

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Fred Hofrichter,	:	
Petitioner	:	
	:	
v.	:	No. 457 C.D. 2008
	:	Submitted: June 20, 2008
Workers' Compensation Appeal	:	
Board (Avella School District),	:	
Respondent	:	

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: July 25, 2008

Fred Hofrichter (Claimant) petitions for review of an order of the Workers' Compensation Board (Board), affirming a decision of a Workers' Compensation Judge (WCJ), granting Claimant's claim petition for a closed period of time and terminating his benefits thereafter. We affirm.

Claimant was employed as a wrestling coach for Avella School District (Employer). The position was part-time with an annual salary of \$2,100.00. In addition to the part-time position, Claimant was self-employed as a graphic designer.

On November 30, 2005, Claimant filed a claim petition alleging that he sustained a neck injury while coaching. Claimant did not seek payment of wage loss benefits. Rather, he sought payment of medical expenses related to his injury. Employer filed an answer denying the allegations and a hearing was held before the WCJ.

At the hearing, Claimant testified that on December 22, 2002, he was demonstrating a wrestling move to a student when the student fell, landing on his neck. Claimant stated that he initially felt pain in his shoulder. A week later, when the pain worsened and began radiating down from his neck into his left arm, he sought medical attention. Claimant stated that he treated with several doctors throughout 2003 and also consulted with two other doctors in order to receive second and third opinions regarding surgical intervention. None of the doctors recommended surgery. Instead, Claimant received a recommendation that he undergo physical therapy. He was also prescribed a soft cervical collar and pain medication. At the time of the hearing, Claimant claimed to have partial blackouts when he tilted his head and constant pain and numbness in his arms, neck and feet.

Claimant offered the deposition testimony of Bruce Cotugno, M.D., a neurologist, in support of his claim. Dr. Cotugno testified that he first examined Claimant on March 21, 2006. At that time, Claimant complained “of neck pain, feeling as if he was going to pass out, lightheadedness, that his hearing would go out, that his vision would change with spots in his vision, and headaches.” (R.R. at 10a).

Following his examination, Dr. Cotugno diagnosed Claimant with torticollis, neck pain, extremity pain and numbness, pre-syncope and possible migraines. Dr. Cotugno opined that all these symptoms were a result of Claimant’s work-related neck injury.

Dr. Cotugno was asked to explain how a neck injury could cause all of Claimant’s symptoms. He stated that when Claimant extended his neck, he may be putting pressure on his vertebral arteries, causing decreased blood flow to his brain. When asked what physical restrictions he would place on Claimant, Dr. Cotugno responded that Claimant should refrain from extending his neck.

Dr. Cotugno confirmed that Claimant had been prescribed medications prior to the date of the alleged work-related injury and that Claimant had informed him that the medications caused him to have headaches and vision problems. Dr. Cotugno also noted that Claimant had surgery for a hernia repair in 2003. Following the surgery, Claimant was placed on Neurontin and he had a severe reaction to the drug. Claimant was hospitalized with shooting pain in his head and lost fifty percent of the vision in his left eye.

Employer presented the deposition testimony of John B. Talbott, M.D., a neurologist, in defense of the claim. Dr. Talbott testified that he examined Claimant on August 24, 2006, and reviewed his medical history. He noted that the X-rays and scans of Claimant's cervical spine performed in 2003 were normal. He further noted that a scan of Claimant's neck arteries performed in 2006 was also normal. Dr. Talbott opined that Claimant's complaints of pain constituted symptom magnification.

Dr. Talbott stated that he disagreed with Dr. Cotugno's conclusion that Claimant's neck injury caused a compression of his vertebral arteries. Dr. Talbott noted that testing established that Claimant's arteries were normal. Further, none of the tests indicated that Claimant had an abnormal cervical spine. As such, Dr. Talbott opined that Claimant suffered a soft tissue injury to his neck on December 22, 2002, and that this injury should have resolved itself within three to six weeks. Thus, Dr. Talbott concluded that Claimant was fully recovered from his work-related injury.

Following the hearing, the WCJ determined that Claimant was credible in part and not credible in part. The WCJ accepted Claimant's testimony that he sustained an injury on December 22, 2002. However, he rejected Claimant's continued complaints of pain, finding that Claimant had exhibited symptom magnification. The WCJ also stated that he was rejecting Claimant's testimony based on the fact that

Claimant had denied having pre-existing medical problems, yet the evidence produced at the hearing established that the Claimant had reported shoulder pain, headaches and vision abnormalities to various medical personnel prior to the date of the work-related injury.

The WCJ rejected the testimony of Dr. Cotugno, finding that the doctor had not established the existence of any structural abnormality. The WCJ noted that Dr. Cotugno presented a theory regarding compression of the vertebral arteries, but did not explain how this alleged condition was caused by the work-related injury. The WCJ credited the testimony of Dr. Talbott and his conclusion that Claimant had merely suffered a soft tissue injury. As such, the WCJ granted benefits from December 22, 2002, through August 24, 2006.

Claimant filed an appeal with the Board, alleging that the WCJ erred in terminating his benefits. The Board rejected Claimant's allegation of error and affirmed the decision of the WCJ.

Claimant now appeals to this Court.¹ Claimant alleges that the WCJ erred in accepting the testimony of Dr. Talbott. He claims that the WCJ's determination was not supported by sufficient, competent, credible evidence of record.

Claimant argues that while Dr. Talbott knew that Claimant was prescribed Oxycontin and Baclofen, Dr. Talbott was unaware of whether or not Claimant had

¹ Our scope of review in a workers' compensation appeal is limited to determining whether an error of law was committed, constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704. Further, in Leon E. Wintermyer, Inc. v. Workers' Compensation Appeal Board (Marlowe), 571 Pa. 189, 812 A.2d 478 (2002), our Supreme Court held that "review for capricious disregard of material, competent evidence is an appropriate component of appellate consideration in every case in which such question is properly brought before the court." Wintermyer, 571 Pa. at 203, 812 A.2d at 487.

actually taken his medication on the day of the examination. Therefore, when Claimant complained of having significant pain levels, Dr. Talbott could not know whether or not the pain was alleviated with medication. Claimant also complains that Dr. Talbott did not ask whether Claimant's pain varied with activity and did not ask Claimant to extend his neck to determine if doing so caused a blackout. Claimant further notes that Dr. Talbott conceded that he was not aware of whether Claimant had recently had a Botox injection to alleviate muscle spasms prior to the examination.

At the hearing before the WCJ, Dr. Talbott testified that he knew what medication Claimant was prescribed, but he was unaware if Claimant had taken any medication prior to the examination. He was also unaware of whether Claimant recently received a Botox injection. Dr. Talbott acknowledged that he did not ask Claimant to extend his neck. He explained that when a patient is reporting pain in a joint or spinal cord, he does not ask the patient to move their spine or joint in a manner that they allege causes pain. Dr. Talbott explained that to do so would put himself at risk of the patient alleging he has caused them harm.

The fact the Dr. Talbott was unaware of Claimant's current drug usage or whether Claimant recently received a Botox injection does not render his testimony incompetent. Also, the alleged incompleteness of the medical examination does not render Dr. Talbott's opinion incompetent. A determination that a medical expert has an incomplete history of a claimant's medical history goes to the weight of the medical expert's testimony, not the competency. Huddy v. Workers' Compensation Appeal Board (U.S. Air), 905 A.2d 589, 593 (Pa. Cmwlth. 2006).

When reviewing the findings by the WCJ, it is not the function of this Court to reweigh the evidence or review the credibility of the witnesses; rather, it is to determine whether the findings of the WCJ have adequate support in the record. The

WCJ is free to accept or reject the testimony of any medical witness, in whole or in part. Hills Department Store No. 59 v. Workmen's Compensation Appeal Board (McMullen), 646 A.2d 1272 (Pa. Cmwlth. 1994), petition for allowance of appeal denied, 540 Pa. 587, 655 A.2d 518 (1995). As this Court has recognized, the fact that one party to a proceeding may view testimony differently than the factfinder is not grounds for reversal if substantial evidence supports the determinations made by the factfinder. See Empire Steel Castings, Inc. v. Workers' Compensation Appeal Board (Cruceta) 749 A.2d 1021 (Pa. Cmwlth. 2000). Substantial evidence is any relevant evidence a reasonable person might use to form the basis of a conclusion. Locher v. Workers' Compensation Appeal Board (City of Johnstown), 782 A.2d 35 (Pa. Cmwlth. 2001), petition for allowance of appeal denied, 568 Pa. 709, 796 A.2d 987 (2002).

It was Claimant's burden to "demonstrate not only that he has sustained a compensable injury but also that the injury continues to cause disability throughout the pendency of the claim petition proceeding." Somerset Welding and Steel v. Workmen's Compensation Appeal Board (Lee), 650 A.2d 114, 119 (Pa. Cmwlth. 1994), petition for allowance of appeal denied, 540 Pa. 652, 659, A.2d 990 (1995). The WCJ found Claimant not credible in part due to the fact he did not testify candidly regarding his prior medical history. The WCJ rejected the testimony of Claimant's medical expert because "[h]e did not really give a diagnosis in terms of any structural abnormality caused by the work incident." (R.R. at 15a). The WCJ noted that objective testing of Claimant's arteries and spine showed that both were normal. Claimant did not challenge these findings by the WCJ. As such, we conclude that the WCJ based his determinations on substantial evidence of record.

Accordingly, the order of the Board is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

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ORDER

AND NOW, this 25th day of July, 2008, the order of the Workers' Compensation Appeal Board is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge