

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Center for Independent Living, :  
Petitioner :  
 :  
v. : No. 1165 C.D. 2008  
 : Submitted: October 3, 2008  
Workers' Compensation Appeal :  
Board (Nichols and United :  
Cerebral Palsy), :  
Respondents :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: November 26, 2008

Center for Independent Living (Center) petitions for review of an adjudication of the Workers' Compensation Appeal Board (Board) vacating a Workers' Compensation Judge's (WCJ) decision of June 28, 2007. In this decision, the WCJ relieved the Center of liability for a work-related injury and, instead, imposed liability for the injury upon another employer. The Board held that the WCJ lacked jurisdiction to issue the 2007 decision because it effectively reversed the WCJ's own 2006 decision to hold the Center liable for this injury while the Center's appeal of the 2006 decision was still pending before the Board. We affirm.

On May 9, 2004, Catherine Nichols (Claimant) sustained a work-related injury to her left ankle and right knee while she was employed by the Center as a personal care attendant. The Center accepted the injury by filing a Notice of Compensation Payable on May 21, 2004, identifying the injury as

“fracture left ankle/right knee abrasion.” WCJ Decision, June 28, 2007, at 1. Claimant received benefits until July 14, 2004, when she returned to work without loss of wages. At that time, Claimant signed a final receipt for benefits. Claimant continued working for the Center until December 2004, at which time she quit her employment and began working for United Cerebral Palsy (UCP).

On March 28, 2005, Claimant twisted her left ankle during the course and scope of her employment with UCP. Pursuant to an Agreement for Compensation, Claimant began receiving total disability benefits for a “left ankle sprain.” WCJ Decision, June 28, 2007, at 1. Claimant returned to work at UCP without wage loss on April 22, 2005.

On September 2, 2005, Claimant filed a review petition against UCP alleging an incorrect description of the injury and a petition to join the Center as an additional defendant. Claimant also filed petitions to review/reinstate and set aside final receipt against the Center alleging a recurrence of her disability caused by the May 9, 2004, work injury. Claimant requested that the description of the 2004 work injury be amended to include a torn left anterior talofibular ligament, torn left calcaneal fibular ligament and tenosynovitis of the left posterior tibial tendon. Claimant’s above-described petitions were assigned to WCJ Francis Williamson for disposition.

WCJ Williamson reviewed testimony from the parties’ medical witnesses. John S. Rychak, M.D., a board-certified orthopedic surgeon, testified on Claimant’s behalf. Dr. Rychak stated that as a result of the 2004 work incident Claimant sustained a tear of the anterior talofibular ligament, chronic sprain changes in the calcaneofibular ligament, and a tiny chip fracture of the talus and fibula. Dr. Rychak recommended surgery to reconstruct the ligaments. He opined that the surgery was necessitated by a combination of Claimant’s 2004 and 2005

work injuries, but he was unable to determine how much each injury contributed to the need for surgery. WCJ Decision, September 12, 2006, at 3.

UCP presented the testimony of Thomas DiBenedetto, M.D., a board-certified orthopedic surgeon. Dr. DiBenedetto opined that Claimant had not fully recovered from her 2004 injury when she sustained a recurrent ankle sprain on March 28, 2005. As of the date of his independent medical examination on March 23, 2006, Dr. DiBenedetto was not ready to certify that Claimant was fully recovered. He agreed with Dr. Rychak that surgery was indicated. However, unlike Dr. Rychak, Dr. DiBenedetto was able to opine on which injury necessitated the surgery. He opined that it was the 2004 injury, an injury more severe than the 2005 injury, that necessitated the surgery. Dr. DiBenedetto stated that the 2005 ankle sprain did not result in any change to the anatomical structure of Claimant's ankle.

The Center offered the testimony of David C. Baker, M.D., a board-certified orthopedic surgeon. Based upon Claimant's history and complaints, Dr. Baker opined that her need for surgery was due to the 2005 incident, not the 2004 incident.

WCJ Williamson issued a decision on September 12, 2006 (2006 Decision) granting Claimant's review petition and petition to set aside final receipt against the Center.<sup>1</sup> He determined that Claimant's current work-related medical bills, including the surgery recommended by Dr. Rychak, resulted from the work injury Claimant sustained in 2004 while she was employed by the Center. WCJ Williamson denied Claimant's reinstatement petition and concluded that the

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<sup>1</sup> WCJ Williamson ordered that the description of Claimant's 2004 injury "be amended to include a tear to the anterior talofibular ligament, injury to the calcaneofibular ligament, and a chip fracture of the left ankle." 2006 Decision, at 6.

remaining petitions were moot. Notably, in rendering his decision, WCJ Williamson found, without explanation, that Dr. Rychak's testimony was "credible in part." 2006 Decision, at 5. He made no credibility determinations concerning the other medical witnesses.

The Center appealed the 2006 Decision to the Board. The Board recognized that Dr. Rychak's testimony that Claimant's need for surgery was caused by both the 2004 and 2005 work incidents conflicted with Dr. DiBenedetto's opinion that the 2004 injury was the sole cause. The Board noted that WCJ Williamson did not explain what portions of Dr. Rychak's testimony he found credible and did not make any credibility determinations with respect to the other witnesses. Accordingly, the Board held that the 2006 Decision was not reasoned for purposes of Section 422(a) of the Workers' Compensation Act (Act), 77 P.S. §834(a),<sup>2</sup> and remanded the matter for WCJ Williamson to more fully explain his credibility determinations.

Before the Board rendered this remand decision, WCJ Williamson issued a second decision on June 28, 2007 (2007 Decision). WCJ Williamson again recited the medical testimony of Drs. Rychak, DiBenedetto and Baker. This time, however, WCJ Williamson concluded that "[t]he testimony of Dr. Rychak, as supported by the credible testimony of Dr. Baker supports a Reinstatement against UCP. Claimant clearly went out of work due to the 2005 injury she suffered at UCP, and, it is this 2005 injury that has necessitated the surgery recommended by Dr. Rychak." 2007 Decision, at 7. WCJ Williamson granted Claimant's review petition against UCP and ordered that the description of the injury be "amended to

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<sup>2</sup> Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §834. Section 422 of the Act states, *inter alia*, that "[w]hen faced with conflicting evidence, the [WCJ] must adequately explain the reasons for rejecting or discrediting competent evidence." 77 P.S. §834.

include a ligamentous injury to Claimant's left ankle to include a surgical intervention ... and resulting medical care and recovery." *Id.* at 7-8. WCJ Williamson made no reference to the 2006 Decision in his 2007 Decision.

All of the parties appealed the 2007 Decision to the Board. The Board acknowledged that a WCJ is authorized to amend a decision in certain circumstances, citing Section 131.112 of the Special Rules of Administrative Practice and Procedure Before Workers' Compensation Judges (Special Rules), 34 Pa. Code §131.112. However, the Board concluded that WCJ Williamson exceeded this authority by issuing an entirely new decision while the appeal of his first decision was still pending with the Board. The Board held that WCJ Williamson's 2007 Decision was null and void and vacated the decision. The Center now petitions this Court for review.

Before this Court,<sup>3</sup> the Center argues that the Board erred by vacating the 2007 Decision. The Center contends that the Board should have remanded the 2007 Decision to WCJ Williamson so that he could explain the inconsistencies between that decision and the 2006 Decision. We disagree.

Section 112 of the Special Rules allows a WCJ to correct or amend his decision and order after it has been circulated. 34 Pa. Code §131.112(a).<sup>4</sup> The

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<sup>3</sup> Our scope of review is limited to determining whether the adjudication is in accordance with the law, whether constitutional rights were violated or whether necessary findings of fact are supported by substantial evidence. *Varkey v. Workers' Compensation Appeal Board (Cardone Industries & Fireman Fund)*, 827 A.2d 1267, 1272 n.6 (Pa. Cmwlth. 2003) (citing Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704)).

<sup>4</sup> Section 112 of the Special Rules provides, in relevant part:

- (a) A decision or an order of a judge may be amended or corrected by the judge subsequent to the service of notice of the decision and order. A typographical or clerical error or obvious omission or error on the part of the judge may be corrected on the judge's motion or on the motion of one or both parties. Other amendments or corrections will be made only upon

WCJ may correct a “typographical or clerical error or obvious omission or error” on his own motion or on the motion of one or both parties. *Id.* Serious modifications or corrections can be made only with the written agreement of both parties; requests for such modifications must be made within 20 days of the date the decision was circulated. *Id.* When a WCJ exceeds his authority under Section 112, his decision and order is null and void and the proper remedy is to vacate the decision. *Varkey v. Workers’ Compensation Appeal Board (Cardone Industries & Fireman Fund)*, 827 A.2d 1267, 1273 (Pa. Cmwlth. 2003).

WCJ Williamson’s 2006 and 2007 Decisions addressed the same petitions and the same issues. None of the parties requested an amendment or correction of the 2006 Decision; the Center elected to appeal the decision to the Board. Although WCJ Williamson was permitted under Section 112 of the Special Rules to make minor corrections to the 2006 Decision, he did not have the authority to issue an entirely new decision and order while the first decision was on appeal to the Board. We agree with the Board that allowing a WCJ to issue multiple decisions in the same matter confuses the appeals process and potentially deprives the litigants of meaningful appellate review. Therefore, because the WCJ

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**(continued . . . )**

written agreement of the parties. A request for correction or amendment shall be made within 20 days of the date of service of notice of the decision and order.

- (b) The corrected decision and order will specifically set forth the items in the prior decision and order which are being corrected and amended, and will contain the following provision: “In all other respects the prior decision and order in the case are hereby reaffirmed.”

34 Pa. Code §131.112.

improperly issued the 2007 Decision, that decision was null and void and the Board did not err by vacating the decision.<sup>5</sup>

For all of the foregoing reasons, we affirm the Board.

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MARY HANNAH LEAVITT, Judge

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<sup>5</sup> We note that the Center's requested relief, a remand of the 2007 Decision, would in all likelihood not change the ultimate outcome of this case. WCJ Williamson is aware of the two conflicting decisions, and the Board's remand of the 2006 Decision is still pending before him. We presume that WCJ Williamson's final decision and order on remand will incorporate the relevant findings and conclusions from the 2007 Decision.

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**ORDER**

AND NOW, this 26<sup>th</sup> day of November, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter, dated June 2, 2008, is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge