

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cynthia Bess,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation	:	
Appeal Board (Delaware	:	
Valley Veterans Home),	:	No. 732 C.D. 2011
	:	
Respondent	:	Submitted: August 26, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 4, 2011

Cynthia Bess (Claimant) petitions this Court for review of the March 29, 2011 order of the Workers' Compensation Appeal Board (Board) affirming the order of a Workers' Compensation Judge (WCJ) granting the termination petition filed by the Delaware Valley Veterans Home (Employer). Claimant presents one issue for this Court's review: whether the Board erred in affirming the WCJ's decision to terminate benefits based on the testimony of Employer's expert, Michael J. Mandarino, M.D. (Dr. Mandarino). For the reasons that follow, we affirm the Board's order.

On March 3, 2006, Claimant suffered a work-related injury. On August 3, 2007, a WCJ granted Claimant's claim petition and awarded temporary total disability benefits beginning April 18, 2006. On May 14, 2009, Employer filed a termination petition alleging that Claimant had fully recovered from her work-related

injury as of April 14, 2009. On June 4, 2010, the WCJ granted Employer's termination petition. Claimant appealed to the Board. On March 29, 2011, the Board affirmed the WCJ's order. Claimant appealed to this Court.¹

Claimant argues that the Board erred in affirming the WCJ's decision to terminate benefits based on the testimony of Employer's expert, Dr. Mandarino. Specifically, Claimant contends that Dr. Mandarino did not recognize or know the accepted work injury, did not unequivocally testify that Claimant had fully recovered from the work injury, and his testimony did not constitute substantial evidence to support terminating Claimant's benefits. We disagree.

It is well established that the WCJ, as fact finder, has exclusive province over questions of credibility and evidentiary weight, and the WCJ's findings will not be disturbed when they are supported by substantial, competent evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The WCJ is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. It is not the function of this Court to reweigh evidence and to substitute its judgment for that of the WCJ.

Supervalu, Inc. v. Workers' Comp. Appeal Bd. (Bowser), 755 A.2d 715, 720 (Pa. Cmwlth. 2000) (citations omitted). However,

[w]hether expert testimony is equivocal is a question of law that is fully subject to this Court's review. When making that determination, we must examine the entire testimony of a witness as a whole and not rely upon a fragment of testimony removed from its context. A medical expert's testimony is unequivocal if, after providing a foundation, he testifies that he believes or thinks the facts exist.

¹ This Court's review is limited to determining whether an error of law was committed, whether the findings of fact are supported by substantial evidence and whether there was a violation of constitutional rights. *Sysco Food Servs. of Phila. v. Workers' Comp. Appeal Bd. (Sebastiano)*, 940 A.2d 1270 (Pa. Cmwlth. 2008).

Inservco Ins. Servs. v. Workers' Comp. Appeal Bd. (Purefoey), 902 A.2d 574, 579 (Pa. Cmwlth. 2006) (citations omitted).

Here, after testifying regarding the reports he reviewed and describing in detail his physical examination of Claimant, Dr. Mandarino testified that “[Claimaint] is healed from anything that might have occurred to her at work on March 1st of 2006.” Respondent’s Br., App. E at 18. Dr. Mandarino further testified that his opinion was based on “[t]he history [he] took from the patient, the medical records that [he] reviewed, and the physical examination that [he] performed.” *Id.* Clearly, this testimony qualifies as unequivocal medical testimony and is such relevant evidence that would support the conclusion that Claimant has fully recovered from her work injury.

In *To v. Workers' Compensation Appeal Board (Insaco, Inc.)*, 819 A.2d 1222 (Pa. Cmwlth. 2003), this Court held that an employer’s expert’s testimony was sufficient to terminate benefits where employer’s expert testified that he believed that there was no connection between the claimant’s current complaints and the event that may or may not have occurred in the course of his employment with his employer. In *To*, the expert testified that the claimant had a normal physiologic examination, that there was no evidence of a medical impairment, and that, given the lack of an impairment and significant symptom embellishment, there was no reason for ongoing medical care. The expert, as here, specifically opined that it was his opinion, within a reasonable degree of medical certainty, having reviewed all the records, performed an examination and taken a history, that since there was no evidence of medical impairment, the claimant had made a full and complete recovery from any injury he may have sustained in the course of his employment. *Id.*

In the instant case, Dr. Mandarino testified that Claimant also exhibited symptom magnification, and her complaints were not supported by objective testing.

He further testified that Claimant was not in need of further medical treatment and that she could return to work without restriction. Accordingly, the Board did not err in affirming the WCJ's decision to terminate benefits based on the testimony of Dr. Mandarino.

This Court notes that on April 14, 2009, Dr. Mandarino completed a Physician's Affidavit of Recovery specifically stating that Claimant had fully recovered from: "Acute cervical, thoracic and lumbar sprain/strain with dysfunction, acute myofascial pain syndrome, bulging disc at C6-7 with acute left C6 radiculopathy, HNP at L5-S-1 and bilateral L4-5 radiculopathy" This affidavit was accepted into the record without objection, thus supporting the fact that Dr. Mandarino was fully aware of Claimant's work-related injury. Respondent's Br., App. E at 9.

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

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cynthia Bess,		:
	Petitioner	:
		:
v.		:
		:
Workers' Compensation		:
Appeal Board (Delaware		:
Valley Veterans Home),		:
	Respondent	:
		No. 732 C.D. 2011

ORDER

AND NOW, this 4th day of October, 2011, the March 29, 2011 order of the Workers' Compensation Appeal Board is affirmed.

JOHNNY J. BUTLER, Judge