

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lisa Ketcha-Tracewski,	:	
Petitioner	:	
	:	
v.	:	No. 1584 C.D. 2007
	:	Submitted: December 7, 2007
Workers' Compensation Appeal Board	:	
(Atlantic Coast Air, A.I.G. Claim	:	
Services, Inc., American International	:	
Adj. Co.),	:	
Respondents	:	

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

Lisa Ketcha-Tracewski (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board) that affirmed a decision of a Workers' Compensation Judge (WCJ) awarding Claimant benefits for a closed period and granting Atlantic Coast Air's (Employer) termination petition. Claimant primarily argues the WCJ's decision is not reasoned. Agreeing with Claimant's contention, we vacate and remand.

Claimant worked for Employer as a customer service agent. Claimant also loaded and unloaded luggage from aircraft. In October 2003, in the course of loading luggage into a jet's cargo pit, a bag broke open and its contents spilled out. While moving away from falling luggage, Claimant injured her back when she fell onto a hard suitcase and a bag of golf clubs.

Claimant subsequently filed a claim petition seeking partial disability benefits from October 20, 2003, the date of injury, forward. Employer filed an answer denying the allegations.

While the record is not entirely clear, it appears Employer began paying Claimant partial disability benefits on a date uncertain. In February 2006, Employer filed a termination petition alleging Claimant fully recovered from any work-related injuries.¹ Claimant filed a timely answer denying these allegations. Both the claim and termination petitions were assigned to a WCJ for disposition.

Prior to the WCJ hearing, the parties stipulated a work injury occurred in October 2003. Accordingly, the litigation was limited to two issues: the exact nature of Claimant's work injury, and whether Claimant fully recovered from such injury.² A WCJ hearing ensued.

Claimant testified as follows. In October 2003, when loading luggage into a jet's cargo pit, a bag broke open, causing other suitcases to fall on her. Claimant fell, injuring her lower-middle back and hip. The following day Claimant sought medical treatment from her family physician who prescribed massage therapy. Claimant continued to work, but performed restricted work duties.

¹ Employer's termination petition reveals it paid Claimant partial disability benefits at a weekly rate of \$302.50. Reproduced Record (R.R.) at 8a. In a subsequent stipulation, the parties agreed "Claimant is due \$1,512.67 in partial disability benefits from the date of injury through on or about October 13, 2005 together with statutory interest." R.R. at 159a. Thus, it appears Employer paid Claimant, at a minimum, five weeks of partial disability benefits.

² In February 2006, Claimant also filed a penalty petition, and Employer denied the allegations. Claimant subsequently withdrew this petition.

Claimant presented the deposition testimony of Dr. Paul W. Horchos (Claimant's Physician), who is board certified in rehabilitation medicine. Based on Claimant's history, an MRI of Claimant's back, and a physical examination, Claimant's Physician opined Claimant suffers sacroiliac joint dysfunction and lumbar discogenic disc disease at the L4-L5 level. Physician related these conditions to the work injury. Claimant's Physician also opined that as of September 2005, Claimant continued to suffer from these injuries.

In opposition and in support of its termination petition, Employer presented the deposition testimony of Dr. Mark W. Scinico (Employer's Physician), who is board certified in internal medicine. Based on Claimant's history, the MRI, and a physical examination, Employer's Physician opined Claimant sustained right sacroiliac joint dysfunction and a thoracolumbar strain or sprain as a result of the work injury. However, he further opined Claimant fully recovered from these injuries as of December 23, 2005, the date he examined Claimant.

Upon review, the WCJ ultimately awarded Claimant benefits for the closed period of October 20, 2003 through December 23, 2005. Concomitantly, the WCJ granted Employer's termination petition effective December 23, 2005. More specifically, the WCJ found:

10. Based upon a thorough review of the record, including the testimony of [Claimant,] this [WCJ] makes the following dispositive findings of fact:

a) In accordance with the Stipulation previously entered into by the parties, [Claimant] sustained a work related injury on October 20, 2003 in the course and scope of her employment with [Employer.]

b) Based upon the credible testimony of [Employer's Physician, Claimant's] injury consisted of sacroiliac joint dysfunction and thoracolumbar strain/sprain from which she had fully recovered as of December 23, 2005.

c) Claimant credibly testified as to the partial disability she experienced following the work injury. Claimant continued to work following the injury. In accordance with the Stipulation entered into by the parties, [C]laimant sustained wage loss as a result of her work injury for which [Employer] has made payment.

Reproduced Record (R.R.) at 16a (emphasis added). Based on these findings, the WCJ determined Claimant met her burden of proof under the claim petition, and Employer met its burden under its termination petition.³ Id.

On appeal,⁴ Claimant primarily argues the WCJ failed to issue a reasoned decision within the meaning of Section 422(a) of the Workers'

³ In a claim petition proceeding, the claimant bears the burden of proving she suffers a work-related injury that occurred in the course and scope of her employment and the injury results in a loss of earning power. Inglis House v. Workmen's Comp. Appeal Bd. (Reedy) 535 Pa. 135, 634 A.2d 592 (1993). In addition, the claimant must establish the duration of disability. Wagner v. Workers' Comp. Appeal Bd. (O'Malley Wood Prods., Inc.), 805 A.2d 683 (Pa. Cmwlth. 2002).

In a termination proceeding, however, the burden is on the employer to establish the claimant fully recovered from her work-related injury. Udvari v. Workmen's Comp. Appeal Bd. (USAir, Inc.), 550 Pa. 319, 705 A.2d 1290 (1997). The employer meets this burden when its medical expert "unequivocally testifies that it is his opinion, within a reasonable degree of medical certainty, that the claimant is fully recovered, can return to work without restrictions and that there are no objective medical findings which either substantiate the claims of pain or connect them to the work injury." Id. at 327, 705 A.2d at 1293.

⁴ This Court is limited to considering whether the WCJ's factual findings were supported by substantial evidence, whether an error of law was committed, and whether constitutional rights were violated. Roadway Express, Inc. v. Workers' Comp. Appeal Bd. (Siekierka), 708 A.2d 132 (Pa. Cmwlth. 1998).

Compensation Act (Act).⁵ Relying on Daniels v. Workers' Compensation Appeal Board (TriState Transport), 574 Pa. 61, 828 A.2d 1043 (2003), Claimant maintains the WCJ did not state an objective basis for rejecting portions of her Physician's deposition testimony. This failure, Claimant contends, warrants a remand. We agree.

Section 422 of the Act, 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 identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

Our Supreme Court holds “a decision is ‘reasoned’ for purposes of Section 422(a) 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.” Daniels, 574 Pa. at 76, 828 A.2d at 1052. Regarding live testimony presented at a hearing, a WCJ's decision need not “explain inherently subjective credibility decisions according to some formulaic rubric or [be] detailed to

⁵ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §834.

the ‘nth degree.’” Id. at 77, 828 A.2d at 1053. However, regarding the deposition testimony of medical experts where a WCJ does not make personal observations relating to credibility, a WCJ must articulate an objective basis for the credibility determination by identifying and evaluating certain relevant factors that affect credibility. Id. These factors include, but are not limited to, the following:

[A]n expert witness's opinion may be based upon erroneous factual assumptions; or an expert may have had less interaction with the subject; or the interaction was in a less timely fashion; or the expert may betray a bias or interest in the matter. In addition, an expert witness may be unqualified or less qualified than the opposing party's expert; or may be impeached with inconsistencies or contradictions in his or her testimony or reports; or may be impeached in some other convincing fashion.

Id. at 78, 828 A.2d at 1053 (citations omitted).

Here, both parties’ medical experts testified by deposition. See R.R. at 90a-146a. Upon review, the WCJ explicitly credited Employer’s Physician’s opinion that Claimant fully recovered from a sacroiliac joint dysfunction and a thoracolumbar strain or sprain as of December 23, 2005. R.R. at 16a. In doing so, the WCJ implicitly rejected Claimant’s Physician’s opinion that Claimant continues to suffer from sacroiliac joint dysfunction and lumbar discogenic disc disease at the L4-L5 level. See id. Unfortunately, the WCJ articulated absolutely no basis for rejecting Claimant’s Physician’s deposition testimony or, for crediting Employer’s Physician’s deposition testimony. Id. Absent some articulation of the basis for these credibility

determinations, the WCJ's decision does not meet the standard found in Section 422(a).⁶ Daniels.

Accordingly, we vacate the Board's order and remand this matter to the Board with instruction it remand it to the WCJ for the limited purpose of issuing a decision consistent with the foregoing opinion.⁷ The record shall not be reopened for additional evidence. Jurisdiction is relinquished.

ROBERT SIMPSON, Judge

⁶ Claimant also argues the WCJ's findings are not supported by substantial evidence. Because the WCJ's decision is not "reasoned," we need not address this issue.

⁷ The Supreme Court noted in Daniels that no statutory remedy exists for a WCJ's failure to comply with the reasoned decision requirement and concluded that it "devolves upon the courts" to decide what is required to conduct effective appellate review or what remedy should apply for a WCJ's failure to issue a reasoned decision. Id. at 75, 828 A.2d at 1051.

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ORDER

AND NOW, this 24th day of January, 2008, the order of the Workers' Compensation Appeal Board is **VACATED**. We **REMAND** to the Board with instruction for further **REMAND** to the Workers' Compensation Judge for the limited purpose of issuing a decision consistent with the foregoing opinion. The record shall not be reopened for additional evidence.

Jurisdiction is relinquished.

ROBERT SIMPSON, Judge