IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia, Petitioner	:	
v.	:	No. 509 C.D. 2009
Workers' Compensation Appeal Board (Williams), Respondent	:	Submitted: September 4, 2009

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE JAMES R. KELLEY, Senior Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: February 2, 2010

The City of Philadelphia (Employer) petitions for review of an order of the Workers' Compensation Appeal Board (Board) affirming the Workers' Compensation Judge's (WCJ) decision granting Richard Williams' remanded claim petition, medical review petition, review/reinstatement petition and penalty petition. We affirm.

This matter began on January 8, 2003, when Claimant filed a claim petition alleging that he had contracted hepatitis C as a result of his work duties over a twenty year period as a police officer for Employer.[1] Claimant alleged further that hepatitis C caused liver and kidney damage. Claimant requested

[1] Employer issued a notice of workers' compensation denial on March 27, 2002.

temporary total disability benefits on and after January 2, 2002. Employer filed an answer denying the material allegations of the claim petition.

Hearings before a WCJ ensued. In support of the claim petition, Claimant testified on his own behalf and submitted the July 23, 2003, deposition testimony of Gary Yeoman, M.D., who is board certified in internal medicine. In opposition to the claim petition, Employer presented the October 20, 2003, deposition testimony of Stephen J. Gluckman, M.D., who is board certified in internal medicine, infectious diseases, and international and travel medicine. Employer also presented the August 16, 2004, deposition testimony of Kenneth Kent, who is a consulting actuary, specializing in retirement programs.

The WCJ found that the unrebutted credible evidence of record established that Claimant was diagnosed with the medical condition, hepatitis C, while employed by Employer as a police officer. Therefore, the WCJ found that Claimant was entitled to the rebuttable presumption that hepatitis C is an occupational disease within the meaning of the Workers' Compensation Act (Act).[2]

The WCJ found that Employer did not credibly rebut the presumption that Claimant's condition of hepatitis C and the disability related thereto was caused by Claimant's employment as a police officer. The WCJ found Dr. Gluckman's testimony on causation not credible or persuasive.

[2] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1 - 1041.4, 2501-2708. See Section 301(e) of the Act, 77 P.S. §413, added by the Act of October 17, 1972, P.L. 930. Section 301(e) provides that a claimant is entitled to a rebuttable presumption that his or her occupational disease arose out of and in the course of his or her employment if it is shown that the claimant, at or immediately before the date of disability, was employed in any occupation or industry in which the occupational disease is a hazard. Section 108(m.1) of the Act, added by, Section 1 of the Act of October 17, 1972, P.L. 903, as amended, 77 P.S. §27.1(m.1), lists hepatitis C as an occupational disease in the occupation of police officer.

The WCJ found that Claimant credibly testified that he provided notice of his work-related medical condition to Employer under Section 311 of the Act.[3] The WCJ found, based on the credible evidence of record, that Claimant was unable to physically perform his employment as a police officer on and after January 2, 2002, due to his work-related injury.

Finally, the WCJ found that Employer did not meet its burden of proof with respect to its request, pursuant to Section 204(a) of the Act,[4] for a credit for pension benefits allegedly received by Claimant. The WCJ found that there was no evidence of record that Claimant is or has been receiving pension benefits from Employer since Claimant's retirement. The WCJ found further that even if one were to assume that a reasonable inference could be drawn from the testimony

[3] 77 P.S. § 631. Pursuant to Section 311, a claimant must provide notice to the employer of the occurrence of an injury within 120 days of that injury. A claimant's failure to provide such notice to the employer within 120 days of the injury generally operates as a bar to compensation unless a claimant can show that the employer has actual knowledge of the occurrence of the injury. Section 311 of the Act. In cases where the cause of the injury or its relationship to the employment is not known to the employee, Section 311 of the Act contains a discovery provision which provides that the time for giving notice shall not begin to run until the employee knows, or by the exercise of reasonable diligence should know, of the existence of the injury and its possible relationship to his employment. Id. The purpose of this Section is to protect the employer from stale claims for injuries, of which it would have no knowledge, made after the opportunity for a full and complete investigation had passed. Sun Oil Co. v. Workers' Compensation Appeal Board (Ford), 626 A.2d 1251 (Pa. Cmwlth. 1993), petition for allowance of appeal denied, 537 Pa. 636, 642 A.2d 489 (1994).

[4] 77 P.S. §71(a). Section 204(a) provides, in relevant part:

> [T]he benefits from a pension plan to the extent funded by the employer directly liable for the payment of compensation which are received by an employe shall also be credited against the amount of the award made under sections 108 [relating to occupational diseases] and 306 [relating to total disability], except for benefits payable under section 306(c) [relating to specific loss benefits].

that pension benefits have been received by Claimant, Employer did not meet its burden of proof concerning the extent that the pension plan was funded by Employer as required by Section 204(a) of the Act. The WCJ specifically found the testimony of the actuary, Mr. Kent, not credible or persuasive on this point.

Accordingly, by decision circulated July 18, 2005, the WCJ granted Claimant's claim petition; however, the WCJ suspended Claimant's benefits as of January 2, 2002, because the record did not contain any evidence on which to make a finding of loss of earnings. The WCJ further ordered that Employer assume responsibility for all medical bills incurred to evaluate and treat Claimant's work-related condition subject to the utilization review procedures and cost containment provisions of the Act.

Both Claimant and Employer appealed the WCJ's July 18, 2005, decision to the Board. Upon review, the Board remanded this matter to the WCJ for two reasons. First, the Board ordered a remand to allow both parties to present expert and other evidence as to the pension offset issue. Second, the Board ordered a remand to allow the WCJ to take evidence concerning Claimant's earnings, average weekly wage and wage loss as related to his occupational disease and to make a determination concerning Claimant's pre-injury average weekly wage and any loss of earnings due to his work-related occupational disease. The Board affirmed the WCJ's decision in all other respects by order of September 21, 2006.

While the appeals were pending before the Board, Claimant filed a petition to review compensation on October 20, 2005, alleging that a claim was filed and litigated before the WCJ and that, although Employer had in its possession a wage statement, such statement was never introduced into the record. As such, the WCJ issued a decision finding disability but suspending benefits

because there was no evidence of wages in the record. Claimant alleged that he was filing the petition to review this mutual mistake and to present evidence regarding the wages he had earned. Employer filed an answer denying the allegations. Claimant subsequently amended the petition to review to seek, in the alternative, a reinstatement of compensation benefits based on a change in Claimant's condition.[5]

On June 12, 2006, Claimant filed a penalty petition alleging that Employer failed to pay for medical bills despite the denial of Employer's request for a supersedeas. Employer filed an answer denying the allegations.

Claimant also filed a petition to review medical treatment and/or billing on June 12, 2006, alleging that the WCJ's decision established a work relationship between hepatitis C and Claimant's police work but despite this and a denial of supersedeas, Employer had refused to pay for medical treatment and medicines. Employer filed an answer denying the allegations.

On November 9, 2006, Claimant filed a second penalty petition alleging that Employer failed to pay for his medical expenses arising out of the work-related injury. Employer filed an answer denying the allegations.

The foregoing petitions were consolidated with the remand claim petition for hearing before the WCJ.[6] In support of the petitions, Claimant testified on his own behalf and presented the October 11, 2006, deposition testimony of Michael H. Segal, D.O., as well as documentary evidence. In opposition to the

[5] See Reproduced Record (R.R.) at 124a.

[6] Claimant filed a third penalty petition on February 2, 2007, alleging that Employer failed to pay for medical treatment related to his work injury of hepatitis C. Employer filed an answer denying the allegations. Claimant subsequently requested that this penalty petition be marked withdrawn.

petitions, Employer presented the April 24, 2007, deposition testimony of Dr. Gluckman and the August 16, 2004, deposition testimony Kenneth Kent, as well as a statement of wages.

Based on the evidence presented, the WCJ, by decision circulated April 29, 2008, granted the remand claim petition and the review of compensation/reinstatement petition and awarded Claimant total disability benefits in the amount of $561.00 per week for the period January 2, 2002, through March 31, 2006, partial disability benefits from April 1, 2006, through August 14, 2006, and total disability benefits thereafter.[7] The WCJ determined that Employer again failed to establish the extent to which it funded Claimant's pension after rejecting the testimony of Mr. Kent as not credible; therefore, the WCJ denied a credit for pension payments made to Claimant. The WCJ also granted Claimant's two penalty petitions and the medical review petition after finding that Employer violated the Act by failing to pay for medical treatment. The WCJ assessed a penalty in the amount of fifty percent of the unpaid medical expenses.

Employer appealed the WCJ's April 29, 2008, decision and the Board affirmed. This appeal followed.

Initially, we note that this Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence. Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995). Substantial evidence is such relevant evidence as a reasonable mind

[7] At some point in the proceedings, this matter was reassigned to a different WCJ from the one who adjudicated the initial claim petition. It was this second WCJ who subsequently *(Continued....)*

might accept as adequate to support a conclusion. Mrs. Smith's Frozen Foods v. Workmen's Compensation Appeal Board (Clouser), 539 A.2d 11 (Pa. Cmwlth. 1988).

In support of its appeal, Employer first argues that it met its burden of proof with respect to its request for a pension benefits credit. Employer argues that its pension plan is a defined benefit pension plan that pays a set amount based on factors at time of retirement, such as age and length of employment. Thus, Employer contends that it can meet its burden of proving the extent that it funded the plan via expert actuarial testimony.

Employer contends that the testimony of its actuary, Mr. Kent, supports a finding that it funded the pension plan from which Claimant has received pension benefits in the amount of $1,617.00 per month since his retirement on February 24, 2002. Employer argues that Mr. Kent's unrebutted testimony proves that it contributes 84.34% to the pension benefits provided to Claimant. Employer argues further that the WCJ erred in finding that the uncontroverted evidence of Mr. Kent was speculative. Therefore, Employer contends, Claimant's workers' compensation benefits are subject to an offset pursuant to Section 204(a) of the Act, up to 84.34% of pension monies received by Claimant.

As noted herein, Section 204(a) of the Act specifically allows an employer to take an offset/credit against a workers' compensation award for pension benefits paid to a claimant "to the extent funded by the employer directly liable for the payment of compensation." 77 P.S. §71(a). The employer bears the burden of proving the extent it funded the pension plan in question. City of

---

issued the April 29, 2008, remand decision.

Philadelphia v. Workers' Compensation Appeal Board (Andrews), 948 A.2d 221 (Pa. Cmwlth. 2008). Where, as here, there is a defined-benefit plan,[8] an employer cannot meet its burden of establishing the amount of its offset absent actuarial testimony.[9] Id.

In this matter, Employer again presented on remand, the August 16, 2004, deposition testimony of Mr. Kent, a consulting actuary who specializes in retirement programs for public employers and multi-employers. Mr. Kent testified that Claimant was covered under the pension plan known as D which is referred to as the Police Division 67 Plan (67 Plan D). R.R. at 246a. Mr. Kent testified further that Claimant began his employment with Employer on February 16, 1982, and retired on February 24, 2002. Id. Mr. Kent testified that Claimant contributed 6% to the 67 Plan D. Id. at 250a; 261a.

Mr. Kent testified that although Claimant began his employment with Employer in 1982, he applied, in his calculations, Employer's 1987 contribution rate to the 67 Plan D for the years prior to 1987 because his records and the pension board's records only went back to 1987. R.R. at 256a-258a. Therefore, he used the 1987 percent funding rate by Employer for the years 1982 to 1987. Id. Mr. Kent testified that he applied the 1987 figure because he did not have the information for the prior years available. Id. Mr. Kent testified further that, due to

[8] A defined-benefit plan is "[a] pension plan in which the benefit level is established at the commencement of the plan and actuarial calculations determine the varying contributions necessary to fund the benefit at an employe's retirement." 34 Pa. Code § 123.2.

[9] We note that our Supreme Court has granted the Petition for Allowance of Appeal in Department of Public Welfare v. Workers' Compensation Appeal Board (Harvey), __ Pa. __, 971 A.2d 1122 (2009), wherein the Supreme Court will consider the issue of whether this Court erred by holding that an employer meets its burden of proof by only presenting evidence of an actuarially assumed rate of annual return on an employer's contribution rather than evidence confirming the actual rate of return on the pension.

the lack of records, he did not have any information as to whether Employer's contribution rate rose each year between 1982 and 1987. Id. Mr. Kent testified that he would only be speculating as to whether Employer's contribution rate for the years prior to 1987 would be greater or lesser than Employer's contribution rate in 1987. Id.

Mr. Kent testified further that Employer could use funding, at Employer's discretion, from the Commonwealth of Pennsylvania to meet its funding requirements for the 67 Plan D. R.R. at 277a-280a. As such, Mr. Kent attributed the funds that Employer received from the Commonwealth as Employer's funds and included said funds as Employer's contribution to the 67 Plan D. Id.

Based on his actuarial calculations, Mr. Kent opined that Employer's portion of its contribution toward the 67 Plan D was 84.34%. R.R. at 258a-259a. Mr. Kent testified that he arrived at this percentage by utilizing the 1987 rate of Employer's contributions for the years prior to 1982, when Claimant began working for Employer and then averaging Employer's contribution rates up through 2002, when Claimant ceased to work for Employer, resulting in a rate of 84.34 percent as the portion of the Employers' contribution towards Claimant's pension benefit. Id.

In the July 18, 2005, WCJ decision, the WCJ rejected Mr. Kent's testimony regarding the extent to which it funded Claimant's pension plan to be speculative because Mr. Kent testified that he was unable to determine Employer's contribution rate to the 67 Plan D prior to 1987 due to the lack of any records prior to that date. The WCJ also rejected Mr. Kent's testimony because he admitted that there were contributions made to the 67 Plan D that were not funded by Employer and he failed to specifically provide the dollar amounts contributed by the

Commonwealth of Pennsylvania. On remand, the WCJ stated that she reviewed Mr. Kent's entire testimony and agreed with the previous WCJ's summarization of his testimony and assessment of his credibility in the July 18, 2005, decision. The WCJ on remand pointed out that Mr. Kent mistakenly believed that contributions from the Commonwealth of Pennsylvania to municipal pension funds are discretionary funds to be credited to Employer as contributions. Therefore, on remand, the WCJ also rejected Mr. Kent's opinions as speculative and inaccurate.

While we agree with Employer that Mr. Kent's testimony was unrebutted, we disagree that the WCJ erred by rejecting his testimony as not credible. We agree with the Board that the WCJ provided specific and rational reasons for not finding Mr. Kent's testimony credible. It is well settled that the WCJ, as fact finder, has exclusive province over questions of credibility and evidentiary weight. Northeastern Hospital v. Workmen's Compensation Appeal Board (Turiano), 578 A.2d 83 (Pa. Cmwlth. 1990). As determinations as to witness credibility and evidentiary weight are not subject to appellate review, Hayden v. Workmen's Compensation Appeal Board (Wheeling Pittsburgh Steel Corp.), 479 A.2d 631 (Pa. Cmwlth. 1984), we conclude that the WCJ did not err by finding that Employer failed to establish its entitlement to a pension offset/credit pursuant to Section 204(a) of the Act.

Next, Employer argues that the Board erred in remanding the July 18, 2005, WCJ decision in order for the WCJ to take evidence concerning Claimant's earnings, average weekly wage and wage loss. Employer points out that Claimant had to the burden to prove all elements of his injury with corresponding wage loss during the course of the litigation of his claim petition. Employer argues that the Board mistakenly relied upon our Supreme Court's decision in Vista International Hotel v. Workmen's Compensation Appeal Board (Daniels), 560 Pa. 12, 742 A.2d

649 (1999), as the remand was inconsistent with the policies and provisions of the Act. Employer contends that it has been prejudiced as the remand effectively gave Claimant a second bite at the apple and circumvented the Act. Employer argues further that the WCJ on remand erred by allowing the admission of evidence setting forth Claimant's wages where Claimant failed to present the same during the initial litigation of the claim. We disagree.

The decision to grant or deny a rehearing or remand is within the discretion of the Board. Stitchick v. Workers' Compensation Appeal Board (Trumball Corp.), 782 A.2d 1133 (Pa. Cmwlth. 2001). Absent an abuse of discretion that decision will not be disturbed. Puhl v. Workers' Compensation Appeal Board (Sharon Steel Corp.), 724 A.2d 997 (Pa. Cmwlth. 1999).

In deciding whether to grant a rehearing based on after-discovered evidence, the Board is not bound by the standards employed by courts in determining whether to grant a new trial based on after-discovered evidence. Cudo v. Hallstead Foundry, Inc., 517 Pa. 553, 539 A.2d 792 (1988). Rather, it is within the Board's broad power to grant rehearing "when justice requires." Id. at 557, 539 A.2d at 794.

In Vista, the Supreme Court held that the Board's power to remand "is not limitless but must be exercised in a manner that is generally consistent with the policies and provisions of the Act." Vista, 560 Pa. at 20, 742 A.2d at 653. The Supreme Court held further that, "in order to allow for appropriate review, the Board may not rest a decision to grant a rehearing solely upon the fact that it has broad powers to do so, but instead, must specify the basis for its determination." Id.

Herein, we do not believe the Board abused its discretion by remanding this matter to allow the WCJ to take evidence concerning Claimant's

earnings, average weekly wage and wage loss as related to his occupational disease. As pointed out by the Board, the WCJ granted Claimant's claim petition because the WCJ found that Claimant had met his burden of proving that he was disabled as a result of work-related hepatitis C. As such, Claimant was entitled to an award of disability benefits. However, the record did not contain any evidence upon which to establish the rate of disability benefits. Therefore, justice required that the Board remand for the taking of evidence to establish such rate.

Thus, contrary to Employer's assertions, the remand was not an opportunity for Claimant to have a second bite at the apple. Claimant clearly satisfied his burden of proving all elements of an award.[10]

Moreover, we reject Employer's contention that it was prejudiced by the remand and that the WCJ on remand should not have permitted the introduction of the amount of Claimant's wages into evidence. We note that it was Employer who submitted the evidence into the record establishing Claimant's wages, which was accepted by the WCJ in making an award of disability benefits. Accordingly, we reject Employer's contention that the remand and the introduction of wage evidence violated the policies and provisions of the Act.

Next, Employer argues that the WCJ, in the July 18, 2005, decision, erroneously granted Claimant's claim petition. In support of this argument, Employer simply states, without elaboration, that Claimant failed to meet his burden of proof because he failed to prove a loss of earnings. To the extent Employer's argument is based on its prior argument that Claimant did not meet his

[10] With respect to a claim petition, the claimant bears the burden of proving that his or her injury arose in the course of employment and was related thereto. Krawchuk v. Philadelphia Electric Co., 497 Pa. 115, 439 A.2d 627 (1981).

burden because he failed to submit evidence of his earnings during the initial proceeding in this matter, we will not revisit this point.

Next, Employer argues that the WCJ erred in the July 18, 2005, decision by finding that Employer failed to rebut the statutory presumption pursuant to Section 301(e) of the Act, 77 P.S. §413. Employer contends that Claimant should not have been afforded the protection of the statutory presumption because he is not covered under Section 108(m.1) of the Act, 77 P.S. §27.1(m.1). Employer contends that police officers were not included as an occupation entitled to the presumption until December 2001 when the Act was amended to provide that hepatitis C is an occupational disease of police officers. In other words, Employer is arguing that Section 108(m.1) of the Act cannot be applied retroactively.

This argument is completely disingenuous and without merit. This Court, in two recent cases wherein Employer was a party, has specifically rejected Employer's argument that the 2001 amendments to Section 108 of the Act cannot be retroactively applied. See City of Philadelphia v. Workers' Compensation Appeal Board (Cospelich), 893 A.2d 171 (Pa. Cmwlth. 2006), petition for allowance of appeal denied, 592 Pa. 761, 923 A.2d 411 (2007); City of Philadelphia v. Workers' Compensation Appeal Board (Sites), 889 A.2d 129 (Pa. Cmwlth. 2005), petition for allowance of appeal denied, 595 Pa. 709, 938 A.2d 1054 (2007). Notably, Employer does not mention these controlling precedents or make an attempt to distinguish these cases.[11] As such, we decline to address this issue any further.

[11] We remind counsel for Employer that he has a duty of candor to the Court.

Next, Employer argues, again without elaboration, that the October 20, 2003, deposition testimony of Dr. Gluckman rebutted Claimant's claim for occupational disease benefits. We reject Employer's argument as the WCJ in the July 18, 2005, decision specifically rejected Dr. Gluckman's 2003 testimony on causation as not credible or persuasive. See General Electric Co. v. Workmen's Compensation Appeal Board (Valsamaki), 593 A.2d 921 (Pa. Cmwlth.), petition for allowance of appeal denied, 529 Pa. 626, 600 A.2d 541 (1991) (The WCJ, as the ultimate fact finder in workers' compensation cases, has exclusive province over questions of credibility and evidentiary weight, and is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part.).

Next, Employer argues that the WCJ on remand erred in finding that Claimant's hepatitis C caused diabetes or that diabetes caused Claimant's disability because Claimant failed to file either a claim petition and/or review petition alleging diabetes. As a result, Employer argues, Claimant failed to establish his entitlement to workers' compensation benefits.

Contrary to Employer's assertions, Claimant did file a review petition, which he amended to include a claim for reinstatement of benefits based on a change or worsening of his condition. Therefore, we reject Employer's argument on this point.

Next, Employer argues that Claimant failed to prove his entitlement to varying periods of total and partial disability due to hepatitis C and/or diabetes. Employer contends that it presented the unequivocal medical opinion of Dr. Gluckman that Claimant's hepatitis C and diabetes were under control; that there was no conclusive evidence that hepatitis C caused Claimant's diabetes; that Claimant's condition following transplant improved; that neither insulin nor Prograf caused fatigue; that Claimant did not report visual problems; and that Dr.

Gluckman testified that he would not restrict Claimant from any activity. Therefore, Employer contends, Claimant failed to meet his burden of proving that he was disabled as a result of hepatitis C and/or diabetes.

The flaw in Employer's argument is that the WCJ rejected the aforementioned testimony of Dr. Gluckman's testimony as not credible. Employer also ignores the fact that the WCJ accepted that portion of the April 24, 2007, deposition testimony of Dr. Gluckman as credible and convincing that Claimant's diagnosis of hepatitis C is work-related and that Claimant's diagnosis of diabetes mellitus and status post liver and kidney transplants are causally related to Claimant's work condition of hepatitis C. Moreover, the WCJ accepted as credible the testimony of Claimant's expert, Dr. Segal, that Claimant's inability to continue working on and after October 2006 was due to his overall deteriorated condition caused by hepatitis C, the transplants, and the diabetes. Accordingly, we reject Employer's argument that Claimant failed to meet his burden of proof.

Finally, Employer argues, without citation to the Act or controlling case law, that Claimant's allegation that diabetes caused his disability is barred by the statute of limitations, the notice provisions of the Act, and/or res judicata. We conclude that Employer has waived this issue. This Court has held, "[w]hen issues are not properly raised and developed in briefs, when the briefs are wholly inadequate to present specific issues for review, a court will not consider the merits thereof." Commonwealth v. Feineigle, 690 A.2d 748, 751 n.5 (Pa. Cmwlth. 1997). "Mere issue spotting without analysis or legal citation to support an assertion precludes our appellate review of [a] matter." Commonwealth v. Spontarelli, 791 A.2d 1254, 1259 n.11 (Pa. Cmwlth. 2002).

The argument presented by Employer in support of this final issue consists of conclusory statements with no supporting analysis or citation to legal authority. Therefore, we decline to address this issue.[12]

The Board's order is affirmed.[13]

JAMES R. KELLEY, Senior Judge

[12] We note that we have been quite lenient in concluding that Employer has waived only one issue in this appeal. Except for the first issue raised herein by Employer with respect to its entitlement to a pension offset/credit, Employer's arguments in support of the numerous issues it has raised are scant and most lack any citation to the record, the Act or to controlling precedent.

[13] Employer has not raised any issues in this appeal with respect to the WCJ's grant of Claimant's penalty and medical review petitions or the Board's affirmance thereof.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia, Petitioner	:	
v.	:	No. 509 C.D. 2009
Workers' Compensation Appeal Board (Williams), Respondent	:	

O R D E R

AND NOW, this 2nd day of February, 2010, the order of the Workers' Compensation Appeal Board in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge