

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

David C. Taylor, Jr.,	:	
Petitioner	:	
	:	
v.	:	No. 1564 C.D. 2007
	:	
Workers' Compensation Appeal	:	Submitted: November 30, 2007
Board (Keystone Staffing),	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: January 24, 2008**

In this workers' compensation appeal, David C. Taylor, Jr. (Claimant) argues a Workers' Compensation Judge (WCJ) relied on speculative expert medical testimony to conclude Claimant sustained a work injury in the nature of a left arm sprain/strain that fully resolved. This conclusion was contrary to Claimant's assertion he suffers reflex sympathetic dystrophy (RSD) as a result of his work injury. Claimant also contends his workers' compensation benefits should be based on the actual number of hours he worked per week rather than the number of hours he was anticipated to work. Finding no merit in either assertion, we affirm.

Claimant worked for a temporary employment agency, Keystone Staffing (Employer). In late August 2004, Employer placed Claimant with Moran

Industries where he operated a forklift, removed trash, and loaded and unloaded trucks. Claimant's last day of work at Moran Industries was December 3, 2004.

Thereafter, Claimant filed a claim petition alleging an October 31, 2004 "injury to the nerves, muscles, connective tissue, bones of the left shoulder, arm, wrist and hand with sensory alteration, pain and loss of use." Reproduced Record (R.R.) at 1a. Employer denied these allegations.

Claimant testified before the WCJ that he injured his left arm when pulling a heavy dock plate used for loading/unloading trucks. He felt a jolt of electricity shoot from his elbow to his hand. Claimant later observed his left hand became discolored and swollen.

Claimant reported to Employer's panel physician who diagnosed a sprain and prescribed a wrist splint. Claimant continued to work for the next few weeks but eventually stopped working on December 3, 2004. He does not believe he is capable of work due to debilitating pain extending to his arm, back, and neck.

Claimant also presented the deposition testimony of Dr. Clarence Mast, who is board-certified in family medicine (Claimant's Physician). At his initial visit, Claimant complained to Physician of RSD. Claimant's Physician diagnosed Claimant with RSD in the left upper extremity, cervical and thoracic strain, and unspecified changes to the neck. Claimant's Physician related the diagnosis to the October 2004 work injury. Notably, Claimant's Physician did not opine Claimant is disabled as a result of the work injury.

Employer presented several witnesses in defense of the claim petition. Most significant is the deposition testimony of Dr. Rodwan K. Rajjoub, a board-certified neurosurgeon (Employer's medical expert). Employer's medical expert conducted an independent medical examination (IME) of Claimant in October 2005. Reviewing Claimant's history and medical records, Employer's medical expert noted Claimant had several prior injuries: a 2002 ATV accident causing injury to his thoracic and cervical spine, and a 2002 strain to the left arm that, like the instant injury, electrified the arm. Employer's medical expert also noted Claimant suffered a subsequent injury: a 2005 injury to his left arm when he slipped on ice. Also, Employer's medical expert noted Claimant's involvement in a 2005 fist fight.

Specifically addressing indicia of RSD, Employer's medical expert found no evidence of unequal hair distribution of the left arm, no swelling, no asymmetrical nail beds, and no changes in skin temperature. The remainder of the expert's examination was normal, with no evidence of atrophy, muscle weakness, spinal cord compression or brain injury, scoliosis, or spasm. Claimant had full range of motion in the neck and waist, and normal sensation to pinprick. Employer's medical expert diagnosed Claimant's work injury as a self-limiting left arm sprain/strain from which Claimant fully recovered.<sup>1</sup>

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<sup>1</sup> As noted above, Claimant initiated a fist fight in May 2005. In further defense of the claim petition, Employer presented the testimony of Claimant's victim, the responding police officer, and the emergency room doctor who examined Claimant. The victim testified that Claimant was removed from a bar after making rude comments. When the victim left the bar, a drunken Claimant swung at the victim with his right arm, and when he missed, started to hit the victim's head against the sidewalk. The victim testified Claimant could not have hit the victim's head against the sidewalk with one arm.

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

The WCJ credited Claimant's testimony to the extent he sustained a work injury on October 31, 2004 causing some level of discomfort to the left arm. The WCJ specifically rejected the remainder of Claimant's testimony. The WCJ also rejected Claimant's Physician's testimony but accepted as credible Employer's medical expert's testimony that Claimant sustained a left arm sprain/strain from which he fully recovered. Thus, WCJ granted the claim petition recognizing a left arm sprain/strain. Awarding only medical benefits, the WCJ suspended Claimant's workers' compensation benefits effective December 3, 2004, his last day of work at Moran Industries, and terminated benefits as of October 5, 2005.<sup>2</sup> The Workers' Compensation Appeal Board affirmed.

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**(continued...)**

The responding police officer testified he arrested Claimant at the scene of the incident. Prior to his arrest, Claimant did not demonstrate any signs of injury to the left arm. En route to the police station, however, Claimant told the police officer he has RSD. As a result, the police officer restrained Claimant's hands in front of the body. The police officer charged Claimant with public drunkenness, disorderly conduct and resisting arrest. The police officer did not observe Claimant protecting his left arm at any time, including at Claimant's preliminary hearing.

The emergency room doctor testified Claimant refused examination of the left upper extremity and all laboratory testing. Although complaining of pain caused by the handcuffs, Claimant informed the doctor of his RSD diagnosis. The doctor diagnosed Claimant with substance abuse and paranoid schizophrenia. The WCJ did not make any credibility determinations regarding the above testimony.

<sup>2</sup> The WCJ's order obviously contains a typographical error in that the WCJ intended to terminate Claimant's benefits as of the October 25, 2005 IME and not October 5.

On appeal,<sup>3</sup> Claimant maintains the WCJ relied on Employer's medical expert's speculative testimony to conclude Claimant sustained, and fully recovered from, a left wrist sprain/strain. Claimant further contends his workers' compensation benefits should be based on the actual number of hours he worked per week rather than the number of hours Employer anticipated he would work.

At the outset, we note a claimant bears the burden of proving all elements necessary to support an award of workers' compensation benefits including the duration and extent of disability. Rite Aid Corp. v. Workers' Comp. Appeal Bd. (Bennett), 709 A.2d 447 (Pa. Cmwlth. 1998). To sustain an award of benefits, a claimant must prove a causal connection between his alleged disability and the injury he sustained at work. Fotta v. Workmen's Comp. Appeal Bd. (U.S. Steel/USX Corp. Maple Creek Mine), 534 Pa. 191, 626 A.2d 1144 (1993). Where there is no obvious causal connection between the alleged disability and the employment, the claimant can only establish the requisite connection by unequivocal medical testimony. Id. Furthermore, not only must the claimant establish he sustained a work related injury, he must also prove the injury resulted in a disability, or loss of earning power. Sch. Dist. of Phila. v. Workers' Comp. Appeal Bd. (Lanier), 727 A.2d 1171 (Pa. Cmwlth. 1999).

In addition, this Court recognizes that the WCJ, as fact-finder, is the sole arbiter of the credibility and weight of the evidence. Rissi v. Workers' Comp.

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<sup>3</sup> Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Prosick v. Workers' Comp. Appeal Bd. (Hershey Chocolate USA), 936 A.2d 177 (Pa. Cmwlth. 2007).

Appeal Bd. (Tony DePaul & Son), 808 A.2d 274 (Pa. Cmwlth. 2002). Also, the WCJ is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. McNulty v. Workers' Comp. Appeal Bd. (McNulty Tool & Die), 804 A.2d 1260 (Pa. Cmwlth. 2002).

As support for his position, but without citation to authority, Claimant attempts to portray Employer's medical expert's testimony as speculative by setting forth lengthy deposition testimony where Claimant challenges the expert's review of his medical test results. In addition, Claimant provides detailed descriptions of other medical providers' reports that are contained in his medical history. Claimant also takes issue with Employer's medical expert's theory that the original RSD diagnosis was made simply to obtain an x-ray but that Claimant's treatment providers failed to revise the diagnosis in the absence of supporting medical evidence.

Claimant's attack on Employer's medical expert's testimony is unpersuasive for two reasons. First, this is a claim petition, and Claimant bears the burden of proving by unequivocal medical evidence the nature and extent of his work injury. Inglis House v. Workmen's Comp. Appeal Bd. (Reedy), 535 Pa. 135, 634 A.2d 592 (1993); Rite-Aid. In this regard, the WCJ specifically rejected Claimant's Physician's opinion:

The WCJ further finds that the testimony of [Claimant's Physician], considered in its own right and on its own merits without comparison to the testimony of [Employer's medical expert] is not credible in that it does not demonstrate a thorough physical examination, thorough knowledge of Claimant's mechanism of injury,

or credible or persuasive explanation of how Claimant's pulling on the dock plate caused RSD.

WCJ Op., 8/31/06, at 11 (emphasis added).

Regardless of Employer's medical expert's testimony, the WCJ rejected Claimant's Physician's testimony. Claimant had the burden to prove the causal connection between his alleged RSD and the work incident by unequivocal medical evidence because there is no obvious causal connection between the two. Having failed to produce credible evidence on this issue, Claimant did not sustain his burden of proof. Bennett v. Workmen's Comp. Appeal Bd. (Fort LeBeouf Sch. Dist.), 629 A.2d 208 (Pa. Cmwlth. 1993).

Second, a review of Employer's medical expert's testimony reveals it is not speculative. He conducted a review of Claimant's medical history both before and after the IME. Dep. of Rodwan K. Rajjoub, M.D., 2/23/06, at 5-6. Employer's medical expert, a board-certified neurosurgeon who treats numerous RSD patients, conducted a thorough neurological examination of Claimant and found no objective evidence of RSD. Id. at 7-16. Further, Employer's medical expert was aware of other injuries to Claimant's left arm. In contrast, Claimant's Physician had no knowledge of these injuries. Compare Dep. of Rowdan K. Rajjoub, M.D., 2/23/06, at 6-7 (reviewing Claimant's previous injuries) with Dep. of Clarence Mast, M.D., 1/16/06, at 17, 21 (denying knowledge of Claimant's 2005 fall and 2002 ATV accident).

Accepting Employer's medical expert's testimony as credible, the WCJ made the following findings:

52. The WCJ finds the testimony of [Employer's medical expert] that Claimant did not suffer from RSD or complex regional pain syndrome as a result of his work injury to be more credible than the testimony of [Claimant's Physician] and adopts [Employer's medical expert's] testimony as fact. [Employer's medical expert] is a Board Certified neurosurgeon and in a better position to analyze the neurological condition of RSD than [Claimant's Physician]. The WCJ finds [Employer's medical expert's] recitation of Claimant's history, his review of medical records, and his physical examination were more detailed, thorough, clearly discussed and analyzed than the testimony of [Claimant's Physician]. The testimony of [Claimant's Physician] is rejected as not credible in light of [Employer's medical expert's] credible testimony.

53. The WCJ finds [Employer's medical expert's] testimony credible that Claimant suffered a strain/sprain injury to his left arm on October 31, 2004 and has fully recovered from that injury as of October 25, 2005.

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55. Claimant's counsel has argued that [Employer's medical expert] did not perform an adequate record review and submitted Claimant's Exhibit No. 1 to [Employer's medical expert's deposition] to support this position. The WCJ finds that [Employer's medical expert's] testimony is credible based upon the history, physical examination, and record review that he did complete. ....

WCJ Op., 8/31/06, at 10-11. The WCJ's findings emphasize Employer's medical expert's comprehensive records review and examination of Claimant. As our independent review of the record supports the WCJ's findings, we disagree with Claimant that Employer's medical expert based his opinion on conjecture.



Additionally, Claimant's reliance on other providers' medical records does not advance his position. Employer's medical expert's disagreement with the diagnosis contained in other medical records, which the expert reviewed, goes to the weight afforded his testimony. Credibility determinations and evidentiary weight are within the province of the WCJ. Pryor v. Workers' Comp. Appeal Bd. (Colin Serv. Sys.), 923 A.2d 1197 (Pa. Cmwlth. 2006). Moreover, Employer's medical expert's questioning of how the RSD diagnosis was made does not render his opinion speculative; it demonstrates a thorough review of Claimant's medical records and an observation of the lack of objective testing to support that diagnosis.

In his second argument, Claimant contends his average weekly wage should be based on the actual number of hours he worked per week at Moran Industries rather than the number of hours Employer anticipated he would work. Claimant's argument, however, fails to recognize the WCJ found no loss in earnings as a result of the work injury:

54. The WCJ finds that there is no credible evidence of any level of disability causing an earnings loss in this case. Claimant's testimony on this issue has been found not credible. [Claimant's Physician] did not express an opinion on this issue.

WCJ Op., 8/31/06, at 11. Supported by the record, this finding is conclusive on appeal. See Dep. of Clarence Mast, M.D., 1/16/06; O'Donnell v. Workers' Comp. Appeal Bd. (United Parcel Serv.), 831 A.2d 784 (Pa. Cmwlth. 2003).

Where a claimant suffers an injury that has no impact on his earning power, no entitlement to benefits arises under the Workers' Compensation Act.<sup>4</sup> L.E. Smith Glass Co. v. Workers' Comp. Appeal Bd. (Clawson), 571 Pa. 594, 813 A.2d 634 (2002). We therefore discern no reversible error in the WCJ's failure to calculate Claimant's average weekly wage.

Accordingly, we affirm.

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ROBERT SIMPSON, Judge

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<sup>4</sup> Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §1-1041.4, 2501-2626.

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Board (Keystone Staffing),	:	
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**ORDER**

AND NOW, this 24<sup>th</sup> day of January, 2008, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

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ROBERT SIMPSON, Judge