

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Albert Singleton, :
Petitioner :
 :
v. : No. 282 C.D. 2008
 : Submitted: July 18, 2008
Workers' Compensation Appeal :
Board (Acme Markets, Inc.), :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: August 14, 2008

Albert Singleton (Claimant) appeals from an order of the Workers' Compensation Appeal Board (Board) affirming a Workers' Compensation Judge's (WCJ) decision granting Acme Markets, Inc.'s (Employer) termination petition. Claimant contends that the Board erred in affirming the WCJ's decision because her decision was not reasoned and it was not based on substantial, competent evidence. For the following reasons, we affirm the decision of the Board.

Claimant worked for Employer driving and unloading trucks. On April 24, 2003, while unloading a truck, a box fell on Claimant and rendered him unconscious. Claimant was taken to the hospital with complaints of pain down the

side of his neck and his upper and lower back. Claimant filed a notice of compensation payable and the injury was accepted by Employer. He missed five months of work following the injury, but returned to full-duty in September 2003 and benefits were suspended. On March 3, 2004, while working, Claimant experienced sharp pains in his legs and they gave out. Claimant missed five days of work due to that incident and returned to full-duty with restrictions to only work an eight-hour shift. He stopped working for Employer on April 10, 2004.

Claimant then filed a reinstatement petition¹ alleging that he had sustained work injuries to his head, neck and lower back in April 2003 which made him totally disabled. Later, Employer filed a termination petition² alleging that Claimant had fully recovered from his work-related injury as of October 26, 2004.

Before the WCJ, Claimant testified that while his head no longer hurt, he continued to have pain in his neck and continued to experience extreme pain in his back when he sat or stood for any length of time. Additionally, the pain sometimes traveled from his lower back into his legs.

¹ A claimant seeking reinstatement of his benefits bears the burden of establishing (1) that through no fault of his own, his earning power has again been affected by a work-related injury and (2) that the disability which gave rise to his original claim continues. *Pieper v. Ametek-Thermox Instruments Division*, 526 Pa. 25, 584 A.2d 301 (1990).

² An employer seeking to terminate benefits bears the burden of proving that a claimant's disability has ceased or that any remaining disability is no longer the result of a work-related injury. *Indian Creek Supply v. Workmen's Compensation Appeal Board (Anderson)*, 729 A.2d 157 (Pa. Cmwlth. 1999).

Claimant also presented the deposition testimony of Zohar Stark, M.D. (Dr. Stark), a board certified orthopedic surgeon. When he first examined Claimant on April 15, 2004, Dr. Stark testified that he complained of pain in his neck, radiating to both his shoulders, pain in his lower back that radiated into his legs and accompanying weakness. He reviewed an MRI taken of Claimant's spine in May 2003 which showed disc desiccation, degeneration and disc protrusions. Dr. Stark diagnosed Claimant as having a sprain/strain of the cervical and lumbar spine caused by his work-related injury from which he had not yet fully recovered, as well as discogenic or degenerative disc disease of the lumbar spine. He stated that Claimant was limited to lifting up to 15 pounds, should not perform tasks requiring repetitive lifting or prolonged sitting or walking, and could not work his regular 10 to 12 hour shifts. In Dr. Stark's opinion, the leg pain and subsequent giving out of Claimant's legs which occurred on March 3, 2004, was causally connected to his work injury.

In opposition to Claimant's reinstatement petition, Employer presented the deposition testimony of Robert Draper, M.D. (Dr. Draper), board certified as an orthopedic surgeon. He testified that when he examined Claimant on April 1, 2004, he reviewed Claimant's medical records, including the MRI report and the results of an electromyography (EMG), and he performed a physical examination. In Dr. Draper's opinion, Claimant sustained a contusion to the head and a cervical and lumbar strain as a result of the work injury. Dr. Draper testified that the EMG performed on Claimant in April 2004 was normal and that the MRI performed in May 2003 indicated that Claimant had a pre-existing degenerative disc disease. While he acknowledged that the March 3, 2004 incident where

Claimant's legs gave out was causally related to his work injury, Dr. Draper opined that he had fully recovered from that injury at the time of his examination and Claimant could return to work without restrictions.

Employer also presented the deposition testimony of Ross Noble, M.D. (Dr. Noble), board certified in physical medicine and rehabilitation. Dr. Noble examined Claimant on October 26, 2004, and diagnosed Claimant with degenerative disc and joint disease of the lumbar spine. He testified that in his opinion, Claimant had fully recovered from his work injury as of October 26, 2004. Dr. Noble also testified that the work injury did not cause, aggravate or accelerate the already present degenerative disc disease, and that he would not place restrictions on Claimant's work. Specifically, Dr. Noble stated that Claimant had sustained a soft tissue injury in the nature of a strain/sprain to his neck and lower back from his work injury, but that the injury had fully resolved as of October 26, 2004. According to Dr. Noble, an injury caused by an object falling on a person's head would cause soft tissue pain, but would not cause a more serious injury. Dr. Noble explained that the MRI supported this conclusion because it did not indicate a disc herniation, nerve root injury or a joint injury. Dr. Noble testified that the recovery period for such tissue damage and a strain/sprain would be measured in weeks or a few months, but would certainly not require more than a year to heal. Dr. Noble opined that the on-going symptoms of pain experienced by Claimant were characteristic of degenerative disc disease resulting from Claimant's age and physical condition and were not related to his work injury. Moreover, the injury would not affect the progression of Claimant's disc and joint disease.

Employer submitted the deposition testimony of the independent medical examiner, Robert Mauthe, M.D. (Dr. Mauthe), board certified in physical and electrodiagnostic medicine. Dr. Mauthe examined Claimant on December 12, 2005, and reviewed Claimant's medical records, including the MRI and EMG reports. According to Dr. Mauthe, Claimant underwent degenerative changes in his lumbar spine, which were unrelated to his work-related injury and which had not been aggravated by the April 24, 2003 work injury. Dr. Mauthe testified that the MRI revealed degenerative changes and that the EMG revealed normal lower extremities. In Dr. Mauthe's opinion, Claimant had fully recovered from his work-related injury, and he did not believe that Claimant required any work restrictions. Dr. Mauthe did state that he believed Claimant's March 3, 2004 incident was related to his work injury, but by the time he examined Claimant in December 2005, Claimant had fully recovered from the work-related injury.

Lastly, Employer presented the deposition testimony of its safety manager, Barbara Morrow (Morrow). Morrow testified that Claimant's pre-injury job remained available to him and that a notice of ability to return to work was sent to Claimant on November 17, 2004, which indicated that there was no medical reason to restrict his hours.

The WCJ found the testimony of Drs. Noble, Mauthe, Draper and of Morrow more credible than the testimony of Dr. Stark and Claimant with regard to Claimant's recovery from his work injury as of October 26, 2004. The WCJ noted that the diagnostic tests, including the MRI and EMG, supported the testimony of Drs. Noble, Mauthe and Draper, and that Dr. Stark had only reviewed Claimant's

MRI results and not his EMG results. Accordingly, the WCJ granted Employer's petition to terminate compensation benefits and denied Claimant's claim petition. The WCJ did find Dr. Stark's testimony, in addition to Drs. Draper's and Mauthe's testimony, credible with regard to Claimant's petition to reinstate compensation benefits for the period from April 12, 2004, to October 26, 2004, and, therefore, granted Claimant's claim petition for that time period. Claimant then appealed to the Board claiming that the WCJ's decision was not reasoned and was not based on substantial evidence. Finding that the decision was both reasoned and based on substantial evidence,³ the Board affirmed and this appeal followed.⁴

On appeal, Claimant argues that the decision of the WCJ is not reasoned as required by Section 422(a) of the Workers' Compensation Act (Act)⁵ because she failed to articulate why Employer's doctors were deemed more credible. Section 422(a) of the Act provides, in pertinent part:

All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole

³ Employer filed a motion to quash Claimant's appeal contending that Claimant did not fully articulate the reasons he was appealing in his petition to the Board. The Board denied the motion and Employer again contends before us that the Board should have quashed the appeal because Claimant failed to adequately set forth the basis for appealing the WCJ's decision. We agree with the Board that Claimant raised the issues with enough sufficiency for the Board to determine the merits of Claimant's appeal.

⁴ Our scope of review in a workers' compensation appeal is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated. *Frankford Hospital v. Workers' Compensation Appeal Board (Walsh)*, 906 A.2d 651 (Pa. Cmwlth. 2006).

⁵ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §834.

which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The [WCJ] shall specify the evidence upon which the [WCJ] relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the [WCJ] must adequately explain the reasons for rejecting or discrediting competent evidence ... The adjudication shall provide the basis for meaningful appellate review.

Our Supreme Court discussed this section of the Act in *Daniels v. Workers' Compensation Appeal Board (Tristate Transport)*, 574 Pa. 61, 828 A.2d 1043 (2003), stating that: “a [WCJ’s] decision is ‘reasoned’ for purposes of Section 422(a) 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 standards of review.” *Id.* at 76, 828 A.2d at 1052. Further, the Court in *Daniels* held that when the testimony presented is by way of deposition, a WCJ must articulate reasons why the testimony of one witness was credited over the testimony of another; the “resolution of conflicting evidence cannot be supported by a mere announcement that [the WCJ] deemed one expert more ‘credible and persuasive’ than another.” *Id.* at 78, 828 A.2d at 1053. Moreover, a WCJ is not required to make findings of fact on *all* the evidence presented, but only on such evidence as necessary to resolve the essential issues so that a meaningful review may take place on appeal. *Pistella v. Workmen’s Compensation Appeal Board (Samson Buick Body Shop)*, 633 A.2d 230 (Pa. Cmwlth. 1993).

In the present case, the WCJ adequately summarized the testimony before her, set forth concise findings of facts, issued credibility determinations with respect to the testimony of Claimant and both parties’ respective medical

experts, and sufficiently explained the basis of these determinations. In rejecting the testimony of Dr. Stark in favor of the testimony of Drs. Noble, Mauthe and Draper, the WCJ specifically pointed to several factors, namely, that the results of Claimant's diagnostic studies supported their testimony and the fact that Claimant's medical witness did not examine the results of the EMG.

Claimant also contends that the WCJ's decision was not reasoned because her findings were internally inconsistent in that she found that Claimant continued to suffer from extreme pain which is inconsistent with her conclusion that Claimant had fully recovered from his work-related injury. However, that finding was not inconsistent because the WCJ found that the pain was related to his degenerative disc disease and not his work-related injury from which she found Claimant had fully recovered.

He also contends that the WCJ's decision is inconsistent because she accepted Dr. Stark's testimony as credible in ordering the reinstatement of Claimant's benefits from April 12, 2004, to October 26, 2004, but did not accept his testimony that Claimant had not fully recovered and terminated benefits as of October 26, 2004. Ignoring that the WCJ did not rely solely on Dr. Stark's testimony to reinstate benefits, but also relied on the testimony of Drs. Noble and Mauthe, a WCJ may accept or reject, in whole or in part, the testimony of any witness, including a medical witness; therefore, the WCJ's partial reliance and partial rejection of Dr. Stark's testimony did not result in an unreasoned decision. *See Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck)*, 664 A.2d 703 (Pa. Cmwlth. 1995).

Claimant finally argues that the WCJ's findings were not based on substantial evidence – namely, that the WCJ's findings were inconsistent and that she improperly found Employer's medical witnesses credible. However, credibility issues and determinations of evidentiary weight are solely within the province of the WCJ and may not be disturbed on appeal. *Lehigh County Vo-Technology School v. Workmen's Compensation Appeal Board (Wolfe)*, 539 Pa. 322, 652 A.2d 797 (1995). Based on the evidence presented and the findings made by the WCJ, substantial evidence existed that Claimant was entitled to a reinstatement of benefits for the period from April 12, 2004, to October 26, 2004, and that as of October 26, 2004, Claimant had recovered from his work-related injury.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

