IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Gibbs, Petitioner	:	
v.	:	No. 1890 C.D. 2007
	:	Submitted: January 25, 2008
Workers' Compensation Appeal Board (Southeast Delco School District), Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FRIEDMAN FILED: April 24, 2008

Carol Gibbs (Claimant) petitions for review of the September 20, 2007, order of the Workers' Compensation Appeal Board (WCAB), which affirmed the decision of a workers' compensation judge (WCJ) denying Claimant's claim and penalty petitions. We affirm.

On February 28, 2005, while employed as a middle school principal for Southeast Delco School District (Employer), Claimant allegedly was injured when she was involved in an altercation with a student. On March 17, 2005, Employer issued a Notice of Temporary Compensation Payable (NTCP) for an injury in the nature of a left trapezius, left wrist and left shoulder strain. On May 24, 2005, Claimant filed a claim petition, alleging that, as a result of the February 28, 2005, incident, she sustained work-related injuries to her entire left side and an aggravation of a pre-existing injury. Thereafter, on May 26, 2005, Employer

issued a Notice Stopping Temporary Compensation and a Notice of Workers' Compensation Denial; Employer also filed a timely answer to the claim petition, denying Claimant's allegations. On June 2, 2005, Claimant filed a penalty petition, asserting that Employer violated the Workers' Compensation Act (Act)[1] by improperly using the NTCP; Employer filed a timely answer denying these allegations. On June 8, 2005, Employer filed a Petition to Modify or Suspend Claimant's benefits, asserting that it offered Claimant a specific job on April 21, 2005. All three petitions were assigned to the same WCJ for hearings. (Findings of Fact, Nos. 1-7.)

In support of her petitions, Claimant testified that, on February 28, 2005, she was called upon to intervene in a disagreement between students. She explained that when one of the students refused to go to the office, she grabbed the student by the arm, and, in an attempt to break free, the student pulled Claimant all over the cafeteria. Claimant stated that, as a result, she suffered numerous injuries to her entire left side, including her back, shoulder, arm, wrist and foot. Claimant testified that she cannot perform all of her regular duties as principal because of her severe pain, but she indicated that she would like to return to work. (Findings of Fact, Nos. 9a-9h, 18h, 18k.)

On cross-examination, Claimant acknowledged that she had prior injuries to her back and left shoulder, arm and wrist. Claimant also acknowledged that: (1) as of April 22, 2005, she could return to a modified position, and that

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

Employer offered her such a position; (2) as of May 23, 2005, Claimant was able to return to regular duty and a principal position was available; and (3) she has not attempted to return to work. (Findings of Fact, Nos. 9e, 9i-9l.)

Claimant also offered the deposition testimony of Anthony J. Mela, D.O., who began treating Claimant on April 25, 2005. Dr. Mela stated that Claimant provided him with her medical history and a description of the alleged work injury. Based on his numerous examinations of Claimant, and his review of Claimant's medical history and records, Dr. Mela opined that, as a result of the February 28, 2005, incident, Claimant sustained numerous injuries to the left side of her body.[2] Dr. Mela stated that Claimant could return to the administrative duties as a principal but is not able to do any physical activities. On cross-examination, Dr. Mela acknowledged that Claimant did not inform him of any prior injuries. He also conceded that he only reviewed the records of Dr. Gordon and Gerald Dworkin, the physiatrist to which Dr. Mela referred Claimant, but did not review the records from Claimant's physical therapy or from Claimant's February 28, 2005, emergency room visit. (Findings of Fact, Nos. 10b-10n.)

Claimant also introduced the deposition testimony of fact witnesses Thomas Orlando, Larry Oliveri and Maryann Murr. Each witness provided a somewhat different description of the incident between Claimant and the student,

[2] His diagnosis included: (1) musculoligamentous strain of the cervical spine, thoracic spine and lumbar spine; (2) left trapezius myofascitis; (3) left hip strain and sprain; (4) left shoulder strain and sprain secondary to status-post left rotator cuff tear repair; (5) left wrist strain and sprain; (6) cervical and lumbosacral radiculopathy; (7) bilateral carpal tunnel syndrome, which required surgery on the left hand; and (8) left C5-6 radiculopathy. (Findings of Fact, Nos. 10e, 10i.)

but none testified that they saw Claimant fall or being pulled around the cafeteria during the incident. (Findings of Fact, Nos. 11d, 11f, 12c, 12f, 12h, 13e.)

In opposition to Claimant's petitions and in support of its suspension/modification petition, Employer presented the deposition testimony of Ira Sachs, D.O., a board-certified orthopedic surgeon who examined Claimant at Employer's request on April 21, 2005, and on December 15, 2005. Based on his physical examinations of Claimant and his review of Claimant's medical records, which included records of Claimant's prior left wrist and left shoulder injuries, as well as more recent MRIs, x-rays and EMG studies, Dr. Sachs opined that there was no causal connection between Claimant's current medical conditions or complaints and the February 28, 2005, incident. Giving Claimant the benefit of the doubt, Dr. Sachs acknowledged that Claimant *may* have sustained a cervical, thoracic and lumbar strain as a result of the February 28, 2005, incident. However, he stated that these soft tissue injuries would have resolved within six weeks or, again, giving Claimant the benefit of the doubt, within three months. Dr. Sachs testified that, as of his April 21, 2005, examination, Claimant was fully recovered from her work incident of February 28, 2005. (Findings of Fact, Nos. 15a-15h.)

The WCJ accepted Dr. Sachs' opinion as credible and persuasive. The WCJ rejected Claimant's testimony in its entirety, noting that: (1) Claimant's description of the incident was not supported by the testimony of the three witnesses to the incident or by Claimant's incident report; (2) Claimant failed to provide Dr. Mela with a full and accurate medical history; (3) Claimant's complaints of constant and severe pain and ongoing disability are not supported by

the medical evidence or the surveillance video offered by Employer;[3] and (4) although she expressed a willingness to return to work, Claimant failed to respond to job offers or maintain her certification.[4] The WCJ also rejected Dr. Mela's testimony, to the extent that it differed from Dr. Sachs' testimony, as neither credible nor persuasive. (Findings of Fact, Nos. 19-23.)

Based on the findings of fact and credibility determinations, the WCJ concluded that, although a work-related incident occurred on February 28, 2005, Claimant failed to prove that she sustained any disabling, work-related injuries or that Employer violated the terms of the Act. Thus, the WCJ denied Claimant's claim and penalty petitions and dismissed Employer's Petition to Modify or Suspend benefits as moot. (Findings of Fact, Nos. 25-30; Conclusions of Law, Nos. 2-6.) Claimant appealed to the WCAB, which affirmed. Claimant now petitions this court for review.[5]

---

[3] In addition, Employer offered into evidence a surveillance video of Claimant, which showed, *inter alia*, that Claimant had no difficulty getting in and out of vehicles, walking up and down steps and carrying a case of canned beverages with both hands. (Findings of Fact, Nos. 17a-17c.)

[4] Employer also presented the deposition testimony of its Director of Human Services, Lynn David, who testified that Employer offered Claimant various modified-duty and regular-duty positions from April 2005 through January 2006, but that, with the exception of the January 2006 offer, Claimant did not report to work. David testified that, although Claimant reported to work on January 10, 2006, she could not begin to work that day because: (1) Claimant lacked the necessary principal certificate to legally work in a middle school; and (2) Claimant presented Employer with a list of very broad work restrictions by Dr. Mela which precluded Claimant from performing any meaningful administrative supervisory work. (Findings of Fact, Nos. 16a-16i, 16n-16p.) The WCJ credited this testimony. (Findings of Fact, No. 21.)

[5] Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law or whether the necessary

(Footnote continued on next page…)

Claimant first argues that the WCJ's decision is not reasoned within the meaning of section 422(a) of the Act, 77 P.S. §834(a), because the WCJ did not adequately explain her reasons for accepting Dr. Sachs' testimony over Dr. Mela's testimony. We disagree.

A decision is "reasoned" for purposes of section 422(a) of the Act if it allows for adequate review by the WCAB without further elucidation and if it allows for adequate review by the appellate courts under applicable review standards. *Daniels v. Workers' Compensation Appeal Board (Tristate Transport)*, 574 Pa. 61, 828 A.2d 1043 (2003). With respect to findings of witness credibility, once a WCJ determines witness credibility and makes factual findings that are supported by substantial evidence, the only remaining requirement is to *adequately explain* how the credibility determinations were reached. *Cooper Power Systems v. Workers' Compensation Appeal Board (McFarland)*, 722 A.2d 746 (Pa. Cmwlth. 1998).

Here, in accepting Dr. Sachs' testimony as credible and persuasive, the WCJ explained that Dr. Sachs: (1) is board-certified in orthopedic medicine; (2) had reviewed the actual MRI films and other diagnostic studies; and (3) reported that Claimant's complaints essentially were the same at both examinations, that Claimant exhibited symptom magnification at both

---

(continued…)

findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

examinations and that neither examination revealed any objective evidence of ongoing disability. (Findings of Fact, No. 19.) In rejecting Dr. Mela's testimony, the WCJ noted that Dr. Mela: (1) is not a board-certified orthopedic surgeon; (2) relied heavily on Claimant's subjective, exaggerated complaints of pain; (3) did not receive a complete medical history of Claimant's prior injuries; (4) did not review any medical records except for those of Dr. Gordon and Dr. Dworkin; (5) did not review any of Claimant's physical therapy records; and (6) did not review the actual MRI films, but relied only on the MRI reports. (Findings of Fact, No. 20.) These findings clearly explain why the WCJ accepted Dr. Sachs' testimony rather than that of Dr. Mela and allows for adequate review by this court; thus, the WCJ's decision is "reasoned" as required by section 422(a) of the Act.[6] *Daniels*.

Claimant next argues that even though the WCJ rejected Claimant's testimony and that of Dr. Mela, the WCJ erred in denying her claim petition in its entirety because Employer's expert, Dr. Sachs, agreed that Claimant sustained cervical, thoracic and lumbar strains as a result of the February 28, 2005, incident. Again, we disagree.

Although Dr. Sachs agreed that he included these diagnoses in his April 21, 2005, report, (Sachs' Deposition at 114, 124), he explained that, in doing so, he was giving Claimant the *benefit of the doubt* because it was *conceivable* that

[6] We also reject Claimant's assertions that the WCJ erred in crediting Dr. Sachs' opinions over those of Dr. Mela and by rejecting Claimant's testimony. It is well settled that a WCJ is free to accept or reject the testimony of any witness in whole or in part, including medical witnesses, and that this determination is not subject to judicial review. *Cooper Power Systems*.

such injuries could result from the February 28, 2005, incident as described by Claimant. (Sachs' Deposition at 113-14.) Clearly, this "benefit of the doubt" was predicated on Claimant's statements that she was injured when a student pulled or "slung" her around the school cafeteria, (Sachs' Deposition at 12; O.R. at Exh. D-Sachs-7), a description that the WCJ specifically rejected. Moreover, the language used is too equivocal to sustain Claimant's burden of proof.[7] *Jeannette District Memorial Hospital v. Workmen's Compensation Appeal Board (Mesich)*, 668 A.2d 249 (Pa. Cmwlth. 1995) (holding that when the causal relationship between the injury and employment is not obvious, unequivocal medical testimony is required), *appeal denied*, 544 Pa. 671, 677 A.2d 841 (1996).

Given our conclusion that Claimant failed to satisfy her burden of proof on her claim petition, we reject Claimant's argument that she is entitled to penalties in this matter. *See Jaskiewicz v. Workmen's Compensation Appeal Board (James D. Morrissey, Inc.)*, 651 A.2d 623 (Pa. Cmwlth. 1994) (holding that where a claimant has been awarded no benefits, penalties cannot be imposed on the employer), *appeal denied*, 541 Pa. 628, 661 A.2d 875 (1995).

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Judge

[7] In addition, even if Dr. Sachs' testimony unequivocally supported the conclusion that Claimant sustained work-related injuries, Dr. Sachs never indicated that those injuries were disabling. Thus, Claimant could not have satisfied her burden of proving an entitlement to benefits. At most, this testimony, had it been unequivocal, would have supported an award of medical benefits and then only for the period between February 28, 2005, and April 21, 2005.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Gibbs, Petitioner	:	
v.	:	No. 1890 C.D. 2007
Workers' Compensation Appeal Board (Southeast Delco School District), Respondent	:	

O R D E R

AND NOW, this 24th day of April, 2008, the order of the Workers' Compensation Appeal Board, dated September 20, 2007, is hereby affirmed.

_____

ROCHELLE S. FRIEDMAN, Judge