

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wilma Coddington, :
 : No. 1226 C.D. 2012
 Petitioner : Submitted: November 16, 2012
 v. :
 :
 Workers' Compensation Appeal :
 Board (Lynchholm Holsteins and :
 State Workers' Insurance Fund), :
 :
 Respondents :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: January 14, 2013

Wilma Coddington (Claimant) petitions for review of the May 31, 2012, order of the Workers' Compensation Appeal Board (WCAB), which affirmed the decision of a workers' compensation judge (WCJ) dismissing Claimant's petition to review compensation benefits. We affirm.

On February 9, 2006, Claimant was injured during the course and scope of her employment as a part-time cow milker with Lynchholm Holsteins (Employer) when she fell backwards onto her buttocks while opening a large metal gate. Claimant continued to work for Employer until March 3, 2006. Claimant became totally disabled on March 4, 2006, due to the work injury. On March 31, 2006, Employer issued a notice of compensation payable (NCP) describing Claimant's

injury as a low back sprain. Claimant continues to receive weekly benefits for her total disability. (WCJ's Findings of Fact, Nos. 1, 4-5.)

On May 21, 2009, Claimant filed a petition to review compensation benefits alleging that her work injury included depression. Employer denied the allegation. (WCJ's Findings of Fact, No. 2.)

On June 30, 2009, the WCJ held a hearing. Claimant testified that she continues to have pain in the left side of her lower back, which is intense at times. Claimant stated that she has numbness in her buttocks, legs and feet. Claimant also receives injections three to four times each year for the lower back pain and takes a prescription drug for numbness. (WCJ's Findings of Fact, Nos. 3, 6.)

Claimant further testified that she began treating for depression in January 2009. Claimant stated that she did not want to leave her house and was having trouble sleeping, remembering and concentrating. Claimant testified that she had been treated for depression in 1996 and 1997, but was not being treated for and had no symptoms of depression at the time of her work injury. Claimant stated that she was tired of her back hurting and the numbness; and that she could not take it anymore after her father's sudden death in January 2008. Claimant also testified that her granddaughter's cerebral palsy is stressful to her. (WCJ's Findings of Fact, No. 7.)

Claimant testified again on May 18, 2010, that she is unable to work because of her depression. Claimant's husband testified as to changes in Claimant's

personality since her work injury. His observations of Claimant were consistent with Claimant's testimony. (WCJ's Findings of Fact, Nos. 7-8.)

Claimant also presented the testimony of Frank Schmidt, Ph.D., who performed a psychological evaluation of Claimant beginning on August 1, 2009. Dr. Schmidt did not treat Claimant. Dr. Schmidt opined that Claimant had the following diagnoses: mood disorder due to disc injury, pain disorder due to disc injury, disorder injury, intervertebral lumbar, generalized anxiety disorder, post-traumatic stress disorder, social phobia, attention deficit/hyperactivity disorder, amnesic disorder, panic disorder and disc disorder/injury, intervertebral lumbar. All of Dr. Schmidt's diagnoses except disc disorder/injury, intervertebral lumbar were under Axis I of the mental health diagnostic format. Dr. Schmidt opined that all of the Axis I diagnoses were related to Claimant's work injury because her symptoms arose after this injury. (Findings of Fact, No. 10.)

Employer presented the testimony of Stuart S. Burstein, M.D. Dr. Burstein evaluated Claimant and reviewed Claimant's medical and chiropractic records, along with Dr. Schmidt's evaluation report. Dr. Burstein did not treat Claimant either. Dr. Burstein opined that Claimant's work injury may have temporarily exacerbated Claimant's mood and caused an adjustment disorder with depression and anxiety, but that when Dr. Burstein examined Claimant, she was fully recovered from any possible mental injury caused by the work injury. Dr. Burstein found no sign of depression during his evaluation. Dr. Burstein opined that Claimant exaggerated her claimed symptoms; he noted that she seemed confident, had normal

cognitive functions, normal memory use, and a normal mental capacity. (WCJ's Findings of Fact, No. 11.)

The WCJ found Claimant's and Claimant's husband's testimony not credible as to the claimed mental injury because it was not consistent regarding the injury's extent and duration, because almost three years passed between the injury date and the first treatment for depression. Further, the WCJ stated that their testimony was not consistent with the demonstrated treatment. The WCJ found Dr. Schmidt's testimony not credible because Dr. Schmidt did not treat Claimant and the history he took from Claimant was incomplete.¹ The WCJ further found that there was no medical evidence submitted to support Claimant's position.² The WCJ found the testimony of Dr. Burstein credible and persuasive, accepting his analysis and opinion of the Claimant's injuries. (WCJ's Findings of Fact, Nos. 10, 12-13.)

The WCJ concluded that Claimant did not meet her burden of showing that her work injury includes depression or any other injury not stated in the NCP. (WCJ's Conclusions of Law, No. 1.) Therefore, on August 2, 2010, the WCJ

¹ Dr. Schmidt was unaware of Claimant's father's death, her granddaughter's cerebral palsy, Claimant's history of depression in 1996 and 1997, or Claimant's sister treating for depression. Dr. Schmidt did not review any medical records. (WCJ's Findings of Fact, No. 10.)

² The only other medical evidence submitted by Claimant was the report of a certified nurse practitioner. The report stated that Claimant was seen beginning April 8, 2009, for some depressive symptoms and that she was told that chronic pain can cause depression. No medical diagnosis or medical opinion as to the cause of the Claimant's symptoms was in the report. Further, there was no history as to the onset of the depressive symptoms. (WCJ's Findings of Fact, No. 12.)

dismissed Claimant’s petition to review compensation benefits. Claimant appealed to the WCAB, which affirmed. Claimant’s petition for review to this court followed.³

Claimant argues that the WCAB erred in affirming the WCJ’s determination because Claimant met her burden regarding causation and the WCJ’s decision was not supported by substantial evidence. We disagree.

Specifically, Claimant contends that the testimony of Dr. Burstein, taken as a whole, shows that the work injury caused Claimant’s depression and constituted substantial evidence to support Claimant’s position.

When a claimant is seeking to amend a NCP pursuant to section 413 of the Workers’ Compensation Act (Act),⁴ she has the burden of proving that her disability “has increased and that the original work-related injury caused the

³ 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.

⁴ Section 413 of the Workers’ Compensation Act, Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §772, provides in pertinent part:

A [WCJ] designated by the department may, at any time, modify, reinstate, suspend, or terminate a [NCP] . . . upon petition filed by either party with the department, upon proof that the disability of an injured employe has increased, decreased, recurred or has temporarily or finally ceased Such modification . . . shall be made as of the date upon which it is shown that the disability of the injured employe has increased

amending disability.”⁵ *Huddy v. Workers’ Compensation Appeal Board (U.S. Air)*, 905 A.2d 589, 592 (Pa. Cmwlth. 2006). Where the connection between the work incident and the claimant’s injury is not obvious, a claimant must prove by unequivocal medical evidence that the work incident caused the injury. *Jeannette District Memorial Hospital v. Workmen’s Compensation Appeal Board (Mesich)*, 668 A.2d 249, 251 (Pa. Cmwlth. 1995). Where medical testimony is needed to establish the causal connection to the work incident, the medical witness must testify that, in his professional opinion, the resulting injury did come from, not might have or possibly come from, the assigned cause. *Lewis v. Workmen’s Compensation Appeal Board*, 508 Pa. 360, 365-66, 498 A.2d 800, 802 (1985).

Here, the WCJ found that Claimant failed to prove a causal connection between the work injury and the claimed new injury, depression. Claimant contends that Employer’s medical expert, Dr. Burstein, met her burden of proof with his testimony. Dr. Burstein testified in pertinent part as follows:

I recognize where [Claimant] *could have* gone through an episode of anxiety, depression and excess pain complaints early on in her adaptation to the work injury.

* * *

I think it *might have* temporarily exacerbated her mood so as to cause what I identified as an adjustment disorder with depression and anxiety. While she had no such disorder

⁵ A claimant who files a petition for review seeking to amend the original NCP to include a mental disability must prove a causal relationship between the work-related injury and the subsequent psychiatric injury. *Commercial Credit Claims v. Workmen’s Compensation Appeal Board (Lancaster)*, 556 Pa. 325, 333, 728 A.2d 902, 906 (1999); *see also Ryan v. Workmen’s Compensation Appeal Board (Community Health Services)*, 550 Pa. 550, 707 A.2d 1130 (1998).

when I met her, [Claimant] *could have* gone through such an episode earlier on in the course of her adaptation to this work injury.

* * *

No, she does not. At the time I examined [Claimant], she was fully recovered from any *possible* mental injury due to that work injury.

* * *

I can understand where there *might have been* some depression and anxiety on [Claimant's] part early on, after the work-injury, but by the time I met with her –and this was very soon after Dr. Schmidt had seen her –she had made a full recovery from any of those symptoms.

(N.T., 1/24/10, at 24, 30-31, 35.) (Emphasis added.)

Contrary to Claimant's assertion, Dr. Burstein did not identify a depression disorder caused by the work injury. (Claimant's Br., at 13.) Dr. Burstein opined that Claimant did not have depression when he examined her. Moreover, he merely acknowledged that Claimant "could have" or "might have" had a temporary episode of depression in the past. However, allowing for the possibility of a prior condition is not unequivocal medical evidence of causation. *Lewis*, 508 Pa. at 366, 498 A.2d at 802. The testimony of Dr. Burstein, when taken as a whole, does not constitute substantial evidence to support a finding of depression.

The WCJ was correct in determining that Claimant failed to present sufficient evidence to support a finding that her work injury caused her depression.⁶ The WCAB did not err in upholding this decision.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

⁶ The WCJ found Claimant and her medical expert not credible. Credibility determinations are for the WCJ and not this court. *Phoenixville Hospital v. Workers' Compensation Appeal Board (Shoap)*, 2 A.3d 689, 698 (Pa. Cmwlth. 2010), *appeal granted*, 610 Pa. 203, 18 A.3d 1093 (2011).

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ORDER

AND NOW, this 14th day of January, 2013, the order of the Workers' Compensation Appeal Board, dated May 31, 2012, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge