

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kelly Perrin,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1692 C.D. 2007
	:	
Workers' Compensation Appeal	:	Submitted: December 28, 2007
Board (Weis Market),	:	
	:	
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: February 6, 2008

Kelly Perrin (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board) that affirmed a decision of a Workers' Compensation Judge (WCJ) granting Claimant's petition for benefits for a closed period only. Raising a substantial evidence challenge, Claimant argues the WCJ erred in terminating benefits at the end of the closed period because both parties' medical experts agreed she suffers head and cervical pain. As the record supports the WCJ's decision, we affirm.

Weis Market (Employer) employed Claimant as a cashier and stocker. In January 2004, Claimant fell off a skid while unloading boxes. An ambulance took Claimant to the emergency room where a doctor treated her for low back pain. The doctor referred Claimant to her family physician. Claimant returned to light-duty work approximately nine days after the incident and returned to full duty

about a month later. However, Claimant removed herself from work in August 2004. In October 2004 and January 2005, Employer issued Claimant notices of ability to return to work as a cashier with a 10-pound lifting restriction.

In June 2005, Claimant filed a claim petition alleging injury to her low back and head as a result of her January 2004 fall at work. In its answer, Employer acknowledged Claimant fell off the skid, but denied she sustained any injuries. Litigation followed.

Before the WCJ, Claimant testified she hit her head on the floor when she fell but could not remember anything else. Claimant began treating with a chiropractor, in part due to headaches she experienced after the fall. In January 2005, Claimant referred herself to Dr. Laurence Primack, a board-certified neurologist (Claimant's Physician). Claimant also complained of left side tremors and left leg weakness. The WCJ rejected Claimant's testimony regarding headaches and ongoing back pain.

Claimant first visited her Physician in January 2005 with complaints of headaches and back pain. He related both conditions to the January 2004 work fall based on the history Claimant provided. Notwithstanding the fact that objective medical tests were normal, Claimant's Physician testified Claimant's headaches are consistent with a concussion resulting from the impact of the fall regardless of whether she hit her head on the floor. He further opined absent Claimant's debilitating headaches, she can perform cashier duties. The headaches, however, prevent her from working. As a result, Claimant's Physician excused

Claimant from work in January 2005. The WCJ rejected Claimant's Physician's testimony.

In opposition, Employer presented the credible testimony of its store manager and medical expert. Employer's store manager witnessed Claimant fall and indicated she did not hit her head on the floor. He also testified Claimant never complained of headaches while at work. Store manager further testified continuing work is available to Claimant.

Employer's medical expert, Dr. Vincent F. Morgan (Employer's medical expert) conducted an independent medical examination (IME) of Claimant in December 2004. Board-certified in physical medicine and rehabilitation, Employer's medical expert began his review with Claimant's medical test results. He noted Claimant's January 2004 emergency room records do not evidence an injury to the neck. Rather, the treatment records describe Claimant's neck as supple and non-tender, demonstrating smooth motion in all directions. In addition, prior medical records indicate Claimant suffered cervical straightening and other cervical complaints prior to the work incident.

As part of the IME, Employer's medical expert also reviewed a November 2004 functional capacities evaluation (FCE). Claimant tested at a sedentary level on the FCE; however, Employer's medical expert explained Claimant's test results were inconsistent throughout the procedure. This suggested symptom magnification. Employer's medical expert further observed Claimant exhibited an inappropriate attitude toward treatment. She claimed some doctors

did nothing to help her. In reality, Claimant participated in aquatic therapy, chiropractic treatment and two rounds of physical therapy. Claimant refused injections to relieve her pain and did not follow through on referrals for pain management and rehabilitation. In addition, her complaints of non-improvement were contradicted by physical therapy notes.

On physical examination, Employer's medical expert found no sign of scoliosis, motor weakness, or focal atrophy of the lower limbs. Claimant's reflexes were intact, and she exhibited normal ranges of motion in the hips, cervical spine, shoulders, and left and right rotation. Employer's medical expert further observed no evidence of muscle spasm in the occipital region, posterior paraspinal muscles, and upper intrascapular and medial suprascapular regions. Unsure of when Claimant's cervical complaints developed, Employer's medical expert nevertheless diagnosed Claimant with a cervical strain, and a lumbosacral contusion and strain. In the expert's opinion, Claimant fully recovered from the work injury and is capable of unrestricted work. The WCJ found Employer's medical expert credible because his IME results were consistent with Claimant's objective test results.

Based on the above, the WCJ found Claimant proved a January 22, 2004 work injury in the nature of a cervical strain, and a lumbosacral contusion and strain. The WCJ further concluded, however, Claimant failed to prove she is disabled from work. The WCJ therefore granted the claim petition but immediately suspended benefits. Accepting Employer's evidence as credible, the WCJ concluded Employer established Claimant fully recovered as of the

December 21, 2004 IME.¹ Accordingly, the WCJ terminated benefits as of that date.

On appeal, the Board affirmed. Claimant now petitions this Court for review.² She contends the record does not support the WCJ's decision to terminate benefits where both medical witnesses agree she suffered an injury to her cervical spine. Claimant also asserts Employer's medical expert did not address her primary complaint of headaches.

Preliminarily, we note that 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. Inglis House v. Workmen's Comp. Appeal Bd. (Reedy), 535 Pa. 135, 634 A.2d 592 (1993). Not only must a claimant establish a work-related injury, she must also prove the injury resulted in a loss of earning power. Sch. Dist. of Phila. v. Workers' Comp. Appeal Bd. (Lanier), 727 A.2d 1171 (Pa. Cmwlth. 1999).

Moreover, the WCJ is the fact-finder in workers' compensation proceedings and, as such, he retains authority over matters of credibility and

¹ A WCJ is vested with authority to render adjudications on claim petitions that incorporate aspects of modification, suspension or termination where the evidence supports his determination. Vista Int'l Hotel v. Workmen's Comp. Appeal Bd. (Daniels), 560 Pa. 12, 742 A.2d 649 (1999).

² 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. Lahr Mech. v. Workers' Comp. Appeal Bd. (Floyd), 933 A.2d 1095 (Pa. Cmwlth. 2007).

evidentiary weight. Waldameer Park, Inc. v. Workers' Comp. Appeal Bd. (Morrison), 819 A.2d 164 (Pa. Cmwlth. 2003). Where substantial evidence supports the WCJ's findings, they are conclusive on appeal. Agresta v. Workers' Comp. Appeal Bd. (Borough of Mechanicsburg), 850 A.2d 890 (Pa. Cmwlth. 2004). Substantial evidence is such relevant evidence that a reasonable person might accept as adequate to support a conclusion. 3D Trucking Co., Inc. v. Workers' Comp. Appeal Bd. (Fine & Anthony Holdings Int'l), 921 A.2d 1281 (Pa. Cmwlth. 2007). In a substantial evidence analysis, it is irrelevant whether the record contains evidence to support contrary findings; the critical inquiry is whether there is evidence to support the WCJ's actual findings. Minicozzi v. Workers' Comp. Appeal Bd. (Indust. Metal Plating, Inc.), 873 A.2d 25 (Pa. Cmwlth. 2005).

Here, the WCJ found the proven injury to be a cervical strain and a lumbosacral contusion and strain; it does not include headaches. WCJ Op., 7/26/06, at Findings of Fact (F.F.) No. 46; Conclusion of Law (C.L.) No. 1. Stated otherwise, Claimant failed to persuade the WCJ that her fall at work caused her headaches. Inglis House; Crenshaw v. Workmen's Comp. Appeal Bd. (Hussey Copper), 645 A.2d 957 (Pa. Cmwlth. 1994) (in a claim petition, the claimant bears the burdens of production and persuasion).

In particular, the WCJ rejected Claimant's assertions of headaches and continuing back pain. F.F. Nos. 44, 46. Claimant's demeanor persuaded the WCJ she was not credible. Id. Likewise, the WCJ rejected Claimant's Physician's testimony because he took Claimant's complaints at face value even though all

objective medical tests were normal. F.F. No. 46. In the absence of objective medical testimony, the WCJ is neither required to accept Claimant's assertions of pain nor prohibited from doing so. Udvari v. Workmen's Comp. Appeal Bd. (USAir, Inc.), 550 Pa. 319, 705 A.2d 1290 (1997); Saville v. Workers' Comp. Appeal Bd. (Pathmark Stores, Inc.), 756 A.2d 1214 (Pa. Cmwlth. 2000). Having failed to produce credible testimony that her work injury caused her headaches, Claimant failed to meet her burden to include this condition in the identified work injury. Moreover, because Claimant failed to persuade the WCJ her headaches are part of the work injury, it is immaterial whether Employer's medical expert addressed Claimant's complaints of head pain. See Stalworth v. Workers' Comp. Appeal Bd. (County of Delaware), 815 A.2d 23 (Pa. Cmwlth. 2003) (where an employer's medical testimony may have been incompetent as a matter of law, fact that the claimant, not employer, had burden of proof made incompetent testimony irrelevant).

Regarding Claimant's complaints of ongoing cervical pain, the WCJ credited Employer's medical expert's testimony that Claimant fully recovered from the work injury, which included a cervical sprain. C.L. No. 2; Dep. of Vincent F. Morgan, M.D., 2/27/06, at 28-29. The expert's recognition of Claimant's complaints of cervical pain does not warrant a different result. "Testimony by the employer's medical expert as to the existence of the claimant's complaints of pain does not require the WCJ to find for the claimant." Udvari, 550 Pa. at 327, 705 A.2d at 1293. If that were true, a claimant could forever preclude a termination of benefits by merely complaining of continuing pain. Id.

Here, Employer's medical expert clearly and unequivocally testified Claimant's work injury completely resolved and it requires no further treatment. Dep. of Vincent F. Morgan, M.D., 2/27/06, at 29. The WCJ accepted this testimony as credible. In addition, the record lacks objective medical tests supporting Claimant's complaints of continuing pain. As such, Employer met its burden of proving entitlement to a termination of benefits. Udvari; Schachter v. Workers' Comp. Appeal Bd. (SPS Technologies), 910 A.2d 742 (Pa. Cmwlth. 2006).

Accordingly, we affirm.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 6th day of February, 2008, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

ROBERT SIMPSON, Judge