IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas Casey, Petitioner	:	
v.	:	
Workers' Compensation Appeal Board (TWU Local 234), Respondent	:	No. 446 C.D. 2008
	:	Submitted: June 20, 2008

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: August 14, 2008

Thomas Casey (Claimant) petitions for review from the order of the Worker's Compensation Appeal Board (Board) that affirmed the order of the Worker's Compensation Judge (WCJ) that denied Claimant's Claim Petition.

Claimant worked as business agent for TWU Local 234 (Employer) since 1995, with the exception of a brief period of time between January 2001, and June 2002. Claimant's duties included arbitrations, conducting grievance hearings, and acting as the union president's confidant.

On March 2, 2006, Claimant was sent to collect provisions for the Local's meeting. Claimant alleged that he slipped and fell on a wet floor: "The floor was wet and as I stepped out I went down. And in an attempt to keep from dropping the food I banged my knees, my hand and my back and my butt." Hearing Transcript, July 27, 2006, at 12; Reproduced Record (R.R.) at 11a.

According to Claimant, a man in a navy blue sportcoat who was working the reception desk in the building helped him to his feet. Claimant immediately felt pain and swelling in his right knee. The next day he had pain in his hand, back, and shoulders.

At the time of the incident in question, a vote was taken whether to increase union dues. All non-elected employees of Employer were made aware of the fact that, if the increased dues were not approved, some of them would be laid off. Ultimately, the dues increase was voted down. The union members were made aware of the results through a union publication mailed on March 3, 2006.

Claimant missed a day and a half of work after he fell, but then returned to work until March 17, 2006. On that day, he was informed by Jeffrey Brooks (Brooks), the union president, that he was laid off.

Claimant petitioned for full disability benefits on and after March 17, 2006. Claimant sought payment of indemnity and medical benefits, as well as unreasonable contest fees. Employer answered and denied all allegations.

Before the WCJ, Claimant described the circumstances surrounding his alleged work injury. Claimant testified that he was unaware that any vote regarding a union dues increase would have any effect on layoffs. Notes of Testimony, July 27, 2006 (N.T.), at 27-28; R.R. at 23a-24a.

Claimant presented the deposition testimony of Nicholas P. Diamond, D.O. (Dr. Diamond), Claimant's treating physician. Dr. Diamond testified that:

> The history was that he (Claimant) slipped and fell on a wet floor. He went down awkwardly. That was while working as a business agent for the transportation worker's union #234. He was at a building on Market Street around the eighteen-hundred block.
>
> When he got back to his feet, he stated he was having a lot of right knee aching and swelling. A couple of days later, he noticed the other areas that I included, you know, the back, the neck, the shoulders and the other knee, the left knee. He also mentioned the headaches.
> ….
> The present condition was caused by the slip on the wet floor and falling on 2, March 2006. That would be in regard to the right and the left knee and the low back.

Deposition of Nicholas P. Diamond, D.O., October 9, 2006, (Dr. Diamond Deposition) at 16-17, 27-28; R.R. at 38a-39a, 49a-50a.

Employer presented the deposition testimony of Kevin F. Hanley, M.D. (Dr. Hanley), a board certified orthopedic surgeon. Dr. Hanley examined Claimant on October 17, 2006. Dr. Hanley opined:

> I diagnosed a history of musculoligamentous sprain-strain to the neck and the back and contusions of the knees and of the hands. All of which, in my opinion, by October 17th had resolved.
> ….
> (By 'history' I mean) that's what he told me and that's what the history contained in the medical record would suggest to support. I'm talking about the March

> 17th and subsequent reports from Dr. Diamond which diagnosed that condition.

Deposition of Kevin F. Hanley, M.D., January 30, 2007, (Dr. Hanley Deposition) at 18; R.R. at 110a.

Employer also presented the testimony of several other witnesses, starting with Harold Jackson (Jackson), a security officer for Allied Barton Security. Jackson was the only male security officer on duty at the time and place where Claimant's injury took place, thus making him the only person that fit Claimant's description of the person who came to his aid. Jackson stated that he never saw Claimant before, and he did not assist anyone on March 2, 2006. He also did not make an incident report involving a fall in the building, as was his custom. Notes of Testimony, October 31, 2006, (N.T.) at 7-9; R.R. at 85a-87a. Jackson testified:

> No, I haven't [seen Claimant before].
>
> ….
>
> Yes, [I wear a navy blue sportcoat] as part of my uniform.
>
> ….
>
> If we witness a slip-and-fall, the first thing we do is get the person --- see if they're all right, provide an incident report, notify our account manager.
>
> ….
>
> No, I didn't [prepare a written report of an incident involving Claimant].

N.T. at 8-9; R.R. at 86a-87a.

Employer also presented the deposition testimony of Jaenette Trocchet (Trocchet), Employer's administrative assistant. Trocchet testified that

during the week following Claimant's alleged fall, Claimant complained of being in pain, but did not specifically inform Trocchet that he was injured in a fall. Deposition of Jaenette Trocchet, October 4, 2006, (Trocchet Deposition) at 18; R.R. at 55a. Trocchet also testified that she received formal notice from Claimant on either March 13th or March 14th, and by that time news about possible layoffs was common knowledge in their office. Trocchet Deposition at 20, 25; R.R. at 56a, 57a.

Brooks also testified on Employer's behalf. Brooks was acting president of the union at the time of the dues increase vote and was out of town for a meeting at the time of the alleged fall. He believed Claimant was aware of the potential consequences of the dues increase vote because he, like all staff members, attended meetings with Brooks where these possibilities were discussed. Deposition of Jeffrey L. Brooks, October 4, 2006, (Brooks Deposition) at 12; R.R. at 66a. Brooks was not notified of any injury to Claimant while he was out of town, even though he was accessible via phone and should have been notified of any injury. Upon his return, he was given the letter that Claimant submitted to Trocchet on March 13th or March 14th. Brooks Deposition at 20; R.R. at 74a.

The WCJ found that Claimant did not sustain a work injury. The WCJ made the following relevant Findings of Fact:

> 17(a) Based upon a review of the evidentiary record as a whole, this Judge rejects Claimant's testimony of sustaining injuries in the course and scope of employment with TWU and providing notice of the same to Willie Brown [the executive vice president for Employer], Jeff Brooks and Jaenette Trocchet as not

credible and persuasive. Additionally, this Judge rejects the testimony of Claimant wherever it is inconsistent with the testimony of Jeff Brooks, Willie Brown, Jaenette Trocchet and Harold Jackson as not as credible and persuasive as the testimony of these witnesses.

17(b) Significant in reaching these determinations is this Judge's observation of the demeanor of Claimant, Willie Brown, and Harold Jackson while testifying and hearing their testimony first hand. Also significant is a careful review of the deposition testimony of Jeff Brooks, Willie Brown and Jaenette Trocchet and the documentary evidence.

17(c) Claimant's testimony that he did not know that the proposed dues increase was for staffing and that as the dues increase was voted down, there would be layoffs is neither credible nor persuasive. Willie Brown, Jeff Brooks, and Jaenette Trocchet provided consistent testimony that the dues increase was in part for this purpose and the staff was made aware that staff reductions would be needed if the increase was not approved by the membership. Claimant, a self-described president's confidant, was on the staff with these individuals and part of the staff meetings where these issues were discussed. Additionally, the union publication supports the testimony of the fact witnesses that the dues increase was in part for staffing purposes and staff reduction was being considered.

17(d) Claimant's testimony that he slipped and fell sustaining injuries on March 2, 2006 and provided notice of the same is neither credible nor persuasive. Claimant identified a man at a desk in a navy blue sports coat as an individual who came over after the March 2, 2006 slip and fall. Harold Jackson, the security guard on duty in the lobby wearing a navy blue sports coat, and an individual who has nothing to gain or lose in the matter at hand credibly testified that he did not witness a fall or assist Claimant following a fall on March 2. Contrary to

> Claimant's testimony, neither Willie Brown, Jaenette Trocchet, nor Jeff Brown [sic] were provided notice of a work related injury on March 2, 2006…. This is consistent with Harold Jackson's testimony that Claimant did not slip and fall on this date. Further discrediting Claimant's testimony is the letter he dated March 4, 2006 giving notice of the March 2, 2006 work injury with intent to treat that was not provided until the week of March 13, 2006.
>
> 17(e) Notably, Claimant did not immediately seek medical treatment, consistent with not sustaining an injury, was never restricted from working and continued to work until he retained counsel. He did not seek medical attention until March 13 when he presented without an appointment at Dr. Diamond's office. Claimant's testimony regarding his slip and fall varies. He testified that he went straight down, related to Dr. Diamond that he fell awkwardly and related to Dr. Hanley that he fell on his hands and knees and rolled onto his back.
>
> 18. This Judge rejects any testimony of any health care provider that causally relates any injury or disability to a March 2, 2006 work related slip and fall as based on a history that this Judge has rejected.
>
> 19. Claimant did not sustain a work related injury in the course and scope of employment with TWU Local on March 2, 2006.
>
> 20. Claimant's lay off was due to staff reductions, not an alleged work injury.

WCJ's Decision, June 7, 2007, Findings of Fact Nos. 17-20 at 8-9; R. R. at 30-31.

Claimant then appealed the WCJ's decision to the Board. The Board affirmed.

Claimant seeks review by this Court and a reversal of the Board's decision.[1]

Claimant contends that the Board erred when it affirmed the WCJ's finding that the Claimant did not suffer a work injury as there was no dispute between the parties whether the Claimant fell and was injured. The Claim Petition filed by Claimant clearly indicated that Claimant sought full disability benefits, as well as medical bills and counsel fees. Claim Petition, March 23, 2006, at 2; R.R. at 4a. There is nothing in the record to indicate that Employer conceded, in any way, that Claimant suffered a work injury. Therefore, the WCJ was not precluded from disbelieving Claimant.

Claimant also contends that the Board erred in affirming the decision by the WCJ because the decision was not based upon substantial competent evidence. This Court does not agree.

In a claim petition, the claimant bears the burden of proving all elements necessary to support an award. Innovative Spaces v. Workmen's Compensation Appeal Board (DeAngelis), 646 A.2d 51 (Pa. Cmwlth. 1994). The WCJ in this case determined that Claimant had failed to meet that burden. Specifically, the WCJ found testimony from Brooks, Trocchet, and Jackson credible and determined that Claimant's testimony was not credible, specifically

[1] This Court's review is limited to a determination of whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence, or whether constitutional rights were violated. Vinglinsky v. Workmen's Compensation Appeal Board (Penn Installation), 589 A.2d 291 (Pa. Cmwlth. 1991).

where it contradicted with the testimony of those witnesses. The law is well settled that the WCJ has complete discretion as to the credibility of witnesses. Sherrod v. Workmen's Compensation Appeal Board (Thoroughgood, Inc.), 666 A.2d 383 (Pa. Cmwlth. 1995).

The WCJ also rejected the testimony of Claimant's treating physician, Dr. Diamond. The WCJ found that the testimony was insufficient because Dr. Diamond based it on a history of events that the WCJ rejected. Dr. Diamond rendered a diagnosis based on the nature of the fall that Claimant described, but which the WCJ rejected. If a medical expert has based his opinion on information that is found to be false or inaccurate, the opinion is legally incompetent, provided that the opinion was dependent upon those inaccuracies. American Contracting Enterprises, Inc. v. Workmen's Compensation Appeal Board (Hurley), 789 A.2d 391 (Pa. Cmwlth. 2001).

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

Judge Butler did not participate in the decision in this case.

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Petitioner	:	
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v.	:	
	:	
Workers' Compensation	:	
Appeal Board (TWU Local 234),	:	No. 446 C.D. 2008
Respondent	:	

O R D E R

AND NOW, this 14th day of August, 2008, the Order of the Workers' Compensation Appeal Board in the above-captioned matter is affirmed.

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BERNARD L. McGINLEY, Judge