

Claimant testified on his own behalf through an interpreter by deposition on January 16, 2006, and at a hearing on October 3, 2006. Claimant explained that as he was carrying something out of the refrigerator on August 8, 2005, he slipped and fell backwards, hitting his head on the metal door frame. Claimant was knocked unconscious and taken to the hospital. Claimant testified that he suffered a “major injury” to his head as well as minor injuries to his neck, low back and right wrist. Reproduced Record at 41a (R.R. ____).

In his January 2006 deposition, Claimant stated that he never returned to the restaurant because of his drowsiness, vomiting and blurry vision. At the hearing in October 2006, Claimant testified that he still could not work because he has “no strength” and has a numb right leg and right hand, dizziness, headaches and a declining memory. R.R. 304a. Claimant stated that he cannot remember many of the recipes he previously used, which makes doing the job impossible, and he has episodes where he does not recognize people and does not know where he is. Claimant acknowledged that he never told his boss he could not continue working and never gave anyone from Employer a doctor’s note saying he could not work because of a work-related injury. No one at the hospital told Claimant he could not return to work, and Claimant did not begin seeing a doctor on a regular basis until January 2006.

In support of his petition, Claimant presented the testimony of Frederick Lieberman, M.D., a board-certified orthopedic surgeon who began treating Claimant on January 20, 2006. Based on several physical examinations, Claimant’s history, a review of the medical records and a review of numerous diagnostic and radiographic studies, Dr. Lieberman diagnosed Claimant with (1) a concussion with loss of consciousness; (2) post-concussion syndrome with

decreased concentration, memory problems, visual problems and headaches; (3) herniated lumbar discs at L4-5 and L5-S1; (4) a right L5 radiculopathy and bilateral S1 radiculopathy; (5) a right suprascapular nerve neuropraxia, bilateral dorsal scapular neuropraxia and bilateral long thoracic nerve neuropraxia; (6) right-sided cervical radiculopathy at C6-7 and C8-T1; and (7) left shoulder impingement. Dr. Lieberman opined that all of the injuries resulted from the work incident on August 8, 2005, and that Claimant was disabled from performing any job, including his pre-injury job. On cross examination, Dr. Lieberman was asked whether Claimant's work restrictions are based on his memory loss, to which Dr. Lieberman replied "[t]hey are based on his orthopaedic findings." R.R. 164a.¹

Employer presented the testimony of I. Howard Levin, M.D., a board-certified neurologist who performed an independent medical examination of Claimant on March 23, 2006. Dr. Levin noted that Claimant was taken to Abington Memorial Hospital after he fell, and was released with a diagnosis of minor head trauma. Based on a physical examination, Claimant's history and a review of the medical records and diagnostic tests, Dr. Levin opined that Claimant's work-related fall resulted in a mild concussion that was not disabling. Dr. Levin did not believe Claimant sustained any other significant traumas that would have caused the symptoms and problems Claimant later reported.

Employer presented testimony from Warren Kuo, Employer's co-owner, who hired Claimant four years earlier because of his impressive credentials working as a dim sum chef in Beijing, China. At the time, Claimant told Kuo that he had a heart problem and hypertension, and Kuo knew that Claimant also had a

¹ Orthopedics deals with "form and function of the musculoskeletal system, extremities, spine, and associated structures." *STEDMAN'S MEDICAL DICTIONARY* at 1277 (27th ed. 2000).

stomach problem. Claimant was never required to perform physically demanding work because Kuo provided Claimant with an assistant for that purpose. On the assistant's day off, everyone in the kitchen helped Claimant. Claimant was also permitted to nap during his work shift. Kuo explained that Claimant was always frail and that he was treated "with kid gloves" because his value to Employer was in his cooking expertise, not in his physical strength. R.R. 331a, 348a. Kuo picked up Claimant at the hospital on the day of the incident, and Claimant reported that his head hurt. Kuo told Claimant to rest for a couple of days. Two days later, Kuo found out that Claimant had left town without saying anything, and he did not return.²

Employer also presented testimony from several witnesses: Dongwen Zhan, Employer's manager; Quangu Qian, assistant manager; and Hoa Vuong, a chef. These witnesses confirmed that Claimant had an assistant; was not required to do any heavy work; sometimes napped during the workday; and kept medication at work. In addition, Dongwen Zhan explained that Claimant was pale, appeared tired, and had health problems; otherwise he would not have needed an assistant. The dim sum chef who replaced Claimant performs the job by himself without an assistant.

The WCJ issued a decision and order granting Claimant's claim petition. The WCJ accepted as credible the testimony of Dongwen Zhan, Quangu Qian, Hoa Vuong and Warren Kuo.³ The WCJ found both Claimant and Dr.

² Claimant lived in an apartment at the restaurant during the week but actually resided in New York.

³ Claimant claimed that his job with Employer required him to do heavy lifting and that his assistant was not with him for most of the day; however, the WCJ instead accepted the testimony of Employer's witnesses. The WCJ did reject Kuo's testimony regarding a job Claimant allegedly took with another restaurant after the injury.

Lieberman credible in part, to the extent that their testimony supported a finding that Claimant's work incident resulted in a concussion, post-concussion syndrome and a cervical radiculopathy at C6-7.⁴ The WCJ also accepted Dr. Levin's testimony in part, to the extent it supported a finding that Claimant's work injury did not include any of the other conditions diagnosed by Dr. Lieberman. The WCJ found that as a result of his work injury, Claimant has been disabled from performing his pre-injury job since August 9, 2005.

Employer appealed. The Board affirmed the WCJ's determination that Claimant sustained a work-related injury. However, the Board reversed the award of disability benefits and suspended benefits as of August 8, 2005, concluding that the finding that the adjudicated work injury resulted in disability is not supported by substantial, competent evidence. Claimant now petitions for this Court's review.⁵

On appeal, Claimant presents essentially one issue for our consideration, namely, whether the Board erred in reversing the WCJ's award of

⁴ The WCJ has complete authority over questions of credibility and evidentiary weight. *Davis v. Workers' Compensation Appeal Board (City of Philadelphia)*, 753 A.2d 905, 909 (Pa. Cmwlth. 2000). The WCJ is free to accept, in whole or in part, the testimony of any witness, including medical witnesses. *Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck)*, 664 A.2d 703, 706 (Pa. Cmwlth. 1995).

⁵ 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. *City of Philadelphia v. Workers' Compensation Appeal Board (Brown)*, 830 A.2d 649, 653 n.2 (Pa. Cmwlth. 2003). The WCJ is the ultimate finder of fact and his findings may not be disturbed unless they are not supported by substantial, competent evidence. *Westinghouse Electric Corp. v. Workers' Compensation Appeal Board (Weaver)*, 823 A.2d 209, 215 (Pa. Cmwlth. 2003).

total disability benefits.⁶ Claimant argues that the Board erred in determining that he failed to establish his work-related disability with substantial, competent evidence. Claimant also argues that the Board failed to consider Dr. Lieberman's testimony as a whole and erred in finding that Dr. Lieberman was not qualified to testify about post-concussion syndrome. Claimant further argues that the Board impermissibly made its own credibility determination by finding that Claimant's complaints did not match his work-related injury.

Employer counters that the Board did not err in reversing the award of disability benefits. It argues that the WCJ made a leap from the finding of a work injury to the finding that Claimant was disabled by that injury, and this leap was not supported by medical evidence.

In a claim petition, the claimant bears the burden of establishing all the necessary elements to support an award. *Inglis House v. Workmen's Compensation Appeal Board (Reedy)*, 535 Pa. 135, 141, 634 A.2d 592, 595 (1993). The claimant must prove that he sustained a work-related injury, and that the injury resulted in his disability. *Fotta v. Workmen's Compensation Appeal Board (U.S. Steel/USX Corp. Maple Creek Mine)*, 534 Pa. 191, 194, 626 A.2d 1144, 1146 (1993). Unless the causal connection between an injury and disability is obvious, unequivocal medical evidence is needed to establish that connection. *Mensah v. Workers' Compensation Appeal Board (Norrell Temp Agency)*, 716 A.2d 707, 709 (Pa. Cmwlth. 1998).

⁶ Although Claimant actually lists five issues, we have combined them because they all deal with the Board's reversal of disability benefits and, additionally, two of the enumerated issues are duplicative of each other.

We agree with the Board that Claimant's evidence did not prove he was disabled by his adjudicated work-related injury. Dr. Lieberman diagnosed Claimant with an extensive list of conditions, all of which he attributed to the work incident, and he testified that Claimant was disabled as a result of those conditions. However, the WCJ rejected the vast majority of those conditions as not work-related and found that only three of those conditions, specifically concussion, post-concussion syndrome and a cervical radiculopathy at C6-7, were work-related. Dr. Lieberman offered only a general opinion regarding Claimant's disability and did not testify that those three specific conditions disabled Claimant. Indeed, he did not opine about which of Claimant's many symptoms were disabling. In addition, Dr. Lieberman stated that he was only offering an opinion of disability with regard to orthopedic injuries; accordingly, Claimant offered no medical opinion at all regarding any conditions that are non-orthopedic.

Contrary to Claimant's assertion, the Board did consider Dr. Lieberman's testimony as a whole and concluded, as does the Court, that his testimony was not sufficient to support the finding that Claimant was disabled by his work injury. Further, there is no evidence that the Board deemed Dr. Lieberman unqualified to offer an opinion regarding post-concussion syndrome.⁷ The Board merely noted that Dr. Lieberman himself testified that he was only offering an opinion of disability with respect to Claimant's orthopedic injuries and that he was not opining that Claimant was disabled by other conditions, such as his memory loss.

⁷ The WCJ accepted Dr. Lieberman's opinion that the work injury includes post-concussion syndrome, and that finding has not been disturbed on appeal.

With respect to the contention that the Board made its own credibility determination, Claimant points to the following statement in the Board's opinion:

Furthermore, Claimant indicated that his inability to work was due in part to memory loss, no strength, and a numb leg, conditions that were either not found to disable him by Dr. Lieberman or were not found to be related to the work injury.

Board Opinion at 5. Claimant contends that the Board impermissibly reassessed Claimant's credibility, substituting its own judgment for that of the WCJ, who found Claimant credible with respect to his disability. We reject this contention.

After determining that Dr. Lieberman's testimony was insufficient to establish work-related disability, the Board analyzed Claimant's testimony regarding his inability to work and found that some of the conditions Claimant felt were disabling were either not linked to the adjudicated work injury or not listed by Dr. Lieberman as disabling.⁸ This is not a new credibility assessment. The Board was pointing out that Claimant's testimony suffered from the same defect as Dr. Lieberman's opinion, *i.e.*, Claimant attributed his disability to symptoms that were not necessarily part of the three conditions that were ultimately found to be work-related.⁹ At any rate, Claimant's opinion regarding the cause of his disability

⁸ Claimant contends that by listing only memory loss, no strength and a numb leg, the Board understated Claimant's symptoms which were accepted as credible by the WCJ. The Board did not suggest that these were the only symptoms and, in fact, specified that Claimant testified his disability was due *in part* to those symptoms. The Board was not required to recite all of Claimant's symptoms. The Board was simply pointing out that several of the conditions to which Claimant attributed his disability are not obviously related to the adjudicated work injury or were not linked by Dr. Lieberman to Claimant's disability.

⁹ Indeed, it is difficult to ascertain how a numb foot could be related to the work injury. A numb hand and "no strength" do not necessarily correspond to the cervical radiculopathy, as Claimant contends, particularly where Dr. Lieberman diagnosed cervical radiculopathies at two levels but only one was determined to be work-related. In fact, Dr. Lieberman testified that hand numbness would be associated with a cervical radiculopathy at C8-T1, while a C-6 radiculopathy, which is **(Footnote continued on the next page . . .)**

is not dispositive because Claimant was required to establish the connection between his work injury and his disability through unequivocal medical testimony. He failed to do so.¹⁰

In sum, Claimant's evidence did not establish a causal connection between the injury found by the WCJ to be work-related and an inability to work. Therefore, the WCJ's finding that Claimant's work injury rendered him totally disabled is not supported by substantial, competent evidence and the Board did not err in reversing the WCJ's award of disability benefits.¹¹

Accordingly, we affirm the Board's order.¹²

MARY HANNAH LEAVITT, Judge

(continued . . .)

part of the work injury, would tend to involve the shoulder. R.R. 104a. We also note that the doctor diagnosed numerous other nerve problems that the WCJ found not work-related, and that Claimant's declining memory was not identified by his doctor as part of the disability.

¹⁰ Although Claimant suggests that the link between his work injury and his disability is obvious such that his testimony by itself can support an award of disability benefits, we disagree. The fact that Claimant was not in good health before the accident, had a job where he did no heavy work and could nap during the day, was not given a slip to miss work by the emergency room doctors, did not begin treatment for his August 8, 2005, work injury until January 2006, and was diagnosed with a myriad of conditions ultimately found to be not work-related demonstrates that the causal connection between the work injury accepted by the WCJ and any disability is not, in fact, obvious. Further, even if we consider Claimant's testimony alone, it does not support the award of disability benefits because he attributes his disability to a combination of symptoms, some of which may not be associated with the actual work-related injury.

¹¹ On appeal, the reviewing court must view the evidence in the light most favorable to the prevailing party below, including the benefit of all inferences reasonably deduced from the evidence. *Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe)*, 539 Pa. 322, 328, 652 A.2d 797, 800 (1995). Claimant asserts that the Board failed to do so in this case. We disagree. Even when viewed in the most favorable light, Claimant's evidence does not adequately establish a causal connection between his disability and the specific injury that was found to be work-related by the WCJ.

¹² We acknowledge Claimant's request for a remand to secure medical testimony regarding whether post-concussion syndrome and cervical radiculopathy, taken alone, are disabling. We deny this request as Claimant already had ample opportunity to submit his medical evidence.

