

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anna Gray,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1275 C.D. 2007
	:	SUBMITTED: November 9, 2007
Workers' Compensation Appeal Board	:	
(Philadelphia Housing Authority),	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: January 24, 2008

Anna Gray (Claimant) appeals from an order of the Worker's Compensation Appeal Board (Board) affirming the order of the Workers' Compensation Judge (WCJ) to suspend Claimant's workers' compensation benefits under the Workers' Compensation Act.¹ At issue is whether Claimant left the labor market voluntarily or was forced out by a work injury. The Board affirmed the WCJ's finding that Claimant voluntarily left the labor market. Because the WCJ's findings are based upon substantial evidence, we affirm.

Claimant suffered a work injury on January 8, 2004, while working as a nutrition aide for Philadelphia Housing Authority (Employer). On February 23,

¹ Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4, 2501-2626.

she returned to work in a light duty position without a loss of earnings. On the same day, she filed a claim petition, seeking payment of medical bills, attorneys' fees and full disability benefits from the date of the injury until the time she returned to work. The WCJ concluded that a work injury rendered Claimant totally disabled for that time period and Claimant was therefore entitled to worker's compensation benefits. The WCJ also concluded that Employer was entitled to a suspension of benefits as of October 6, 2005, because on that date Claimant retired and voluntarily left the work force. Claimant appealed, challenging the latter conclusion, and the Board affirmed.

Our Supreme Court has established a clear burden for workers, such as Claimant, who seek benefits after retirement:

It is clear that disability benefits must be suspended when a claimant voluntarily leaves the labor market upon retirement. The mere possibility that a retired worker may, at some future time, seek employment does not transform a voluntary retirement from the labor market into a continuing compensable disability. An employer should not be required to show that a claimant has no intention of continuing to work; such a burden of proof would be prohibitive. For disability compensation to continue following retirement, a claimant must show that he is seeking employment after retirement or that he was forced into retirement because of his work-related injury.

Southeastern Pennsylvania Transportation Authority v. Workmen's Comp. Appeal Bd. (Henderson), 543 Pa. 74, 79, 669 A.2d 911, 913 (1995). *See also County of Allegheny (Dept. of Pub. Works) v. Workers' Comp. Appeal Bd. (Weis)*, 872 A.2d 263 (Pa. Cmwlth. 2005). As it is undisputed that Claimant did not seek employment after retirement, the ultimate issue is whether Claimant established that she was forced into retirement by her work-related injury.

At the first hearing in April of 2004, Claimant testified that after her work injury:

[S]he was out of work until February 23, 2004 and used her accrued vacation, sick and personal leave time in order to continue her income. She returned to work after exhausting her leave benefits and was placed in a light duty position initially ordering foods and janitorial supplies. That stopped and then she was assigned to sit at a desk and collect the lunch fee the residents had to pay and she would lock up in the afternoon. She had no problems performing this job because there was really nothing to do[.]

F.F. No. 1.g. Specifically, she testified:

Q. Are you able to do the job you're doing now?

A. Yeah, because I mostly sitting.

Q. Do you have any problems with that?

A. No. I have to tell the truth. I don't have no problems because there's really nothing to do.

N.T. 4/21/04, pp. 16-17. Approximately eighteen months later, on October 6, 2005, Claimant retired. At that time, she was sixty-seven years old² and receiving social security benefits. At a subsequent hearing on November 17, 2005, just after her retirement, Claimant testified that she retired because of orders from her doctor and because she could not function in the workplace due to medication that she needed to take for her injury. *See* N.T. 11/17/05, pp. 11-12. However, the WCJ did not credit claimant's testimony, instead finding:

While Claimant contends that she retired because of the pain in her right shoulder, it is noted that Claimant admittedly was able to perform her job duties even with

² Claimant was born on November 7, 1937. N.T. 4/21/04, p.6.

the painful condition of her right shoulder. Moreover, Claimant had the option of seeking a reinstatement of her workers' compensation benefits, if she was no longer capable of performing her job duties. Instead, Claimant made a conscious choice to retire and it is found that in doing so Claimant evidenced her intention to retire from the work force.

F.F. No. 13. Claimant argues that her testimony that she would not have retired but for her work-related injury established that she retired for that reason. She further argues that no evidence exists of any other reason for her retirement. The WCJ, however, is not required to accept even uncontested testimony. *See Capasso v. Workers' Comp. Appeal. Bd. (RACS Associates, Inc.)*, 851 A.2d 997 (Pa. Cmwlth. 2004). The burden lies entirely with the Claimant to establish that her retirement was induced by her work-related injury, and she simply failed to persuade the factfinder.

Resolving conflicts in evidence is beyond the scope of our review. Our inquiry is limited to whether there is evidence to support the findings made by the WCJ. We will not disturb the WCJ's findings merely because there is some evidence on record that could support contrary findings. *See Minicozzi v. Workers' Comp. Appeal Bd. (Indus. Metal Plating, Inc.)*, 873 A.2d 25 (Pa. Cmwlth. 2005).

We examine the entire record to see if it contains evidence a reasonable person might find sufficient to support the WCJ's findings. If the record contains such evidence, the findings must be upheld, even though the record may contain conflicting evidence. This Court cannot, nor will we, consider the

existence of other testimony that might support findings different from those found by the WCJ.

Id. at 29 (citations omitted).

Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anna Gray, :
 :
 Petitioner :
 :
 :
 v. : No. 1275 C.D. 2007
 :
 :
 Workers' Compensation Appeal Board :
 (Philadelphia Housing Authority), :
 Respondent :

ORDER

AND NOW, this 24th day of January, 2008, the order of the Workers' Compensation Appeal Board in the above captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge