

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robin McBride,	:
Petitioner	:
	:
v.	:
	:
Workers' Compensation Appeal Board	:
(United Methodist Services for the	:
Aging and Old Republic Insurance	:
Company),	: No. 1859 C.D. 2007
Respondents	: Submitted: February 15, 2008

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: April 15, 2008

Robin McBride (Claimant) petitions for review of a decision of the Workers' Compensation Appeal Board (Board) which affirmed the decision of a Workers' Compensation Judge (WCJ) that denied Claimant's claim petition after finding that Claimant failed to meet her burden of proving that she sustained a compensable work-related injury on August 28, 2005, while in the course and scope of her employment with United Methodist Services for the Aging (Employer).

On November 4, 2005, Claimant filed a claim petition, alleging that on August 28, 2005, she injured her left shoulder while lifting a patient in the

course and scope of her duties with Employer. Employer filed a Notice of Workers' Compensation Denial (NCD) on August 31, 2005, averring that although Claimant sustained an injury, she was not disabled from it, and the matter was designated a "medical only" claim.

Following a hearing at which Claimant presented the deposition testimony of her treating physician, Dean G. Sotereanos, M.D., and her treating chiropractor, Case Phillips, D.C., and Employer presented the deposition testimony of Francis X. Plunkett, M.D., the WCJ, on December 22, 2006, denied Claimant's claim petition. In so doing, the WCJ concluded that Claimant and Claimant's medical experts were not credible, and that Claimant had failed to meet her burden of proving that on August 28, 2005, she sustained a continuing, compensable work-related injury while in the course and scope of her employment, which injury left her temporarily and totally disabled.

Claimant appealed and on September 7, 2007, the Board affirmed the WCJ's decision. This appeal followed.¹

On appeal, Claimant contends that the Board erred in affirming the WCJ's denial of Claimant's petition for benefits. In this regard, Claimant avers that the WCJ accepted as credible the testimony of Employer's medical expert, Dr. Plunkett, who testified that Claimant had sustained work-related injuries to her arm and neck, but had fully recovered from these injuries as of his exam on January 25, 2006. Claimant therefore argues that her petition should have been granted and

¹ On review, we are limited to determining whether the necessary findings of fact are supported by substantial evidence, whether errors of law were made, or whether constitutional rights were violated. *Philadelphia Gas Works v. Workers' Compensation Appeal Board (Camacho)*, 819 A.2d 1230 (Pa. Cmwlth. 2003).

benefits awarded her for a closed time period from August 28, 2006 to January 25, 2006, followed by a termination. Claimant also contends that since she should have been awarded benefits, the Board erred in not awarding Claimant litigation costs.

Upon review, we conclude that substantial evidence of record supports the Board's affirmance of the WCJ's determination. After considering Claimant's testimony and the testimony of Claimant's medical experts in juxtaposition with the testimony of Employer's medical expert, the WCJ found that Claimant failed to meet her burden of proof and that Claimant lacked credibility. Sufficient evidence supports this credibility determination.

First, Claimant testified that about one week after her work-related injury, she experienced pain in her upper left shoulder. Claimant averred that she did not have prior left shoulder problems, although she conceded that on February 20, 2005, she visited the emergency room complaining of overall body ache including her shoulders and elbows. Additionally, Employer submitted into evidence medical records from St. Clair Occupational Medicine Center containing a progress note dated August 30, 2005, in which Claimant admitted to one year of shoulder pain for which she treated with a chiropractor. With respect to this progress note, Claimant testified that although it indicated that she complained of left shoulder tenderness for approximately a year prior to her work-related injury, she never voiced these complaints to the nurse at St. Clair Occupational Medicine Center.

Second, although Claimant's chiropractor, Dr. Phillips, testified that prior to treating Claimant on August 31, 2005 for her work injury, he was not treating her expressly for left shoulder complaints, he nonetheless acknowledged

having treated Claimant's shoulders as part of his total treatment, and acknowledged having listened to Claimant's complaints of top shoulder pain. (Deposition of Case Sumner Phillips, D.C., 3/22/2006, pp. 5-24.) Additionally, although Claimant's orthopedic surgeon, Dean Soterreanos, M.D., testified that he had diagnosed Claimant as suffering from rotator cuff tendonitis that was causally linked to Claimant's work injury, he conceded that if Claimant's history were inaccurate, this fact would affect his opinion as to causation. (Deposition of Dean Soterreanos, M.D., 3/10/2006, pp. 6-19.)

The WCJ evaluated the foregoing testimony of Dr. Phillips and Dr. Soterreanos vis-a-vis that of Employer's medical expert, Francis Plunkett, M.D., an orthopedic surgeon, who commented that his physical examination of Claimant indicated she suffered from left shoulder impingement, which in his medical opinion existed prior to Claimant's work injury and did not relate to her employment. Dr. Plunkett also diagnosed Claimant with a left arm and neck sprain that did relate to the August 28, 2005 work injury, but from which she had recovered. (Deposition of Francis Plunkett, 6/14/2006, pp. 10-22.)

The WCJ, after considering the inaccuracies in the history provided by Claimant, rejected the testimony of both Dr. Phillips, Claimant's chiropractor, and Dr. Sottereanos, Claimant's orthopedic surgeon. Alternatively, the WCJ found the testimony of Dr. Plunkett, Employer's medical expert, to be credible for establishing that Claimant had suffered a neck and left arm strain from which she had fully recovered and that Claimant's shoulder impingement problem was unrelated to the work injury she sustained.

This Court has consistently reaffirmed that where the Board takes no additional evidence, the WCJ is the final arbiter of credibility and the weight to be

accorded evidence. The WCJ may accept or reject, in whole or in part, the testimony of any witness, as did the WCJ in the present matter. *Vols v. Workmen's Compensation Appeal Board (Alperin, Inc.)*, 637 A.2d 711 (Pa. Cmwlth. 1994). In *Kasper v. Workers' Compensation Appeal Board (Perloff Bros.)*, 769 A.2d 1243, 1246 (Pa. Cmwlth. 2001), this Court stated:

Deciding credibility is the quintessential function of the fact-finder, particularly one who sees and hears the testimony. It is not an exact science, and the ultimate conclusion comprises far more than a tally sheet of its various components. . . .

As we have recently noted:

The WCJ's prerogative to determine the credibility of witnesses and the weight to be accorded evidence has not been diminished by the amendments to Section 422(a). Such determinations are binding on appeal unless made arbitrarily and capriciously.

Empire Steel Castings, Inc. v. Workers' Compensation Appeal Board (Cruceta), 749 A.2d 1021, 1027 (Pa.Cmwlth. 2000). . . .

Based upon the foregoing discussion, we conclude that the Board did not err in affirming the WCJ's determination which is supported by substantial evidence of record, and accordingly, we affirm the Board's order.

JAMES GARDNER COLINS, Senior Judge

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ORDER

AND NOW, this 15th day of April 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter is affirmed.

JAMES GARDNER COLINS, Senior Judge