

who weighed 350 pounds, injured his left foot while kicking a tire block wedged under a trailer that he was to remove. Claimant notified Employer of the injury to his left foot, which was bruised and swollen, and he was referred to Employer's physician, Dr. Santos. Dr. Santos prescribed Celebrex for the injury described as a contusion, but Claimant stopped taking it after three days upon noticing that swelling in his left foot increased and that it also appeared in his right foot.

Claimant's family physician, Ralph Hawks, M.D., referred Claimant to Mark Francis Indzonka, M.D., board certified in cardiovascular disease, internal medicine and interventional cardiology, to treat Claimant's swelling or peripheral edema. Claimant was prescribed diuretic pills for the edema by Terry Davison, M.D., Employer's physician. Claimant's swelling resolved, and he returned to work but remained on diuretics, without which his feet would swell.¹ In November 2005 he was terminated for failing an eye exam required to retain his commercial driver's license. He testified that the diuretics dried out his eyes and that his dry eye condition caused him to fail the exam. He has diagnoses of pre-existing diabetes, obesity, asthma and hypertension, which are treated with medications.

On June 13, 2006, Claimant filed a claim petition seeking, *inter alia*, total disability benefits beginning as of November 2005 for "[e]dema in knees, legs and feet bilaterally, congestive heart failure related to use of Celebrex as prescribed by panel physician, and dry eye syndrome related to medications prescribed for congestive heart failure." Reproduced Record (R.R.) at 2a. Claimant testified and presented the deposition of Dr. Indzonka, who examined Claimant in October 2003 and in March/November 2006. Employer presented the deposition of Kenneth W.

¹Employer temporarily accepted the injury of contusion but stopped benefits on October 23, 2003, claiming that Claimant was not disabled as a result of his injury.

Gentilezza, M.D., board certified in physical medicine and rehabilitation and pain medicine, and Basil M. Rudusky, M.D., board certified in internal medicine, forensic medicine and cardiovascular medicine. The WCJ found in part as follows:

[5]a. Dr. Indzonka first saw Claimant on October 20, 2003, at the referral of his family physician, Dr. Hawk. ... Dr. Indzonka testified [Claimant's] records revealed Claimant stopped taking Celebrex sometime before September 29, 2003, and that the swelling had mostly resolved upon stopping this medication.

b. Dr. Indzonka opined that peripheral edema is an adverse reaction to Celebrex found in 2.1% of patients. Dr. Indzonka indicated Claimant did not have a history of peripheral edema prior to taking Celebrex and the condition resolved after he discontinued use of the medication and with the use of the diuretic, Lasix. Nevertheless, Dr. Indzonka continues to treat Claimant for right-sided heart failure and indicated Claimant needed ongoing diuretic therapy.

c. Dr. Indzonka confirmed Claimant had not been diagnosed with congestive heart failure before September 30, 2003. Dr. Indzonka opined that Claimant's use of Celebrex in September of 2003 caused the episode of congestive heart failure and that the condition is now chronic. Dr. Indzonka further opined that the edema associated with congestive heart failure is currently controlled with the use of Lasix, a diuretic medication....

d. Dr. Indzonka confirmed that peripheral edema can be caused by sleep apnea and that sleep apnea tests performed on May 1, 2006 confirmed Claimant had sleep apnea. However, he noted neither sleep apnea nor congestive heart failure had been diagnosed before September 7, 2003....

[8]a. ...[T]his Judge finds Claimant creditable. ... In particular, this Judge finds Claimant's testimony regarding the sudden onset of swelling in his feet after taking Celebrex ... creditable. Additionally, this Judge finds Claimant's testimony regarding his dry eye symptoms, linked to his Lasix prescription necessitated by his use of Celebrex and also supported by

Dr. Indzonka's and Dr. Gentilezza's information, creditable. Finally, this Judge finds Claimant's testimony that he was unable to continue working as a result of his eye symptoms creditable....

b. ...[T]his Judge finds Dr. Indzonka's testimony creditable and, on balance, more persuasive than Dr. Gentilezza's or Dr. Rudusky's testimony. This Judge finds these facts ... render [Dr. Indzonka's] opinion creditable and persuasive that Claimant's use of Celebrex in September 2003 caused his episode of congestive heart failure that is now chronic. Additionally, these factors render Dr. Indzonka's opinion creditable and persuasive that Claimant's edema associated with his congestive heart failure must currently be controlled by Lasix. Finally, this Judge finds that the fact that Claimant may have had the preexisting conditions cited by Dr. Rudusky do not render Dr. Indzonka's opinions incredible. Rather, this Judge considers Claimant's situation similar to the case of a claimant who has asymptomatic, pre-existing back conditions, and then aggravates these conditions with work incident thereby sustaining a ... work related back injury. Accordingly, Dr. Indzonka's opinions are accepted as fact. To the extent the opinions of Dr. Gentilezza and Dr. Rudusky are inconsistent with Dr. Indzonka's opinions, they are not accepted as fact.

Findings of Fact Nos. 5, 8.² The WCJ concluded that Claimant met his burden of proof. The Board reversed, determining that Dr. Indzonka offered no testimony regarding Claimant's dry eye condition and offered equivocal medical testimony on the issue of causation involving Celebrex. The Board noted the burden of proof in a claim petition under *Inglis House v. Workmen's Compensation Appeal Board (Reedy)*, 634 A.2d 592 (Pa. Cmwlth. 1993), and reiterated that "[w]here there is no obvious causal connection between the aggravation symptoms and the alleged

²Findings Nos. 6 and 7 are summaries of Employer's medical expert testimony by Drs. Gentilezza and Rudusky. Although Dr. Indzonka did not explicitly establish a relationship between congestive heart failure and peripheral edema, Dr. Gentilezza testified that peripheral edema is one of the signs associated with congestive heart failure. See R.R. at 114a.

work-related cause, that connection must be established by unequivocal medical evidence." *Knapp v. Workmen's Compensation Appeal Board (GTE)*, 671 A.2d 258, 262 (Pa. Cmwlth. 1996). It reasoned in part as follows:

Dr. Indzonka's [2003] records stated that Claimant's ankle swelling had resolved completely. ... On November 6, 2006 Claimant was still taking Lasix for treatment of edema.... Dr. Indzonka diagnosed sleep apnea and right sided heart failure. His March 13, 2006 report stated that Claimant still needed diuretic therapy.... Dr. Indzonka opined that the primary cause of Claimant's edema was right sided heart failure that can be caused by sleep apnea or lung conditions. Dr. Indzonka was then asked for an opinion as to the cause of Claimant's congestive heart failure.

He responded:

A. The heart failure that he has now or the edema that he reported in '03?

Q. The congestive heart failure that was diagnosed on September 30th 2003?

A. Well, based on what we saw there, it seemed like he had the edema after the Celebrex. It seemed like it went away after he came off the drug and gave him some diuretics. So presumably that episode was induced by the Celebrex. What he's being treated for now may be more of a chronic condition.

Q. Okay. Is it your opinion that the Celebrex either caused or aggravated the congestive heart failure?

Mr. McCadden: Objection to the form....

A. Based on what I see, it's reasonable to conclude that it caused the peripheral edema.

....

Whether medical opinion is equivocal ... is a matter of law which is fully reviewable on appeal. Terek v. W.C.A.B. (Somerset Welding & Steel, Inc.), [542 Pa. 453, 668 A.2d 131 (1995)]. The Board on appeal must review the medical evidence as a whole to determine whether it is equivocal. Lewis v. W.C.A.B. (Pittsburgh Board of Education), [508 Pa. 360, 498 A.2d 800

(1985)]. Medical testimony as to causation which is based on possibility or is less than positive is equivocal. Boring v. W.C.A.B. (Combustion Engineering, Inc.), 629 A.2d 287 (Pa. Cmwlth. 1993).

Based upon our review of Dr. Indzonka's testimony, his opinion, at best, only establishes that Claimant's use of Celebrex ... caused edema in his lower extremities which resolved after he discontinued its use and had no symptoms of edema when Dr. Indzonka first examined him in October 2003. We also note that ... the Judge failed to resolve this inconsistency in the testimony. Dr. Indzonka's opinion, causally relating the use of Celebrex to Claimant's congestive heart failure was based upon his presumption that it was reasonable to conclude that this was possible. Because Dr. Indzonka's testimony on this issue was less than positive, we must reverse the Decision of the Judge.³

Board Opinion, pp. 2 - 9 (internal citations omitted).

Claimant asserts that the Board reassessed witness credibility and that medical testimony must be evaluated as a whole under *Hannigan v. Workmen's Compensation Appeal Board (Asplundh Tree Expert Co.)*, 616 A.2d 764 (Pa. Cmwlth. 1992). Additionally, Dr. Indzonka unequivocally testified that the work injury led to Claimant's use of Celebrex causing peripheral edema, which caused congestive heart failure; Dr. Gentilezza stated that he would not have prescribed Celebrex for Claimant; and Dr. Rudusky's testimony regarding the pre-existing conditions supports the WCJ's finding that Celebrex aggravated those conditions triggering congestive heart failure. In his challenge to the Board's determination

³The Court's review is limited to determining whether constitutional rights were violated, an error of law was committed, a practice or procedure of the Board was not followed or the findings of fact are not supported by substantial evidence in the record. *Helvetia Coal Co. v. Workers' Compensation Appeal Board (Learn)*, 913 A.2d 326 (Pa. Cmwlth. 2006). The WCJ is the ultimate fact finder and the exclusive arbiter of witness credibility and evidentiary weight, but the WCJ's decision must be supported by substantial evidence. *Suburban Delivery v. Workers' Compensation Appeal Board (Fitzgerald)* 858 A.2d 219 (Pa. Cmwlth. 2004).

that he recovered from the edema in 2003, Claimant indicates that diuretics resolved only the symptoms and that he continued to experience peripheral edema.

Claimant challenges further the Board's conclusion that no medical evidence supported the claim that diuretics caused Claimant's dry-eye syndrome where Dr. Gentilezza testified that the syndrome is a side effect of diuretics and Claimant testified that his eyes became dry immediately after using diuretics. He contends that the Board erred when it indicated that he had sleep apnea in 2003, which was not tested until May 2006, and although his wife raised the possibility of sleep apnea in 2003 she was not qualified to make a diagnosis. Claimant argues that the Board should have remanded the matter for the WCJ to determine whether the peripheral edema was disabling separate and apart from the other conditions.

Employer responds that the Board did not reassess the credibility determinations but instead concluded that insufficient evidence existed to establish causation. Under *Universal Cyclops Steel Corp. v. Workmen's Compensation Appeal Board (Krawczynski)*, 305 A.2d 757 (Pa. Cmwlth. 1973), the Board may disregard findings of fact that are unsupported by substantial evidence. Employer claims that Dr. Indzonka never addressed Claimant's dry eyes or his failing the eye examination. Where the causal relationship between the injury and the disability is not obvious, unequivocal medical testimony is required under *Fotta v. Workmen's Compensation Appeal Board (U.S. Steel/USX Corp. Maple Creek Mine)*, 534 Pa. 191, 626 A.2d 1144 (1993) (requiring unequivocal, not less than positive, testimony for claimant's ankle injury where he had pre-existing ankle problems). No obvious connection exists between Claimant's injury in 2003 and his vision problems in 2005, and he was treated in 2003 for unrelated symptoms such as asthma, diabetes, obesity and hypertension.

Employer maintains that Dr. Indzonka's testimony is equivocal; he testified that Celebrex caused Claimant's edema and then testified that right-sided heart failure caused the edema; that the right-sided heart failure was caused by sleep apnea or a lung condition; and that the edema in 2003 was resolved but that the edema in 2006 is chronic.⁴ No unequivocal testimony exists that sleep apnea or the vision problems were caused by the 2003 injury or that the ongoing edema was caused by Celebrex. Dr. Gentilezza's testimony does not establish that Claimant's dry eyes were caused by his use of diuretics: Dr. Gentilezza was asked, "And dry-eye syndrome is a risk with use of diuretics, correct?" He replied, "It may be, yes." R.R. at 115a. Dr. Gentilezza's answer does not establish unequivocal medical testimony, and Claimant is unqualified to render medical opinions regarding the effects of diuretics on his eyes. Moreover, the Board recognized an indication of sleep apnea in 2003, supported by Dr. Indzonka's testimony, and Dr. Rudusky opined without contradiction that Claimant had it prior to 2003. Also, a remand is not required where Claimant presented insufficient evidence to meet his burden.

After its review, the Court concludes that the Board did not err in reversing the WCJ's decision to grant the claim petition where the record lacked substantial evidence to support the findings on causation. *Suburban Delivery v. Workers' Compensation Appeal Board (Fitzgerald)* 858 A.2d 219 (Pa. Cmwlth. 2004) (affirming that WCJ's decision must be supported by substantial evidence). Because the causal relationship between his foot injury in 2003 and his failing the eye examination in 2005 is not obvious, Claimant had to establish causation by

⁴Employer points to the following testimony by Dr. Indzonka, found in R.R. at 63a:
Q. And Doctor, what is causing the edema at this point [in 2006]?
A. I felt it was primarily right-sided heart failure that can be caused by sleep apnea or lung conditions....

unequivocal medical testimony, but he failed to do so. *Fotta*. Dr. Indzonka offered no testimony regarding Claimant's dry eyes; thus, no unequivocal medical evidence exists to support Finding No. 8(a): Claimant's dry eye symptoms are linked to his use of diuretics. Furthermore, no unequivocal medical testimony was produced to establish a causal relationship between Claimant's edema caused by Celebrex in 2003 and chronic edema caused by right-sided heart failure diagnosed in 2006. Thus, Finding No. 8(b) that "Claimant's use of Celebrex in September 2003 caused his episode of congestive heart failure that is now chronic" is not supported by substantial evidence of record. Remand is inappropriate where no further findings are necessary to determine the outcome. *Borovich v. Colt Indus.*, 492 Pa. 372, 424 A.2d 1237 (1981). The Court therefore affirms.

DORIS A. SMITH-RIBNER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Walter Bond,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1172 C.D. 2008
	:	
Workers' Compensation Appeal Board	:	
(Roadway Express and Gallagher	:	
Bassett),	:	
	:	
Respondents	:	

ORDER

AND NOW, this 11th day of December, 2008, the Court affirms the order of the Workers' Compensation Appeal Board.

DORIS A. SMITH-RIBNER, Judge