

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Grace Medallis, | : | |
| | : | |
| Petitioner | : | |
| | : | |
| v. | : | No. 228 C.D. 2007 |
| | : | SUBMITTED: June 1, 2007 |
| Workers' Compensation Appeal | : | |
| Board (City of Scranton), | : | |
| | : | |
| Respondent | : | |

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: August 27, 2008

Claimant Grace Medallis petitions for review of the order of the Workers' Compensation Appeal Board (Board) that affirmed the denial of her review petition seeking to address the description of her work injury. For the reasons that follow, we affirm.

In June of 2000, claimant sustained lumbar and cervical injuries during the course of her employment as a police officer with her employer, the City of Scranton. A Notice of Compensation Payable (NCP) was issued describing

claimant's injury as "lumbar cervical discogenic syndrome, cervical strain"¹ and indicating an average weekly wage of \$959.46 and a compensation rate of \$611.00.

In November of 2004, claimant filed a review petition seeking to expand the description of her injury. During the course of the litigation, it came to light that, subsequent to the NCP, the parties apparently stipulated to the general injury description of "neck and back."² The alleged stipulation, however, is not part of the record and the Workers' Compensation Judge (WCJ) concluded that claimant failed to prove that the work injury description *in the NCP* was incorrect."³ In light of these factors, we conclude that there was no error in treating the description of the injury as set forth in the NCP, "lumbar cervical discogenic syndrome, cervical strain," as controlling in the present case.⁴

In connection with the review petition,⁵ the WCJ accepted, in part, testimony from *both* parties' proffered medical experts. Claimant presented the

¹ Although the NCP is not part of the record, the WCJ recited the nature of the injury as set forth in the NCP on the record. Hearing of November 4, 2004, Notes of Testimony (N.T.) at 21; R.R. 105a. Given the fact that neither party disputed the WCJ's characterization, we will accept the same for purposes of judicial economy.

² Hearing of November 4, 2004, N.T. at 22-23, R.R. 106-07a; Hearing of May 13, 2004, N.T. at 5, R.R. 133a.

³ Contrary to our seeming largesse in the present case for considering documents *de hors* the record, *e.g.* the NCP, we consider it quite significant that the WCJ apparently did not have access to or precise knowledge of the contents of the alleged stipulation. The burden was on counsel to provide it as an exhibit.

⁴ Section 407 of the Workers' Compensation Act (Act), in pertinent part, provides that "[a]ll notices of compensation payable . . . shall be valid and binding unless modified or set aside as hereinafter provided." Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. § 731.

⁵ In March of 2004, employer filed a modification/suspension petition, therein alleging that work was generally available to claimant as of March 7, 2004. Rejecting Dr. Gentilezza's testimony that claimant was capable of returning to work in a sedentary or light-duty capacity on a full-time basis, the WCJ denied that petition. The Board affirmed that denial and employer did not appeal to this court from that denial.

testimony of Dr. Robert T. O’Leary, previously her treating physician and board-certified in physical medicine and rehabilitation. The WCJ found:

[I] will accept Dr. O’Leary’s testimony as being more credible, persuasive and convincing than[sic] that of his partner, Dr. Gentilezza, and will accept Dr. O’Leary’s diagnosis that the claimant suffers from cervical discogenic syndrome at C4-5 and C5-6, as well as lumbar spine involvement at L1-2 and L4-5 with an annular tear with lumbar radiculopathy. Dr. O’Leary’s testimony and opinion that these diagnoses were directly caused by claimant’s work injury is supported by diagnostic studies, as well as his extensive physical examination of the claimant.

WCJ’s Finding of Fact (F.F.) No. 15.⁶

Employer presented the testimony of Dr. Kenneth Gentilezza, also board-certified in physical medicine and rehabilitation and the physician who conducted two independent medical examinations. The WCJ accepted Dr. Gentilezza’s opinion that:

claimant had obtained a full recovery of the work injury involving her right index finger and middle finger, that her work injury consists of a lumbar discogenic syndrome involving L4-5 level, in addition to cervical myofascial pain and that the degenerative changes in the lumbar spine as well as degenerative changes from C1 to C5 were neither caused nor aggravated by her work injuries.

F.F. No. 16.⁷

⁶ Dr. O’Leary described an “annular tear” by saying, “If you can imagine a disc like a doughnut, the dough is torn and the jelly leaks out.” Hearing of February 9, 2005, N.T. at 15.

⁷ Dr. Gentilezza described “myofascial pain syndrome” as “a more severe case of a strain/sprain syndrome. The muscle gets more damaged than a usual sprain/strain.” Hearing of December 30, 2004, N.T. at p. 41.

The WCJ concluded that claimant failed to establish that the injury description set forth in the NCP was incorrect and, therefore, denied claimant's review petition. The Board affirmed that denial and claimant's petition for review to this court followed.

The issues on appeal as posited by claimant are 1) whether the WCJ ignored and/or capriciously disregarded substantial and competent medical evidence of record;⁸ and 2) whether the WCJ's decision constitutes a reasoned decision under Section 422(a) of the Act.⁹ Claimant argues that her appeal does not constitute an improper challenge to the WCJ's credibility determinations, but instead that the WCJ capriciously disregarded substantial and competent medical evidence from both parties' medical witnesses.

What is immediately obvious is that claimant has mischaracterized her arguments. Far from capriciously disregarding claimant's medical evidence, the WCJ accepted it in its entirety and fully explained his reasons for so doing. Indeed,

⁸ In *Pryor v. Workers' Comp. Appeal Bd. (Colin Serv. Sys.)*, 923 A.2d 1197, 1204-05 (Pa. Cmwlth. 2006), this court noted that

a review for capricious disregard of material competent evidence is an appropriate component of appellate consideration in every case in which the question is properly brought before the Court. *Leon E. Wintermyer, Inc. v. Workers' Comp. Appeal Bd. (Marlowe)*, 571 Pa. 189, 812 A.2d 478 (2002). Where the WCJ's findings reflect a deliberate disregard of competent evidence that logically could not have been avoided in reaching the decision, the findings represent a capricious disregard of competent evidence. *Higgins v. Workers' Comp. Appeal Bd. (City of Phila.)*, 854 A.2d 1002 (Pa. Cmwlth. 2004).

⁹ 77 P.S. § 834. A reasoned decision is one that "allows for adequate review by the Board without further elucidation and when it permits adequate review by the appellate courts under their applicable standards of review." *Higgins v. Workers' Comp. Appeal Bd. (City of Phila.)*, 854 A.2d 1002, 1006 (Pa. Cmwlth. 2004).

claimant does not in any way challenge these findings and fully endorses them, reminding us that, “In Worker’s Compensation proceedings it has been long recognized that the WCJ has the exclusive authority to make findings of fact and credibility determinations.” Claimant’s Brief at 24. The gist of her argument appears to be that, given the WCJ’s findings of fact, he erred as a matter of law in determining that she failed to establish that the description of her work injuries set forth in the NCP was materially incorrect. What claimant fails to appreciate is that the conclusion is not based on any rejection of her proof concerning the nature and extent of her injuries, but on her failure to show any defect or deficiency in the description contained in the NCP.

That description, “lumbar cervical discogenic syndrome, cervical strain,” defines a very broad spectrum of injury. *Stedman’s Medical Dictionary* defines “discogenic” as “denoting a disorder originating in or from an intervertebral disk,” and “syndrome” as “the aggregate of signs and symptoms associated with any morbid process, and constituting together the picture of the disease.” *Stedman’s Medical Dictionary* 443, 1522 (25th ed. 1990). Therefore, “Lumbar cervical discogenic syndrome” describes generically a disorder or disease of the lumbar and cervical intervertebral disks, and its resulting symptoms. Clearly, this definition encompasses not only the very specific pathologies and symptoms identified by the accepted medical testimony, but also a myriad of possible disk problems in the lumbar and cervical regions. Had the WCJ modified the injury description as claimant requested, he would have limited rather than expanded it.

At all events, the WCJ did not err in concluding that the injury accepted in the NCP included all the work-related injuries described in the

accepted medical testimony, and thus that claimant did not meet her burden of showing that the NCP was materially incorrect.

Accordingly, the order of the Board is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

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ORDER

AND NOW, this 27th day of August, 2008, the order of Workers' Compensation Appeal Board in the above captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge