

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Donna Quaranta,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 127 C.D. 2008
	:	
Workers' Compensation Appeal Board	:	Submitted: April 25, 2008
(Pennsylvania State University),	:	
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: September 4, 2008**

Donna Quaranta (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board) affirming the determination of a Workers' Compensation Judge (WCJ), which denied Claimant's Claim Petition for workers' compensation benefits. At issue in the present appeal is whether the WCJ issued a reasoned decision as required by Section 422(a) of the Workers' Compensation Act (Act).<sup>1</sup>

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<sup>1</sup> Act of June 2, 1915, P.L. 736, as amended, 77 P.S. § 834.

Claimant testified to the following facts regarding her history and symptoms, which the WCJ found credible. (WCJ Decision, Findings of Fact (FOF) ¶ 37.) The Pennsylvania State University (Employer) employed Claimant as a foodservice worker at its State College campus. (FOF ¶ 4.) During the summer months, Claimant also worked in Employer's housing department. (FOF ¶ 4.) On May 14, 2003, Claimant reported to Redifer Commons at 6:30 a.m. to work in the housing department. (FOF ¶¶ 4-5.) While walking through a doorway, Claimant tripped on the threshold, causing her right elbow to strike the door jamb. (FOF ¶ 5.) Claimant reported the injury to her manager, but continued to work the rest of the day using her left hand. (FOF ¶ 6.) Claimant sought treatment after work at Penn State Occupational Health Services because her elbow continued to hurt. (FOF ¶ 6.) Claimant was x-rayed, prescribed Bextra, ibuprofen, and physical therapy, and was cleared to work with her left hand. (FOF ¶ 7.) Claimant went back to work in food service in the beginning of August. (FOF ¶ 9.) She testified that her elbow bothered her and that she noticed her right hand was swelling while she wore latex gloves. (FOF ¶ 9.)

On August 17, 2003, while working in food service, Claimant's right arm began swelling, and her right hand was discolored. (FOF ¶ 10.) Dr. Martin, a Penn State team physician who Claimant encountered while at work, advised Claimant to see her family physician. (FOF ¶ 10.) Claimant also called Dr. Herbert Kunkle,<sup>2</sup> who recommended that Claimant receive an ultrasound of her upper right extremity. (FOF

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<sup>2</sup> Dr. Kunkle is an orthopedic physician that has treated Claimant for her work injury, as well as past conditions. (Report of Charles S. Yanofsky, M.D., July 21, 2006, at 1-2, Employer's Exhibit C.)

¶ 10.) After being referred to Dr. Karla Anderson at Hershey Medical Center (Hershey), based on the ultrasound findings, Claimant was treated for a blood clot while at Hershey. (FOF ¶ 11.) As for pre-existing conditions that may or may not have a bearing on blood clots, Claimant testified that she suffers from Charcot-Marie-Tooth Disease and takes Darvocet and Soma for this condition. (FOF ¶ 14.) Claimant also used birth control pills from 1976 to 1982, as well as a second course up to 2003.<sup>3</sup> (FOF ¶ 14.) Claimant was also diagnosed with a Protein-S deficiency while at Hershey. (FOF ¶ 14.) Dr. Anderson recommended that Claimant have a rib resection and referred her to Dr. Robert J. Keenan at Allegheny General Hospital. (FOF ¶ 11.) In September 2003, Claimant began treatment with Dr. Keenan. (FOF ¶ 21.) Dr. Keenan diagnosed Claimant as having thoracic outlet syndrome, and an effort-induced venous thrombosis that resulted from the May 2003 work injury. (FOF ¶ 27.) Following Claimant's rib resection surgery and post-operative recovery, a venogram performed on September 17, 2004 "showed post-operative changes but no evidence of flow limitation, stenosis or obstruction of venous return." (FOF ¶ 25.) Claimant returned to Dr. Keenan on May 22, 2006, again having swelling of the upper right extremity. (FOF ¶ 26.)

Claimant filed a Claim Petition for workers' compensation benefits against Employer on November 11, 2005. (FOF ¶ 1.) In her Claim Petition, Claimant alleged that she suffered an injury on May 14, 2003, including right tricep tendonitis, right lateral epicondylitis, exacerbation of the right rotator cuff, right subclavian vein thrombosis and thoracic outlet syndrome. (FOF ¶ 1.) Claimant requested workers'

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<sup>3</sup> Per Claimant's testimony, the second course of birth control pills began in 2002 and ended in 2003. (WCJ Hr'g Tr. at 68, January 13, 2006.)

compensation benefits for temporary total disability beginning August 18, 2003, as well as payment of medical bills and counsel fees by Employer. (FOF ¶ 1.) Employer issued a Notice of Workers' Compensation Denial on September 9, 2003, which stated that although an injury occurred, Claimant was not disabled as a result of the injury within the meaning of the Act. (FOF ¶ 2.)

The WCJ conducted hearings in this matter at which Claimant and Employer both presented evidence. Claimant testified at the hearings which occurred on January 13, 2006 and July 28, 2006. Claimant also presented the deposition testimony of Dr. Keenan, a board-certified thoracic surgeon. Employer presented the deposition testimony of Dr. Charles S. Yanofsky, a board-certified neurologist.

Dr. Keenan first evaluated Claimant on September 19, 2003, at which time she had discoloration of her upper right extremity, edema of the upper and lower arm, as well as engorgement of the collateral veins of the upper right extremity. (Keenan Dep. at 15-16; FOF ¶ 22.) Dr. Keenan diagnosed Claimant with Pagett-Schroetter Syndrome, or effort-induced thrombosis. (Keenan Dep. at 19-20; FOF ¶ 24.) Dr. Keenan opined that Claimant "experienced a thoracic outlet syndrome, an effort-induced venous thrombosis" that resulted from the May 2003 work injury. (Keenan Dep. at 34; FOF ¶ 27.) He testified that other patients that suffer from an effort-induced thrombosis are not always diagnosed proximately to the time of the injury. (Keenan Dep. at 39; FOF ¶ 28.) Dr. Keenan commented that Claimant's condition of Charcot-Marie Tooth Disease, pre-existing lateral epicondylitis, and shoulder bursitis have no relation to an increased risk of venous thrombosis. (Keenan Dep. at 41-42, 45-46; FOF ¶ 29.) Dr. Keenan also testified that Claimant's Protein-S deficiency, of

which he was not aware until his deposition, and use of birth control would make her more prone to a thrombosis, but were not the proximate cause. (Keenan Dep. at 43-45; FOF ¶ 29.) Dr. Keenan opined that the work injury was the proximate cause that made the vessel develop the clot. (Keenan Dep. at 43-45, FOF ¶ 29.) He also noted that effort-induced thrombosis can be caused by repetitive work stress, exercise, or other situations where the arm is being used in a repetitive motion. (Keenan Dep. at 60; FOF ¶ 30.)

Dr. Yanofsky conducted a records review and prepared a report for Employer in this matter. His deposition testimony was consistent with Dr. Keenan's as to the contribution of risk factors he discussed. (FOF ¶ 31.) Dr. Yanofsky admitted that the compression of the subclavian vein could have been caused by the May 2003 work injury, whereas Dr. Keenan testified that it was a structural or congenital condition. (FOF ¶ 31.) Dr. Yanofsky opined that the May 2003 elbow injury could not have caused the subclavian vein thrombosis. (FOF ¶ 31.) He explained that the instigating factor is a tear inside the blood vessel. (FOF ¶ 32.) The tear, combined with Claimant's other predisposing factors, would cause a thrombosis to form within hours. (FOF ¶ 32.) Dr. Yanofsky explained that to relate the thrombosis to the injury, forces would have to be transmitted through the humerus bone and into the shoulder joint. (FOF ¶ 33.) These forces would derange the shoulder joint by stretching the soft tissues around the joint and could injure a blood vessel if great enough. (FOF ¶ 33.)

The WCJ found that Claimant "credibly related her history and symptoms," but noted that "the determination of the Claimant's Claim Petition is made on the medical

opinion evidence.” (FOF ¶ 37.) The WCJ found the findings and opinions of Employer’s expert, Dr. Yanofsky, to be more credible than those of Claimant’s expert, Dr. Keenan, and accepted Dr. Yanofsky’s opinion that the subclavian vein thrombosis from which Claimant was disabled, on and after August 18, 2003, is unrelated to the May 14, 2003 work injury. (FOF ¶ 36.) Accordingly, the WCJ determined that Claimant failed to meet her burden to show that her subclavian vein thrombosis and thoracic outlet syndrome were related to the May 14, 2003 injury, and dismissed Claimant’s Claim Petition. (WCJ Decision, Conclusions of Law (COL) ¶ 1.) Claimant appealed to the Board, which affirmed the WCJ’s decision. The Board concluded that the WCJ authored a reasoned decision pursuant to Section 422(a) of the Act. (Board Op. at 5.) Claimant now petitions this Court for review.<sup>4</sup>

On appeal, Claimant essentially argues that the WCJ failed to provide a reasoned decision pursuant to Section 422(a) of the Act.<sup>5</sup> To this end, Claimant argues that the decision fails to explain the WCJ’s basis for accepting the opinion of

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<sup>4</sup> This Court’s review of the Board’s determination is “limited to determining whether constitutional rights were violated, errors of law were committed or necessary findings of fact were unsupported by substantial evidence.” Manners v. Workmen’s Compensation Appeal Board (McDonald’s Restaurant), 688 A.2d 786, 788 n.1 (Pa. Cmwlth. 1997). Substantial evidence is “relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Gibson v. Workers’ Compensation Appeal Board (Armco Stainless & Alloy Prods.), 580 Pa. 470, 479, 861 A.2d 938, 943 (2004).

<sup>5</sup> We note that, in general, neither Claimant nor Employer’s briefs comply with Chapter 21 of the Pennsylvania Rules of Appellate Procedure. Rule 2119(a) requires that the argument section “be divided into as many parts as there are questions to be argued.” Pa. R.A.P. 2119(a). In this case, Claimant’s brief identified six issues for review, but presented a unified argument section. Additionally, Rule 2174 requires that all briefs contain a table of contents and table of citations, which Employer’s brief does not include. Pa. R.A.P. 2174.

Employer's expert as more credible than that of Claimant's expert, and that it is unsupported by substantial evidence.<sup>6</sup> In support of her argument, Claimant attacks the credibility of Employer's expert by pointing out that, *inter alia*, Dr. Yanofsky: holds no board certifications in thoracic surgery; was unaware of Claimant's job description; and did not physically examine Claimant. (Claimant's Br. at 12, 15.) Claimant also contends that the WCJ did not clearly or concisely explain his rationale for accepting Dr. Yanofsky's opinion as more credible, given that he could not identify the root cause of Claimant's thrombosis. (Claimant's Br. at 13.) Claimant further alleges that the WCJ capriciously disregarded competent record evidence in reaching his decision. (Claimant's Br. at 15.)

To comply with Section 422(a) of the Act, "a WCJ's decision must permit adequate appellate review." Dorsey v. Workers' Compensation Appeal Board (Crossing Constr. Co.), 893 A.2d 191, 194 (Pa. Cmwlth. 2006), petition for allowance of appeal denied, 591 Pa. 667, 916 A.2d 635 (2007). Specifically, Section 422(a) of the Act requires that a decision be based on the evidence as a whole, clearly and concisely state and explain the rationale for the decision, and specify the evidence upon which the WCJ relied, as well as the reasons it was accepted. 77 P.S. § 834.

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<sup>6</sup> In her brief, Claimant sets forth six separate issues for review. When read together, Claimant essentially alleges that: the Board's decision is not supported by substantial evidence; the WCJ erred in making his credibility determinations; both the Board and the WCJ capriciously disregarded competent record evidence; and the WCJ's decision does not comply with Section 422(a) of the Act. However, in the Argument section, Claimant largely sets forth arguments alleging that the WCJ's decision does not comply with the Act because: the WCJ's findings are not supported by substantial evidence; the WCJ capriciously disregarded competent record evidence; and the WCJ erred in making his credibility determinations. We also note that the Summary of Argument section raises several arguments that do not seem to track any of the issues identified in the Statement of Questions Involved section.

However, the WCJ is not required to discuss all of the evidence presented, but only “to make the findings necessary to resolve the issues raised by the evidence and relevant to the decision.” Dorsey, 893 A.2d at 194 n.4. Additionally, the WCJ is not required “to give a line-by-line analysis of each statement by each witness, explaining how a particular statement affected the ultimate decision.” Acme Mkts., Inc. v. Workers’ Compensation Appeal Board (Brown), 890 A.2d 21, 26 (Pa. Cmwlth. 2006).

As to credibility, the WCJ must articulate an objective basis for his or her credibility determination where the WCJ bases the determination on the consideration of deposition testimony and not personal observations. Daniels v. Workers’ Compensation Appeal Board (Tristate Transp.), 574 Pa. 61, 78, 828 A.2d 1043, 1053 (2003). “[A] WCJ’s resolution of conflicting evidence must be supported by more than a statement that one expert is deemed more credible than another.” Dorsey, 893 A.2d at 194. Moreover, “Section 422(a) does not permit a party to challenge or second-guess the WCJ’s reasons for credibility determinations.” Id. at 195. “Unless made arbitrarily or capriciously, a WCJ’s credibility determinations will be upheld on appeal.” Id.

In this case, we agree with the Board that the WCJ issued a well-reasoned decision as required by the Act because it provides for adequate appellate review. The WCJ based his decision on the evidence as a whole, specified the evidence he relied upon, and explained the reasoning behind the decision. The WCJ accepted the opinion of Dr. Yanofsky as more credible than that of Dr. Keenan, and set forth the evidence he relied upon in doing so. The WCJ accepted Dr. Yanofsky’s deposition



testimony that Claimant's elbow injury could cause a thrombosis if the forces, transmitted through the humerus bone into the shoulder joint, stretched the soft tissues around the joint and caused a blood vessel to be injured. (FOF ¶ 33; Yanofsky Dep. at 31-33.) The WCJ also credited Dr. Yanofsky's testimony that the clot would form usually within hours. (FOF ¶ 36.) The WCJ explained that he interpreted Dr. Keenan's opinion to suggest that a blood vessel was injured by these forces, but that a clot did not form until three months later. (FOF ¶ 36.) In discrediting Dr. Keenan's opinion, the WCJ noted that even though Dr. Keenan testified in his deposition that in other cases "the condition is sometimes diagnosed months after the initial trauma that causes a subclavian vein thrombosis, Dr. Keenan did not analogize those cases to the facts of this case wherein the swelling of Claimant's upper right extremity was not noted before the beginning of August." (FOF ¶ 36.) The WCJ explained that, since Claimant was undergoing treatment related to her upper right extremity by several physicians after the work injury, any swelling of her upper right extremity that existed prior to August 2003 would not have been missed. (FOF ¶ 36.) The WCJ also noted that Dr. Keenan could not comment on whether the physiotherapy prescribed following the work injury caused, contributed, or had any relation to the swelling of the upper extremity. (FOF ¶ 30.) While Claimant sets forth numerous reasons why the WCJ could find Dr. Yanofsky's deposition testimony not credible, the WCJ explained and supported his credibility determinations with competent evidence of record. Even though Dr. Keenan provided competent testimony in favor of Claimant, such testimony is not dispositive because there was contrary testimony to support the WCJ's findings. Minicozzi v. Workers' Compensation Appeal Board (Indus. Metal Plating, Inc.), 873 A.2d 25, 29 (Pa. Cmwlth. 2005). Thus, since the WCJ articulated an objective basis for crediting Dr. Yanofsky's deposition testimony

over Dr. Keenan's deposition testimony, we find no error in the WCJ's credibility determinations.

Additionally, there is substantial evidence in the record to support the WCJ's findings. Dr. Yanofsky explained that thoracic outlet syndrome is considered to be a developmental anomaly, which results from the way a person's body is built rather than a single traumatic incident. (Yanofsky Dep. at 26-27.) He states in his report that "there is no known definite causal link between the trauma and the diagnosis of thoracic outlet syndrome." (Report of Charles S. Yanofsky, M.D., July 21, 2006, (Report) at 5, Employer's Exhibit C.) Dr. Yanofsky also notes in his report that Claimant's "thoracic outlet syndrome is associated with developmental (present at birth) anomalies likely pre-existent to her May 2003 injury." (Report at 5.) Thus, Dr. Yanofsky believed, "within 90, 95 percent probability," that the May 2003 work injury was not the cause of Claimant's thoracic outlet syndrome. (Yanofsky Dep. at 28-29.) He also explained that thoracic outlet syndrome and a subclavian vein thrombosis are two separate conditions. (Yanofsky Dep. at 112-13.)

As to the thrombosis, Dr. Yanofsky explained that Claimant's work injury could cause the inside of a blood vessel to tear if the forces from the injury were transmitted through the humerus bone and into the shoulder joint, causing the soft tissue around the joint to be stretched. (Yanofsky Dep. at 31-33.) He stated that a thrombosis can be caused by such a tear and that it would form "usually within hours." (Yanofsky Dep. at 33.) Dr. Yanofsky further explained that a thrombosis caused by an injury, such as damage to a blood vessel, would "occur very rapidly, not three months later." (Yanofsky Dep. at 34.) He also stated that, since the clot should not form over months of time, it is extremely unlikely that the thrombosis occurred

close-in-time to the work injury, but was not confirmed until August 2003. (Yanofsky Dep. at 104-05.) Dr. Yanofsky concluded in his report that, “to a reasonable degree of medical certainty,” Claimant’s thrombosis was not caused by the work injury or a work-related condition. (Report at 6.)

Dr. Yanofsky also testified that Claimant’s Protein-S deficiency made her more susceptible to developing a subclavian vein thrombosis. (Yanofsky Dep. at 142-43.) He also notes in his report that “Protein-S deficiency is considered a lifelong condition predisposing to thrombosis and is not a condition caused or brought on by injury.” (Report at 5.) He also testified that a subclavian vein thrombosis would only be diagnosed if sudden swelling was present, since the venous return from the upper extremity is blocked. (Yanofsky Dep. at 114.) Claimant testified that her right arm started swelling, while she was at work serving food, on August 17, 2003.<sup>7</sup> (WCJ Hr’g Tr. at 35, January 13, 2006.) Dr. Yanofsky explained that, in this case, Claimant’s sudden swelling raised her doctor’s suspicions and, as a result, the doctor performed tests to determine whether there was a problem with the venous return in Claimant’s extremity. (Yanofsky Dep. at 120-21.) While Claimant points out that Dr. Yanofsky stated that the cause of Claimant’s thrombosis “has to remain conjectural at this time” (Report at 5), Dr. Yanofsky nonetheless clearly and competently explained why he concluded that the work injury did *not* cause the thrombosis. The WCJ credited the findings and opinions of Dr. Yanofsky, which he

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<sup>7</sup> We note that Claimant’s counsel points out that Dr. Kunkle, in a report, makes reference to Claimant’s “sudden onset of right arm swelling with discoloration and pain” on August 18, 2003. (Yanofsky Dep. at 100-01.)

relied on in making his decision. Thus, we conclude that the WCJ's decision is supported by substantial evidence.

Finally, Claimant argues that the WCJ capriciously disregarded competent record evidence in reaching his decision. (Claimant's Br. at 15.) In support of this argument, Claimant notes that Dr. Keenan testified that Claimant's condition was Pagett-Schroetter Syndrome (effort-induced thrombosis), but Dr. Yanofsky testified that he was not familiar with this condition and, nevertheless, concluded that the work injury did not cause the thrombosis. (Claimant's Br. at 14-15.) Claimant also points to testimony suggesting that Dr. Yanofsky did not "consider Claimant's repetitive use of her upper extremities in association with the subclavian vein thrombosis." (Claimant's Br. at 15.) Additionally, Claimant notes that, while Dr. Yanofsky could not identify the cause of Claimant's thrombosis, he admitted that it is possible that the work injury contributed to the thrombosis. (Claimant's Br. at 14, 16.)

However, what Claimant identifies in support of her capricious disregard argument only amounts to selectively chosen statements in Dr. Yanofsky's testimony that, when read out of context, appear inconsistent.<sup>8</sup> While Dr. Yanofsky did state

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<sup>8</sup> We note that these statements were elicited on cross-examination. "[A]nswers given in cross-examination do not, as a matter of law, destroy the effectiveness of previous opinions expressed by a physician. Rather, the evidence will be assessed as a whole in passing upon the weight to be given to the expressed opinion." Hannigan v. Workmen's Compensation Appeal Board (Asplundh Tree Expert Co.), 616 A.2d 764, 767 (Pa. Cmwlth. 1992); see also Carpenter Tech. Corp. v. Workmen's Compensation Appeal Board (Wisniewski), 600 A.2d 694, 696 (Pa. Cmwlth. 1991) (holding that a doctor's recognition on cross-examination that other events could possibly have caused an injury does not render his original opinion equivocal).

that he was not familiar with Pagett-Schroetter Syndrome (Yanofsky Dep. 84-85), he was familiar with how a thrombosis forms and explained why Claimant's work injury did not cause her thrombosis. As to Claimant's repetitive use of her upper extremities, Dr. Yanofsky explained that he did not believe that Claimant's job duties were responsible for her subclavian vein thrombosis or thoracic outlet syndrome because of his "understanding . . . of the pathogenesis of the conditions." (Yanofsky Dep. at 83.) Also, even though Dr. Yanofsky allowed for the possibility that trauma can cause a thrombosis (Yanofsky Dep. at 142), he nonetheless explained why the trauma suffered by Claimant did not cause her thrombosis. Moreover, "the fact that a WCJ may not reiterate and/or pass specific review upon any particular line or portion of testimony does not necessarily constitute a capricious disregard thereof." Williams v. Workers' Compensation Appeal Board (USX Corp.–Fairless Works), 862 A.2d 137, 145-46 (Pa. Cmwlth. 2004). Additionally, "where there is substantial evidence to support an agency's factual findings, and those findings in turn support the conclusions, it should remain a rare instance in which an appellate court would disturb an adjudication based upon capricious disregard." Leon E. Wintermyer, Inc. v. Workers' Compensation Appeal Board (Marlowe), 571 Pa. 189, 203 n.14, 812 A.2d 478, 487 n.14 (2002). We have already determined that the WCJ reviewed the evidence as a whole and that his decision is supported by substantial evidence. Accordingly, we conclude that Claimant's capricious disregard argument must fail.

For the foregoing reasons, the order of the Board is affirmed.

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**RENÉE COHN JUBELIRER, Judge**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Donna Quaranta,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 127 C.D. 2008
	:	
Workers' Compensation Appeal Board	:	
(Pennsylvania State University),	:	
	:	
Respondent	:	

**ORDER**

**NOW**, September 4, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter is hereby **AFFIRMED**.

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**RENÉE COHN JUBELIRER, Judge**