IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pamela Hartman, Petitioner	:	
v.	:	No. 2146 C.D. 2007
Workers' Compensation Appeal Board (Butler Memorial Hospital), Respondent	:	Submitted: March 28, 2008

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: May 22, 2008

Pamela Hartman (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board) affirming the Workers' Compensation Judge's (WCJ) decision granting the review medical treatment/termination petition filed by Butler Memorial Hospital (Employer). We affirm.

Claimant was employed as an x-ray technician when she suffered a work-related injury described as an "acute lumbar strain" on August 19, 1995. Claimant began receiving total disability benefits pursuant to a notice of compensation payable. By decision circulated December 31, 1996, the WCJ granted Employer's modification petition and modified Claimant's benefits as of December 12, 1995, from total to partial, based on Claimant's ability to perform

light duty work in the radiology department for four hours per day. By decision circulated August 28, 2001, the WCJ granted Employer's second modification petition and again modified Claimant's benefits as of January 5, 2000, based on Claimant's ability to perform the "O" Desk Clerk position on a full time basis at wages slightly lower than her pre-injury wages.

On October 6, 2005, Employer filed a review medical treatment/termination petition (petition) alleging that as of August 10, 2005, Claimant was fully recovered from her work-related injury, that Claimant was able to return to unrestricted work and that Claimant's medical bills were unrelated to her work-related injury. Claimant filed a timely answer thereto denying the allegations contained in the petition. Hearings before the WCJ ensued at which Employer and Claimant agreed that there were no appeals taken from the WCJ's August 28, 2001, decision and that Claimant's 500 weeks of partial disability had expired.

In support of the petition, Employer presented the deposition testimony of William David Abraham, M.D., a board certified orthopedic surgeon. In opposition to the petition, Claimant testified on her own behalf and presented the deposition testimony of her treating Chiropractor, Anthony C. Bilott.

Dr. Abraham testified that, based on his examination of Claimant on August 10, 2005, he did not detect any objective abnormalities and Claimant's neurologic and musculoskeletal examination was normal. Dr. Abraham testified that Claimant's subjective complaints were out of proportion and not substantiated in any way. Dr. Abraham opined that Claimant had fully recovered from her low back injury of August 19, 1995, and could return to her pre-injury job without limitation and that she did not require any further treatment including medications or chiropractic treatment.

Dr. Bilott testified on June 20, 2006, that Claimant was not able to return to even sedentary work and that he disagreed with the two previous decisions finding that Claimant was capable of performing some work and therefore only was partially disabled. Claimant testified on May 5, 2006, that she still has work related difficulties as she cannot sit or stand very long as her back goes into spasms. Claimant testified that she has pain in her lower back, left and right legs, that her left foot and right toes go numb, and that she also has spasms in the kidney area. Claimant also testified with respect to several other non-work related medical conditions that she is afflicted with asthma, ulcers, high blood pressure and fibromyalgia, for which she was taking multiple medications.

With regard to the evidence presented, the WCJ made the following finding:

> 11. Based upon the entire evidence of record including the claimant's live testimony and demeanor, I specifically reject the testimony of claimant and Chiropractor Bilott and specifically accept as credible the medical testimony of Dr. Abraham and find as a fact that the claimant has fully recovered from her work related low back injury of August 19, 1995 and can return to work to her pre-injury job without any restrictions or limitations and does not require any further medical treatment or care including medications or chiropractic treatment as a result of her work injury as of August 10, 2005. It is without question that the claimant has a multitude of medical problems in addition to her work related low back injury for which she is taking numerous medications and has not returned to work despite my prior two decisions finding that claimant was able to perform some work which the defendant had made available. I found the testimony of the claimant and Chiropractor Bilott to be inconsistent, unpersuasive and incredible that the claimant cannot even perform some types of work which is in direct conflict and contradicts my prior two decisions in 1996 and 2001 in this matter. Furthermore, I find that Dr. Abraham performed a

> thorough physical examination and review of the medical records and diagnostic tests as he personally viewed the MRI films and that the claimant had a lack of objective findings and a normal neurologic and musculoskeletal examination relative to her work related injury and the claimant had exhibited signs of symptom magnification during the examination. Therefore, the defendants' Review Medical Treatment/Termination Petitions are granted as of August 10, 2005 as the defendant is entitled to a termination of compensation benefits and the claimant does not require any further medical care including medications or chiropractic treatment.

Accordingly, the WCJ granted Employer's petition. Claimant appealed to the Board on the basis that the WCJ erred in finding full recovery because in the prior 2001 proceeding the WCJ had determined that Claimant had suffered from a chronic and permanent injury. Upon review, the Board rejected Claimant's argument and affirmed the WCJ's decision. This appeal followed.

Initially, we note that this Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence. Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Mrs. Smith's Frozen Foods v. Workmen's Compensation Appeal Board (Clouser), 539 A.2d 11 (Pa. Cmwlth. 1988).

Herein, Claimant argues that the WCJ's decision is not supported by substantial evidence. First, Claimant points out that the WCJ overlooked a previous unappealed utilization review determination that found that treatment rendered to Claimant through January 12, 2000, was reasonable and necessary and

that treatment rendered after January 12, 2000, would be considered reasonable and necessary if given on an unscheduled PRN basis with a maximum of three treatments per month.

Second, Claimant argues that the WCJ failed to consider his own relevant findings from the August 28, 2001, decision, wherein the WCJ specifically found the testimony of Employer's medical expert credible. Claimant directs this Court's attention to the summary of Employer's medical expert's testimony in the August 28, 2001, decision, wherein the doctor testified that Claimant was suffering from chronic low back pain. Claimant points out that the WCJ also found credible the Employer's medical expert's opinion that Claimant continued to have difficulties of pain and discomfort and imposed certain restrictions on Claimant's activities. Therefore, Claimant argues, the WCJ's finding of full recovery in the instant matter is inconsistent with his previous finding that Employer's medical expert credibly testified that Claimant suffered from a "chronic low back".

Claimant argues that the WCJ's hasty termination of her benefits, in order to put an end to this matter, contradicts his previous finding that she was suffering from a work related chronic low back injury and ignores the unappealed utilization review determination that the chiropractic treatment she was receiving was reasonable and necessary for a chronic condition. In short, Claimant is contending that because the WCJ previously found that she had suffered a permanent chronic injury, he could not later find that she has recovered from that injury. We disagree.

Section 413(a) of the Workers' Compensation Act[1] (Act) provides that a WCJ may, at any time, modify, reinstate, suspend or terminate a notice of compensation payable, a supplemental agreement or an award of benefits of a WCJ upon proof that the injured employee's disability has changed. In Wieczorkowski v. Workers' Compensation Appeal Board (LTV Steel), 871 A.2d 884 (Pa. Cmwlth. 2005), this Court held that an employer was not estopped from seeking to terminate benefits because the parties previously executed a supplemental agreement and stipulation providing that the claimant's disability had resolved into a permanent partial disability where there was nothing to suggest that the claimant's injury was irreversible.

Herein, Employer initially accepted, via a notice of compensation payable, an injury described as "acute lumbar sprain." While the WCJ, in the August 28, 2001, decision, accepted Employer's medical expert's testimony credible, which included a diagnosis that Claimant suffered from chronic low back pain, there was no finding, or testimony cited that would support a finding, that Claimant's condition was irreversible.[2] Accordingly, as in Wieczorkowski, there is nothing to suggest in the present case that Claimant's condition was irreversible; therefore, the WCJ did not err in finding that Claimant had fully recovered from her work-related injury based on Dr. Abraham's credible testimony.

Moreover, the WCJ was not bound by the unappealed utilization review determination which was rendered in 2000. Employer sought to terminate Claimant's benefits as of August 10, 2005, and in accordance therewith had the

[1] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §772.

[2] We note that although Claimant now characterizes her injury as "chronic low back pain", she did not file a review petition seeking to have the description of her injury changed from "acute lumbar sprain" to "chronic low back pain."

burden of proving that Claimant's condition had changed and that she had fully recovered from her work-related injury as of that date.[3] As stated previously herein, the WCJ found that Employer met its burden through the credible testimony of Dr. Abraham. It is well settled that the WCJ's credibility determination in this regard is not subject to review. See Hayden v. Workmen's Compensation Appeal Board (Wheeling Pittsburgh Steel Corp.), 479 A.2d 631 (Pa. Cmwlth. 1984) (Determinations as to witness credibility and evidentiary weight are not subject to appellate review.).

Accordingly, the Board's order is affirmed.

JAMES R. KELLEY, Senior Judge

[3] An employer seeking to terminate a claimant's benefits must prove that the claimant's disability has ceased or that any existing injury is not a result of the work-related injury. Jaskiewicz v. Workmen's Compensation Appeal Board (James D. Morrissey, Inc.), 651 A.2d 623 (Pa. Cmwlth. 1994), petition for allowance of appeal denied, 541 Pa. 628, 661 A.2d 875 (1995). An employer may satisfy this burden by presenting unequivocal and competent medical evidence of claimant's full recovery from the work-related injury. Koszowski v. Workmen's Compensation Appeal Board (Greyhound Lines, Inc.), 595 A.2d 687 (Pa. Cmwlth. 1991).

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O R D E R

AND NOW, this 22nd day of May, 2008, the order of the Workers' Compensation Appeal Board in the above captioned matter is affirmed.

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JAMES R. KELLEY, Senior Judge