

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cheryl Chellis,	:
Petitioner	:
	:
v.	:
	:
Delaware Valley Charter High	:
School and Wesco Insurance	:
Company (Workers' Compensation	:
Appeal Board),	:
Respondent	:
	No. 110 C.D. 2021
	Submitted: August 13, 2021

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE ANNE E. COVEY, Judge
 HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON

FILED: October 6, 2021

Cheryl Chellis (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board) dated January 27, 2021. The Board affirmed an order of a Workers' Compensation Judge (WCJ) granting termination and utilization review (UR) petitions by Delaware Valley Charter High School and Wesco Insurance Company (jointly, Employer) and denying Claimant's review petition. Claimant asserts that the WCJ credited medical testimony that was not competent or credible. Upon review, we affirm the Board's order.

I. Background

In April 2015, Claimant was operating a school bus for a student field trip in Philadelphia. Certified Record (C.R.), Item 17 at 12. While en route to pick up the students at the end of the field trip, she was stopped at a traffic signal when a sedan driven by a third party struck the rear of the bus. *Id.* at 13 & 26; C.R., Item 25 at 7-8. According to Claimant, the bus sustained only “scratches and chips,” but the sedan was “mangled.” C.R., Item 17 at 14; C.R., Item 25 at 9. Police officers came to the scene, and Claimant asserts that she told them she was experiencing “a sharp pain [that] went from [her] neck down to the middle of [her] back”; however, Claimant declined an ambulance, believing she did not need one. C.R., Item 25 at 9 & 11-12. Claimant has not produced a copy of the police report to corroborate her assertion that she told the police she was having neck pain at the accident scene. When Claimant arrived at home that afternoon, she was feeling soreness in her upper back. *Id.* at 12.

Upon awaking the morning after the accident, Claimant was in pain and went to the emergency room at Nazareth Hospital. C.R., Item 17 at 15. Claimant testified that at the emergency room, “I told them I was in an accident, and the upper part of my neck and back is seriously in pain.” C.R., Item 25 at 13. The hospital report, however, indicated the accident involved “low” impact to the bus and listed Claimant’s pain symptoms as “mild.” C.R., Item 26 at 1. Notably, the hospital report reflected that Claimant specifically denied any pain in her neck. *Id.*

Employer issued a notice of temporary compensation payable (NTCP) accepting a work injury described as a left shoulder sprain/strain. C.R., Item 28. The NTCP subsequently converted to a notice of compensation payable. C.R., Item 29.

The parties dispute the point in time at which Claimant began experiencing pain in her neck. However, in January 2017, she underwent surgery for anterior cervical discectomy and fusion at the C5-C6 and C6-C7 levels. C.R., Item 10 at 6; C.R., Item 17 at 19. The surgery was a success according to her medical records, but Claimant testified it did not help her. C.R., Item 10 at 3; C.R., Item 17 at 20; C.R., Item 24 at 14 & 19-20; C.R., Item 25 at 24. Claimant never returned to work after the 2015 accident. C.R., Item 17 at 14, 21-22 & 27-28; C.R., Item 25 at 30.

On July 24, 2018, Employer procured an independent medical examination (IME) of Claimant by Donald F. Leatherwood, II, M.D. (Employer's Medical Expert), who opined that Claimant had fully recovered from her work injury as of that date. C.R., Item 24 at 16-19 & Ex. D-2. Based on the IME report, Employer filed the termination petition and the UR petition. C.R., Items 2 & 5. Claimant then filed her review petition seeking to amend her work injury to add a severe neck injury in addition to a left shoulder sprain and strain. C.R., Item 7 at 3.

Despite her refusal of an ambulance at the accident scene and her specific denial of any neck pain in her emergency room visit the next day, Claimant later testified in support of the review petition that she had felt something in her neck "snap" at the time of the accident and that when she went to the emergency room the next day, her neck was "seriously in pain." C.R., Item 17 at 13; C.R., Item 25 at 13. Claimant also testified that she had never experienced neck pain before the accident. C.R., Item 25 at 21. However, a report of treatment she received in 2010 at the Rothman Institute revealed she was treated for neck pain at that time. C.R., Item 10 at 6.

In addition to her own testimony, Claimant presented expert medical testimony in the form of a deposition from one of her treating physicians, Uplekh Purewal, M.D. (Claimant's Medical Expert). Claimant's Medical Expert opined that, as of his first examination of Claimant in December 2015, she suffered from post-traumatic neck pain and post-traumatic cervical radiculopathy, as well as left shoulder pain and muscle spasms. C.R., Item 20 at 11. Claimant's Medical Expert stated that, in his opinion, Claimant's condition resulted from the accident rather than natural deterioration, and that she had not fully recovered from her neck injury, although her left shoulder "improved significantly" and she had only "mild residual left shoulder pain issues." *Id.* at 18-20. Notably, Claimant's Medical Expert stated Claimant related to him that she had neck pain at a level of 6 to 7 out of 10 when she went to the emergency room the day after the accident. *Id.* at 8. However, on cross-examination, Claimant's Medical Expert conceded he had not reviewed the emergency room records that indicated Claimant had only mild shoulder pain and denied any neck pain at that time. *Id.* at 24-25. Similarly, Claimant's Medical Expert had never seen the records from the Rothman Institute indicating that Claimant was treated for neck pain there in 2010 and that there were already degenerative findings at C5-C6 and symptoms of left cervical radiculopathy at that time. *Id.* at 27-29.

Employer submitted a deposition and supplemental report of Employer's Medical Expert. Employer's Medical Expert stated that, in his opinion, to a reasonable degree of medical certainty, Claimant was fully recovered from her accepted work injury of a left shoulder sprain and strain as of July 24, 2018, the date of the IME. C.R., Item 24 at 16-17. Employer's Medical Expert further opined that Claimant suffered no work-related injury to her neck. C.R., Item 26 at 1-2. He

explained that the symptoms Claimant experienced in her neck resulted from natural age-related deterioration that had appeared in magnetic resonance imaging (MRI) scans years before the 2015 accident and that any further deterioration after 2015 was completely unrelated to the accident. *Id.* In forming his opinion, Employer's Medical Expert relied on medical records that showed Claimant already had longstanding dehydration and deterioration of the vertebrae in her neck in 2015. *Id.* at 1. Employer's Medical Expert also relied on the emergency room records that reflected Claimant's specific denial of any neck pain the day after the accident. *Id.* Employer's Medical Expert acknowledged that Claimant had undergone a functional evaluation in 2017 that suggested she was not capable of returning to her job with Employer; however, he discounted that report because it lacked a validity component and thus amounted to a mere recounting of Claimant's subjective statements. C.R., Item 10 at 5; C.R., Item 24 at 15-16 & 34. Employer's Medical Expert's own examination did not indicate any ongoing disability related to Claimant's accepted work injury, nor did it support Claimant's assertion that she suffered an acute injury to her neck in the accident. C.R., Item 24 at 16-19; C.R., Item 26 at 2.

The WCJ found Employer's Medical Expert more credible than Claimant's Medical Expert. C.R., Item 10 at 8. The WCJ credited the opinion of Employer's Medical Expert that Claimant's cervical condition, related surgery, and any ongoing disability were the results of degenerative changes and not the April 2015 accident. C.R., Item 10 at 8. The WCJ observed that the opinion of Employer's Medical Expert was supported by the emergency room records, a June 2015 MRI, Employer's Medical Expert's own clinical findings from his examination of Claimant, and Claimant's diagnosis of cervical radiculopathy five years before the accident. *Id.* The WCJ also credited the opinion of Employer's Medical Expert that

Claimant was fully recovered from the accepted work injury of left shoulder sprain and strain as of the IME date of July 24, 2018, in that Employer's Medical Expert's examination of Claimant on that date revealed no objective findings to support Claimant's subjective and non-anatomical complaints. *Id.*

By contrast, the WCJ observed that Claimant's Medical Expert did not review Claimant's emergency room records indicating that the morning after the accident, Claimant was experiencing "mild" shoulder pain and denied any neck pain. C.R., Item 10 at 6. The WCJ also cited the statement of Claimant's surgeon that, contrary to Claimant's contention, she had been treated for neck pain in the past. *Id.* Claimant's Medical Expert failed to explain or even mention the significant degenerative changes already present in an MRI scan just weeks after the accident, as well as degenerative findings and a related diagnosis from 2010. *Id.* at 8.¹

Regarding Claimant's testimony, the WCJ observed Claimant's demeanor and credited her assertion of neck pain, but gave specific reasons for refusing to credit Claimant's suggestion that her neck pain was related to the accident. C.R., Item 10 at 7-8. Although Claimant testified she told the police at the scene of the accident that she felt neck pain, she did not produce a police report to corroborate that testimony, and she did not seek any medical treatment that day. *Id.* at 7. At the emergency room the next day, Claimant specifically denied any neck pain and had no symptoms of neck injury on examination. *Id.* at 8. Further, although Claimant told Claimant's Medical Expert that she never had any neck pain before the accident, she was in fact diagnosed with cervical radiculopathy at least five years before the accident. *Id.*

¹ The WCJ also noted that Claimant's Medical Expert was not opining that Claimant had a preexisting condition that was aggravated by the accident, but rather, that the accident directly caused Claimant's condition. Certified Record (C.R.), Item 10 at 8.

Based on her credibility determinations, the WCJ issued a decision and order granting Employer's termination and UR petitions and denying Claimant's review petition. C.R., Item 10. Specifically, the WCJ concluded that "Claimant's cervical condition was not related to the work injury and that she is fully recovered from her shoulder injury as of July 24, 2018, [and] treatment by [Claimant's Medical Expert] on and after August 17, 2018 is per se neither reasonable and [sic] necessary." *Id.* at 9.

The Board affirmed the WCJ's order. C.R., Item 13. The Board observed that Employer met its burden of supporting its termination and UR petitions with unequivocal medical evidence from Employer's Medical Expert which the WCJ accepted as credible. *Id.* at 5. Further, the Board stated that Claimant failed to sustain her burden of supporting her review petition, in that the WCJ rejected as not credible the testimony of Claimant and Claimant's Medical Expert that Claimant sustained a neck injury in the 2015 accident, and accepted as credible the opinion of Employer's Medical Expert that the condition of Claimant's neck is degenerative in nature and unrelated to the accident. *Id.* at 4-5. Accordingly, the Board concluded the WCJ's decision was supported by substantial competent evidence. *Id.* at 5. Claimant's petition for review by this Court followed.

II. Discussion

On a petition for review of the Board's decision, our review is limited to determining whether the WCJ's decision was supported by substantial evidence, whether there was an error of law, or whether constitutional rights were violated. *Zuchelli v. Workers' Comp. Appeal Bd. (Indiana Univ. of Pa.)*, 35 A.3d 801, 804 n.2 (Pa. Cmwlth. 2011).

"[S]ubstantial evidence" is such relevant evidence as a reasonable person might accept as adequate to support a

conclusion In performing a substantial evidence analysis, the evidence must be viewed in a light most favorable to the party that prevailed before the WCJ In a substantial evidence analysis where both parties present evidence, it is immaterial that there is evidence in the record supporting a factual finding contrary to that made by the WCJ; rather, the pertinent inquiry is whether there is any evidence which supports the WCJ's factual finding.

W. Penn Allegheny Health Sys. v. Workers' Comp. Appeal Bd. (Cochenour), 251 A.3d 467, 475 (Pa. Cmwlth. 2021) (internal citations omitted).

Here, Claimant asserts that the WCJ's decision was unsupported by substantial evidence because Employer's medical evidence was not competent or credible for three reasons. We address each in turn.

First, Claimant contends Employer's Medical Expert lacked expertise in accident reconstruction and was not competent to opine that the impact of the accident could not have caused a severe injury to Claimant. Br. of Pet'r at 20-21. This argument lacks merit, in that it misapprehends both the nature and the basis of the medical opinions expressed by Employer's Medical Expert. Notably, Claimant herself testified there was little damage to the bus, and the emergency room report listed the force of the impact in the accident as "low." C.R., Item 26 at 1. Employer's Medical Expert observed that "a full-size bus being hit by a car is – only has a certain amount of energy that's going to be expended. Nevertheless, it certainly could cause a strain/sprain type of issue." C.R., Item 24 at 17. Thus, Employer's Medical Expert did not opine on the specific amount of force involved in the accident. Moreover, in opining that Claimant was fully recovered from the accident, Employer's Medical Expert relied mainly on the time elapsed since the

injury, his own clinical examination of Claimant, and her medical records.² *Id.* at 17-18. Similarly, in opining that Claimant’s neck condition was unrelated to the accident, Employer’s Medical Expert again relied on his own clinical examination and Claimant’s medical records, which showed longstanding degenerative conditions in Claimant’s cervical spine, including previous treatment for neck pain, but no complaints of neck pain and only mild shoulder pain shortly after the accident. C.R., Item 26 at 1-2; *see* C.R., Item 10 at 6.

Next, Claimant argues that Employer’s Medical Expert engaged in “pure speculation” by opining that a computerized tomography (CT) image likely was affected by the positioning of the gurney when the image was made. Br. of Pet’r at 21. Claimant cites no authority for her suggestion that a medical expert cannot state, based on his experience, that straightening shown on a CT scan “can be seen with muscle spasm, but it is most often seen with positioning on the gurney.” C.R., Item 24 at 25. Moreover, Claimant again misapprehends the degree to which that statement influenced the opinion of Employer’s Medical Expert. Our review of the record demonstrates that this statement concerning the CT scan was merely a response to a question from Claimant’s counsel, not a statement made in support of the medical opinion offered by Employer’s Medical Expert. *Id.*

In her third and final argument, Claimant essentially takes issue with the WCJ’s credibility determinations by restating her first two arguments, which we reject for the reasons stated above. Claimant additionally challenges a perceived discrepancy between a radiologist’s characterization of MRI findings as “herniated” cervical discs and the description of them by Employer’s Medical Expert as

² Notably, despite his opinion that Claimant suffered no neck injury in the accident, Employer’s Medical Expert also observed that Claimant had a successful neck surgery and opined that she had no objective findings to support her ongoing complaints of neck pain. C.R., Item 24 at 19-20.

“degeneration” and then as “degenerative herniations.” Br. of Pet’r at 23. Claimant offers no support for her implicit suggestion that the radiologist’s reading of the MRI was credible and that of Employer’s Medical Expert was not. Further, Claimant does not explain whether, or why, the discrepancy in descriptions was relevant to any issue in this matter; indeed, Claimant fails to establish that the descriptions are even inconsistent with one another.

Claimant also challenges Employer’s Medical Expert’s rejection of a functional capacity evaluation of Claimant performed in 2017. Claimant asserts that Employer’s Medical Expert “chose not to accept [the functional capacity evaluation] because he did not want to, probably because it disagreed with his opinion.” Br. of Pet’r at 24. This is a further mischaracterization of the opinion of Employer’s Medical Expert, who testified that he reviewed the functional capacity evaluation, but expressly explained that he discounted it because it lacked a validity component, and thus, was merely a recounting of Claimant’s subjective statements concerning her condition. C.R., Item 10 at 5; C.R., Item 24 at 15-16 & 34.

Despite Claimant’s attempts to couch her arguments in terms of competency of evidence, her assertions are ultimately just expressions of her disagreement with the WCJ’s credibility determinations. As set forth in the background facts above, those determinations have substantial support in the record. Accordingly, they may not be disturbed on review. *W. Penn Allegheny Health Sys.* We therefore conclude that the Board did not err in affirming the WCJ’s decision.

III. Conclusion

Based on the foregoing analysis, the Board’s order is affirmed.

CHRISTINE FIZZANO CANNON, Judge

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ORDER

AND NOW, this 6th day of October, 2021, the January 27, 2021 order of the Workers' Compensation Appeal Board is AFFIRMED.

CHRISTINE FIZZANO CANNON, Judge