

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Samuel Cromartie,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 216 C.D. 2008
	:	
Workers' Compensation Appeal	:	Submitted: June 20, 2008
Board (D.M. Sabia & Co., Inc.),	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: September 10, 2008**

Samuel Cromartie (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board), which affirmed the Workers' Compensation Judge's (WCJ) decision and order granting the Claim Petition filed by Claimant for a closed period followed by a termination. The questions presented in this case are: (1) whether the WCJ failed to make a reasoned decision; and (2) whether the WCJ erred by failing to award medical benefits up to the circulation date of his decision. For the reasons discussed herein, we affirm.

Claimant was employed by D.M. Sabia & Co., Inc. (Employer) as a mason tender. As a mason tender, Claimant was responsible for setting up material used by bricklayers, unloading trucks, mixing concrete, and clearing debris from worksites. On October 26, 2005, while acting within the course and scope of his employment, Claimant was struck by a lull, a forklift-type machine, which pushed his left thigh into a pile of bricks.

Claimant filed a Claim Petition in which he alleged that he sustained injuries to his left leg and buttock as a result of the October 26, 2005 work incident that prohibited him from working. Employer responded by filing an Answer in which it denied Claimant's allegations that he had sustained a disabling work-related injury to his left leg and buttock, but admitted that Claimant had sustained a compensable injury in the form of a laceration and muscle strain of his left leg/thigh, with no lost time incurred. The matter was subsequently assigned to a WCJ, who conducted several hearings at which the parties were given the opportunity to present testimony and evidence regarding the Claim Petition.

In support of his Claim Petition, Claimant testified on his own behalf. Claimant initially testified as to the circumstances surrounding his injury and the treatment that he received following his injury. Claimant also testified that he continues to experience pain in his upper left thigh, from his buttock to the back of his knee, and that he experiences a strong ache when he sits for long periods of time, sneezes, or laughs. (WCJ Hr'g Tr. at 23-24.) Claimant further testified that he is not physically capable of returning to his pre-injury position because he still experiences a pulling sensation in his thigh. (WCJ Hr'g Tr. at 31-32.)

Claimant also presented the deposition testimony of A.V. Hankins, M.D., a board certified physician who has been Claimant's primary care physician since 2000. Dr. Hankins testified that, after the October 26, 2005 work incident, she first saw Claimant on October 31, 2005, at which time she reviewed Claimant's medical records and conducted a physical examination. (Hankins Dep. at 15-19.) Dr. Hankins determined that Claimant had sustained multiple contusions and had decreased ambulation as a result of the October 26, 2005 work incident. (Hankins Dep. at 22.) Dr. Hankins believed that Claimant was not capable of returning to work at that time, and she approved him to miss work for about one month. (Hankins Dep. at 23.)

Dr. Hankins testified that she next treated Claimant on November 30, 2005, and that Claimant continued to have leg pain at that time. (Hankins Dep. at 24-25.) Dr. Hankins conducted a Bala Disability Scale test, which measures how pain is affecting a patient's functioning and psychosocial issues, and Claimant's pain level was determined to be seven or eight out of ten. (Hankins Dep. at 25.) Dr. Hankins testified that she again treated Claimant on January 11, 2006, at which time an MRI was taken of Claimant's left hip. (Hankins Dep. at 30-31.) The MRI revealed that Claimant had arthritis in his left hip. (Hankins Dep. at 31.) Dr. Hankins also conducted a physical examination, which revealed that Claimant was experiencing diffused pain in his left thigh. (Hankins Dep. at 32-33.) Dr. Hankins believed that Claimant's left leg pain was attributable to the arthritis in his hip and the muscle contusion. (Hankins Dep. at 37.) Dr. Hankins believed that Claimant was not capable of returning to work as of the January 11, 2006 visit and that Claimant's condition had actually worsened. (Hankins Dep. at 37-38.)

Dr. Hankins testified that she again treated Claimant on January 30, 2006. (Hankins Dep. at 38.) As of that time, Dr. Hankins believed that the October 25, 2005 work incident had caused a thigh contusion and possibly exacerbated Claimant's arthritis in his left hip. (Hankins Dep. at 40.) Dr. Hankins noted that Claimant had complaints of back pain, but she felt that the back pain may have been caused by Claimant's enlarged prostate. (Hankins Dep. at 39.) Dr. Hankins also noted that Claimant continued to have tenderness and weakness in his left leg, but that he was making progress. (Hankins Dep. at 49.) Dr. Hankins opined that Claimant was still unable to return to his pre-injury employment at the time of the January 30, 2006 visit and that Claimant continues to be unable to return to work. (Hankins Dep. at 48, 52.)

On cross-examination, Dr. Hankins acknowledged that Claimant had complained of pain in his back, his neck, and his upper and lower extremities prior to the October 26, 2005 work incident. (Hankins Dep. at 55.) Dr. Hankins also acknowledged that she was unable to determine, with any certainty, whether Claimant's back pain was related to the October 26, 2005 work incident. (Hankins Dep. at 61.) However, Dr. Hankins included a lumbar strain in her diagnosis of the injuries that Claimant sustained as a result of the October 26, 2005 work incident. (Hankins Dep. at 90-91.)

In opposition to the Claim Petition, Employer presented the deposition testimony of David A. Allan, M.D., Ph.D., who is board certified in internal medicine and rheumatology and works as an attending physician at the Hospital of the University of Pennsylvania (HUP). Dr. Allan testified that Claimant first sought treatment at HUP on October 27, 2005, at which time he was examined by

Eileen Simms, a nurse practitioner. (Allan Dep. at 8, September 18, 2006.) A report completed by Nurse Simms indicated that Claimant had: tenderness in his left thigh; a tender left sacroiliac joint with radicular joint pain radiating to the left lateral thigh; pressure over the sciatic notch; and no lumbosacral spine tenderness. (Allan Dep. at 11, 20.) The report also indicated that Nurse Simms had diagnosed Claimant with a left sacroiliac strain with left radicular pain and contusion of the left posterior thigh. (Allan Dep. at 12-13.)

Dr. Allan also testified that he personally evaluated Claimant at HUP on October 31, 2005, at which time he reviewed Claimant's history and conducted a physical examination. (Allan Dep. at 15-19.) The physical examination revealed that Claimant had a slight antalgic gait and that his right leg was shorter than his left leg. (Allan Dep. at 19.) Dr. Allan also found no evidence of low back tenderness and, specifically, no sciatic notch tenderness. (Allan Dep. at 19-20.) Claimant had a normal range of motion in both hips, but complained of low back pain during a straight leg raise test of each leg. (Allan Dep. at 20.) Dr. Allan diagnosed Claimant with "blunt trauma with a contusion to the left thigh," and he released Claimant to return to modified-duty work on November 1, 2005. (Allan Dep. at 21-22.)

Dr. Allan further testified that Claimant subsequently returned on November 1, 2005, and complained of pain in his left leg and stomach. (Allan Dep. at 25.) At that time, Dr. Allan found no changes in Claimant's condition, and he released Claimant to return to modified-duty work on November 2, 2005. (Allan Dep. at 27-28.) Dr. Allan testified that he again evaluated Claimant on November 4, 2005, at which time he found "no low back or soft tissue induration" and "no dorsolumbar or sacral spine tenderness," but noted "variable tenderness in the left thigh." (Allan Dep. at

28-29.) Dr. Allan diagnosed Claimant with a healing contusion on his left thigh and low back pain consistent with a possible strain. (Allan Dep. at 29.) Dr. Allan again approved Claimant to perform modified-duty work. (Allan Dep. at 31.)

Finally, Dr. Allan testified that he examined Claimant on November 8, 2005, at which time he reviewed Claimant's history and conducted a physical examination. (Allan Dep. at 31.) Dr. Allan determined that Claimant's continuing complaints of pain were consistent with symptom magnification and that there was no evidence of a significant thigh or low back injury. (Allan Dep. at 33-34.) Dr. Allan, thus, believed that Claimant had recovered from his work injury, and he released Claimant to return to full-duty work. (Allan Dep. at 33-34.)

On cross-examination, Dr. Allan agreed that Claimant continued to have subjective complaints of pain at the time of the November 8, 2005 evaluation. (Allan Dep. at 39.) However, Dr. Allan testified that he believed that Claimant was not providing an accurate report of the pain that he was experiencing. (Allan Dep. at 42.)

Employer also presented the deposition testimony of Marc Manzione, M.D., a board certified orthopedic surgeon. Dr. Manzione conducted an independent medical examination of Claimant on February 6, 2006. (Manzione Dep. at 11-12.) Dr. Manzione found that Claimant's stride length on the left was slightly shorter than his stride length on the right and that his overall stride velocity was slower than normal. (Manzione Dep. at 18.) Claimant declined to do heel and toe raises on his left side, indicating that it would cause pain in his left thigh. (Manzione Dep. at 18.) Dr. Manzione found some tenderness in the muscles adjacent to the lower lumbar

spine, but found no tenderness in “the sacroiliac joints or sciatic notches.” (Manziona Dep. at 19.) Dr. Manziona noted that Claimant complained of pain in his left thigh when he bent and/or rotated his back to the right and left. (Manziona Dep. at 19.) Dr. Manziona also performed the sitting root test, which, when performed on the left side, caused Claimant to complain of pain from behind his left knee up to the posterior left thigh. (Manziona Dep. at 19-20.) Additionally, Dr. Manziona performed the straight leg raise test, and Claimant complained of pain behind the left knee up to the posterior left thigh when the test was performed on both the right and left sides. (Manziona Dep. at 20.) Dr. Manziona determined that there were inconsistencies between his findings as to the straight leg raise test and the sitting root test, which led him to believe that Claimant was embellishing his symptoms. (Manziona Dep. at 20.) Dr. Manziona also found that Claimant had full range of motion in both of his hips. (Manziona Dep. at 21.) Dr. Manziona did note some tenderness behind the left knee and in the posterior left thigh. (Manziona Dep. at 21.) Dr. Manziona indicated that there were no objective findings with regard to the complaints that Claimant attributed to the October 26, 2005 work incident. (Manziona Dep. at 23.) Dr. Manziona also testified that he reviewed numerous records, which indicated that Claimant had problems with his left knee and left hamstring dating back to 2000 and 2001. (Manziona Dep. at 23-25.) Dr. Manziona also reviewed several records which revealed that Claimant had complained of pain in his posterior thigh in 2000 and 2001. (Manziona Dep. at 26.) Dr. Manziona also testified that he reviewed the reports of Dr. Hankins, Dr. Allan, and Nurse Simms. (Manziona Dep. at 28-32.) Based on his review of the medical records and reports, as well as his physical examination of Claimant, Dr. Manziona opined that Claimant had “sustained soft tissue injuries to his left lower extremity and possibly the left lower back.” (Manziona Dep. at 34.) Dr. Manziona also opined that, as of the time of his

evaluation, Claimant did not require any ongoing medical treatment or devices for his injury. (Manziona Dep. at 36-37.) Dr. Manziona further opined that Claimant had fully recovered from his work injuries and that he was capable of returning to work. (Manziona Dep. at 35-37.)

On cross-examination, Dr. Manziona testified that he did not believe that Claimant suffered from chronic pain as a result of the October 26, 2005 work incident. (Manziona Dep. at 51-54.)<sup>1</sup>

After reviewing the evidence that was presented by the parties, the WCJ issued a decision and order granting Claimant's Claim Petition for the closed period from October 27, 2005 to February 5, 2006, followed by a termination. The WCJ found Dr. Hankins' testimony "that work trauma caused a lumbar strain or left hip arthritis, and/or aggravated pre-existing left hip arthritis . . . unpersuasive and less credible than [the] contrary findings and opinions of Drs. Allan and Manziona." (WCJ Decision, Findings of Fact (FOF) ¶ 15a.) The WCJ found that "[t]he work injury was limited solely to a left thigh contusion and muscle strain." (FOF ¶ 15a.) The WCJ discredited Dr. Allan's testimony that Claimant had fully recovered from his work injury as of November 9, 2005, and found Claimant credible that he was physically unable to perform the light-duty work that was offered to him by Employer in October and November of 2005, because of residuals from his work injury. (FOF ¶ 15b.) However, the WCJ discredited Claimant's testimony that he

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<sup>1</sup> Employer also presented the deposition testimony of John J. Sabia, Jr., Employer's vice president, and Dominic Ferone, Employer's bricklayer foreman. Mr. Sabia and Mr. Ferone testified generally as to Claimant's job responsibilities, the circumstances surrounding the October 26, 2005 work incident, and the hours that Claimant worked thereafter. Mr. Sabia and Mr. Ferone also testified as to the light-duty work that was available and offered to Claimant.



was physically unable to perform his pre-injury job as of February 6, 2006. (FOF ¶ 15c.) Further, the WCJ found Dr. Manzione’s testimony that Claimant had fully recovered from his work injury as of February 6, 2006, more credible than Dr. Hankins’ testimony to the contrary. (FOF ¶ 15d.)

The WCJ concluded that Claimant “failed to establish the October 26, 2005 work incident either caused a lumbar strain or left hip arthritis [or] aggravated pre-existing left hip arthritis.”<sup>2</sup> (WCJ Decision, Conclusions of Law (COL) ¶ 2.) However, the WCJ concluded that Claimant established that he was physically unable to perform his pre-injury work duties from October 27, 2005 to February 5, 2006. (COL ¶¶ 3, 5.) The WCJ further concluded that Employer “established that all residuals of the October 26, 2005 work injury experienced by [Claimant] fully resolved as of February 6, 2006, without need for further treatment or imposition of physical restrictions.” (COL ¶ 4.)

Claimant appealed the WCJ’s decision and order to the Board, which affirmed. Claimant now petitions this Court for review.<sup>3</sup>

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<sup>2</sup> Although the WCJ treated the Claim Petition as a reinstatement petition, the Board treated it as a claim petition, as do the parties before this Court. The burden of proof is on a claimant who files either a claim petition or a reinstatement petition, to prove that a work-related injury has caused a disability; therefore, the WCJ’s treatment of the Claim Petition as a reinstatement petition did not affect the outcome of this case.

<sup>3</sup> “Our review is limited to determining whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence and whether constitutional rights were violated.” Sysco Food Servs. of Phila. v. Workers’ Compensation Appeal Board (Sebastiano), 940 A.2d 1270, 1273 n.1 (Pa. Cmwlth. 2008).

On appeal, Claimant first argues that the WCJ erred by failing to issue a reasoned decision, particularly as to his findings regarding the nature and extent of Claimant's injuries. Claimant contends that the WCJ failed to resolve the inconsistency between Dr. Allan's diagnosis of a left sacroiliac strain and Employer's acknowledgment of Claimant's injury as a laceration and muscle strain of the left thigh. Claimant also contends that the WCJ failed to resolve the inconsistency between Dr. Allan's diagnosis and Dr. Manzione's diagnosis that Claimant sustained soft tissue injuries to his lower left extremity and his left lower back. Claimant asserts that the WCJ's failure to address these inconsistencies renders the WCJ's decision unreasoned because the WCJ never found that Claimant had fully recovered from the left sacroiliac strain. We disagree.

Section 422(a) of the Workers' Compensation Act (Act)<sup>4</sup> provides, in relevant part:

All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. Uncontroverted evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

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<sup>4</sup> Act of June 2, 1915, P.L. 736, as amended, 77 P.S. § 834.

77 P.S. § 834. Where a WCJ bases his credibility determinations on deposition testimony, rather than on testimony that was provided in his presence, he must articulate an objective basis for his determinations. Daniels v. Workers' Compensation Appeal Board (Tristate Transp.), 574 Pa. 61, 78, 828 A.2d 1043, 1053 (2003). A WCJ is “not require[d] . . . to discuss all of the evidence presented” in order to comply with Section 422(a) of the Act, but rather “is only required to make the findings necessary to resolve the issues raised by the evidence and relevant to the decision.” Dorsey v. Workers' Compensation Appeal Board (Crossing Constr. Co.), 893 A.2d 191, 194 n.4 (Pa. Cmwlth. 2006). Additionally, the WCJ is “not require[d] . . . to give a line-by-line analysis of each statement by each witness, explaining how a particular statement affected the ultimate decision.” Acme Mkts., Inc. v. Workers' Compensation Appeal Board (Brown), 890 A.2d 21, 26 (Pa. Cmwlth. 2006).

Here, although Claimant asserts that Dr. Allan concurred in Nurse Simms' diagnosis that Claimant sustained a left sacroiliac strain with left radicular pain, Dr. Allan, in fact, was merely reading from Nurse Simms' report and never testified that he concurred in Nurse Simms' diagnosis. To the contrary, Dr. Allan testified that, after he first evaluated Claimant on October 31, 2005, his own diagnosis was that Claimant had sustained “blunt trauma with a contusion to the left thigh.” (Allan Dep. at 21.) Dr. Allan testified that he subsequently diagnosed Claimant with “a healing contusion on his left thigh” and “low back pain consistent with [a] possible strain.” (Allan Dep. at 29.) Claimant's assertion that Dr. Allan diagnosed Claimant with a left sacroiliac strain with left radicular pain is, therefore, misplaced. It is also important to note that Dr. Allan, himself, testified that his diagnosis was consistent with Employer's acknowledgment that Claimant sustained a contusion to the left posterior thigh, but that there was no evidence of a laceration. (Allan Dep. at 33.)

Thus, there is no inconsistency between Dr. Allan's diagnosis and the injury acknowledged by Employer, with the exception of the laceration to the thigh.<sup>5</sup>

Moreover, there is no inconsistency between Dr. Allan's diagnosis and Dr. Manzione's diagnosis. As previously discussed above, Dr. Allan's initial diagnosis was that Claimant sustained "blunt trauma with a contusion to the left thigh" (Allan Dep. at 21), and his later diagnosis was that Claimant had "a healing contusion on his left thigh" and "low back pain consistent with [a] possible strain." (Allan Dep. at 29.) Dr. Manzione diagnosed Claimant with "soft tissue injuries to his left lower extremity and possibly the left lower back." (Manzione Dep. at 34.) Importantly, Dr. Manzione clarified that, by soft tissue injuries, he was referring to "contusions, strains or sprains." (Manzione Dep. at 34.) Thus, Dr. Manzione's diagnosis that Claimant sustained soft tissue injuries to his left lower extremity and possibly his left lower back is not inconsistent with Dr. Allan's diagnosis.

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<sup>5</sup> The WCJ adequately addressed the inconsistency regarding the Employer's acknowledgment of a laceration to Claimant's thigh in his opinion by stating:

In an interesting development, the Court finds one of the so-called acknowledged work injury diagnoses (i.e., laceration of the left thigh) medically and factually erroneous. The initial examination following the work incident found no such laceration present, and no testifying physician or medical record establish [sic] a left thigh laceration. This is highly problematic considering the burden upon an employer seeking termination of all benefits is to establish all work acknowledged disability ceased. However, all testifying physicians including the treating physician and all medical records describe the work injury to the left thigh as a "contusion" or soft tissue injury. As all medical witnesses on both sides concur on the left leg diagnosis, the erroneous description of injury as a laceration is simply harmless error.

(WCJ Decision at 8 n.1. (citations omitted).)

Furthermore, contrary to Claimant's overarching argument, we believe that the WCJ issued a reasoned decision in this case. While Dr. Hankins' diagnosis of the work-related injury that Claimant sustained conflicted with the diagnoses of Drs. Allan and Manzione, the WCJ resolved such conflict by accepting the testimony of Drs. Allan and Manzione regarding the nature of Claimant's injury as more credible. (FOF ¶ 15a.) On the basis of this credibility determination, the WCJ found that Claimant's injury was "limited solely to a left thigh contusion and muscle strain." (FOF ¶ 15a.) The WCJ explained that he rejected Dr. Hankins' testimony regarding her diagnosis because her testimony was "confusing and often commingles [Claimant's] overall pre-existing medical conditions with disability caused by the October 26, 2005 trauma." (WCJ Decision at 8.) Specifically, the WCJ referred to Dr. Hankins' testimony that Claimant's back pain may have been caused by his enlarged prostate and that she was unable to determine, with any certainty, whether Claimant's back pain was related to the October 26, 2005 work incident. (WCJ Decision at 8.) The WCJ also explained that any suggestion that the work incident caused Claimant's hip arthritis was undercut by Dr. Hankins' acknowledgment that "the MRI results do not *per se* indicate when the arthritis occurred or its cause" and by other evidence showing "degenerative changes in the lower lumbar region." (WCJ Decision at 9.) The WCJ also explained that Dr. Hankins' opinion regarding Claimant's left hip arthritis was undercut by her own uncertainty when she testified that the work incident had only possibly exacerbated the arthritis. (WCJ Decision at 9.) The WCJ further explained that, while Dr. Hankins had noted a decreased range of motion in Claimant's left hip, Drs. Allan and Manzione had made contrary observations during their evaluations, and Claimant attributed his complaints of hip pain to the abdominal problems that he was experiencing as a result of his enlarged prostate. (WCJ Decision at 9.)

Although Drs. Hankins and Manzione provided conflicting opinions as to whether Claimant had fully recovered from his work injury, the WCJ resolved this conflict by accepting as credible Dr. Manzione's opinion that Claimant had fully recovered as of February 6, 2006. (FOF ¶ 15d.) The WCJ explained that he accepted Dr. Manzione's opinion as more credible because: he had "the most orthopedic expertise of any testifying physician"; his review of Claimant's medical records revealed objective findings of prior injuries, and no objective findings relating Claimant's ongoing complaints of pain to the October 26, 2005 work incident; and one week prior to Dr. Manzione's examination, Dr. Hankins acknowledged that Claimant's work related leg contusions had improved. (WCJ Decision at 10-11.) Because the WCJ resolved the conflicting expert testimony by making credibility determinations, and because he provided objective reasoning for those determinations, we conclude that the WCJ did not fail to issue a reasoned decision. Daniels, 574 Pa. at 78, 828 A.2d at 1053.

Next, Claimant argues that the WCJ erred by failing to award Claimant medical benefits up to the date that the WCJ's decision was circulated. Again, we disagree.

As support for his argument, Claimant relies on Stonebraker v. Workmen's Compensation Appeal Board (Seven Springs Farm, Inc.), 641 A.2d 655 (Pa. Cmwlth. 1994). However, such reliance is misplaced because Stonebraker involved a termination petition, and the present case involves a claim petition. In the context of a claim petition, the claimant has the initial burden to establish the compensability of medical expenses. DeJesus v. Workmen's Compensation Appeal Board (Friends Hosp.), 623 A.2d 397, 400 (Pa. Cmwlth. 1993). Moreover, Stonebraker and its

predecessors, Boehm v. Workmen's Compensation Appeal Board (United Parcel Servs.), 576 A.2d 1163 (Pa. Cmwlth. 1990) and Johnson v. Workmen's Compensation Appeal Board (Albert Einstein Med. Ctr.), 586 A.2d 991 (Pa. Cmwlth. 1991), were superseded by Sections 8 and 15 of Act 44, Act of July 2, 1993, P.L. 190, which amended Section 306(f) of the Act and renumbered it as Section 306(f.1), 77 P.S. § 531,<sup>6</sup> and amended Section 420 of the Act, 77 P.S. § 831.<sup>7</sup> Albert Einstein Med. Ctr. v. Workers' Compensation Appeal Board (Perkins), 707 A.2d 611, 616 (Pa. Cmwlth. 1998).

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<sup>6</sup> Section 306(f.1)(6) provides, in relevant part:

Except in those cases in which a workers' compensation judge asks for an opinion from peer review under section 420, disputes as to reasonableness or necessity of treatment by a health care provider shall be resolved in accordance with the following provisions:

(i) The reasonableness or necessity of all treatment provided by a health care provider under this act may be subject to prospective, concurrent or retrospective utilization review at the request of any employe, employer or insurer. . . .

77 P.S. § 531(6)(i).

<sup>7</sup> Section 420 of the Act provides, in relevant part:

The workers' compensation judge when necessary or appropriate or upon request of a party in order to rule on requests for review filed under section 306(f.1), or under other provisions of this act, may ask for an opinion from peer review about the necessity or frequency of treatment under section 306(f.1). The peer review report or the peer review report of any physician, surgeon, or expert appointed by the department or by a workers' compensation judge, including the report of a peer review organization, shall be filed with the board or workers' compensation judge, as the case may be, and shall be a part of the record and open to inspection as such. The workers' compensation judge shall consider the report as evidence but shall not be bound by such report.

77 P.S. § 831.

We believe that this Court's decision in Mashuda Corp. v. Workers' Compensation Appeal Board, 706 A.2d 374 (Pa. Cmwlth. 1998), is controlling in this case. Mashuda, like the case at bar, also involved a claim petition. In Mashuda, the WCJ, in the context of a claim petition, awarded total disability benefits for a closed period from April 27, 1991 through August 5, 1991 and terminated all benefits effective August 6, 1991. Id. at 375. The WCJ also directed the employer to pay all medical bills submitted by the claimant, including those for medical treatment received after the date upon which the claimant's disability was determined to have ceased. Id. The employer subsequently challenged the WCJ's order directing it to compensate the claimant for medical expenses incurred after August 6, 1991, and the Board affirmed. Mashuda, 706 A.2d at 375. On appeal, however, relying on Braden v. Workmen's Compensation Appeal Board (Beacon Auto Parts), 659 A.2d 655 (Pa. Cmwlth. 1995) and DeJesus, this Court held that "there is no reason to require the employer to pay claimant benefits up until the date of the WCJ's decision when the claimant files a claim petition and the WCJ establishes liability for a closed period. Once claimant's disability has terminated, employer is no longer responsible for paying benefits." Mashuda, 706 A.2d at 376. Because the claimant had failed to meet her burden of proving that her medical expenses were causally connected to her injury and not unreasonable or unnecessary, we concluded that the WCJ had erred in ordering the employer to pay the medical bills incurred by the claimant after the date upon which her disability had ceased. Id.

Here, like in Mashuda, Claimant filed a Claim Petition, and the WCJ determined that Employer was liable for a closed period. Under such circumstances, the burden was on Claimant to prove that any medical expenses that he incurred were causally connected to his work injury and not unreasonable or unnecessary.



However, Claimant failed to meet his burden. Therefore, we conclude that the WCJ did not err in failing to award medical benefits up to the circulation date of his decision.<sup>8</sup>

Accordingly, for the reasons discussed above, we affirm the Board's order.

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**RENÉE COHN JUBELIRER, Judge**

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<sup>8</sup> While Claimant also relies on Buchanan v. Workmen's Compensation Appeal Board (Mifflin County School District), 648 A.2d 99 (Pa. Cmwlth. 1994), to support his argument, we believe that such reliance is misplaced because this Court, in Buchanan, in the context of a penalty petition, employed the same reasoning that was used in DeJesus and found that the claimant had failed to meet his burden of proving that his medical bills were causally connected to his work injury. Buchanan, 648 A.2d at 101-02. Thus, Buchanan actually provides further support for the WCJ's decision in this case, instead of providing support for Claimant's position.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Samuel Cromartie,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 216 C.D. 2008
	:	
Workers' Compensation Appeal	:	
Board (D.M. Sabia & Co., Inc.),	:	
	:	
Respondent	:	

**ORDER**

**NOW**, September 10, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter is hereby affirmed.

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**RENÉE COHN JUBELIRER, Judge**