IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Freda E. Stricklen, Petitioner	:	
v.	:	
Workers' Compensation Appeal Board (Pennrico/Conoco Phillips Co. and ACE American Insurance Co.), Respondents	:	No. 2231 C.D. 2007
	:	Submitted: May 23, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: July 18, 2008

Freda E. Stricklen (Claimant) petitions for review from the order of the Workers' Compensation Appeal Board (Board) that affirmed the order of the Workers' Compensation Judge (WCJ) that dismissed Claimant's claim petition against Pennrico/Conoco Phillips Company (Employer).

At the time of Claimant's alleged injury she was a 59 year-old woman who was 5'3" tall and weighed approximately 143 pounds. She worked for Employer as a KDU pumper, a job which required her to unload railroad tank cars. Claimant was also required to perform maintenance duties in the course of performing this job. Frequently, she got down under the tank cars and used tools such as pipe wrenches to exert forces of up to 50 pounds to remove caps on the tanks.

On October 26, 2005, Claimant was trying to remove a "stuck cap" with a 36-inch pipe wrench with her right arm. When Claimant came out from under the rail car and stood up, she could "hardly walk." After the incident Claimant took narcotic medication and received assistance in performing her job. Finally on November 5, 2005, Claimant stopped working due to her injury. She also believed that she would be discharged if narcotics were found in her system while at work.

Claimant petitioned for benefits on December 9, 2005, and sought temporary disability benefits on and after November 6, 2005. Employer answered and denied all allegations.

Before the WCJ, Claimant explained her job and the circumstances surrounding her injury. Claimant also acknowledged having experienced back pain at times prior to the work injury, and that the back pain was in the same location as the pain associated with the work injury. Notes of Testimony, February 7, 2006, at 13; Reproduced Record (R.R.) at 20a.

Claimant presented the deposition testimony of Garrett W. Dixon, M.D. (Dr. Dixon), board certified in physical medicine and rehabilitation and Claimant's treating physician. Dr. Dixon opined that Claimant suffered low back pain with L4-5 radiculopathy on the left and L5-S1 radiculopathy on the right, aggravation of lumbar degenerative disease, and left-sided sacroiliac pain. Deposition of Garrett W. Dixon, M.D., May 12, 2006, (Dr. Dixon Deposition) at 14; R.R. at 42a. Dr. Dixon found Claimant to be disabled as a result of her work injury, and prescribed narcotic medication which included Darvocet and Hydrocodone. Dr. Dixon Deposition at 16; R.R. at 44a. In his examination on

May 11, 2006, Dr. Dixon observed a right lumbar paraspinal spasm as a result of the work injury. Dr. Dixon Deposition at 20; R.R. at 48a. On cross-examination Dr. Dixon acknowledged that Claimant had a prior, pre-existing degenerative disc condition in her lower back for years and that Claimant's disease was at a fairly advanced stage. Dr. Dixon Deposition at 30; R.R. at 58a.

Employer presented the deposition testimony of Daniel Kelly Agnew, M.D. (Dr. Agnew), a board-certified orthopedic surgeon. Dr. Agnew examined Claimant on July 3, 2006. Dr. Agnew opined that the "worst imaginable diagnosis" for Claimant "would be a minor strain." Deposition of Daniel Kelly Agnew, M.D., July 18, 2006 (Dr. Agnew Deposition) at 30; R.R. at 127a. Dr. Agnew acknowledged that the circumstances that Claimant described surrounding her injury could be consistent with the back pain described by Claimant. Dr. Agnew Deposition at 30; R.R. at 127a. However, Dr. Agnew did not believe that this caused any structural damage. Dr. Agnew reviewed two MRIs taken of Claimant's back. One MRI was from before the work injury on August 14, 2004, and one was from after the injury on November 29, 2005. Dr. Agnew Deposition at 15; R.R. at 112a. Dr. Agnew testified that he found no change in Claimant's condition upon comparing these two studies. Dr. Agnew Deposition at 17; R.R. at 114a. Dr. Agnew opined that the injury described by Claimant did not accelerate or alter the natural history of the degenerative process on Claimant's spine. Dr. Agnew Deposition at 34; R.R. at 131a.

Dr. Agnew did not believe that Claimant required further medical treatment.[1] During the examination, Dr. Agnew could not find any muscle spasms, and found that Claimant had full range of motion and did not complain of any pain on range of motion testing. As such, Dr. Agnew believed that Claimant had, at worst, experienced a minor lumbar strain that would likely have resolved within weeks or months. Dr. Agnew Deposition at 32-33; R.R. at 129a-130a.

The WCJ awarded temporary total disability benefits beginning November 6, 2005, as well as counsel fees against Employer for an unreasonable contest. The WCJ then found that Claimant had made a full recovery from her work injury and terminated Claimant's benefits as of July 3, 2006. The WCJ made the following relevant finding of fact:

> 7. Based upon a careful review of the entire record in this matter, and viewing the evidence as a whole, your Worker's Compensation Judge believes and finds as fact that:
>
> > a. The Claimant suffered a lumbar strain/sprain injury in the course and scope of her employment on October 26, 2005;

[1] Employer's counsel questioned Dr. Agnew about Claimant's condition:

Q: And, Doctor, as of July 3, 2006, did you have any medical recommendations relative to treatment for Ms. Stricklen?

A: I certainly did not find any lingering musculoskeletal injury or disease process from October 2005 for which she would need any treatment. If she needs treatment for her degenerative low back in the future, be that over-the-counter medications, prescription medications or beyond, it would be because of a degenerative process and not due to any occupational event.

Q: And, Doctor, per the described work event of October 26, '05, would you place any type of physical limitations on Ms. Stricklen as of your evaluation of 7/3/06?

A: I would not.

Dr. Agnew Deposition at 34-35; R.R. at 131a-132a.

b. As a direct result of that injury the Claimant was disabled from performing her time-of-injury job as maintenance person and relief pumper throughout the period of time from November 6, 2005, through July 2, 2006, inclusive, and she sought and obtained care and treatment with medical providers including Dr. Balestrino, Dr. Hutteman, Dr. Ferraro, Dr. Hope, pharmacists, diagnostic imaging centers, and Dr. Dixon; and

c. Effective July 3, 2006, the Claimant had fully recovered from the subject work injury and any ongoing symptomatic complaints were solely related to her pre-existing degenerative conditions in her spine.

In reaching these findings, I have accepted the testimony of the Claimant and Dr. Agnew, and most of the testimony of Dr. Dixon, as credible and convincing. I had the opportunity to observe the Claimant's demeanor as a witness when she testified and although she was not particularly persuasive I saw no reason to doubt that she was telling the truth. I felt that most of Dr. Dixon's testimony was logical and consistent with the other records as well as the Claimant's testimony; however, on the question of whether or not she had damaged discs or caused radiculopathy or aggravated or accelerated any degenerative conditions in her spine as a result of the subject work injury, to the extent that Dr. Dixon actually gave an unequivocal opinion connecting those things I felt that Dr. Agnew's opinion testimony was far more logical and scientific and believable. As even Dr. Dixon ultimately agreed, there is no indication that anything changed from her diagnostic studies over the years before and the time period after the subject work injury, and her symptomatic complaints in the lower extremities are not consistent with the radiculopathies suggested by the EMG study and had resolved in any event according to Dr. Dixon's testimony.

WCJ's Decision, September 28, 2006, Finding of Fact No. 7 at 12; R.R. at 197a.

Claimant then appealed the portion of the WCJ's decision that terminated Claimant's benefits to the Board. The Board affirmed the WCJ's decision to terminate the benefits effective July 3, 2006.

Claimant petitioned for review with this Court, and seeks reversal only as to that portion of the WCJ's decision terminating Claimant's benefits on July 3, 2006.

Claimant contends that the WCJ erred when he terminated Claimant's benefits based on the testimony of Dr. Dixon where Dr. Dixon assumed that Claimant did not suffer a work related injury and where Claimant continued to use narcotic medication even when Dr. Dixon opined she was fully recovered.[2]

In a claim petition, the claimant bears the burden of proving all elements necessary to support an award. Innovative Spaces v. Workmen's Compensation Appeal Board (DeAngelis), 646 A.2d 51 (Pa. Cmwlth. 1994). To sustain an award, the claimant has the burden of establishing a work-related injury which resulted in disability. If the causal relationship between the claimant's work and the injury is not clear, the claimant must provide unequivocal medical testimony to establish a relationship. Holy Family College v. Workmen's Compensation Appeal Board (KYCEJ), 479 A.2d 24 (Pa. Cmwlth. 1984).

[2] Our review is limited to a determination of whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence, or whether constitutional rights were violated. Vinglinsky v. Workmen's Compensation Appeal Board (Penn Installation), 589 A.2d 291 (Pa. Cmwlth. 1991).

A WCJ may order a termination of benefits in the context of a claim petition if it is determined that a claimant is only entitled to benefits for a closed period of time. Thomas v. Workmen's Compensation Appeal Board (George's Painting Contractors), 629 A.2d 251 (Pa. Cmwlth. 1993). The employer must establish through competent medical evidence that the claimant's work-related injury has resolved and that any remaining disability was the result of a non-work-related cause. McFaddin v. Workmen's Compensation Appeal Board (Monongahela Valley Hosp.), 620 A.2d 709 (Pa. Cmwlth. 1992).

Dr. Agnew did not, as Claimant contends, opine that Claimant suffered no injury and he did not contradict himself in concluding that Claimant fully recovered. Dr. Agnew stated that whatever injury occurred, likely a lumbar strain, healed to the point that Claimant did not need to be placed under any work restrictions. Dr. Agnew did not take the fact that Claimant continued to use the prescribed narcotic medication to indicate anything about the ongoing nature of the disability.

The law is well settled that the WCJ has complete discretion as to the credibility of witnesses. As such, the WCJ's credibility findings cannot be disturbed if supported by substantial evidence. Sherrod v. Workmen's Compensation Appeal Board (Thoroughgood, Inc.), 666 A.2d 383 (Pa.Cmwlth. 1995). Here, the WCJ found both Dr. Dixon and Dr. Agnew to be credible, but found that Dr. Agnew's testimony was more logical and scientific in the areas in which their opinions differed. The WCJ is free to accept or reject, in whole or in part, the testimony of any witness, including medical witnesses. Greenwich

Colleries v. Workmen's Compensation Appeal Board (Buck), 664 A.2d 703 (Pa. Cmwlth. 1995).

Claimant contends that the WCJ's decision was not supported by substantial evidence. This Court does not agree. Dr. Agnew's testimony was substantial competent evidence that supported the WCJ's findings that the Claimant's work injury was a relatively minor lumbar strain, and did not cause any aggravation of Claimant's preexisting condition. This lumbar strain resolved by the July 3, 2006 medical evaluation. Termination of benefits is appropriate where medical testimony establishes that the disability has ceased or that any disability is no longer the product of compensable injury. McFaddin.

Accordingly, this Court affirms.

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BERNARD L. McGINLEY, Judge

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O R D E R

AND NOW, this 18th day of July, 2008, the order of the Worker's Compensation Appeal Board in the above-captioned matter is affirmed.

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BERNARD L. McGINLEY, Judge