

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mary Louise E. Hydock,	:	
Petitioner	:	
	:	
v.	:	No. 1975 C.D. 2009
	:	Submitted: February 26, 2010
Workers' Compensation Appeal	:	
Board (Department of Auditor General),	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: April 22, 2010

Mary Louise E. Hydock (Claimant), representing herself, petitions for review from an order of the Workers' Compensation Appeal Board (Board) that affirmed a Workers Compensation Judge's (WCJ) decision denying her review petition pursuant to the provisions of the Pennsylvania Workers' Compensation Act (Act).¹ Additionally, the WCJ granted the Commonwealth of Pennsylvania, Department of Auditor General's (Employer) termination petition. Before this Court, Claimant argues the WCJ erred in not granting her corrective amendment to the NCP, and in concluding her accident related conditions resolved. We affirm.

I. Background

Claimant was an auditor for Employer. Her job responsibilities required her to travel by automobile to district court offices across the state to

¹ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1 – 1041.4, 2501 – 2708.

conduct onsite audits. Claimant was injured during the course of her employment when another driver struck the rear of Claimant's vehicle while she was stopped in traffic. As a result of the collision, her vehicle was propelled into the car behind which she stopped. Emergency personnel transported her to the emergency room of a local hospital. Emergency room personnel treated and released her. Claimant eventually returned to work. There is no issue of lost wages in the present case.

Employer issued a medical only notice of compensation payable (NCP) identifying Claimant's injuries as "strain" of "cervical [spine] and right shoulder". NCP, WCJ's Ex. 1. The NCP did not reference Claimant's back.

A. Prior Utilization Review

One of her doctors diagnosed her with cervical disc syndrome. He prescribed medications and massage therapy to treat the condition.

Employer filed a utilization review (UR) petition challenging the reasonableness of this treatment. The UR physician determined the treatments were not necessary, and the WCJ and the Board affirmed this determination. Claimant did not appeal the Board's decision on the UR Petition.

B. Current Proceeding

Following the UR Determination, Employer requested an independent medical examination (IME). Richard G. Schmidt, M.D., (Employer's Physician) conducted the IME. He issued a report concluding Claimant was fully healed from any workplace injury. Accordingly, he signed a notice of ability to return to work. Based on the IME, Employer filed a termination petition.

Claimant denied the allegations in Employer's petition. Additionally, Claimant filed a review petition. Claimant asked the WCJ to amend the injury description "to include lumbar spine damage." Review Petition at 2. Employer denied the allegations in the Claimant's review petition.

The WCJ consolidated the review and termination petitions and conducted hearings on them. In support of the review petition, the WCJ heard testimony from the Claimant, received reports from three of Claimant's physicians, and received emergency room treatment records. Claimant bases much of her arguments on the content of these records. She argues these forms clearly show that she suffered an injury to her left shoulder and back.

In support of its termination petition, Employer offered the deposition testimony and IME report of its Physician.

The WCJ denied the review petition, concluding Claimant did not meet her burden. He granted the termination petition, concluding Employer met its burden. In making these determinations, the WCJ found Claimant partly credible. The WCJ found Claimant suffered a whiplash injury in the accident. He also found Claimant briefly received treatment for her shoulder and neck. However, the WCJ concluded her testimony did not establish she suffered a back injury in the accident. Additionally, he did not find any of Claimant's ongoing complaints were connected with the accident.

As to expert evidence, the WCJ concluded none of Claimant's

experts' opinions support a finding of a lumbar injury. He noted none of them identified, let alone discussed, a back injury. In contrast, the WCJ found Employer's Physician's testimony credible and competent. The WCJ also stated, "Because I do not credit Claimant's current constellation of complaints as being related to a three-year-old motor vehicle accident, I find his opinion of full recovery persuasive" WCJ. Op. Finding of Fact (F.F.) No. 10.

Claimant appealed to the Board. It affirmed.

II. Issues on Appeal

On her own, Claimant filed a petition for review. Claimant argues that the WCJ erred in denying her review petition and granting Employer's termination petition because his factual findings were not supported by substantial evidence.²

III. Discussion

A. Review Petition

In her review petition, Claimant asked the WCJ to add a "lumbar

² This Court's review is limited to determining whether the WCJ's findings of fact were supported by substantial evidence, whether an error of law was committed or whether constitutional rights were violated. Minicozzi v. Workers' Comp. Appeal Bd. (Indus. Metal Plating, Inc.), 873 A.2d 25 (Pa. Cmwlth. 2005).

We also note that Claimant in her brief also seems to challenge the prior UR Determination. The time has long passed for Claimant to challenge this UR decision, and we will not, visit this issue in the current appeal. Krouse v. Workers' Comp. Appeal. Bd. (Barrier Enterprises, Inc.), 837 A.2d 671, 676 (Pa. Cmwlth. 2003) (applying preclusion principles to prevent relitigation of matters decided in a prior, unappealed UR decision). Accordingly, we decline to address Claimant's arguments about the UR Petition.

spine injury” to the NCP. Claimant bears the burden of proving additional compensable injuries. Cinram Mfg, Inc. v. Workers’ Compensation Appeal Bd (Hill), 601 Pa. 524, 975 A.2d 577 (2009)

Claimant argues she met this burden. She argues the WCJ erred in not recognizing that a lumbar injury was identified in the emergency room report prepared and signed by the emergency room treating physician. Claimant argues that including the lumbar region is not adding an injury to the NCP; rather, it is correcting a scrivener’s error by formally acknowledging a recurring injury that was recognized informally.

The emergency room documents consist of two forms. An emergency physician completed the first form. Emergency Physician Record MVA (Physician Record). An emergency room nurse completed the second form. Emergency Nursing Record MVC (Nursing Record).

In the Physician Record, the emergency room physician identified Claimant as suffering from pain or an injury in her mid and lower back. The doctor also noted the “clinical impression” that Claimant was suffering from neck and lumbar sprains or strains. Physician Record at 2.

However, in the Nursing Record, the emergency room nurse did not indicate Claimant was complaining about her back. Rather, the emergency room nurse identified Claimant’s “Chief Complaint” as “shoulder, dizzy.” Nursing Record at 1.

The documentary evidence from the emergency room is not consistent as to whether the Claimant complained of a back injury. This inconsistency undermines Claimant's position that Employer's error was merely a scrivener's error that can be readily corrected.³ The conflicting emergency room documents create a factual issue to be resolved by the fact-finder.

The WCJ is the ultimate fact-finder. Williams v. Workers' Comp. Appeal Bd. (USX Corp.-Fairless Works), 862 A.2d 137 (Pa. Cmwlth. 2004). Matters of credibility and evidentiary weight are within his exclusive province. Id. The WCJ is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. Id. If the WCJ's findings are supported by substantial evidence, they are binding on appeal. Agresta v. Workers' Comp. Appeal Bd. (Borough of Mechanicsburg), 850 A.2d 890 (Pa. Cmwlth. 2004). It is irrelevant whether there is evidence to support contrary findings; the relevant inquiry is whether substantial evidence supports the WCJ's necessary findings. Hoffmaster v. Workers' Comp. Appeal Bd. (Senco Prods., Inc.), 721 A.2d 1152 (Pa. Cmwlth. 1998).

In this case, the WCJ's findings are consistent with the Nursing Record. Further, the record contains additional aspects which corroborate these findings. As discussed below, noticeably absent from all reports of Claimant's experts is a specific reference to a back injury, let alone a lumbar injury.

³ Claimant makes several other arguments that ask the Court to infer Employer erred in omitting the lumbar injury from the NCP. The drawing of inferences, however, is a matter for the fact-finder, not for this Court on appeal. We therefore decline Claimant's invitation to draw inferences or reweigh the evidence.

The opinion of Christopher M. Smith, D.O. (Claimant's Primary Physician), was equivocal at best. He treated Claimant for neck pain. He did not indicate that he treated her for back pain. He also opined Claimant suffered from Lyme Disease.

Claimant's Primary Physician also opined Claimant's present physical complaints were multifactorial, and that "there could be many conditions that are causing her aches and pains." Smith Report, Employee's Ex. 3. He repeated this assessment later in his report: "It is possible that she is not fully recovered from the car accident. Needless to say, I am just going to state that it is possible that she is not fully recovered. It would be reasonable that you contact some of the other specialist[s] that [Claimant] has seen." Smith Report, Employee's Ex. 3.

David J. Dolan, D.C., (Claimant's Chiropractor), identified her injuries as being neck and right shoulder pain, with occasional left shoulder pain, as well as pain that radiated to her head. Dolan Report, Employee's Ex. 4. He noted Claimant suffers from Lyme disease that exacerbates her symptoms. Claimant's chiropractor did not state that Claimant suffered any lumbar or back conditions.

Lawrence J. Bellew, D.O., (Claimant's Cranial Osteopath), opined that Claimant has "a superior compression of an external rotational strain extending from the plantar aspect of the right foot to the occiput." Bellew Report, Employee's Ex. 2. He identified Claimant's injury as pain from her temporal

bones, through her spine, as well as numbness in her right palm. Bellew Report, Employee's Ex. 2. He did not specifically identify a lumbar injury.

Thus, evidence from her experts is consistent with the information contained on the Nursing Record—Claimant did not suffer a back injury.

In sum, the WCJ's determination that Claimant did not suffer a lumbar back injury as a result of this accident is adequately supported by the record. While there is conflicting evidence, the WCJ appropriately exercised his discretion to evaluate the evidence, and his decisions are supported by substantial evidence. For these reasons we find no error in the WCJ's denial of Claimant's review petition.

B. Termination Petition

We also find no error in the WCJ's determination as to the termination petition.

In a termination proceeding, the employer bears the burden of proving all of the claimant's work-related disability ceased. Cohen v. Workers' Comp. Appeal Bd. (City of Phila.), 869 A.2d 1175 (Pa. Cmwlth. 2005). The employer's burden is a considerable one, and it never shifts to the claimant because disability is presumed to continue until proven otherwise. Dana Corp. v. Workers' Comp. Appeal Bd. (Hollywood), 706 A.2d 396 (Pa. Cmwlth. 1998).

An employer meets its burden when its medical expert unequivocally

testifies it is his opinion, within a reasonable degree of medical certainty, the claimant is fully recovered, can return to work without restrictions and there are no objective medical findings that either substantiate the claims of pain or connect them to the work injury. Udvari v. Workmen's Comp. Appeal Bd. (USAir, Inc.), 550 Pa. 319, 705 A.2d 1290 (1997). A medical expert's testimony "will be found to be equivocal if it is based only upon possibilities, is vague, and leaves doubt." Kurtz v. Workers' Comp. Appeal Bd. (Waynesburg Coll.), 794 A.2d 443, 449 (Pa. Cmwlth. 2002).

In this case, the Employer presented the IME and supporting testimony of its Physician, who unequivocally opined Claimant recovered from injuries listed on the NCP. He indicated that he examined her neck, her low back, her mid back and upper extremities, and found them all to be normal. IME Report at 4, Employer's Exhibit 5. He testified that she had normal EMG studies. Schmidt Dep. at 37, Employer's Ex. 2. He noted that the medical records he reviewed showed no evidence of neuropathy or radiculopathy. While an MRI did show mild degenerative disc disease from C4-5 through C6-7, Employer's Physician found no evidence of ongoing sprain or strain.

Additionally, he was asked during his testimony if he had an opinion as to whether any back injuries she may have sustained were healed. He again unequivocally opined that any back injuries were healed. Schmidt Dep at 16, Employer's Ex. 2. He noted that his conclusions were based on his own clinical observation. The IME, and the testimony of Employer's Physician, were sufficient to meet Employer's burden.

Claimant challenges several of the WCJ's findings, all directed at whether her ongoing conditions were accident related. She argues that the WCJ intentionally mischaracterized her injury. Claimant also argues that the WCJ erred by concluding Claimant's injuries were caused by Lyme Disease.

The findings of the WCJ are supported by substantial evidence. It is clear that the WCJ did not find Claimant credible that any of her ongoing physical conditions were related to the accident. Employer's Physician corroborates this finding. It is also clear that the WCJ did not find that her conditions were caused by Lyme Disease. Rather, consistent with her own physician's statements, the WCJ referenced Lyme Disease as one factor, in addition to others, that may explain the present complaints. While Claimant is under no burden to show the ongoing nature of her injury, Employer presented evidence sufficient to meet its burden. Accordingly, we find no error with the WCJ's granting of Employer's termination petition.

IV. Conclusion

For all these reasons, we affirm the Board's order which affirmed the WCJ's Order denying Claimant's review petition and granting employer's termination Petition.

ROBERT SIMPSON, Judge

