

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rexen Francis, :  
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 Petitioner :  
 :  
 v. :  
 :  
 Workers' Compensation Appeal :  
 Board (East Penn Manufacturing :  
 Company), : No. 2213 C.D. 2007  
 Respondent : Submitted: February 29, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE McGINLEY

FILED: April 2, 2008

Rexen Francis (Claimant) appeals *pro se* from the order of the Workers' Compensation Appeal Board (Board) which affirmed the denial of his Claim Petition by the Workers' Compensation Judge (WCJ).

On February 2, 2006, Claimant filed a claim petition and asserted that he sustained an injury on March 18, 2005, in the course and scope of his employment with East Penn Manufacturing Company (Employer). Specifically, Claimant alleged that he sustained right leg pain, lumbar spine stenosis at L3-L4, lumbar degenerative disc disease, and right leg radiculitis.

Employer timely answered and denied all allegations.

Claimant testified in support of his claim petition on May 31, 2006, and January 10, 2007. Claimant operated a wire cutting machine, a light duty

position.<sup>1</sup> On March 18, 2005, he developed sensitivity in his right leg, with pain radiating down the back of his thigh, calf and into his right foot. He gave notice to his supervisor on April 22, 2005, and he was seen by Employer's nursing staff and referred to his family physician. Eventually, he underwent surgery on his lower back. He testified that he had constant low back pain which radiated into his right leg and thigh. Deposition of Rexen Francis, May 31, 2006, at 12, 21, 26-27.<sup>2</sup>

Claimant offered the medical testimony of board-certified neurosurgeon, David W. Allen, M.D. (Dr. Allen). Dr. Allen testified that a September 2005, MRI revealed "moderate to severe canal stenosis at L4-5 due to bulging spondylosis, endplate hypertrophy with moderate stenosis at L3-4 and L5-S1 due to similar changes" and a disc herniation at L4-L5. Deposition of David W. Allen, M.D. (Dr. Allen Deposition), December 4, 2006, at 10-12. On November 15, 2005, Dr. Allen performed a decompressive lumbar laminectomy at L3-S1 and a right-sided disectomy at L4-L5. Dr. Allen Deposition at 14. Dr. Allen opined that Claimant's operation of the wire-rolling machine for 7 hours a day aggravated his pre-existing degenerative disc and joint disease of the lumbar spine. He further opined that Claimant was unable to perform his job duties due to back pain and ongoing treatment and that a return to work would further aggravate his condition. Dr. Allen Deposition at 18. Dr. Allen acknowledged that Claimant had a "very degenerated spine" and his opinion that the wire machine job aggravated his condition was based on the history received from Claimant. Dr. Allen specifically

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<sup>1</sup> Claimant had sustained a previous work injury in 2001, to his coccyx, when he tripped and fell. In 2003, he developed a non-work related heart condition which required him to work the light duty position.

<sup>2</sup> Claimant did not file a reproduced record. This Court's citations are to the certified record.

admitted that his conclusion that Claimant hurt his back as the result of the wire rolling job was based on what Claimant stated to him. Dr. Allen Deposition at 19-20, 31.

Employer offered the testimony of its Worker's Compensation Coordinator, Chris Losch (Losch), and introduced a DVD demonstrating the operation of the wire-rolling machine. According to Losch, Claimant's job could be done from both a standing and sitting position. The opportunity to shift positions as desired, and a chair, was provided to Claimant. Deposition of Chris Losch, November 22, 2006, at 12-13. She explained that the position was similar to operating a sewing machine and it did not require stooping or kneeling. Deposition of Chris Losch, November 22, 2006, at 13, 20. The WCJ reviewed the DVD and concluded that it corroborated Losch's description of the wire-roller job.

Employer also presented the expert medical testimony of S. Ross Noble, M.D. (Dr. Noble), board-certified in Physical Medicine and Rehabilitation, Electrodiagnostic Medicine, Spinal Cord Injury Medicine and Pain Medicine. Dr. Noble performed an independent medical examination of Claimant on July 6, 2006. His review of the medical records and MRI films indicated that Claimant suffered from degenerative disc disease, as opposed to any traumatic injury. Deposition of S. Ross Noble, M.D. (Dr. Noble Deposition), October 10, 2006, at 22. With respect to Claimant's complaint that his back problems arose in 2005, from using the pedal, Dr. Noble disagreed. Dr. Noble reviewed the DVD which showed the operation of the wire-rolling machine and opined that the degenerative condition of Claimant's spine was not consistent with Claimant's 2001 work injury or the wire-roller job. He testified the wire rolling job "did not cause a work injury. It did not aggravate a preexisting condition. It did not cause any change in

his lumbar spine.” Deposition of Dr. Noble at 27. He further explained: “[p]ushing a pedal is not a mechanism of low back injury. It’s not going to herniate a disc. It’s not going to pinch a nerve. It’s not going to cause dislocation or ... spondylosisthesis. It has minimal to no effect on the structures of the low back.” Dr. Noble Deposition at 28.

Dr. Noble continued:

However, if a person has a degenerative condition of their low back, they may have pain pushing on a pedal, just like a person with a sunburn is going to have pain at work and if he bumps against something or somebody pats him on the back to welcome him back, you know, slaps him on the back, Good to see you, that is going to cause some pain. But its not a work injury.

There’s nothing about pushing a foot pedal that’s going to injure his back that’s going to cause the need for lumbar surgery or cause any disability or inability to work. It’s not surprising given the degeneration that he would have some symptoms, but I don’t think that it’s a work injury.

Dr. Noble Deposition at 28-29.

On May 3, 2007, the WCJ denied and dismissed Claimant’s Petition. In sum, the WCJ found Employer’s expert more credible than Claimant’s expert. The WCJ made the following credibility determinations:

14. This Judge accepts the testimony and opinions of S. Ross Noble, M.D. and this Judge finds such to be both competent and credible. This Judge accepts the testimony and opinions of Dr. Noble over those of David W. Allen, M.D. Dr. Noble and Dr. Allen, for the most part, agree that the Claimant suffers from long-standing, severe degenerative lumbar spine disease; they disagree

as to causation. In that respect this Judge accepts the opinions of Dr. Noble, that the Claimant's degenerative lumbar spine disease was not aggravated, accelerated or exacerbated by the work activity as a wire roller machine operator. This Judge finds Dr. Noble's opinions to be supported by the results of the many diagnostic tests, the many medical records and reports and the results of Dr. Noble's physical examination of the Claimant....

15. ...This Judge does not accept the Claimant's testimony that he was symptom and pain free from his degenerative lumbar spine disease until his assignment to the position of wire roller operator. Dr. Allen's opinions are based upon the truthfulness of the Claimant's history, which this Judge finds to be less than truthful.

WCJ's Decision, May 3, 2007, Finding of Fact Nos. 14 and 15 at 4-5.

Claimant appealed to the Board. He argued that the WCJ erred when he concluded Claimant's injury was not work-related or aggravated by his use of the wire rolling machine because his pain began shortly after he began the wire rolling job. Claimant further argued that the WCJ erred because he did not find Claimant or Dr. Allen credible.

Noting that Claimant's appeal was, in essence, an improper challenge to the WCJ's credibility determinations, the Board affirmed:

The Judge [WCJ] found Claimant to be less than truthful as to his freedom from back pain symptoms until his assignment to the job of wire roller operator. (Finding of Fact #15). Because Dr. Allen based his opinion on the non-credible history given to him by Claimant, the Judge [WCJ] also rejected his testimony. (Findings of Fact #14, 15)...Consequently, with the rejection of Dr. Allen's testimony, the claimant failed to carry his burden as a matter of law.

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Nevertheless, we have reviewed Dr. Noble's testimony given by deposition on October 10, 2006, and are satisfied that it provides substantial evidence to support the Judge's [WCJ] Decision. Dr. Noble was permitted to view a DVD showing how the wire rolling machine was operated after taking a history from claimant, where claimant advised him that he first developed pain going down his right leg after taking the job as an operator. (Deposition 10-10-06, page 26).... [Dr. Noble] testified that ...pushing a pedal with his foot had no relationship to Claimant's back pain.

The Judge [WCJ] found Dr. Noble to be a credible witness and to be more persuasive than Dr. Allen as to Claimant's degenerative lumbar disease and its cause.

Board Opinion, November 6, 2007, at 3-5.

On appeal<sup>3</sup> to this Court, Claimant, *pro se*, continues to challenge the WCJ's credibility determinations. Claimant asserts that the WCJ should have granted his claim petition because he presented substantial and credible evidence that the work injury aggravated his pre-existing back condition. Specifically, he points to his testimony that he did not complain of pain *before* he operated the wire rolling machine. He also asserts that the WCJ should have credited his expert, Dr. Allen, because he treated Claimant whereas Dr. Noble only examined him once and was not a "specialist." Finally, Claimant contends that the WCJ's opinion was not a well-reasoned decision because it failed to explain why Claimant's evidence was rejected.

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<sup>3</sup> This Court's scope of review is limited to determining whether an error of law was committed, constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Johnson v. Workers' Compensation Appeal Board (Abington Memorial Hospital), 816 A.2d 1262 (Pa. Cmwlth. 2003).

This Court may not reject a WCJ's credibility determinations on appeal or make new findings of fact. To do so would require this Court to exceed its scope of review and substitute its own judgment as to the credibility and weight to be given to Claimant's testimony regarding the onset of his back pain. Rather, where, as here, the Board takes no additional evidence, this Court reviews the record in its entirety in order to determine whether the WCJ's factual findings are supported by substantial evidence. Ryan v. Workmen's Compensation Appeal Board (Community Health Services), 550 Pa. 550, 707 A.2d 1130 (1998). "Substantial evidence" is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Bethenergy Mines, Inc.; Republic Steel Corporation v. Workmen's Compensation Appeal Board (Shinsky), 492 Pa. 1, 421 A.2d 1060 (1980). As a fact finder, the WCJ has exclusive power to decide questions of credibility and may accept or reject, in whole or part, the testimony of any witness, including medical witnesses. Vols v. Workmen's Compensation Appeal Board (Alperin, Inc.), 637 A.2d 711 (Pa. Cmwlth. 1994).

Here, although Claimant testified his back pain did not begin until he worked the wire-rolling machine, the WCJ found him not to be credible. The WCJ was instead persuaded by Dr. Noble, who testified that Claimant's non work-related degenerative disc disease was not causally related to or affected by his operation of the wire-rolling machine. As the Board pointed out, the WCJ's finding was supported by substantial evidence. Dr. Noble, whom the WCJ credited, confirmed that Claimant's symptoms and responses to medical treatment were consistent with degenerative arthritis, and not consistent with an acute injury. Dr. Noble viewed the DVD and opined that the fact that Claimant's pain manifested itself when he operated the wire-rolling machine did not necessarily mean that it *caused* the degenerative arthritis or *aggravated* his condition such that

his operation of the wire-rolling machine materially contributed to his work disability.

This Court concludes that the testimony of Dr. Noble, who was board-certified in a number of relevant disciplines, and whose qualifications Claimant never questioned at hearing, was clearly competent and supported the WCJ's findings.

Claimant also argues that the WCJ failed to issue a reasoned decision. This Court must disagree.

Section 422(a) of the Workers' Compensation Act (Act)<sup>4</sup>, 77 P.S. § 834, provides, in pertinent 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....

The WCJ clearly explained the rationale for his findings and adequately explained why he rejected the testimony Dr. Allen and Claimant

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



regarding the cause of Claimant's condition. Therefore, the WCJ's decision complies with the reasoned decision requirements of Section 422(a) of the Act.

The order of the Board is affirmed.

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BERNARD L. McGINLEY, Judge

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Board (East Penn Manufacturing	:
Company),	:
	:
Respondent	:

No. 2213 C.D. 2007

**ORDER**

AND NOW, this 2nd day of April, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned case is hereby affirmed.

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BERNARD L. MCGINLEY, Judge