

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ronald Tarr,	:
	:
Petitioner	:
	:
v.	: No. 2280 C.D. 2011
	: Submitted: November 16, 2012
Workers' Compensation Appeal	:
Board (McInnes Steel Company	:
State Workers' Insurance Fund and	:
Old Republic Insurance Company),	:
	:
Respondents	:

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: January 23, 2013

Ronald Tarr (Claimant) petitions for review of the November 8, 2011 order of the Workers' Compensation Appeal Board (Board) that affirmed the August 18, 2010 decision of the Workers' Compensation Judge (WCJ) that denied Claimant's Reinstatement Petition against McInnes Steel Company/State Workers' Insurance Fund (SWIF) and Claim Petition against McInnes Steel Company/Old

Republic Insurance Company (ORIC) under the Pennsylvania Workers' Compensation Act (Act).¹ We affirm.²

Claimant was employed as a machinist for McInnes Steel (Employer) for 23 years. (WCJ 4/17/2007 Opinion and Order (WCJ 4/17/2007), Findings of Facts (F.F.) ¶1; *see also* WCJ 8/18/2010 Opinion and Order (WCJ 8/18/2010), Conclusions of Law (C.L.) ¶3.) On October 23, 1989, Claimant sustained a serious injury to his back and following a period of disability that included lower back surgery, he returned to full-time employment with Employer. (*Id.*) Claimant sustained a second serious work related injury, an injury to his right shoulder, on August 12, 2002, his last day of employment with Employer. (*Id.*) In 2003, the plant where Claimant had been employed prior to his injury was closed by Employer. (*Id.*)

During the course of Claimant's employment, Employer was insured for workers' compensation claims by two separate insurers: SWIF and ORIC. As a result, the petitions filed by Claimant at issue here, although arising from injuries sustained while working solely for Employer, were filed separately against SWIF and ORIC and were subsequently consolidated for review.

The first set of claims date back to the October 23, 1989, work injury (1989 injury) sustained by Claimant. (Notice of Compensation Payable SWIF

¹ Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4, 2501-2708.

² This Court's review is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights have been violated. *American Road Lines v. Workers' Compensation Appeal Bd. (Royal)*, 39 A.3d 603, 610 n.6 (Pa. Cmwlth. 2012). Where an appeal presents a question of law, our scope of review is plenary. *Id.*

(NCP SWIF), 11/13/1989, Reproduced Record (R.R.) at 5a; Agreement for Compensation, 4/24/1990, R.R. at 6a.) In the initial Notice of Compensation Payable (NCP), Claimant's injuries were described as "cuts, bruises, contusions to the head, left arm & right hand." (NCP SWIF, R.R. at 5a.) The NCP was modified to include an L4-5 herniation and adjacent level stenosis in Claimant's back as a part of the injuries sustained by Claimant as a result of his 1989 injury.³ On April 24, 1990, SWIF issued an Agreement for Compensation that detailed Claimant's status as "disabled [October 24, 1989], returned to work [March 26, 1990], again became disabled [April 19, 1990] through present." (Agreement for Compensation SWIF 4/24/1990, R.R. at 6a.) A Supplemental Agreement issued by SWIF on May 22, 1995, states that Claimant was disabled again as of May 2, 1995, and returned to work with no loss of earnings on May 22, 1995, at which time benefits were suspended. (Supplemental Agreement SWIF 5/22/1995, R.R. at 10a.) On August 5, 2005, Claimant filed Reinstatement and Penalty Petitions alleging that SWIF had failed to pay medical bills, had suspended his benefits when he returned to light-duty work on September 13, 1994, instead of modifying his benefits to partial disability, and that Claimant's condition had deteriorated as a result of the 1989 injury. (Reinstatement Petition SWIF, R.R. at 17a; Penalty Petition SWIF, R.R. at 15a.)

³ On August 5, 2005, Claimant filed a Review Compensation Benefits Petition, seeking to have the description of his 1989 injury amended to include a lower back injury that resulted in spinal fusions. (Reinstatement and Review Petitions, R.R. at 17a.) In the WCJ's April 17, 2007 opinion, incorporated by reference into the WCJ's August 18, 2010 opinion, the WCJ concluded that the injury description in the November 13, 1989 NCP should be amended to include an L4-5 herniation and adjacent level stenosis. (WCJ 4/17/2007 at 10, C.L. ¶1; *see also* WCJ 8/18/2010 C.L. ¶3.)

The second set of claims relates to Claimant's August 12, 2002 work injury, which resulted in a "right rotator cuff tear, a labrum tear, and a biceps tendon rupture." (Compromise and Release Agreement ORIC 8/12/2002, R.R. at 1b.) On March 15, 2004, the WCJ issued a decision and order approving a Compromise and Release Agreement between Claimant, Employer, and ORIC. (WCJ 4/15/2004 Opinion and Order, R.R. at 11a-14a.) In the Compromise and Release Agreement, Claimant agreed to release Employer and ORIC from all further liability for wage loss benefits under the Act for Claimant's August 12, 2002, injury; in exchange for the release, Employer and ORIC agreed to pay Claimant \$90,000 and to pay all reasonable and necessary medical expenses causally related to Claimant's work injury. (*Id.*) On August 10, 2005, Claimant filed a Claim Petition alleging that the August 12, 2002, work injury aggravated his pre-existing (*i.e.* 1989 injury) lower back injury and requesting total disability benefits dating from August 12, 2002. (Claim Petition ORIC 8/10/02, R.R. at 20a.) Claimant also filed a Penalty Petition on August 10, 2005, alleging that Employer and ORIC had violated the Act by refusing to pay Claimant total disability benefits, refusing to investigate whether they were obligated to compensate Claimant for the aggravation of his pre-existing back injury, and refusing to pay Claimant's medical bills. (Penalty Petition ORIC, R.R. at 22a.)

The WCJ initially issued an opinion and order in this matter on April 17, 2007, granting Claimant's Review Notice of Compensation Payable and Medical Review Petitions but denying Claimant's Claim, Penalty, Reinstatement, and Review Benefit Offset Petitions. The WCJ found that Claimant's Petition for Reinstatement against SWIF was filed, at the earliest, on August 5, 2005. (WCJ 4/17/ 2007, F.F. ¶15.) The WCJ found that Claimant's wage benefits were first

suspended after his 1989 work injury on March 26, 1990, and that he last received wage loss benefits for that injury on May 22, 1995, when he returned to work at no loss of earnings. (*Id.*) As a result, the WCJ concluded that Claimant's Reinstatement Petition against SWIF was barred by the applicable statute of limitations. (*Id.*)

Next, the WCJ found that even if the Reinstatement Petition were not time-barred, credible testimony failed to support reinstatement due to a recurrence of disability and failed to support Claimant's Claim Petition against ORIC by establishing an aggravation of Claimant's pre-existing back injury. (WCJ 4/17/2007, C.L. ¶¶2, 6.) The WCJ found credible Claimant's testimony that he returned to full-duty work on May 22, 1995, following his 1989 injury and that, regardless of his work status, he had continued to experience back pain dating from his 1989 injury. (WCJ 4/17/ 2007, F.F. ¶12.) The WCJ did not find credible Claimant's testimony that he would have been disabled as of August 13, 2002, due to his 1989 back injury, even if he had not had the injury to his shoulder, and did not find credible Claimant's testimony that his back injury and the associated pain rendered him unable to work since 2004. (*Id.*) The WCJ explained that the finding that portions of Claimant's testimony lacked credibility was rooted in Claimant's failure to seek medical treatment for his back until two years after he was off work, in Claimant's failure to support his claims with sufficient medical testimony, and in the fact that Claimant did not mention his back pain at the time that he executed the Compromise and Release Agreement with ORIC regarding his August 12, 2002 work injury. (*Id.*)

Addressing the medical testimony offered, the WCJ found credible the testimony of both Dr. Louis Keppler, Claimant's expert, and Dr. Thomas Kramer,

ORIC's expert, concerning the type of back injury sustained by Claimant in October of 1989 and the causally related stenosis he experiences today. (WCJ 4/17/ 2007, F.F. ¶13, 14.) However, the WCJ did not credit Dr. Keppler's conclusion that Claimant's return to work aggravated his back condition and did credit Dr. Kramer's conclusion that Claimant was not disabled as a result of his back injury and is able to perform his full duty job. (*Id.*) The WCJ based both credibility determinations in part on Claimant's own behavior in continuing to work until his shoulder injury. (*Id.*)

Claimant appealed to the Board and, in an August 19, 2008 decision and order, the Board affirmed. Before the Board, Claimant argued that the WCJ's April 7, 2007, opinion evidenced an abuse of discretion and contained several errors of law. First, Claimant argued that the WCJ erred in relying on the Compromise and Release Agreement executed with ORIC, as well as evidence from his social security disability proceedings, because in both cases he was unrepresented by counsel. (Board Opinion and Order, 8/19/2008 (Board 8/19/2008), at 7.) The Board concluded that the WCJ did not err because Claimant's representation status did not affect the relevancy of the evidence, but went only to the weight the evidence was afforded, a determination solely for the WCJ. (Board 8/19/2008, at 7-8.)

Next, Claimant argued that he demonstrated that his condition had deteriorated and thus, the WCJ erred in not reinstating his benefits. The Board did not address whether or not the statute had run, concluding instead that Claimant had failed to demonstrate that his condition had deteriorated, and that the WCJ was therefore not in error in denying reinstatement. (Board 8/19/2008, 8-9.)

The final issue addressed by the Board was Claimant's argument that it was an abuse of discretion for the WCJ to refuse a continuance and close the record before Claimant could offer additional evidence from Dr. Keppler in support of Claimant's allegation that his condition was deteriorating. (Board 8/19/2008, at 9.) The Board concluded that Claimant had failed to make a clear showing of abuse of discretion by the WCJ. (*Id.*)

Claimant filed a Petition for Rehearing before the Board, in which he requested that the Board remand the matter to the WCJ to allow him to present after-discovered evidence of his deteriorating condition, specifically evidence concerning a surgical procedure that occurred following the initial opinions issued by the WCJ and the Board.

The Board, in an opinion and order circulated May 7, 2009, both granted Claimant's Petition for Rehearing and concluded that remand to the WCJ was appropriate. The Board reasoned that at the time it issued the August 19, 2008 opinion and order, Claimant could only offer evidence showing that his medical expert intended to perform surgery, which could be relevant to future disability, but failed to establish current disability; however, now that the surgery had been performed, the surgery had become relevant to Claimant's disability status, making remand appropriate. (Board Opinion and Order, 5/17/2009, at 7.)

On remand, the WCJ again denied Claimant benefits in an August 18, 2010 opinion and order. The WCJ's opinion evaluated the new testimony offered by Claimant's medical expert Dr. Keppler and determined that Dr. Keppler's testimony that the stenosis in Claimant's back developed as a natural result of the surgery Claimant had for his 1989 work injury was credible, but that Dr. Keppler's testimony that Claimant's work activities in 2002 and 2004 aggravated his

condition was not credible, because Dr. Keppler also testified that the condition would have progressed with or without continued work activities. (WCJ Opinion and Order, 8/18/2010 (WCJ 8/18/2010), F.F. ¶6.) The WCJ found that Claimant's surgery on February 18, 2009, was causally related to the 1989 injury, but that by September 2009, although Claimant had been totally disabled directly following the surgery, he was in better condition than he had been before the surgery. (WCJ 8/18/2010, F.F. ¶7.) In addition, the WCJ found that Claimant's Petition to Reinstate was still time-barred. (*Id.*) Finally, in the conclusions of law, the WCJ included by reference the findings of fact and conclusions of law made in the initial April 17, 2007 opinion. (WCJ 8/18/2010, C.L. ¶3.)

Again before the Board, Claimant challenged the WCJ's rejection of Dr. Keppler's testimony. Claimant argued that it was error for the WCJ to refuse to sustain ORIC's objections to the direct examination of Dr. Keppler by Claimant's counsel as leading, but to then refer to the manner of questioning in discussing Dr. Keppler's testimony by noting "when left to his own devices" in evaluating testimony credited or "these answers came primarily upon direct questions," when evaluating testimony that was not credited. (Board Opinion and Order, 11/8/2011 (Board 11/8/2011), at 7.) The Board rejected Claimant's argument both because the WCJ offered other reasons for the credibility determinations and because whether or not the leading nature of a question affects the acceptance or rejection of testimony is a question concerning the weight afforded to evidence, a question for the fact finder, the WCJ, and not within the Board's scope of review. (Board 11/8/2011, at 10.)

In addition to rejecting Claimant's challenge to the WCJ's rejection of parts of Dr. Keppler's testimony, the Board also made final its August 19, 2008 disposition of the issues raised by Claimant. (Board 11/8/2011, at 11.)

The end result of this extensive procedural history, for our purposes, is three issues that Claimant has raised for our review. First, Claimant argues that the Board's affirmance of the WCJ's rejection of Dr. Keppler's testimony on remand was in error. Second, Claimant contends that the Board's affirmance of the WCJ's admission of evidence relating to Claimant's Compromise and Release Agreement and social security disability proceedings was in error. Finally, Claimant argues that the Board's conclusion that his Reinstatement Petition was time-barred under the Act was error.⁴

In addressing his first issue, Claimant contends that for the WCJ, on remand, to reject Dr. Keppler's testimony concerning causation because it "came primarily upon direct questions from Claimant's counsel," *see* WCJ 8/18/2010, F.F. ¶6, evidences a capricious disregard of evidence and renders the WCJ's decision irrational rather than reasoned.

Section 422(a) of the Act requires that, in issuing a decision, the WCJ must clearly state the rationale for the decision and make findings of fact and conclusions of law based upon the evidence as a whole. 77 P.S. § 834. The WCJ's findings of fact and conclusions of law must be supported by "substantial evidence" or "such relevant evidence as a reasonable mind might accept to support

⁴ In addition to the claims raised by Claimant and addressed herein, ORIC argues that the Board erred when it remanded Claimant's Claim Petition filed against ORIC following the Board's grant of Claimant's Petition for Rehearing in the Board's May 7, 2009 opinion and order. ORIC also argues that the WCJ erred in allowing Claimant's expert Dr. Keppler to be deposed a second time on the issue of causation, which ORIC contends was outside the scope of the Board's remand. Because of our resolution of Claimant's appeal, we need not address these issues.

a conclusion.” *Ryan v. Workmen’s Comp. Appeal Bd. (Community Health Services)*, 550 Pa. 550, 559, 707 A.2d 1130, 1134 (1998). Section 422(a) also requires that, when the WCJ is faced with conflicting evidence, the reasons for rejecting or discrediting competent evidence must be explained. *Id.* Section 422(a) does not alter the longstanding principle that determining the credibility of witnesses remains the quintessential function of the fact finder; the WCJ remains free to accept, in part or in whole, the testimony of any witness, including expert medical witnesses. *Dorsey v. Workers’ Comp. Appeal Bd. (Crossing Construction Co.)*, 893 A.2d 191, 195 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 667, 916 A.2d 635 (2007); *Remaley v. Workers’ Comp. Appeal Bd. (Turner Dairy Farms, Inc.)*, 861 A.2d 405, 409 (Pa. Cmwlth. 2004), *appeal denied*, 582 Pa. 720, 872 A.2d 1200 (2005); 77 P.S. § 834. However, if the WCJ’s reasoning and credibility determinations reveal a deliberate disregard of competent relevant evidence, we will overturn the WCJ’s decision. *Wintermyer v. Workers’ Compensation Appeal Board (Marlowe)*, 571 Pa. 189, 203 n.12, 812 A.2d 478, n.12 (2002).

In the course of evaluating Dr. Keppler’s testimony, the WCJ noted in the factual findings that Dr. Keppler’s testimony concerning causation varied depending on whether he was responding to the direct questioning of Claimant’s attorney. (WCJ 8/18/2010, F.F. ¶6.) Claimant contends that because the WCJ overruled ORIC’s repeated objections to the form of questions posed by Claimant’s counsel, it is impermissible for the WCJ to then consider the manner in which Dr. Keppler’s answers were elicited in evaluating the credibility of his testimony. This argument ignores the dual role of the WCJ. The WCJ is charged with making both conclusions of law and findings of fact; to accept Claimant’s argument would require this Court to declare that in workers’ compensation cases

alone, evidence is credible merely because it is admissible. This we will not do. Even if we accepted Claimant's argument, it is clear from the WCJ's opinion that the testimony concerning causation in Dr. Keppler's additional deposition on remand was found incredible because of the contradictions within that testimony. (WCJ 8/18/2010, F.F. ¶6.) The WCJ stated:

Dr. Keppler stated several times that with or without continued work activities, the stenosis would, and did, progress at an accelerated rate. Dr. Keppler even noted that between 2005 and 2008, when the Claimant was not working at all, there was a continued progression of the stenosis. Therefore, Dr. Keppler's opinion that the continued work after 1989 aggravated the Claimant's condition is not credited.

(*Id.*) As the Board noted in its November 8, 2011 decision, the WCJ's finding concerning Dr. Keppler's credibility was also supported by the findings incorporated from the WCJ's April 17, 2007 opinion, which included the fact that Claimant failed to seek treatment during the period in which his back condition was supposedly deteriorating due to work activities and the crediting of Dr. Kramer's testimony that Claimant was not disabled. (Board 11/8/2011, at 10; WCJ 4/17/2007, F.F. ¶12, 13.) The WCJ here did not deliberately disregard competent relevant evidence, but instead properly made factual findings concerning the testimony of Claimant's medical expert, and clearly explained the reasons for doing so.

Next, Claimant contends that the WCJ erred in allowing both the Compromise and Release Agreement that Claimant executed with ORIC and the Disability Report Adult Form from Claimant's social security disability proceedings to be entered into evidence. (*See* WCJ Hearing 9/22/2006, Hearing Transcript (H.T.) at 7, SWIF Ex. A.) In support of this argument, Claimant

compares the situation here with that before this Court in *Wallace v. Workers' Compensation Board of Appeal (Bethlehem Steel/ PA Steel Tech.)*, 854 A.2d 613 (Pa. Cmwlth. 2004.) In *Wallace*, this Court held that a claimant's representations that he did not have any other work-related injuries in a vague compromise and release agreement addressing his inhalation injuries, did not judicially estop the claimant from filing a subsequent petition for a back injury sustained prior to execution of the compromise and release agreement. (*Id.*) Claimant contends that *Wallace* prevents the WCJ from considering the statements made in his Compromise and Release Agreement and his social security proceedings. However, the issue addressed in *Wallace* was judicial estoppel and, although the Board suggests in a footnote in its November 8, 2011 decision that "we see no reason why Claimant's Claim petition seeking to recognize Claimant's back condition would not be barred by the doctrine of collateral estoppel," (Board 11/8/2011 at 10 n.7), as a result of the Compromise and Release Agreement, neither the WCJ nor the Board ever concluded that Claimant's Reinstatement Petition was barred by the Compromise and Release Agreement.

Instead, the WCJ considered the representations, or more accurately lack of representations concerning injury to Claimant's back, in the Compromise and Release Agreement in the course of concluding that a portion of Claimant's testimony concerning his injury was not credible. (WCJ 4/17/2007, F.F. ¶12.) Similarly, although the WCJ did not discuss whether or not Claimant's social security Disability Report Adult Form was weighed in assessing Claimant's credibility, it is clear from the record that this document was entered solely for the purposes of credibility. (WCJ Hearing 9/22/2006, H.T. at 7.) This Court's opinion in *Wallace* did not alter the WCJ's ability to consider prior inconsistent statements

when assessing the credibility of a witness' testimony. The WCJ found that here the Claimant's prior inconsistent statement weighed against crediting portions of Claimant's testimony and we simply reiterate longstanding principle by concluding that the weighing of such relevant evidence is entirely within the discretion of the WCJ.

Claimant's final contention on appeal is that the WCJ erred in concluding that Claimant's Reinstatement Petition filed against SWIF was time barred, because it was filed more than 500 weeks from when his wage benefits were first suspended following his 1989 injury and more than three years from when Claimant last received benefits for his 1989 injury.

Claimant's wage benefits were first suspended after his 1989 injury, when he returned to work on March 26, 1990. (WCJ 4/17/2007, F.F. ¶15.) Claimant last received wage loss benefits for his 1989 injury when he returned to work at no loss of earnings on May 22, 1995. (*Id.*) Under Section 306(b)(1) of the Act, compensation for partial disability is capped at 500 weeks. 77 P.S. §512(1) (partial disability compensation "shall be paid during the period of such partial disability....but not for more than five hundred weeks."). Section 413(a) of the Act sets out the general rule that a reinstatement petition must be filed within three years of the most recent payment of compensation. 77 P.S. § 772. However, for claimants who have had their benefits suspended, Section 413(a) provides that they may file a reinstatement petition at any time within 500 weeks from the date when the last payment of compensation was received. (*Id.*) A reinstatement petition filed after 500 weeks from the date when benefits for partial disability were suspended has elapsed is barred by the statute of limitations. This is the situation facing Claimant. The WCJ found that Claimant would have had to file his

Reinstatement Petition in February 2005 and that he did not do so until August 2005. (WCJ 4/17/2007, F.F. ¶15.) As a result, the WCJ concluded that Claimant's Reinstatement Petition filed against SWIF was time barred. (WCJ 4/17/2007, C.L. ¶2; WCJ 8/18/2010, C.L. ¶2, 3.) The Board agreed. (Board 11/08/2011.)

Claimant argues that the conclusion that his Reinstatement Petition is barred by the statute of limitations is in error, because the 500 week cap would only apply if he was seeking partial disability and cannot foreclose his claim for total disability based upon the deterioration of his physical condition caused by his 1989 injury. In support of his argument, Claimant relies solely on our Supreme Court's decision in *Stewart v. Workers' Compensation Appeal Board (Pa. Glass Sand/U.S. Silica and INA/Cigna WCC)*, 562 Pa. 401, 756 A.2d 655 (2000). In *Stewart*, our Supreme Court held that a claimant who had remained eligible to receive partial disability compensation for the full 500-week period and subsequently established total disability due to the deterioration of his condition, was not time-barred from claiming total disability by the expiration of the 500-week period, as the claimant would have been if seeking reinstatement of partial disability.

Here, however, Claimant's situation is not like that of the claimant in *Stewart*, because Claimant has not proved deterioration of his physical condition causally related to his 1989 work injury. Having failed to do so, Claimant's Reinstatement Petition must be treated as a claim for partial disability. See *Palaschak v. Workers' Compensation Appeal Board (U.S. Airways)*, 35 A.3d 1242, 1252 (Pa. Cmwlth. 2012) (*en banc*) ("...the holding in *Stewart* was that the plain language of Section 413(a) must be followed, and, steadfastly, we have done so. We decline to deviate from the legislature's express directive that to seek a

reinstatement, a claimant on suspension must file his petition within 500 weeks of the payment of compensation.”). Accordingly, Claimant’s Reinstatement Petition is time-barred.⁵

We discern no abuse of discretion in the WCJ’s admission of and reliance on the Compromise and Release agreement or the Disability Report Adult form completed by Claimant as a part of his social security proceedings for purposes of determining the credibility of Claimant’s testimony. In rejecting Dr. Keppler’s testimony, the WCJ did not capriciously disregard competent evidence. The WCJ’s August 18, 2010 opinion is supported by substantial evidence and, in accordance with Section 422(a) of the Act, a reasoned opinion. 77 P.S. § 834. Finally, the WCJ’s conclusion that, having failed to prove deterioration of his physical condition, Claimant’s Reinstatement Petition filed against SWIF was time-barred is free from error.

The November 8, 2011 order of the Board is affirmed.

JAMES GARDNER COLINS, Senior Judge

⁵ In his reply brief, Claimant argues that the statute of limitations should be tolled because (a) SWIF did not immediately furnish Claimant with a complete copy of his medical records upon request, *see Mauger and Co. v. Workers’ Compensation Appeal Board (Waltz)*, 598 A.2d 1035 (Pa. Cmwlth. 1991), and because (b) Employer or SWIF lulled Claimant into a false sense of security regarding the filing of his claim, *see Dudley v. Workers’ Compensation Appeal Board (Marple Tp.)*, 471 A.2d 169 (Pa. Cmwlth. 1984). Even if we were to conclude that Claimant’s arguments have not been waived, the assertions that *Mauger* and *Dudley* are applicable here are utterly lacking in factual support and barely rise to the level of bald allegations. Claimant’s contentions that the statute of limitations should be tolled are without merit.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ronald Tarr,	:
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Petitioner	:
	:
v.	: No. 2280 C.D. 2011
	:
Workers' Compensation Appeal	:
Board (McInnes Steel Company	:
State Workers' Insurance Fund and	:
Old Republic Insurance Company),	:
	:
Respondents	:

ORDER

AND NOW, this 23rd day of January, 2013, the November 8, 2011 order of the Workers' Compensation Appeal Board in the above-captioned matter is AFFIRMED.

JAMES GARDNER COLINS, Senior Judge