

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia-Fire Department,	:	
Petitioner	:	
	:	
v.	:	No. 2247 C.D. 2007
	:	
Workers' Compensation Appeal	:	Submitted: May 2, 2008
Board (Dombrowski),	:	
Respondent	:	

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: June 11, 2008

In this appeal, the City of Philadelphia-Fire Department (Employer) petitions for review of an order of the Workers' Compensation Appeal Board (Board) that affirmed a Workers' Compensation Judge's (WCJ) award of total disability benefits to Vincent Dombrowski (Claimant). The Board, however, reversed the WCJ's award of a credit to Employer for sick leave benefits paid to Claimant. Employer contends the Board erred in reversing the award of credit for sick leave benefits and that the WCJ's decision awarding Claimant total disability benefits fails the reasoned decision requirement in Section 422(a) of the Workers' Compensation Act (Act).¹ Discerning no error in the Board's decision, we affirm.

Claimant worked for Employer as a firefighter. In December 2002, while moving a ladder from a burning building, a 30-pound piece of the building's

¹ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §834.

roofing dislodged, struck Claimant in the head and cracked his helmet in half. Claimant was placed on a spine board with a collar and transported to a hospital. An MRI and x-ray did not show a neck fracture. Following treatment and release, Claimant returned to full duty, but he experienced chronic neck and head pain, and numbness in his hands. He had difficulty wearing a helmet because of his neck pain. He also had trouble gripping things, moving ladders and swinging an axe. His symptoms continued to worsen.

In January 2005, Claimant informed his supervisors he could no longer work due to head, neck and hand pain. Employer immediately placed Claimant on sick leave. He remained on sick leave until his early retirement, at age 44, in June 2005.

In May 2005, Claimant filed a claim petition alleging he suffered a work-related neck injury with right radiculopathy, post concussion syndrome and post-traumatic cephalgia. Employer filed an answer denying Claimant's material allegations. Litigation followed.

Claimant testified his condition continued to deteriorate following his accident. His greatest impediment was neck pain; he could not properly drive due to his inability to turn his head. Claimant further testified he intended to work until age 55 and then seek a promotion or retire. However, following his injury, he felt unable to perform his firefighter duties. The WCJ found Claimant's testimony credible and persuasive.

The WCJ also found the testimony of Claimant's orthopedic surgeon (Claimant's Physician) credible and persuasive. Claimant's Physician diagnosed

Claimant as suffering from post concussion syndrome, unresolved cervical sprain and strain, protruding discs at C4-5, C5-6, C6-7 and right sided C6 radiculopathy. He opined Claimant's condition was a direct result of his December 2002 work injury. He also opined Claimant could not return to work as a firefighter, but could possibly perform some type of lighter sedentary job.

Conversely, the WCJ rejected the testimony of Employer's orthopedic surgeon (Employer's Physician) as equivocal and unpersuasive. Employer's Physician opined Claimant's pathology in his neck and cervical spine was degenerative in nature and unrelated to the work injury.

Consequently, the WCJ awarded Claimant total disability benefits effective his last day of work. The WCJ awarded Employer a credit for the sick leave benefits paid to Claimant from his last day of work until his retirement. The WCJ also awarded other credits and offsets not at issue here.

Both parties appealed. The Board rejected Employer's challenge to Claimant's medical evidence. In contrast, the Board accepted Claimant's challenge to the sick leave credit. The Board noted an employer is not entitled to a credit if the injured employee is required to deplete exhaustible benefits available for a non-compensable injury, and Employer failed to prove Claimant's sick leave was not depleted. See Marsh v. Workmen's Comp. Appeal Bd. (Prudential Ins. Co.), 673 A.2d 33 (Pa. Cmwlth. 1996) (an employer not entitled to credit for sick

leave benefits if they were available to an employee regardless of whether he suffered a compensable injury). Employer's appeal ensued.²

Employer maintains the Board erred in reversing the WCJ's award of credit for sick leave benefits because Claimant's use of sick leave was unrelated to his work injury. Employer further asserts denial of a sick leave credit would result in double recovery. Additionally, Employer asserts, the WCJ's decision fails Section 422(a)'s reasoned decision requirement inasmuch as the WCJ ignored Claimant's Physician's failure to perform adequate neurological testing and the WCJ did not address Claimant's refusal to treat or accept light duty work after his injury. Employer maintains these facts indicate Claimant's evidence fails to establish his condition is causally related to his December 2002 work injury.

I. Sick Leave

Employer first argues it is entitled to a credit for sick leave benefits because otherwise Claimant would recover twice for the same injury. In support, Employer cites Donegal School District v. Workers' Compensation Appeal Board (Haggerty), 798 A.2d 857 (Pa. Cmwlth. 2002) (where the claimant's expended sick leave was restored under a collective bargaining agreement, the employer was entitled to a credit for paid sick leave benefits; otherwise the claimant could use the same sick leave benefits twice). Donegal, however, is factually distinguishable. Here, unlike Donegal, the record does not indicate whether Claimant's expended sick leave benefits were restored to him.

² This Court's review is limited to determining whether the WCJ's findings of fact were supported by substantial evidence, whether an error of law was committed or whether constitutional rights were violated. Romanowski v. Workers' Comp. Appeal Bd. (Precision Coil Processing), 944 A.2d 127 (Pa. Cmwlth. 2008).

Employer asserts that Claimant did not testify Employer forced him to exhaust his sick leave benefits because of his work injury. Employer further argues that Claimant did not petition for or request reimbursement of his sick leave benefits on the basis he used his sick leave in lieu of workers' compensation benefits.

Citing Marsh, Claimant counters Employer is not entitled to a credit for the sick leave benefits at issue. Claimant also maintains Employer bears the burden of proving entitlement to an offset credit. See Dep't of Pub. Welfare/Polk Ctr. v. Workers' Comp. Appeal Bd. (King), 884 A.2d 343 (Pa. Cmwlth. 2005) (employer bore the burden of proving its entitlement to an offset credit for pension benefits).

We agree with Claimant. The burden is on the employer, not the claimant, to establish the appropriateness of an offset credit. Id. Further, “[t]he employer is not entitled to a credit if the injured employee is required to deplete exhaustible benefits to which he would be entitled if he suffered from a non-compensable injury.” Marsh, 673 A.2d at 35. Moreover, “disability payments are not incidents of employment in the same sense as sick leave payments: an employee is entitled to sick leave regardless of whether [he] suffered a compensable injury; therefore the employer is not allowed credit for sick leave payments.” Id.

Here, Employer did not prove Claimant used his sick leave benefits for any non-compensable injury or illness unrelated to his work injury, or that his expended benefits were restored. Consequently, Employer is not entitled to a credit for Claimant's sick leave benefits. Marsh.

II. Reasoned Decision

Employer asserts the WCJ's decision awarding Claimant benefits does not meet the reasoned decision requirement in Section 422(a) of the Act.³ Essentially, Employer maintains that Claimant's evidence did not establish his condition is causally related to his employment and that the WCJ's decision is not well-reasoned because it did not address either Claimant's failure to treat for nearly three years after his December 2002 injury or his refusal of light duty work following his work injury.

To comply with Section 422(a), a WCJ's decision must permit adequate appellate review. Dorsey v. Workers' Comp. Appeal Bd. (Crossing Constr. Co.), 893 A.2d 191 (Pa. Cmwlth. 2006), appeal denied, 591 Pa. 667, 916 A.2d 635 (2007). "Section 422(a) does not require the WCJ to discuss all of the evidence presented." Id. at 194, n.4. "The WCJ is only required to make the findings necessary to resolve the issues raised by the evidence and relevant to the decision." Id. "[T]he purpose of a reasoned decision is to spare the reviewing

³ Section 422(a), 77 P.S. §834, provides in 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 [WCJ] shall specify the evidence upon which the [WCJ] relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the [WCJ] 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 [WCJ] must identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

court from having to imagine why the WCJ believed one witness over another.” Id. at 196 (citation omitted) (emphasis in original).

Nonetheless, “[w]here medical experts testify by deposition, a WCJ’s resolution of conflicting evidence must be supported by more than a statement that one expert is deemed more credible than another.” Id. at 194. To allow effective appellate review, the WCJ must articulate an objective basis for the credibility determination. Id. Although there are countless objective factors which may support a credibility determination, these factors must be identified and enunciated. Id.

“However, Section 422(a) does not permit a party to challenge or second-guess the WCJ’s reasons for credibility determinations.” Id. at 195. “Unless made arbitrarily or capriciously, a WCJ’s credibility determinations will be upheld on appeal.” Id. Moreover, “[a] reasoned decision does not require the WCJ 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' Comp. Appeal Bd. (Brown), 890 A.2d 21, 26 (Pa. Cmwlth. 2006).

Further, the WCJ’s authority to determine witness credibility and the weight to be accorded the evidence is not attenuated by Section 422(a)’s reasoned decision requirement. Kasper v. Workers' Comp. Appeal Bd. (Perloff Bros., Inc.), 769 A.2d 1243 (Pa. Cmwlth. 2001). “Deciding credibility is the quintessential function of the fact-finder, particularly one who sees and hears the testimony.” Id. at 1246. “It is not an exact science, and the ultimate conclusion comprises far more than a tally sheet of its various components.” Id.

Here, the WCJ's decision awarding Claimant total disability benefits complies with Section 422(a). In a claim proceeding, a claimant must establish all elements necessary to support an award. Inglis House v. Workmen's Comp. Appeal Bd. (Reedy), 535 Pa. 135, 634 A.2d 592 (1993). These elements include the occurrence of a work injury, a related disability, and the duration of disability. Id. Where the causal connection between the work injury and the disability is not obvious, it must be established by unequivocal medical testimony. Fotta v. Workmen's Comp. Appeal Bd. (U.S. Steel/USX Corp. Maple Creek Mine), 534 Pa. 191, 626 A.2d 1144 (1993).

“Medical evidence is unequivocal if the medical expert, after providing a foundation, testifies in [his] medical opinion [he] thinks the facts exist.” Martin v. Workers' Comp. Appeal Bd. (Red Rose Transit Auth.), 783 A.2d 384, 389 (Pa. Cmwlth. 2001) (citation omitted). In determining whether medical testimony is unequivocal, we must view medical testimony as a whole, not as isolated expressions. Id. Also, as the ultimate fact-finder, the WCJ may accept or reject the testimony of any witness, including a medical expert, in whole or in part. Id.

On appeal, the critical inquiry is whether there is evidence to support the WCJ's findings. Minicozzi v. Workers' Comp. Appeal Bd. (Indus. Metal Plating, Inc.), 873 A.2d 25 (Pa. Cmwlth. 2005). If the record contains evidence a reasonable person might find sufficient to support the WCJ's findings, the findings must be upheld even though there is conflicting evidence in the record. Id. Consequently, it is irrelevant whether the record contains evidence to support findings other than those made by the WCJ. Id.

Regarding the occurrence of Claimant's injury, the WCJ found:

On December 4, 2002, while at work fighting a building fire, [C]laimant was struck on the head by a thirty pound piece of roofing with such force to shatter his fire helmet, injuring his neck, back and cervical spine.

Finding of Fact (F.F.) No. 2. The WCJ also noted Claimant was placed on a spine board with a collar and transported to a hospital for an MRI and x-rays. F.F. No. 4C. Claimant's testimony provides substantial evidence to support these findings. See Notes of Testimony, 09/07/05, (N.T.) at 6-11.

Regarding disability, the WCJ found Claimant returned to work with chronic neck pain and numbness in his hands. F.F. No. 4D. Although Claimant continued to work as a firefighter, his symptoms continued to worsen. He had difficulty gripping burnt mattresses, moving ladders and swinging an axe. Id. On January 5, 2005, Claimant informed his supervisors he could no longer work due to head, neck and hand pain. F.F. No. 4F. Claimant's testimony provides substantial evidence to support these findings. N.T. at 8-11.

The WCJ also found Claimant's Physician's testimony credible and persuasive. F.F. No. 5. Claimant's Physician examined Claimant in March 2005, took a medical history, noted his head injury, and reviewed a January 2005 MRI. F.F. No. 5B. Claimant complained of chronic and constant neck pain radiating into his right arm to the middle finger, which increased with position, movement and activity. Id. The MRI revealed protruding cervical discs at C4-5, C5-6 and C6-7, with significant stenosis at the right of C5-6. Id.; F.F. No. 5E. In March 2005, Claimant underwent an EMG study of his upper extremities that was positive for

C6 right-sided radiculopathy. F.F. No. 5C. These findings are supported by Claimant's Physician's testimony. See Dep. of Dr. Mark D. Allen (Allen Dep.) at 8-14.

Claimant's Physician diagnosed Claimant's condition as post concussion syndrome, unresolved cervical sprain and strain; protruding discs at C4-5, C5-6, C6-7 and right-sided C6 radiculopathy. F.F. No. 5E; Allen Dep. at 15. He opined Claimant's condition directly resulted from being struck on the head by the 30-pound piece of roof. F.F. No. 5E; Allen Dep. at 15-16. Claimant's Physician further opined Claimant could no longer perform his firefighter duties as of January 5, 2005 due to chronic severe neck pain with associated radiculopathy and hand numbness directly caused by his December 2002 work injury. F.F. No. 5F; Allen Dep. at 16-17.

The WCJ also found the diagnostic tests support Claimant's Physician's diagnosis. F.F. No. 6. Based on his credentials, his repeated examinations and his review of Claimant's medical history and job duties, the WCJ found Claimant's Physician's opinion credible as to the causal relationship between Claimant's work injury and his ongoing disability. Id.

Further, because Employer's Physician's opinion, that Claimant's condition is degenerative and unrelated to his work injury, contradicted Claimant's Physician's opinion and the medical record as a whole, the WCJ rejected it as not credible. F.F. No. 8.

After reviewing Claimant's evidence, and the WCJ's findings and credibility determinations, we conclude the WCJ's decision satisfies Section

422(a)'s reasoned decision requirement. Claimant credibly testified before the WCJ that his head, neck and hand pain resulting from his December 2002 work injury continued to worsen to the point he could no longer perform his firefighter duties. Claimant explained that despite the pain, he wanted to continue performing his regular duties with the hope his neck would get better. However, it got worse. As of January 5, 2005, Claimant could no longer wear a helmet or perform his job duties.

Also, the WCJ stated clear and objective reasons for finding Claimant's Physician's opinions more credible than those of Employer's Physician. The WCJ emphasized Claimant's Physician derived his opinions as to causation and ongoing disability from his knowledge of Claimant's work injury, job duties and his repeated examinations. The WCJ also noted the diagnostic tests performed corroborated Claimant's Physician's opinions.

Having determined substantial evidence, including competent medical evidence, supports the WCJ's findings and credibility determinations, we hold the WCJ's decision complies with Section 422(a). Dorsey; Acme Mkts.; Minicozzi; Kasper. Discerning no error in the Board's decision, we affirm.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia-Fire Department, :
Petitioner :
 :
v. : No. 2247 C.D. 2007
 :
Workers' Compensation Appeal :
Board (Dombrowski), :
Respondent :

ORDER

AND NOW, this 11th day of June, 2008, the order of the Workers'
Compensation Appeal Board is **AFFIRMED**.

ROBERT SIMPSON, Judge