

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald Beatty,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 104 C.D. 2011
	:	SUBMITTED: July 15, 2011
Workers' Compensation	:	
Appeal Board (Bethlehem Steel),	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: September 2, 2011

Donald Beatty petitions for review of the order of the Workers' Compensation Appeal Board (Board), which affirmed the order of the Workers' Compensation Judge (WCJ) denying his claim, reinstatement and penalty petitions under the Pennsylvania Workers' Compensation Act (Act).¹

Beatty worked for Employer Bethlehem Steel Company from 1973 until March of 1998. In that time, he sustained a number of injuries which were accepted by Employer, including a right shoulder strain on November 21, 1997. On December 29, 1997, Beatty returned to work from that injury with no loss of wages, and signed a supplemental agreement to that effect. While Beatty has

¹ Act of June 2, 1915, P.L 736, *as amended*.

received no lost wage benefits since returning to work in 1997, Employer has continued to pay Beatty's associated medical expenses.

On September 24, 2007, Beatty filed a reinstatement petition with respect to the November 21, 1997 injury. After Employer filed an answer which, among other issues, raised the timeliness of Beatty's filing, Beatty, on March 3, 2008, filed a claim petition alleging that he suffered a lower back injury on January 6, 1998. Subsequently, Beatty filed a penalty petition alleging that medical expenses associated with the November 21, 1997 injury had not been paid.

After a hearing addressing all three petitions, the WCJ found that the reinstatement petition was time barred, as it was filed beyond the 500 week period in which compensation was available. The WCJ also found the claim petition time barred, and held in the alternative that Beatty had failed to prove the existence of the alleged injury. Finally, the WCJ refused to grant the penalty petition, finding the disputed bills had in fact been paid by Employer. The Board affirmed, and an appeal to this court followed. On appeal, Beatty challenges the Board's holding with respect to the reinstatement and claim petitions, but not the denial of the penalty petition.

Beatty's argument on appeal, in essence, is that Employer maliciously and secretly manipulated the record to prevent him from being eligible for benefits. This theory of the case is not supported by the facts as found by the WCJ. Beatty seemingly asserts that Employer improperly failed to document the alleged January 6, 1998 injury, and paid medical expenses for that injury under the file of the November 21, 1997 injury for the purpose of preventing him from obtaining benefits. However, the WCJ found that Beatty's testimony regarding the alleged

January 6, 1998 injury was not credible, found the testimony of Employer's claims representative to be credible, and simply did not accept Beatty's theory of the case.

Credibility determinations are the province of the WCJ, and will not be disturbed on appeal. *Clear Channel Broad. v. Workers' Comp. Appeal Bd. (Perry)*, 938 A.2d 1150 (Pa. Cmwlth. 2007). In workers' compensation cases, the WCJ is the ultimate finder of fact, and we will not disturb factual findings supported by substantial evidence of record. *Prot. Tech., Inc. v. Workers' Comp. Appeal Bd. (Dengler)*, 665 A.2d 557 (Pa. Cmwlth. 1995). Because the findings of the WCJ in this case are supported by substantial evidence, including the documentary record and the testimony of the claims representative, we cannot disturb them. As Beatty's argument is based upon facts not found by the WCJ, we need not consider the details of his legal argument.

We will, however, review the Board's holdings with regard to the two petitions at issue. The Board was correct to find Beatty's reinstatement petition time barred in several ways. First, because it was filed almost ten years after the suspension of benefits in 1997, it was well beyond the three year time limit for reinstatement petitions set out by Section 413 of the Act, 77 P.S. § 772. As the Board noted:

Pursuant to Section 413(a) of the Act, 77 P.S. § 772, no notice of compensation payable, agreement, or award shall be reviewed, or modified, or reinstated, unless a petition is filed with the department within three years after the date of the most recent payment of compensation made prior to the filing of such petition. Payment of medical expenses does not constitute payment of compensation under Section 413 of the Act, and does not toll the statute of limitations.

Board Opinion at 3, *citing Westinghouse Elec. Corp./CBS v. Workers' Comp. Appeal Bd. (Korach)*, 854 Pa. 411, 883 A.2d 579 (2005). Moreover, Section 423 also provides that: "where compensation has been suspended because the employe's earnings are equal to or in excess of his wages prior to the injury that payments under the agreement or award may be resumed at any time during the period for which compensation for partial disability is payable." Section 306 of the Act, 77 P.S. § 512(1), states that compensation is payable for a period not to exceed 500 weeks. Thus, a petition for reinstatement of suspended benefits must be filed within 500 weeks of the date of the supplemental agreement suspending benefits. *Stehr v. Workers' Comp. Appeal Bd. (Alcoa)*, 936 A.2d 570, (Pa. Cmwlth. 2007). As the date of Beatty's reinstatement petition was indisputably outside that 500 week period, the Board did not err in finding it barred.

The Board was also correct to find that Beatty's claim petition was time barred. Under Section 315 of the Act, 77 P.S. § 602, claims for compensation are barred if not initiated within three years of injury. The claim in this case was made almost ten years after the alleged injury. However, Beatty asserts that the time limit in Section 315 was tolled by medical payments made by Employer. In *Schreffler v. Workers' Compensation Appeal Board (Kocher Coal Co.)*, 567 Pa. 527, 788 A.2d 963 (2002), our Supreme Court held that medical payments can serve to toll the time limit if the claimant can establish that the medical payments were actually "payments of compensation." In this case, the WCJ found that the payments at issue were to cover medical expenses related to the 1997 injury, and no evidence was submitted that would establish that these payments were actually compensation for the alleged 1998 injury. In fact, the WCJ found that Beatty had

not established that the 1998 injury even occurred. Therefore, the Board did not err in finding Beatty's claim petition barred.

For all the forgoing reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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ORDER

AND NOW, this 2nd day of September, 2011, the order of the Workers' Compensation Appeal Board in the above-captioned matter is hereby **AFFIRMED**.

BONNIE BRIGANCE LEADBETTER,
President Judge