

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Hall, :
 :
 Petitioner :
 :
 :
 v. : No. 357 C.D. 2008
 : Submitted: June 27, 2008
 Workers' Compensation Appeal Board :
 (Matrix Services), :
 Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FRIEDMAN

FILED: August 12, 2008

Arthur Hall (Claimant) petitions for review of the February 19, 2008, order of the Workers' Compensation Appeal Board (WCAB), which affirmed the remand decision of a workers' compensation judge (WCJ) denying Claimant medical benefits and litigation costs. We affirm in part, and we reverse and remand in part.

Claimant worked as a welder for Matrix Services (Employer). On August 24, 2004, Claimant filed a claim petition, alleging that during incidents on February 10, 2003, and February 11, 2003,¹ he sustained work-related injuries to his neck, head and right arm, resulting in total disability as of July 6, 2004.

¹ On February 10, 2003, Claimant slipped on ice at work and fell, hitting his lower back, and, on February 11, 2003, a one-hundred pound ladder fell and struck Claimant on the head. (R.R. at 10a-11a.)

Claimant sought indemnity benefits as of July 6, 2004, and medical benefits as of the date of injury. Employer filed a timely answer denying all of Claimant's allegations, and a WCJ held hearings at which Claimant and Employer presented evidence.

Claimant testified on his own behalf and offered the deposition testimony of his family physician, John Aaron, M.D. Dr. Aaron testified that the February 2003 work incidents aggravated Claimant's pre-existing cervical conditions, and as a result, Claimant was totally disabled and could not return to his prior position as a welder. (WCJ's 3/30/2006 op., Findings of Fact, No. 6; R.R. at 141a-45a.) Both Claimant and Dr. Aaron acknowledged that: (1) Claimant has a history of non-work-related neck pain and conditions; (2) Dr. Aaron has treated Claimant for these prior conditions since 2001; (3) a pre-injury (February 5, 2003) examination, revealed that Claimant had neck pain and pain and numbness in his arms; (4) Claimant was taking numerous medications for neck pain prior to the 2003 work injuries; and (5) Dr. Aaron suggested that Claimant seek an evaluation from a neurosurgeon regarding his neck pain as early as November 26, 2001, and as late as February 5, 2003. (WCJ's 3/30/2006 op., Findings of Fact, Nos. 5a-5d, 5g, 6; R.R. at 13a-14a, 156a-57a, 181a.)

Employer presented the deposition testimony of Richard J. Sagall, M.D., one of Employer's panel physicians, who treated Claimant's injuries from February 10, 2003, through April 8, 2003. Dr. Sagall opined that, as a result of the two incidents in February 2003, Claimant sustained soft tissue injuries in the nature of head trauma, cervical strain, lumbar strain and contusion. However, Dr. Sagall

testified that, as of April 8, 2003, Claimant had recovered from those injuries, returned to his baseline condition and could return to work without restrictions. (WCJ's 3/30/2006 op., Findings of Fact, No. 3; R.R. at 217a, 219a, 228a-29a, 250a-51a.)

Crediting Dr. Sagall's testimony, the WCJ found that Claimant sustained a work-related injury in February 2003 and had fully recovered from that injury as of April 8, 2003, without suffering any loss of earnings. (WCJ's 3/30/2006 op., Findings of Fact, Nos. 8, 10-12.) On this basis, the WCJ concluded that Claimant was not entitled to disability benefits and denied the claim petition in its entirety.² (WCJ's 3/30/2006 op., Findings of Fact, No. 12, Conclusions of Law, No. 1.)

Claimant appealed to the WCAB, arguing that because the WCJ found that Claimant sustained a work-related injury, the WCJ erred by denying the claim petition in its entirety, without awarding medical benefits or litigation costs. The WCAB sustained Claimant's appeal in part, affirming the WCJ's denial of disability benefits, but, concluded that the WCJ erred by failing to make findings of fact or conclusions of law addressing Claimant's medical expenses or litigation costs. Accordingly, the WCAB remanded the matter to the WCJ to address those issues. (WCAB's 9/25/2006 op.; R.R. at 402a-410a.)

² The WCJ also concluded that Employer's contest was reasonable and, consequently, that Claimant was not entitled to unreasonable contest attorney's fees. (WCJ's 3/30/2006 op., Conclusions of Law, No. 2.) The WCAB affirmed the denial of attorney's fees in its September 25, 2006, decision, and Claimant has not appealed this determination.

On remand, Claimant sought payment for outstanding charges in the amount of \$360.00 for four visits with Dr. Aaron between February 12, 2003, and April 7, 2003. The bill listed Inservco as the responsible insurer, not Liberty Mutual, Employer's workers' compensation carrier, and the codes assigned in the bill for the alleged work-related services were the same codes used for Dr. Aaron's treatment prior to the February 2003 incidents. Claimant also presented a list of his litigation costs, including deposition fees, totaling \$9,944.65. (WCJ's 4/20/2007 op., Findings of Fact, Nos. 2, 5.)

The WCJ again credited Dr. Sagall's opinions and testimony over Dr. Aaron's and found that Employer, through Dr. Sagall, provided Claimant with all the reasonable and necessary medical treatment required by the February 2003 work injury. (WCJ's 4/20/2007 op., Findings of Fact, Nos. 3, 5.) Moreover, the WCJ found that the statement of Dr. Aaron's charges was devoid of detail and was not addressed to either Employer or Employer's workers' compensation insurer. The WCJ also observed that the diagnostic codes used on the bill for the alleged work-related treatment were the same as for Claimant's non-work-related treatment. Accordingly, the WCJ concluded that Claimant failed to present credible evidence to support his claim that Dr. Aaron's treatment was causally related to the February 2003 work-related injury. (WCJ's 4/20/2007 op., Findings of Fact, No. 5.) Finally, the WCJ held that, because Employer had fully discharged its substantive liability for Claimant's work-related injury by April 8, 2003, almost a year and a half **before** Claimant filed his claim petition, Claimant had not been successful in whole or in part on his petition, and, therefore, litigation costs were not warranted. (WCJ's 4/20/2007 op., Findings of Fact, No. 4.) Claimant

appealed to the WCAB, which affirmed, and Claimant now petitions this court for review.³

Claimant first argues that Employer should have been required to pay Dr. Aaron's outstanding medical bills incurred prior to April 8, 2003, because Claimant proved that this treatment with Dr. Aaron was causally related to the work injury. We disagree.

An employer challenging an alleged work injury is not required to pay **all** the medical expenses presented by a claimant. *DeJesus v. Workmen's Compensation Appeal Board (Friends Hospital)*, 623 A.2d 397 (Pa. Cmwlth. 1993). To be subject to the reimbursement provisions of section 306(f.1) of the Workers' Compensation Act (Act),⁴ medical expenses must be causally related to a claimant's work injury. *DeJesus*. Where, as here, the causal relationship between the work injury and the medical bills is not obvious, the claimant must prove that the medical bills are causally related to the work injury, as well as necessary, before the employer is required to pay those bills. *Id.* However, because the WCJ rejected Claimant's evidence relating to causation as not credible, Claimant could

³ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

⁴ Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §531.

not satisfy his burden of proof regarding Employer's obligation to pay those expenses.⁵ *Id.*

Claimant next argues that, because the WCJ found that he sustained a work-related injury in February 2003 and that Employer was responsible for related, reasonable and necessary medical treatment of that injury, he prevailed in part on his claim petition. Therefore, Claimant contends that Employer was obligated to pay reasonable litigation costs pursuant to section 440(a) of the Act.⁶ We agree.

Section 440(a) of the Act, provides, in relevant part:

(a) In any contested case where the **insurer has contested liability** in whole or in part ... the employe ... **in whose favor the matter at issue has been finally determined** in whole or **in part shall be awarded** ... a **reasonable sum for costs** incurred for attorney's fee, witnesses, necessary medical examinations ...: Provided, That cost for attorney fees may be excluded when a reasonable basis for the contest has been established by the employer or the insurer.

77 P.S. §996(a) (emphasis added). To trigger the award of reasonable litigation costs, a matter at issue must be finally determined in whole or **in part in favor of**

⁵ The WCJ's authority over questions of credibility, conflicting evidence and evidentiary weight is unquestioned, and, thus, we are bound by the WCJ's credibility and evidentiary determinations. *Minicozzi v. Workers' Compensation Appeal Board (Industrial Metal Plating, Inc.)*, 873 A.2d 25 (Pa. Cmwlth. 2005).

⁶ Section 440(a) was added by section 3 of the act of February 8, 1972, P.L. 25, *as amended*, 77 P.S. §996(a).

the claimant. *Jones v. Workers' Compensation Appeal Board (Steris Corporation)*, 874 A.2d 717 (Pa. Cmwlth. 2005).⁷

Here, Claimant filed a claim petition seeking both disability and medical benefits. When Claimant filed the claim petition, alleging a work injury and compensation due for wage loss and medical benefits, Employer did not acknowledge the work injury, but, instead, denied all of those allegations.⁸ Thus, the issue of whether Claimant suffered a work injury was contested, and this specific issue was resolved by the WCJ and the WCAB in Claimant's favor. Consequently, Claimant is entitled to those reasonable litigation costs associated with the issue on which he prevailed. *Jones*.

⁷ In *Jones*, the claimant, like Claimant here, filed a claim petition seeking both disability and medical benefits for an alleged work injury. The WCJ found that the claimant had sustained a work injury and granted the claim petition for medical benefits, but the WCJ denied disability benefits because the claimant had no loss of earnings as a result of the work injury. The claimant appealed to the WCAB, which affirmed on the merits, but the WCAB remanded the matter to the WCJ to calculate and award the claimant litigation costs because the claimant had been partially successful on his claim petition. On appeal, we quashed as interlocutory the claimant's petition for review from the WCAB's order, reasoning that the remand order required the WCJ to use his discretion to calculate and award the amount of litigation costs associated with the issue on which the claimant was successful.

⁸ For this reason, this matter is distinguishable from *Watson v. Workers' Compensation Appeals Board (Special People in Northeast)*, 949 A.2d 949 (Pa. Cmwlth. 2008). The claimant in *Watson*, like Claimant here, established that she sustained a work-related injury but did not succeed in establishing the right to indemnity benefits, medical benefits or litigation costs. The claimant argued that she was entitled to litigation costs because she partially succeeded in her claim petition because she established a work-related injury. In rejecting this argument, we noted that, in its answer to the claim petition, the employer acknowledged that a work injury had occurred and agreed to pay all reasonable, necessary medical expense payments; thus, the claimant was not successful in part on a **disputed issue**. In contrast, Employer here denied all of Claimant's allegations of injury in its answer, despite Claimant having been treated by Employer's own physicians for several months.

Accordingly, we reverse the WCAB's order to the extent that it denies litigation costs in their entirety, and we remand the matter to the WCAB for further remand to the WCJ to calculate and award the amount of reasonable litigation costs associated with the issue on which Claimant was successful.⁹ The WCAB's order is affirmed in all other respects.

ROCHELLE S. FRIEDMAN, Judge

⁹ The WCJ may find that all costs incurred by Claimant relate to his establishment of a work-related injury and, therefore, award the full amount of litigation costs. *Jones*. Alternatively, the WCJ may decide that the litigation costs can be allocated between the two issues presented and award only that sum attributable to the issue on which Claimant prevailed. *Id.*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Hall, :
 :
 Petitioner :
 :
 :
 v. : No. 357 C.D. 2008
 :
 Workers' Compensation Appeal Board :
 (Matrix Services), :
 Respondent :

ORDER

AND NOW, this 12th day of August, 2008, the order of the Workers' Compensation Appeal Board (WCAB), dated February 19, 2008, is hereby reversed to the extent that it denies litigation costs in their entirety, and we remand the matter to the WCAB for further remand to the workers' compensation judge to calculate and award the amount of reasonable litigation costs associated with the issue on which Arthur Hall was successful. The WCAB's order is affirmed in all other respects.

Jurisdiction relinquished.

ROCHELLE S. FRIEDMAN, Judge