

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

James Rinaldi,	:	
Petitioner	:	
	:	
v.	:	No. 470 C.D. 2008
	:	
Workers' Compensation	:	Submitted: June 27, 2008
Appeal Board (Correctional	:	
Physician Services, Inc.),	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: August 6, 2008**

In this workers' compensation appeal, we are asked whether a claimant receiving partial disability benefits under a stipulation of facts is entitled to a reinstatement of benefits on the basis he was actually totally disabled. In particular, a 1996 stipulation of facts identified James Rinaldi's (Claimant) disability benefits as partial, but set the benefit rate at the applicable maximum compensation rate. After 500 weeks of compensation, Correctional Physician Services, Inc. (Employer) ceased payment of Claimant's disability benefits pursuant to Section 306(b)(1) of the Workers' Compensation Act (Act) (limiting partial disability benefits to 500 weeks).<sup>1</sup> Thereafter, Claimant filed a

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<sup>1</sup> Act of June 5, 1936, P.L. 736, as amended, 77 P.S. §512(1), relating to schedule of compensation and providing in relevant part:

For disability partial in character caused by the  
compensable injury or disease ... sixty-six and two-thirds per  
**(Footnote continued on next page...)**

reinstatement petition. A Workers' Compensation Judge (WCJ) concluded Claimant received total rather than partial disability benefits; consequently, Section 306(b)(1) did not bar Claimant's receipt of ongoing total disability benefits. On appeal, the Workers' Compensation Appeal Board (Board) reversed. Claimant now petitions this Court for review, asserting the Board misplaced the burden of proof and the record proves he remains totally disabled from his work injury. Discerning no error in the Board's decision, we affirm.

Claimant worked for Employer as a physician's assistant. He also worked part-time in an administrative capacity at the Lackawanna County Prison. While working for Employer, Claimant sustained a compensable injury in the nature of four herniated discs in the cervical spine.

In March 1996, Claimant filed a claim petition seeking disability benefits as of February 7, 1996 and the Bureau of Workers' Compensation (Bureau) assigned the petition to WCJ Hall (First WCJ). Thereafter, the parties entered into a stipulation of facts that provided the basis for First WCJ's order. The stipulation provided in part:

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**(continued...)**

centum of the difference between the wages of the injured employe, as defined in [Section 309, 77 P.S. §582], and the earning power of the employe thereafter; but such compensation shall not be more than the maximum compensation payable. This compensation shall be paid during the period of such partial disability except as provided in [Section 306(f.1), 77 P.S. §531], but not for more than five hundred weeks. .... (Emphasis added.)

1. Claimant has filed a Claim Petition against [Employer] and the State Workmen's Insurance Fund [SWIF]. The Claim Petition alleges that on September 22, 1995, Claimant slipped on a wet floor due to rain entering an open window, and that Claimant suffered trauma to his neck, back, and hip, and that an MRI reveals four (4) herniated discs [in] Claimant's cervical spine. The Claim Petition further seeks compensation for full disability from February 7, 1996, to the present, as well as payment of medical bills and counsel fees.

...

5. Claimant suffered an injury while working for [Employer] on September 22, 1995, in the nature of four (4) herniated discs in the cervical spine, as well as cervical radiculopathy.

6. As a result of his work-related injury, Claimant has been totally disabled from his work position with [Employer] since February 7, 1996, and continuing thereafter. Claimant continued to work at a second job after February 7, 1996. As a result of his work-related injury, Claimant has suffered a loss in earnings in the amount of \$1,211.54 per week. Claimant is entitled to compensation at the rate of \$509.00 per week, based on partial disability, with payments beginning as of February 7, 1996.

Reproduced Record "R.R." at 74a-75a (emphasis added). First WCJ included the above stipulations in his findings of fact 3, 5, and 6. Id. at 78a-79a. Also, in finding of fact 7, First WCJ found:

Claimant's claim petition should be granted. [Employer] should be directed to pay [C]laimant workers' compensation payments for partial disability at the rate of \$509.00 per week beginning February 7, 1996 and continuing indefinitely thereafter within the provisions and limitations of the Act.

Id. at 79a (emphasis added). The parties' stipulation therefore awarded Claimant partial disability benefits at the maximum compensation rate, which is permissible under Section 306(b)(1) of the Act.

In January 1997, the parties executed a supplemental agreement authorizing a weekly credit in favor of SWIF against Claimant's disability benefits for unemployment compensation benefits Claimant received at the same time. R.R. at 81a; 111a. The supplemental agreement indicated Claimant's benefits, at a rate of \$509.00 per week, would continue for an indefinite number of weeks. Id.

On September 6, 2005, Employer ceased payment of Claimant's disability benefits on the basis Claimant received 500 weeks of partial disability benefits as of that date. As a result, Claimant filed the instant reinstatement petition asserting his injury occurred prior to the 1996 amendments to the Act<sup>2</sup> and, therefore, the 500-week limitation period did not apply. Id. at 3a. Employer denied the allegation.

The Bureau assigned WCJ Spizer (Second WCJ) to hear the reinstatement petition. Before Second WCJ, Claimant testified regarding the nature of his injuries and his receipt of benefits. Importantly, Claimant understood the stipulation acknowledged his total physical disability but provided only partial (monetary) disability benefits. See Notes of Testimony "N.T.", 8/31/06, at 13; R.R. at 99a. He also testified he continued to work the part-time position

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<sup>2</sup> Act of June 24, 1996, P.L. 350.

approximately 3 days per week for 2 hours each day until December 2002; he stopped working after certain debts were satisfied. He was not aware his benefits would expire at the conclusion of 500 weeks.<sup>3</sup>

Second WCJ viewed the primary issue before him as one involving the interpretation of the 1996 stipulation. Second WCJ found Employer failed to establish Claimant's benefits were subject to the 500-week limitation period of Section 306(b)(1) of the Act. Second WCJ reasoned the 1996 stipulation was unclear as to whether the stated wage loss took into account Claimant's part-time employment earnings. Noting the 1996 stipulation did not separately set forth Claimant's wages from Employer and his part-time job, Second WCJ construed the stipulation against Employer to conclude the stipulation inaccurately described Claimant's benefits as partial. Concomitantly, Second WCJ found Employer failed to prove Claimant is capable of full-time light duty work. For these reasons, Second WCJ reinstated total disability benefits effective September 6, 2005. See Second WCJ Op., 4/13/07 at 3-5, Findings of Fact "F.F." No. 11, 14, 15.

In reversing, the Board concluded the parties' 1996 stipulation awarded Claimant weekly compensation, based on partial disability, as evidenced by Claimant's continued part-time employment until December 2002. Since Claimant received 500 weeks of partial disability, he exhausted his partial disability benefits on September 6, 2005. The Board further concluded Claimant

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<sup>3</sup> Both Claimant and Employer presented expert medical testimony. Claimant's medical expert testified Claimant is totally disabled from any gainful employment; Employer's medical expert opined Claimant is able to return to full-time sedentary work. Second WCJ rejected both experts' opinions as not credible. Second WCJ Op., 4/13/07, at 3, Finding of Fact "F.F." No. 13.

failed to meet his burden of proof on the reinstatement petition because he failed to establish by precise and credible medical evidence that he suffered an increase in his work impairment precluding him from continued light duty employment and that he has zero earning capacity.

In this appeal, Claimant asserts the Board erred by placing the burden of proof on him to show entitlement to a reinstatement of benefits. He further contends the record is clear he remains totally disabled as a result of the work injury. On review, we are limited to determining whether the necessary findings were supported by substantial evidence, whether errors of law were made, or whether constitutional rights were violated. Pryor v. Workers' Comp. Appeal Bd. (Colin Serv. Sys.), 923 A.2d 1197 (Pa. Cmwlth. 2006).

Characterizing the reinstatement petition as atypical, Claimant contends the Board erroneously placed the burden of proof on him.<sup>4</sup> Claimant argues the stipulation effectively proved his ongoing total disability and loss of

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<sup>4</sup> Claimant maintains the Board mischaracterized Second WCJ's findings because he found the parties' 1996 stipulation inaccurately described Claimant's benefits as partial. We point out Claimant never argued the 1996 stipulation was ambiguous, nor would his testimony support such a claim. A stipulation of the parties is subject to contract interpretation. Nottingham Village Ret. Ctr. Assocs., LP v. Northumberland County Bd. of Assessments, 885 A.2d 93 (Pa. Cmwlth. 2005). When a written contract is clear and unequivocal, its meaning must be determined by its contents alone. Id. Here, the parties' stipulation, and consequently First WCJ's order, clearly stated Claimant was entitled to partial disability benefits at the maximum compensation rate. In addition, Claimant understood he was receiving partial disability benefits, that is, "the amount of money was partial." Reproduced Record "R.R." at 99a. Therefore, Second WCJ's conclusion the 1996 stipulation inaccurately described Claimant's disability benefits is without evidentiary and legal support.

earning power. Employer, Claimant asserts, therefore bore the burden to prove there are jobs available within his medical restrictions. We disagree.

As stated above, the parties' 1996 stipulation expressly provided:

As a result of his work-related injury, Claimant has been totally disabled from his work position with [Employer] since February 7, 1996, and continuing thereafter. Claimant continued to work at a second job after February 7, 1996. As a result of his work-related injury, Claimant has suffered a loss in earnings in the amount of \$1,211.54 per week. Claimant is entitled to compensation at the rate of \$509.00 per week, based on partial disability, with payments beginning as of February 7, 1996.

R.R. at 75a (emphasis added). First WCJ accepted this stipulation and included it in his findings. R.R. at 78a-79a. In addition, Claimant testified he continued to work the part-time position for six years after the work injury and quit for unrelated reasons. Id. at 97a-98a.

Contrary to Claimant's assertions, the record does not establish he is physically disabled from all employment or totally disabled as that term is used in workers' compensation.<sup>5</sup> Rather, the 1996 stipulation, First WCJ's order, and Claimant's continued employment for six years after the work injury established that he is disabled from his pre-injury position but physically capable of

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<sup>5</sup> In workers' compensation proceedings, the term "disability" is synonymous with loss of earning power. Coyne v. Workers' Comp. Appeal Bd. (Villanova Univ.), 942 A.2d 939, 945 n.7 (Pa. Cmwlth. 2008). See also Luciani v. Workmen's Comp. Appeal Bd. (Brockway Glass Co.), 520 A.2d 1256 (Pa. Cmwlth. 1987) (recognizing distinction between "medically" and "legally" disabled).

performing light duty work. If a claimant is able to perform light work in general, he is only partially disabled. Petrone v. Moffat Coal Co., 222 A.2d 416 (Pa. Super. 1966); Hurtuk v. H. C. Frick Coke Co., 43 A.2d 559 (Pa. Super. 1945). See also Metzger v. Workmen's Comp. Appeal Bd. (Heidelberg Twp. Supervisors), 480 A.2d 367 (Pa. Cmwlth. 1984) (a claimant returning to work during claim petition is considered to have labored under partial disability); Torrey, David and Greenburg, Andrew, 6 Pennsylvania Practice, Workers' Compensation Law & Practice, §5:37 (West 2002) (same). Thus, the 1996 stipulation and First WCJ's order accurately reflected Claimant's receipt of partial disability benefits.

Pursuant to Section 306(b)(1), a claimant receiving partial disability benefits may do so for a period not exceeding 500 weeks. 77 P.S. §512(1). In this case, the 500-week limitation period expired. In instances where the claimant exhausted his right to partial disability benefits, is no longer performing available and occupationally appropriate work, and later seeks reinstatement of total disability benefits, the claimant must show his medical condition worsened and he has no ability to generate earnings. Stanek v. Workers' Comp. Appeal Bd. (Greenwich Collieries), 562 Pa. 411, 756 A.2d 661 (2000); Williams v. Workers' Comp. Appeal Bd. (Hahnemann Univ. Hosp.), 834 A.2d 679 (Pa. Cmwlth. 2003). A post-500 week claimant must establish a worsening of his medical condition by precise and credible evidence. Stanek.

Here, Claimant failed to meet this two-pronged burden. Second WCJ rejected Claimant's medical expert's opinion Claimant is totally disabled as a result of the work injury. Second WCJ Op., 4/13/07, at 3, F.F. Nos. 11, 13; R.R. at



15a. This is not surprising given Claimant's admission that he worked the part-time position for six years after the work injury occurred.

Further, even if Second WCJ accepted Claimant's medical expert's opinion, Claimant failed to prove he has no earning capacity. Claimant never testified he terminated his part-time position because he was no longer physically capable of performing the job and that there are no jobs available within his restrictions. He quit the part-time position for reasons unrelated to the work injury. See R.R. at 97a-98a.

Accordingly, the Board properly reversed Second WCJ's order reinstating benefits. Order affirmed.

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ROBERT SIMPSON, Judge

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**ORDER**

AND NOW, this 6<sup>th</sup> day of August, 2008, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

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ROBERT SIMPSON, Judge