IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jesus Santos,	:	
Petitioner	:	
	:	
v.	:	No. 168 C.D. 2008
	:	Submitted: May 23, 2008
Workers' Compensation Appeal	:	
Board (Hatfield Quality Meats),	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: July 2, 2008

Jesus Santos (Claimant) seeks review of a decision of the Workers' Compensation Appeal Board (Board) affirming the order of the Workers' Compensation Judge (WCJ) granting Hatfield Quality Meats' (Employer) termination petition. Claimant contends that the Board and the WCJ committed an error of law because they made findings that were not based on substantial evidence as the medical expert whose opinion was relied on never physically examined Claimant. For the following reasons, we affirm the order of the Board.

Claimant worked for Employer as a meat packer. His duties required him to push nine pigs at a time, each weighing approximately 150 pounds, through

chill tunnels. On May 19, 2005, Claimant slipped and fell while performing his duties for Employer and sustained an injury to his right knee. In January 2006, Claimant filed a claim petition alleging that he was entitled to disability benefits as of November 7, 2005, and later amended that petition to change the date of injury to the May 19, 2005 date and to allege shoulder injuries. Employer acknowledged the right knee injury, but denied disability as a result of the injury and never acknowledged the shoulder injury. In June 2006, Employer filed a termination petition, maintaining that Claimant was fully recovered from his knee injury as of May 4, 2006. Claimant filed an answer denying those allegations, and the petitions were consolidated for hearings before a WCJ.

In support of its termination petition, Employer called Pamela Waldron (Waldron), the case manager in the occupational health unit, who testified that after Claimant was discharged from the infirmary in September 2005, he made no complaints and received no treatment for his knee and continued to work his full-time job until he was terminated in November 2005. She also stated that Claimant reported that he was performing his full-time job without difficulty and that his knee only bothered him a little when he turned.

To support that he had fully recovered from his work-related injury, Employer offered the testimony of David Rubenstein, M.D. (Dr. Rubenstein), a board-certified orthopedic surgeon. Dr. Rubenstein testified that he saw Claimant on May 4, 2006, and obtained a patient history from Claimant and reviewed his various medical records. Dr. Rubenstein testified that Claimant told him he had slipped and hit his right kneecap on the ground, but that once his knee was better,

he continued to work until he was terminated. Dr. Rubenstein stated that Claimant explained to him that as of September 2005, the injured knee felt fine and that he had sought no medical care since that date and was not receiving any medical care presently. Further, Claimant told Dr. Rubenstein that his knee did not buckle, give way or lock, and that no swelling or other joint symptomatology existed. As to the medical records, Dr. Rubenstein stated that those records indicated that as of September 2005, Claimant had a full active range of motion of his knee and full strength. He explained that while the magnetic resonance imaging (MRI) scan taken in May 2005 indicated that there was a tear to the lateral meniscus, in his opinion, it was unlikely that the tear was caused by Claimant's slip and fall. Dr. Rubenstein explained that meniscal tears may often be asymptomatic and that patients who have such tears may be fully functional despite the tear. Further, Claimant could have had the meniscal tear noted on the MRI for some time before his work-related injury occurred. Dr. Rubenstein admitted, though, that he did not physically examine Claimant's knee, and that he did not examine "film" from the MRI performed on Claimant's knee after the injury in May 2005. Dr. Rubenstein diagnosed Claimant as suffering from a work-related knee contusion, but in his opinion, Claimant had fully recovered because his condition had improved, he had not sought further medical care and the manner of injury did not involve a twisting mechanism; therefore, a torn meniscus as a result of Claimant's fall was unlikely.

In opposition to the termination petition, Claimant testified that he had sustained his knee injury when he slipped and fell while pushing pigs into the chill tunnel. The day after he fell, he showed his knee to his supervisor who brought him to the infirmary for treatment. Claimant stated that he underwent three months

of therapy and received medication, and that during the three months between May and September 2005, he performed modified light-duty work. After he was discharged from the infirmary, Claimant returned to work in his full-duty position until he was terminated for conduct-related issues on November 7, 2005. He testified that he had difficulty performing his original job, and denied that he had told a doctor in the infirmary that he was performing his job without difficulty. Claimant also denied that he had injured himself before May 19, 2005.

Maxwell Stepanuk, D.O. (Dr. Stepanuk), a board-certified orthopedic surgeon, testified on behalf of Claimant. He examined Claimant on May 22, 2006. Dr. Stepanuk testified that he had also reviewed Claimant's medical records and performed a physical examination. He stated that Claimant complained of pain in the lateral aspect of his right knee, but that there was no instability, no atrophy, no swelling, and that Claimant had a normal gait. Dr. Stepanuk explained that the 2005 MRI scan, the same one that was used by Dr. Rubenstein, revealed a complex tear of the anterior horn of the lateral meniscus, which did not appear to be degenerative. Because Claimant described his fall as involving a "twisting mechanism," in his opinion, the meniscal tear noted in the MRI was the result of the work-related fall. He further found a strain of the lateral aspect of the joint capsule, and he opined that the strain was also due to the fall Claimant sustained at work. Dr. Stepanuk opined that Claimant could not return to his pre-injury work because he had not fully recovered, was experiencing pain, and that repairing the meniscus would involve arthroscopic surgery.

Finding Claimant's testimony regarding difficulty performing his job after September 2005 not credible and rejecting Dr. Stepanuk's opinion that Claimant had not fully recovered from the knee injury because Claimant worked his pre-injury job without treatment or complaint for almost two months, the WCJ granted the Employer's termination petition. The WCJ found Dr. Rubenstein's testimony that Claimant had a functional recovery from his knee sprain was bolstered by the knee examination performed by Dr. Stepanuk, which indicated that the knee was essentially normal. The WCJ then ordered Employer to pay medical expenses to Claimant from May 19, 2005, through May 4, 2006, but ordered that Claimant's benefits with regard to the knee injury be suspended as of May 19, 2005, and terminated as of May 14, 2006. Claimant then appealed to the Board, which affirmed. This appeal followed.[1]

The only issue Claimant raises on appeal is that Employer has not met its burden[2] to show through unequivocal and substantial medical testimony that his

[1] Our scope of review is limited to determining whether there has been a violation of constitutional rights, an error of law, whether necessary findings of fact are supported by substantial evidence, or whether there has been a capricious disregard of material, competent evidence. *Linton v. Workers' Compensation Appeal Board (Amcast Industrial Corporation)*, 895 A.2d 677 (Pa. Cmwlth. 2006). Further credibility determinations are the exclusive province of the WCJ, who is free to accept or reject the testimony of any witness, in whole or in part. The WCJ is the ultimate factfinder, and his or her findings will not be disturbed if they are supported by substantial evidence. *Harrell v. Workers' Compensation Appeal Board (Circle HVAC)*, 616 A.2d 1051 (Pa. Cmwlth. 1992).

[2] An employer seeking to terminate benefits has the burden of proving by substantial evidence that the employee has fully recovered from his injury and that all disability causally related to the injury has ceased. An employer may satisfy this burden by introducing unequivocal medical testimony. *Jackson v. Workers' Compensation Appeal Board (Resources for Human Development)*, 877 A.2d 498 (Pa. Cmwlth. 2005).

disability no longer exists, because Dr. Rubenstein's opinion that Claimant has fully recovered from his work-related injury is incompetent because he never physically examined his knee. However, Claimant's focus on Dr. Rubenstein's failure to physically examine – to lay his hands on his knee – is misplaced because such an examination would have revealed nothing conclusive – what was really at issue was the cause of Claimant's meniscal tear, not whether he had a meniscal tear. Both medical experts, Dr. Rubenstein and Dr. Stepanuk, determined the cause of the injury by the history the Claimant gave to each of them. Based on the description of the injury given to him by Claimant, Employer's medical expert, Dr. Rubenstein, who was deemed credible by the WCJ, opined that the meniscal tear was not caused by Claimant's fall because it did not involve any twisting of his leg.

Accordingly, because Dr. Rubenstein's opinion, based on Claimant's current ability, his medical record – which indicated a full range of motion – and his finding that Claimant's meniscal tear was not work-related, provided substantial evidence for the WCJ to conclude that Claimant has fully recovered from his work-related injury, the order of the Board is affirmed.

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DAN PELLEGRINI, JUDGE

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O R D E R

AND NOW, this 2nd day of July, 2008, the order of the Workers' Compensation Appeal Board, dated January 7, 2008, at No. A07-1120, is affirmed.

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DAN PELLEGRINI, JUDGE