IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Canonsburg General Hospital, Petitioner	:	
v.	:	
Workers' Compensation Appeal Board (Miller), Respondent	:	No. 1545 C.D. 2012
	:	Submitted: November 30, 2012

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY FILED: January 2, 2013

Canonsburg General Hospital (Employer) petitions this Court for review of the Workers' Compensation Appeal Board's (Board) July 17, 2012 order affirming the Workers' Compensation Judge's (WCJ) decision granting Charles Miller's (Claimant) claim petition. There are two issues for this Court's review: (1) whether the Board erred by affirming the WCJ's determination that there was substantial evidence to support the award, and (2) whether the Board erred by finding that the WCJ issued a reasoned decision. We affirm.

Claimant was employed as an Environmental Services Aide (i.e., housekeeper) for Employer for 18 years. His job required him to clean rooms and beds after patients were discharged. While at work on November 12, 2008, Claimant lifted the lower section of a bed with his right hand to clean beneath it. He heard a rip and felt a tear in his right shoulder, and experienced immediate pain. He reported the injury to the employee health nurse, who referred him to Employer's emergency

room. Claimant was diagnosed with a right rotator cuff tear for which he was prescribed Motrin and Percocet and was instructed to apply ice and wear a sling. Claimant was told to remain off work the next day and follow up at Health Works. An x-ray showed that Claimant had right shoulder arthritis.

On November 13, 2008, Claimant was examined at Health Works, where he was diagnosed with a work-related right shoulder strain. He was told to continue the treatment plan started in the emergency room, and to be re-checked. On his Medical and Occupational History Form, Claimant did not indicate a history of shoulder problems. *See* Reproduced Record (R.R.) at 31a. Claimant returned to Health Works on November 17, 2008, where he was diagnosed with right shoulder impingement syndrome with possible rotator cuff tear. He was instructed to begin physical therapy and was released to modified-duty work. On November 22, 2008, Employer's employee health nurse notified Claimant that his claim was denied, and that modified-duty work was no longer available.

On November 26, 2008, Claimant treated with his family physician, Jeffrey R. Gretz, D.O., who referred Claimant for an MRI which revealed a massive right rotator cuff tear and arthritis. Dr. Gretz referred Claimant to surgeon Christopher C. Schmidt, M.D. who diagnosed Claimant with a rotator cuff tear. Dr. Schmidt's report indicated that Claimant's injury was work-related, in that "[h]e had no pain prior to this. He could lift his arm up prior to the injury." R.R. at 42a. On December 22, 2008, Dr. Schmidt surgically repaired Claimant's shoulder. In his operative report, Dr. Schmidt noted that "[t]here is some evidence that some of this is old or acute on an old injury. I do believe it is work related." R.R. at 44a.

On February 2, 2009, Claimant filed a claim petition alleging that he sustained a right rotator cuff tear as a result of the November 2008 work-related incident. Employer denied Claimant's allegations. In a March 19, 2009 follow-up report, Dr. Gretz stated that Claimant was experiencing less pain, and was doing his

own therapy since he had no insurance. Dr. Gretz released Claimant to light-duty work.

At an April 14, 2009 hearing before the WCJ, Claimant testified that he had no symptoms or pain in his right shoulder before the November 2008 injury. When asked about the May 2008 reports from Dr. Gretz reflecting complaints of extreme shoulder pain, x-ray reports reflecting bilateral shoulder pain, and steroid injections as late as October 2008, Claimant explained that those references were related solely to his left shoulder.

On May 26, 2009, Claimant underwent an independent medical evaluation with Robert L. Waltrip, M.D. Dr. Waltrip reported that despite Claimant's denials that he had prior right shoulder pain or injuries, his medical records reflected a right shoulder sprain/strain in May 2001, and treatments for extreme right shoulder pain in April and May 2008 with continued steroid injections through October 2008. Following his examination, Dr. Waltrip concluded, within a reasonable degree of medical certainty, that Claimant's right shoulder problems pre-existed the November 12, 2008 incident and were not work-related. Based upon his later review of Employer's short video clip demonstrating the method by which employees lift and clean beds, Dr. Waltrip stated, "the video strengthens my opinion that there is no significant stress on the right rotator cuff with the mechanism of the injury described," and re-stated that he did not believe that Claimant tore his rotator cuff or aggravated a pre-existing tear at work on November 12, 2008. R.R. at 78a. Claimant returned to full-duty work for Employer on June 22, 2009.

At an October 15, 2009 hearing before the WCJ, when again asked if he had previous right shoulder problems, Claimant insisted that he was treated in 2008 solely for left shoulder pain due to his use of a cane in his left hand caused by a vapor cyst on his left knee. Also at that hearing, Employer introduced the video clip of its housekeepers' bed cleaning procedure. Claimant's supervisor, Carla Evans, testified

that the hospital beds fold up on a hinge for easy cleaning, and that she does not consider them heavy. Ms. Evans also testified that, based upon where Claimant claims to have been standing when his injury occurred, he should have been using his left hand to lift the bed, because it would have been closest to the bottom.

At the final WCJ hearing on April 13, 2010, Claimant acknowledged medical records related to treatment by Thomas A. Mutschler, M.D. for his hips and left leg in late 2007 and early 2008 which, on February 19, 2009 and March 4, 2009, reflected treatments for pain in the right shoulder and a diagnosis of "right shoulder rotator cuff tendonitis." R.R. at 54a. When Claimant was asked why he did not mention those treatments in response to questioning at the October 2009 hearing, he responded, "I actually just forgot about it. . . . I totally forgot that I had that done." R.R. at 122a. Claimant acknowledged that he had used his cane in his right hand during his knee recovery. He also confirmed that he did not mention Dr. Mutschler's previous right shoulder treatments during his post-injury visits with either Dr. Schmidt or Dr. Gretz.

On August 31, 2010, the WCJ awarded Claimant total disability benefits from November 23, 2008 through June 22, 2009, and credited Employer for sickness and accident benefits Claimant received during his absence from work. On July 17, 2012, the Board affirmed the WCJ's decision. Employer appealed to this Court.[1]

Employer first argues that the Board erred by affirming the WCJ's determination that there was substantial evidence to support the award. Employer specifically argues that the WCJ's decision was based upon Dr. Schmidt's medical opinion evidence which was legally incompetent because Dr. Schmidt did not have

[1] "This Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence." *Washington v. Workers' Comp. Appeal Bd. (State Police)*, 11 A.3d 48, 54-55 n.4 (Pa. Cmwlth. 2011). Employer's application for supersedeas was denied on August 23, 2012.

all of the facts about Claimant's prior right shoulder problems when he rendered his opinion as to causation. We disagree.

> To sustain an award under the Workers' Compensation Act [(Act),[2]] 'the claimant must prove a causal relationship between the work-related incident and the alleged disability. Generally, if there is no obvious relationship between the disability and the work-related cause, unequivocal medical testimony is required to meet the burden of proof.'

Housing Auth. of City of Pittsburgh v. Workmen's Comp. Appeal Bd. (Sheffield), 646 A.2d 686, 688 (Pa. Cmwlth. 1994) (quoting *Odd Fellow's Home of Pa. v. Workmen's Comp. Appeal Bd. (Cook)*, 601 A.2d 465, 467 (Pa. Cmwlth. 1991)). "Unequivocal medical testimony is a medical expert's testimony that in his professional opinion the claimant's condition . . . did [in fact] come from the work experience." *Bartholetti v. Workers' Comp. Appeal Bd. (Sch. Dist. of Phila.)*, 927 A.2d 743, 746 n.7 (Pa. Cmwlth. 2007) (quotation marks omitted).

Here, the WCJ deemed credible Claimant's testimony that he sustained a work injury to his right shoulder on November 12, 2008, stating:

> While I do believe [C]laimant unfortunately attempted to hide the prior problems he had with his right shoulder, this does not change the fact that [C]laimant was able to perform his job up to November 12, 2008, and was not able to perform it afterwards, which is evidence that he sustained some sort of injury on that date which either aggravated the preexisting problem or caused a new injury on top of the old problems. I note that [C]laimant has been consistent in describing how the injury happened which lends credibility to his description of that particular event.

WCJ Decision at ¶ 20. For the same reason, the WCJ found Dr. Schmidt's opinions more credible than Dr. Waltrip's. The WCJ further stated that while Dr. Waltrip pointed out that Dr. Schmidt deemed the right shoulder injury a degenerative

[2] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4, 2501-2708.

condition, "Dr. Schmidt was able to view the shoulder personally during the surgery and this did not change his opinion that [C]laimant's condition is work-related . . . ." WCJ Decision at ¶ 21. The WCJ also found Ms. Evans' testimony credible on the basis that it was not contradicted in any significant way by the other record evidence. Accordingly, the WCJ found that there was substantial evidence to support the award.

"The WCJ is the sole finder of fact when the Board takes no additional evidence. A WCJ's findings of fact can be reversed only if not supported by substantial, competent evidence or if arbitrary and capricious." *B & T Trucking v. Workers' Comp. Appeal Bd. (Paull)*, 815 A.2d 1167, 1170 (Pa. Cmwlth. 2003) (citation omitted). "'Substantial evidence' is such relevant evidence as a reasonable person might accept as adequate to support a conclusion. In performing a substantial evidence analysis, the evidence must be viewed in a light most favorable to the party who prevailed before the WCJ." *Washington v. Workers' Comp. Appeal Bd. (State Police)*, 11 A.3d 48, 55 n.4 (Pa. Cmwlth. 2011) (citations omitted).

> A WCJ is free to accept or reject . . . the testimony of . . . medical witnesses. The Board may review the nature of the evidence submitted to determine if it is sufficient to state a claim, however reinterpretation of the evidence by the Board is in excess of its scope of review.

Bartholetti, 927 A.2d at 747 (citation omitted). The Board reviewed the record evidence and found no reversible error. The Board concluded that "although Dr. Schmidt did not know of the prior treatment, [his] operative report evidences his understanding that Claimant had issues with his right shoulder that pre-existed the work incident," and "Dr. Schmidt also based his opinion on other factors besides Claimant's history[,] including diagnostic tests and a physical examination." Board Op. at 9-10.

It is clear that the WCJ did not ignore any evidence provided by Employer. He expressly considered the testimony and documentary evidence and

deemed Dr. Waltrip's opinion less credible than Dr. Schmidt's. We recognize that a medical expert's testimony may be rendered incompetent "if it is **based solely** on inaccurate or false information." *Degraw v. Workers' Comp. Appeal Bd. (Redner's Warehouse Mkts., Inc.)*, 926 A.2d 997, 1001 (Pa. Cmwlth. 2007) (emphasis added). However, this Court has held: "The fact that a medical expert does not have all of the claimant's medical information goes to the weight to be given to that individual's testimony, not its competency." *Id.* Ultimately, "[t]he opinion of a medical expert must be viewed as a whole." *Id.*

Moreover, Employer's disagreement with the WCJ's findings and credibility determinations are not grounds upon which this Court may reweigh evidence or substitute its judgment. In fact,

> it is irrelevant whether the record contains evidence to support findings other than those made by the WCJ; the critical inquiry is whether there is evidence to support the findings actually made. We review the entire record to determine if it contains evidence a reasonable mind might find sufficient to support the WCJ's findings. If the record contains such evidence, the findings must be upheld even though the record contains conflicting evidence.

Lahr Mech. v. Workers' Comp. Appeal Bd. (Floyd), 933 A.2d 1095, 1101 (Pa. Cmwlth. 2007) (citations and quotation marks omitted). Viewing this record in a light most favorable to Claimant, as we must, we hold that it contains substantial evidence to support the WCJ's findings. Accordingly, the Board did not err by affirming the WCJ's decision.

Employer next argues that the Board erred by finding that the WCJ issued a reasoned decision insofar as the WCJ failed to reconcile clearly opposing findings in the testamentary and documentary evidence. We disagree. Section 422(a) of the Act 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.

77 P.S. § 834. The reasoned decision requirement in "Section 422(a) [of the Act] does not permit a party to challenge or second-guess the WCJ's reasons for credibility determinations. Unless made arbitrarily or capriciously, a WCJ's credibility determinations will be upheld on appeal." *Dorsey v. Workers' Comp. Appeal Bd. (Crossing Constr. Co.)*, 893 A.2d 191, 195 (Pa. Cmwlth. 2006) (citation omitted). "A capricious disregard of evidence occurs only when the fact-finder deliberately ignores relevant, competent evidence." *Williams v. Workers' Comp. Appeal Bd. (USX Corp.-Fairless Works)*, 862 A.2d 137, 145 (Pa. Cmwlth. 2004). Capricious disregard, by definition, does not exist where, as here, the WCJ expressly considers and rejects the evidence. *Williams*. The WCJ "clearly and concisely state[d] and explain[ed] the rationale for [his] decision[]" from which the Board could and this Court "can determine why and how a particular result was reached." 77 P.S. § 834. Thus, the Board did not err by affirming that the WCJ issued a reasoned decision.

Based on the foregoing, the Board's order is affirmed.

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ANNE E. COVEY, Judge

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O R D E R

AND NOW, this 2nd day of January, 2013, the Workers' Compensation Appeal Board's July 17, 2012 order is affirmed.

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ANNE E. COVEY, Judge