

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Chester Water Authority, :  
Petitioner :  
 :  
 v. : No. 1516 C.D. 2007  
 : Submitted: December 21, 2007  
Workers' Compensation Appeal Board :  
(Irving), :  
Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
SENIOR JUDGE FLAHERTY

FILED: March 7, 2008

Chester Water Authority (Employer) petitions for review from an Order of the Workers' Compensation Appeal Board (Board) that affirmed the decision of a Workers' Compensation Judge (WCJ) granting a Claim Petition filed by Jerome Irving (Claimant). We affirm for the reasons stated below.

Claimant filed a Claim Petition on August 11, 2005 alleging he sustained an injury to his back in the course and scope of his employment. He sought total disability from August 2, 2005 and ongoing.

Claimant testified that he worked for Employer as a repairman specialist requiring him to inspect booster stations that keep system pressure.

(N.T. 5/18/06, p. 5).<sup>1</sup> He explained that the materials he handles during his workday can weigh anywhere between sixty to three-hundred pounds. (Id. at 6). Claimant stated that on June 3, 2005, he was attempting to disconnect a jockey pump that weighed between one-hundred to two-hundred pounds that was suspended from a ceiling. (Id. at 8, 9). The pump gave way, fell on him, and he had to catch it. (Id. at 9). He explained that following the incident his shoulders, back, hands, and knees hurt. (Id. at 10). According to Claimant, his supervisor, Joseph Pinter, came out to the job site that day and he informed him of the incident. (Id. at 10, 11). Claimant worked his regular job the following week but he became more and more sore until the following Sunday when he could not get out of bed. (Id. at 12). He explained that he called off work on Monday, June 13, 2005. (Id. at 13). He sought medical treatment with Occupational Health per Employer's request. (Id. at 14). He was placed on restricted duty but ultimately stopped working sometime in August. (Id. at 18-19, 25).

Claimant does not believe he can physically perform all of the duties of his pre-injury job. (Id. at 21). Claimant acknowledged he did not tell anyone about the pain he was in during the week following the jockey pump incident. (Id. at 12, 36). He does not recall telling "Dr. Marazini" that he may have injured himself jogging. (Id. at 40).

Claimant presented the testimony of Raymond Wolfe, M.D., board certified orthopedic surgeon, who first examined him on August 9, 2005. (Depo. dated 4/25/06, p. 7). Claimant provided him with a history of the jockey pump

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<sup>1</sup> The reproduced record supplied by Employer in this case does not contain proper pagination as required by Pa. R.A.P. 2173. Thus, citation is made to the original record throughout this Opinion.

incident. (Id.) Claimant had complaints of left-sided low back pain that radiated down his left leg to his heel with occasional numbness in the left foot. (Id. at 8). Upon examination, Dr. Wolfe noted tenderness in the left side of Claimant's lumbar spine. (Id.) Dr. Wolfe reviewed films of an MRI dated June 13, 2005 that revealed disc degeneration at two levels as well as some narrowing. (Id. at 9). Dr. Wolfe's initial impression was back pain with radiculopathy and nerve irritation; stated alternatively, degenerative disc disease, some stenosis or narrowing, as well as herniated discs. (Id.) As of Claimant's November 18, 2005 office visit, Dr. Wolfe opined Claimant could return to work at light duty. (Id. at 12). He did not believe Claimant could perform his pre-injury job as a repairman specialist. (Id. at 14). Dr. Wolfe opined Claimant's complaints were related to the work accident he described. (Id. at 14).

Employer presented the deposition testimony of Joseph Pinter, distributions facility supervisor, who assigned Claimant to replace the jockey pump. (Depo. dated 9/20/06, p. 10). He recalled going to the job site on June 3, 2005, but denied having a conversation with Claimant concerning the pump falling on him. (Id. at 11). Mr. Pinter explained that upon arriving at the job site, the pump was unbolted but still in place. (Id. at 12). He acknowledged that at the end of the day in Employer's office he and Claimant had a conversation about the fact that the jockey pump fell. (Id. at 13). According to Mr. Pinter, he inquired as to whether Claimant was "okay." (Id.) He stated that Claimant responded that "everything was fine." (Id.) Mr. Pinter agreed that the following week, Claimant worked his normal duties and did not indicate he was having any physical problems. (Id. at 14). Mr. Pinter stated that Claimant worked Monday, June 13, 2005 and mentioned that his back was bothering him. (Id. at 15). Mr. Pinter

testified that Claimant did not attribute this pain to any particular cause. (Id. at 19). Claimant called off the following day as his back was bothering him. (Id. at 18, 20). Mr. Pinter explained that upon receiving Claimant's call, he inquired if Claimant knew how he injured his back. (Id. at 20). He stated that he asked twice and both times Claimant answered that he did not know. (Id.) Mr. Pinter found out through his supervisor on June 15, 2005 that Claimant was claiming his back pain originated from the incident on June 3, 2005.<sup>2</sup> (Id. at 19).

Employer further presented the testimony of Theodore Pawlik, its human resources director, who stated that Employer has a light duty policy in order to enable a worker to continue working on a temporary basis when injured. (Depo. dated 9/20/06, p. 6). According to Mr. Pawlik, Employer will try to accommodate individuals for a sixty-day period in order to facilitate a return to full duty employment. (Id. at 7). He suggested that the first time he heard anything about Claimant having a back problem was on June 15, 2005. (Id. at 8). The following day, Mr. Pawlik learned that Claimant was attributing his back problems to work. (Id. at 9). He understood that Claimant was placed on restrictions following an appointment with Occupational Health that was set up by Employer. (Id. at 9-10). Mr. Pawlik agreed that Claimant worked restricted duty through August of 2005. (Id. at 16). He noted that he discussed this matter with a "Dr. Marazini" whereupon that individual suggested that there may be a question regarding causation as Claimant provided a history that he was "jogging over the weekend." (Id. at 13, 21, 24).

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<sup>2</sup> During Mr. Pinter's testimony, Employer's Counsel indicated "[a]nd just so the record is clear, if it saves you questions, we're not disputing the possibility that the pump may have fallen, we're just questioning whether there was an injury from it 10 days later." (Depo. dated 9/20/06, p. 29). Employer's Counsel further agreed that there was no dispute as to notice. (Id.)

Employer also presented the testimony of David N. Bosacco, M.D., board certified in orthopedic surgery, who saw Claimant on February 27, 2006. (Depo. dated 9/22/06, p. 7). Claimant's symptoms at that time were low back pain rated at seven out of ten. (Id. at 9). According to Dr. Bosacco, evaluation of the lumbar spine was normal. (Id. at 11). Dr. Bosacco opined that Claimant sustained a lumbar strain as a result of the incident at work occurring on June 3, 2005 that resolved by the point he saw him. (Id. at 12). Dr. Bosacco observed that in reviewing the June 13, 2005 MRI, there was no evidence of something new or acute that would indicate anything had happened within the past year. (Id. at 13). According to Dr. Bosacco, the MRI revealed disc degeneration at L4-5 and L5-S1 as well as a mild protrusion and bulging of the disc asymmetric to the left. (Id.) Dr. Bosacco believed no restrictions were required for Claimant's work injury. (Id. at 14).

In a decision circulated December 12, 2006, the WCJ credited Claimant's testimony as to the incident of June 3, 2005 and the symptoms he has suffered since that time. The WCJ based this credibility determination on his own personal observations and the fact that Claimant's testimony was consistent with the clinical observations of Claimant's treating surgeon, the medical records, and the diagnostic tests. The WCJ further credited the testimony of Dr. Wolfe as he was able to examine Claimant on numerous occasions and his testimony was consistent with that of Claimant, Dr. Wolfe's own observations, and the diagnostic tests that Dr. Wolfe reviewed. The WCJ rejected the opinion of Dr. Bosacco to the extent he opined Claimant was fully recovered noting that his testimony is not supported by Claimant's credible testimony, the diagnostic test results, nor the clinical observations of Claimant's treating physician. The WCJ credited Mr.

Pinter and Mr. Pawlik in part. He noted that neither witness disputed the fact that Claimant gave timely notice of his injury. Moreover, they agreed that a light-duty position is unavailable to Claimant after the sixty-day period expires.

Based on these credibility determinations, the WCJ determined that Claimant met his burden of establishing that he sustained a lumbar strain, herniated discs, and radiculopathy as well as an aggravation of his lumbar degenerative disc disease with stenosis as a result of the incident occurring on June 3, 2005. The WCJ awarded total disability benefits beginning August 17, 2005 and into the future based on an average weekly wage (AWW) of \$1,350.00. The Board affirmed in an Order dated July 10, 2007. This appeal followed.<sup>3</sup>

Employer argues the WCJ failed to issue a reasoned decision and that he mischaracterized and capriciously disregarded evidence.<sup>4</sup> It contends that the

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<sup>3</sup> Our review is limited to determining whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence and whether constitutional rights were violated. DeGraw v. Workers' Compensation Appeal Board (Redner's Warehouse Mkts., Inc.), 926 A.2d 997 (Pa. Cmwlth. 2007). On appeal, the prevailing party below is entitled to all inferences that can be reasonably drawn from the evidence. Krumins Roofing & Siding Co. v. Workmen's Compensation Appeal Board (Libby), 575 A.2d 656 (Pa. Cmwlth. 1990).

<sup>4</sup> Section 422(a) of the Pennsylvania Workers' Compensation Act (Act), added by the Act of July 2, 1993, P. L. 190, 77 P.S. § 834, provides in pertinent part:

All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. Uncontroverted evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must

**(Footnote continued on next page...)**

WCJ failed to consider the testimony of Mr. Pinter and Mr. Pawlik for the actual purpose that it was offered. The intended purpose of this testimony was to attack Claimant's credibility as to whether Claimant actually sustained a disabling injury on June 3, 2005. Employer further asserts that it is difficult to discern how the WCJ arrived at his assessment concerning the nature of Claimant's work-related injuries and his finding that Claimant continues to be disabled by the same based on his summary of the evidence presented and the basis given for his credibility determinations.

In a claim petition, the burden of proving all necessary elements to support an award rests with the claimant. Inglis House v. Workmen's Compensation Appeal Board (Reedy), 535 Pa. 135, 634 A.2d 592 (1993). The claimant must establish that his injury was sustained during the course and scope of employment and is causally related thereto. McCabe v. Workers' Compensation Appeal Board (Dep't of Revenue), 806 A.2d 512 (Pa. Cmwlth. 2002). When the connection between the injury and the alleged work-related cause is not obvious, it is necessary to establish the cause by unequivocal medical evidence. Hilton Hotel Corp. v. Workmen's Compensation Appeal Board (Totin), 518 A.2d 1316 (Pa. Cmwlth. 1986). The claimant is also required to establish the length of his disability. Innovative Spaces v. Workmen's Compensation Appeal Board (DeAngelis), 646 A.2d 51 (Pa. Cmwlth. 1994). An aggravation of a pre-existing

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**(continued...)**

identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

condition is compensable. Cooper-Jarrett, Inc. v. Workmen's Compensation Appeal Board (Miller), 423 A.2d 52 (Pa. Cmwlth. 1980).

Section 422(a) of the Act does not permit a party to challenge or second-guess the WCJ's reasons for the credibility determinations rendered. Dorsey v. Workers' Compensation Appeal Board (Crossing Constr. Co.), 893 A.2d 191 (Pa. Cmwlth. 2006). Indeed, determining the credibility of a witness is the quintessential function of the fact finder. It is not an exact science, and the ultimate conclusion comprises far more than a tally sheet of its various components. Id. at 195. Moreover, a reasoned decision does not require the WCJ to give a line-by-line analysis of each statement made 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 (Pa. Cmwlth. 2006).

After a review of the record, we conclude that the Board did not err in affirming the WCJ's Order as all findings are supported by substantial evidence. Pursuant to both Inglis House and Innovative Spaces, Claimant had the burden to establish that he sustained a work-related injury accompanied by a resultant disability as well as the length of that disability. The WCJ credited Claimant's testimony. He credited Dr. Wolfe's testimony in its entirety and rejected Dr. Bosacco's testimony to the extent Dr. Bosacco opined Claimant was fully recovered from his work-related injury. Based on the WCJ's credibility determinations, Claimant was able to satisfy his burden of proving he sustained a lumbar strain, herniated discs, and radiculopathy as well as an aggravation of his lumbar degenerative disc disease with stenosis as a result of the incident occurring



on June 3, 2005.<sup>5</sup> Furthermore, Claimant was able to establish that he continues to be disabled by his work injuries. The WCJ is the final arbiter of witness credibility and the weight to be accorded evidence and may accept or reject the testimony of any witness in whole or in part. Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck), 664 A.2d 703 (Pa. Cmwlth. 1995).

We reiterate that as Claimant prevailed below, he is entitled to all inferences that can be reasonably drawn from the evidence. Libby. Moreover, it does not matter that there is other evidence of record that supports a factual finding other than that made by the WCJ. Hoffmaster v. Workers' Compensation Appeal Board (Senco Prods. Inc.), 721 A.2d 1152 (Pa. Cmwlth. 1998). Rather, the proper inquiry is whether there is any evidence that supports the WCJ's factual findings. Id. at 1155. There is substantial, competent evidence of record to support the WCJ's findings.

We disagree with Employer that a remand is necessary. We acknowledge that the WCJ found both Mr. Pinter and Pawlik credible in part although he did not specify what portion of their testimony he credited or what portion he rejected. We further recognize that in support of his credibility determinations regarding these witnesses, the WCJ indicated only that they did not dispute that Claimant gave notice of his injury and that light-duty was not available from Employer after sixty days. This finding was made despite the fact that

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<sup>5</sup> We acknowledge that it was Dr. Bosacco whom diagnosed Claimant with a lumbar strain attributable to his employment. Nonetheless, a party's burden of proof may be met where the necessary evidence is introduced by his adversary. SKF USA, Inc., v. Workers' Compensation Appeal Board (Smalls), 728 A.2d 385 (Pa. Cmwlth. 1999). We reiterate that Dr. Bosacco's testimony was only rejected to the extent he opined Claimant was fully recovered from his work-related injuries.

Employer never challenged the notice issue or the duration of the availability of modified duty. This Court also notes, as asserted by Employer, that the WCJ never mentions in his Decision that Claimant responded in the negative when questioned by Mr. Pinter if he knew how he injured his back upon calling off work, that he worked for one week after the June 3, 2005 accident without complaints, or that “Dr. Marazini,” who did not testify in this case, informed Mr. Pawlik that Claimant may have injured himself jogging. Nonetheless, while Employer contends that the purpose of Mr. Pinter and Mr. Pawlik’s testimony is to challenge Claimant’s credibility as to whether he actually sustained a disabling injury on June 3, 2005, and that the WCJ failed to consider their testimony for this purpose, the fact remains that Employer’s own medical expert agreed that there was such an injury.

Dr. Bosacco opined Claimant sustained a lumbar strain as a result of the incident occurring on June 3, 2005 that had resolved as of his examination. Thus, the crux of this appeal really is whether the WCJ satisfied the Act’s reasoned decision requirement when crediting Dr. Wolfe’s opinion, that differed as to the nature of Claimant’s injury and the duration of his disability, over that of Dr. Bosacco to the extent Dr. Wolfe opined Claimant continues to be hampered by his work injury.

When the WCJ has the opportunity to see the witnesses testify live, a mere conclusion as to whether he credits or rejects the witnesses’ testimony, absent some special circumstance, is sufficient to render the decision adequately “reasoned.” Daniels v. Workers’ Compensation Appeal Board (Tristate Transp.), 574 Pa. 61, 828 A.2d 1043 (2003). When, however, the WCJ did not observe the respective demeanors of the witnesses, his resolution of the conflicting evidence cannot be supported by a mere announcement that he deemed one individual more

credible than another. To the contrary, the WCJ must provide certain objective factors to support his acceptance or rejection of that evidence. Id. at 78, 828 A.2d at 1053.

As the medical expert's appeared via deposition, Daniels instructs that the WCJ must provide an objective basis to support his credibility determinations. The WCJ credited the testimony of Dr. Wolfe as he was able to examine Claimant on several occasions, his testimony was consistent with the credible testimony of Claimant, and the diagnostic tests that he reviewed. The WCJ rejected Dr. Bosacco's opinion on the duration of Claimant's disability because his testimony was contradictory to the Claimant's credible testimony, the diagnostic test results, and the clinical observations of Claimant's treating physician. These are objective factors sufficient to comply with the reasoned decision requirement of the Act.

To the extent Employer cites testimony in the record that it contends was not considered by the WCJ that, in its opinion, tends to weigh against finding Dr. Wolfe credible, we reiterate, per Brown, that the WCJ is not required to give a line-by-line analysis of each statement made by each witness and explain how it affected his adjudication. Moreover, to the extent it questions, *inter alia*, how the diagnostic tests, specifically the June 13, 2005 MRI, support Dr. Wolfe's opinion, this court is precluded from second guessing the WCJ's credibility determinations. Dorsey.

We acknowledge the argument made by Employer that the WCJ failed to consider its statement of wages when calculating Claimant's AWW. We have reviewed the contents of the record, however, and note that no statement of wages is contained therein. Moreover, the WCJ, in the "Witnesses & Exhibits" page that precedes his December 12, 2006 Decision, does not list a statement of wages as an

exhibit. Further, Employer fails to direct us to as to when or where a statement of wages was submitted into the record or to summarize its contents. Items that are not part of the record may not be considered by the fact finder or an appellate body on review. Kimberly Clark Corp. v. Workers' Compensation Appeal Board (Bullard), 790 A.2d 1072 (Pa. Cmwlth. 2001). As the alleged statement of wages is not part of the record, Employer's argument must fail.<sup>6</sup>

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JIM FLAHERTY, Senior Judge

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<sup>6</sup> It is true that workers' compensation proceedings are not governed by technical rules of evidence. Cruz v. Workers' Compensation Appeal Board (Philadelphia Club), 728 A.2d 413 (Pa. Cmwlth. 1999). Rather, they are governed by more relaxed standards. Edwards v. Workers' Compensation Appeal Board (MPW Indus. Serv.), 858 A.2d 648 (Pa. Cmwlth. 2004). Nonetheless, we point out even if it was submitted into the record, a statement of wages prepared by the employer is hearsay. Pike v. Workmen's Compensation Appeal Board (Bob Hart Contractors), 639 A.2d 887 (Pa. Cmwlth. 1994).

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(Irving),	:	
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**ORDER**

AND NOW, this 7<sup>th</sup> day of March, 2008, the Order of the Workers' Compensation Appeal Board is affirmed.

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JIM FLAHERTY, Senior Judge