IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Luis Rolon,	:	
Petitioner	:	
	:	
v.	:	No. 752 C.D. 2009
	:	Submitted: February 12, 2010
Workers' Compensation Appeal Board (Airgas East),	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: April 14, 2010**

Luis Rolon (Claimant) petitions for review from an order of the Workers' Compensation Appeal Board (Board) that affirmed an order of a Workers' Compensation Judge (WCJ) granting Claimant's claim petition in part for a cervical spine injury. Claimant contends the WCJ's denial of his claim relating to alleged pain in his low back, legs and testicles is not supported by substantial evidence, and is erroneous as a matter of law. Claimant further contends the WCJ erred in not reinstating him to total disability benefits when his employer, Airgas East (Employer), terminated him for failing to return to full duty despite medical restrictions limiting him to light duty. In addition, Claimant contends a remand is warranted because the WCJ failed to make findings as to whether Employer presented a reasonable contest of the claim for cervical injuries and as to whether Claimant met his burden of proving his work injury caused his leg and testicle pain. Upon review, we affirm.

I. Background

Claimant worked for Employer as a truck driver. His duties included driving the truck, lifting from 50 to 400 pounds, pushing pallets weighing up to 4,000 pounds, and handling cylinders of gas weighing up to 1,000 pounds. In February, 2006, Claimant was involved in a work-related motor vehicle accident. The next day, Claimant sought treatment at a hospital emergency room for headaches and neck pain. Claimant missed one week of work, but then returned to his pre-injury position until late August, 2006, when he stopped working due to continued pain.

A. Claim Petition; Answers

In September, 2006, Claimant filed a claim petition alleging he sustained injuries to his neck, head, left arm, lower back, testicles, and left and right leg, as a result of the motor vehicle accident. Claimant sought partial disability from the date of the injury to his last day of work in August, 2006, and total disability benefits thereafter. Employer filed a timely answer denying Claimant's allegations. In April, 2007, Employer filed an amended answer admitting Claimant sustained a cervical disc herniation as a result of the accident. Employer's amended answer denied the remaining injuries.

B. Evidence

Before the WCJ, Claimant testified on his own behalf and submitted expert testimony from a treating physician, Dr. Yong Park (Physiatrist), and his treating chiropractor, Dr. Matthew Johns (Chiropractor). In opposition, Employer submitted medical testimony from Dr. John F. Perry, an orthopedic surgeon (Employer's Surgeon), who performed an independent medical examination (IME) of Claimant in October, 2006. Employer also submitted testimony from two fact

witnesses: Claimant's supervisor, Robert Whitman (Supervisor) and Employer's Senior Human Resources Field Representative, Brenda Wright (HR Representative).

Claimant testified regarding the February, 2006 accident. While driving a tractor-trailer on Route 309 near Coopersburg, PA, he collided with a car driven by an individual who ran a stop sign. To avoid striking the car broadside, Claimant swerved and came to an abrupt stop. He ended up running over the hood of the car with his trailer. He immediately notified Employer about the accident. Claimant was so nervous at the time of the accident about injuring the other driver that he did not feel anything. However, the following day, Claimant sought treatment at a hospital emergency room for head and neck pain, and was prescribed pain medication. After a week, Claimant returned to work at his pre-injury job as a truck driver.

Claimant further testified that following the accident, he continued to experience pain in his legs, back, neck, arms and testicles. Employer's panel physicians at Concentra Medical Center performed a cervical MRI and eventually referred Claimant to Reading Spine and Neck Center for treatment of two herniated cervical discs. An orthopedic surgeon and spine specialist, Dr. Abraham, examined Claimant in May, 2006. Dr. Abraham referred Claimant to Physiatrist, who treated his head and neck pain with physical therapy and nerve block injections. In August, 2006, Claimant stopped performing his pre-injury position because of continued pain.

In early September, 2006, Physiatrist restricted Claimant to light duty work with lifting and bending limitations. Employer offered Claimant light duty

work within those restrictions. Claimant performed the light duty job for one and a half days. On his second day, Claimant began treating with Chiropractor, who immediately removed him from any work activity. Claimant testified he could no longer work due to testicular pain from standing for long periods of time on concrete.

Physiatrist testified he is board certified in physical medicine and rehabilitation/pain management. Beginning in May, 2006, Physiatrist treated Claimant for his head and neck pain. Based on his examinations and treatment, Physiatrist ultimately diagnosed Claimant's cervical spine condition as cervical facet arthropathy, left occipital neuralgia, and cervical spine herniated discs. He opined these conditions were causally related to the February, 2006 work injury.

In late August, 2006, Physiatrist again examined Claimant and reaffirmed his cervical spine diagnoses. At that time, Claimant mentioned his low back problem. Physiatrist examined Claimant's low back and noted some tenderness at the bottom of his lumbar spine. Physiatrist also prescribed a lumbar MRI. In September, 2006, Physiatrist imposed work restrictions on Claimant of no lifting over 15 pounds and no bending. Physiatrist's note indicated Claimant's condition as low back pain, lumbar radiculopathy and cervical facet arthropathy.

At this time, Claimant began seeing Chiropractor, who treated his neck and low back with physical therapy. Physiatrist did not see Claimant again until February, 2007. After reviewing the lumbar MRI report, Physiatrist diagnosed disc herniations at L4-5 and L5-S1. Based on the history provided by Claimant that his low back pain started after the work injury, Physiatrist opined that at the very least, the work injury exacerbated Claimant's low back condition.

Physiatrist further opined Claimant did not fully recover from the work injury, and his earlier work restrictions of no lifting over 15 pounds and no bending continued. Physiatrist opined Claimant could perform light duty work and drive a truck.

Chiropractor first examined Claimant in September, 2006 and reached a diagnosis of cervical brachial syndrome, lumbosacral dysarthia with radiculopathy, post-concussive syndrome and thoracic spine pain. Chiropractor opined that damage to Claimant's lumbar spine caused radiating pain into his legs, groin and testicles. As of the date of his deposition, Chiropractor treated Claimant two to three times a week.

Chiropractor opined Claimant's cervical and lumbar conditions were causally related to the work-related motor vehicle accident. He further opined Claimant can walk and function, but will never be able to perform the type of heavy lifting work as he did at his pre-injury job. In other words, Claimant can drive, but cannot load or unload trucks.

Employer's Surgeon performed an IME of Claimant in October, 2006, which included a physical examination, and a review of Claimant's history and medical records. Employer's Surgeon's examination produced subjective complaints of pain. Claimant's range of motion was limited and also produced complaints of pain. A review of Claimant's cervical and lumbar MRIs indicated cervical disc herniations at C3-4, C4-5, and C5-6, with degenerative changes. Employer's Surgeon also reviewed Claimant's lumbar MRI report, which indicated disc herniations at L4-5 and L5-S1.

In his initial report, Employer's Surgeon provisionally diagnosed Claimant's condition as status post motor vehicle accident with complaints of neck and left leg pain, probable cervical and lumbar strain/sprain. He also completed a physical capabilities evaluation that placed no restrictions on sitting, standing or walking. Employer's Surgeon opined Claimant could work full time, but restricted his lifting to no more than 20 pounds.

Employer's Surgeon opined Claimant's cervical spine injuries were causally related to the work-related motor vehicle accident. However, Employer's Surgeon opined Claimant's low back pain and herniated lumbar discs were not related to the work injury. Prior to his April, 2007 deposition, Employer's Surgeon reviewed Claimant's records from the hospital emergency room visit following the accident and subsequent treatment with Employer's panel physicians at Concentra. He noted Claimant did not report any low back problems for at least five months following the accident. For this reason, Employer's Surgeon opined Claimant's lumbar condition was not work related. He further opined Claimant could return to light duty work that did not involve lifting, sorting, and receiving packages weighing in excess of 10 pounds.

Employer also submitted testimony from two fact witnesses. Supervisor recalled Claimant worked until late August, 2006. In early September, 2006, Claimant brought in a medical note from Physiatrist restricting him to light duty work with lifting and bending restrictions. Supervisor forwarded the note to HR Representative. Approximately a week later, Employer offered Claimant a light duty position within Physiatrist's restrictions.

Supervisor specifically advised Claimant not to lift any item over 10 pounds. The job did not require Claimant to climb, bend, stoop, crawl or reach. Claimant worked at this position for one day. The next day Claimant presented a note from Chiropractor removing him from any type of work.

HR Representative also testified Employer offered Claimant a full-time, light duty position within Physiatrist's restrictions. The light duty position paid Claimant the same hourly rate as his pre-injury position, minus overtime. Claimant performed the light duty position for one day and then returned with a note from Chiropractor restricting him from any work. In January, 2007, Employer terminated Claimant because he refused to return to light duty work.

C. WCJ Decision

The WCJ credited the medical opinions of Physiatrist and Employer's Surgeon that Claimant's cervical spine injury and herniated cervical discs are causally related to the February, 2006 work injury. The WCJ noted Physiatrist and Employer's Surgeon placed similar light duty restrictions on Claimant's work activity. Additionally, the WCJ recognized Chiropractor is competent to render a chiropractic opinion, but not a medical opinion. The WCJ rejected Chiropractor's opinion that Claimant could not perform the light duty job Employer made available.

As to Claimant's low back condition, the WCJ credited Employer's Surgeon's opinion that Claimant's low back pain and lumbar herniations were not causally related to the February, 2006 work injury. In addition, the WCJ determined Physiatrist's opinion that the work injury exacerbated Claimant's

herniated lumbar discs to be equivocal. The WCJ also rejected Chiropractor's opinion regarding Claimant's low back condition as not credible.

Further, the WCJ accepted the testimony of Supervisor and HR Representative that Employer offered Claimant a light duty position within Physiatrist's and Employer's Surgeon's restrictions. The light duty job paid the same hourly rate as Claimant's pre-injury position, minus overtime. The WCJ found that but for Claimant leaving work without medical authorization from Physiatrist or Employer's Surgeon, he would still be working.

The WCJ also recognized Employer paid Claimant $258.38 per week in partial disability benefits effective from the date he left his pre-injury job in August, 2006, without the benefit of any agreement or order.

Ultimately, the WCJ granted Claimant's claim petition in part and denied it in part. The WCJ concluded Claimant sustained a work injury in the nature of a cervical spine injury, herniated discs and headaches. However, the WCJ held Claimant failed to sustain his burden of proving he became totally disabled due to his low back symptoms. Therefore, the WCJ awarded Claimant total disability benefits for the week following the injury and ongoing partial disability benefits in the amount of $258.38 per week beginning the day after his last day of work in August, 2006. The WCJ also awarded Claimant $8,022.42 in litigation costs. On appeal, the Board affirmed. Claimant's petition for review followed.[1]

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[1] This Court's review is limited to determining whether the WCJ's findings of fact were supported by substantial evidence, whether an error of law was committed or whether

(Footnote continued on next page…)

II. Issues

Claimant presents five issues for review. He contends: substantial evidence does not support the WCJ's findings that his pain in his low back, legs and testicles was not causally related to his work injury; the WCJ erred in finding Physiatrist's opinion regarding a low back injury to be equivocal; the reasons articulated by the WCJ for rejecting Physiatrist's testimony as less credible than Employer's Surgeon regarding Claimant's low back pain are not supported by substantial evidence; the WCJ erred in failing to reinstate total disability benefits where Employer terminated Claimant for failing to return to full duty work; and, the WCJ failed to make necessary findings on the issues of whether Employer's contest was reasonable and whether Claimant proved his leg and testicle pain was causally related to his work injury.

III. Discussion

A. Low Back, Leg and Testicular Injuries

1. Contentions

Claimant first contends the Board erred in affirming the WCJ's denial of his claim relating to pain in his low back and radiating pain in his legs and testicles, because the WCJ's necessary findings are not supported by substantial evidence. He primarily argues that medical evidence indicates he complained of low back and left leg pain following the work injury.

(continued…)

constitutional rights were violated. Ostrawski v. Workers' Comp. Appeal Bd. (UPMC Braddock Hosp.), 969 A.2d 15 (Pa. Cmwlth. 2009).

Claimant asserts that in February, 2006, Employer referred him to its panel physicians at Concentra, where he reported pain in his neck, head, back and legs.[2] Concentra referred him to the Reading Spine and Neck Center, where he complained of low back and leg pain to Dr. Abraham in May, 2006, three months after the work injury.

Claimant further asserts Employer's Surgeon acknowledged he told Dr. Abraham he not only had neck pain, but also left leg pain. See Dep. of Dr. John F. Perry, 04/25/07, (Perry Dep.) at 8. Claimant further asserts Employer's Surgeon also acknowledged reviewing a lumbar MRI that showed Claimant had disc herniations at L4-5 and L5-S1 that were traumatically induced. See id. at 16-17.

Claimant also asserts Physiatrist testified Dr. Abraham reported that Claimant mentioned low back pain in May, 2006. See Dep. of Dr. Yong Park, 02/19/07, (Park Dep.) at 27-28. Physiatrist further testified he first saw Claimant in May 2006, at which time Claimant filled out a pain diagram indicating pain in the middle of his back. Id. at 45. In addition, Claimant told Physiatrist in August, 2006, that he was no longer working because of pain in his head, neck and low back and that he was having problems with his low back the entire time. Id. at 34, 61.

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[2] In his brief, Claimant refers to a transcription of a physician's notes from Claimant's February 2006 visit to Concentra, which assessed his condition as a "back strain." Although Claimant included this transcription in his Reproduced Record at 304a, the parties ultimately stipulated that it be struck. By order dated January 10, 2010, this Court approved the stipulation.

In addition, Claimant argues the WCJ erred in drawing an adverse inference from the fact that he sought advice and treatment from Chiropractor after Physiatrist recommended a nerve abalation (burning a nerve ending to block pain). Claimant did not want the nerve abalation procedure and sought a second opinion.

Moreover, Claimant contends the WCJ capriciously disregarded his own testimony, which establishes he had no prior injuries, and that upon his return to pre-injury position one week after the accident, he had problems with his legs, back, neck, arms and testicles.[3] See Notes of Testimony (N.T.), 12/01/06, at 9. Upon returning to work, Claimant told Supervisor about his pain complaints. Id. at 10. Neither Supervisor nor any other witness contradicted Claimant's testimony. Therefore, Claimant argues, the WCJ had no rational basis to disregard his testimony regarding complaints of low back, leg and testicular pain. See Acme Mkts., Inc. v. Workmen's Comp. Appeal Bd. (Pilvalis), 597 A.2d 294 (Pa. Cmwlth. 1991) (where WCJ rejects uncontradicted evidence and makes findings or conclusions that have no rational basis in the record, the WCJ capriciously disregards competent evidence).

2. Analysis

Claimant, as the moving party in a claim proceeding, has the burden of proving all elements needed to support an award, including an actual injury and disability, and a causal relationship between the injury and the work incident. Inglis House v. Workmen's Comp. Appeal Bd. (Reedy), 535 Pa. 135, 634 A.2d 592

[3] In Leon E. Wintermyer, Inc. v. Workers' Compensation Appeal Board (Marlowe), 571 Pa. 189, 203, 812 A.2d 478, 487 (2002), our Supreme Court held that "review for capricious disregard of material, competent evidence is an appropriate component of appellate consideration in every case in which such question is properly brought before the court."

(1993); Merchant v. Workers' Comp. Appeal Bd. (TSL, Ltd.), 758 A.2d 762 (Pa. Cmwlth. 2000). As the burdened party, Claimant bears both the burden of production and persuasion. Merchant. Where the causal relationship is not obvious, unequivocal medical evidence is required to establish the connection between the work incident and the disability. Cardyn v. Workmen's Comp. Appeal Bd. (Heppenstall), 517 Pa. 98, 534 A.2d 1389 (1987); Lewis v. Commonwealth, 580 Pa. 360, 498 A.2d 800 (1985).

The WCJ made the following decisive findings regarding Claimant's assertions of low back, leg and testicular pain related to the February, 2006 work injury:

> 18. The Claimant's testimony is that he could not perform the light duty job because of testicular pain. [Physiatrist], [Employer's Surgeon] and even [Chiropractor] did not limit the Claimant's work activity because of testicular pain. The Claimant stopped working on his own accord. [Physiatrist] did not remove him from the light duty work activity; [Employer's Surgeon] did not remove him from the light duty activity. [Chiropractor], who did not see the Claimant until September 12, 2006, concurs with [Physiatrist's] lifting restriction of no lifting over 10 lbs.
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> 22. This Judge accepts the testimony and opinions of [Employer's Surgeon], concerning the Claimant's low back condition. This Judge finds that the Claimant did not report low back problems when he was seen at the ER, nor did he report low back problems when seen at Concentra. His first report of low back pain was a number of months after the February 22, 2006 motor vehicle accident. [Physiatrist] opined that the motor vehicle accident may have exacerbated the low back herniated discs, if they were not there before the accident,

and based upon the history as provided by the Claimant; this opinion is equivocal. This Judge does not accept such testimony and opinions and accepts [Employer's Surgeon's] opinions over those of [Physiatrist], with regard to the low back symptoms. [Physiatrist] saw the Claimant for the cervical spine symptoms, not for low back symptoms. Any conflict in testimony is resolved in favor of [Employer's Surgeon], whose testimony and opinions are more persuasive and supported by the clinical findings.

23. This Judge accepts the testimony and medical opinions of [Employer's Surgeon] over the testimony and chiropractic opinions of [Chiropractor]. [Employer's Surgeon's] opinions are clear, concise and supported by the diagnostic studies and clinical findings. [Chiropractor's] findings concerning the low back symptoms are less than credible and not supported by the history of prior treatment. Any conflict in testimony is resolved in favor of [Employer's Surgeon], whose medical opinions are competent and more persuasive than the chiropractic opinions of [Chiropractor].

24. This Judge accepts that portion of the Claimant's testimony concerning the pain and limitations in his cervical spine, and the causal relationship between the motor vehicle accident and his neck pain and headaches. <u>The Claimant did not report the low back pain until some five months after the motor vehicle accident.</u> Even if this Judge were to find that the Claimant's low back condition is causally related to the motor vehicle accident, [Physiatrist] and [Employer's Surgeon] did not remove him from work activity. The Claimant, on his own accord, stopped working at a light duty position that was made available to him by the Employer. After he stopped working, the Claimant then saw a chiropractor and did not return to [Physiatrist] until 5 months later. He informed [Physiatrist] that he (Claimant) was seeing a chiropractor. Even at the February 8, 2007 office visit (one year post injury), [Physiatrist] did not remove the Claimant from the light duty work activity. <u>This Judge draws an adverse inference from the fact that the Claimant stopped treating with [Physiatrist], to seek</u>

> treatment from a chiropractor, in order to get a chiropractic opinion to justify his (Claimant's) stopping work. The chiropractor issued a chiropractic opinion that the Claimant was not able to engage in work activity.

WCJ's Op., 05/21/08, Findings of Fact (F.F.) Nos. 18, 22-24 (emphasis added).

Substantial evidence is such relevant evidence that a reasonable mind would accept as sufficient to support a conclusion. WAWA v. Workers' Comp. Appeal Bd. (Seltzer), 951 A.2d 405 (Pa. Cmwlth. 2008). "[I]t is irrelevant whether the record contains evidence to support findings other than those made by the WCJ; the critical inquiry is whether there is evidence to support the findings actually made." Minicozzi v. Workers' Comp. Appeal Bd. (Indus. Metal Plating, Inc.), 873 A.2d 25, 29 (Pa. Cmwlth. 2005) (citation omitted). "This Court cannot, nor will we, consider findings different from those found by the WCJ." Id. (citation omitted). Moreover, in performing a substantial evidence analysis, we view the evidence, and all reasonable inferences deducible from the evidence, in the light most favorable to the prevailing party. WAWA.

Further, it is solely within the province of the WCJ, as fact finder, to resolve issues of credibility and evidentiary weight. Capasso v. Workers' Comp. Appeal Bd. (RACS Assocs., Inc.), 851 A.2d 997 (Pa. Cmwlth. 2004). The WCJ may accept or reject the testimony of any witness, in whole or in part, including the uncontested testimony of the claimant or any other witness. Id.

Here, the WCJ accepted Employer's Surgeon's opinion that Claimant's low back pain and disc herniations were not related to the February, 2006 work injury. F.F. Nos. 14, 22. Employer's Surgeon reviewed Claimant's

medical records and noted Claimant did not complain of any lumbar problems for five months following the accident. Id.; Perry Dep. at 20, 27-29. In particular, Employer's Surgeon testified on cross-examination as follows:

> **Q.** So at least by your recollection at least by history the Claimant was blaming activities at work, maybe not the motor vehicle accident, but he was blaming activities at work for his increase in pain; correct?
> **A.** Yeah, but it was an increase in pain in his neck from the heavy lifting at work.
> **Q.** Not with regard to his low back?
> **A.** Not from the records that I saw through July of 2006.
> **Q.** July of 2006 is when he started to make low back complaints?
> **A.** I didn't see anything at all through that amount. My understanding is that he is complaining about it now, so all I can tell you is that from February through July of 2006 I didn't find any evidence in the record of a problem and that's enough for me to conclude that the lumbar spine is not related to the motor vehicle accident of February of 2006.

Perry Dep. at 28-29.

"A medical expert's opinion is not rendered incompetent unless it is solely based on inaccurate or false information." Casne v. Workers' Comp. Appeal Bd. (Stat Couriers, Inc.), 962 A.2d 14, 16 (Pa. Cmwlth. 2008). Therefore, "[t]he opinion of a medical expert must be viewed as a whole, and even inaccurate information will not render the opinion incompetent unless it is dependent on those inaccuracies." Id. Such inconsistencies go to the weight and credibility of the evidence, not its competency. Id. at 17. A reviewing court does not reweigh the evidence or second guess witness credibility. Id.

Clearly, the contested findings are supported by the testimony of Employer's Surgeon. Moreover, the contested factual findings are consistent with the absence of early medical records documenting low back complaints, with treatment for body parts other than Claimant's low back, with clinical findings, and with Claimant's full-time return to his pre-injury work.

We reject Claimant's argument based on testimony by other experts regarding Claimant's May, 2006, visit to Dr. Abraham, at which a low back complaint may have been made. This visit was about three months after Claimant's accident. Assuming the truth of this detail, it is overshadowed by the vast weight of evidence here. In any event, we discern no reversible error if the first complaint of low back pain is three months post-accident, as opposed to five months post-accident.

Also, we reject Claimant's argument about an adverse inference. The WCJ drew an inference against Claimant in Finding of Fact No. 24 because of the timing of his change from Physiatrist's care to chiropractic care. The adverse inference related to Claimant's motivation for seeking a new source of treatment and opinion. This inference is within the fact-finder's discretion, and no abuse of discretion is evident.

Further, we reject the contention that the WCJ capriciously disregarded Claimant's testimony that he had no prior injuries and that upon his return to work following the accident he had problems with his low back, legs, and testicles. The WCJ did not disregard Claimant's testimony; rather, he considered it, and he specifically rejected part of it for stated reasons. This is not a capricious disregard of evidence. Instead, it is a permitted credibility

determination. It is within the province of the WCJ to accept or reject Claimant's testimony, given before the WCJ at the December, 2006 hearing, in whole or in part. Minicozzi; Capasso.

Moreover, where there is no obvious causal connection between an injury and its alleged work-related cause, such connection must be established by credible *medical* testimony. Cardyn; Lewis. Thus, Claimant's testimony, by itself, that he suffered low back pain or leg pain following the work injury, even if believed, is *legally* insufficient to establish its work-related cause. Id.

Claimant's argument is also somewhat unclear as to whether his testicular pain is a symptom of a lumbar condition. However, the only expert testimony that the work injury caused Claimant's testicular pain is Chiropractor's opinion. See Dep. of Dr. Matthew C. Johns (Johns Dep.), 04/27/07, at 36-37. The WCJ, however, rejected Chiropractor's opinions regarding Claimant's low back symptoms. F.F. No. 23.

For these reasons, we conclude substantial evidence supports the WCJ's findings that Claimant's low back, leg and testicular pain were not causally related to his February, 2006 work injury.

B. Physiatrist's Opinion

Next, Claimant contends the WCJ erred as a matter of law when he found equivocal Physiatrist's opinion that Claimant's work-related injuries included a low back injury. Claimant asserts Physiatrist testified on direct examination that at the very least, the work accident exacerbated Claimant's low back pain. Physiatrist did not use the words *might* or *could have been*. Claimant

asserts "an employer is liable for an employee's disability when that disability is caused by a combination of work-related and non-work-related factors, so long as the work-related cause is a substantial contributing factor to the disability." Martin v. Workers' Comp. Appeal Bd. (Red Rose Transit Auth.), 783 A.2d 384, 389 (Pa. Cmwlth. 2001). Thus, Claimant urges, regardless of whether he had a pre-existing lumbar pain and disc herniations, Physiatrist unequivocally testified the February, 2006 work injury exacerbated those conditions.

In Finding of Fact No. 22, the WCJ found:

> [Physiatrist] opined that the motor vehicle accident may have exacerbated the low back herniated discs, if they were not there before the accident, and based upon the history provided by the Claimant; this opinion is equivocal.

WCJ Op. at 8. On direct examination, Physiatrist testified as follows (with emphasis added):

> **Q.** Based upon the time that you saw [Claimant] and those both in 2006 and now one time in 2007, any medical – and medical records that you have had the chance to look at through that course of time, could you tell us what your diagnosis is of [Claimant's] problems? And I want you to limit the diagnosis to what you think was related to the February 22, 2006 motor vehicle accident, what was caused by that accident?
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> **A.** Well, I think the – well, same thing, cervical facet arthropathy arthralgia, left occipital – left occipital neuralgia, and I have to say the – low back pain in terms of causation, I can't say. I don't think I really spent enough time with [Claimant] to say with certainty that his back pain is coming from those disc herniations, I can't say. Was it aggravated by it? The question is whether or not that was there before. I don't know. If it wasn't

> before, since his back pain, <u>at least by his history he said his back pain started after that initial car accident</u>. So at the very least it was exacerbated by that accident I would think.

Park Dep. at 34.

Whether expert medical testimony is equivocal and thus constitutes incompetent evidence is a question of law fully subject to our review. <u>Casne</u>. In conducting such a review, the expert's testimony must be viewed as a whole, and the determination should not rest on a few words taken out of context. <u>Id.</u> Medical evidence will be found unequivocal where the expert witness, after providing a foundation, testifies that in his professional opinion, states the facts exist. <u>Craftsmen v. Workers' Comp. Appeal Bd. (Krouchick)</u>, 809 A.2d 434 (Pa. Cmwlth. 2002). Where medical testimony is needed to establish a causal connection, the medical expert must testify, not that the injury might have or possibly came from the assigned cause, but that in his or her professional opinion, the injury did come from the assigned cause. <u>Cardyn</u>; <u>Merchant</u>.

We discern no error in the WCJ's determination that Physiatrist's testimony is equivocal. Physiatrist's opinion as to causation is less than positive or certain. He testified he did not spend enough time with Claimant to determine causation for his low back pain. Park Dep. at 34. He could not opine with certainty whether Claimant's back pain came from his herniations. <u>Id.</u> Physiatrist also stated he did not know whether the work injury aggravated a pre-existing condition; he merely testified Claimant stated his back pain started after the accident. <u>Id.</u>

The WCJ only accepted Claimant's testimony regarding the pain in his cervical spine following the work injury, not his lumbar spine. F.F. No. 24. Viewed as a whole, we agree with the WCJ that Physiatrist's opinion regarding the causation of Claimant's lumbar problems is equivocal and thus incompetent to establish a causal relationship between his low back pain and his February, 2006 work injury. Cardyn; Merchant.

Moreover, even where a medical expert's testimony is unequivocal, it must be accepted as credible by the WCJ. Campbell v. Workers' Comp. Appeal Bd. (Pittsburgh Post Gazette), 954 A.2d 726 (Pa. Cmwlth. 2008). Here, the WCJ accepted as credible Employer's Surgeon's opinion that Claimant's low back pain was not work related and resolved any conflicts in the evidence in his favor. F.F. No. 22.

C. Reasoned Decision

Also, Claimant contends the reasons articulated by the WCJ in Finding of Fact No. 22 for rejecting Physiatrist's testimony are not supported by substantial evidence. However, in Casne, we recognized the reasoned decision requirement in Section 422(a) of the Workers' Compensation Act[4] (Act), does not require a substantial evidence analysis for credibility determinations. In Casne, we stated (with emphasis added):

> While many cases since [Daniels v. Workers' Compensation Appeal Board (Tristate Transport), 574 Pa. 61, 828 A.2d 1043 (2003)] have addressed the adequacy of the reasons set out by the WCJ in support of his or her credibility determination, we have not clearly

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

> addressed the *standard* by which we review such reasoning. While many petitioners challenging an adverse credibility determination would suggest that we review each and every component of the WCJ's reasoning for substantial evidence and reverse and remand if we can find any flaw, we do not believe that the reasoned decision requirement takes us so far from the traditional notions of the deference owed credibility determinations.

962 A.2d at 18-19 (footnote omitted).

Rather, to satisfy Section 422(a), a WCJ's decision must permit adequate appellate review. Dorsey v. Workers' Comp. Appeal Bd. (Crossing Constr. Co.), 893 A.2d 191 (Pa. Cmwlth. 2006). "Section 422(a) does not require the WCJ to discuss all of the evidence presented." Id. at 194, n.4. "The WCJ is only required to make the findings necessary to resolve the issues raised by the evidence and relevant to the decision." Id. "[T]he purpose of a reasoned decision is to spare the reviewing court from having to *imagine* why the WCJ believed one witness over another." Id. at 196 (citation omitted).

Nonetheless, "[w]here medical experts testify by deposition, a WCJ's resolution of conflicting evidence must be supported by more than a statement that one expert is deemed more credible than another." Id. at 194. To allow effective appellate review, the WCJ must articulate an objective basis for the credibility determination. Id. at 194-95. Although there are countless objective factors that may support a credibility determination, these factors must be identified and enunciated. Id.

"However, Section 422(a) does not permit a party to challenge or second-guess the WCJ's reasons for credibility determinations." Id. at 195. "Unless made arbitrarily or capriciously, a WCJ's credibility determinations will be upheld on appeal." Id. Moreover, "[a] reasoned decision does not require the WCJ to give a line-by-line analysis of each statement by each witness, explaining how a particular statement affected the ultimate decision." Acme Mkts., Inc. v. Workers' Comp. Appeal Bd. (Brown), 890 A.2d 21, 26 (Pa. Cmwlth. 2006).

In crediting the testimony of Employer's Surgeon over that of Physiatrist, the WCJ found Employer's Surgeon reviewed Claimant's medical records and found it significant that Claimant did not complain of lumbar spine or leg pain until approximately five months after his work injury. F.F. Nos. 14, 22. The WCJ also noted Employer's Surgeon's opinions were supported by the clinical findings. F.F. No. 22. More importantly, as discussed above, the WCJ did not err in finding Physiatrist's testimony about Claimant's low back complaints to be equivocal. Id. The WCJ also noted Physiatrist treated Claimant for his cervical spine symptoms, not his lumbar spine symptoms. Id. The objective bases cited by the WCJ in support of his credibility determinations are adequate for appellate review. Casne; Dorsey. We therefore hold the WCJ's credibility determinations satisfy the reasoned decision requirements of Section 422(a) of the Act. Id.

D. Reinstatement of Total Disability Benefits

Claimant further contends the WCJ erred in failing to reinstate Claimant to total disability benefits as of January, 2007, when Employer terminated him based on his failure to return to full duty at his pre-injury position. Claimant asserts Employer presented no evidence that he fully recovered from his work injury and could return to his pre-injury position as of January, 2007.

Claimant further argues that even if the WCJ found that the light duty job Employer offered was within Claimant's medical restrictions, Employer presented no evidence of any available work as of January, 2007. Therefore, Claimant urges, the WCJ erred in failing to reinstate him to total disability benefits as of his termination. We disagree.

The WCJ credited the testimony of Supervisor and HR Representative that Employer created and offered Claimant a light duty position within the medical restrictions imposed by Physiatrist and Employer's Surgeon. F.F. Nos. 25 and 26. In particular, HR Representative testified Employer offered Claimant a full-time light duty position in September, 2006, within Physiatrist's medical restrictions. Dep. of Brenda L. Wright (Wright Dep.), 05/21/07, at 8-9. Claimant started on September 11 and did not work past September 13. Id. at 9. HR Representative further testified Employer always accommodates light duty restrictions. Id. at 13. The light duty job remained available until Claimant's termination. Id. at 21-22. Employer terminated Claimant because he did not return to the light duty position. Id.

Where an employer offers a claimant a light duty position within his medical restrictions and the claimant refuses it, a suspension of benefits is warranted. Jayne v. Workmen's Comp. Appeal Bd. (King Fifth Wheel), 585 A.2d 604 (Pa. Cmwlth. 1991). By offering the light duty position from September, 2006, through January, 2007, Employer made a genuine and good faith effort to return Claimant to work. Id. Because Claimant refused to accept work within his medical restrictions, he is only entitled to partial disability benefits based on the difference between his pre-injury wage and his earning power thereafter. Section 306(b) of the Act, 77 P.S. §512; Jayne. Therefore, the WCJ did not err in declining

reinstatement to total disability status upon Claimant's termination of employment in January, 2007. Id.

E. Reasonable Contest; Leg and Testicle Pain

Finally, Claimant contends the WCJ erred in failing to make necessary findings as to whether Employer's contest of the claim petition was reasonable and whether Claimant established that the work injury caused the leg and testicle pain alleged in his claim petition.

1. Reasonable Contest

Whether to award unreasonable contest attorney's fees is a question of law reviewable by the Board and this Court. Jordan v. Workers' Comp. Appeal Bd. (Phila. Newspapers, Inc.), 921 A.2d 27 (Pa. Cmwlth. 2007), appeal denied, 596 Pa. 748, 946 A.2d 689 (2008). "Section 440(a) of the Act, 77 P.S. §996(a), provides that where a claimant succeeds in a litigated case reasonable counsel fees are awarded against the employer, as a cost, unless the employer meets its burden of establishing facts sufficient to prove a reasonable basis for the contest." U.S. Steel Corp. v. Workers' Comp. Appeal Bd. (Luczki), 887 A.2d 817, 820 (Pa. Cmwlth. 2005). "A reasonable contest is established when medical evidence is conflicting or susceptible to contrary inferences, and there is an absence of evidence that an employer's contest is frivolous or filed to harass a claimant." Id. at 821. The employer bears the burden of proving a reasonable basis for contesting liability. Dep't of Corr. v. Workers' Comp. Appeal Bd. (Clark), 824 A.2d 1241 (Pa. Cmwlth. 2003).

Citing Luczki, Claimant contends he is entitled to unreasonable contest attorney fees because he prevailed in part regarding his cervical spine

injuries and because Employer based its contest of those injuries on medical evidence acquired after it decided to contest those injuries. Claimant asserts Employer's Surgeon, following his October, 2006 IME, gave a provisional diagnosis of probable cervical and lumbar strain. However, it was not until April, 2007, that Employer filed an amended answer acknowledging the cervical injury.

Employer counters that the existence of an issue concerning the degree of disability provides a reasonable basis for contest. Dworek v. Workmen's Comp. Appeal Bd. (Ragnar Benson, Inc. & Nat'l Union Fire Ins. Co.), 646 A.2d 713 (Pa. Cmwlth. 1994); Chmiel v. Workmen's Comp. Appeal Bd. (Jandy Coal Co.), 442 A.2d 398 (Pa. Cmwlth. 1982).

Claimant sought total disability benefits from the time he stopped working at his pre-injury job in August, 2006. Employer's panel physicians referred Claimant to Dr. Abraham, who then referred him to Physiatrist. Following receipt of Physiatrist's September, 2006, note limiting Claimant to light duty, Employer offered him a full-time, light duty position within Physiatrist's restrictions at Claimant's pre-injury hourly wage, minus overtime. In addition, Employer began paying Claimant partial disability benefits at the rate of $258.38 per week, based on Claimant's wage loss difference.

Physiatrist's September, 2006, determination that Claimant could perform light duty work with lifting and bending restrictions provided Employer with a sufficient basis to contest Claimant's claim for total disability benefits. Dworek; Chmiel. In his decision, the WCJ concluded Claimant failed to meet his burden of proving he became totally disabled. WCJ Op. at 10, Conclusion of Law

No. 2. The WCJ's decision, viewed as a whole, indicates Employer presented a reasonable contest of Claimant's claim petition.

2. Leg and Testicular Pain

Claimant also contends the WCJ erred in failing to make necessary findings as to whether he established his work injury resulted in testicular and leg pain. In Finding of Fact No. 18, the WCJ found:

> The Claimant's testimony is that he could not perform the light duty job because of testicular pain. [Physiatrist], [Employer's Surgeon] and even [Chiropractor] did not limit Claimant's work activity because of testicular pain.

F.F. No. 18.

As discussed above, the only expert testimony that Claimant's testicular pain is work related is Chiropractor's opinion. Johns Dep. at 36-37. The WCJ rejected Chiropractor's opinions that the work injury caused Claimant's low back symptoms. F.F. No. 23. This finding is therefore dispositive as to the Claimant's claim that the work injury caused his testicular pain.

The WCJ also found that Employer's Surgeon opined Claimant's complaints of lumbar spine pain and *leg pain* were not work related. F.F. No. 14. The WCJ accepted this testimony as credible. F.F. No. 22.

We therefore reject Claimant's argument that the WCJ failed to make necessary findings as to whether Claimant's leg and testicular symptoms were causally related to the work injury.

IV. Conclusion

Discerning no error in the WCJ's decision and order, we affirm the Board.

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ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Luis Rolon, Petitioner	:	
v.	:	No. 752 C.D. 2009
Workers' Compensation Appeal Board (Airgas East), Respondent	:	

<u>O R D E R</u>

AND NOW, this 14th day of April, 2010, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

ROBERT SIMPSON, Judge