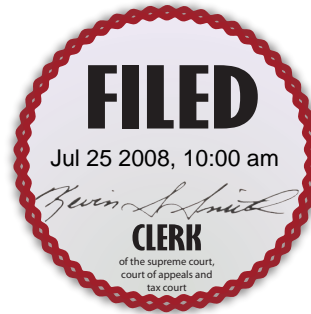


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DAWN DAVIS,)
)
Appellant-Plaintiff,)
)
vs.)
)
HORSESHOE CASINO,)
)
Appellee-Defendant.)

No. 93A02-0802-EX-155

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Application No. C-167224

July 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Dawn Davis appeals the decision of the Worker’s Compensation Board that she is entitled to no further benefits and has sustained no permanent partial impairment in connection with her work-related injury. Because the Board’s findings were sufficiently specific and are supported by the evidence, we affirm.

FACTS AND PROCEDURAL HISTORY

Davis worked as a banker for Horseshoe Casino. One of her duties was to add up the money brought to the vault by other employees. She used a jet sorter to count the coins. After the coins were counted, they were bagged and stacked in the middle of the floor. On August 19, 2002, Davis’ foot got wedged between two bags of coins, and she nearly fell. Davis shook her foot loose, and when she put her foot down, she felt a sharp pain that “started in the hip, from the back of the knee straight up.” (Tr. at 6.)

Davis tried to treat the injury with BenGay, Advil, and Tylenol. On August 24, 2002, the pain was persisting, so Davis filed an accident report, and she was referred to St. Margaret’s Hospital. Davis complained of “left posterior mid-thigh pain.” (Appellant’s App. at 12.)¹ Dr. Kemp initially identified the injury as a left hamstring strain and placed Davis on work restrictions. On September 15, 2002, Davis returned to St. Margaret’s, complaining of continued pain in her thigh. She was diagnosed with a “left hip strain/hamstring strain” and degenerative joint disease in the left hip. (*Id.*)

¹ These facts are taken primarily from Chairman Linda P. Hamilton’s order, which incorporated several stipulations entered by the parties. Horseshoe contends certain handwritten changes were made, and has submitted a different copy of the stipulations in its appendix. (*See* Appellee’s App. at 4-10.) The changes do not appear to be material to the issues on appeal, and we choose to rely on the stipulations as incorporated in Chairman Hamilton’s order.

On October 10, 2002, Davis' family physician, Dr. Anekwe, ordered an MRI. He concluded the MRI showed osteoarthritis in the left hip, probably imposed on Legg-Calvé-Perthes disease or hip dysplasia.²

On October 30, 2002, Dr. Kemp referred Davis to Dr. Diveris, an orthopedic surgeon. Dr. Diveris believed Davis had hip dysplasia and osteoarthritis in her left hip and a proximal left hamstring strain. Dr. Diveris treated the strain with physical therapy, drugs, and restricted work duty. On February 7, 2003, Dr. Diveris released Davis with a thirty-pound maximum lifting restriction, which satisfied her job requirements. Dr. Diveris said she did not have an "objective loss of function attributable to her work injury that would qualify her for permanent partial impairment." (*Id.*)

However, on February 4, 2003, Davis fell at home, and Dr. Anekwe took her off work.³ Davis has not worked since then. Dr. Anekwe referred Davis to Dr. Andrews, who determined she had arthritis caused by hip dysplasia, but he could not determine whether she ever suffered a hamstring injury. On April 1, 2003, she was referred to Dr. Koscielniak, who diagnosed degenerative joint disease and recommended a total hip replacement. Davis had a hip replacement on October 28, 2004, performed by Dr. Ham; however, she continues to experience pain in her hip.

Davis filed a worker's compensation claim on September 26, 2003. A hearing was held before Chairman Linda P. Hamilton on August 30, 2007. Chairman Hamilton

² Legg-Calvé-Perthes disease is a childhood disease where there is a loss of blood supply to the ball of the hip joint. Hip dysplasia is an abnormal formation of the hip joint in which the ball is unstable in the socket.

³ It appears Dr. Diveris released Davis on the basis of a functional capacity exam that was completed on January 23, 2003, and therefore did not take into account her fall on February 4.

issued an order in which she found Davis had suffered a work-related injury, the injury was in the nature of a strain and had reached maximum medical improvement in February 2003, and Davis was not entitled to further benefits. Davis appealed to the Worker's Compensation Board, which adopted Chairman Hamilton's order.

DISCUSSION AND DECISION

1. Specificity of Findings

Davis argues the Board's order is not sufficiently specific to permit meaningful appellate review. The Board's findings "must be specific enough to provide the reader with an understanding of the Board's reasons, based on the evidence, for its finding of ultimate fact." *Outlaw v. Erbrich Products Co., Inc.*, 742 N.E.2d 526, 531 (Ind. Ct. App. 2001). Davis focuses on the portion of the order titled "Findings of Fact," which contains five conclusory statements. (*See* Appellant's App. at 15.) However, her argument ignores the twenty-seven stipulations that were incorporated into the order. These stipulations describe the August 19, 2002 incident and summarize the medical evidence.

Davis relies on *Van-Scyoc v. Mid-State Paving*, 787 N.E.2d 499 (Ind. Ct. App. 2003). *Van-Scyoc* had a pre-existing condition when he was injured at work. The Board found *Van-Scyoc* was not disabled, but was permanently partially impaired as a result of his work injury. We remanded for more specific findings because the Board did not address evidence that *Van-Scyoc's* work injury aggravated his pre-existing condition.

Davis' theory of the case is that she had a pre-existing hip condition that "lay dormant and asymptomatic until the work-related triggering event." (Appellant's Br. at 15.) Unlike *Van-Scyoc*, the Board in Davis' case specifically found her work-related

injury “was in the nature of a strain” and she did not meet her burden of proving her need for a hip replacement arose from that injury. (Appellant’s App. at 15.) Therefore, the Board considered whether the strain aggravated her hip condition. As explained below, these conclusions are supported by the stipulated findings and the other evidence before the Board. The order, as a whole, enables us to understand the Board’s reasoning and the primary evidence on which it relied. Therefore, remand for more specific findings is unnecessary.

2. Review of Board’s Decision

We may not disturb the Board’s findings of fact “unless the evidence is undisputed and leads undeniably to a contrary conclusion.” *Ind. State Police v. Wiessing*, 836 N.E.2d 1038, 1044 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 1001 (Ind. 2006). We do not assess the credibility of witnesses or reweigh the evidence. *Id.* We consider only the evidence favorable to the decision and any favorable inferences therefrom. *Id.* “Our review involves two steps. First, we review the record to determine if there is any competent evidence of probative value to support the findings. Then, we review the findings to determine whether they support the award.” *Id.* (citations omitted).

Davis’ theory that her incident at work aggravated a dormant hip condition relies primarily on Dr. Anekwe’s opinion. On December 18, 2003, Dr. Anekwe wrote, “It is my professional opinion that the alleged fall on August 19, 2002 either caused or aggravated a stable hip condition or caused the avascular necrosis of an already mild unstable hip.” (Appellant’s App. at 65.) On May 10, 2005, Dr. Anekwe expanded on his opinion, stating, “The patient was in no distress prior to the accident. Immediately

following the accident the patient developed severe distress, that resulted in her having to rely on an assistive device for ambulation.” (*Id.* at 68.) Again on April 6, 2007, Dr. Anekwe stressed that if Davis’ condition were congenital, “she should have manifested symptoms prior to the incident of August 19, 2002.” (*Id.* at 69.)

The parties made the following stipulations:

22. On August 14, 2003, Dr. Anekwe indicated that the onset of the plaintiff’s symptoms was February 7, 2003, although at other points he suggests that her problems were attributable to the work injury of August 19, 2002.

23. On December 18, 2003, Dr. Anekwe provided a report which indicated that in his professional opinion the plaintiff’s hip difficulties were either caused or aggravated by “the alleged fall on August 19, 2002.”

(*Id.* at 14.) Thus, the stipulations acknowledge there were some inconsistencies in Dr. Anekwe’s opinions. Dr. Anekwe characterized Davis’ accident as a fall; however, Davis testified she did not fall. Horseshoe’s expert, Dr. Hupfer, explained why that fact was important:

I don’t think that pulling your leg out from a couple of token bags – I don’t think that’s more trauma to your hip than pulling a boot off or taking a stocking off that’s a little tight, one of those kind of things. I think if she had fallen on this or got hit, knocked over or something like that, that may make a difference. But pulling your foot out of there, I don’t think is a significant enough trauma to cause all these problems.

(Appellee’s App. at 92.) Dr. Hupfer further explained that Davis’ hip condition is one that develops slowly over time. The abnormal formation of her hip caused the cartilage to gradually wear away, and once the cartilage is gone, the onset of pain is sudden and severe.

Davis also cites Dr. Ham's records from October 8, 2004. In the section titled "History of Present Illness," Dr. Ham noted Davis "has had left hip arthritis for at least 2 years, possibly from an injury at work." (Appellant's App. at 83.) Under "Diagnosis," Dr. Ham wrote, "Hip pain appears to be dating back to the injury that she sustained in 2002 at work." (*Id.* at 84.) Dr. Ham stated Davis had a "post traumatic type of hip arthritis," but he was also under the impression Davis had "fallen on her hip." (*Id.* at 87.) Dr. Ham's records do not appear to state an opinion whether the work injury caused or aggravated Davis' hip pain; he simply notes that they occurred around the same time and are "possibly" related. (*Id.* at 83.) When the records are read as a whole, it appears Dr. Ham was examining Davis to determine the propriety of hip replacement surgery, not to determine whether her work injury caused or aggravated her hip condition. Dr. Andrews' and Dr. Koscielniak's records do not offer an opinion whether the incident at work caused or aggravated Davis' hip injury.

In sum, only Dr. Anekwe offered an opinion that Davis' accident at work caused or aggravated her hip condition. The evidence and the stipulations incorporated into the Board's order provide a basis for rejecting that opinion. Furthermore, the evidence supports the Board's conclusion that Davis simply suffered a hamstring strain that was unrelated to her hip condition. Therefore, we affirm the Board's decision.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.