IN THE COMMONWEALTH COURT OF PENNSYLVANIA

United Parcel Service, Petitioner	:	
v.	:	No. 2089 C.D. 2007
Workers' Compensation Appeal Board (Ragland), Respondent	:	Submitted: April 11, 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: June 4, 2008**

We consider the appeal of United Parcel Service (UPS) from the Order of the Workers' Compensation Appeal Board (Board) that affirmed the Decision and Order of Workers' Compensation Judge Charles Clark (WCJ, WCJ Clark) granting David Ragland's (Ragland) claim petition for a closed period. We affirm the Board.

On January 14, 2000, Ragland filed a claim petition alleging that he suffered work-related disability in the nature of reactive hypertension, hyperventilation syndrome, abnormal thallium, stress-related chest pain, angina, high blood pressure, left upper extremity numbness, non-occlusive C.A.D. hypertensive crisis, work-related stress and anxiety disorder, and depression during the course of his employment with UPS. Ragland claimed an ongoing disability from October 17, 1999, and sought lost wages, medical bills and attorney fees. In

a Decision and Order circulated on June 21, 2001, WCJ Clark granted Ragland's petition, determining that he suffered a work-related aggravation of his underlying hypertension condition that consisted of hypertensive crisis, non-occlusive coronary artery disease, and hypertension with abnormal thallium stress test. UPS appealed, and the Board, in an Opinion and Order dated January 29, 2002, vacated the WCJ's Decision and remanded with instructions that the WCJ reconsider the matter in light of *Davis v. Workers' Compensation Appeal Board (Borough of Swarthmore)*, 561 Pa. 462, 751 A.2d 168 (2000). In *Davis* our Supreme Court held that a claimant must prove abnormal working conditions before he may recover benefits where he asserts a mental injury that results in either mentally or physically disabling symptoms.

Upon remand, in a Decision and Order circulated April 14, 2003, the WCJ concluded that Ragland failed to demonstrate that his injury was the result of abnormal working conditions and denied his claim. The Board affirmed in an Opinion and Order dated October 15, 2004. On March 8, 2006, not quite eighteen months after the Board's 2004 Order, Ragland petitioned for rehearing, claiming that our Supreme Court, in *Panyko v. Workers' Compensation Appeal Board (U.S. Airways)*, 585 Pa. 310, 888 A.2d 724 (2005), eliminated the requirement of proving an abnormal working condition. The Board determined that the petition was timely in that it met the requirement of Section 426 of the Workers' Compensation Act,[1] 77 P.S. § 871,[2] and remanded with instructions to consider the

[1] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-104.4; 2501-2708

[2] 77 P.S. § 871 provides, in pertinent part,

> The board, upon petition of any party and upon cause shown, may grant a rehearing of any petition upon which the board has made an award or disallowance of compensation or other order or ruling, or upon which the board has sustained or reversed any action of a

matter in light of *Panyko*. The WCJ granted the claim for a closed period and this appeal followed.

The questions we are asked to consider are: 1) whether the Board erred in granting the petition for rehearing where the Board appropriately applied the applicable case law in its original decision; 2) whether the Board erred in determining that its decision could be reconsidered in light of *Panyko* where almost eighteen months had passed since that decision and the matter was no longer under appeal; 3) whether the WCJ erred in concluding that Ragland sustained a disabling, work-related physical injury; and 4) whether the WCJ's finding that Ragland's injuries were caused by strenuous, physically demanding work, are supported by substantial evidence.[3]

UPS first argues that the Board erred in granting a rehearing because the decision was based on the law in effect at the time the decision was rendered and that too much time had elapsed between the decision and the grant of rehearing. UPS, however, ignores Section 426 of the Act which provides that the Board, upon cause shown, may grant the petition for rehearing of any party within eighteen months of a decision by the Board. Here, the Board properly granted rehearing where Ragland, within the eighteen month period, pled a change in the law that directly affected his case.

> referee; but such rehearing shall not be granted more than eighteen months after the board has made such award, disallowance, or other order or ruling, or has sustained or reversed any action of the referee.

[3] Our standard of review is limited to determining whether findings are supported by substantial evidence, errors of law were committed, or constitutional rights were violated. *Bortz v. Workmen's Compensation Appeal Board (Reznor Division of Florida Industries)*, 546 Pa. 77, 683 A.2d 259 (1996).

UPS' second argument fails because Section 426 specifically provides that a rehearing may be granted within eighteen months of a decision even if it is no longer under appeal.

Ragland bears the burden of proving, by substantial evidence, that he suffered a work-related injury that resulted in a disability. *Inglis House v. Workmen's Compensation Appeal Board (Reedy)*, 535 Pa. 135, 634 A.2d 592 (1993); *Ruhl v. Workmen's Compensation Appeal Board (Mac-It-Parts, Inc.)*, 611 A.2d 327 (Pa. Cmwlth. 1992), *petition for allowance of appeal denied*, 553 Pa. 620, 619 A.2d 701 (1993). In *Davis*, the claimant alleged that he sustained work-related post-traumatic stress disorder and specific work inhibition. The Supreme Court in *Davis* held that where a claimant alleges a mental injury stemming from a mental stimulus, regardless of whether it is manifested in psychic or physical symptoms, the claimant must prove that the injury arose from abnormal working conditions in order to qualify for benefits. In *Panyko*, where the claimant alleged that he suffered a heart attack as a result of a confrontation with his supervisor, our Supreme Court cautioned that "*Davis* should not be read narrowly, so as not to require a claimant to meet the restrictive abnormal working conditions test in situations where he suffers a purely physical injury such as a heart attack." 585 Pa. at 318, 888 A.2d at 729. Thus, where a claimant alleges a physical injury caused by a psychic reaction to a working condition he must only demonstrate that he is suffering from an "objectively verifiable physical injury" that "arose in the course of employment and was related thereto." 585 Pa. at 323, 888 A.2d at 732 (citation omitted).

Ragland testified that he left work on October 15, 1999 because he was experiencing pain in his chest, arm, head, and neck, migraine headaches,

elevated blood pressure, and tingling in his arms, and that all of these symptoms began in 1999 after UPS increased his workload drastically. Ragland presented the testimony of Samuel Clayton, M.D., board-certified in family practice, who first examined Ragland in August of 1995. Based on Ragland's medical history, records and physical examinations, Dr. Clayton diagnosed Ragland as suffering "[h]ypertensive crisis,[4] nonocclusive coronary artery disease, [an]d hypertension with [an] abnormal thallium stress test[.][5]" Dr. Clayton testified that "these physical conditions, that were the result of work-related stress, prevented Ragland from returning to work." (Clayton deposition, 6/14/00, pp. 5, 7, 13,19-20).

UPS presented the testimony of David Leaman, M.D., a board-certified cardiologist. Dr. Leaman examined Ragland on August 15, 2000 and, based on his examination, Ragland's medical history and records, diagnosed him with preexisting non-work related hypertension. While acknowledging that Ragland did not miss work because of his hypertension until October, 1999, Dr. Leaman opined that there was no connection between Ragland's symptoms and his employment. He attributed Ragland's hospitalization on October 17, 1999 to Ragland's failure to take his medication and insisted that he could have returned to work the next day. (Leaman deposition, 9/9/00, pp. 4, 6, 18-21, 31).

UPS also presented the testimony of Gladys Fenichel, M.D., a board-certified psychiatrist. Dr. Fenichel first examined Ragland on September 19, 2000 and, based on her examination and Ragland's medical history and records, opined

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[4] "[A] sudden severe increase in blood pressure to a level exceeding 200/120 mm Hg … " *Mosby's Medical and Nursing Dictionary*, 555 (2nd ed. 1986)

[5] "[A] non-evasive test [used] to [determine] whether there is any precardial or tissue damage or areas of ischaemia." (Clayton deposition, 6/14/00, p. 13).

that he did not suffer depression or any psychiatric disorder. (Fenichel deposition, 10/13/00, pp 8, 19).

The WCJ accepted the testimony of Ragland and Dr. Clayton as credible, but rejected Dr. Leaman's testimony that Ragland's hypertension was not work-related because he did not miss work until after his work load was increased in 1999. The WCJ credited those portions of Dr. Fenichel's testimony where she concluded that Ragland's condition stemmed from physiological rather than psychological factors.

The WCJ has complete authority over questions of credibility, conflicting medical evidence and evidentiary weight and can accept or reject the testimony of any witness, in whole or in part. *Lombardo v. Workers' Compensation Appeal Board (Topps Company)*, 698 A.2d 1378 (Pa. Cmwlth. 1997), *petition for allowance of appeal denied*, 553 Pa. 701, 718 A.2d 787 (1998). The WCJ's findings will not be disturbed if they are supported by substantial, competent evidence. *Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck)*, 664 A.2d 703 (Pa. Cmwlth. 1995).

Panyko imposes a burden on a claimant to demonstrate that his physical injury is caused by work-related stress. Ragland met that burden here when the WCJ credited Dr. Clayton's testimony that Ragland's hypertensive crisis, hypertension, non-occlusive coronary artery disease and hypertension with an abnormal thallium stress test were the result of work-related stress. UPS asks us to reverse the Board because Ragland did not suffer "the type of purely physical injury contemplated by … [*Panyko*]." (UPS' brief at 9). We find, to the contrary, that Dr. Clayton's testimony describes just the sort of injury contemplated in *Panyko*. The WCJ's determination that Ragland is "suffering from an objectively

verifiable physical injury … [that] arose in the course of his employment and was related thereto." (Conclusion of law 4) is supported by substantial evidence.

Accordingly, the Order of the Workers' Compensation Appeal Board in this matter is affirmed.

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JAMES GARDNER COLINS, Senior Judge

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ORDER

AND NOW, this 4th day of June, 2008, the Order of the Workers' Compensation Appeal Board in this matter is AFFIRMED.

JAMES GARDNER COLINS, Senior Judge