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JR

**STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT**

NUMBER 2022 CA 0442

JOSUE RABADAN

VERSUS

TURNER INDUSTRIES

WJW

Judgment Rendered: NOV 04 2022

**Appealed from the
Office of Worker's Compensation
District 5
State of Louisiana
Docket Number 18-04854**

The Honorable Pamela Moses-Laramore, Judge Presiding

**Brian D. Calvit
Baton Rouge, LA**

**Claimant/Appellee,
Josue Rabadan**

**Patrick H. Hunt
Phillip E. Foco
Baton Rouge, LA**

**Defendant/Appellant,
Turner Industries**

BEFORE: WHIPPLE, C.J., GUIDRY, AND WOLFE, JJ.

WHIPPLE, C.J.

This matter is before us on appeal by defendant-employer, Turner Industries (“Turner”), from a judgment of the Worker’s Compensation Judge (WCJ) in favor of claimant-employee, Josue Rabadan. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Josue Rabadan is a native of the Philippines and permanent resident of the United States. On May 7, 2018, Mr. Rabadan, a welder, was employed by Turner Industries and working at the Occidental Petroleum plant in Geismar. According to Mr. Rabadan, on that day, he was sweeping in the fabrication shop when he began to feel hot and dizzy and “was blinded.” He tried to hold onto a table, but fell to the ground hitting his right shoulder. He crawled on the floor towards a chair and pulled himself up on it. Co-workers found him and brought him to the safety manager, and then the site nurse, for evaluation. Mr. Rabadan was ultimately transported to the emergency room at St. Elizabeth’s Hospital in Gonzales by ambulance, where he presented with elevated blood pressure of 208 over 102, elevated blood sugar, dizziness, headache, chest pain, nausea, vomiting, back pain, neck pain, and impaired vision. Upon evaluation, he was found to be suffering from malignant hypertension and was admitted to the hospital.

Following his release from the hospital, on May 23, 2018, Mr. Rabadan made complaints of his right shoulder pain to his primary care physician, Dr. Rodolfo Manalac, and was ultimately referred to Dr. David Rabalais, an orthopedic physician. After examination and testing, Dr. Rabalais determined that Mr. Rabadan had a torn rotator cuff, which was more likely than not caused by his fall and recommended an arthroscopic evaluation to repair it. Turner disputed that the claim for treatment to his shoulder resulted from a compensable work accident, on the basis of Mr. Rabadan’s failure to mention the fall to anyone on May 7, 2018, the date of the incident, the fact that a Turner employee affirmatively reported that

Mr. Rabadan did not fall, and because Mr. Rabadan did not report the fall until May 23, 2018, over two weeks after the accident.

The matter proceeded to trial on June 21, 2021. Thereafter, on June 25, 2021, the WCJ issued a ruling and oral reasons finding that Mr. Rabadan sustained an accident on May 7, 2018, in the course and scope of his employment, resulting in injury to his shoulder and head.

On July 8, 2021, the WCJ signed a judgment in favor of Mr. Rabadan and against Turner, awarding Mr. Rabadan: temporary total benefits of \$653.00 per week from June 22, 2018 to date; continued temporary total benefits of \$653.00 per week during the pendency of his work-related disability; judicial interest at the rate of 5% on all past due indemnity owed; payment and/or reimbursement of all work-related medical expenses incurred since the date of accident; and continued work-related medical expenses. The judgment also provided that all claims for penalties and attorney fees were denied and assessed costs against Turner.

Turner now appeals, contending that the WCJ erred in determining that Mr. Rabadan was injured in a workplace accident on May 7, 2018.

DISCUSSION

The standard of review in a workers' compensation case is the manifest error-clearly wrong standard. See Alexander v. Pellerin Marble & Granite, 93-1698 (La. 1/14/94), 630 So. 2d 706, 710. Determinations by the workers' compensation judge as to whether the worker's testimony is credible and whether the worker has discharged his or her burden of proof are factual determinations not to be disturbed on review unless clearly wrong or absent a showing of manifest error. Winfield v. Jiffy Lube, 2001-0341 (La. App. 1st Cir. 3/28/01), 813 So. 2d 428, 431. If the findings of the trier of fact are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the

evidence differently. Sistler v. Liberty Mutual Insurance Co., 558 So. 2d 1106, 1112 (La. 1990).

In order for a claimant to be entitled to recover workers' compensation benefits, he must prove, by a preponderance of the evidence, that a work-related event occurred and that an injury was sustained. Authement v. Consolidated Water Works District No. 1, 2005-0877 (La. App. 1st Cir. 5/5/06), 935 So. 2d 158, 162. A claimant's testimony alone may be sufficient to discharge this burden of proof, provided two elements are satisfied: (1) no other evidence discredits or casts serious doubt on the worker's version of the incident; and (2) the worker's testimony is corroborated by the circumstances following the alleged incident. Bruno v. Harbert International Inc., 593 So. 2d 357, 361 (La. 1992).

Turner contends on appeal that Mr. Rabadan failed to meet his burden of proving that a work-related accident occurred under Bruno. Mr. Rabadan disputes Turner's contentions, maintaining that his accident was witnessed and contending that the Bruno factors do not apply. Nonetheless, on the record before us, even if we were to assume that the Bruno factors applied, based on the evidence set forth herein, we find the elements are satisfied in this case.

Mr. Rabadan testified that he was sweeping in the fabrication shop when he felt dizzy and was blinded, and tried to hold onto the table, but fell to the floor.¹ He testified that he crawled to a chair and pulled himself onto it. He did not remember being brought to the safety office and speaking to Natasha Lejeune. He also did not remember speaking to the site nurse and being transported to the hospital by ambulance. The first thing Mr. Rabadan remembered after the fall was seeing Walter Dewitt, the site superintendent, and his safety manager, Natasha Lejeune, in the emergency room at the hospital and them telling him where he was and that he was safe. While in the hospital, he did not remember speaking to any

¹At trial, Mr. Rabadan's testimony was translated by an interpreter.

of the doctors or nurses. He testified that while in the hospital, he was not focused on his shoulder, just his head, and that he thought the shoulder pain was connected to the head pain. He conceded that when he saw his primary care physician, Dr. Rodolfo Manalac, after the incident on May 11 and 16, 2018, he did not tell him that his right shoulder was hurting because he wanted to return to work. Mr. Rabadan testified that he did not tell Dr. Manalac that he had hurt his shoulder until May 23, 2018. He testified that he felt no pain in his right shoulder before May of 2018.

Mr. Rabadan subsequently provided a recorded statement, which was translated via an interpreter, wherein he recalled the events as follows:

[W]hile I was working I fell and then I passed out. While I was [on] the ground of floor I tried to crawl to the chair, however, I could not see anymore. I was having severe headache like my head is going to explode. ... Headache was very, very bad that I was screaming. And also I was screaming for help for my co-workers to come and call the supervisor and take me to the hospital. And I tried to explain to them that I fell and that my head was aching. ... And my shoulder, I was also having shoulder pain, neck pain, and I couldn't see anymore.

Mr. Rabadan's wife, Nida Cochran Rabadan, was born in the Philippines and is an American citizen. She testified that her native language is Tagalog and Mr. Rabadan's native language is Bisasaya. She testified that he understands a lot of English and can read English, but does not speak it. Mrs. Rabadan testified that prior to the instant incident in May of 2018, in the forty years that Mr. Rabadan had been employed as a welder, he had no prior work injuries. She stated that in the hospital on the day after the incident, when Mr. Rabadan was able to speak again, he told her that he fell. Mrs. Rabadan stated that Mr. Rabadan told her not to tell anyone he had fallen because it would hold him up from going to work and he was anxious to return to work.

Safety manager Lejeune testified that Mr. Rabadan was brought to her office by employees who reported that Mr. Rabadan was in the shop and they saw him

“kind of stumble” and grab the fabrication table. Ms. Lejeune stated that she did not know who saw Mr. Rabadan stumble. She testified that she asked Mr. Rabadan if he had fallen and he indicated he had not. She stated that “he said he got lightheaded, he grabbed himself at the fab table, that’s what made people look because he stopped and just held onto the table.” She stated that given his elevated blood pressure, Mr. Rabadan was experiencing a hypertensive emergency and was not a well person from a medical standpoint. Ms. Lejeune testified that “you could tell he was nervous, you could tell he didn’t know what was going on and he typically did not feel well.” Given his condition, they called an ambulance and had him transported to the hospital as per company protocol.

Turner employee Kendal Hays found Mr. Rabadan sitting in a chair in front of a fan. A welder on Mr. Rabadan’s crew was with him. He testified that Mr. Rabadan “just didn’t look right” so he sent for help. Mr. Hays testified that he did not know what transpired before he entered the fabrication shop and found Mr. Rabadan. Nathan Scivique was the project supervisor of Mr. Rabadan’s crew. At around 3:00 p.m. on the date of the incident, Mr. Hays came into his office and reported that Mr. Rabadan was feeling hot and dizzy and his blood pressure was high. They assisted him onto a golf cart and brought him to safety, then he was transported by truck for a medical evaluation. Mr. Scivique did not know if Mr. Rabadan fell prior to his arrival because he was not in the vicinity. Walter Dewitt was the site superintendent at the Occidental plant in Geismar on the date of the incident. He received a call that Mr. Rabadan was disoriented in the shop and that Randy Greer, a safety technician, was with him. Mr. Dewitt testified that Mr. Rabadan looked disoriented, was moving his head from side to side saying that he had a bad headache and complaining of chest pains. After he was evaluated by safety manager Lejeune and site nurse, Sandy Poche, they made the joint decision to bring him to the hospital due to the rate and elevation of his blood pressure. Mr.

Dewitt followed the ambulance to the hospital and stayed with Mr. Rabadan in the emergency room. Notably, none of the Turner employees who testified could affirmatively state that Mr. Rabadan did not fall.

After Mr. Rabadan was admitted, hospitalist Dr. Srivalli Donthineni saw him on May 8, 2018, at St. Elizabeth's Hospital. Dr. Donthineni reviewed the hospital records and noted that Mr. Rabadan reported pain to his shoulders and upper chest to nurse practitioner Kelly Duke. While Mr. Rabadan did not mention right shoulder pain to Dr. Donthineni and the records did not indicate that Mr. Rabadan reported shoulder pain to the cardiologist who saw him after he saw the nurse practitioner, Dr. Donthineni explained that Mr. Rabadan could have presumably been thinking "I already told them, I don't have to tell this doctor again." Dr. Donthineni testified that the hospital records indicate that Ms. Duke was having trouble with the language barrier, but was able to use the interpreter service and communicate through a family member. Ms. Duke reported that Mr. Rabadan had a sudden onset of pain into his back, shoulders, head and neck that blinded him, which can be caused by a blood pressure of 208 over 102.

Primary care physician Dr. Rodolfo Manalac testified that when he saw Mr. Rabadan on May 23, 2018, he complained of headache and right shoulder pain and reported that on the date of the incident, he felt dizzy and "went black," which caused him to fall. Dr. Manalac opined that Mr. Rabadan probably did not mention the shoulder pain at first when he saw him after the incident on May 11 and 16, 2018, because Mr. Rabadan was a poor historian and moreover, he wanted to return to work as soon as he was released from the hospital. Dr. Manalac opined that Mr. Rabadan hurt his right shoulder from the fall. He prescribed physical therapy and referred him to an orthopedic physician, Dr. David Rabalais.

Mr. Rabadan first saw Dr. Rabalais, for treatment for his right shoulder pain on January 15, 2019. After examination and testing, Dr. Rabalais determined that

Mr. Rabadan had a torn rotator cuff in his right shoulder. Dr. Rabalais opined that based on Mr. Rabadan's history, as translated by his wife, of no pain before the incident and pain after the incident, and a physical exam revealing a large partial thickness tear of the supraspinatus, that Mr. Rabadan sustained a rotator cuff tear that was more likely than not caused by his fall. Dr. Rabalais specifically noted that he found no reason to doubt that Mr. Rabadan was truthful. The fact that Mr. Rabadan reported his shoulder injury to his physician approximately two weeks after the incident did not change Dr. Rabalais's opinion on causation, i.e., that the shoulder injury was caused by his fall. Dr. Rabalais ultimately recommended and performed a surgical repair of Mr. Rabadan's rotator cuff.

After considering the testimony and evidence adduced at trial, the WCJ specifically determined that:

Mr. Rabadan sustained an accident in the course and scope of his employment on May 7, 2018 on the job and did sustain injury to his shoulder and head as a result of that accident.

In support of this determination, the WCJ noted:

I found Mr. Rabadan at trial to be very credible. I found him to be confused quite often. I think some of that is due to the language barrier, but I also think that some of it may just be not understanding how things work.

The records at Turner for the date of accident of May 7, 2018 state that Mr. Rabadan was found, sitting in a chair in front of a fan, by Mr. Hays. He looked hot; he was complaining of [a] headache. He needed assistance. By Mr. Dewitt, he was disoriented and he complained of chest pain and headache. By Mr. Savaki, he was feeling bad, he was dizzy and hot. I feel that the hypertensive emergency that Mr. Rabadan was diagnosed with, when he did make it to the hospital that day, is also to blame for lapses in records at Turner and early medical records. His blood pressure was off the charts. His blood sugar was off the charts. He had a horrible headache. Everybody said he had a horrible headache. And to me, the headache is obviously – everybody, all of the doctors, agreed was the result of high blood pressure. But the court finds that the horrible headache is also a result of him having hit the floor, and that that combined with the high blood pressure, high sugar, bloomed in his inability to be completely coherent. Although everybody said they could understand him, it was mainly – the main problem was that he – his head was hurting him so bad, and his blood pressure was off the

charts, it was an emergency situation. ... Ms. Lejeune is the only person who testified that she asked him if he fell, and he said no. But given the situation as it was described by everyone, including Mr. Rabadan on that day, I find that that is not dispositive of him having had an accident.

With reference to the fact that, Mr. Rabadan did not report a fall at St.

Elizabeth's hospital, the WCJ noted that:

[Mr. Rabadan] doesn't remember talking to them. Dr. Donthineni remembers talking to him and getting responses back. Nurses that were there took notes that indicates that they talked to him. But in his condition, even after they got the blood pressure down and his being in the hospital and having the language barrier, I find that it was just a misunderstanding, that he did not understand what they really wanted, and he doesn't remember talking to them.

He did specifically report the actual fall on May 22 or May 23, rather, when he gave his statement to the adjustor. In that statement he told her that he had the fall as a result basically of the high blood pressure, what was going on with him, and that he fell on his arm and may have hit his head. She accepted the claim based on that at first and provided – started providing him with medical treatment.

When he saw Dr. Manalac after coming out of the hospital and failed to inform Dr. Manalac at the first two visits, the Court is of the opinion that this man wanted to return to work so badly that he was willing to try to go back to work even though he had injured his arm, and didn't tell Dr. Manalac about that until it became obvious to him that he could not go back to work because of his arm. And that was on May 23, when he made the statement to the adjustor. He had reached the point where even though he had been released by Dr. Menalac to go back and released by Turner, he stated that when he walked out of the clinic, Turner's clinic, he realized that he was hurting too bad, his arm was hurting too bad, he had to go back to the doctor and have it looked at and admit that he had had the fall.

... The fact that [he reported it] a little under two weeks or right at two weeks is not at all that significant, especially in light of what I consider to be the attributing factors, the high blood pressure, the high blood sugar, the headache, the language barrier, just everything happening to him at once on that day. Once he decided to report the accident to the adjustor, from there forward, he goes to Dr. Manalac, tells him about it, and he is consistent after that.

The WCJ concluded that “[i]t really came down to a credibility call” and that she “found Mr. Rabadan credible, confused but credible, and that was the turning point for the case.”

Although Turner contends that Mr. Rabadan's late reporting and denial of a fall to Ms. Lejeune raises doubts as to the causation of Mr. Rabadan's medical condition, we note that Mr. Rabadan testified that he had no recollection of anything from the time he fell until he was in the emergency room. Moreover, Ms. Lejeune testified that when she observed Mr. Rabadan, he was experiencing a hypertensive emergency, he did not know what was going on, and was not a well person from a medical standpoint. To the extent that Turner contends that the two-week reporting delay casts doubt on Mr. Rabadan's version of the events, as we observed in Fabre v. ICF Kaiser International, 2001-2734 (La. App. 1st Cir. 11/8/02), 835 So. 2d 724, 728, a case involving the same issue, an employee should not be barred from recovery because he did not realize or diagnose the full extent of his injury immediately after it happened. See also Barber Brothers Contracting Company, LLC v. Reilly, 2003-1365 (La. App. 1st Cir. 2/23/04), 874 So. 2d 194, 196-197. Thus, we are unable to say that the WCJ erred in finding that this evidence of his late reporting was insignificant and failed to cast serious doubt on Mr. Rabadan's version of the accident, and in further finding that Mr. Rabadan's version of the accident was credible and corroborated by the circumstances following the accident. See Bruno, 593 So. 2d at 361; Barber Brothers Contracting Company, LLC, 874 So. 2d at 196-197.

We find the WCJ's findings entirely reasonable under the particular facts and circumstances herein. Thus, even if this court would have weighed the evidence differently, we may not reverse. See Authement v. Consolidated Water Works District No. 1, 935 So. 2d at 161. After a thorough review of the record, we cannot say that the WCJ committed manifest error in finding that a compensable accident-causing injury occurred.

CONCLUSION

For the above and foregoing reasons, the July 8, 2021 judgment of the WCJ is hereby affirmed. Costs of this appeal are assessed to the appellant, Turner Industries.

AFFIRMED.