IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Smurfit-Stone Container Corporation, Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation Appeal Board (Grabusky), Respondent	:	No. 281 C.D. 2008 Submitted: August 1, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: October 9, 2008

Smurfit-Stone Container Corporation (Employer) petitions for review of the January 29, 2008, Workers' Compensation Appeal Board (Board) order that affirmed the decision of the Workers' Compensation Judge (WCJ) which granted Jerome Grabusky's (Claimant) petition to reinstate compensation benefits (Reinstatement Petition).

Claimant was employed as a Preventive Maintenance Engineer by Employer when he herniated a disc at L3-4 on April 13, 2001, from repeatedly lifting boxes and skids. Claimant filed a Claim Petition on August 27, 2001. WCJ Wayne L. Dietrich (WCJ Dietrich) granted the Claim Petition and Claimant received temporary total disability benefits from Employer at the rate of $528.03 per week, based upon a pre-injury average weekly wage of $792.01.

Thereafter, Employer filed a Petition to Modify Compensation Benefits on the basis of a Labor Market Survey, which was granted by WCJ Dietrich on January 7, 2005. WCJ Dietrich found that Claimant could do sedentary work on a full-time basis as of October 27, 2003, earning $380.00 per week. Claimant's weekly compensation rate was modified to $274.67 per week.

On or about February 15, 2006, Claimant filed a Reinstatement Petition alleging that as of February 13, 2006, he suffered a worsening of his work-related condition and had to undergo spinal fusion surgery, leaving him totally disabled. Reinstatement Petition at 1; Reproduced Record (R.R.) at 3a.

In support of the Reinstatement Petition, Claimant testified at a May 3, 2006, hearing. Claimant testified that he opted to begin with conservative treatment in 2001 in the form of chiropractic care, physical therapy, epidural and nerve block injections in an attempt to avoid surgery. Claimant's Notes of Testimony (N.T.), May 3, 2006, at 7; R.R. at 13a.

Notwithstanding the conservative treatments, Claimant continued to experience low back pain. Claimant had not sustained any injuries subsequent to his work-injury of April 13, 2001. N.T. at 6; R.R. at 12a. Claimant explained, however, that the pain "just increased over the last few years" and it was quite intense. N.T. at 8; R.R. at 14a. The pain radiated down his low back and both legs. He experienced "about ten different types of pains, from sciatic nerves to muscles jumping and tingling, numbness, [and] joints aching all the time." N.T. at 9; R.R. at 15a. The symptoms in his low back and right leg appeared immediately

following the April 13, 2001, incident while the left leg pain developed two years prior to the hearing. N.T. at 11-12; R.R. at 17a.

Claimant underwent surgery on February 13, 2006, because he "couldn't walk anymore, couldn't stand up straight, [and] couldn't . . . stand up for any period of time." N.T. at 12; R.R. at 18a. Subsequent to this surgery he wore a body brace, used a walker and received physical therapy. Claimant did not believe he was capable of returning to work in any capacity because his back "is still in a condition where it's still healing . . . . I just can't stand up straight, walk, stand up for any period of time. And I'm still in a lot of pain." N.T. at 13; R.R. at 19a.

In further support of the Reinstatement Petition, Claimant submitted the September 1, 2006, deposition testimony of David W. Allen M.D. (Dr. Allen), board-certified neurosurgeon. Dr. Allen has been Claimant's treating physician since June 30, 2001. Deposition of David W. Allen, M.D. (Dr. Allen Deposition), September 1, 2006, at 6-7; R.R. at 45a.

Dr. Allen testified that diagnostic testing approximately two weeks after the work-injury revealed a herniated disc at L3-4 centrally as well as multi-level degenerative discs with scoliosis, a herniated disc at T10-11 and spinal stenosis. Dr. Allen Deposition at 7, 13-14; R.R. at 45a, 47a. In June 2001, Claimant did not want surgical intervention and Dr. Allen noted that Claimant was of "significant high risk for surgery because of his obesity." Dr. Allen Deposition at 7-8; R.R. at 45a. Dr. Allen referred Claimant for pain management.

Dr. Allen monitored Claimant's condition for several years and observed that Claimant gradually deteriorated to the "point that he couldn't walk . . . ." Dr. Allen Deposition at 8; R.R. at 45a. Claimant's inability to walk was the impetus for surgery in 2006 because he had exhausted all conservative treatments. Dr. Allen Deposition at 8, 11-12; R.R. at 45a, 46a.

In performing the surgery, Dr. Allen testified that he could not disregard Claimant's other medical conditions. Dr. Allen Deposition at 13-14; R.R. at 47a. Dr. Allen conceded that part of the decision to have Claimant undergo surgery was caused by Claimant's disc herniation at T10-11, however "part of . . . [Dr. Allen's] call to do surgery included the herniation at L3-4." Dr. Allen Deposition at 20, 23; R.R. at 48a, 49a. Dr. Allen testified that Claimant had no intervening injuries between his work-injury and the surgery, but "he may have fallen at home several times near the end before the surgery" due to his difficulty walking. Dr. Allen Deposition at 12-13; R.R. at 46-47a.

Due to Claimant's deteriorated condition, Dr. Allen, in conjunction with Phillip Perkins M.D. (Dr. Perkins), an orthopedic surgeon, performed surgery upon Claimant on February 13, 2006. Dr. Perkins fused eight levels of Claimant's spine, specifically, from L5-S1 to T10-11. Dr. Allen Deposition at 10, 18; R.R. at 46a, 48a. The fusion at multiple levels was performed to correct the scoliosis and the stenosis. Dr. Allen Deposition at 18; R.R. at 48a. Dr. Allen performed foramenotomies to alleviate pressure on the nerves so that Claimant would eventually be able to walk. Dr. Allen Deposition at 18, 24; R.R. at 48a, 49a. Dr. Allen also performed a decompressive laminectomy to open up the spinal column.

Dr. Allen Deposition at 18, 22-24; R.R. at 48a, 49a. Dr. Allen stated that the T10-11 disc was removed; however he did not remove the L3-4 disc. He "just [performed the] decompression and the foramenotomies." Dr. Allen Deposition at 21, 24; R.R. at 49a. He felt the L3-4 herniation, not the herniation at T10-11, was causing Claimant's leg pain. Dr. Allen Deposition at 23-24; R.R. at 49a.

Dr. Allen associated the need for surgery with Claimant's April 13, 2001, work-injury and opined: "[b]ased upon the history that he is giving, he's giving these symptoms of back and leg pain, which was related to that work injury, and it never ceased. So I would say it is in some way related to that." Dr. Allen Deposition at 12; R.R. at 46a. Dr. Allen further explained that, as to the work-injury, "[i]t basically is the start of the problem. And there was no end that I saw . . . ." Dr. Allen Deposition at 14-13; R.R. at 47a.

Dr. Allen's prognosis was "guarded." Since surgery Claimant was unable to return to work in any capacity. Dr. Allen Deposition at 12; R.R. at 46a. Claimant underwent extensive physical therapy and still experienced difficulties walking. Claimant used a walker and wore a back brace. Dr. Allen Deposition at 12; R.R. at 46a.

In opposition to the Reinstatement Petition, Employer submitted the September 21, 2006, deposition testimony of Richard J. Levenberg, M.D. (Dr. Levenberg), board-certified orthopedic surgeon with a specialty in spine surgery. Deposition of Richard J. Levenberg, M.D. (Dr. Levenberg Deposition), September 21, 2006, at 4; R.R. at 66a.

Dr. Levenberg testified that he examined Claimant on three occasions at the request of Employer with the most recent evaluation occurring on May 25, 2006. Dr. Levenberg Deposition at 6; R.R. at 68a. During his most recent examination, Claimant's chief complaint was numbness and weakness in both legs. Previously, Claimant's complaints concerned only his right leg.

Dr. Levenberg took a medical history of Claimant and learned that Claimant recently underwent surgery and took pain medication. Dr. Levenberg Deposition at 7; R.R. at 69a. Dr. Levenberg reviewed the operative records, which showed that on February 13, 2006, Claimant had decompressive lumbar laminectomies at L2, 3, 4 and L5-S1, a thoracic laminectomy at T10-11, foramenotomies at L2 through S1 and T10 to T11 and fusion from L2 through S1. Dr. Levenberg Deposition at 10; R.R. at 72a. The records indicated the procedures were performed to address scoliosis, spondylolisthesis, degenerative changes, spinal stenosis and disc herniation at T10-11. Dr. Levenberg Deposition at 10-11; R.R. at 72a-73a.

Dr. Levenberg was of the opinion that the disc herniation at T10-11 was the condition that caused the progression of Claimant's symptoms of bilateral leg pain and inability to walk. Dr. Levenberg Deposition at 11-12; R.R. at 73a-74a. He opined that "little if any" of the surgery was directed at the L3-4 disc herniation. Dr. Levenberg Deposition at 13; R.R. at 75a. Dr. Levenberg confirmed that the L3-4 disc was not removed during the surgery. Dr. Levenberg concluded to a reasonable degree of medical certainty that the procedures performed on February 13, 2006, were "unrelated to a herniated disc at L3-4" and

not "in any way related to the work injury" suffered on April 13, 2001. Dr. Levenberg Deposition at 14-15; R.R. at 76a-77a.

Dr. Levenberg concluded because Claimant's symptoms worsened necessitating surgery in February 2006, Claimant was totally disabled and his prognosis was poor. Dr. Levenberg Deposition at 14; R.R. at 76a.

Dr. Levenberg confirmed that claimant complained of right leg pain since 2001 and that surgery was suggested by Dr. Allen in 2001. Dr. Levenberg Deposition at 17; R.R. at 79a. However, since Claimant was a high risk patient due to his obesity, conservative treatment was administered. Dr. Levenberg acknowledged that the "L3-4 level [was] part of the surgical site" on February 13, 2006. Dr. Levenberg Deposition at 17; R.R. at 79a.

By a Decision and Order circulated April 24, 2007, the WCJ granted Claimant's Reinstatement Petition. Despite contrary expert testimony, the WCJ accepted Dr. Allen's testimony and opinions as more credible and persuasive than Dr. Levenberg with regard to the causal relationship between the work injury and the surgery. The WCJ also credited Claimant's testimony. The WCJ found:

> 23. The Judge has reviewed the medical evidence of record and finds the testimony of Dr. David Allen to be credible and accepts the same. In this regard that doctor has been treating Claimant on a regular basis since June 30, 2001, within a few months of the work injury, and has therefore had the best opportunity to assess Claimant's condition. The judge finds persuasive Dr. Allen's explanation of the gradual deterioration of Claimant's back condition and why surgery had to be

performed on February 13, 2006 after a number of years of conservative treatment.

24. The Judge does not find the testimony of Dr. Richard Levenberg to be credible to the extent that the doctor's testimony is inconsistent with the testimony of Dr. Allen. In this regard the Judge prefers to accept the opinions of the treating physician who has had the opportunity to follow the Claimant consistently . . . prior to the surgery of February 13, 2006.

25. The Judge finds that Claimant's need for surgery on February 13, 2006 was due to a combination of back conditions he had, including mild scoliosis that had become more severe during the period from April of 2001 to February of 2006, spinal stenosis, degenerative disc disease at multiple levels, a herniated disc at T10-11 and the work-related herniated disc at L3-4. The Judge finds that although the non work-related back conditions played a part in Claimant's need for surgery, Claimant's work-related back conditions of the L3-4 disc herniation contributed to his need for this surgery, supported by the fact that surgery for that condition had been considered as far back as 2001.

26. The Judge does not find credible Dr. Levenberg's opinion that the work-related herniated disc at L3-4, which was the start of Claimant's back and right leg pain, conditions which never resolved but actually worsened during the period from 2001 to 2006 played no part whatsoever in Claimant's need for surgery on February 13, 2006. In this regard the Judge finds that opinion not credible due to Claimant's lack of any complaints prior to his work injury, his consistent complaints thereafter and the fact that this level of the lumbar spine was addressed during the surgery performed on February 13, 2006.

27. The Judge finds that since Claimant's need for surgery . . . was due at least in part to his work injury . . . Employer is responsible for the reasonable and necessary medical expenses for that surgery and Claimant's post-operative treatment.

> 28. The Judge finds that Claimant's condition due to his work injury of April 13, 2001 worsened as of February 13, 2006 to the point where Claimant became totally disabled due to that injury and was incapable as of that date and thereafter of performing sedentary work. Accordingly, Claimant's work-related total disability recurred as of February 13, 2006 and has been ongoing since that date.

Decision of the WCJ (WCJ Decision), April 23, 2007, Findings of Fact (F.F.) Nos. 23-28 at 4; R.R. at 103a.

Based upon the findings of fact, the WCJ concluded that "Claimant has met his burden on the Petition to Reinstate as he has established by credible medical evidence that he suffered a recurrence of total disability due to his injury of April 13, 2001 as of February 13, 2006 and ongoing." WCJ Decision, Conclusions of Law No. 2 at 5; R.R. at 104a. Employer appealed to the Board, which affirmed the WCJ's decision. This appeal followed.[1]

Employer contends that the WCJ erred in reinstating Claimant's total disability benefits because the increase in disability resulted from the surgery and the credible medical evidence did not support a finding that the work injury was a substantial contributing factor to the surgery.

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[1] This Court's review is limited to a determination of whether an error of law was committed, whether necessary findings of fact were supported by substantial evidence, or whether constitutional rights were violated. Vinglinsky v. Workmen's Compensation Appeal Board (Penn Installation), 589 A.2d 291 (Pa. Cmwlth. 1991).

In regards to a petition to reinstate compensation benefits, Section 413(a), of the Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. § 772, provides:

> A workers' compensation judge designated by the department may, at any time, modify, reinstate, suspend, or terminate a notice of compensation payable, an original or supplemental agreement or an award of the department or its workers' compensation judge, upon petition filed by either party with the department, upon proof that the disability of an injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or that the status of any dependent has changed . . . .

It is well-settled that the claimant bears the burden of proof of a petition to reinstate. The cases that define this law, however, have been subject to uncertainty. What must be proven depends on whether the claimant's benefits had previously been suspended or terminated. Pieper v. Ametek-Thermox Instruments, 526 Pa. 25, 584 A.2d 301 (1990). When benefits have been terminated, the claimant is required to prove that the current disability has been caused by the prior work related injury. D.P. "Herk" Zimmerman, Jr. v. Workmen's Compensation Appeal Board (Himes), 519 A.2d 1077 (Pa. Cmwlth. 1987).

When benefits have previously been suspended the claimant's burden is less onerous because it is presumed that the requisite causal connection exists. Pieper, 526 Pa. at 34, 584 A.2d at 305. The Supreme Court explained:

> No such causal connection must be shown in a 'suspension of benefits' situation. A 'suspension of benefits' is supported by a finding that the earning power of the claimant is no longer affected by his disability . . . .

> Should a claimant seek to have a suspension lifted, he is required to demonstrate only that the reasons for the suspension no longer exist. Simply, a claimant must show that while his disability has continued, his loss of earnings has recurred. Certainteed Corporation and Aetna Casualty & Surety Company v. Workmen's Compensation Appeal Board (Williams), 125 Pa.Commw. 311, 559 A.2d 971 (1989), *appeal denied*, 524 Pa. 612, 569 A.2d 1370 (1989) . . . .
>
> In such suspension situations, the causal connection between the original work-related injury and the disability which gave rise to compensation is *presumed.* First, it is presumed because the causal connection between the original work-related injury and disability was initially either not contested by the employer or established by competent proof by the employee at the time of the original disability claim. Second, it is presumed because with a mere suspension of benefits, there is no contention by any party that the liability of the employer has terminated. The only fact established at a suspension of benefits is that the *earning power* of a claimant has improved to a point where benefits are no longer necessary. Since the disability continues to exist, the liability of the employer for the injury has not terminated. Therefore, in these situations the causal connection between the original work-related injury and the disability goes unquestioned. (emphasis in original).

Id. at 33-34, 584 A.2d at 305.

In the current controversy, Claimant sought to reinstate total disability benefits subsequent to a modification of partial disability benefits. Similarly, in Dillon v. Workmen's Compensation Appeal Board (Greenwich Collieries), 536 Pa. 490, 640 A.2d 386 (1994), the claimant had been awarded compensation benefits based upon partial disability and filed a petition to modify award to one of total disability. In regards to the claimant's burden, the Court in Dillon explained:

> [T]he elements of the burden of proof on a claimant seeking to change the status of his benefits will differ depending on whether the employer's liability has previously been terminated or merely held in abeyance. *For this purpose, at least, an award of benefits for partial disability may be viewed as a 'partial suspension' of benefits:* the causal connection has been established, the employer's liability for the injury has not terminated but the claimant's earning power is such that benefits for total disability are not necessary, benefits for partial disability being sufficient. If a claimant whose benefits have been entirely suspended may have them reinstated on proof '*that through no fault of his own his earning power is once again adversely affected' by the injury which gave rise to his original claim, we can discern no basis for requiring a claimant who receives benefits for partial disability to prove more, i.e., that his physical condition due to his injury has worsened.* (emphasis added).

Id. at 503-504; 640 A.2d at 392-392.

Based on this understanding, our Supreme Court held that a claimant (1) who is either working and receiving partial disability benefits; or (2) has stipulated that he or she is able to work in a particular occupational category and is only partially disabled, can reinstate to total disability without a showing of a worsening of condition.[2] Id. On a petition to reinstate, the claimant still bears the burden of establishing that there is an increase of wage loss as a result of the work-

[2] This rule applies when claimant seeks to reinstate within the 500-week period of his partial disability entitlement. There is no dispute that Claimant is still entitled to partial disability benefits.

related injury. Id. The Court in Dillon found that the petition should be granted and claimant's benefits reinstated from partial to total if the claimant meets his burden of showing that he was "unable to obtain any work within the physical limitations *caused by* his work-related injury." Id. at 504 , 640 A.2d at 393 (emphasis added).

This Court's inquiry focuses on the issue of causation. Considering that the Court in Dillon categorized an award for partial disability as a partial *suspension* of benefits, we turn to Pieper to clarify the claimant's burden. As set forth, in Pieper the Court held that the claimant was not required to establish causal connection between the work-related injury and present disability, since benefits had been suspended, not terminated. Pieper, 526 Pa. at 34-35, 584 A.2d at 305.

Employer points to Wetterau v. Workmen's Compensation Appeal Board (Mihaljevich), 609 A.2d 858 (Pa. Cmwlth. 1992), in which claimant's disability increased as a result of a surgery and the claimant subsequently sought reinstatement of benefits that had previously been suspended. In Wetterau the Court applied the claimant's burden of proof principles as outlined in Pieper:

> In applying these principles to the present case, it is clear that the claimant was not required to prove that his disability was work related *as long as the present disability is the same from which he suffered at the time of the original work related injury.* As the claimant had been doing his time of injury job before Dr. Myerson performed the surgery, the claimant, by necessity, was required to prove that Dr. Myerson's surgery was necessary to repair damage from the original injury. . . . Because this fact requires expert medical testimony, it must be proven by unequivocal medical evidence.

> Borough of Media v. Workmen's Compensation Appeal Board (Dorsey), 134 Pa.Commonwealth Ct. 573, 580 A.2d. 431 (1990). (emphasis in original).

Wetterau, 609 A.2d at 860. The Court concluded that the medical expert's testimony was equivocal about whether surgery was necessary to repair damage from the claimant's original work-related injury, and therefore, held that claimant did not prove that he was entitled to reinstatement of benefits.

In light of the cases as set forth, we discern that in the instant case Claimant is required to prove that his 2006 surgery was causally related to the original work injury in 2001. To this extent, we disagree with Employer's argument that Claimant is burdened with proving that his 2001 work injury was a substantial contributing factor to the 2006 surgery.

At hearing, both parties presented medical evidence. A determination of whether medical evidence is unequivocal is a question of law. Lewis v. Commonwealth, 508 Pa. 360, 498 A.2d 800 (1985). Medical testimony is considered equivocal if it is vague, leaves doubt, is less than positive, or is based on possibilities. Reinforced Molding Corp. v. Workers' Compensation Appeal Board (Haney), 717 A.2d 1096 (Pa. Cmwlth. 1998).

Undisputedly, Claimant's surgery resulted from a combination of work-related and non work-related causes as determined by the WCJ, including scoliosis, spinal stenosis, degenerative disc disease at multiple levels, a herniated disc at T10-11 and the work-related herniated disc at L3-4. WCJ Decision, F.F. No. 25 at 4; R.R. at 103a. The question is whether Claimant submitted

unequivocal medical evidence to support a finding that the surgery, which rendered Claimant totally disabled, was causally related to the work-injury.

Unlike the medical expert in Wetterau who was unable to testify that surgery was necessary to repair damage from the claimant's original work-related injury, Dr. Allen testified that Claimant gradually deteriorated to the "point that he couldn't walk . . . ." Dr. Allen Deposition at 8; R.R. at 45a. Dr. Allen then explained that Claimant's inability to walk was "the real reason to operate" because he exhausted all conservative treatments. Dr. Allen Deposition at 8, 11-12; R.R. at 45a, 46a.

Dr. Allen gave additional direct testimony as follows with regard to the causal relationship between the 2001 work-related injury and the 2006 surgery, which rendered Claimant totally disabled:

> Q. Do you associate the need for the surgery at all or in part to the April 13, 2001 work injury?
>
> A. Based upon the history that he's giving, he's giving these symptoms of back and leg pain, which was related to that work injury, and it never ceased. So I would say it's *in some way* related to that.

Dr. Allen Deposition at 12; R.R. at 46a (emphasis added). Dr. Allen conceded that part of the decision to have Claimant undergo surgery was caused by Claimant's disc herniation at T10-11, however "part of . . . [Dr. Allen's] call to do surgery included the herniation at L3-4." Dr. Allen Deposition at 20, 23; R.R. at 48a, 49a. He felt it was that the L3-4 herniation, not the herniation at T10-11 that was causing Claimant's leg pain. Dr. Allen further explained that, as to the work-

injury, "[i]t basically is the start of the problem. And there was no end that I saw . . . ." Dr. Allen Deposition at 14-13; R.R. at 47a. Dr. Allen added that he did not remove the L3-4 disc; however, he performed decompression and foramenotomies.

Contrary to Dr. Allen, Dr. Levenberg opined that "little if any" of the surgery was directed at the L3-4 disc herniation. Dr. Levenberg confirmed that the L3-4 disc was not removed during the surgery. He concluded that the procedures performed on February 13, 2006, were "unrelated to a herniated disc at L3-4" and not "in any way related to the work injury" suffered on April 13, 2001. Dr. Levenberg Deposition at 14-15; R.R. at 76a-77a. Dr. Levenberg, however, acknowledged that the "L3-4 level [was] part of the surgical site" on February 13, 2006. Dr. Levenberg Deposition at 17; R.R. at 79a.

The WCJ accepted Dr. Allen's testimony and opinions as credible and rejected Dr. Levenberg's opinions to the extent they were inconsistent with Dr. Allen's opinions. WCJ Decision, F.F. Nos. 23, 24 at 4; R.R. at 103a. The WCJ, as the ultimate fact finder in workers' compensation cases, has exclusive province over questions of credibility and evidentiary weight, including a medical witness, in whole or in part. Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck), 664 A.2d 703, 706 (Pa. Cmwlth. 1995). This Court is satisfied that the WCJ acted within permissible bounds of discretion when the WCJ determined Dr. Allen's testimony was credible and persuasive, given that Dr. Allen routinely treated Claimant since June 2001.

Dr. Allen's opinions were not based on possibilities and they were decidedly certain. Therefore, this Court is of the opinion that Dr. Allen rendered an unequivocal opinion that Claimant's 2006 surgery was attributable to Claimant's 2001 work-injury.

This Court must conclude Claimant met his burden of proving that his reinstatement petition should be granted through substantial, credited and unequivocal evidence and testimony which supported a finding that the 2001 work-injury was causally related to the 2006 surgery that rendered Claimant totally disabled.

Accordingly, this Court affirms.[3]

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BERNARD L. McGINLEY, Judge

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[3] Employer argues that we must remand this case with regard to the medical expenses, inasmuch as the surgery addressed non work-related conditions, such that the WCJ erred in imposing liability on Employer for all medical expenses incurred in connection with the surgery and post surgical treatment.

Section 306(f.1) of the Act, 77 P.S. § 531, states that an employer shall provide payment for reasonable and necessary medical treatment in connection with an employee's work injury. Although Employer questions the causation between the medical expenses and the work-related injury, the WCJ specifically found that Claimant established that the medical expenses were related to the work-related injury. The WCJ found that since "Claimant's need for surgery . . . <u>was due at least in part to his work injury</u> . . . Employer is responsible for the reasonable and necessary medical expenses for that surgery and Claimant's post-operative treatment." WCJ Decision, F.F. No. 27 at 4; R.R. at 103a (emphasis added). Therefore, this Court will not remand the matter with regard to re-apportioning medical expenses.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Smurfit-Stone Container Corporation, Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation Appeal Board (Grabusky),	:	No. 281 C.D. 2008
Respondent	:	

O R D E R

AND NOW, this 9th day of October, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge