

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rodney Gelb, Deceased,	:	
Helen Gelb, Dependent,	:	
Petitioner	:	
	:	
v.	:	No. 2139 C.D. 2007
	:	Submitted: February 8, 2008
Workers' Compensation Appeal	:	
Board (Department of Transportation),	:	
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: March 13, 2008

Helen Gelb (Claimant) petitions for review of the October 23, 2007, order of the Workers' Compensation Appeal Board (WCAB), which affirmed the decision of a workers' compensation judge (WCJ) denying the fatal claim petition (Petition) Claimant filed against the Department of Transportation (Employer). We affirm.

On August 26, 2002, Claimant's husband, Rodney Gelb (Decedent), was struck by a vehicle while working as a flagman for Employer. Decedent sustained injuries to his low back, neck, both arms and both legs, which Employer accepted pursuant to a notice of compensation payable. Decedent's wage loss benefits were suspended when he returned to work without a loss of earnings in April 2005.

On October 13, 2005, Claimant filed the Petition, alleging that the pain from Decedent's work-related injuries caused him to become depressed and despondent and, ultimately, drove him to commit suicide on September 23, 2005. Employer filed a timely answer denying Claimant's allegations, and the matter was assigned to a WCJ for hearings.

Claimant testified in support of the Petition on November 30, 2005, and on February 22, 2006. Claimant stated that, prior to the work injury, Decedent had been a very happy person; he enjoyed his work, never suffered from anxiety or depression, was only a moderate drinker and never was abusive. Claimant testified that, after the work injury, Decedent's personality changed; he began to drink heavily, he became dissatisfied with his life, and, eventually, he became verbally and physically abusive. On cross-examination, Claimant acknowledged that Decedent never was treated for depression and that, several weeks before Decedent's death, she hired a private investigator, Frank Licausi (Licausi), to investigate whether Decedent was having an affair with his sister-in-law. Claimant testified that the night before Decedent's death, she confronted him about the affair and that, when Decedent came home on the afternoon of September 23<sup>rd</sup>, Licausi<sup>1</sup> and Decedent spoke outside for a period about the affair and then Decedent got into his car and drove away. (Findings of Fact, Nos. 4-5.)

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<sup>1</sup> Claimant testified that, after confronting Decedent about the affair on September 22, 2005, she contacted Licausi and told him that his services were no longer needed, but Licausi insisted on coming over on September 23<sup>rd</sup> to provide security. (Findings of Fact, No. 5.)

Claimant also introduced the deposition testimony of Arnold T. Shienvold, Ph.D., a licensed psychologist. Based on various medical records, the February 22, 2006, testimony of Claimant and the testimony of Decedent's older brother, Henry Gelb,<sup>2</sup> Dr. Shienvold believed that Decedent had been suffering from chronic pain syndrome at the time of his death. Dr. Shienvold opined that Decedent's work-related chronic pain syndrome caused Decedent's depression, which, in turn, led to Decedent's increased drinking, his extra-marital affair and, ultimately, his suicide. (Findings of Fact, No. 9.)

On cross-examination, Dr. Shienvold conceded that no physician ever diagnosed Decedent with chronic pain syndrome or reported that Decedent suffered from depression, and he acknowledged that he had never spoken directly to or met with Claimant or Henry Gelb. Dr. Shienvold testified that, as he understood the facts, Claimant found out about Decedent's affair and confronted him only days before his suicide; however, upon being told that Decedent killed himself within hours of being confronted about the affair, Dr. Shienvold admitted: "I didn't see the testimony of [Claimant] until recently." (R.R. at 198a; Findings of Fact, No. 9.)

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<sup>2</sup> Decedent's older brother, Henry Gelb, also testified on Claimant's behalf. We note that the WCJ's finding refers to the brother as "Richard," but a review of the record indicates that Decedent's brother Henry testified. (R.R. at 136a.) Gelb stated that, prior to Decedent's work injury, Decedent was a fun person who had a lot of laughs, seemed to enjoy life and never appeared to be down on himself or on life. Gelb testified that Decedent's outlook on life did not seem to change immediately after the work injury, but, as time went on, Decedent appeared to be concerned with the amount of pain he experienced. (Findings of Fact, No. 7.)

In opposition to the Petition, Employer presented, *inter alia*, the May 15, 2006, deposition testimony of Robert V. DeSilverio, a licensed psychiatrist, who reviewed Claimant's testimony as well as records of Decedent's medical condition from twenty-two separate sources. Based on these records, Dr. DeSilverio testified that: none of Decedent's physicians noted that Decedent was suffering from depression or depression-like symptoms; Decedent told one physician, Dr. Koscielniak, in April 2005 that his back was bothering him only occasionally; and Decedent's condition was improving after he had a series of lumbar facet injections in June 2005. Dr. DeSilverio disagreed with Dr. Shienvold's assumption that Decedent suffered from chronic pain syndrome because Decedent's medical records did not support such an assumption. Dr. DeSilverio opined within a reasonable degree of medical certainty that Decedent's problems in his personal life were unrelated to the work injury, that there was no evidence that Decedent had any psychiatric condition which would have caused him to kill himself and that there was no relationship between Decedent's work injury and his suicide. (Findings of Fact, No. 11.)

After considering the evidence, the WCJ rejected Dr. Shienvold's testimony as being "unworthy of belief," noting that: (1) Dr. Shienvold never met with or personally questioned Claimant, Decedent's brother or Decedent's lover, who was the last person to whom Decedent may have spoken;<sup>3</sup> (2) Dr. Shienvold never met with Licausi, who had spent considerable time with Decedent shortly

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<sup>3</sup> Dr. DeSilverio noted that, according to Claimant's testimony, Decedent called his lover at approximately 4:15 p.m., just minutes before his suicide. (Findings of Fact, No. 11.) The police records indicate that Decedent shot himself at 5:00 p.m. and was pronounced dead at 6:18 p.m. (O.R. at Exh. D-01.)

before he killed himself; (3) Dr. Shienvold's report states that Decedent killed himself within *days* of being confronted about his affair when the death occurred within *hours* of the confrontation with Licausi; and (4) Dr. Shienvold purported to base his report on Claimant's testimony but admitted that he prepared the report *prior to reading the entirety of that testimony*.<sup>4</sup> Accordingly, the WCJ denied the Petition, concluding that Dr. Shienvold's lack of credibility was fatal to Claimant's Petition. (Findings of Fact, Nos. 12-13.) Claimant appealed to the WCAB, which affirmed. Claimant now petitions this court for review.<sup>5</sup>

Under section 301(a) of the Workers' Compensation Act (Act),<sup>6</sup> an employer is not liable for compensation when an employee's death is self-inflicted. *Lead v. Workers' Compensation Appeal Board (Sexton)*, 796 A.2d 431 (Pa. Cmwlth. 2002). However, section 301(a) does not preclude an award of benefits in all such cases, and a suicide may be compensable if the claimant satisfies the "chain of causation" test. *Id.* Under this test, a claimant must prove: (1) that there was initially a work-related injury as defined by section 301(a) of the Act; (2) which injury directly caused the employee to become dominated by a disturbance

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<sup>4</sup> The WCJ made no credibility determinations for the other witnesses. However, the WCJ noted that, even if Claimant's testimony were accepted as credible, it does not provide direct evidence of causation that would support the grant of the Petition. (Findings of Fact, Nos. 14-15.)

<sup>5</sup> 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 findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

<sup>6</sup> Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §431.

of mind of such severity as to override normal rational judgment; and (3) which disturbance resulted in the employee's suicide. *Id.* Where, as here, there is no obvious causal connection between the worker's death and the work injury, the claimant must present unequivocal medical evidence establishing the connection. *Dobash v. Workers' Compensation Appeal Board (PG Energy)*, 836 A.2d 1085 (Pa. Cmwlth. 2003), *appeal denied*, 577 Pa. 737, 848 A.2d 930 (2004).

Claimant argues that she satisfied her burden of proof under the "chain of causation" test based on both her and Dr. Shienvold's *credible* testimony that Decedent's ongoing, work-related neck and back pain directly caused Decedent to feel depressed, to consume alcohol in excess and, eventually, to commit suicide. However, contrary to Claimant's assertions, the WCJ did *not* find Dr. Shienvold's testimony credible, and we are bound by that credibility determination on appeal. *Lead* (holding that the WCJ is the sole arbiter of credibility and is free to determine the credibility of any witness and that this court is bound by those determinations on appeal). Because the WCJ rejected Dr. Shienvold's testimony and because Claimant offered no other medical evidence to support her Petition, Claimant cannot satisfy her burden of proving that Decedent's suicide was causally related to his work injury.<sup>7</sup>

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<sup>7</sup> Claimant asserts that, because Dr. Shienvold could base his opinions on facts of which he has no personal knowledge, the WCJ erred in rejecting Dr. Shienvold's testimony based *solely* on his failure to personally examine either Decedent or Claimant. Initially, we note that this was merely *one* of *several* valid reasons why the WCJ rejected Dr. Shienvold's testimony. Moreover, where an expert bases his opinions on facts of which he has no personal knowledge, those opinions must be supported by the facts in the record. *Southeastern Pennsylvania Transportation Authority v. Workers' Compensation Appeal Board (Herder)*, 765 A.2d 414 (Pa. Cmwlth. 2000), *appeal denied*, 566 Pa. 654, 781 A.2d 151 (2001). Here, Dr. Shienvold's opinion that Decedent's depression and suicide was work-related was based on his belief that **(Footnote continued on next page...)**

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Judge

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**(continued...)**

Decedent suffered from work-related chronic pain syndrome; however, the facts in the record reveal that Decedent was *never* diagnosed with chronic pain syndrome.

Claimant further asserts that this matter is factually and legally analogous to that in *Lead* and *Pennsylvania Power and Light v. Workers' Compensation Appeal Board (Lechner)*, 719 A.2d 1116 (Pa. Cmwlth. 1998), *appeal denied*, 559 Pa. 697, 739 A.2d 1061 (1999), where this court affirmed the grant of fatal claim petitions. However, these cases are readily distinguishable because the claimants in *Lead* and *Lechner* presented *credible*, unequivocal medical testimony that the decedents had been diagnosed with depression that was causally connected to their work-related injuries and pain and that this depression caused their suicides.

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ORDER

AND NOW, this 13th day of March, 2008, the order of the Workers' Compensation Appeal Board, dated October 23, 2007, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Judge