IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cheryl Edwards, Petitioner	:	
v.	:	No. 1168 C.D. 2008
	:	Submitted: October 3, 2008
Workers' Compensation Appeal Board (Temple University), Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FRIEDMAN FILED: November 25, 2008

Cheryl Edwards (Claimant) petitions for review of the June 3, 2008, order of the Workers' Compensation Appeal Board (WCAB), which affirmed the decision of a workers' compensation judge (WCJ) granting the termination petition filed by Temple University (Employer). We also affirm.

On April 30, 1993, while Claimant was working as a dental assistant, a tray of dental tools fell on her left wrist, and Employer accepted liability for a left-wrist injury by way of a notice of compensation payable. Subsequently, Employer filed three termination petitions, each of which was denied. A 2004 decision recognized tenosynovitis and reflex sympathetic dystrophy (RSD) in the description of Claimant's work injury.

On May 2, 2006, Claimant attended an independent medical evaluation performed by Paul Shipkin, M.D. After examining Claimant, Dr. Shipkin opined that, as of that date, Claimant was fully recovered from her work-related wrist injury and was capable of returning to work full time with no restrictions. Based on this opinion, Employer filed the current termination petition. Claimant filed a timely answer denying Employer's allegations, and the matter was assigned to the WCJ for hearings.

Employer presented the deposition testimony of Dr. Shipkin, who is a board-certified neurologist. Based on his examination, his clinical observations and his review of Claimant's medical records and history, Dr. Shipkin opined that Claimant was fully recovered from her work-related wrist injuries, including RSD and tenosynovitis, and could return to work without restrictions as of May 2, 2006. Dr. Shipkin explained that there were no objective findings to support Claimant's continued subjective complaints and that none of the medical reports or tests he reviewed altered his opinion that Claimant was completely and fully neurologically intact. On cross-examination, Dr. Shipkin explained that he was not saying that Claimant never had RSD, only that she did not have RSD when he examined her in May 2006. Dr. Shipkin acknowledged that Claimant has not undergone any diagnostic testing, such as an EMG, since 1995; however, Dr. Shipkin stated that clinical examination and observation, not an EMG, was the best way to diagnose RSD. (R.R. at 46a-52a, 58a-60a, 67a.)

In response, Claimant described her ongoing pain and symptoms and the limitations that the injury has placed upon her daily life, including her inability

to return to her time-of-injury position. Claimant testified that she treated with Gregory A. Nelson, M.D., until 2000, but she stopped treatment when he advised her that there was nothing further he could do for her. Claimant stated that she did not seek medical treatment again until November 2006, when she began treating with Richard H. Kaplan, M.D. According to Claimant, she was unaware that she suffered from RSD until she received a copy of the 2004 decision. Claimant acknowledged that: she only takes over the counter pain medications, such as Aleve and Advil; the only treatment Dr. Kaplan has scheduled is acupuncture; and Dr. Kaplan has not prescribed any pain medicines. (R.R. at 9a-13a, 16a-18a, 21a-22a, 24a-25a.)

Claimant also presented the deposition testimony of Dr. Kaplan, who is board-certified in rehabilitation. Dr. Kaplan testified that he first examined Claimant on November 15, 2006, and that Claimant described the work incident, her medical history and her ongoing complaints of pain and swelling in her left wrist and arm. Based on his examination, Claimant's medical reports and the prior termination decisions, Dr. Kaplan opined that Claimant suffers from work-related RSD and that this condition prevents Claimant from returning to work. On cross-examination, Dr. Kaplan agreed that Claimant is fully recovered from her tenosynovitis. (R.R. at 107a, 112a-14a, 118a-19a, 132a-33a.)

The WCJ rejected Claimant's testimony that she remains disabled as a result of her work-injury, finding it significant that Claimant did not seek any medical treatment between 2000 and 2006, despite her complaints of pain. The WCJ also credited Dr. Shipkin's opinions over those of Dr. Kaplan and, based on

that credited testimony, held that Employer met its burden of proving that Claimant had fully recovered from her work-related injuries and could return to work without restrictions. (WCJ's Findings of Fact, Nos. 14-18.) Accordingly, the WCJ granted Employer's petition and terminated Claimant's benefits as of May 2, 2006. (WCJ's Conclusions of Law, Nos. 2-4.) Claimant appealed to the WCAB, which affirmed.

On appeal,[1] Claimant argues that the WCJ erred in terminating Claimant's benefits based solely on Dr. Shipkin's testimony. Relying on *Lewis v. Workers' Compensation Appeal Board (Giles & Ransome, Inc.*), 591 Pa. 490, 919 A.2d 922 (2007), Claimant asserts that, in order to establish Claimant's full recovery from her work-related RSD, Employer also had to proffer new diagnostic test results showing a change in Claimant's physical condition since September 24, 2004, the date of the last termination determination, which Dr. Shipkin did not provide. We disagree.

In *Lewis*, our supreme court held that, where there has been a prior termination petition, an employer seeking to terminate a claimant's benefits based on the theory that the claimant's disability has reduced or ceased due to the improvement of the claimant's physical ability must demonstrate a change in the claimant's physical condition since the last disability determination. To satisfy this

[1] Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

burden, an employer must establish a change in the claimant's condition with medical evidence; however, there is nothing in *Lewis* that requires, as Claimant suggests, that an employer must present a specific kind of evidence, such as EMG results, to support its claim that a claimant is fully recovered. *Id.*

Here, Dr. Shipkin credibly testified that Claimant had fully recovered from her work-related injuries, including RSD, that there were no objective findings to support Claimant's ongoing subjective complaints and that Claimant could return to work with no restrictions. Because the difference between Claimant's condition in 2004, i.e., the presence of RSD and tenosynovitis, and in 2006, i.e., the absence of these injuries and Claimant's full recovery, constitutes a change in Claimant's physical condition, Dr. Shipkin's testimony alone satisfied Employer's burden of proof under *Lewis* and constitutes substantial medical evidence to support the WCJ's finding of full recovery and termination of benefits. *Wright v. Workers' Compensation Appeal Board (US Air, Inc.)*, 717 A.2d 596 (Pa. Cmwlth. 1998) (holding that a physician's testimony constitutes substantial medical evidence to support a finding of full recovery and the termination of benefits).

Claimant next argues that Dr. Shipkin's testimony is not legally competent because he could not say exactly when Claimant's work-related injuries had resolved, and he did not request new diagnostic testing, such as an EMG, to confirm Claimant's full recovery. Again, we disagree.

In determining whether a claimant is fully recovered from a work-related injury, the question of precisely when a work injury resolves is irrelevant, *Wright*, and a physician is not required to examine or treat a claimant in the past to be competent to testify that the claimant's physical condition has changed after the date of a prior disability determination. *National Fiberstock Corporation v. Workers' Compensation Appeal Board (Grahl)*, 955 A.2d 1057 (Pa. Cmwlth. 2008). Moreover, a medical expert's decision to request or rely on new diagnostic tests to determine whether a claimant is fully recovered goes to the weight of the medical expert's testimony, not to the competency of that testimony. *Coyne v. Workers' Compensation Appeal Board (Villanova University)*, 942 A.2d 939 (Pa. Cmwlth. 2008). Thus, neither the failure to identify the precise moment when Claimant's RSD and tenosynovitis had resolved, nor the decision to forgo additional diagnostic testing renders Dr. Shipkin's opinion that Claimant is fully recovered legally incompetent.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Judge

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O R D E R

AND NOW, this 25th day of November, 2008, the order of the Workers' Compensation Appeal Board, dated June 3, 2008, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Judge