IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Juan Zegarra,	:	
Petitioner	:	
	:	
v.	:	No. 1499 C.D. 2012
	:	Submitted: December 21, 2012
Workers' Compensation Appeal	:	
Board (Select Nutrition),	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: January 22, 2013

Juan Zegarra (Claimant) petitions for review of the order of the Workers' Compensation Appeal Board (Board) affirming the Workers' Compensation Judge's (WCJ's) decision granting a termination petition filed by Select Nutrition (Employer) because he fully recovered from his work injury.[1] Finding no error, we affirm.

[1] Section 413 of the Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §772, provides, in relevant part: "A workers' compensation judge … may, at any time, modify, reinstate, suspend, or terminate a notice of compensation payable … 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."

On September 19, 2007, Claimant was injured while working as a stocker in Employer's warehouse. Pursuant to a Notice of Compensation Payable (NCP) which identifies his injury as a contusion to his right great toe, Claimant began receiving benefits on October 18, 2007. Following an independent medical examination (IME) conducted at Employer's request, Employer filed a termination petition on January 8, 2008, alleging that Claimant had fully recovered from his work injury as of December 27, 2007. Claimant filed an answer denying all allegations set forth in the termination petition.

Before the WCJ, Employer submitted the deposition testimony of Noubar Didizian, M.D. (Dr. Didizian), an orthopedic surgeon who conducted an IME on Claimant approximately three months after his work injury. He testified that there was no abnormality or deformity between Claimant's left foot and right foot and that the temperature, pulse, texture, sweat pattern, and nail growth were matching between the two great toes. Claimant's hips, knees, and ankles had no issues. He applied pressure over the nail of the affected toe and saw no pain production. He said that a review of Claimant's record and x-rays performed on the injury stated a "nondisplaced tuft fracture of the distal phalanx, right great toe," (Reproduced Record [R.R.], at 253a), at which point Barry Lipson, M.D. (Dr. Lipson), the initial treating physician, noted in the records that Claimant was not to work unless he could perform a sitting job; subsequent records indicated a resolving hematoma on October 16, 2007. At that point, Dr. Lipson noted that Claimant was anxious to return to work, so he was released back to full duty with no need for an open shoe or a crutch. Dr. Didizian testified that because the injury was in "a highly vascular area," it would heal with or without treatment in three to six weeks. Dr. Didizian also found no nail bed injury, because the tuft has nothing to do with the nail bed, which was not affected. He further stated at the time of his examination there was no blackening of

the nail bed, nor was there any abnormality in his gait, and any blackening that had occurred at the time of injury was due to blood from the fracture going under the nail. Based upon his examination, he stated that Claimant had fully recovered from the work injury and was capable of returning to work without limitation on December 27, 2007.

Employer also submitted the deposition testimony of Paul Horenstein, M.D. (Dr. Horenstein), an orthopedic surgeon who performed an independent medical examination on Claimant on April 8, 2009.[2] He said that his examination revealed that the right great toenail had a significant fungal infection with hypertrophy secondary to that infection. There was also fungus on the other right toenails and in between the toes on both feet. Dr. Horenstein also noted "significant dry skin bilaterally and … loss of hair from the midcalf bilaterally in both lower extremities[, as well as] atrophy of his muscles in the foot and … hammering of toes two through five, again, bilaterally." (R.R., at 336a). Dr. Horenstein testified that Claimant's sensation to light touch was decreased in the right foot compared to the left, but there was no change in wetness, temperature, or color. Claimant's right ankle was also tender and Dr. Horenstein noted probable moderate to severe arthritis in the knees. He testified that the fungal infections and hypertrophy would not have any causal relationship to the work injury, and the dry skin, loss of hair, atrophic changes in the feet, hammering of the toes, and arthritic changes in the knees were likely related to diabetic neuropathy and were unrelated to the work injury. Dr. Horenstein testified that, based upon his physical examination and review of

[2] Employer submitted a petition for physical examination, which the WCJ granted, because "it appeared that Dr. Rodriguez [(Claimant's current treating physician)] was diagnosing conditions extending beyond the accepted injury as set forth on the [NCP]." (R.R., at 41a).

Claimant's records, Claimant's injury was a fracture or break of the tip of the first right toe, which has a normal healing period of four to six weeks and from which Claimant had recovered. He did not agree with Claimant's treating physician, George Rodriguez, M.D. (Dr. Rodriguez), who diagnosed a nail bed injury, but agreed that Claimant had a gait abnormality; however, Claimant's abnormal gait was due to the fact that he walks on the outside of his feet, which is secondary to the arthritic knees and was not causally related to the work injury.

Employer also submitted transcripts of two exchanges with Dr. Lipson, who was scheduled to testify but refused to do so after receiving letters the day before both scheduled depositions which Dr. Lipson viewed as threatening[3] because he "felt that he would be exposed to possible action against him if he gave the deposition." (R.R., at 39a).

Claimant testified by deposition, through an interpreter, that as a result of his injury he now uses a cane to walk and also wears an open-toe, orthopedic boot because his "nail is growing in oddly and it just does not fit in a shoe." (R.R., at 85a). He said while the injury occurred to the tip of his toe, he now experiences pain at the knuckle of the big toe and has trouble walking. As a result, he contends that he is unable to return to work as a stocker because it involves unloading trucks and putting products in different places requiring use of a ladder, none of which he felt he was

[3] One letter states, in pertinent part, that "you are not authorized to conduct the deposition at the request of the opposing party to this litigation. Should you persist in going forward with this deposition, please be on notice that you do not have any executed medical release from defense counsel." (R.R., at 39a). The other letter provides similar language.

capable of doing. He acknowledged that he has diabetes, high blood pressure and cholesterol, and recently-discovered tuberculosis.

Claimant also submitted the deposition testimony of Dr. Rodriguez, a physician at the Injury Rehabilitation Center who testified that he began treating Claimant on October 25, 2007, for his right great toe pain. At this initial visit, he said that Claimant explained that while he was working for Employer on September 19, 2007, an antique desk fell and landed on Claimant's right great toe. Following the injury, Employer sent Claimant to Dr. Lipson, who performed a physical evaluation and ordered x-rays, which revealed a fracture to the tip of toe in question. When he examined Claimant, Dr. Rodriguez testified that Claimant avoided putting pressure on the bottom of the affected toe and only walked for short distances throughout the day. He also had some knee and ankle pain from limping. Based on his examination, Dr. Rodriguez opined that Claimant had "a right great toenail bed injury [and] a right great toe sesamoid bone fracture" and a gait abnormality because Claimant walks with a limp, for which he prescribed a cane. Based on a subsequent examination of Claimant on March 31, 2009, two weeks before being deposed, Dr. Rodriguez found that there was blackness of the nail in the affected toe, accompanied by moderately severe to severe pain. Dr. Rodriguez testified that, at that point, Claimant was not capable of returning to his pre-injury work.

The WCJ found that Claimant was not credible because his complaints of pain extended far beyond a normal healing period given the injury he sustained. She also found Dr. Didizian and Dr. Horenstein more credible than Dr. Rodriguez. Based on her findings, the WCJ granted the termination petition because Employer established, by substantial, competent evidence that Claimant fully recovered from his work injury as of December 27, 2007, and he was able to return to work without

restriction. Claimant appealed to the Board, which affirmed and this appeal followed.[4]

On appeal, Claimant argues that the WCJ's decision was not well-reasoned[5] because Employer's medical experts' testimony is inconsistent and contradictory because Dr. Didizian testified that there was not a nail bed injury and Dr. Horenstein testified that Claimant had some nail bed issue, since "whenever you see bleeding, that's assumed that the patient had a nail bed injury." (R.R., at 344a). Claimant further alleges that the WCJ failed to address this inconsistency, but still found both experts credible.

Ignoring that the existence of an alleged nail bed injury is of no consequence because both doctors testified that there was no ongoing nail bed injury at the time Dr. Didizian examined Claimant, there is no conflict. Dr. Didizian, who examined Claimant three months after the injury, testified that there may have been blackening of the nail bed caused by dried blood at the time the accident occurred, but did not attribute this to any specific nail bed injury. After Dr. Horenstein examined Claimant on April 8, 2009, he testified that Claimant did not have any evidence of a nail bed injury but agreed, upon reviewing Dr. Lipson's records, that at the time of the injury, "he had bleeding there, so there was an element of some nail

[4] Our review of a decision of the Board is limited to determining whether errors of law were made, constitutional rights were violated or whether the record supports the necessary findings of fact. *Ward v. Workers' Compensation Appeal Board (City of Philadelphia)*, 966 A.2d 1159, 1162 n.4 (Pa. Cmwlth.), *appeal denied*, 603 Pa. 687, 982 A.2d 1229 (2009).

[5] Section 422 of the Act, 77 P.S. §834, provides that parties are entitled to a reasoned decision that clearly and concisely explains the basis for the decision so that the parties can determine how and why a particular result is reached.

bed laceration or injury." (R.R., at 344a.) Further, he said that Dr. Lipson's notes did not state that Claimant had a nail bed injury, but even if he did, he had fully recovered from any nail bed injury that may have occurred.

A decision is well-reasoned "if it allows for adequate review by the Board without further elucidation and if it allows for adequate review by the appellate courts under applicable review standards. A reasoned decision is no more and no less." *Daniels v. Workers' Compensation Appeal Board (TriState Transport)*, 574 Pa. 61, 76, 828 A.2d 1043, 1052 (2003). Accordingly, the decision more than adequately satisfies that standard and the WCJ's decision was well-reasoned and supported by substantial, competent evidence, and we will not disturb it on appeal.[6]

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, President Judge

[6] Claimant also argues that Dr. Horenstein failed to establish that Claimant had fully recovered from a nail bed injury. However, because Claimant cites his own testimony, which was deemed not credible by the WCJ, and because Dr. Horenstein, who was found credible, testified that even if there had been a nail bed injury, Claimant had fully recovered from it, we do not need to address this issue further.

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O R D E R

AND NOW, this 22nd day of January, 2013, the order of the Workers' Compensation Appeal Board dated July 13, 2012, at No. A11-0565, is affirmed.

DAN PELLEGRINI, President Judge