IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Church of God Home, Petitioner	:	
v.	:	No. 299 C.D. 2007
Workers' Compensation Appeal Board (Lucas), Respondent	:	Submitted: June 8, 2007

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: January 30, 2008

Church of God Home (Employer) petitions for review of an order of the Workers' Compensation Appeal Board (Board) affirming an order of a Workers' Compensation Judge (WCJ). The WCJ granted the Petition to Review Medical Treatment of Georgia Lucas, which sought payment for certain medical treatment pursuant to the Pennsylvania Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1 - 1041.4; 2501 - 2626. We affirm.

On April 12, 2001, Georgia Lucas (Claimant) sustained a work-related injury to her cervical spine in the course and scope of her work as a Quality Assurance Manager for Employer, when Claimant tried to prevent a patient from

falling.[1] Thereafter, Claimant sought benefits for her injury under the Act, and total disability benefits for a "work-related cervical injury" were awarded by a WCJ by Decision and Order circulated July 18, 2002.[2] That order was not appealed.

On June 19, 2003, Employer requested a Utilization Review (UR) of certain care provided to Claimant by Dow Brophy, M.D., which care included Lidoderm patches, trigger point injections, physical therapy, acupressure therapy, and related office visits. Following litigation thereon, the WCJ concluded, by Decision and Order circulated January 28, 2005, that all of the treatment under review therein was reasonable and necessary. Reproduced Record (R.R.) at 26a. No appeal from that order followed, and Employer subsequently paid the medical bills that had been at issue.

Thereafter, Claimant submitted additional medical treatment bills to Employer, and Employer rejected those bills. Resultantly, on September 15, 2005, Claimant filed the Petition to Review Medical Treatment (Medical Review Petition) at issue. Therein, Claimant asserted that Employer had failed to pay for reasonable medical treatment rendered by Dr. Brophy. Employer filed a timely answer thereto, alleging in material part that it had paid all medical bills related to

[1] Claimant's position required, *inter alia*, direct contact with Employer's patients as Claimant assisted nurse's aides.

[2] The WCJ Decision and Order dated July 18, 2002, is contained within the Original Record to this case.

Claimant's work injury. Hearings before a WCJ ensued, at which both parties were represented by counsel, and presented evidence.

While litigation on the Medical Review Petition was pending, the parties executed a Compromise and Release Agreement (C&R Agreement), which Agreement was adopted into a WCJ Decision and Order circulated October 31, 2005. R.R. at 18a. In relevant part, the C&R Agreement again recognized the litigated "cervical disc injury (C5-6 disc)" sustained by Claimant, paid Claimant a lump sum in full and final settlement of all non-medical expenses, and preserved for future payment all "[r]reasonable, necessary and casually related treatment for the accepted injury of 4/12/01. . ." as permitted under the Act. R.R. at 21a-25a. The C&R Agreement further preserved both parties' rights to seek review of future medical and health treatment, and to challenge treatment based on a lack of causation. R.R. at 22a.

In the proceedings on the Medical Review Petition before the WCJ, Claimant submitted documentary evidence regarding the treatment at issue, as well as Dr. Brophy's prior deposition. Employer presented no evidence regarding the medical treatment. The WCJ first found that the treatments which included Claimant's shoulder area were not of such a nature as to be obviously related to the accepted work-related cervical injury. However, the WCJ further found that Dr. Brophy's deposition, as well as the documentary evidence including treatment notes, did in fact establish that the treatments to Claimant's shoulder area were administered to treat symptoms of the accepted injury. The WCJ also found that the treatments at issue described many, if not all, of the treatment modalities that

had been addressed and accepted in the prior UR proceedings. The WCJ did not amend or change the work-related injury itself.

The WCJ accepted Dr. Brophy's deposition testimony as credible, and concluded that all of Claimant's evidence satisfied Claimant's burden of showing that the shoulder treatment was causally related to the accepted cervical injury, despite that treatment's non-obvious nature. Accordingly, the WCJ granted Claimant's Medical Review Petition, and concomitantly ordered reimbursement of the expenses at issue, by Decision and Order circulated March 20, 2005.

Employer timely appealed to the Board, which affirmed the WCJ's Order without receiving additional evidence. Employer now timely appeals to this Court. This Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of Board procedures, and whether necessary findings of fact are supported by substantial evidence. Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995).

We will address Employer's first two presented issues together. Employer argues that the Board erred in affirming the WCJ's *sua sponte* amendment of the previously litigated work-related injury. Employer asserts that any amendment to the accepted injury is precluded by the doctrines of *res judicata* and/or collateral estoppel,[3] in that the prior litigation in this case - namely, the

[3] We have held:

> Collateral estoppel, also known as issue preclusion or "broad res judicata, prevents re-litigation in a later action of an issue of fact or

(Continued....)

Claim Petition, the UR proceedings, and the adoption of the C&R Agreement - all described and recognized only the cervical injury, and not any shoulder injury. Since those orders are now final, Employer argues, they cannot be disturbed in subsequent proceedings to include a work-related shoulder injury. Further, Employer argues that any such amendment of, or correction to, the accepted work-related cervical injury would require Claimant to file a petition to amend or correct that injury description, or to file an additional claim petition. Employer emphasizes, correctly, that no such petition has been filed herein.

Employer's arguments on these two related issues are without merit. A clear reading of the WCJ's Decision and Order in its entirety, as well as the Board's Opinion affirming that Order, reveals that no change or amendment was made to the accepted work-related cervical injury. Contrarily, every individual section of the WCJ's Opinion expressly references the sole accepted work-related injury as one only to Claimant's cervical area. WCJ Opinion of March 20, 2006, at

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> law which was actually litigated and which was necessary to the original judgment" . . .
>
> Collateral estoppel applies when: (1) the issue decided in the earlier case is identical to the one presented in the later action; (2) there was a final judgment on the merits in the earlier action; (3) the party against whom the plea is asserted was a party, or in privity with a party to an earlier adjudication; (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior action; and (5) the determination in the prior proceeding was essential to the judgment.

Ragno v. Workers' Compensation Appeal Board (City of Philadelphia), 915 A.2d 1234, 1242 (Pa. Cmwlth.) (citation omitted), petition for allowance of appeal denied, ___Pa.___, 934 A.2d 1279 (2007).

1-4. Similarly, each page of the Board's Opinion recognizes only Claimant's cervical injury as the work-related injury at issue. Board Opinion at 2-5. Nowhere in the record of this matter can Claimant's work-related injuries be found to include a shoulder injury. Claimant has not advanced any argument that the injury description should be amended or corrected, and neither the WCJ nor the Board discussed or addressed any such amendment or correction.

The record plainly contradicts Employer's repeated insistence that the WCJ and the Board have concluded that Claimant's accepted injury should be amended and or corrected to include any injury to Claimant's shoulder. On the contrary it is the *treatment* to Claimant's shoulder that is at issue, and not the recognition of any shoulder injury as work-related. No disability has been claimed in this matter as a result of any shoulder injury, nor have any disability benefits been awarded for any injury other than the accepted cervical injury. The record is clear on this point, Employer's rhetoric notwithstanding.

We have, however, addressed employer liability for medical expenses resulting from symptoms and/or treatments that stem from previously accepted work-related injuries. It is axiomatic that, under the Act, a claimant bears the burden of proof to show the relation between medical treatment bills, and an accepted work-related injury. Hilton Hotel Corp. v. Workmen's Compensation Appeal Board (Totin), 518 A.2d 1316 (Pa. Cmwlth. 1986). In Hilton Hotel, we addressed a situation applicable to that presented *sub judice*. In that precedent, we held that where medical treatment is for symptoms that are not the "immediate and direct" or "natural and probable" consequences of the accepted work-related

injury, unequivocal medical testimony is required to establish the nexus between the accepted injury and any "new, seemingly unrelated, 'non-natural and non-probable' symptoms" that are alleged to stem from the accepted injury, and for treatment for those symptoms. Id. at 1319 (citations omitted). We note that this is the burden that was correctly applied by the WCJ, and by the Board, in the instant matter. WCJ Opinion, Findings of Fact Nos. 5, 6, 8, 9; Board Opinion at 3-4. Employer's next argument is directed towards Claimant's satisfaction of that burden.

Employer argues that no substantial[4] or competent evidence exists to support an "award of medical benefits for shoulder treatment." We disagree, inasmuch as Employer's argument can be read to attack the evidence supporting a causal relationship between the shoulder treatments at issue, and the accepted cervical injury.[5]

We first note that in support of this argument, Employer offers various portions of selected evidence and testimony, as offered by Claimant, that support Employer's preferred alternative finding that no such connection exists between the treatments at issue and Claimant's accepted cervical injury. However, it is

[4] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Mrs. Smith's Frozen Foods v. Workmen's Compensation Appeal Board (Clouser), 539 A.2d 11 (Pa. Cmwlth. 1988).

[5] We emphasize that, notwithstanding the imprecision of Employer's arguments on this point, no disability *benefits* have been awarded in this case for any injury other than those previously awarded for Claimant's accepted cervical injury. When reading Employer's argument as a whole on this issue, it is clear that Employer's challenge is to the ordered reimbursement for the shoulder treatment expenses in this matter, and not to any disability benefits.

axiomatic that in determining whether substantial evidence supports a WCJ's finding of fact, it is irrelevant that the record reveals evidence that would support a contrary finding; the relevant inquiry is whether the record contains substantial evidence supporting the actual findings that were made. Williams v. Workers' Compensation Appeal Board (USX Corp.-Fairless Works), 862 A.2d 137 (Pa. Cmwlth. 2004).

The WCJ in this matter detailed the evidence supporting the causal connection between the shoulder treatments at issue, and the accepted work-related cervical injury. As the WCJ noted, the record shows that multiple treatment notes included with the submitted invoices for the shoulder treatment at issue clearly associate the treatment administered with both the cervical injury, and the shoulder symptomology. R.R. at 37a, 73a-82a, 87a. Dispositively on this issue, Dr. Brophy's deposition, submitted during the prior UR proceedings in this case, expressly states that his initial diagnosis of Claimant's work-related injury included musculoskeletal spasms and "pain in specific areas of [Claimant's] neck and shoulder" related to those spasms. R.R. at 47a-49a. Additionally, Dr. Brophy's deposition expressly mentions the treatments that he prescribed for Claimant's work-related injuries, which treatments encompass those treatments at issue herein, including *inter alia* Lidoderm patches, trigger point injections, physical therapy, and acupressure therapy. R.R. at 49a-54a. That deposition testimony, as well as the treatment notes referenced above, when taken as a whole, constitute substantial competent evidence supporting the connection between

Claimant's accepted work-related injury and the shoulder treatment at issue. Mrs. Smith's Frozen Foods.

Finally, we will address Employer's contention that the WCJ failed to render a reasoned decision as required under Section 422(a) of the Act, 77 P.S. §834. Section 422(a) of the Act provides, in pertinent part, that "[a]ll 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 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…", and "[t]he adjudication shall provide the basis for meaningful appellate review…" 77 P.S. § 834. Our Supreme Court has held that a WCJ's decision is "reasoned" for purposes of Section 422(a) if it allows for adequate review by the Board without the need for further elucidation, and if it allows for adequate review by the appellate courts under their standards of review. Daniels v. Workers' Compensation Appeal Board (Tristate Transport), 574 Pa. 61, 828 A.2d 1043 (2003). Further, the Court held that Section 422(a) requires that when conflicting testimony is presented by way of deposition, the WCJ must articulate the reasons why one witness' testimony was credited over another's. Id. The WCJ must clearly state its reasons for credibility determinations on deposition testimony so that the reviewing body may determine whether those reasons are set forth in the record. Id.

Relying entirely upon its prior assertion that Dr. Brophy's deposition testimony failed to establish a connection between Claimant's work-related injury and the shoulder treatments at issue, Employer in this matter argues that the WCJ's

Decision therefore does not provide a proper rationale for ordering reimbursement for those treatments. As our foregoing analysis articulates, however, Dr. Brophy's deposition does establish a causal connection between the treatments at issue and the accepted injury. As such, the WCJ's rationale is both adequately provided and correct, the WCJ's Decision is reasoned under the Act, and Employer's argument on this point must fail. Daniels; Hilton Hotel.

Employer also argues that the WCJ failed to provide any objective basis for finding Dr. Brophy's deposition testimony to be credible. In regards thereto, the WCJ stated: "Having reviewed the deposition in its entirety, this Judge finds Dr. Brophy's explanation to be credible." WCJ Opinion, Finding of Fact 6. This statement of credibility is sufficient under the instant facts, notwithstanding Daniels' requirements.

It is well established that "the purpose of a reasoned decision is to spare the reviewing court from having to imagine why the WCJ believed one witness over another." Lewis v. Workers' Compensation Appeal Board (Disposable Products), 853 A.2d 424, 429 (Pa. Cmwlth. 2004). The Supreme Court, in Daniels, addressed the objective basis requirement for deposition testimony thusly:

> The complication here - and in many cases like this - is that, although appellant appeared live before the WCJ, *the medical experts, whose evidence concerning the persistence of appellant's work injury was conflicting*, testified only by deposition. Since the WCJ did not

> observe the respective demeanors of the experts, *her resolution of the conflicting evidence cannot be supported by a mere announcement that she deemed one expert more "credible and persuasive" than another*. This is not to say that the WCJ must actually observe *competing witnesses* on the stand in order to assess their relative credibility. To the contrary, as the cases that we have canvassed above demonstrate, *there are countless objective factors which may support the decision to accept certain evidence while "rejecting or discrediting competent [conflicting] evidence."*

Daniels, 574 Pa. at 78, 828 A.2d at 1053 (emphasis added). Clearly, then, the goal of the objective basis requirement in relation to deposition testimony is to enable effective appellate review of a WCJ's resolution of *competing or conflicting* evidence, and to allow effective appellate review of a WCJ's rejection of evidence.

In the instant matter, no conflicting evidence was offered by Employer in opposition to Dr. Brophy's deposition evidence. Indeed, no medical evidence of any kind was offered by Employer in this matter, and Dr. Brophy's deposition evidence was the sole evidence offered and admitted. As such, Daniels' objective basis requirement for conflicting deposition evidence is inapplicable under the narrow facts of this case. In our review of this matter, we have no need to "imagine why the WCJ believed one witness over another", as only one witness presented medical evidence, and no competing medical evidence whatsoever was rejected in the proceedings below. As such, the WCJ's plain and express articulation of his acceptance of Dr. Brophy's deposition testimony as credible

fully enables effective appellate review, which effective review is itself the ultimate goal of Daniels' articulated standards.

Accordingly, we affirm.

JAMES R. KELLEY, Senior Judge

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O R D E R

AND NOW, this 30th day of January, 2008, the order of the Workers' Compensation Appeal Board, dated January 25, 2007, at A06-0719, is affirmed.

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JAMES R. KELLEY, Senior Judge