FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2104

FRANCOIS GUERLANDE,

Appellant,

v.

DELRAY BEACH FAIRFIELD INN AND SUITES/TRAVELERS INSURANCE,

Appellees.

On appeal from the Office of the Judges of Compensation Claims. Gregory J. Johnsen, Judge.

Date of Accident: September 11, 2018.

August 19, 2020

PER CURIAM.

Francois Guerlande appeals an order of the Judge of Compensation Claims (JCC) to the extent it denies certain workers' compensation benefits for her compensable September 2018 injury. We affirm in all respects but write to briefly explain one issue.

On appeal, Guerlande claims that the JCC erred by not granting benefits for a 12-day period, six weeks post-accident, during which her work restrictions were briefly lifted. She was

seen at urgent care the day after the accident and was placed on work restrictions; weeks later she was evaluated, rejected a recommended injection, but no work restrictions were imposed (she was free to report back if conditions worsened or she wanted the injection); after 12 days she saw the physician again, elected to get the injection, and based on his evaluation, she was again placed on work restrictions. As such, she received temporary disability benefits for periods immediately before and after this 12-day period.

The JCC reviewed the evidence presented and concluded—with detailed findings based only on such evidence—that Guerlande failed to satisfy her burden to show that work restrictions for those 12 days either had, in fact, been imposed or, if not, would have been medically justified. *See, e.g.*, *Olvera v. Hernandez Constr. of SW Florida, Inc.*, 283 So. 3d 447, 450 (Fla. 1st DCA 2019) (emphasizing that burden of proof is on claimant). Specifically, the authorized treating physician released her to full duty during the 12-day period during which Guerlande considered whether to receive a recommended cortisone injection. The JCC concluded, and entered written findings, that: (a) the authorized treating physician had opined that full-duty work might cause discomfort but would cause "no harm," and (b) a second authorized treating physician later opined it "appropriate" to have lifted work restrictions under the circumstances during the disputed period. The JCC's findings are fully supported by the record.

Guerlande's argument in support of reversal claims that the "uncontroverted facts" support her view, but that is not accurate because the facts were disputed and resolved against her. Both her treating physician and the reviewing physician deemed the treatment plan for the 12-day period to be reasonable and appropriate, as the JCC stated in the findings of fact and conclusions of law. As to work restrictions, the JCC found that "there is insufficient evidence of [Guerlande] having any work restrictions or inability to work for this period of time" and concluded that Guerlande "has not demonstrated, with medical evidence, that she had work restrictions for the [12-day] time period" as well. The facts and legal conclusions dispel Guerlande's claim as to the 12-day period in question. Guerlande told both her treating physician and the JCC that pain precluded her from

working during those 12 days, but they were each unconvinced, which was their prerogative. *See* § 440.09(1), Fla. Stat. (2018) ("[D]isability must be established to a reasonable degree of medical certainty, based on objective relevant medical findings . . . ."); *Fitzgerald v. Osceola Cty. Sch. Bd.*, 974 So. 2d 1161, 1164 (Fla. 1st DCA 2008) (holding that JCC may reject in whole or part even uncontroverted testimony he disbelieves).

Finally, the one case on which Guerlande relies, *Alan McLeod Funeral Home v. Cooksey*, 527 So. 2d 253 (Fla. 1st DCA 1988), is distinguishable in that the 1984 versions of the statutes applied in that case did not require objective medical findings, which have been required due to legislative changes made effective January 1, 1994. *See* Ch. 93-415, ss. 5, 112, Laws of Fla. (amending section 440.09(1) to state: "The injury, its occupational cause, and any resulting manifestations or disability shall be established to a reasonable degree of medical certainty and by objective medical findings."); *see also* Ch. 03-412, s. 6, Laws of Fla. (substituting the currently applicable phrase, "objective relevant medical findings," for "objective medical findings"); *see generally Family Dollar Stores v. Henderson*, 718 So. 2d 931, 931 (Fla. 1st DCA 1998) (noting that 1994 amendments to section 440.09(1) created a new standard of proof for workers' compensation claimants); *Pyram v. Marriott Int'l*, 687 So. 2d 351, 351 (Fla. 1st DCA 1997) ("By its use of the phrase 'shall be established,' the Legislature has given a quite clear signal that the statute devolves upon workers' compensation claimants a new standard of proof, rather than providing employers with an affirmative defense."). Here, Guerlande failed to meet the applicable burden of proof. Instead, the JCC's findings and order, which denied benefits for the 12-day period at issue, are supported by competent substantial evidence including the medical opinions of two physicians, thereby necessitating affirmance.

AFFIRMED.

ROWE and MAKAR, JJ., concur; TANENBAUM, J., concurs in result.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Divya Khullar of Khullar, P.A., Tamarac, for Appellant.

Amanda Forti and Steven H. Preston of Hicks, Porter, Ebenfeld & Stein, P.A., Miami, and David C. Halpern of Eraclides Gelman Hall Indek, West Palm Beach, for Appellees.