

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Angelica Negron, :
Petitioner :
 :
v. : No. 91 C.D. 2011
 :
Workers' Compensation : Submitted: June 10, 2011
Appeal Board (Family Dollar :
Store), :
Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: October 6, 2011

Claimant petitions for review of an order of the Workers' Compensation Appeal Board (Board), which affirmed the decision of a workers' compensation judge (WCJ) denying Claimant's Claim/Reinstatement Petition and granting Family Dollar Store's (Employer) Petition to Terminate/Review Compensation. We affirm.

On May 28, 2008, Claimant filed a Claim Petition alleging that on May 24, 2008 she sustained an injury to her right wrist in the course and scope of her employment as a cashier with Employer. Claimant alleged that she was seeking full disability from May 24, 2008 and ongoing as well as payment of

medical bills. Employer filed a timely answer denying the material allegations contained therein. On June 4, 2008, Employer issued a Medical Only Notice of Compensation Payable (NCP) indicating that Claimant had sustained a work-related injury in the nature of a “right wrist fracture” on May 24, 2008 and would receive benefits for medical treatment only.¹

On March 4, 2009, Employer filed a Petition to Terminate/Review Compensation benefits. Therein, Employer alleged that Claimant did not sustain a right wrist fracture as described on the Medical Only NCP. Employer further alleged that, as of January 21, 2009, Claimant had fully recovered from any injuries she sustained to her right wrist on May 24, 2008.

The petitions were consolidated for a hearing. The WCJ treated Claimant’s Claim Petition as a Reinstatement Petition. At the hearing, Claimant testified² and presented the deposition of Joseph P. Guagliardo, D.O. Employer presented the deposition of John Perry, M.D. Based upon the testimony and evidence presented, the WCJ made the following relevant findings of fact.

Claimant testified that she injured her right wrist on May 24, 2008 while assisting a customer place a toy in a bag. Claimant went to the emergency room for treatment and understood from the emergency room that her right wrist was fractured. She was given medication, provided work restrictions and allowed to resume her duties as a cashier, but not stocking shelves or lifting inventory. Claimant testified that she did not return to work or remember her last day worked

¹ A second Medical Only NCP was issued on June 11, 2008, indicating that the injury of May 24, 2008 was a left wrist fracture. There is no dispute that the injury was to Claimant’s right wrist, not her left. Reproduced Record (R.R.) at 6a, 12a, 25a.

² Claimant testified with the aid of an interpreter at the hearing.

because Employer could not accommodate her restrictions. Claimant testified she received treatment from a chiropractor three times per week for her injury. Claimant also treated with Dr. Stempler, who prescribed pain medication that she took daily. Claimant testified that she had a February 2008 injury to her right hand while working for a former employer, but had no symptoms when she began working for Employer in May 2008. Claimant testified she was receiving therapy from Dr. Guagliardo two-to-three times per week.

Dr. Guagliardo testified that he first examined Claimant on October 20, 2008, five months after her reported injury, received a history from her, and conducted tests. Dr. Guagliardo understood that Claimant had a wrist fracture and a prior injury to her wrist. Dr. Guagliardo diagnosed Claimant with deQuervain's tenosynovitis of the first dorsal compartment to the right wrist, which he believed was superimposed upon a previous injury, with a possible acute fracture caused by the work injury. Dr. Guagliardo believed her problem started in April and was the result of a repetitive trauma, not a single traumatic event. Dr. Guagliardo reviewed the May 25, 2008 x-ray report, which did not report a right wrist fracture. Dr. Guagliardo ordered an MRI to determine whether she suffered an acute fracture that was in a healing phase. Dr. Guagliardo testified Claimant could not return to work without restrictions, but admitted she may be capable of performing light-duty work.

Employer offered two emergency room records into evidence. The April 30, 2008 emergency room record revealed that Claimant sustained an injury to her right wrist. Claimant was given a splint and released to return to work without repetitive use or lifting with her right hand. The May 24, 2008 emergency

room record is consistent with Claimant's history. However, there is no diagnosis of a fracture.

Dr. Perry testified that he examined Claimant on January 21, 2009 and took a history from Claimant. Dr. Perry reviewed the emergency room records and x-rays, and opined that Claimant did not suffer a fracture on either occasion; her bones are intact. Dr. Perry specifically testified that Claimant did not suffer a right wrist fracture on May 24, 2008. Dr. Perry testified that his clinical tests were negative. He found no evidence of deQuervain's disease or carpal tunnel syndrome. He testified that Claimant's subjective complaints and symptoms were not objectively supported. Dr. Perry further testified that Claimant was immediately capable of returning to her pre-injury duties without restrictions.

The WCJ found Claimant's testimony competent, but not credible on any disputed point, explaining that her testimony was vague, with too many gaps and inconsistencies with Employer's records and other evidence. The WCJ specifically rejected her testimony concerning the severity of her mechanism of injury, her alleged pain afterward, and her claim of continuing pain and disability a year later. The WCJ did not find that Claimant stopped working as a result of the work injury. The WCJ found the testimony of Dr. Guagliardo to be equivocal as he misapprehended the mechanism of injury. The WCJ also found that Dr. Guagliardo's testimony contradicted Claimant's testimony. The WCJ further rejected Dr. Guagliardo's diagnosis of deQuervain's tenosynovitis, a thumb tendon condition related to overuse, and not a wrist injury. Instead, the WCJ credited the testimony of Dr. Perry, finding it to be fully credible, competent, logical, and based upon his examination and review of records and diagnostic films.

The WCJ ultimately found that the injury Claimant sustained was a non-disabling strain/sprain of the right wrist and not a wrist fracture. The WCJ further found that Claimant had fully recovered from any injury as of January 21, 2009. By decision dated March 23, 2010, the WCJ granted Employer's Petition to Terminate/Review Compensation and denied Claimant's Claim/Reinstatement Petition. Additionally, the WCJ determined that Employer was only responsible for payment of Claimant's May 24, 2008 emergency room treatment.

This appeal now follows.³ Claimant presents two issues for our review, which are summarized as follows:

1. Whether the Board erred in affirming the WCJ's failure to award payment of medical expenses beyond the May 24, 2008 emergency room treatment where Claimant satisfied her burden of proving that she sustained a work-related right wrist injury as evidenced by the Medical Only NCP and incurred medical expenses for treatment of this injury.
2. Whether the Board erred in affirming the WCJ's failure to award payment of disability benefits from the date of injury through the date of termination where Claimant satisfied her burden of proving that she sustained a work-related right wrist injury as evidenced by the Medical Only NCP and was restricted to work that did not entail lifting with her right hand, which was not made available to her.

³ This Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995).

Claimant contends that the WCJ erred in failing to award medical expenses through the date of his decision. We disagree.

To begin, 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. Northeastern Hospital v. Workmen's Compensation Appeal Board (Turiano), 578 A.2d 83 (Pa. Cmwlth. 1990). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Mrs. Smith's Frozen Foods Co. v. Workmen's Compensation Appeal Board (Clouser), 539 A.2d 11 (Pa. Cmwlth. 1988). The WCJ is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. General Electric Co. v. Workmen's Compensation Appeal Board (Valsamaki), 593 A.2d 921 (Pa. Cmwlth.), petition for allowance of appeal denied, 529 Pa. 626, 600 A.2d 541 (1991).

It is not the function of this Court to reweigh evidence and to substitute its judgment for that of the WCJ. Vitelli v. Workmen's Compensation Appeal Board (St. Johnsburgy Trucking Co.), 630 A.2d 923 (Pa. Cmwlth. 1993), petition for allowance of appeal denied, 537 Pa. 627, 641 A.2d 591 (1994). Rather, the function of the Board and this Court is to determine, upon consideration of the evidence as a whole, whether the WCJ's findings have the requisite measure of support in the record. Bethenergy Mines v. Workmen's Compensation Appeal Board (Skirpan), 531 Pa. 287, 612 A.2d 434 (1992). Testimony and evidence found not credible by a WCJ are irrelevant for purposes of an appeal. Hoffmaster v. Workers' Compensation Appeal Board (Senco Products), 721 A.2d 1152 (Pa. Cmwlth. 1998).

It is axiomatic that an employer is only liable for payment of benefits arising out of work-related injuries. Section 301(c)(1) of the Workers' Compensation Act⁴ (Act); McDonnell Douglas Truck Services, Inc. v. Workmen's Compensation Appeal Board (Feldman), 655 A.2d 655 (Pa. Cmwlth. 1995). This is true of both compensation benefits and the reimbursement of medical expenses. McDonnell. Obviously, if an injury is not work-related, the employer is not responsible for paying for the medical costs related to that injury, even if the medical treatment is necessary to cure that other injury. Id.

Here, although Employer initially accepted Claimant's injury described as a "right wrist fracture," Employer filed a Review Petition challenging this description. The WCJ found that Employer had satisfied its burden of proving it inadvertently misidentified Claimant's work injury and therefore amended the description of the injury to reflect a right wrist sprain/strain. As a result, Employer was only liable for medical expenses in connection with the treatment of the right wrist sprain/strain. Unfortunately, Claimant was unable to establish a causal connection between the treatment received after the May 24, 2008 emergency room visit and the work-related injury. According to Claimant's own medical witness, Claimant's treatment was for deQuervain's tenosynovitis and a possible acute fracture. The WCJ rejected these diagnoses and found that this treatment was not related to the work injury. The WCJ's findings are amply supported by substantial evidence. Based upon our review, we conclude that the WCJ did not err in determining that Employer was only responsible for the May 24, 2008 emergency room treatment.

⁴ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §411(1).

Claimant further contends that the WCJ erred in failing to award disability benefits from the date of injury through the date of his decision. We disagree.

By filing a “medical only” NCP, an employer can accept liability for the injury, not the loss of earning power. Armstrong v. Workers' Compensation Appeal Board (Haines & Kibblehouse, Inc.), 931 A.2d 827 (Pa. Cmwlth. 2007). A “medical only” NCP serves to put a claimant on notice of the parameters of the employer's acceptance of the work injury. See id.

Here, by issuing a “medical only” NCP, Employer acknowledged that Claimant was entitled to medical expense payments as a result of the work incident, but denied any associated disability. Since Employer never accepted liability for loss of earning power associated with the injury, Claimant carried the burden of proving that the work-related injury caused a loss of earning power. See Delaware County v. Workers' Compensation Appeal Board (Baxter Coles), 808 A.2d 965 (Pa. Cmwlth. 2002) (claimant must prove the work injury resulted in a disability, that is, wage loss, which continues for the period for which benefits are sought), petition for allowance of appeal denied, 573 Pa. 699, 825 A.2d 1262 (2003). Although Claimant and Dr. Guagliardo testified regarding Claimant's disability, the WCJ flatly rejected their testimony. Therefore, the WCJ properly concluded that Claimant failed to satisfy her burden of establishing a disability.

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

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ORDER

AND NOW, this 6th day of October, 2011, the order of the Workers' Compensation Appeal Board, at A10-0530, dated December 23, 2010, is AFFIRMED.

JAMES R. KELLEY, Senior Judge