

Decedent was employed by Regal Industrial Corporation (Employer) as a working foreman. On June 11, 1990, he fell 40 - 50 feet while painting the inside of a water tank and suffered injuries including a severed spinal cord, head injury, broken ribs and a punctured lung. Decedent was unable to walk thereafter and received benefits pursuant to a Notice of Compensation Payable that described his injury as "paraplegic." On October 22, 2001, he filed a petition to review medical treatment and/or billing and a petition to review compensation benefits (original petitions) seeking payment of medical expenses related to a stroke and amputations that he claimed resulted from his work injury. He testified that he developed circulation problems about ten years after the work injury and had a series of amputations on his right foot, culminating in the amputation of his right leg above the knee. Also, he suffered a stroke that was preceded by numbness in his right arm and groin, and he never regained full use of his right arm. In January 2003 Decedent suffered a heart attack and he passed away on December 20, 2003.

On July 26, 2004, Claimant filed a petition to review compensation benefits requesting an amendment of Decedent's work injury description to include specific loss of both legs and the right arm. Claimant testified that she married Decedent in 1985 and that she and her son relied upon Decedent for financial support. Claimant acknowledged that she and Decedent separated after his work injury; however, she went to his residence three or four days per week to clean. In January 2003 Claimant was released to a halfway house after an eighteen-month incarceration and thereafter resided with Decedent and their son.

Dr. Andrew C. Krouskop, board certified in physical medicine and rehabilitation, testified that Decedent had no sensation or voluntary movement from below the mid-chest level. Decedent suffered skin breakdown on his lower

extremities that did not heal and developed infection, resulting in the amputation of his right leg. Dr. Krouskop opined that the amputation was related to the work injury where being confined to a wheelchair accelerated the atherosclerotic process of the arteries in Decedent's lower extremity making him more susceptible to injury. He related Decedent's stroke to his paraplegia because of his limited ability to metabolize and his accelerated atherosclerotic process. Decedent's smoking could have been a factor, but the doctor found it unlikely that he would have this accelerated vascular disease in his early or mid-fifties had he not been a paraplegic.

Dr. Yong Dae Cho, a board-certified family practitioner, monitored Decedent for conditions normally associated with paraplegia, such as kidney infection and bed sores. He opined that the nerve damage from Decedent's paraplegia led to the development of gangrene and ultimately resulted in the amputations. Dr. Cho also testified that coronary artery disease was one of the risk factors of paraplegia and that this can cause stroke. He believed that Decedent's paraplegia was the cause of both his stroke and his heart attack.

To support the specific loss petition, Claimant presented Dr. Michael Carpathios, who is licensed to practice general internal medicine. He treated Decedent before his death and completed the death certificate, and he described the cause of death as respiratory failure, which "may or may not have been directly related to acute renal failure or an infection...." Certified Record (C.R.), Exhibit C-7, p. 5; Supplemental Reproduced Record (S.R.R.) at 26a. When asked whether the cause of death was related to Decedent's paraplegia, Dr. Carpathios explained:

Given that he had been paralyzed, I guess, from a work-related accident 12 years prior to that, it's hard to say that the actual cause of death and respiratory failure would have been related to that. It is possible that he became more debilitated to the point where he did develop ulcers

in his body ... that may have caused an infection, but you know, from something that may have happened 12 to 14 years prior, it's hard to say that it was respiratory failure that was related to the actual paralysis.

C.R., Exhibit C-7, p. 6; S.R.R. at 27a. Dr. Carpathios testified that Decedent may have had other health problems over the last few years of his life that caused declining health. He did not review Decedent's medical records and was unaware of the actual nature of the work injury.

Dr. Frederick Jarrett, a board-certified general surgeon, reviewed Decedent's medical records on behalf of Employer, including hospital records and diagnostic studies dated between 1999 and 2001. Dr. Jarrett testified that Decedent's paraplegia did not cause his amputations, nor did it cause his stroke. He opined that Decedent's peripheral vascular disease in his legs and very poor circulation resulted in the amputations. He noted that paraplegia does not cause gangrene. Dr. Jarrett also stated that stroke is due to either a blockage of an artery supplying the brain or to a hemorrhage within the brain, whereas paraplegia is a spinal cord problem that does not cause these conditions.

The WCJ accepted the testimony of Dr. Krouskop and Dr. Cho and rejected that of Dr. Jarrett. He found that medical expenses incurred by Decedent prior to his death were related to his work injury and granted the original petitions. The WCJ found that Claimant was not entitled to specific loss benefits because Decedent's death was caused by his work injury. He rejected the opinion of Dr. Carpathios as tenuous and equivocal at best regarding the cause of Decedent's death and whether it was related to his work injury. The Board vacated the WCJ's decision and remanded for the WCJ to clarify certain inconsistencies and to "issue additional findings enumerating whether Claimant failed to prove a separate and distinct injury regarding the averred specific loss petition." Board Opinion,

June 26, 2007, p. 5. The WCJ issued a remand decision dated May 21, 2008 and added a finding that Dr. Carpathios' opinions were not credible, competent or sufficient to prove that Decedent's death was due to causes other than the work injury. The Board affirmed, noting that the WCJ was free to make credibility determinations and to accept in whole or in part the testimony of any witness, even a medical witness. *Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck)*, 664 A.2d 703 (Pa. Cmwlth. 1995).

Claimant seeks specific loss benefits under Section 306(g) of the Act:

Should the employe die from some other cause than the injury, payments of compensation to which the deceased would have been entitled to under section 306(c)(1) to (25) [77 P.S. §513] shall be paid to the following persons who at the time of the death of the deceased were dependents ...:

(1) To the surviving widow or widower if there are no children under the age of eighteen.

Claimant argues that pursuant to *Mosier v. Workmen's Compensation Appeal Board (Jessop Steel Co.)*, 601 A.2d 1319 (Pa. Cmwlth. 1992), if an employee is entitled to total disability and specific loss benefits for the same injury, he or she has the right to choose the benefit that would provide the greatest advantage. In *Reed v. Workmen's Compensation Appeal Board*, 499 Pa. 177, 452 A.2d 997 (1982), the Supreme Court held that a dependent of a deceased employee has the same choice, provided the employee's death was not due to the work injury. Whereas total disability benefits end upon the employee's death, specific loss benefits do not end upon an employee's death from unrelated causes.

Claimant contends that the death certificate listing the cause of death as respiratory failure rather than paraplegia and Dr. Carpathios' testimony prove that Decedent died from causes other than his work injury. The doctor stated: "[I]f

I had to go one way or the other, make it completely black or white, I would say it's not related" C.R., Exhibit C-7, p. 8; S.R.R. at 29a. Employer offered no evidence on the issue; therefore, no evidence supports the WCJ's conclusion of law No. 3 that "the Claimant's death was the result of causes directly related to his work injury." WCJ Decision, May 28, 2008, p. 10; S.R.R. at 49a.

Citing *Spotts v. Workmen's Compensation Appeal Board (Superior Tube Co.)*, 541 A.2d 446 (Pa. Cmwlth. 1988), Claimant notes that the question as to whether medical testimony is equivocal is one of law and is fully reviewable by this Court. The WCJ found Dr. Carpathios' opinion equivocal and incompetent, but the evidence in the case supports his position that the work injury did not cause Decedent's death. In *Formicola v. Workmen's Compensation Appeal Board (City of Philadelphia)*, 509 A.2d 434 (Pa. Cmwlth. 1986), the Court explained that the causal connection between a work injury and death is easier to prove when there is less time between the events. Conversely, a longer time between events weakens the connection. Claimant submits that Dr. Carpathios provided an unequivocal opinion that the connection was questionable due to the time between events here.

Claimant also argues that the burden should have shifted to Employer to prove that Decedent's death was related to the work injury. She proposes that the definition of injury in Section 301(c)(1) of the Act, 77 P.S. §411(1), creates a presumption that a death occurring more than three hundred weeks after the injury is not related to the work injury. That section provides that "wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from such injury and its resultant effects, and occurring within three hundred weeks after the injury." She cites *Antonucci v. Workmen's Compensation Appeal Board (U.S. Steel Corp.)*, 576 A.2d 401 (Pa. Cmwlth. 1990), where this

Court held that the three hundred-week limit in Section 301(c)(1) was reasonable because it promoted the purposes of the Act by striking a balance between the interests of employers and employees. Here, Decedent's death occurred more than thirteen years after his work injury and more than seven years past the time when his widow could have collected death benefits under the Act.

Employer argues that Claimant needed to show the relationship of the death to the work injury through unequivocal medical evidence. *See AT & T v. Workers' Compensation Appeal Board (Hernandez)*, 707 A.2d 649 (Pa. Cmwlth. 1998). Dr. Carpathios did not specifically recall treating Decedent and reviewed no medical records other than the death certificate. Employer objected to the doctor's testimony as having no foundation. Also, the death certificate lists causes of death as: "respiratory failure, acute renal failure, possible systemic infection and stage 4 decubitus ulcers." C.R., Exhibit C-6; Reproduced Record at 2. Dr. Krouskop testified that Decedent developed skin ulcers that became infected due to inactivity caused by his paraplegia. He explained that the leading cause of death for paraplegics is atherosclerotic coronary vascular disease and that prior to medical advances the leading cause of death for these patients was renal failure. Dr. Cho monitored Decedent for kidney infection and bed sores, and he described these as conditions normally associated with paraplegia. The WCJ found Drs. Krouskop and Cho to be credible concerning the many physical problems that Decedent developed as a result of his work injury.

Employer cites *Estate of Harris v. Workers' Compensation Appeal Board (Sunoco, Inc.)*, 845 A.2d 239 (Pa. Cmwlth. 2004) (specific loss benefits payable after death of claimant only if death not caused by work injury), and contends that Claimant bore the burden of proof in her petition for specific loss to

show that Decedent suffered a loss of the use of his legs and right arm and that his death was not related to his work injury. The testimony of Dr. Carpathios was not sufficient to sustain her burden. Conversely, the opinions of Drs. Krouskop and Cho and even some of Dr. Carpathios, show that paraplegia leads to complications including those listed on the death certificate.

The Court reviews to determine whether there was a constitutional violation or an error of law, whether any practice or procedure of the Board was not followed and whether substantial evidence supports the necessary findings of fact. *Liveringhouse v. Workers' Compensation Appeal Board (ADECCO)*, 970 A.2d 508 (Pa. Cmwlth. 2009). The Court concludes that the WCJ did not err by rejecting Dr. Carpathios' testimony as to the cause of death. The WCJ found that his testimony was not credible as it was rendered without benefit of Decedent's medical records. At one point, the doctor testified: "Not knowing -- not having the hospital chart and not knowing all of the details immediately, is it possible that the injury shortened his life, that is a possibility." C.R., Exhibit C-7, p. 10; S.R.R. at 31a. Such lack of foundation goes to the weight to be given the testimony. *Degraw v. Workers' Compensation Appeal Board (Redner's Warehouse Markets, Inc.)*, 926 A.2d 997 (Pa. Cmwlth. 2007). The WCJ had exclusive authority to decide issues of credibility and weight of the evidence. *Greenwich Collieries*.

Claimant bore the burden of proof in her specific loss petition. *Jacobi v. Workers' Compensation Appeal Board (Wawa, Inc.)*, 942 A.2d 263 (Pa. Cmwlth. 2008). As to the merits, the language of Section 301(c)(1) upon which she relies creates a time limitation "intended to prevent speculation as to whether a work-related injury was the cause of death years after the injury had occurred." *Antonucci*, 576 A.2d at 406. Also, Section 301(c)(1) relates to those cases where

death is stated as the "cause for compensation," but it does not create a presumption that death occurring more than three hundred weeks after the work injury is not related to that injury for purposes of satisfying a claimant's burden in a specific loss petition.

Moreover, the Court rejects Claimant's contention that Dr. Carpathios' inability to link Decedent's cause of death by respiratory failure to the work injury of paraplegia satisfied Claimant's burden of proof. It is not for this Court to second-guess the WCJ's credibility determinations or to overturn factual findings where the record shows that the findings are supported by substantial evidence. A review of the record establishes that the findings as to the equivocal nature of Dr. Carpathios' medical testimony are supported by substantial evidence and therefore that the WCJ had sufficient bases for discrediting the doctor's testimony. The Board did not err in affirming the denial of Claimant's specific loss petition, and its order will be affirmed.

DORIS A. SMITH-RIBNER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David Zack, Dec'd,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 279 C.D. 2009
	:	
Workers' Compensation Appeal Board	:	
(Regal Industrial Corp.),	:	
Respondent	:	

ORDER

AND NOW, this 22nd day of July, 2009, the order of the Workers' Compensation Appeal Board is affirmed.

DORIS A. SMITH-RIBNER, Judge