

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Dickey,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 240 C.D. 2008
	:	
Workers' Compensation Appeal Board	:	Submitted: May 2, 2008
(Genesis Worldwide II, Inc. and Zurich	:	
Insurance Company),	:	
	:	
Respondents	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: August 13, 2008

John Dickey (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board) that affirmed a Workers' Compensation Judge's (WCJ) decision and order denying and dismissing the Claim Petition filed by Claimant. Claimant argues, before this Court, that the WCJ's decision is not supported by substantial evidence and that it is not a reasoned decision.

Claimant began working for Employer in April of 2005 as an assembly technician. He began feeling discomfort in his left hand in late summer or early fall

of 2005, and notified Employer of the condition on December 1, 2005. He received left carpal tunnel surgery on June 22, 2006, and returned to work in full capacity on September 5, 2006.

Claimant filed a Claim Petition on September 9, 2006, alleging that he developed left Carpal Tunnel Syndrome (CTS) while in the course and scope of his employment with Genesis Worldwide II, Inc. (Employer). Employer denied the allegations in the Claim Petition. The WCJ subsequently conducted hearings on the matter.

In support of his Claim Petition, Claimant testified on his own behalf before the WCJ. Claimant described his job duties as involving all hand work for the fitting of machine parts. He stated that while his left hand held a part in place, his right hand engaged in activities including, but not limited to, filing, fitting, sanding, and grinding. Various assembly activities, however, did involve the use of his left hand. Claimant further testified that he had been diagnosed with bilateral CTS in 1995.

Claimant also submitted the reports of Dean G. Sotereanos, M.D. In his first report, Dr. Sotereanos stated that he believed Claimant's work activities caused his left CTS. In his second report, Dr. Sotereanos indicated that he found evidence of repetitive hand use and the use of vibratory tools; therefore, he opined that Claimant's work activities aggravated his indolent left CTS.

In opposition to the Claim Petition, Employer submitted a demonstrative videotape into evidence. The videotape contained footage of various activities that

were a part of Claimant's job duties while working for Employer.¹ With the videotape, Employer intended to show that Claimant's work activities did not involve repetitive motions.

Employer also presented the testimony of Ken Goehring, the plant manager for Employer. Mr. Goehring was involved in the creation of the demonstrative videotape. He described the footage as a snapshot of Claimant's work activities and noted that it consisted of the activities that were on the floor the day it was filmed. He noted that not all of Claimant's job duties were presented on the videotape. Mr. Goehring also stated that Claimant's work activities were not repetitive as in a production line, and that he used his hands all day.

Employer also submitted the report of Steven E. Kann, M.D. In his report, Dr. Kann stated that his opinions were based on his own independent medical evaluation, the history of the Claimant, and the medical records available at the time. Claimant informed Dr. Kann of his bilateral CTS diagnosis from 1995 and that he had an EMG study consistent with that diagnosis. Dr. Kann did not believe that Claimant's work activities involved repetitive motions that would cause or aggravate left CTS. He also opined that Claimant had left CTS symptoms by the time he initiated employment with Employer, and that such a condition could not develop within the time frame of Claimant's employment there.

¹ In response to the demonstrative videotape, Claimant submitted a written statement, which was admitted without objection. In his statement, Claimant provided a description of the job duties and physical activities depicted in the videotape. Claimant also described additional physical activities that he was required to perform to complete those job duties, but which were not depicted in the videotape. Additionally, Claimant testified that the videotape did not depict the full extent of his job duties. (WCJ Hr'g Tr. at 7-10, April 9, 2007.)

After considering the evidence presented, the WCJ issued a decision and order denying and dismissing Claimant's Claim Petition. The WCJ found the testimony of Claimant and Mr. Goehring credible with regard to Claimant's work activities. (WCJ Decision, Findings of Fact (FOF) ¶ 9.) However, the WCJ found credible Dr. Kann's opinion that "claimant [did] not engage in repetitive motion activities at work which would cause or aggravate [CTS] in his left upper extremity." (FOF ¶ 9.) The WCJ did not find credible Dr. Sotereanos' opinion that Claimant's work activities aggravated his left CTS. (FOF ¶ 9.) Based on his credibility findings, the WCJ found that Claimant's left CTS was not a result of his work activities and that Claimant failed to meet his burden of proving that he was injured in the course and scope of his employment. Claimant appealed the WCJ's decision to the Board, which affirmed. Claimant now petitions this Court for review.²

Claimant presents two arguments on appeal. In his first argument, Claimant contends that the WCJ lacked substantial evidence to support his decision. This argument contains two sub-arguments. First, Claimant asserts that Dr. Kann's opinion could not be accepted since it is contradictory to other accepted testimony. Second, Claimant argues that Dr. Kann's interpretation of the demonstrative videotape could not be accepted because it contradicts the credible testimony of

² In workers' compensation cases, "this Court must affirm the adjudication below unless we find that an error of law was committed, that constitutional rights were violated, that a practice or procedure of a Commonwealth agency was not followed or that any necessary finding of fact is not supported by substantial evidence of record." Mitchell v. Workers' Compensation Appeal Board (Steve's Prince of Steaks), 572 Pa. 380, 385, 815 A.2d 620, 624 (2003).

Claimant and Mr. Goehring regarding the videotape. Claimant, in his second argument, contends that the WCJ failed to provide a reasoned decision.³

Within his first argument, Claimant contends that the testimony given by Claimant and Mr. Goehring, which was accepted as credible by the WCJ, supports a finding that Claimant's job duties included repetitive motions that may cause or aggravate left CTS, while Dr. Kann's opinion, which was also accepted as credible by the WCJ, supports a contrary finding. Claimant further asserts that the WCJ should have found Dr. Sotereanos' opinion credible, as it was more consistent with the credible testimony of Claimant and Mr. Goehring.

“[T]he WCJ is the ultimate finder of fact in worker's compensation proceedings. Questions of credibility and weight of the evidence are within the province of the WCJ who is free to accept or reject the testimony of any witness, in whole or in part.” Jenkins v. Workmen's Compensation Appeal Board (Woodville State Hosp.), 677 A.2d 1288, 1292 (Pa. Cmwlth. 1996) (citations omitted). “In a claim petition proceeding, a claimant bears the burden of establishing a work-related injury and its causal effect on wage earning capacity.” Gibson v. Workers' Compensation Appeal Board (Armco Stainless & Alloy Prods.), 580 Pa. 470, 479, 861 A.2d 938, 943 (2004).

Upon examination of the record, we find no conflict in the testimony and Dr. Kann's opinion. The WCJ found Claimant's testimony credible as to the nature of the work that Claimant performed. Dr. Kann does not dispute these descriptions in

³ This argument overlaps with and relies heavily on the first and main argument.

his report; however, Dr. Kann opined that Claimant's work activities were not of a repetitive nature such as would cause or aggravate CTS. (Report of Dr. Kann at 3, January 11, 2007.) Dr. Kann also asserted that Claimant's "work exposures even on a prolonged basis would not cause or contribute to [CTS] and certainly would not cause or contribute to [CTS] within one to three months of initiation of employment." (Report of Dr. Kann at 3.) While Dr. Sotereanos offered a different medical conclusion as to whether the work could cause or aggravate CTS, it was the WCJ's prerogative as fact finder to choose one expert's testimony over another. "A difference of opinion and a WCJ's acceptance of one medical opinion over another is not [a] basis for reversible error." Jenkins, 677 A.2d at 1293.

Claimant also contends in this argument that Dr. Kann erred by relying on a demonstrative video in rendering his opinion. Claimant and Mr. Goehring testified that not all of Claimant's job duties are shown on the video. (WCJ Hr'g Tr. at 11, February 12, 2007; WCJ Hr'g Tr. at 7-9, April 9, 2007.) Since the video does not fully depict Claimant's responsibilities, Claimant contends that Dr. Kann could not properly rely on it to form his medical opinion. We disagree.

Claimant is incorrect in his assertion that Dr. Kann relied solely on the video to form his opinion. Although Dr. Kann used this video to aid in his evaluation, he also considered Claimant's history, a review of his medical records, and his own physical evaluation of Claimant. (Report of Dr. Kann at 1-3.) Further, the WCJ considered Claimant's own testimony and written statement in his finding that Claimant did not engage in repetitive motion activities which could cause or exacerbate left CTS. (FOF ¶ 9.)

Claimant, in his next argument, argues that the WCJ did not meet the reasoned decision standard as required by Section 422(a) of the Pennsylvania Workers' Compensation Act (Act).⁴ Claimant argues that the WCJ made his own medical interpretations as to what types of activities may cause left CTS. Claimant also argues that the WCJ did not provide a reasoned decision because he did not explain contradictions between the testimony of Claimant and Mr. Goehring, which was accepted as credible, and the opinion of Dr. Kann, which was also accepted as credible.

Section 422(a) of the Act provides, in relevant 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.

77 P.S. § 834. Our Supreme Court has held that Section 422(a) requires that when testimony or evidence is presented in writing, as it was in the present matter, the WCJ must articulate the reasons for crediting one witness over the other witness. See Daniels v. Workers' Compensation Appeal Board (Tristate Transport), 574 Pa. 61,

⁴ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. § 834.

77-79, 828 A.2d 1043, 1053-54 (2003). We have interpreted this to require that “the WCJ must clearly state the reasons for credibility determinations on deposition testimony so that the reviewing body may determine whether those reasons are set forth in the record.” O’Donnell v. Workers’ Compensation Appeal Board (United Parcel Service), 831 A.2d 784, 790 (Pa. Cmwlth. 2003).

Claimant argues that the WCJ’s decision was “based, in substantial part, upon the [WCJ’s] own medical interpretations as to what types of activities are “repetitive” and “repetitive enough” to cause [CTS].” (Claimant’s Br. at 26.) We disagree. Dr. Kann stated in his report, “with[] a reasonable degree of medical certainty,” that he believed Claimant did not engage in repetitive activities that would aggravate or cause CTS. (Report of Dr. Kann at 3.) The WCJ was faced with conflicting expert opinions, and he only determined which medical expert he found more credible in light of the evidence presented. The WCJ acted entirely within his province as fact finder in accepting the medical opinion of one expert over another. See Jenkins, 677 A.2d at 1292-93.

Claimant also argues that because the WCJ failed to explain contradictions between the testimony of Claimant and Mr. Goehring, which was accepted as credible, and the expert opinion of Dr. Kann, which was also accepted as credible, he failed to provide a reasoned decision. Because, as stated above, we find that no contradictions exist between Claimant and Mr. Goehring’s credible testimony and the credible opinion of Dr. Kann, Claimant’s argument fails.

Accordingly, for the reasons stated above, we affirm the order of the Board.

RENÉE COHN JUBELIRER, Judge

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	:	
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ORDER

NOW, August 13, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter is hereby **affirmed**.

RENÉE COHN JUBELIRER, Judge