

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald Sharpless, :
Petitioner :
 :
v. : No. 365 C.D. 2008
 : Submitted: May 30, 2008
Workers' Compensation Appeal :
Board (Workforce Solutions, Inc.), :
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: July 16, 2008

Donald Sharpless (Claimant) petitions for review of the February 5, 2008, order of the Workers' Compensation Appeal Board (WCAB), which affirmed the decision of a workers' compensation judge (WCJ) dismissing Claimant's claim and penalty petitions. We affirm.

On January 14, 2005, Claimant filed a claim petition alleging that he suffered work-related injuries to his back, hip and right knee while working as a forklift operator for Workforce Solutions (Employer). Claimant subsequently filed a penalty petition alleging that Employer failed to promptly investigate his claim. Employer filed timely answers to both petitions, which were consolidated for hearings before the WCJ.

Claimant testified that, on July 8, 2004, his wrench slipped while he was tightening a bolt, causing him to fall backward and injure his back and right knee. Claimant stated that he experienced pain in his back, hip and knee but completed his shift. The following day Claimant went to the emergency room, where he was examined and released. Claimant stated that he returned to work but was unable to continue working after July 21, 2004, because of pain. On cross-examination, Claimant acknowledged that he has had back problems since 1995 and had been seeing a chiropractor for his back at the time of the July 8, 2004, incident. However, Claimant testified that, before the July 8th incident, he only suffered periodic episodes of back pain and that his pain has been constant since that time. (WCJ's Findings of Fact, Nos. 3, 4.)

Claimant also offered the deposition testimony of Vinit Pande, M.D. Dr. Pande, who is board-certified in physical medicine and rehabilitation, began treating Claimant on November 11, 2004. Dr. Pande stated that his physical examination of Claimant revealed significant tenderness and spasm in the lumbar paraspinal region with a limited range of motion and that these findings were repeated during examinations in February and April 2005. Dr. Pande testified that MRIs of Claimant's knee and lower back reflected degenerative changes as well as mild spinal stenosis and facet arthropathy in the lumbar region. Based upon his examinations of Claimant and review of the MRIs, Dr. Pande opined that, as a result of the July 8, 2004, work incident, Claimant suffered an aggravation of the degenerative process in his right knee and back. (WCJ's Findings of Fact, No. 5.)

Employer submitted the deposition testimony of Mark Scinico, M.D. Dr. Scinico, who is board-certified in internal medicine, examined Claimant on May 5, 2005, at Employer's request. Dr. Scinico testified that Claimant provided a history of chronic low back pain since 1994. He stated that his examination of Claimant's right knee and back revealed no abnormalities and that MRI studies of Claimant's knee and back reflected degenerative changes but no evidence of traumatic injury. Dr. Scinico stated that "at best [Claimant] sustained strain or sprain of the lumbosacral spine" as a result of the July 8, 2004, injury, from which he had fully recovered. (R.R. at 125a.) Dr. Scinico believed that Claimant suffered from chronic low back pain causally related to a 1994 injury that was neither aggravated nor exacerbated by the incident of July 8, 2004. (WCJ's Findings of Fact, No. 6.)

On cross-examination, Dr. Scinico acknowledged stating in his May 5, 2005, report that Claimant suffered an injury in the nature of strains or sprains of the lumbar spine as a result of the work incident on July 8, 2004. (R.R. at 127a-28a, 149a.) However, he explained that, although Claimant reported an increase in symptomology following the work incident, Claimant returned to his baseline condition shortly thereafter. (R.R. at 127a.)

The WCJ accepted the testimony of Dr. Scinico as more credible than that of Dr. Pande, explaining that Dr. Scinico's opinion was corroborated by Claimant's medical history and by diagnostic tests that reflected no changes in Claimant's back or knee following the July 8, 2004, episode. (WCJ's Findings of Fact, No. 8.) Concluding that Claimant failed to meet his burden of proving he

sustained a work injury, the WCJ dismissed the claim and penalty petitions. Claimant appealed to the WCAB, which affirmed the WCJ's decision.

On appeal to this court,¹ Claimant argues that the WCJ erred in denying him benefits because “Dr. Scinico unequivocally opined that Claimant did indeed suffer a work injury.” (Claimant’s brief at 12.) We disagree.

In an original claim petition, the claimant bears the burden of proving all the elements necessary to support an award of benefits. *Teter v. Workers’ Compensation Appeal Board (Pinnacle Health System)*, 886 A.2d 721 (Pa. Cmwlth. 2005). More specifically, the claimant must establish that he sustained an injury during the course and scope of his employment that resulted in a disability, that is, wage loss, which continues for the period for which benefits are sought. *Delaware County v. Workers’ Compensation Appeal Board (Baxter Coles)*, 808 A.2d 965 (Pa. Cmwlth. 2002), *appeal denied*, 573 Pa. 699, 825 A.2d 1262 (2003). The claimant must prove a causal connection between the work-related incident and the alleged disability, *Teter*, and where, as here, the causal relationship is not obvious, the claimant must present unequivocal medical testimony to prove such a connection. *Sears, Roebuck & Company v. Workmen’s Compensation Appeal Board*, 409 A.2d 486 (Pa. Cmwlth. 1979). The medical testimony must be viewed in its entirety and must establish, not that the injury or condition might have or

¹ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

possibly resulted from the alleged cause, but that, in the professional opinion of the medical witness, the result in question did come from the alleged cause. *Id.*

Although Dr. Scinico at times referred to the July 8, 2004, work incident as an “injury,” he opined that “at best ... [Claimant] sustained strain or sprain” of the lumbosacral spine. (R.R. at 125a.) In addition, Dr. Scinico repeatedly stated that the work incident caused no worsening of Claimant’s pre-existing conditions. He also testified that, *if* Claimant had inflammation or increased symptoms related to the work incident, Claimant recovered shortly after the injury. (R.R. at 127a, 135a.) We conclude that, taken as a whole, Dr. Scinico’s testimony does not constitute the unequivocal medical testimony necessary to satisfy Claimant’s burden of proof.²

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Judge

² Having so decided, we need not address Claimant’s argument concerning costs and counsel fees.

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ORDER

AND NOW, this 16th day of July, 2008, the order of the Workers' Compensation Appeal Board, dated February 5, 2008, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Judge