

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher Ortiz,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation Appeal	:	
Board (Consolidated Container),	:	No. 2735 C.D. 2010
Respondent	:	Submitted: June 17, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: July 18, 2011

Christopher Ortiz (Claimant) petitions this Court for review of the November 23, 2010 order of the Workers' Compensation Appeal Board (Board) affirming the decision of a Workers' Compensation Judge (WCJ) and denying Claimant's claim and penalty petitions. Essentially, Claimant presents one issue for this Court's review: whether the Board erred by not remanding the case to the WCJ. For the reasons that follow, we affirm the Board's order.

Claimant sustained a right hand laceration on November 12, 2008, while working for Consolidated Container Company (Employer). On December 4, 2008, Claimant filed a claim petition alleging he sustained a work-related injury. On December 14, 2008, Claimant filed a penalty petition alleging that Employer failed to issue the proper documents either accepting or denying the injury. On December 16, 2008, Employer issued a Notice of Compensation Payable for medical treatment only.

On December 11, 2009, the WCJ denied and dismissed the claim and penalty petitions, and terminated Claimant's benefits as of March 30, 2009. Claimant appealed to the Board. On November 23, 2010, the Board affirmed the WCJ's order. Claimant appealed to this Court.<sup>1</sup>

Claimant argues that the Board erred by not granting his request to remand this case to the WCJ to clarify inconsistencies, to make new findings, and to issue a reasoned decision. We disagree.

Initially, we recognize that a remand is required when a WCJ fails to issue a reasoned decision. *Daniels v. Workers' Comp. Appeal Bd. (Tristate Transp.)*, 574 Pa. 61, 828 A.2d 1043 (2003). "[A] decision is 'reasoned' . . . if it allows for adequate review by the [Board] without further elucidation and if it allows for adequate review by the appellate courts under applicable review standards. A reasoned decision is no more, and no less." *Id.*, 574 Pa. at 76, 828 A.2d at 1052. "[A]bsent the circumstance where a credibility assessment may be said to have been tied to the inherently subjective circumstance of witness demeanor, some articulation of the actual objective basis for the credibility determination must be offered for the decision to be a 'reasoned' one which facilitates effective appellate review." *Id.*, 574 Pa. at 78, 828 A.2d at 1053.

Here, the WCJ specifically stated the basis for his credibility determinations. Regarding the reasons why he rejected Claimant's testimony concerning his limitations and inability to work, the WCJ specifically stated:

The court has accepted the more credible and competent testimony of Dr. Weiss. Dr. Weiss credibly explained that Claimant's inability to grip to make a fist has no anatomical

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<sup>1</sup> This Court's review is limited to determining whether an error of law was committed, whether the findings of fact are supported by substantial evidence and whether there was a violation of constitutional rights. *Sysco Food Servs. of Phila. v. Workers' Comp. Appeal Bd. (Sebastiano)*, 940 A.2d 1270 (Pa. Cmwlth. 2008).

explanation. Dr. Weiss opined that Claimant's physical limitations cannot be explained in light of the mechanism of his work injury, his physical findings and the medical records detailing Claimant's condition and treatment after the work injury.

Reproduced Record (R.R.) at 57a-58a. Regarding the reasons why he rejected the testimony of Claimant's expert witness, Lance O. Yarus, D.O. (Dr. Yarus), the WCJ specifically stated:

Dr. Yarus reviewed no medical records in this case. Dr. Yarus had no information about the nature of Claimant's lacerations and the observations made by the emergency room personnel at Lehigh Valley Hospital on November 12, 2008. As explained by Dr. Weiss, the information contained in Claimant's medical records from Lehigh Valley Hospital was significant in that the emergency room physicians failed to observe or clinically diagnose a tendon or nerve injury despite their ability to visualize the open lacerations. Dr. Yarus did not address the significant physical findings detailed in the Lehigh Valley Hospital records from November 12, 2008. Moreover, he did not explain the basis for his diagnosis and opinions with regard to the work injury in light of the information contained in these records. Dr. Yarus's two office notes contain inconsistencies which undermine[] his credibility. He noted on both occasions that Claimant had a surgical procedure on November 12, 2008, which Claimant admittedly did not have. His Functional Capacity Evaluation indicated that Claimant was not able to use his right upper extremity, which was inconsistent with Claimant's representation to Dr. Yarus that he had no problem performing housework. Furthermore, Dr. Yarus's notes revealed that Claimant has no problem with house work but he has problems with activities of daily living. Dr. Yarus did not explain why Claimant has no problems with housework yet he has problems with activities of daily living. Dr. Yarus failed to adequately explain the bases for his opinions. He failed to cite the clinical diagnostic tests that he performed during his examinations and how the results of these tests substantiate his opinions. He failed to explain how the mechanism of the work injury caused a tendon injury, tenosynovitis,

sprain and nerve injury. He failed to describe his positive objective findings that support his opinion of a continuing disabling work related injury. Instead, Dr. Yarus simply made general conclusory statements.

R.R. at 58a.

Regarding the reasons why he found the testimony of Employer's witness, Lawrence E. Weiss, M.D. (Dr. Weiss), credible and persuasive, the WCJ specifically stated:

Dr. Weiss had the opportunity to fully examine all of the medical records, including all records of Claimant's condition and treatment following the initial work injury. Dr. Weiss's opinion of full recovery is fully supported by the evidence of record, including the information contained in Claimant's medical records and his physical findings following an exhaustive battery of clinical diagnostic testing. Dr. Weiss is an orthopedic surgeon with a Certificate of Added Qualification in Hand Surgery and Division Chief of Hand Surgery at Lehigh Valley Hospital. Dr. Weiss provided a detailed analysis of his physical findings and clinical test results explaining the significance of each finding. Before rendering an opinion that Claimant's subjective complaints have no substantiating objective basis, Dr. Weiss was extraordinarily careful to rule out all potential sources of discomfort. His opinion on full recovery is also accepted as fact, given the thorough exam and his understanding of [C]laimant's condition.

R.R. at 58a-59a. Clearly, based on the above, the WCJ's decision allowed for adequate review by the Board without further elucidation and allows for adequate review by this Court under applicable review standards. Thus, the WCJ's decision is reasoned and remand was not warranted.

Further, Dr. Weiss testified that as of March 30, 2009, Claimant had fully recovered from his work-related injuries. Based on this testimony, there is substantial evidence to support the WCJ's denial of Claimant's claim and penalty petitions. *See Coyne v. Workers' Comp. Appeal Bd. (Villanova Univ.)*, 942 A.2d 939

(Pa. Cmwlth. 2008). “If supported by substantial evidence, a WCJ’s findings are conclusive on appeal, despite the existence of contrary evidence.” *Watson v. Workers’ Comp. Appeal Bd. (Special People in Northeast)*, 949 A.2d 949, 953 (Pa. Cmwlth. 2008). Accordingly, the Board did not err in denying Claimant’s request for a remand. The order of the Board is therefore, affirmed.

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JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 18<sup>th</sup> day of July, 2011, the November 23, 2010 order of the Workers' Compensation Appeal Board is affirmed.

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JOHNNY J. BUTLER, Judge