

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rohm and Haas and Travelers Insurance Company,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 1119 C.D. 2007
	:	
Workers' Compensation Appeal Board (Martin),	:	Submitted: January 18, 2008
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
 HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: March 12, 2008

Rohm and Haas and Travelers Insurance Company (Employer) petition for review of an order of the Workers' Compensation Appeal Board (Board) reversing in part and affirming in part the Workers' Compensation Judge's (WCJ) decision.¹ The Board reversed the WCJ's expansion of the description of Claimant's work-related injury on the notice of compensation payable (NCP) to include the lateral meniscus tear and chronic partial tear of the anterior cruciate ligament (ACL) in Claimant's left knee. The Board affirmed the WCJ's decision and order in all other respects. The sole issue before this Court is whether

¹ By order entered January 9, 2008, this Court precluded Dennis Martin (Claimant) from
(Continued....)

substantial evidence supports the WCJ's expansion of the NCP to add an "aggravation of degenerative arthritis in both knees" where the credible medical testimony supporting the foregoing expansion was equivocal.

The facts pertinent to this appeal are as follows. Claimant suffered work-related injury on March 19, 2004 when he fell through a rusted metal plate on the floor of Employer's premises. Claimant began receiving total disability benefits pursuant to a NCP issued on April 13, 2004. The NCP described Claimant's injury as "rt knee, lt knee, rt lower leg"; "contusions – bilat knees, abrasions"; "to rt loer (sic) leg. [T]he claimant fell through a rusted metal plate on the floor." See Original Record (O.R.), Bureau Exhibit 1.

On or about March 29, 2005, Claimant filed a petition to review compensation benefits (review petition).² Therein, Claimant alleged that the NCP should be expanded to include: (1) a complex tear of the posterior horn and body of the medial meniscus of his right knee; (2) a torn lateral meniscus, torn medial meniscus, and a torn ACL of his left knee; and (3) an adjustment and pain disorder with anxiety. Employer filed a timely answer thereto denying all material allegations.

The parties submitted a stipulation of fact wherein they agreed that the NCP should be amended to reflect bilateral knee contusions and abrasions, sprain of the right knee, and a tear of the medial meniscus of the right knee. The parties

filing a brief in this matter.

² Prior to the filing of the review petition, Employer filed a termination petition. Shortly after filing the review petition, Claimant filed a penalty petition. The three petitions were consolidated and disposed of by the WCJ. The WCJ denied the termination petition and granted the penalty petition. However, the disposition of those two petitions was not before the Board and is not currently before this Court.

also stipulated that Claimant does not have a compensable psychiatric component to his work-related injury. The parties agreed further that any further expansion of the compensable injuries would be governed solely by the evidence presented. Hearings before the WCJ ensued.

In support of the review petition, Claimant testified on his own behalf and presented the deposition testimony of John J. McPhilemy, D.O., a board certified orthopedic surgeon. In opposition to the review petition, Employer submitted the deposition testimony of David R. Cooper, M.D, a board certified orthopedic surgeon.

The WCJ accepted Claimant's testimony and that of Dr. McPhilemy as credible and rejected the testimony of Dr. Cooper as not credible. Accordingly, the WCJ found that as a result of the March 19, 2004 work-related injury, Claimant suffered: (1) a lateral meniscus tear and a chronic partial tear of the ACL of the left knee; (2) a medial meniscus tear and a medial collateral ligament strain of the right knee. The WCJ found further that Claimant's degenerative arthritic condition was aggravated in both knees. Therefore, the WCJ granted the review petition and ordered that the NCP be amended consistent with the foregoing.

Employer appealed to the Board wherein Employer agreed to amend the NCP in part to reflect a sprain of the right knee and a tear of the medial meniscus of the right knee. Therefore, the sole issue before the Board was whether the WCJ erred in expanding the NCP's description of Claimant's work injury to include a lateral meniscus tear and a chronic partial tear of the ACL in Claimant's left knee and the aggravation of a preexisting arthritic condition in both of Claimant's knees.

Upon review, the Board reversed in part and affirmed in part. The Board reversed the WCJ's expansion of the description of Claimant's work-related

injury to include the lateral meniscus tear and chronic partial tear of the ACL in Claimant's left knee as Dr. McPhilemy's testimony did not support such a finding. The Board affirmed the WCJ's decision and order in all other respects. The Board determined that Dr. McPhilemy's testimony supported the finding that Claimant's work-related injury included an aggravation of a pre-existing arthritic condition in both knees. This appeal followed.

Initially, we note that 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).

Employer argues that the WCJ erred in expanding the compensable injuries to include an "aggravation of degenerative arthritis in both knees" because Dr. McPhilemy's testimony, upon which the WCJ purportedly relied, was equivocal. Employer contends that although Dr. McPhilemy testified that it was his opinion that Claimant's left knee arthritic condition was a pre-existing condition that was substantially aggravated by the March 19, 2004 work-related injury, Dr. McPhilemy also testified that there was no change in the left knee and that diagnostic test findings would have been the same immediately before the work incident. Employer argues that Dr. McPhilemy's testimony, when reviewed as a whole, establishes that there was no change in Claimant's underlying degenerative arthritis after the work incident; therefore, the WCJ's addition of an

aggravation of degenerative arthritis in both knees to the compensable injuries is not supported by substantial evidence. Employer argues further that, at most, Dr. McPhilemy's testimony would support a finding of a temporary "flare up" of symptoms.

A petition for review is limited to review or modification of a notice of compensation payable which is in some material respect incorrect and such modification may occur at any time. Birmingham Fire Insurance Company v. Workmen's Compensation Appeal Board (Kennedy), 657 A.2d 96 (Pa. Cmwlth. 1995). It is the burden of the party seeking modification of the notice of compensation payable to prove that a material mistake of fact or law was made at the time the notice of compensation payable was issued. Id.

The equivocality of a medical opinion is a question of law and fully reviewable by this Court. Carpenter Technology v. Workmen's Compensation Appeal Board (Wisniewski), 600 A.2d 694 (Pa. Cmwlth. 1991). Equivocality is judged upon a review of the entire testimony. Id. In conducting this review, we are mindful of our admonition in Philadelphia College of Osteopathic Medicine v. Workmen's Compensation Appeal Board (Lucas), 465 A.2d 132 (Pa. Cmwlth. 1983), that to be unequivocal, every word of medical testimony does not have to be certain, positive, and without reservation or semblance of doubt.

It is an established principle that medical testimony is unequivocal if a medical expert testifies, after providing a foundation for the testimony, that, in his or her professional opinion, he or she believes or thinks a fact exists. Shaffer v. Workmen's Compensation Appeal Board (Weis Markets), 667 A.2d 243 (Pa. Cmwlth. 1995), petition for allowance of appeal denied, 544 Pa. 618, 674 A.2d 1079 (1996). Even if a medical expert admits to uncertainty, reservation or lack of information with respect to medical details, the testimony remains unequivocal so

long as the expert expresses a belief that, in his or her professional opinion a fact exists. Id.

Contrary to Employer's contentions, our review of Dr. McPhilemy's testimony, taken as a whole, clearly supports the WCJ's expansion of Claimant's compensable injuries to include an "aggravation of degenerative arthritis in both knees". As pointed out by the Board, while Dr. McPhilemy acknowledged that there was no way to measure precisely how much the arthritic conditions changed because of the injury, Dr. McPhilemy did not waiver in his opinion that Claimant's current complaints of pain were the result of a work-related aggravation of the underlying arthritic condition.

Dr. McPhilemy specifically testified that Claimant's left knee arthritic condition was a pre-existing condition that was substantially aggravated by the March 19, 2004 work-related injury. Reproduced Record (R.R.) at 45a. Dr. McPhilemy consistently testified, more than once on both direct examination and cross examination, that Claimant's history revealed that prior to the March 19, 2004 work-related injury, he did not require any medical treatment of significance for either of his knees. Id. at 48a-49a; 53a; 55a.

Dr. McPhilemy testified further that his prescribed treatment of Claimant was "to treat a condition that had been substantially exacerbated or aggravated or made symptomatic made (sic) by the work-related injury." Id. at 49a. While Dr. McPhilemy used the terms "aggravation" and "exacerbation" interchangeably, his testimony clearly supports an expansion of the NCP to include an aggravation as opposed to a temporary "flare-up" as Employer contends. Dr. McPhilemy testified "the underlying arthritic component, which was fairly significant and substantial in the left knee, somewhat less significant in the right

knee, was exacerbated, and that has not calmed down or gone away. That is still producing symptoms in the patient.” R.R. at 50a.

Employer’s contention that Dr. McPhilemy’s testimony supports a finding that there was no change in the arthritic condition before and after the work-related injury, therefore, the WCJ erred by expanding the NCP, is based on one partial excerpt of the doctor’s testimony. If one reviews Dr. McPhilemy’s testimony in its entirety and in context, it is clear that Dr. McPhilemy did not waiver in his opinion that Claimant’s underlying arthritic condition was aggravated by the work-related injury. As set forth previously herein, Dr. McPhilemy acknowledged that Claimant suffered from a pre-existing condition and that such condition was not caused by the work-related injury. However, with regard to that condition and the current cause of Claimant’s symptoms and pain as a result of that condition, Dr. McPhilemy unequivocally testified that the work-related injury caused Claimant’s current pain by aggravating Claimant’s previous relatively dormant or minimally symptomatic arthritic problem. R.R. at 56a.

Accordingly, we reject Employer’s contention that the WCJ’s decision is not supported by substantial evidence. The Board’s order is affirmed.

JAMES R. KELLEY, Senior Judge

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Board (Martin),	:	
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ORDER

AND NOW, this 12th day of March, 2008, the order of the Workers' Compensation Appeal Board in the above captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge