 1972, P.L. 25.

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	:	
Respondent	:	

O R D E R

NOW, January 28, 2010, the order of the Workers' Compensation Appeal Board in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge