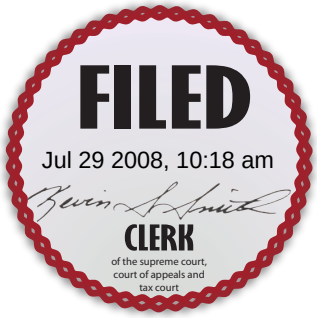

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IN THE
COURT OF APPEALS OF INDIANA

SAMUEL L. PAIZ,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0710-EX-908
	)	
TRANS-CORR, INC. and	)	
GREAT WESTERN CASUALTY COMPANY,	)	
	)	
Appellees.	)	

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Cause No. C-171835

July 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Samuel Paiz appeals, pro se, the decision of the Worker's Compensation Board ("the Board") that denied his application for additional medical treatment for the injury he suffered November 14, 2003, in an accident in the course of his employment.

We affirm.

ISSUE[1]

Whether the Board erred when it denied Paiz's claim for additional medical treatment.

FACTS

On November 14, 2003, Paiz was working for Trans-Corr, Inc. as an owner-operator truck driver. While attempting to disengage a lever beneath his trailer, Paiz injured his right arm. Paiz immediately reported the injury to Trans-Corr, which completed an employee injury report.

Subsequently, Paiz "realized that [he] wasn't going to get any better on [his] own" and went to his personal physician, Dr. McGuire. (Tr. 10). Dr. McGuire referred Paiz to Dr. Devlin, and Dr. Devlin referred him to the Indiana Hand Center, where he was treated by Dr. Kaplan from September 13, 2004 until early 2005.[2]

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[1] Paiz failed to provide a "Statement of Issues." *See* Indiana Appellate Rule 46(A) (appellant's brief shall contain Statement of Issues). The bold headings in his brief are titled "Argument against the Judges [sic] Decision," and "Fraud and Concealment by Violation of Contractual and Fudiciary [sic] Obligations." Inasmuch as the order appealed is that of the Board denying his claim for additional medical treatment, we consider whether the Board erred in so ordering.

[2] Paiz was also examined subsequently by Drs. Vicar and Bauman.

On October 25, 2004, Paiz submitted an application for adjustment of claim. A Single Member of the Board held a hearing on Paiz's claim on December 7, 2006.

At the hearing, Paiz and Trans-Corr submitted a joint stipulation as to the "single issue presented for hearing," along with the initial injury report, and the medical reports relevant for the Board's consideration in reaching a determination. (Trans-Corr App. 1). The stipulated single issue was whether Paiz was "in need of additional medical treatment with respect to problems he is experiencing with both of his wrists." *Id.* The injury report reflected that Paiz's "type of injury/exposure" on November 14, 2003, was "right arm & elbow." (*Id.* at 4). The medical reports were those of Dr. Kaplan (dated September 13, 2004, December 10, 2004, December 28, 2004, January 17, 2005, February 16, 2005, and March 12, 2005); independent medical examiner Dr. Vicar (dated January 12, 2006, and April 13, 2006); Dr. Devlin (dated December 5, 2005); and Dr. Bauman (dated August 22, 2006).

Paiz and his wife testified that after the November 14, 2003 incident, both of his arms evidenced severe bruising. Paiz testified that he had reported to Dr. Kaplan that he suffered pain in both his wrists. Paiz also testified that he still suffers bilateral wrist pain, and that Dr. Bauman had recommended bilateral carpal tunnel release surgery. Paiz further testified that he had also complained to Dr. Bauman of lower back pain.

The Single Member issued findings of fact and conclusions of law on January 10, 2007. The order found that "the medical opinions indicate that the event of November 14, 2003, was an injury to the right biceps tendon, possibly a partial rupture, which was treated without surgery, has healed and causes no present complaints." (Paiz App., Jan.

10, 2007 order at 1[3]). Further findings noted Dr. Kaplan's opinion that Paiz had "no permanent partial impairment," and the opinions of both Dr. Bauman and Dr. Devlin that they did "not prescribe" carpal tunnel surgery "for an injury resulting from or caused by the November 13, 2003, event." *Id.* at 3. The Single Member found the "weight of the medical opinion" to establish that (1) any carpal tunnel problems that Paiz had "were not caused by or resulting from the injury by accident on November 14, 2003"; (2) Paiz had "fully recovered from any biceps tendon injury" of that date and had suffered "no other injury" on that date; and "[n]o additional statutory medical care or treatment [wa]s required as a result of the November 13, 2003 injury." *Id.* at 3, 4. The Single Member then concluded that Paiz was "not entitled to any additional medical treatment for any injury by accident on November 13, 2003." *Id.* at 4.

Paiz appealed. The full Board heard Paiz's appeal on August 28, 2007. Paiz appeared pro se. On September 26, 2007, the Board "adopt[ed] the Single Hearing Member's decision" and affirmed. (Paiz App., Sept. 27, 2007 order at 1).

DECISION

The claimant for Worker's Compensation benefits bears the burden of proving the right to compensation. *Bertoch v. NBD Corp.*, 813 N.E.2d 1159, 1161 (Ind. 2004). When we review a decision of the Worker's Compensation Board on appeal, we do not

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[3] The pages in the Appendix submitted by Paiz are not numbered successively. It appears that each item in the Appendix has numbers for the pages in that item only.

Further, the appellate rules do not permit material to be included in a party's Appendix that was not presented to the tribunal which issued the final order that is appealed. *See In re Contempt of Wabash Valley Hosp., Inc.*, 827 N.E.2d 50, 57 n.6 (Ind. Ct. App. 2005); *see also Hoosier Outdoor Advertising Corp. v. RBL Management, Inc.*, 844 N.E.2d 157, 161 (Ind. Ct. App. 2006), *trans. denied*.

reweigh the evidence or judge the credibility of witnesses. *Id.* at 1160. Rather, we "determine whether substantial evidence, together with any reasonable inferences that flow from such evidence, support the Board's findings and conclusions." *Id.*

Paiz does not argue that there was not substantial evidence presented to the Board that, "together with any reasonable inferences that flow from such evidence, support the Board's findings and conclusions." *Id.* Nevertheless, we will consider whether the standard has been met.

Indiana law requires employers to provide employees "compensation for personal injury or death by accident arising out of and in the course of the employment." Indiana Code § 22-3-2-2(a). "An injury 'arises out of' employment when a causal nexus exists between the injury or death and the duties or services performed by the injured employee." *Bertoch*, 813 N.E.2d at 1161. The evidence before the Board indicated that the injury sustained by Paiz on November 14, 2003, was to his right arm; that the injury was diagnosed as one to the right biceps tendon; that the injury was treated and had healed; and that there was no need for further medical treatment for the injury.

Paiz argued before the Board that he had also incurred injury to both wrists on November 14, 2003, and that additional treatment for his wrists was needed. However, the stipulated medical reports reflected the following:

> 9. While Drs. Bauman and Devlin indicate that they might authorize carpal tunnel surgery, they do not prescribe it for an injury resulting from or caused by the November 14, 2003, event. They also suggest that such surgery is considered because of subjective complaints and will not resolve Claimant's problems and may or may not be a benefit to him. There is suggestion of cervical problems and indeed some findings of arthritis and bursitis.

> 10. [Named tests conducted by Dr. Kaplan and Dr. Vicar] indicate symptom magnification, inconsistencies between complaints and fact, subjective symptoms not demonstrated by objective signs.
>
> 11. Dr. Kaplan states that there is no permanent impairment and [Paiz]'s actual abilities might be higher than demonstrated.
>
> 12. Dr. Vicar said that there is some arthritis in the cervical spine, moderate carpal tunnel syndrome but no recommended treatment or surgery for the carpal tunnel findings.

(Paiz App., Jan. 10, 2007 order at 3). There is no argument that the medical reports fail to support these facts, and these facts support the subsequent finding that any carpal tunnel problems Paiz might have "were not caused by or resulting from the injury by accident on November 14, 2003." *Id.*

Where the claimant has failed to establish the causal connection between the work-related injury and the medical treatment being sought, the Board "properly reject[s]" that claim because the claimant has "failed to sustain his burden of proof on every material element of his claim." *Talas v. Correct Piping Co., Inc.*, 435 N.E.2d 22, 31 (Ind. 1982). Here, Paiz failed to establish the requisite causal connection between his complaints of wrist problems and the injury he sustained on November 14, 2003. Therefore, the Board's order is not erroneous.

Affirmed.

NAJAM, J., and BROWN, J., concur.