

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nadine E. Grim, :  
 :  
 Petitioner :  
 :  
 v. : No. 1088 C.D. 2009  
 : Submitted: November 20, 2009  
 :  
 Workers' Compensation Appeal :  
 Board (Adams County), :  
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: January 5, 2010

Nadine E. Grim (Claimant), *pro se*, petitions for review of an order of the Workers' Compensation Appeal Board (Board) affirming a decision and order of the Workers' Compensation Judge (WCJ) denying her claim petition. We affirm.

Claimant was employed by the Adams County Children & Youth Services (Employer) as a fiscal technician. On or about June 22, 2007, Claimant, through counsel, filed a claim petition alleging that she suffered a work-related back injury on January 9, 2007, while she was pulling files from a filing cabinet. Claimant alleged further that she was totally disabled as a result of the work-related back injury as of January 10, 2007. On February 22, 2007, Employer

issued a Notice of Workers' Compensation Denial wherein Employer declined to pay workers' compensation benefits because Claimant did not suffer a work-related injury. Hearings before the WCJ ensued.

In support of the claim petition, Claimant testified on her own behalf and presented the deposition testimony of Debra DeAngelo, D.O., who is board-certified in anesthesiology and chronic pain management. In opposition to the claim petition, Employer presented the testimony of its administrator Peter Vriens, as a fact witness, and the deposition testimony of Steven E. Morganstein, D.O., who is board-certified in Physical Medicine and Rehabilitation.

The WCJ did not find Claimant to be a credible witness when she testified at the November 19, 2007, and January 28, 2008, hearings. The WCJ pointed out that Claimant acknowledged that she had had a history of back problems due to a May 20, 2003, motor vehicle accident and that she kept Vicodin on hand for when she had back pain due to that injury. The WCJ found that Claimant did not report any injury on the date that it allegedly occurred. Claimant denied any leg symptoms associated with her back pain from the motor vehicle accident; however, the medical records indicated that Claimant complained of pain, muscle cramping and numbness down her legs. The WCJ found that although Claimant denied using a cane to assist her when walking prior to January 2007, this was refuted by the credible testimony of Peter Vriens. Accordingly, the WCJ rejected Claimant's testimony as not credible or persuasive that she suffered a work-related injury on January 9, 2007, or January 10, 2007.

The WCJ also rejected Dr. DeAngelo's testimony as not credible because her opinion that Claimant had suffered a work-related injury in the nature of a herniated disc was not based on a thorough review of the medical records but rather on Claimant's assertion that she injured her back at work. The WCJ pointed

out that Dr. DeAngelo admitted that she did not review a substantial portion of Claimant's medical records and was unaware of the true nature of Claimant's low back pain and leg problems prior to January of 2007.

The WCJ found Peter Vriens credible and accepted his testimony as persuasive. Vriens testified that Claimant provided Employer with a January 12, 2007, disability note from her treating physician but Claimant did not report the alleged work-related injury at that time.<sup>1</sup> Vriens testified that Claimant first reported the alleged work-related injury on January 24, 2007. Vriens testified that Claimant frequently missed work because of back pain in the two years immediately prior to January 2007. Vriens testified that he had several discussions with Claimant prior to January 2007 regarding her back condition and the problems it caused for Claimant. During those conversations, Claimant indicated that she had a degenerative condition and numbness in her legs making it difficult to sit and walk. Vriens also testified that Claimant sometimes used a cane. The WCJ found that Vriens testimony was supported by the numerous medical excuses Claimant gave Employer during her missed time from work prior to January 2007.<sup>2</sup> See C.R. at D-4.

The WCJ also found the medical opinion of Dr. Morganstein credible and persuasive. The WCJ found that Dr. Morganstein thoroughly reviewed Claimant's medical records and performed a complete physical examination before opining that Claimant did not suffer a disabling work-related back injury in

---

<sup>1</sup> The January 12, 2007, note from Claimant's treating physician stated "no work until further notice." See Certified Record (C.R.) at D-3. The note further stated that the diagnosis was "facet syndrome/coccyxdynia." Id.

<sup>2</sup> See C.R. at D-4. The medical excuses cover the time period from January 10, 2005, to December 15, 2006.

January 2007. The WCJ found that Dr. Morganstein was fully aware of Claimant's long standing history of low back pain and leg pain following the 2003 motor vehicle accident. The WCJ found that Dr. Morganstein's opinion was consistent with the factual testimony.

Accordingly, based on the credibility determinations, the WCJ found that Claimant did not suffer a work-related injury on or about January 9, 2007, or January 10, 2007. Thus, the WCJ concluded that Claimant failed to meet her burden of proof and denied Claimant's claim petition.<sup>3</sup>

By hand written letter, Claimant, *pro se*, appealed the WCJ's decision to the Board. Upon review, the Board found that the WCJ committed no error in denying the claim petition based on the credibility determinations. Accordingly, the Board affirmed the WCJ's decision and order. This *pro se* appeal by Claimant followed.<sup>4</sup>

Initially, we note that Employer contends that Claimant has waived any issue on appeal to this Court due to her failure to raise any issues or claims of error in her appeal to the Board as required by 34 Pa. Code §111.11(a). In the alternative, Employer argues that Claimant's entire appeal is based solely on a

---

<sup>3</sup> With respect to a claim petition, the claimant bears the burden of proving that his or her injury arose in the course of employment and was related thereto. Krawchuk v. Philadelphia Electric Co., 497 Pa. 115, 439 A.2d 627 (1981). Generally, if there is no obvious relationship between the disability and the work-related cause, unequivocal medical testimony is required to meet this burden of proof. Lewis v. Commonwealth, 508 Pa. 360, 498 A.2d 800 (1985).

<sup>4</sup> This Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence. Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Mrs. Smith's Frozen Foods v. Workmen's Compensation Appeal Board (Clouser), 539 A.2d 11 (Pa. Cmwlth. 1988).

challenge to the WCJ's credibility determinations, which are not subject to appellate review.

Section 111.11(a) of Chapter 111 of the Special Rules of Administrative Practice and Procedure before the Board governs the content and form required when a party wishes to appeal to the Board from a WCJ's decision. 34 Pa. Code §111.11(a). Section 111.11(a)(2) requires that the appeal contain "[a] statement of the particular grounds upon which the appeal is based, including reference to the specific findings of fact which are challenged and the errors of the law which are alleged. General allegations which do not specifically bring to the attention of the Board the issues decided are insufficient." This Court has held that failure to raise issues in the appeal form to the Board can result in waiver. See Jonathan Sheppard Stables v. Workers' Compensation Appeal Board (Wyatt), 739 A.2d 1084 (Pa. Cmwlth. 1999).

In the instant appeal to the Board, Claimant sent a hand written letter. Therein, she stated that she did not have the correct appeal form and that she was concerned that if she waited until she received the form from the Board, her appeal would be late. Therefore, she requested that the Board either grant her extra time or accept her letter as an appeal and that she would get the rest to the Board. Finally, Claimant stated that she was victimized by her attorneys because they did not give the WCJ any evidence to prove her injury.

Claimant's appeal letter does not include any reference to specific findings of fact that Claimant wished to challenge nor does the letter allege any errors of law. The only issue that may be gleaned from the letter is Claimant's allegation that her attorneys were negligent or incompetent. However, an appeal to the Board is not the proper forum for Claimant's claim that she was victimized by her attorneys' conduct. In addition, we note that there is nothing in the certified

record to show that Claimant supplemented her initial appeal letter with an appeal form or letter setting forth the particular grounds upon which her appeal was based. As such, we are constrained to agree with Employer that Claimant has waived all issues on appeal by failing to preserve any issues before the Board.<sup>5</sup> Jonathan Sheppard Stables.

Moreover, as pointed out by Employer, Claimant arguments on appeal to this Court are nothing more than challenges to the WCJ's credibility determinations and to how the WCJ weighed the evidence. Claimant contends that the WCJ should have accepted her testimony and that of her medical expert as credible and found that she did in fact suffer a disabling work-related injury. However, determinations as to witness credibility and evidentiary weight are not subject to appellate review. Hayden v. Workmen's Compensation Appeal Board (Wheeling Pittsburgh Steel Corp.), 479 A.2d 631 (Pa. Cmwlth. 1984). The WCJ,

---

<sup>5</sup> We note further that in her *pro se* brief in support of her appeal, Claimant has failed to comply with the Pennsylvania Rules of Appellate Procedure. The most glaring violation is Claimant's failure to include a Statement of the Questions Involved as required by Rule 2116(a). Pa.R.A.P. 2116(a) ("No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby."). As a result, even if Claimant had preserved any issues before the Board, she would have waived any issues on appeal to this Court by her failure to comply with Rule 2116. See County of Venango v. Housing Authority of Venango, 868 A.2d 646 (Pa. Cmwlth. 2005) (No point will be considered which is not set forth in the statement of questions involved or suggested thereby.).

This Court has noted on numerous occasions that a layperson who chooses to represent herself in a legal proceeding must assume the risk that her lack of expertise and legal training may prove to be her undoing. See Finfinger v. Unemployment Compensation Board of Review, 854 A.2d 636 (Pa. Cmwlth. 2004); Raleigh v. Pennsylvania Human Relations Commission, 660 A.2d 177 (Pa. Cmwlth. 1995); Daly v. Unemployment Compensation Board of Review, 631 A.2d 720 (Pa. Cmwlth. 1993). It is well established within our jurisprudence that a claimant who chooses to appear *pro se* assumes the risk that her lack of expertise and legal training may adversely affect her case. Griffith v. Workers' Compensation Appeal Board (New Holland North America, Inc.), 798 A.2d 324 (Pa. Cmwlth. 2002).

as fact finder, has exclusive province over questions of credibility and evidentiary weight, and the WCJ's findings will not be disturbed when they are supported by substantial competent evidence. Northeastern Hospital v. Workmen's Compensation Appeal Board (Turiano), 578 A.2d 83 (Pa. Cmwlth. 1990). The WCJ, as the ultimate fact finder in workers' compensation cases, is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. General Electric Co. v. Workmen's Compensation Appeal Board (Valsamaki), 593 A.2d 921 (Pa. Cmwlth.), petition for allowance of appeal denied, 529 Pa. 626, 600 A.2d 541 (1991).

Accordingly, the Board's order is affirmed.

---

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nadine E. Grim,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1088 C.D. 2009
	:	
	:	
Workers' Compensation Appeal	:	
Board (Adams County),	:	
Respondent	:	

**ORDER**

AND NOW, this 5th day of January, 2010, the order of the Workers' Compensation Appeal Board in the above-captioned matter is affirmed.

---

JAMES R. KELLEY, Senior Judge