IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Department of Corrections, Petitioner	:	
v.	:	
Workers' Compensation Appeal Board (Drapola), Respondent	:	No. 818 C.D. 2011
	:	Submitted: November 10, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: December 8, 2011

The Pennsylvania Department of Corrections (Employer) petitions this Court for review of the April 11, 2011 order of the Workers' Compensation Appeal Board (Board) reversing the determination of a Workers' Compensation Judge (WCJ) that the Employer is required to reimburse the private health insurance of Kim Drapola (Claimant) for medical bills, and affirming the decision in all other respects. Employer presents four issues for this Court's review: (1) whether the report of David A. Tonnies, M.D. (Dr. Tonnies) was competent, (2) whether the description of Claimant's injury was properly amended, (3) whether the denial of Employer's termination petition was in capricious disregard of the evidence, and (4) whether the WCJ's decision was well reasoned. For the following reasons, we affirm the Board's order.

Claimant sustained a work injury on November 10, 2007. On October 30, 2008, Claimant filed a review petition alleging an incorrect description of her

work injury, unpaid medical bills, a worsening of her condition, and decreased earning power. On June 26, 2009, Employer filed a termination petition alleging that Claimant was fully recovered from her work injury as of May 27, 2009. On April 30, 2010, the WCJ granted Claimant's review petition and denied Employer's termination petition. Employer appealed to the Board. On April 11, 2011, the Board reversed the WCJ's decision to require Employer to reimburse Claimant's private health insurance, and affirmed the WCJ's decision in all other respects. Employer appealed to this Court.[1]

Employer argues that the WCJ erred in finding the report of Dr. Tonnies competent.[2] Specifically, Employer contends that Dr. Tonnies did not have a complete and accurate history regarding Claimant's symptoms because he based his opinion on Claimant's symptoms beginning the day of the injury, when in fact Employer contends, the symptoms started four months after the injury. We disagree.

> A medical expert's opinion is not rendered incompetent unless it is solely based on inaccurate or false information. The opinion of a medical expert must be viewed as a whole, and even inaccurate information will not render the opinion incompetent unless it is depend[e]nt on those inaccuracies. Whether an expert's opinion is incompetent is a question of law subject to our plenary review.

Casne v. Workers' Comp. Appeal Bd. (Stat Couriers, Inc.), 962 A.2d 14, 16 (Pa. Cmwlth. 2008) (citations omitted).

Here, Claimant testified that she felt numbness and tingling in her arms and wrists from the very first day. She testified that she did not mention it early on

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[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).

[2] Because Claimant returned to work within 52 weeks, all of the doctors' reports were admissible; hence, neither party introduced deposition testimony. *See:* Reproduced Record at 140a.

because the major pain was coming from her back and shoulder and figured it was just radiating from there and would go away, but it did not. *See* Reproduced Record (R.R.) at 47a and 48a. Instead, according to Claimant, it got worse. "It is solely for the WCJ, as the factfinder, to assess credibility and to resolve conflicts in the evidence. In addition, it is solely for the WCJ, as the factfinder, to determine what weight to give to any evidence." *McCabe v. Workers' Comp. Appeal Bd. (Dep't of Revenue)*, 806 A.2d 512, 515 (Pa. Cmwlth. 2002). The WCJ deemed Claimant's testimony "credible and accepted." Employer's Br., App. A at 9. Thus, Dr. Tonnies' opinion is not based on inaccurate information. Accordingly, the WCJ did not err because Dr. Tonnies' report is competent evidence.

Employer next argues that Claimant's description of her injury was improperly amended to include injury to Claimant's back, neck and right shoulder.[3] Specifically, Employer contends there is no substantial evidence to support the amendment because Dr. Tonnies' report was insufficient. We disagree.

"Substantial evidence is such relevant evidence a reasonable mind might accept as adequate to support a conclusion. In performing a substantial evidence analysis, we must view the evidence, and every reasonable inference deducible from the evidence, in a light most favorable to the prevailing party." *WAWA v. Workers' Comp. Appeal Bd. (Seltzer)*, 951 A.2d 405, 407 n.4 (Pa. Cmwlth. 2008) (citation omitted). "It is the burden of the party seeking to correct the [Notice of Compensation Payable (NCP)] to prove that it was materially incorrect when it was issued. Unequivocal medical evidence is required where it is not obvious that an injury is causally related to the work incident." *City of Pittsburgh v. Workers' Comp. Appeal Bd. (Wilson)*, 11 A.3d 1071, 1075 (Pa. Cmwlth. 2011) (citations omitted).

[3] The original injury was a thoracic/lumbar strain. The WCJ amended this injury to include neck, back, right shoulder, right arm and right hand.

Claimant testified that she immediately felt pain in her right shoulder when the incident occurred. *See* R.R. at 23a. She further testified that when she filled in paperwork for her employer the next day she told them that her pain was in her "[n]eck, back and [her] right shoulder . . . ." R.R. at 29a. Claimant also testified that she saw her family doctor the next day and her complaints again were pain in her "back, neck and [her] shoulder." R.R. at 30a. Given that Claimant's symptoms began immediately after the incident, it is reasonably obvious that the injuries are causally related to the work incident, and that the NCP was materially incorrect when issued. Accordingly, Claimant's testimony is sufficient to support the WCJ's amendment to include those injuries.

Further, Dr. Tonnies' report specifically referred to Claimant's arm and hand because those injuries were not obviously causally related to the injury, as she did not report that pain immediately. As stated above, however, Claimant explained that she did not report it immediately because it was tingling that she believed would go away. In addition, Dr. Tonnies unequivocally stated that the carpel tunnel syndrome and ulnar nerve neuropathy, *i.e.*, Claimant's hand and arm injuries, were causally related to the work incident. Accordingly, Dr. Tonnies' report was sufficient, and there was substantial evidence to support the amendment of the injury.

Employer next argues that in denying its termination petition the WCJ capriciously disregarded evidence. Specifically, Employer contends that because it submitted the report of Daniel T. Altman, M.D. (Dr. Altman), which stated that Claimant was fully recovered from her thoracic and lumbar spine injuries, Employer's termination petition should have been granted. We disagree.

"A capricious disregard of evidence occurs only when the fact-finder deliberately ignores relevant, competent evidence." *Williams v. Workers' Comp. Appeal Bd. (USX Corp.-Fairless Works)*, 862 A.2d 137, 145 (Pa. Cmwlth. 2004).

Here, the WCJ did not ignore Dr. Altman's report. In fact, he discussed Dr. Altman's report at length in finding of fact number 8, and again in finding of fact number 14. Employer's Br., App. A at 6-8, 9. Although the WCJ found Dr. Altman's testimony reasonable, he found his report "less credible and persuasive than that of Dr. Tonnies' . . . ." Employer's Br., App. A at 9. "Such an express consideration and rejection, by definition, is not capricious disregard." *Williams*, 862 A.2d at 145. Accordingly, Employer's termination petition was properly denied.

Finally, Employer argues that the WCJ's decision was not well reasoned. Specifically, Employer contends that the WCJ did not provide any basis or reasoning for finding Claimant credible. We disagree.

> Section 422(a) of the Workers' Compensation Act[4] . . . provides, in pertinent 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 workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. . . .

Benginia v. Workers' Comp. Appeal Bd. (City of Scranton), 805 A.2d 1272, 1278 (Pa. Cmwlth. 2002). Regarding Claimant's credibility, concerning the termination petition, the WCJ specifically stated:

> [Dr. Tonnies'] clinical findings and conclusions comport very reasonably with [Claimant's] medical and surgical history as described by her during the course of her

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

> testimony, and her credibility has been enhanced considerably by virtue of her continuing employment. Her testimony as concerns the issues attendant to these various petitions has been deemed credible, and accepted, and is more persuasive than evidence to the contrary, inclusive of the opinions and conclusions of Dr. Daniel T. Altman as reflected in his report of June 4, 2009.

Employer's Br., App. A at 6-8, 9. The WCJ further stated:

> Additionally, the claimant's testimony as concerns her mechanism of injury on November 10, 2007, has been deemed credible, and accepted, as she indicated that she fell while attempting to move an inmate, injuring her back, neck and shoulder. The medical and surgical treatment she received as the result of these injuries comports very reasonably with their nature and extent, and again, as reviewed previously, her credibility has been enhanced markedly by virtue of her continuing employment. She described a release to return to employment from Dr. Tonnies during the course of the hearing of October 21, 2009, initially in a modified duty capacity, on a full time basis, and subsequent to October 22, 2009, in her regular duty capacity.

Employer's Br., App. A at 9. Finally, the WCJ noted:

> [Employer's] [c]ounsel also argues that the claimant's credibility is suspect as concerns timeframes wherein she [rode] a motorcycle or a horse, but once again, these considerations are not of such a nature that they have served to undermine her credibility as concerns the nature and extent of the injuries she sustained on November 10, 2007, as well as developments which followed.

Employer's Br., App. A at 10. Clearly, the WCJ has fully explained why he chose to accept Claimant's testimony as credible. Accordingly, the WCJ's opinion is sufficiently reasoned.

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

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JOHNNY J. BUTLER, Judge

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O R D E R

AND NOW, this 8th day of December, 2011, the April 11, 2011 order of the Workers' Compensation Appeal Board is affirmed.

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JOHNNY J. BUTLER, Judge