IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mary Hobson,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1279 C.D. 2009
	:	
Workers' Compensation Appeal Board (Sharon Regional Health System),	:	No. 1280 C.D. 2009
	:	Submitted: October 16, 2009
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: February 9, 2010**

Mary Hobson (Claimant) petitions for review of the July 30, 2008 and June 11, 2009 orders of the Workers' Compensation Appeal Board (Board). In the July 30, 2008 order, the Board affirmed in part and reversed and remanded in part the Workers' Compensation Judge's (WCJ) decision granting Claimant's two Claim Petitions for Workers' Compensation Benefits (Claim Petitions) and denying Sharon Regional Health System's (Employer) two Petitions to Suspend Benefits (Suspension Petitions). In the June 11, 2009 order, the Board affirmed the WCJ's decision on remand granting Employer's Suspension Petitions and reaffirmed the Board's prior

order as a final order. Before this Court, Claimant argues that the Board erred in suspending her benefits because: (1) the Board exceeded its authority and substituted its own credibility determinations for those of the WCJ; (2) Employer failed to issue a notice of ability to return to work, in accordance with Section 306(b)(3) of the Workers' Compensation Act (Act),[1] before offering Claimant a modified-duty position and seeking a suspension of benefits on that basis; and (3) the Board directed the WCJ to issue a decision on remand without first requiring the WCJ to make certain credibility findings regarding Employer's evidence pertaining to job availability.[2] For the reasons that follow, we affirm the Board's orders.

Claimant worked for Employer as a registered nurse in the cardiovascular unit at Sharon Regional Hospital. On September 6, 2003, Claimant developed a methticillin-resistant staphylococcus aureas (MRSA) infection in her right arm. As a result of the MRSA infection, Claimant missed work from September 7, 2003 to January 4, 2004. On January 5, 2004, Claimant returned to work, but she left work again on January 17, 2004 after developing a MRSA infection in her left knee.

On December 16, 2004, Claimant filed the Claim Petitions, alleging that she had developed MRSA infections as a result of exposure to MRSA patients while working for Employer. Claimant sought to receive temporary total disability benefits from September 7, 2003 to January 4, 2004, and from January 19, 2004 forward, as well as medical benefits. Employer filed an Answer to the Claim Petitions, denying

[1] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. § 512(3).

[2] For purposes of this opinion, we have reordered Claimant's arguments.

that Claimant's MRSA infections were work-related. Thereafter, in November and December of 2005, Employer filed the Suspension Petitions seeking to suspend Claimant's benefits as of September 26, 2005, the date Employer offered Claimant a special job as a breast care nurse specialist, which Claimant declined, and because work was generally available. Claimant filed an Answer to the Suspension Petitions, denying the availability of suitable work and alleging that she remains totally disabled. The Claim Petitions and Suspension Petitions were consolidated, and the matter was assigned to the WCJ for disposition. The WCJ held several hearings, at which both parties presented evidence.

During the hearings, Claimant testified on her own behalf. Claimant testified as to the circumstances that led to her developing her MRSA infections and the treatment that she received thereafter. (January 28, 2005, WCJ Hr'g Tr. at 8-20, R.R. at 62a-65a.) Claimant believed that she developed MRSA infections after being exposed to several patients who had MRSA infections while working for Employer. (WCJ Hr'g Tr. at 22-25, 28-30, R.R. at 66a-68a.) Claimant also testified that she attempted to seek reemployment with Employer in positions that were consistent with her medical restrictions, which she understood as not being permitted to perform any jobs that involved exposure to infected wounds or changing dressings on wounds. (WCJ Hr'g Tr. at 22, R.R. at 66a; March 16, 2005 WCJ Hr'g Tr. at 10-11, R.R. at 72a.) Claimant explained that, in March of 2004, she had inquired with Employer about performing a records-related position, but that such a job never materialized. (March 16, 2005 WCJ Hr'g Tr. at 11, R.R. at 72a.) Claimant further explained that, in May of 2004, she applied for a position with Employer reviewing medical charts as a clinical abstractor, but Employer hired someone else. (January 28, 2005 WCJ Hr'g

Tr. at 21, R.R. 66a; March 16, 2005 WCJ Hr'g Tr. at 12, R.R. at 72a.) Additionally, Claimant explained that, in June of 2005, she applied for another position as a clinical abstractor, was offered the position, and accepted the position; however, before she started, Employer advised her that it was no longer able to hire anyone for the position. (January 28, 2005 WCJ Hr'g Tr. at 21, R.R. at 66a; March 16, 2005 WCJ Hr'g Tr. at 12-13, R.R. at 72a-73a.)

Claimant also presented the deposition testimony of Robin K. Avery, M.D., who is board certified in internal medicine and infectious disease. Dr. Avery testified that she began treating Claimant for her MRSA infections in March of 2004. (Avery Dep. at 5, R.R. at 204a.) Dr. Avery testified that, although she could not pinpoint any one patient, she believed that it was "likely that [Claimant] encountered MRSA" as a result of exposure to patients with MRSA during her employment with Employer. (Avery Dep. at 20-21, R.R. at 219a-20a.) Dr. Avery also testified that, as of a visit that occurred on September 15, 2004, the last signs of Claimant's MRSA infections had resolved, and she advised Claimant that she could stop taking medication for those infections. (Avery Dep. at 13-14; R.R. at 212a.-13a.) Moreover, Dr. Avery explained that she had advised Claimant to "consider[] another branch of nursing where she would not have direct exposure to wounds or dressings." (Avery Dep. at 12, R.R. at 211a.) Dr. Avery further testified that, in August of 2005, she reviewed the job description for the breast care nurse specialist position and "saw no contraindication to [Claimant] taking this type of position." (Avery Dep. at 17, R.R. at 216a.) Dr. Avery explained that, based on her review of the job description, she did not believe that the breast care nurse specialist position would involve direct

exposure to patients with wounds or treating wounds. (Avery Dep. at 18, R.R. at 217a.)

Claimant also presented the deposition testimony of Nadine H. Alex, M.D., who is board certified in internal medicine and endocrinology. Dr. Alex testified that she treated Claimant from 2002 to 2004 for Hashimoto's disease with hypothyroidism and osteoporosis. (Alex Dep. at 8-9, R.R. at 234a-35a.) Dr. Alex testified that Claimant also suffers from CREST syndrome,[3] for which she treated with another physician. (Alex Dep. at 8-10, R.R. at 234a-36a.) Dr. Alex explained that, because of Claimant's medical conditions and the medications that Claimant takes for these conditions, Claimant is at a higher risk to contract infections. (Alex Dep. at 15-16, R.R. at 241a-42a.) Dr. Alex testified that she believed Claimant developed her MRSA infections from patients in the cardiovascular unit at Employer's hospital. (Alex Dep. at 22, R.R. at 248a.) Dr. Alex explained that MRSA infections are common among patients in the cardiovascular unit and that Claimant "had very little risk [of] exposure elsewhere." (Alex Dep. at 22, R.R. at 248a.) Furthermore, Dr. Alex testified that it would "be in [Claimant's] best interest to move into an area where she was not going to be exposed to infections" and that Claimant "should at least try to get into an area where she is not going to be in direct contact with patients that have infections." (Alex Dep. at 23, R.R. at 249a.) Dr. Alex explained that it is "preferable that [Claimant work in positions where she has] contact with patients that [are] healthier, out-patient type patients or administrative,

[3] Dr. Alex explained that CREST syndrome is "when you have calcinosis, calcium deposits under the skin in your extremities – Raynaud's syndrome, esophageal dysmotility, sclerodactyly, and telangiectasias." (Alex Dep. at 8, R.R. at 234a.)

or where she [isn't] going to have direct contact." (Alex Dep. at 23, R.R. at 249a.) Dr. Alex also explained that the MRSA infections that Claimant contracted were "a wake-up call to all of us that she needs to change her environment." (Alex Dep. at 26, R.R. at 252a.)

Dr. Alex also testified that, because of the scleroderma Claimant experiences from her CREST syndrome, she recommended that Claimant apply for full medical disability. (Alex Dep. at 24-25, R.R. 251a-52a.) Dr. Alex explained that Claimant's CREST syndrome "is never going to go away, and [Claimant] is always going to be on medication. She is always going to be immuno-compromised to an extent." (Alex Dep. at 25, R.R. at 251.) Dr. Alex further explained that, given Claimant's CREST syndrome and her risk of contracting infections, "in any hospital setting -- and even in an outpatient setting it would still offer some risk, because out-patients can also be ill -- but given the whole picture, it might be a good idea to have full medical disability." (Alex Dep. at 25, R.R. at 251a.)

Employer presented the deposition testimony of David A. Wheeler, M.D., who is board certified in internal medicine and infectious disease. Dr. Wheeler testified that he could not say with certainty whether Claimant had developed her MRSA infections as a result of working in the cardiovascular unit for Employer. (Wheeler Dep. at 11, R.R. at 120a.) While Dr. Wheeler "believe[d] it's more likely that [Claimant] did in fact get exposed to MRSA in 2002, 2003 in the health care setting," he could not distinguish whether the exposure occurred while Claimant was working or when she was a patient. (Wheeler Dep. at 11, R.R. at 120a.) Dr. Wheeler also could not rule out the possibility that Claimant acquired MRSA in the community

setting. (Wheeler Dep. at 11-12, R.R. at 120a-21a.) Dr. Wheeler explained that, while there is some risk that Claimant could become infected again in the future, she is physically able to return to work in a health care setting. (Wheeler Dep. at 15-16, R.R. at 124a-25a.) Dr. Wheeler stated that he had reviewed the job description for the breast care nurse specialist position and agreed with Dr. Avery that Claimant was capable of performing that position in September of 2005. (Wheeler Dep. at 17, R.R. at 126a.)

Employer also presented the deposition testimony of Susan Gibson, Employer's Vice President of Patient Care, and Carol Novelli, Employer's Workers' Compensation Claim Administrator. Ms. Gibson testified that she had worked on developing the job description for the breast care nurse specialist position and had discussed the position with Claimant. (Gibson/Novelli Dep. at 6-7, R.R. at 146a-47a.) Ms. Gibson and Ms. Novelli explained that the breast care nurse specialist position is a non-clinical position. (Gibson/Novelli Dep. at 6-7, 30-32, 146a-47a, 170a-72a.) Ms. Gibson and Ms. Novelli also testified that they had reviewed other non-clinical positions with Claimant as well, including a position as an Atlas abstractor and a position in Employer's Tumor Registry Program. (Gibson/Novelli Dep. at 9, 30-32, R.R. at 149a, 170a-72a.) Both Ms. Gibson and Ms. Novelli stated that Employer offered Claimant the job as a breast care nurse specialist, but that Claimant declined the job. (Gibson/Novelli Dep. at 14, 33-34, R.R. at 154a, 173a-74a.)

After considering the evidence presented, the WCJ issued a decision and order granting Claimant's Claim Petitions and denying Employer's Suspension Petitions.

The WCJ credited Claimant's testimony "on the subjects of the development of her work-related infections and medical disorders as the result of her employment with [E]mployer, as well as her inability to continue with employment in either her pre-injury capacity, or the positions as advanced in the testimony of Susan Gibson and Carol Novelli." (WCJ Decision, Findings of Fact (FOF) ¶ 8, June 29, 2007.) The WCJ also credited the testimony of Dr. Avery and Dr. Alex over the testimony of Dr. Wheeler as to the cause of Claimant's MRSA infections, finding that such infections were caused by Claimant's employment. (FOF ¶ 8.) The WCJ further credited the testimony of Dr. Alex over the testimony of Dr. Wheeler as to Claimant's inability to return to work either in her pre-injury capacity or in the positions advanced by Employer. (FOF ¶ 8.)

Employer appealed the WCJ's decision and order to the Board, arguing that the WCJ erred in denying the Suspension Petitions because the WCJ's finding that Claimant was incapable of returning to work on September 26, 2005, in the specific position offered by Employer, was not supported by substantial evidence. Claimant filed a cross-appeal, arguing that the WCJ erred by failing to find that Employer had not issued a notice of ability to return to work before seeking a suspension of Claimant's benefits. Neither party challenged the WCJ's grant of the Claim Petitions. On July 30, 2008, the Board issued an opinion and order affirming in part and reversing and remanding in part the WCJ's decision and order. The Board agreed with Employer that the WCJ erred in denying Employer's Suspension Petitions because the WCJ's finding that Claimant was incapable of returning to work on September 26, 2005 was not supported by substantial evidence. (Board Decision at 7, July 30, 2008.) Moreover, the Board disagreed with Claimant that the WCJ had erred

in failing to find that Employer had not issued a notice of ability to return to work. (Board Op. at 8-9.)

On October 20, 2008, the WCJ issued a decision and order on remand, concluding that, based on the Board's determination that Employer had established that, as of September 26, 2005, Claimant was capable of returning to work in the specific position offered, Employer was entitled to a suspension of benefits.[4] (WCJ Decision, FOF ¶ 1; Conclusions of Law (COL) ¶ 1, October 20, 2008.) Accordingly, the WCJ suspended Claimant's benefits effective September 26, 2005. Claimant appealed the WCJ's decision and order on remand to the Board. On June 11, 2009, the Board issued an opinion and order affirming the WCJ's decision and order on remand, and reaffirming its prior order of July 30, 2008 as a final order.[5] Claimant

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[4] After the 1996 amendments to Section 306(b), Act of June 24, 1996, P.L. 57, an employer seeking to modify or suspend benefits must:

> (1) offer to a claimant a specific job that it has available, which the claimant is capable of performing, or (2) establish 'earning power' through expert opinion evidence including job listings with employment agencies, agencies of the Department of Labor and Industry and advertisements in a claimant's usual area of employment.

Edwards v. Workers' Compensation Appeal Board (MPW Industrial Services, Inc.), 858 A.2d 648, 650-51 (Pa. Cmwlth. 2004) (quoting South Hills Health Sys. v. Workers' Compensation Appeal Board (Kiefer), 806 A.2d 962, 966 (Pa. Cmwlth. 2002)). If an employer seeks to modify or suspend benefits on the basis of a specific job offer, once it proves that it offered the claimant an available job within her restrictions, "[t]he burden of proof then shifts to the claimant to demonstrate that [s]he responded to the job offer in good faith." Darrall v. Workers' Compensation Appeal Board (H.J. Heinz Co.), 792 A.2d 706, 714 (Pa. Cmwlth. 2002). If the claimant fails to exercise good faith, then her benefits will be modified or suspended, whichever is appropriate. Id.

[5] After the matter was appealed to the Board, the parties stipulated to the Board's affirmance of the WCJ's decision and order on remand so that the matter could move forward. (Board Op. at 4, June 11, 2009.)

now petitions this Court for review of the Board's July 30, 2008 and June 11, 2009 orders.[6,7]

Before this Court, Claimant first argues that the WCJ's initial finding that Claimant was incapable of returning to work in the specific position offered by Employer as of September 26, 2005 was supported by substantial evidence in the form of Dr. Alex's credited testimony. Thus, Claimant contends that the Board exceeded its authority by overturning the WCJ's finding and credibility determination. We disagree.

In a workers' compensation proceeding, the WCJ "is the ultimate fact finder and is the sole authority for determining the weight and credibility of evidence." Lombardo v. Workers' Compensation Appeal Board (Topps Company, Inc.), 698 A.2d 1378, 1381 (Pa. Cmwlth. 1997). "As such, the WCJ is free to accept or reject the testimony of any witness, including medical witnesses, in whole or in part." Id. Similar to a reviewing court, the Board's authority to review factual matters is limited to determining "whether, upon consideration of the evidence as a whole, the [WCJ's] findings have the requisite measure of support in the record." Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Board (Skirpan), 531 Pa. 287, 293, 612 A.2d 434, 437 (1992). As long as the WCJ's findings are supported by substantial

[6] Claimant filed separate petitions for review of the Board's July 30, 2008 and June 11, 2009 orders; however, this Court consolidated those petitions by order dated July 20, 2009.

[7] This Court's "review is limited to a determination of whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence." Vinglinsky v. Workmen's Compensation Appeal Board (Penn Installation), 589 A.2d 291, 293 (Pa. Cmwlth. 1991).

evidence, the Board is required to accept those findings. Id. "Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id. at 292, 612 A.2d at 436 (quoting Republic Steel Corp. v. Workmen's Compensation Appeal Board (Shinsky), 492 Pa. 1, 5, 421 A.2d 1060, 1062 (1980)).

Here, in initially finding Claimant incapable of returning to work as of September 26, 2005, the WCJ relied primarily on the testimony of Dr. Alex, which he credited over the testimony of Dr. Wheeler. Specifically, the WCJ relied on Dr. Alex's credited testimony that "it would be in [C]laimant's best interest to move to a position where there would not be exposure or direct contact with patients subject to [the] infections experienced by [C]laimant." (FOF ¶ 8, June 29, 2007.) However, as the Board correctly observed, Dr Alex's credited testimony does not support that Claimant is *totally* disabled from working; instead, it supports that Claimant is capable of working in a position where she will not be exposed to, or have direct contact with, patients who have MRSA infections. As there is no indication that Dr. Alex ever reviewed, or was asked to review, the breast cancer nurse specialist position, Dr. Alex did not, and could not, testify as to whether that position would be within Claimant's restrictions.[8]

Moreover, Claimant's other medical expert, Dr. Avery, who did treat Claimant for her work-related MRSA infections, testified, like Dr. Alex, that Claimant would

[8] We note that, according to Dr. Alex's testimony, she only treated Claimant for pre-existing medical conditions, not the work-related MRSA infections, and her treatment of Claimant ended in 2004.

be medically capable of performing a nursing job "where she would not have direct exposure to wounds or dressings." (Avery Dep. at 12, R.R. at 211a.) Dr. Avery indicated that, based on her review of the job description, she did not believe that the breast care nurse specialist position would involve direct exposure to wound care or dressings, and she did not see any problem with Claimant accepting that type of a position. (Avery Dep. at 17-18, R.R. at 216a-17a.) Significantly, the WCJ did not discredit Dr. Avery's testimony. Additionally, Ms. Gibson and Ms. Novelli both testified that the breast care nurse specialist position is a non-clinical position (Gibson/Novelli Dep. at 6-7, 30-32, R.R. at 146a-47a, 170a-72a), and the WCJ did not discredit this testimony. Therefore, like the Board, we conclude that Dr. Alex's credited testimony does not constitute substantial evidence to support the finding that, as of September 26, 2005, Claimant was not capable of returning to work in the position offered by Employer because of her work-related MRSA.

While Claimant relies on Dr. Alex's testimony that Claimant would still be at some risk in any health care setting and that Claimant's MRSA infections signaled a need for Claimant to change her environment, that reliance is misplaced. Dr. Alex provided this testimony in the context of discussing Claimant's scleroderma related to her CREST syndrome, and Dr. Alex did so after testifying that Claimant would be capable of returning to work in a position that would not involve exposure to patients with the infections to which Claimant was susceptible. Thus, when viewed in context, we do not believe, as Claimant contends, that Dr. Alex's testimony constitutes substantial evidence to support that, as of September 26, 2005, Claimant was medically incapable of returning to work in any health care setting due to her

work-related MRSA infections. Accordingly, the Board did not err in overturning the WCJ's finding.

Claimant next argues that the Board erred in suspending her benefits because Employer never issued a notice of ability to return to work, as is required by Section 306(b)(3) of the Act, before offering her the position as a breast care nurse specialist and seeking to suspend her benefits due to her refusal of that position. We again disagree.

Section 306(b)(3) provides as follows:

> (3) If the insurer receives medical evidence that the claimant is able to return to work in any capacity, then the insurer must provide prompt written notice, on a form prescribed by the department, to the claimant, which states all of the following:
>
> (i) The nature of the employe's physical condition or change of condition.
> (ii) That the employe has an obligation to look for available employment.
> (iii) That proof of available employment opportunities may jeopardize the employe's right to receipt of ongoing benefits.
> (iv) That the employe has the right to consult with an attorney in order to obtain evidence to challenge the insurer's contentions.

77 P.S. § 512(3). This Court has held that "compliance with [S]ection 306(b)(3) is a prerequisite for the presentation of evidence offered in support of a suspension petition." Miegoc v. Workers' Compensation Appeal Board (Throop Fashions/Leslie Fay and ITS Hartford), 961 A.2d 269, 274 (Pa. Cmwlth. 2008); see also Allegis Group (Onsite) v. Workers' Compensation Appeal Board (Henry), 882 A.2d 1, 4 (Pa. Cmwlth. 2005) (holding that "compliance with the provisions of Section 306(b)(3) is

a threshold burden an employer must satisfy to obtain a modification or suspension of a claimant's benefits.") However, Section 306(b)(3), by its own terms, only applies in situations where a modification or suspension of benefits is sought based upon the receipt of new medical evidence. Burrell v. Workers' Compensation Appeal Board (Philadelphia Gas Works), 849 A.2d 1282, 1286 (Pa. Cmwlth. 2004).

In Burrell, the claimant, who had been employed by the employer as a compressor operator, sustained work-related injuries, and the employer began paying the claimant benefits. Id. at 1284. The employer subsequently obtained video surveillance footage that depicted the claimant working in a shoe shine shop, and the employer sought to modify benefits on the basis of this evidence and expert vocational testimony. Id. at 1285. The WCJ modified benefits, and the Board affirmed. Id. Thereafter, the claimant appealed to this Court, arguing, among other things, that the employer had failed to comply with Section 306(b)(3) of the Act. Id. In addressing this issue, the Court explained:

> "[C]ompliance with the provisions of Section 306(b)(3) is a threshold burden which must be met in order to obtain a modification or suspension of Claimant's benefits." Summit Trailer Sales [v. Workers' Compensation Appeal Board (Weikel), 795 A.2d 1082, 1088 (Pa. Cmwlth. 2002).] However, Section 306(b)(3) is expressly limited to modifications sought upon the receipt of medical evidence. Here, Employer sought modification not on the basis of medical evidence, but on the basis of surveillance evidence and expert vocational . . . testimony.
>
> *The clear purpose of Section 306(b)(3) is to require the employer to share new medical information about a claimant's physical capacity to work and its possible impact on existing benefits. Where, as here, a claimant determines his own physical capacity without new medical information, formal notice to him does not advance the purpose of employer disclosure. Moreover, under these circumstances the claimant enjoys a superior position to control timely notice.*

Id. at 1286 (emphasis added).

Here, the record evidence establishes that Employer was not seeking a suspension on the basis of new medical evidence of which Claimant did not already have notice. Instead, Employer sent a letter to Claimant's counsel on August 2, 2005, along with the job description for the breast care nurse specialist position. (Letter from Employer's Counsel to Claimant's Counsel (August 2, 2005) Employer's Ex. D, R.R. at 95a). Claimant's counsel then forwarded that letter to Dr. Avery, and Dr. Avery replied to Claimant's counsel on August 12, 2005 approving Claimant for the position. (Avery Dep. at 16-18, R.R. at 215a-17a.) Moreover, as the Board correctly observed, Claimant's own testimony establishes that she was voluntarily attempting to reenter the workforce by applying for different positions with Employer, but that she was unsuccessful in securing a job. Because Employer was not relying on new medical information of which Claimant was not already aware, and because Claimant voluntarily attempted to reenter the workforce, as in Burrell, we do not believe that the purpose of Section 306(b)(3) would be served by requiring formal notice under Section 306(b)(3).

While Claimant contends that Burrell only relieves employers of the duty to issue a notice of ability to return to work where a claimant has actually returned to work, like the Board, we decline to interpret Burrell that narrowly. We believe that Burrell is substantially analogous to lend support for the Board's decision here, and therefore, we conclude that Employer was not obligated to issue a notice of ability to return to work under Section 306(b)(3) of the Act.

Finally, Claimant argues that the Board improperly directed the WCJ to issue a decision on remand suspending Claimant's benefits without requiring the WCJ to make certain credibility findings. According to Claimant, because the WCJ did not make specific credibility findings as to the testimony of Ms. Gibson and Ms. Novelli, the Board should have directed the WCJ to render credibility findings as to these witnesses, particularly where the WCJ accepted all of Claimant's testimony as credible. We disagree.

In his initial decision, the WCJ did summarize the deposition testimony provided by Ms. Gibson and Ms. Novelli, and although he had the opportunity to discredit such testimony, he chose not to do so. Moreover, the testimony provided by Ms. Gibson and Ms. Novelli regarding the availability of the breast care nurse specialist position and the duties that it would involve was undisputed.[9] Thus, there would have been no rational basis for the WCJ to reject this testimony on remand. See Daniels v. Workmen's Compensation Appeal Board (Tristate Transport), 574 Pa. 61, 68, 828 A.2d 1043, 1047 (2003) (quoting Section 422(a), 77 P.S. § 834, that a WCJ may not reject uncontroverted evidence "for no reason or for an irrational reason"). Therefore, we conclude that it was unnecessary for the Board to direct the WCJ to assess the credibility of these witnesses on remand. Based on the evidence presented, there was only one logical conclusion that could be reached—that

[9] Although the WCJ credited Claimant's testimony, Claimant, herself, testified that she understood her restrictions to be that she was not permitted to work in any positions that involved exposure to infected wounds or changing dressings on wounds (January 28, 2005 WCJ Hr'g Tr. at 22, R.R. at 66a; March 16, 2005 WCJ Hr'g Tr. at 10-11, R.R. at 72a), and she never provided any testimony expressing a belief on her part that the breast care nurse specialist position did not conform with these restrictions.

Claimant was medically capable of returning to work as a breast care nurse specialist as of September 26, 2005.

Accordingly, the Board's orders are affirmed.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mary Hobson,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1279 C.D. 2009
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Workers' Compensation Appeal Board (Sharon Regional Health System),	:	No. 1280 C.D. 2009
	:	
	:	
Respondent	:	

O R D E R

NOW, February 9, 2010, the orders of the Workers' Compensation Appeal Board in the above-captioned matter are hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge