

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joan Carnaroli, :
 :
 Petitioner :
 :
 :
 v. : No. 394 C.D. 2008
 : Submitted: May 16, 2008
 Workers' Compensation Appeal Board :
 (Elwyne, Inc.), :
 Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FRIEDMAN

FILED: June 13, 2008

Joan Carnaroli (Claimant) petitions for review of the February 11, 2008, order of the Workers' Compensation Appeal Board (WCAB), which reversed the decision of a workers' compensation judge (WCJ) granting a review petition filed by Claimant. We affirm.

On October 3, 2001, Claimant suffered a work injury while employed by Elwyne, Inc. (Employer).¹ Claimant filed a claim petition, which was granted on August 25, 2003. In the adjudication, the WCJ described multiple work-related injuries, including syringomyelia.² (5/17/07 Findings of Fact, Nos. 1-2.) On

¹ Claimant slipped on debris while walking to her car in Employer's parking lot, landing on her back, shoulders and head. (8/25/03 decision at 1, ¶ II(a), R.R. at 44a.)

² Syringomyelia is a condition involving a cavity in the spinal cord. (R.R. at 96a-97a.) Although the work injuries in the August 25, 2003, adjudication included syringomyelia, the **(Footnote continued on next page...)**

August 9, 2006, Claimant filed a review petition, seeking to add pulmonary disorders to the description of her work injuries. Employer filed an answer, and the WCJ held hearings on the matter. (5/17/07 Findings of Fact, Nos. 3-4.)

In support of her review petition, Claimant presented the February 2007 deposition testimony of Daniel C. DuPont, D.O., whose physician group treated Claimant from January 2006 to January 2007. Dr. DuPont testified that Claimant suffers from dyspnea³ related to a mild moderate restrictive lung disease of a multifactorial nature. Dr. DuPont opined that Claimant's pulmonary condition is due to the significant weight gain, de-conditioning and limited activity that has resulted from her syringomyelia. Thus, Dr. DuPont concluded that the pulmonary condition is a result of Claimant's work injury. (5/17/07 Findings of Fact, No. 7; R.R. at 65a.)

Employer presented the March 2007 deposition testimony of Paul Shipkin, M.D., who testified that Claimant's records do not indicate that she gained a large amount of weight after her October 2001 work injury. Dr. Shipkin explained that Claimant is 5'5" tall, that she weighed 211 pounds on July 9, 2001, and that she weighed an estimated 250 pounds at the time he examined her. Dr.

(continued...)

WCJ in this case failed to include that injury in the findings of fact. (*See* 8/25/03 decision, Findings of Fact, No. 3, R.R. at 49a; *see also* 5/17/07 Findings of Fact, No. 2).

³ Dyspnea is shortness of breath. Stedman's Medical Dictionary 480 (25th ed. 1990). We note that the deposition transcript and the WCJ incorrectly call the condition "dysmea." (5/17/07 Findings of Fact, No. 7; R.R. at 62a.)

Shipkin opined that it is inconceivable that a weight gain of thirty-five pounds⁴ would compromise a person's breathing. Thus, Dr. Shipkin concluded that Claimant's pulmonary problems are unrelated to the weight gain or the work injury. (5/17/07 Findings of Fact, No. 10.)

Claimant subsequently testified that she erred in telling Dr. DuPont that she had gained 130 pounds since her work injury. Claimant stated that her weight gain since the work injury was only fifty pounds. (R.R. at 132a.) When asked to explain, Claimant testified:

A. As a female – and I think maybe a lot of females do this – I don't go by weight. I go by size. So I know back in 2001, I was wearing a size 12/14. And now, I'm wearing a size 20 or 2X. As a female, I don't like to look at weight, I like to look at sizes. So that's kind of how I got that conclusion because, you know, all of a sudden, I gained weight. I know that, after talking last night with my husband, he had been sick the year prior to me falling and I was on-the-go quite a bit and grabbing, so I did gain some weight, and I had forgotten about it because it was eight years ago.

Q. So the history that you gave to Doctor [D]uPont, you just made an error?

A. Yeah.

(R.R. at 132a-33a.)

⁴ Although the difference between 250 and 211 is thirty-nine, Dr. Shipkin had only estimated Claimant's weight to be 250 pounds at the time he examined her. Thus, presumably, thirty-five pounds is also an estimate.

After considering the evidence, the WCJ credited Dr. DuPont's testimony relating Claimant's pulmonary disorder to the significant weight gain, de-conditioning and limited activity resulting from Claimant's work injury. (5/17/07 Findings of Fact, No. 13.) In rejecting Dr. Shipkin's contrary opinion, the WCJ stated that the doctor's testimony "does not convince this [WCJ] that the weight gain and medications" would not support a causal connection between the work injury and Claimant's pulmonary disorder. (5/17/07 Findings of Fact, No. 16.) Thus, the WCJ granted the review petition.⁵

Employer appealed to the WCAB, which reversed. Relying on *Newcomer v. Workmen's Compensation Appeal Board (Ward Trucking Corporation)*, 547 Pa. 639, 692 A.2d 1062 (1997) (stating that expert medical testimony that is based solely on a false medical history is not competent evidence), the WCAB concluded that Dr. DuPont's testimony was not competent because he relied on the false history provided to him by Claimant that she had gained 130 pounds since her work injury. Claimant now appeals to this court.⁶

Claimant argues that the WCAB erred in concluding that the expert testimony of Dr. DuPont was not competent. Claimant contends that Dr. DuPont's

⁵ A claimant may amend the description of a work injury when the claimant's condition arises as a natural consequence of the work injury. *Temple University Hospital v. Workers' Compensation Appeal Board (Sinnott)*, 866 A.2d 489 (Pa. Cmwlth. 2005).

⁶ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with 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.

opinion establishing a causal connection between the work injury and Claimant's pulmonary condition, when viewed as a whole, is not based solely on, and is not dependent on, the amount of the weight gain. We disagree.

A medical expert's opinion is rendered incompetent if, when viewed as a whole, it is based solely on, and is dependent on, inaccurate information. *American Contracting Enterprises, Inc. v. Workers' Compensation Appeal Board (Hurley)*, 789 A.2d 391 (Pa. Cmwlth. 2001). In determining whether a medical expert's opinion is incompetent, a close examination of the testimony is essential. *Newcomer*.

Dr. DuPont testified as follows:

Q. ... [D]o you have an opinion within a reasonable degree of medical certainty as to the cause of the pulmonary diagnosis you have rendered today?

A. I do.

Q. And what is that opinion?

A. It is – her restrictive lung disease is due to a **significant weight gain**, deconditioning and limited activity due to the nonpulmonary conditions, that is to say that we ruled out that her heart and her lungs were responsible for that. So by process of elimination it is her musculoskeletal condition [i.e., de-conditioning and muscle weakness] that would be causing the initial problem that led to the ultimate **excessive weight gain** and limited activity.

Q. Okay. You're aware that she's been diagnosed as having syringomyelia?

A. I am.

Q. Can you explain how if at all that might fit in with your opinion on causation?

A. Well, she ... has been diagnosed with this spinal disorder, syringomyelia that has limited her activity, has resulted in other doctors treating her with pain medicine, such that she does less activity than we have tried to get her to do and she wants to do. She has realized, in her words, a **weight gain of 130 pounds** since 2002. **That weight gain has resulted in** the restrictive disease that the breathing tests have shown, and that restrictive disease has made her symptomatically limited in her activity.

(R.R. at 64a-65a) (emphasis added). Dr. DuPont further testified:

Q. [W]hat, if any, causal relationship do you feel her current pulmonary problems ... have in relation to that original work injury?

A. ... [T]his syringomyelia has been the underlying problem that resulted in these other conditions: Her inactivity, her pain, her pain medications, her spinal cord stimulator, her **weight gain** and then her **subsequent shortness of breath**. So it [syringomyelia] is the end result of that process that has caused her to have the pulmonary problems that we have been seeing her for since January of 2006.

(R.R. at 66a) (emphasis added). On cross-examination, Dr. DuPont testified:

Q. And this lady is morbidly obese now, is she not?

A. She is.

Q. And you had not seen her until she was already in that condition?

A. Correct. **The history of the weight gain was obtained directly from her. I did not see her when she had been of a different body habitus.**^[7]

(R.R. at 70a-71a) (emphasis added). Finally, Dr. DuPont testified:

Q. And what was the amount of weight gain that you said she told you she has undergone?

A. **In her words** or by her statement since 2002 **she states she's gained 130 pounds....**

Q. Doctor, just one last question. As of ... her last visit what was her weight?

A. 264 pounds.

(R.R. at 81a-82a) (emphasis added).

In reviewing Dr. DuPont's testimony, it is apparent that, when he referred to "significant weight gain," "excessive weight gain" or just the "weight gain," he was referring to a weight gain of 130 pounds. Dr. DuPont made clear that he did not see Claimant when she had a "different body habitus," i.e., when she weighed only 134 pounds. Therefore, Dr. DuPont had no reason to question Claimant's statement that she had gained 130 pounds since her work injury. In fact, when Dr. DuPont's deposition was taken in February 2007, no one disputed that Claimant had gained 130 pounds. Dr. Shipkin raised the issue for the first time at his deposition in March 2007.

⁷ The word "habitus" refers to "[t]he physical characteristics of a person." Stedman's Medical Dictionary 678 (25th ed. 1990).

The question, then, is whether Dr. DuPont's opinion regarding the causal connection between Claimant's work injury and her pulmonary condition is based solely on, and is dependent on, his belief that Claimant gained 130 pounds. At one point, Dr. DuPont referred to the 130 pounds and stated, "**That** weight gain has resulted in" Claimant's pulmonary problems. (R.R. at 65a) (emphasis added). Such testimony certainly shows that Dr. DuPont's expert opinion is based solely on, and is dependent on, his belief that Claimant gained 130 pounds. There is nothing in the rest of Dr. DuPont's testimony to suggest otherwise.

Accordingly, we affirm.⁸

ROCHELLE S. FRIEDMAN, Judge

⁸ Claimant also argues that the WCAB erred in failing to remand this case to the WCJ to resolve the conflicting evidence regarding the amount of Claimant's weight gain. However, whatever finding the WCJ might make on remand, that finding would not change the fact that Dr. DuPont believed Claimant gained 130 pounds, rendering his testimony incompetent. Thus, the WCAB did not err in failing to remand the case.

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(Elwyne, Inc.),	:	
Respondent	:	

ORDER

AND NOW, this 13th day of June, 2008, the order of the Workers' Compensation Appeal Board, dated February 11, 2008, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Judge