

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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|----------------------------|---|---------------------------|
| Lake A. Laughlin,          | : |                           |
|                            | : |                           |
| Petitioner                 | : |                           |
|                            | : |                           |
| v.                         | : |                           |
|                            | : |                           |
| Workers' Compensation      | : |                           |
| Appeal Board (Comm of PA - | : |                           |
| SCI – Chester),            | : | No. 2493 C.D. 2011        |
|                            | : |                           |
| Respondent                 | : | Submitted: August 3, 2012 |

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE COVEY

FILED: August 23, 2012

Lake A. Laughlin (Claimant), pro se, petitions this Court for review of the Workers' Compensation Appeal Board's (Board) October 26, 2011 order affirming the Workers' Compensation Judge's (WCJ) decision denying Claimant's claim petition. Essentially, there are four issues for this Court's review: (1) whether the WCJ and the Board erred by failing to review and consider video recordings of Claimant's accident; (2) whether the WCJ and the Board erred when witnesses supporting Claimant's claim were neither called to testify nor properly questioned; (3) whether substantial evidence supported the WCJ's conclusion that Claimant was not disabled; and (4) whether Claimant met his burden of proof in establishing his rights to benefits. We affirm.

Claimant was employed as a prison guard by the Commonwealth of Pennsylvania/SCI Chester (Employer) since 2006. On July 2, 2008, Claimant filed

for benefits under the Workers' Compensation Act<sup>1</sup> (Act) arising from an incident he claims occurred while working for Employer in May 2008.

A hearing was held before a WCJ on May 1, 2009. At the hearing, and in a deposition taken October 21, 2008, Claimant testified that he was injured on May 25, 2008 when he fell down a flight of approximately twenty steps in the prison on his way to a meeting. He did not recall how he fell, and was not sure if he lost consciousness. He testified that after the fall he had pain on his right side involving his right knee and right arm. He was taken to the hospital, underwent x-rays, was prescribed Percocet and was given a cane. He later developed pain in his right pinky and ring fingers, and in his mid and upper back. Claimant has not worked since the accident. Claimant asserts that he requested surveillance tapes from Employer relative to his fall.

Claimant treated with Employer's panel physician, Lawrence Axelrod, M.D., until June 2008, but was not satisfied with the treatment. At his counsel's recommendation, Claimant began treating with Stephen F. Ficchi, D.O. (Dr. Ficchi) in July 2008. Dr. Ficchi testified, by deposition, that he diagnosed Claimant with cervical thoracic strain and sprain with dysfunction, acute myofascial pain syndrome, herniated nucleus pulposus two levels, cervical spine two levels, thoracic spine with C5 radiculopathy on the right, disc bulge multiple level cervical thoracic spine, right knee strain and contusion, cerebral concussion, post-concussion syndrome, post-traumatic headaches and bilateral trapezius myofascitis. Dr. Ficchi attributed his diagnosis directly to the May 25, 2008 fall, and declared Claimant to be permanently disabled from his pre-injury job, and from any other gainful employment.

Employer presented the deposition testimony of Ira C. Sachs, D.O. (Dr. Sachs), who performed an independent medical evaluation of Claimant at Employer's

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

request on August 5, 2008. After reviewing Claimant's medical records and examining him, Dr. Sachs concluded that there was no objective evidence to support an injury to Claimant's cervical spine or a thoracolumbar spine injury. Further, Dr. Sachs found no objective evidence to support an injury to Claimant's right knee. He determined that both Claimant's right knee and elbow had full range of motion. He diagnosed Claimant with resolved right knee, right elbow contusions, resolved cervical, thoracolumbar strain and sprain and contusions. Dr. Sachs concluded that Claimant was not disabled, and could return to his pre-injury job.

On October 29, 2009, the WCJ issued her decision finding Claimant's testimony not credible that he had sustained a disabling injury and that he did not recall how he fell. Further, the WCJ found the opinion of Dr. Sachs to be more credible than that of Dr. Ficchi. Accordingly, the WCJ denied Claimant benefits. Claimant appealed to the Board. On October 14, 2011, the Board issued its opinion and order affirming the WCJ's decision. Because the first page of the Board's October 14, 2011 opinion was inadvertently omitted, the Board issued a corrected opinion on October 26, 2011. Claimant timely appealed to this Court.<sup>2</sup>

Claimant first argues that the WCJ and the Board improperly failed to consider video surveillance recordings of the incident. Claimant specifically asserts that the WCJ and the Board erred by "not gathering all substantial evidence such as video recordings from [Employer] from the day when Claimant's accident took place,

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<sup>2</sup> Employer asserts that Claimant's appeal should be quashed because it was late-filed on November 21, 2011. It is evident from the record, however, that the Board's corrected October 26, 2011 opinion gave Claimant 30 days from then to appeal. Since Claimant timely appealed from the October 26, 2011 order on November 21, 2011, we decline to quash this appeal.

"This Court's scope and standard of review of an order of the Board is limited to determining whether the necessary findings of fact are supported by substantial evidence, whether Board procedures were violated, whether constitutional rights were violated or an error of law was committed." *World Kitchen, Inc. v. Workers' Comp. Appeal Bd. (Rideout)*, 981 A.2d 342, 346 n.5 (Pa. Cmwlth. 2009).

to show the occurrence of the fall and damage caused by said fall, as requested by Claimant.” Claimant’s Br. at 6. We disagree.

Claimant was represented by counsel at the hearing before the WCJ. “In a claim petition proceeding, the claimant bears the burden of establishing all elements necessary to support an award of benefits. The claimant must prove that he sustained a work injury that disabled him.” *Cytemp Specialty Steel v. Workers’ Comp. Appeal Bd. (Crisman)*, 39 A.3d 1028, 1033 n.8 (Pa. Cmwlth. 2012) (citation omitted). Thus, it was Claimant’s burden to obtain and present surveillance videotapes, if Claimant believed that the tapes were necessary to establish the existence of his disability. Although Claimant’s counsel represented to the WCJ that requests were made to Employer for the recordings, Employer’s counsel denied that any such demand had been received. Moreover, Claimant did not request that subpoenas be issued to require production of the tapes, nor has Claimant argued that the surveillance tapes could not have been subpoenaed. Because video surveillance recordings of the incident were not produced by Claimant, the WCJ and the Board did not err by failing to review and consider them.

Claimant next argues that the Board and the WCJ erred by “not properly questioning Claimant’s wife or other physicians, and solely relying on one physician who never conducted a full physical, or ran any tests.” Claimant’s Br. at 6. We disagree. Claimant was represented by counsel at Dr. Sachs’ deposition, in addition to being represented by counsel at the hearing. Because Claimant has the burden of proof, if Claimant believed it necessary to present the testimony of his wife and/or other physicians, it was Claimant’s responsibility to offer such evidence. Further, if Claimant believed that Dr. Sachs’ methods and conclusions were suspect, Claimant was free to demonstrate that through cross-examination. It is not the WCJ’s burden to prove Claimant’s case. Therefore, the WCJ did not err by failing to call witnesses to support Claimant’s claim.

Claimant next argues that the WCJ's conclusion that Claimant was not disabled was not supported by substantial evidence. Claimant specifically contends that the Board and the WCJ erred by relying upon Dr. Sachs' testimony and report because Dr. Sachs incorrectly referred to Claimant as an African-American male, when he is a caucasian male, thus, deeming Dr. Sachs' opinion unreliable. We disagree. It is undisputed that Dr. Sachs identified Claimant as an African-American. However, upon review of Dr. Sachs' detailed report and testimony describing his understanding of the circumstances of the accident, Claimant's medical complaints and his examination of Claimant's medical records, it is clear that the error regarding Claimant's race did not render his testimony or report unreliable. Thus, the error regarding race did not require the WCJ to disregard Dr. Sachs' entire testimony.

It is well established that "[t]he WCJ is the ultimate factfinder and has exclusive province over questions of credibility and evidentiary weight." *Univ. of Pa. v. Workers' Comp. Appeal Bd. (Hicks)*, 16 A.3d 1225, 1229 n.8 (Pa. Cmwlth. 2011). "The WCJ, therefore, is free to accept or reject, in whole or in part, the testimony of any witness, including medical witnesses." *Griffiths v. Workers' Comp. Appeal Bd. (Red Lobster)*, 760 A.2d 72, 76 (Pa. Cmwlth. 2000). In addition, "Section 422(a) [of the Act, 77 P.S. § 834,] does not permit a party to challenge or second-guess the WCJ's reasons for credibility determinations. Unless made arbitrarily or capriciously, a WCJ's credibility determinations will be upheld on appeal." *Dorsey v. Workers' Comp. Appeal Bd. (Crossing Constr. Co.)*, 893 A.2d 191, 195 (Pa. Cmwlth. 2006) (citation omitted). Although the error regarding Claimant's race may have served to raise questions regarding the reliability of Dr. Sachs' observations, the WCJ was entitled to evaluate Dr. Sachs' credibility and to determine the weight to give his testimony. Thus, the Board and the WCJ did not err by relying upon Dr. Sachs' testimony and report.

Lastly, Claimant asserts various general arguments that Claimant met his burden of establishing his right to benefits. Claimant essentially argues that the WCJ should have believed Claimant's evidence rather than Employer's, and that Claimant's evidence supports the award of benefits. We disagree.

This Court has stated:

it is irrelevant whether the record contains evidence to support findings other than those made by the WCJ; the critical inquiry is whether there is evidence to support the findings actually made. We review the entire record to determine if it contains evidence a reasonable mind might find sufficient to support the WCJ's findings. If the record contains such evidence, the findings must be upheld even though the record contains conflicting evidence.

*Lahr Mech. v. Workers' Comp. Appeal Bd. (Floyd)*, 933 A.2d 1095, 1101 (Pa. Cmwlth. 2007) (citations and quotation marks omitted). Moreover, this Court has held:

Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion. In performing a substantial evidence analysis, this court must view the evidence in a light most favorable to the party who prevailed before the factfinder. Moreover, we are to draw all reasonable inferences which are deducible from the evidence in support of the factfinder's decision in favor of that prevailing party.

*3D Trucking Co., Inc., v. Workers' Comp. Appeal Bd. (Fine & Anthony Holdings Int'l)*, 921 A.2d 1281, 1288 (Pa. Cmwlth. 2007) (citations and quotation marks omitted). Clearly, Dr. Sachs' testimony and report, and all reasonable inferences deduced therefrom, support the conclusion that Claimant was not disabled. Thus, substantial evidence supports the WCJ's findings. Accordingly, the Board did not err when it affirmed the WCJ's order.

For the aforementioned reasons, the Board's order is affirmed.

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ANNE E. COVEY, Judge

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ORDER

AND NOW, this 23<sup>rd</sup> day of August, 2012, the Workers' Compensation Appeal Board's October 26, 2011 order is affirmed.

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ANNE E. COVEY, Judge