

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Port Authority of Allegheny County,	:
Petitioner	:
	:
v.	:
	:
Workers' Compensation Appeal	:
Board (Wright),	: No. 1887 C.D. 2007
Respondent	: Submitted: March 7, 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: May 5, 2008**

The Port Authority of Allegheny County (Employer) petitions for review of the September 21, 2007 order of the Workers' Compensation Appeal Board (Board) that affirmed the order of the Workers' Compensation Judge (WCJ) expanding the notice of compensation payable issued by Employer with respect to a March 18, 2004 work injury sustained by Lynn Wright (Claimant), and dismissing the termination/suspension petitions filed by Employer.

On March 18, 2004, Claimant was involved in an accident during the scope and course of her employment as a bus driver for Employer, who subsequently issued a notice of compensation payable acknowledging Claimant's right hip and thigh injuries. On October 5, 2005, Employer filed a petition for

termination or suspension of Claimant's benefits alleging that Claimant's work-related disability had ended and that any remaining disability of Claimant was unrelated to her work injury. On or about October 15, 2005, Claimant filed an answer denying the allegations of Employer's petition to terminate or suspend benefits, and thereafter, Claimant filed a review petition as to her medical condition.

Hearings before the WCJ were conducted at which Claimant testified and presented the deposition testimony of her treating physician, Stephen F. Conti, M.D., along with supporting medical records. Employer presented the deposition testimony of its medical expert, Carl T. Hasselman, M.D., the deposition testimony of Richard Wojnar, Assistant Director of Road Operations for Employer, the deposition testimony of Robert Semancik, Assistant to the Director of Rail Service Delivery, and an Ability to Return to Work and Functional Capacity Evaluation, a job description for modified work, a letter to Claimant with a job offer, and a letter from a workers' compensation specialist regarding the job offer.

On January 18, 2007, the WCJ issued a determination granting Claimant's review petition and expanding the notice of compensation payable to include a non-union fracture of the fibula, post-traumatic arthritis of the subtalar joint and saphenous nerve neuropathy, and denying Employer's petition to terminate/suspend Claimant's benefits. The Board, on September 21, 2007, affirmed the WCJ's decision and this appeal followed.<sup>1</sup>

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<sup>1</sup> 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).

On appeal, Employer challenges the Board's affirmance of what it avers to be the WCJ's erroneous determinations that Claimant, in the modified job offered to her, would not be permitted to elevate her leg while working in a booth, and that she would have to clear sidewalks, both of which findings are, according to Employer, unsupported by substantial evidence. In this regard, Employer avers that both the testimony of Claimant's treating physician, Dr. Conti, and that of Robert Semancik, upon which the WCJ relies, contravene the latter's decision, and instead support the suspension of Claimant's benefits. Additionally, Employer maintains that in light of the WCJ's credibility determinations, the WCJ did not render a reasoned decision since the basis for denying Employer's suspension petition is indeterminable.

Upon review, we concur with the Board's affirmance of the WCJ's determination that: the notice of compensation payable should be expanded to include a non-union fracture of Claimant's fibula, post-traumatic arthritis of Claimant's subtalar joint and saphenous nerve neuropathy, Employer failed to meet the burden of proving that Claimant had fully recovered from her March 18, 2004 work injury, and failed to establish that Claimant could either resume her time-of-injury position as a bus driver or perform the modified position of an Off-Board Fare Collector, thereby resulting in denial of Employer's suspension petition.

It has long been established that credibility determinations are made solely by the WCJ, who has the authority to accept the testimony of a witness in whole or in part. *Udvari v. Workmen's Compensation Appeal Board (USAIR, Inc.)*, 550 Pa. 319, 705 A.2d 1290 (1997). In the present matter, the WCJ found the testimony of Claimant's treating physician, Dr. Conti, more credible than that

of Employer's expert/physician. The following testimony elicited from Dr. Conti's May 5, 2006 deposition is relevant:

Direct Examination

Q. Dr. Hasselman made a comment about the fibula fracture malunion. He was questioning whether that was work-related. . . . [D]o you have an opinion as to whether or not . . . the fibula fracture was related?

A. I do. In my opinion, it is related, because I can't come up with another explanation in this case as to how someone walks around on a broken bone without a history of a trauma. . . .

Q. Relative to the subtalar arthritis, Dr. Hasselman's opinion was that was a preexisting condition, and he did not believe that was related to this bus accident of 3-19-04. You would agree or disagree with that opinion, Doctor?

A. I disagree. . . . As I look at her now, she has a broken ankle and damage to her subtalar joint, both of which, I believe, at least temporally as well as just logically, had to have come from the bus accident, and certainly her fibula fracture comes from the bus accident. To say that her subtalar joint was perfectly normal prior to – I mean was not perfectly normal, was highly arthritic prior to the accident, yet she had no symptoms, she had no unusual swelling and she didn't seek any treatment, and then after the bus accident, it just happens to get that much worse that she needs an operation just doesn't make as much sense as either the accident caused the arthritis or, if she did have some mild preexisting arthritis, the accident aggravated it to the point where she eventually needed surgery.

Further, the WCJ, after evaluating the following May 9, 2006 deposition testimony of Robert F. Semancik, Assistant Director of Rail Service Delivery, concluded that the modified job as an off-board fare collector offered to Claimant by Employer was not feasible within her medical restrictions.

Cross-Examination

Q. You talked about, I guess, sometimes Port Authority has placed people that might have had a work injury or some other maybe disability, and some of those individuals have been able to perform the off-board fare collector position. Have you ever been able to employ someone that needs to lay down and still allow them to perform this off-board fare collector position?

A. No. . . .

Q. . . . Dr. Conti recently had given testimony, and that's Ms. Wright's treating surgeon, and his testimony was that at times she may need to elevate her foot above heart level. You would acknowledge to me, sir, that if Ms. Wright was sitting on one chair, and there's another chair in there, if she puts her foot up on the chair, her foot is not going to be above her heart level, correct?

A. I can't say that for certainty. Some of those stools are pretty high. Depends, I guess, where she places her foot. If she placed her foot on the seat portion, of course, I would say no. Assuming she would assume a normal position in a chair, I'd say no. . . .

Q. . . . [C]ould the person do that where they're sitting in their chair, have their foot up on this higher stool with their foot above their heart level and still be able to reach and do this fare collector inputting on the box? . . . I'm just wondering if they can reach the box and have their

foot above heart level, . . . I mean, physically is there enough room in there for someone to do that?

A. Well, the way I visualize that could happen would be that the employee would probably turn their chair side saddle to the fare box like this, and then extend their leg out to whatever elevation that would, you know, be needed or required.

Based upon our review, we find that substantial evidence, as exemplified by the foregoing excerpts of Dr. Conti's deposition and that of Mr. Semancik, supports the WCJ's credibility determinations and conclusions.

Finally, we find no merit to Employer's contention that the WCJ failed to issue a reasoned decision. The requirement for a WCJ to issue a "reasoned decision" is governed by Section 422(a) of the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §834, which provides:

[N]either the board nor any of its members nor any workers' compensation judge shall be bound by the common law or statutory rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based upon sufficient competent evidence to justify same. 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. . . . The adjudication shall provide the basis for meaningful appellate review.

The authority of the WCJ over questions of credibility, conflicting medical evidence, and evidentiary weight is unquestioned. *Sherrod v. Workmen's Compensation Appeal Board (Thoroughgood, Inc.)*, 666 A.2d 383, 385 (Pa. Cmwlth. 1995). Section 422(a) does not require that the WCJ set forth in detail the process by which he arrives at his ultimate determination. It is sufficient that the decision contains findings of fact and conclusions of law, based upon all of the evidence, which clearly and concisely state and explain the rationale for the WCJ's decision. *Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck)*, 664 A.2d 703 (Pa. Cmwlth. 1995). A WCJ must set forth an adequate reason for accepting or rejecting conflicting competent evidence, and adequately explain the reasons for rejecting uncontroverted evidence. *Daniels v. Workers' Compensation Appeal Board (Tristate Transport)*, 574 Pa. 61, 828 A.2d 1043 (Pa. 2003). With respect to the "reasoned decision" standard, the present WCJ clearly presented the necessary findings of fact and conclusions of law enabling this Court to provide meaningful review. The decision includes a more than adequate statement of the facts based on the evidence presented, credibility determinations, and an explanation of the basis for the decision.

Accordingly, based upon the foregoing discussion, the order of the Board in this matter is affirmed.

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JAMES GARDNER COLINS, Senior Judge

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**ORDER**

AND NOW, this 5<sup>th</sup> day of May, 2008 the order of the Workers' Compensation Appeal Board in the above-captioned matter is AFFIRMED.

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JAMES GARDNER COLINS, Senior Judge