IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stefanie L. Ruia,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1821 C.D. 2007
	:	
Workers' Compensation Appeal Board (New York & Company),	:	Submitted: January 4, 2008
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: February 12, 2008**

Stefanie L. Ruia (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board), affirming the decision of a Workers' Compensation Judge (WCJ), which denied and dismissed Claimant's Claim Petition. Claimant takes issue with the entirety of the Board's decision, which we determine to be consistent with the law of this Commonwealth.

Claimant was employed by New York & Company (Employer), a retail clothing store, as a store manager for approximately three years between 2000 and

April 2003. (WCJ Findings of Fact (FOF) ¶ 4a.) Her duties as a store manager included hiring, training workers, receiving and putting away shipments of merchandise, and serving customers. (FOF ¶ 4a.) On March 22, 2005, Claimant filed a Claim Petition against Employer alleging an injury date of April 11, 2003, which was described as "[p]hysical/mental; headaches, fibromyalgia, chronic pain, depression, neck, back, shoulders, legs, arms and surrounding area (entire body)." (Claim Petition, March 22, 2005.) Claimant explained that this injury occurred because of "[c]onstant, repetitive, traumatic, continuous physical demands of the job including standing, stress associated with work, work hours and work environment." (Claim Petition.) Employer filed a timely answer denying all substantive averments.

In support of her Claim Petition, Claimant testified and also submitted the testimony of a former co-worker, Angela Gruber. Claimant also submitted the deposition testimony of three experts: Susan Hogg, M.D., Carl Adolph, Jr., M.D., and Carol Horning, M.S. In opposition to the Claim Petition, Employer submitted the deposition testimony of two experts, Gladys Fenichel, M.D. and Richard A. Close, M.D.

The WCJ found that Claimant's complaints of pain in her neck, shoulder, and upper and middle back were not related to a physical injury that occurred while in the course and scope of her employment, and that she did not suffer any injury to her feet while employed by Employer. Additionally, the WCJ found that Claimant's complaints of pain in her lower back were not related to a work-related fall that occurred in May of 2001, nor did Claimant suffer a repetitive trauma lumbar injury as a result of work duties up to April 11, 2003. The WCJ found that Claimant's

complaints of physical pain were not related to an actual work-related injury. Furthermore, the WCJ found that Claimant's complaints were neither a substantial causal factor in her leaving her employment, nor a substantial causal factor in her anxieties, which ultimately caused Claimant to quit her job on April 11, 2003. Although the WCJ found that Claimant did, in fact, suffer from anxiety and depression as a result of emotional job stress, which resulted in a disability commencing on April 11, 2003, the WCJ determined that Claimant's anxiety did not meet the diagnostic criteria of an adjustment disorder and that it was the result of her *subjective* reaction to a normal work environment. Accordingly, the WCJ denied Claimant's Claim Petition, and the Board affirmed that decision on appeal.

Claimant now petitions this Court for review,[1] essentially arguing the same issues she did before the Board: whether the WCJ erred in (1) failing to find that Claimant suffered a physical/mental injury in the course and scope of her employment; (2) applying an improper standard of review for a mental/mental case because the facts alleged are for a physical/mental case; (3) denying Claimant's Petition to Enforce a Settlement; (4) ruling on numerous objections posed by Claimant's counsel during medical depositions; and (5) failing to impose penalties upon Employer for allegedly never filing a proper denial.

[1] Our standard of review where, as here, both parties have presented evidence, is limited to whether the findings of fact are supported by substantial evidence and whether there has been any constitutional violation or legal error. Bogdanski v. Workers' Compensation Appeal Board (City of Pittsburgh), 813 A.2d 949, 952 n.3 (Pa. Cmwlth. 2002).

We will first address Claimant's argument in which she claims that the WCJ erred in denying the Claim Petition because she had a physical/mental injury stemming from "unreasonable managerial demands placed on her by [Employer] and her unanswered cries for help . . . ." (Claimant's Br. at 5.) She claimed that her job was overwhelming because she was working twelve hour days for three months, and felt that it was "killing" her. (Claimant's Br. at 5.) Claimant argues that her witnesses' testimony was more credible than the testimony of Employer's witnesses, and therefore, she "has met her burden of showing that a physical stimulus, that being the deterioration of her body, the overuse, the constant standing, the lifting, the physical demands of the job, working 12 hour shifts, constantly, with no days off for an extensive period of time, the egregious work conditions at [Employer], resulted in the mental disability, that being her depression and anxiety." (Claimant's Br. at 13.)

In opposition, Employer contends[2] that the WCJ and Board properly concluded that Claimant failed to sustain her burden of proving that she sustained a physical injury which resulted in a mental disability as of April 11, 2003. Employer contends that Claimant's legal theory of a physical/mental claim is flawed because even her own medical expert confirmed that her mental issues preceded her physical issues. Employer states that "[C]laimant's counsel tried valiantly to cast the facts of this case

[2] At the outset, we note that Employer has renewed its argument to this Court that Claimant must be deemed to have waived any challenge to the WCJ's specific factual findings for failure to allege, with any specificity, "the nature of the alleged error or which particular witness(es) and/or credibility and/or factual determination may be at issue." (Employer's Br. at 7.) After a close review of the record, we conclude that because the Board and this Court can discern the nature of the challenges to the WCJ's findings of fact, waiver does not apply. However, we note that waiver does apply to Claimant's challenges to the WCJ's evidentiary rulings, which is discussed in detail on pages 12-13 of this opinion.

as something other than a mental stimulus resulting in a mental injury. In doing so, it is clear that [C]laimant was hoping to avoid the necessity of proving that she was subjected to abnormal working conditions." (Employer's Br. at 10.)

In a claim petition proceeding where a claimant seeks workers' compensation benefits under the Workers' Compensation Act (Act),[3] psychic claims are divided into three categories: "(1) the 'mental/physical' injury where a psychological stimulus causes a physical injury, (2) the 'physical/mental' injury where a physical stimulus causes a psychic injury and (3) the 'mental/mental' injury where a psychological stimulus causes a psychic injury." Bogdanski v. Workers' Compensation Appeal Board (City of Pittsburgh), 813 A.2d 949, 952 (Pa. Cmwlth. 2002). The distinction of the injury claimed is highly relevant because the classification determines the burden of proof that will be placed on the claimant. Id. For example, "in 'mental/physical' and 'mental/mental' claims, the claimant bears the burden of showing abnormal working conditions," whereas an assertion of a physical/mental claim, the "claimant need only demonstrate that a physical stimulus resulted in a mental disability." Id.

It is well-settled law that it is solely the role of the WCJ to assess credibility and resolve conflicts in the evidence. Hoffmaster v. Workers' Compensation Appeal Board (Senco Products, Inc.), 721 A.2d 1152, 1155-56 (Pa. Cmwlth. 1998). The WCJ, alone, determines the weight of the evidence and, as such, "may reject the testimony of any witness in whole or in part, even if that testimony is uncontradicted." Id. at 1156 (citing Dana v. Workers' Compensation Appeal Board (Hollywood), 706 A.2d 396, 400 (Pa. Cmwlth 1998)). "[T]he appellate role is not to

[3] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1-1041.4, 2501 – 2626.

reweigh the evidence or to review the credibility of the witnesses." Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Board (Skirpan), 531 Pa. 287, 293, 612 A.2d 434, 437 (1992). Rather, the "reviewing court must simply determine whether, upon consideration of the evidence as a whole, the [WCJ]'s findings have the requisite measure of support in the record." Id.

In this case, we agree with the Board's determination that Claimant failed to sustain her burden of proving that she sustained a physical/mental injury during the course and scope of her employment. The Board noted that, although the WCJ found Claimant credible that she subjectively felt physical pain, the WCJ found that her complaints did not relate to an actual work injury. The WCJ rejected Claimant's testimony that her musculoskeletal complaints began and continued after a fall at work in May 2001, or were otherwise causally related to her employment because no medical evidence, other than her low back, was presented to establish a connection. In so finding, the WCJ credited the testimony of Employer's expert, Dr. Close, over that of Claimant and Dr. Hogg, that her low back complaints were not related to the May 2001 work injury. To support this finding, Dr. Close credibly testified that he is a board-certified neurological surgeon, (Close Dep. at 5) and that he performed an independent medical examination (IME) of Claimant on October 19, 2005. (Close Dep. at 14.) As part of the IME, Dr. Close took a history from Claimant, reviewed Claimant's medical records, and performed a physical examination. Based on this review and examination, Dr. Close diagnosed Claimant with a resolved fractured left wrist; resolved mild cerebral concussion; and a resolved cervical, dorsal and lumbar sprain and strain. (Close Dep. at 36-37.) Dr. Close opined that Claimant's history of depression, anxiety, and fibromyalgia were not causally connected to her three-year employment with Employer.

(Close Dep. at 37-38.) This opinion was based on a detailed neurological examination, which Dr. Close concluded was normal. (Close Dep. at 38.) Dr. Close noted that "[t]here was no reason that she needed ongoing treatment for any of the injuries that she described to me. And no reason why she was not fully recovered and fully able-bodied." (Close Dep. at 38-39.) Dr. Close stated that there was no objective evidence of any ongoing back pain based on his physical examination of Claimant. (Close Dep. at 42.)[4]

[4] Claimant also contends that Employer's own medical evidence, in the form of Dr. Close's Affidavit of Recovery, is contrary to the WCJ's finding that Claimant suffered no physical injuries in the course and scope of her employment. However, as correctly noted by the Board, Claimant's argument amounts to nothing more than a challenge to the WCJ's credibility determinations and factual findings. The law is well-settled that it is within the sole province of the WCJ to make credibility determinations and resolve conflicts in the evidence. Hoffmaster, 721 A.2d at 1155-56. The WCJ, alone, determines the weight of the evidence and, as such "may reject the testimony of any witness in whole or in part, even if that testimony is uncontradicted." Id. at 1156. "[T]he appellate role is not to reweigh the evidence or to review the credibility of the witnesses." Bethenergy Mines, 531 Pa. at 291, 612 A.2d at 436. Rather, the "reviewing court must simply determine whether, upon consideration of the evidence as a whole, the [WCJ]'s findings have the requisite measure of support in the record." Id. "[T]he fact that one party to a proceeding may view testimony differently" than the fact finder is simply not grounds for reversal if the findings are supported by substantial evidence. Second Breath v. Workers' Compensation Appeal Board, 799 A.2d 892, 899 (Pa. Cmwlth. 2002) (citing Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994)).

Here, the WCJ was not bound by the diagnoses of Dr. Close. The WCJ found that Claimant did not suffer a musculoskeletal injury related to her job because there was no medical evidence, other than that pertaining to a back injury, that she suffered a work-related musculoskeletal injury. With regard to the low back injury, the WCJ found that she did not suffer such an injury due to her work-related fall in 2001. In support of this finding, the WCJ found Claimant's expert, Dr. Adolph, credible when he testified that there was no correlation between her low back pain complaints and her 2001 fall because there were no medical records from 2001 documenting a back injury, nor were there medical records documenting complaints of back pain from the 2001 fall. (Adolph Dep. at 69-70, 79-80; FOF ¶ 17(c).) Furthermore, the WCJ did not find that Claimant suffered a repetitive trauma lumbar injury as a result of her work duties because even her own expert, Dr. Adolph, testified that he did not know how frequently she had to lift up to fifty pounds or how much stock she was required to handle on a given day. (FOF ¶ 18(c).) In fact, Dr. Adolph testified that "I think that she feels that she has back pain. I think her back hurts. I think its partly related to psychologically what's going on. . . . I think there's a lot of anger involved. I think it does affect her physically." (Adolph Dep. at 82.)

The WCJ also rejected the expert testimony of Dr. Adolph that Claimant suffered a repetitive trauma lumbar injury as a result of her work duties up to April 11, 2003, and of overuse in the course of her regular job duties. Moreover, the WCJ rejected Claimant's testimony that she suffered a foot problem, in the form of tarsal tunnel syndrome and calluses, in the course and scope of her employment. The record is devoid of any evidence to substantiate this allegation. In fact, Claimant's expert, Dr. Adolph, specifically testified that he did not diagnose Claimant with any abnormality of the feet (Adolph Dep. at 102), and Claimant's other expert witness, Dr. Hogg, admittedly testified that she isn't familiar with tarsal tunnel syndrome, nor does she make such diagnoses. (Hogg Dep. at 87-89.)

Although the WCJ accepted Claimant's testimony as credible with regard to her subjective feelings of physical pain, the WCJ noted that her complaints did not relate to an actual work injury because it was not supported by the credible evidence of record. The WCJ further found that Claimant's subjective complaints of physical pain were not a causal factor in her anxieties, which ultimately led her to quit her job on April 11, 2003. Instead, the WCJ found that Claimant's anxiety preceded her musculoskeletal pain.

Because there is substantial evidence to support the WCJ's credibility findings and the finding that Claimant did not suffer a physical injury which caused a psychic injury, the Board was correct in affirming the WCJ's decision to deny Claimant's Claim Petition.

Next, Claimant contends that the WCJ erred by applying an improper standard of review for a mental/mental case because the facts alleged were for a physical/mental case. Furthermore, Claimant argues that notwithstanding this argument, there was sufficient evidence of record to warrant a finding that Claimant has, in fact, sustained the heightened burden of a mental/mental case because the facts support an abnormal working condition. We disagree.

The Board was correct in finding that the WCJ applied the correct standard of review. Although the Claim Petition specifically stated "physical/mental," which the WCJ thoroughly and properly disposed of, a review of the record establishes that Claimant was also alleging a mental/mental claim and, even possibly, a mental/physical claim. Our Pennsylvania Supreme Court, in Davis v. Workmen's Compensation Appeal Board (Swarthmore Borough), 561 Pa. 462, 465, 751 A.2d 168, 170 (2000), has held that "where a psychic injury is claimed, regardless of whether it is manifested through psychic symptoms alone or physical symptoms as well, the claimant must establish that the injury arose from abnormal working conditions in order to recover benefits."

To the extent that Claimant was alleging a psychic injury, the WCJ correctly identified her burden of proof as having to establish that she suffered her psychic injury as a result of abnormal working conditions[5] while employed by Employer.

[5] As the Supreme Court succinctly explained in Rag (Cyprus) Emerald Resources, L.P. v. Workers' Compensation Appeal Board (Hopton), 590 Pa. 413, 912 A.2d 1278, 1288 (2007):

> In classifying working conditions as normal or abnormal, we do not employ a bright line test or a generalized standard, but instead, consider the specific work environment of the claimant; for we recognize that what may be normal for a police

(Continued…)

(WCJ Conclusion of Law ¶ 3.) However, Claimant did not sustain this heightened burden because the WCJ determined that Claimant's anxiety was the result of her subjective reaction to a normal work environment:

> The pressure for sales, the duties of hiring and training subordinates, working extra hours when short staffed, maintaining inventory, covering two stores on a temporary basis and even working twelve hours a day several days in a row do not constitute abnormal working conditions. Claimant admitted even in her initial testimony of May 17, 2005 that some of the other managers at [Employer] had the same kind of job demands which were placed upon her. There is no evidence that she was singled out for treatment or expected to work differently from other managers in the same type of retail position. Ms. Gruber confirmed that working twelve hour days several consecutive days was not abnormal and that other managers also worked these hours. (N.T. 2/14/06 pg. 49-50)

(FOF ¶ 23.) Because the record is devoid of any credible evidence that Employer subjected Claimant to abnormal working conditions, and because Claimant fails to point this Court to such evidence in the record (See Claimant's Br. at 18-19), we reject Claimant's argument as to this issue.[6]

> officer will not be normal for an office worker. Consequently, we deny compensation for injuries resulting from events that are expected in the relevant working environment, whether it is an office worker's change in job title or responsibility, or a police officer's involvement in life-threatening situations. Additionally, we do not expect employers to provide emotionally sanitized working conditions. "In assessing whether work conditions are abnormal, we must recognize that the work environment is a microcosm of society. It is not a shelter from rude behavior, obscene language, incivility, or stress." Philadelphia Newspapers, Inc. v. W.C.A.B. (Guaracino), 544 Pa. 203, 675 A.2d 1213, 1219 (1996).

Id. at 428-29, 912 A.2d at 1288 (citations omitted).

[6] We also note that the WCJ found Employer's expert witness, Dr. Fenichel, more credible than Claimant's witness, Ms. Horning, in that Dr. Fenichel opined that Claimant's psychological condition does not meet the diagnostic criteria of an adjustment disorder. (FOF ¶ 22.) Therefore, *(Continued…)*

Next, Claimant argues that the Board erred in affirming the WCJ's decision denying her Petition to Enforce Settlement because a settlement had allegedly been reached by all parties following mediation. Claimant contends that the principles of contract law determine the outcome and, because an offer was made and accepted, "the WCJ should have upheld a 'contract' and enforced settlement." (Claimant's Br. at 17.)

In opposition, Employer argues that the Board was correct in finding that no settlement took place under the Act, and contends that the record does not reflect that a settlement was reached, but that only mediation and negotiations took place.

Section 449 of the Act,[7] 77 P.S. § 1000.5, governs the compromise and release (C&R) of workers' compensation claims. Section 449 of the Act provides, in relevant part, that:

> (a) Nothing in this act shall impair the right of the parties interested to compromise and release, subject to the provisions herein contained, any and all liability which is claimed to exist under this act on account of injury or death.
>
> (b) Upon or after filing a petition, the employer or insurer may submit the proposed compromise and release by stipulation signed by both parties to the *workers' compensation judge for approval*. The

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the WCJ found that Claimant's anxiety is the result of her subjective reaction to a normal work environment. (FOF ¶ 23.)

[7] Added by Section 22 of the Act of June 24, 1996, P.L. 350.

> workers' compensation judge shall consider the petition and the proposed agreement in open hearing and *shall render a decision.* The workers' compensation judge shall not approve any compromise and release agreement unless he first determines that the claimant understands the full legal significance of the agreement. The agreement must be explicit with regard to the payment, if any, of reasonable, necessary and related medical expenses. Hearings on the issue of a compromise and release shall be expedited by the department, and the decision shall be issued within thirty days.
>
> (c) Every compromise and release by stipulation shall be in writing and duly executed, and the signature of the employe, widow or widower or dependent shall be attested by two witnesses or acknowledged before a notary public. . . .

77 P.S. § 1000.5 (emphasis added).

This section of the Act provides that settlement agreements are not valid or binding until approved by a WCJ. Department of Labor & Industry, Bureau of Workers' Compensation v. Workers' Compensation Appeal Board (US Food Service), 932 A.2d 309, 314 (Pa. Cmwlth. 2007). Once approved, a valid C&R is final and binding on the parties. Id.

We agree with the Board that, because a C&R was not approved by a WCJ, the statutory requirements of Section 449 have not been met and, thus, a valid settlement agreement does not exist. A review of the record shows that a conference was held between the parties with WCJ Benischeck on September 27, 2006. At that time, the parties disputed whether a settlement agreement had been reached and WCJ Benischeck advised parties that a settlement could not be enforced until a WCJ held a hearing and approved a C&R. (WCJ Hr'g Tr. at 6-10, September 27, 2006.) WCJ Benischeck then allowed the parties to discuss the negotiations with WCJ Hetrick, who had previously conducted mediations with the parties. WCJ Benischeck noted

that he was later verbally informed by WCJ Hetrick, following his meeting with the parties, that the case had not been settled. (WCJ Hr'g Tr. at 12-13, September 27, 2006.) Because the record does not contain a duly executed C&R, which was approved by a WCJ, we find that the Board did not err in denying Claimant's request to enforce settlement.

Next, Claimant contends that the WCJ erred in his "various rulings" (Claimant's Br. at 19) concerning evidentiary objections posed during medical depositions. In support of this argument, Claimant states:

> Generally, the objections noted by Claimant's counsel should not have been "overruled" but rather "sustained". Similarly, the objections noted by Defendant's counsel during various medical depositions should have been "sustained" rather than overruled. There are too many objections to reference in the brief; rather counsel requests that the Court review those objections independently and make appropriate determinations as to the [sic] whether appropriate rules of evidence were in fact applied as to the objections. Claimant avers not.

(Claimant's Br. at 19.)

On appeal from the WCJ's decision, the Board found that Claimant waived this issue for failure to allege specific errors of law committed by the WCJ or his evidentiary rulings. We agree with the Board.

Title 34, Section 111.11(a)(2) of the Pennsylvania Administrative Code (Code) states that an appeal filed with the Board shall contain "substantially the following information: . . . (2) A statement of the particular grounds upon which the appeal is based, including reference to the specific findings of fact which are challenged and the errors of the law which are alleged. General allegations which do not specifically

bring to the attention of the Board the issues decided are insufficient." 34 Pa. Code § 111.11(a)(2). A review of the WCJ's decision shows that ninety evidentiary rulings were made by the WCJ. (WCJ Decision at 14-17.) As she does before this Court, Claimant offered the Board a very vague and unspecific argument regarding the WCJ's evidentiary rulings: "The Judge's rulings on certain of the Claimant's objections during the medical depositions held in this matter were incorrect and did not conform to the provisions of the Workers' Compensation Act and contrary to the general principles of evidence." (Appeal from Judge's Findings of Fact and Conclusions of Law, November 16, 2006.) The appeal document to the Board is clear that Claimant failed to abide by the requirements of 34 Pa. Code § 111.11(a)(2) by raising an issue with the requisite specificity. See Jonathan Sheppard Stables v. Workers' Compensation Appeal Board (Wyatt), 739 A.2d 1084 (Pa. Cmwlth. 1999). Because Claimant fails to offer this Court a legal reason to support its argument that the Board erred in finding waiver, we conclude that the Board was correct in finding that Claimant failed to preserve that issue and, thus, it is waived. Accordingly, we will not disturb the Board's decision.

Claimant also contends that the WCJ erred in allowing a continuation of Dr. Hogg's deposition, over the objection of Claimant's counsel. In support of this argument, "Claimant's counsel requests the Court to apply rules of evidence to address whether the WCJ committed errors of law in allowing a Part II deposition. The entire transcript must be read (Part I) before a reasoned decision can be made as to this issue." (Claimant's Br. at 19.)

We note that this Court is not, and will not, act as an advocate for any party in an appeal before it. Rule 2119(a) of the Rules of Appellate Procedure provides that "[t]he argument shall be divided into as many parts as there are questions to be argued . . . followed by such discussion and citation of authorities as are deemed pertinent." Pa. R.A.P. 2119(a). Claimant's brief not only fails to offer an argument explaining why the Board erred in its analysis of the alleged error by the WCJ, but it also fails to comply with Rule 2119 by citing legal authority in support of its argument. For these deficiencies alone, Claimant's argument on this issue is denied as waived. Wert v. Department of Transportation, 821 A.2d 182, 189 (Pa. Cmwlth. 2003). However, even if not waived, we agree with the Board's analysis in finding no error when the WCJ granted a continuation of Dr. Hogg's deposition.

Title 34, Section 131.13(c) of the Code provides that continuances may be granted for substantial and compelling reasons at the discretion of the WCJ, provided that such action is consistent with Title 34, chapter 131 of the Code, and the chapter's purpose of providing an orderly and expeditious determination of the proceedings. 34 Pa. Code § 131.13(c). A review of the record shows that the WCJ determined that Employer's counsel should have been given a chance to continue cross-examination of Dr. Hogg because the deposition had been stopped by Claimant's counsel during the original deposition. (WCJ Hr'g Tr. at 8-9, 13-15, January 17, 2006.) The WCJ found that Claimant's counsel, on re-direct, was pursuing questions outside the scope of what was covered in the original cross-examination and, thus, Employer was entitled to an opportunity to continue with re-cross-examination. (WCJ Hr'g Tr. at 14-15, January 17, 2006.) Because the WCJ did not abuse his discretion in granting the continuance, we must affirm the Board on this issue.

Additionally, Claimant alleges that the WCJ erred by allowing Employer's counsel "to view certain of Claimant's 'letters' to her treating physician, which were not medical evidence, not relevant to the litigation and in violation of the patient-physician privilege. Such was an error of law. Again, the Court needs to look to the Record as a whole to make that determination." (Claimant's Br. at 20.)

Again, Claimant's brief fails to offer any reasons why the Board's determination and analysis—which found no error by the WCJ in allowing Employer's counsel to view letters from Claimant to her physician—was erroneous, and, thus, the brief is in violation of Rule 2119, as explained above. Accordingly, the argument is waived. Wert, 821 A.2d at 189. However, even if this Court would not find waiver, we agree with the Board that Claimant waived her right against disclosing private medical information because she placed her physical and mental condition at issue. This Court, in Doe v. Workmen's Compensation Appeal Board (USAir, Inc.), 653 A.2d 715 (Pa. Cmwlth. 1995), succinctly stated:

> There exists in Pennsylvania a general statutory prohibition against the disclosure of confidential medical information by a physician which would tend to blacken the character of his patient without the patient's prior consent. However, the legislature, in recognizing the need in civil litigation matters for disclosure of this information in order for a defendant to fully defend against claims for money damages, provided a waiver of this general prohibition. Section 5929 of the Judicial Code, 42 Pa.C.S. § 5929, provides as follows:
>
> > No physician shall be allowed, in any civil matter, to disclose any information which he acquired in attending the patient in a professional capacity, and which was necessary to enable him to act in that capacity, which shall tend to blacken the character of the patient, without consent of said

> patient, *except in civil matters brought by such patient, for damages on account of personal injuries.*
>
> (Emphasis added).
>
> There is no question that a claimant seeking compensation benefits in a workmen's compensation matter fits into this exception.
>
> Additionally, the rule has long been that where, as here, a party places his or her physical or mental condition in issue, the privacy right against disclosing private medical information is waived.

Id. at 717.

Because we find Claimant's argument without merit, we affirm the Board's decision.

Finally, Claimant argues that the WCJ erred in failing to impose penalties upon Employer for allegedly never filing a proper denial. Claimant contends that "[t]he injury of April 11, 2003 was not in fact reported by [Employer]. [Employer] reported an injury of June 11, 2003, a date whereby the Claimant was no longer an employee of [Employer]; and, therefore, a violation of the Act has occurred, warranting penalties, including an admission of liability and acceptance of injuries noted therein." (Claimant's Br. at 20-21.)

In opposition, Employer contends that the Board properly rejected Claimant's allegation of error concerning its issuance of the notice of denial. First, Employer contends that Claimant never filed a Petition for Penalties and, thus, the WCJ did not fail to address any issue properly before him. Second, Employer contends that it issued a Notice of Denial and an Employer's Report of Injury on June 12, 2003, the date upon which it was notified of Claimant's alleged injury. "The Report of Injury referenced the fact that Claimant quit without notice of [sic] 4/11/2003. When

Claimant filed her Claim Petition on March 22, 2005 identifying the date of injury as 4/11/2003, [Employer] filed a timely Answer to the Petition specifically denying the allegation." (Employer's Br. at 22.) Accordingly, Employer argues that it did not violate the Act and there was no deemed admission of a 4/11/2003 injury. Moreover, Employer contends that, even if this Court were to conclude that the WCJ should have addressed this issue, there is no basis for a penalty award because there was no award of compensation.

We agree with the Board that, because Claimant was not awarded workers' compensation benefits, she is not entitled to penalties. Section 435 of the Act provides that "[t]he department, the board, or any court which may hear any proceedings brought under this act shall have the power to impose penalties . . . for violations of the provisions of this act or such rules and regulations or rules of procedure: (i) Employers and insurers may be penalized a sum not exceeding ten per centum of *the amount awarded* . . . ." 77 P.S. § 991(d)(i) (emphasis added). Section 435(d)(i), thus, permits imposition of penalties only when the claimant is awarded compensation. Shannon v. Southwark Metal Manufacturing Co., 366 A.2d 963, 964 (Pa. Cmwlth. 1976). As this Court explained in Jaskiewicz v. Workmen's Compensation Appeal Board (James D. Morrisey, Inc.), 651 A.2d 623 (Pa. Cmwlth. 1994):

> [T]he words "of the amount awarded" [under Section 435(d)(i)] indicate the legislature's intention to award penalties only when a claimant is awarded benefits. The penalty is based upon the amount awarded which was zero here. Thus, any other interpretation of this section of the Act would lead to arbitrary results, as referees would be left to award penalties based upon unknown numbers.

Id. at 626. Hence, the Board was correct that Claimant may not seek penalties because she did not receive an award of compensation. The WCJ found that she did not suffer a physical injury as a result of her work for Employer and she did not suffer a psychological injury as a result of abnormal working conditions.

Accordingly, we affirm the Board.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stefanie L. Ruia,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1821 C.D. 2007
	:	
Workers' Compensation Appeal Board (New York & Company),	:	
	:	
Respondent	:	

O R D E R

NOW, February 12, 2008, the order of the Worker's Compensation Appeal Board in the above-captioned matter is hereby affirmed.

RENÉE COHN JUBELIRER, Judge