IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Larry Gillyard,	:	
Petitioner	:	
	:	
v.	:	No. 742 C.D. 2010
	:	Submitted: September 24, 2010
Workers' Compensation Appeal Board	:	
(Glaxo Smith-Kline),	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: December 3, 2010

Larry Gillyard (Claimant) petitions for review of the April 19, 2010, order of the Workers' Compensation Appeal Board (WCAB), which affirmed a Workers' Compensation Judge's (WCJ) decision to grant Glaxo Smith-Kline's (Employer) termination petition. We affirm.

Claimant sustained a work-related injury in the nature of a lumbosacral sprain and strain on March 16, 2004. (WCJ's Findings of Fact, No. 7.) This injury occurred when Claimant, who had already had two serious back surgeries due to a congenital condition, fell when a hydraulic chair in which he was attempting to sit failed. (*Id*.) Employer accepted the injury and paid disability benefits until August 19, 2004, at which point Claimant returned to work, and his benefits were suspended

pursuant to a Supplemental Agreement. Claimant continued to receive, and Employer continued to pay for, medical treatment for Claimant's back condition after he returned to work.

On May 6, 2005, Employer filed a petition seeking: (1) review of medical treatment and/or billing; and (2) termination of compensation benefits. This petition alleged that, as of March 22, 2005, Claimant was fully recovered from his injury and that his continuing medical bills were not related to his work injury. On May 23, 2005, Employer also filed a utilization review (UR) request seeking review of treatment rendered by Dr. Sofia Lam, Claimant's treating physician, from March 1, 2005, onward. In a report dated June 20, 2005, the reviewing physician, Dr. Mary Torchia, determined that Claimant's continued treatments with Dr. Lam were reasonable and necessary. Employer then filed a petition for review of the UR determination.

On February 26, 2007,[1] the WCJ held a hearing on Employer's petitions for termination and for review of the UR. Employer submitted two reports of Dr. Wilhelmina C. Korevaar, dated August 13, 2004 and March 22, 2005. In the August 2004 report, Dr. Korevaar stated that "the increased back pain described by [Claimant] . . . is not causally related to the March 14, 2004, incident with the chair."

[1] The WCJ initially held a hearing on July 20, 2005. Claimant did not appear at this hearing, and the WCJ granted Employer's termination petition and dismissed the review petition on the basis that no separate evidence was presented, and it was moot. Claimant appealed to the WCAB, arguing that he did not receive notice of the July 20, 2005, hearing. The WCAB affirmed; however, upon Claimant's appeal to this court, we vacated the WCAB's order with directions to remand the case to the WCJ for a hearing on the merits. *Gillyard v. Workers' Compensation Appeal Board* (Pa. Cmwlth., No. 538 C.D. 2006, filed Sept. 6, 2006).

(Dr. Korevaar's 8/13/2004 Report at 2.) In the March 2005 report, Dr. Korevaar stated that Claimant was, at that time, "fully and completely recovered" from the March 2004 incident with the chair, and that he was, in her opinion, back to his preinjury state. (Dr. Korevaar's 3/22/2005 Report at 4.) In her March 2005 report, Dr. Korevaar also expressed concern that Claimant was dependent on pain medications and muscle relaxers. According to Dr. Korevaar, the injections and prescription medications he was receiving from his treating physician, Dr. Lam, were not "reasonable, necessary, or even causally related" to the chair incident and Clamant could return to work as a "chemist" without restriction. (*Id.* at 2, 4.)

Claimant testified on his own behalf at the hearing and submitted a report from Dr. Lam and the UR report of Dr. Torchia, both of whom opined that continuing treatment by Dr. Lam was reasonable and necessary.

The WCJ made the following relevant findings with regard to this evidence:

> 13. Defendant obtained a [UR] determination by Dr. Mary Torchia of Dr. Lam's treatment . . . [Dr.] Torchia determined that [Dr. Lam's] regimen was reasonable and necessary.
>
> . . .
>
> 17. Considering the reports of Dr. Korevaar, I find them credible. She gave a full and logically consistent explanation. She gave substantial backing for her conclusions. She made the distinction between claimant's condition before the injury and after it. She expressed her concern at the long, long history of narcotic medication with little improvement to show for

> it. She related the diagnostic studies (primarily the MRIs) directly to her evaluation. I accept her conclusions as fact.
>
> 18. Dr. Lam on the other hand did none of that. Her evaluation is sparse. She neither addresses the course of pain management, long pre-dating 2004, nor the long use of medications. No alternatives are reviewed, none apparently considered. I reject her conclusions.
>
> 19. [Claimant] suffered an aggravation of a pre-existing condition on 16 March 2004, but he had fully recovered from that aggravation by 25 March 2004[2] when he had returned to baseline. He needed no additional medical treatment or prescription medicine after that date. The treatment rendered by Dr. Lam [this finding drops off in mid-sentence]

(WCJ's Findings of Fact, Nos. 13, 17-19.)

Accordingly, the WCJ concluded that Employer sustained its burden of proving that Claimant had fully recovered from his work injury and that medical treatment by Dr. Lam was neither reasonable nor necessary. The WCJ granted both of Employer's petitions and terminated Claimant's benefits as of March 25, 2005. The WCAB affirmed.

[2] We presume this is a typographical error and that the WCJ meant March 25, 2005, since Dr. Korevaar's second report was dated March 2005 and the WCJ terminated benefits as of March 25, 2005.

On appeal to this Court,[3] Claimant first argues that Employer did not meet its burden of proving that Claimant had fully recovered from his work injury. We disagree.

According to Claimant, Dr. Korevaar's reports were insufficient grounds for granting Employer's termination petition because she stated in her first report that Claimant's increased back pain was not related to the chair incident. Claimant relies on *Lewis v. Workers' Compensation Appeal Board (Giles & Ransome, Inc.)*, 591 Pa. 490, 919 A.2d 922 (2007), for the proposition that benefits cannot be terminated on the grounds that the disability was never work-related. It is true that an employer is not entitled to a termination unless the employer can show that there was a change in the claimant's condition after the last disability determination. *See id*. at 497-98, 919 A. 2d at 926. However, although Dr. Korevaar's first report indicates that Claimant's back pain was not related to the incident with the chair, her second report plainly acknowledges that there was a work injury and states that Claimant had fully recovered from it. This report, accepted as fact by the WCJ, suffices to meet Employer's burden of proving that Claimant had fully recovered from his work injury.

Claimant also argues that Dr. Korevaar's reports were insufficient because she stated that Claimant was still dependent on narcotic medications. However, Dr. Korevaar indicated that the medications Claimant was taking were not

[3] Our scope of review is to determine whether findings of fact are supported by substantial evidence, whether an error of law has been committed, or whether constitutional rights have been violated. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

reasonable or necessary and that Claimant had fully recovered from any work-related injury. The WCJ accepted this opinion as credible; thus, there is no error.

Claimant also suggests Dr. Korevaar's testimony was insufficient because Dr. Korevaar refers to Claimant as a "chemist" whereas Claimant's job title is, in fact, "senior scientist, process coordinator." (N.T., 2/26/2007, at 5.) This argument is disingenuous, however, as Claimant himself acknowledged at the hearing before the WCJ that he was a chemist. (N.T., 2/26/2007, at 5.)

Claimant also suggests that the WCJ erred because he found Claimant's testimony, which included the belief that he (Claimant) was not fully recovered from his work injury, to be credible but granted Employer's termination petition nonetheless. This argument is also unavailing. The WCJ stated that: "[t]o the extent that he testified to facts, [C]laimant's testimony is credible. He is not legally competent to testify to medical issues or to render medical opinions. Therefore, where his testimony conflicts with that of Dr. Korevaar, I reject it." (WCJ's Findings of Fact, No. 16.) This finding speaks for itself, and we will not disturb the credibility determination contained therein.

Next, Claimant argues that the WCAB erred in affirming the WCJ's decision to grant Employer's UR review petition. According to Claimant, the WCJ's findings on this issue are incomplete, and the WCJ's decision does not qualify as "well-reasoned" as required by section 422(a) of the Workers' Compensation Act[4] because he made no credibility findings related to Dr. Torchia's UR report and did

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

not offer any reasons why he favored Dr. Korevaar's opinion over that of Dr. Torchia's opinion. We reject this argument because the outcome of the case would not change even if the WCJ accepted all of Dr. Torchia's report as fact.

A UR report addresses **only** the question of whether a claimant's medical treatment is reasonable and necessary. 34 Pa. Code §127.406(a). It may **not** address the causal relationship between the treatment under review and the claimant's work injury, nor may it address whether the claimant remains disabled. 34 Pa. Code §127.406(b). A finding by the WCJ that a claimant's "work-related disability [has] ceased and that any remaining disability was the result of a non-work-related condition cannot be affected by the [UR report]." *Corcoran v. Workers' Compensation Appeal Board (Capital Cities/Times Leader)*, 725 A.2d 868, 872 (Pa. Cmwlth. 1999). In other words, Dr. Torchia's report is irrelevant to the question of whether Claimant is fully recovered from his work injury.

We also disagree with Claimant's contention that the WCJ's decision was not well reasoned because Finding of Fact, No. 19 drops off in mid-sentence. Regardless of how the WCJ might have finished that particular sentence, we do not find that any crucial elements of a well-reasoned decision are lacking in the opinion. We therefore find no error in the WCAB's decision to affirm the WCJ.

Accordingly, we affirm.

_____

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Larry Gillyard, Petitioner	:	
v.	:	No. 742 C.D. 2010
Workers' Compensation Appeal Board (Glaxo Smith-Kline), Respondent	:	

O R D E R

AND NOW, this 3rd day of December, 2010, the April 19, 2010, order of the Workers' Compensation Appeal Board is hereby affirmed.

_____

ROCHELLE S. FRIEDMAN, Senior Judge