

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James Fuller,	:
Petitioner	:
	:
v.	:
	:
Workers' Compensation Appeal	:
Board (Taylor Borough),	: No. 590 C.D. 2008
Respondent	: Submitted: July 18, 2008

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
 HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE BUTLER**

FILED: September 29, 2008

James Fuller seeks review of the order entered by the Workers' Compensation Appeal Board (Board) affirming a Workers' Compensation Judge's (WCJ) decision to dismiss and deny Fuller's claim petition. Fuller questions: 1) whether the WCJ committed error of law in dismissing his claim petition on the theory that Fuller's injuries were caused by the intentional acts of individuals not employed by Fuller's employer, Taylor Borough (Employer); 2) whether the WCJ committed error of law in failing to recuse himself in light of previous work with one of Employer's witnesses; and 3) whether the WCJ's conclusion that Fuller failed to sustain his burden of proof is supported by substantial evidence. For reasons stated below, the order of the Board is affirmed.

Fuller alleged that on May 20, 2004, he sustained a heart attack while working for Employer as a landfill inspector, inspecting one of Fuller's assigned landfills, "ERIS."¹ As of May 20, 2004, Fuller was having ongoing difficulties dealing with certain ERIS employees, namely Scott Hahn and Nick Genova. Although Hahn and Genova did not work for Employer, Fuller alleged that Hahn and Genova had been harassing him in his inspection duties since June of 2003 by following him, verbally abusing him, threatening him with bodily harm, threatening to sue him, threatening to have him arrested and attempting on one occasion to punch out the windows in his car. Fuller claims that this created a stressful work environment ultimately leading to his heart attack upon seeing Hahn and Genova at a distance at the ERIS landfill on May 20, 2004.

Genova gave contrary testimony saying that he never threatened Fuller. Genova related, however, that he had, and reported, problems with Fuller appearing at the ERIS landfill after consuming alcohol and brandishing a weapon. Genova testified regarding other occasions when he asked Fuller to leave the landfill because Fuller had apparently been drinking. The WCJ credited Genova's testimony over Fuller's testimony.

There is no dispute that on May 20, 2004, Fuller suffered a heart attack after working near the ERIS landfill. According to Fuller, he was taking pictures of the landfill from the Northeast Extension of the Pennsylvania Turnpike when he saw Genova and Hahn approaching his vehicle. Fuller states that he then drove away to avoid the confrontation. Thereafter he developed pain in his shoulder and arm, drove to his house and called his physician. An ambulance crew

¹ Although not clear from our review of the record, we note that ERIS is likely an acronym for the Environmental Research Institute of the States.

responded and Fuller was admitted to a medical facility for treatment. Fuller had three stents placed in his heart at that time.

In support of his claim Fuller submitted the testimony of his family physician, Dr. Kurt Moran, board-eligible in internal medicine and board certified in pain management. Dr. Moran began treating Fuller in 1991 relative to Fuller's history of high blood pressure, hyper cholesterolemia, coronary artery disease and degenerative joint disease. Fuller had anxiety problems that contributed to his high blood pressure, stemming from job and family issues as well as other outside factors. Fuller's anxiety and high blood pressure contributed to his coronary artery disease. Fuller's pre-May 20, 2004 medical history included angioplasty. After Fuller's landfill incident on May 20, 2004, he was admitted into the hospital with chest pain radiating into his arm, with extreme shortness of breath. Thus on May 21, Dr. Pancholy performed a catheterization. Fuller also consulted with Dr. Sebastianelli who found a history of chronic obstructive pulmonary disease consistent with Fuller's history of cigarette smoking. Dr. Sebastianelli concluded that one of the causes of Fuller's hypertension was the fact that Fuller had blockages of the renal arteries.

Noting awareness that Fuller was repeatedly harassed over the course of the year, was verbally harassed, had his car vandalized, became very anxious and developed an acute onset of chest pain, Dr. Moran testified that Fuller's pre-existing condition was worsened by job-related stress. "The level of harassment had actually a profound effect just from the anxiety level, worsening his condition and accelerating the deterioration of his condition." WCJ Findings of Fact No. 4. Thus Dr. Moran concluded that Fuller is totally disabled.

The WCJ noted Dr. Moran's admission that even in the absence of job-related stress, Fuller's condition continued to deteriorate after Fuller stopped working in May of 2004, and that his cardiovascular disease progressed to the extent that Fuller developed additional blockages thereafter that required treatment. The WCJ further noted that Dr. Moran failed to mention Fuller's employment or any relationship between Fuller's employment and heart condition in his May 20, 2004 report. The first instance of Dr. Moran noting job-relatedness in writing was his May 4, 2005 letter to Fuller's counsel.

Dr. Richard Blum, board certified in internal medicine, testified on behalf of Employer based on his September 12, 2005 examination of Fuller and a review of Fuller's medical history. Dr. Blum noted that Fuller's history included a more than 20 pack a year history of cigarette smoking, a diagnosis of coronary artery disease and related angioplasty in 1993. Dr. Blum also noted that Fuller's being overweight with elevated blood pressure contributed to ongoing deterioration of Fuller's vasculature. Overall Dr. Blum found a long history of diffuse cardiovascular disease caused by longstanding progressive factors which he described as being severe as of 1993. He stated that Fuller's continued smoking, failures to take prescribed medications, uncontrolled hypertension and hyperlipidemia between 1993 and 2004 resulted in an aggravation of Fuller's condition in 2004 and again in 2005 when Fuller underwent additional medical procedures. Given Fuller's poor risk factor control following his 1993 angioplasty, Dr. Blum opined: "With or without stress, he was going to end up with progressive disease and myocardial infarct." WCJ Findings of Fact No. 8.

Employer also presented the testimony of Dawn Richards, Secretary for Employer and Daniel Zeleniak, Manager for Employer. Richards and Zeleniak

testified that Genova and Hahn did not work for, or take direction from, Employer. They reported that Genova had complained to Employer, however, regarding Fuller's drinking on the job at the landfill.

Genova also testified on behalf of Employer. He stated that after 34 years as a Pennsylvania State Trooper, he worked as site manager at the ERIS landfill for 8 years. Genova denied Fuller's allegations that Genova made threats or otherwise harassed Fuller. He did recall asking Fuller to leave the premises because of alcohol consumption.

The WCJ found Employer's evidence to be more credible, persuasive and convincing than Fuller's evidence. Specifically, the WCJ credited Genova, Zeleniak and Richards over Fuller on the issue of harassment. The WCJ found that Fuller was not harassed by the ERIS employees, but was confronted regarding his actions at the landfill. On May 20, 2004, the date of Fuller's heart attack, there was no verbal or physical contact between Fuller and the ERIS employees. Additionally, the WCJ credited Dr. Blum over Dr. Moran in finding that the aggravation of Fuller's condition in May of 2004 resulted from the progression of Fuller's uncontrolled risk factors, not job-related stress. The WCJ thus concluded that Fuller failed to meet his burden of proof to establish a work-related aggravation of his pre-existing cardiovascular disease. The Board affirmed.

The Court's review of the Board's order is limited to deciding whether Fuller's constitutional rights have been violated, whether an error of law has been committed and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704; *Visteon Sys. v. Workers' Compensation Appeal Board (Steglik)*, 938 A.2d 547 (Pa. Cmwlth. 2007). It is not our role to reweigh evidence or reassess the credibility of

witnesses. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Board (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992). All questions of evidentiary weight and credibility, including resolution of conflicts in medical testimony, are matters within the exclusive province of the WCJ. *Peterson v. Workers' Compensation Appeal Board (Wal Mart)*, 938 A.2d 512 (Pa. Cmwlth. 2007); *Bethenergy Mines*.

Turning to the central issue of Fuller's appeal, we hold that the WCJ's conclusion that Fuller failed to sustain his burden of establishing a work-related aggravation of his pre-existing cardiovascular disease is supported by substantial evidence of record. Specifically, Dr. Blum's conclusion, based on his examination of Fuller and Fuller's medical history, that Fuller's continued smoking, failures to take medications, uncontrolled hypertension and hyperlipidemia caused the 2004 aggravation of Fuller's condition, constitutes substantial evidence in support of the WCJ's determination. Fuller's only argument to the contrary is that "there was clear evidence to establish that [he] had been subjected to a course of harassment leading to severe anxiety and cumulating in a heart attack on May 20, 2004." Fuller's Brief at 18. Notwithstanding, our inquiry is not whether there was contrary evidence to the WCJ's decision below; our inquiry is whether the record contains substantial evidence in support of the decision. *See Allied Mechanical and Electrical, Inc. v. Pennsylvania Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) ("the presence of conflicting evidence in the record does not mean that substantial evidence is lacking"). We hold that the record does in fact contain substantial evidence in support of the WCJ's decision.

We decline to review the issue of whether the WCJ committed error of law in concluding that Employer was not liable or responsible for intentional

acts of Genova and Hahn as individuals not employed by Employer.² The credited testimony established that Genova and Hahn did not cause the aggravation of Fuller's pre-existing condition. Thus the WCJ's conclusion on this point is non-essential to the bottom-line decision to deny Fuller benefits. Even if we were to hold that the WCJ erred as to this issue, we would nonetheless affirm the denial of benefits because substantial evidence supports the WCJ's determination that Fuller did not establish work-relatedness.

Finally, as to the issue of whether the WCJ committed error of law in failing to recuse himself in light of previous work with Genova, we hold that Fuller has not established an error of law. Fuller points out that the WCJ once worked in the Lackawanna County District Attorney's Office, and that the WCJ then had occasion to work with Genova in his prior capacity as a Pennsylvania State Trooper. Fuller fails to cite any authority in support of his argument that a WCJ should recuse himself in this situation. The record reveals that the WCJ's work relationship with Genova was limited to preparation to give testimony some 29 years prior to the proceedings below. "Recusal is only required when there is substantial reasonable doubt as to a referee's ability to preside impartially.... We will only reverse a judge's decision not to recuse when there was an abuse of discretion on the judge's part in not doing so." *Thomas v. Workmen's Compensation Appeal Board (Ida's Frosted Products, Inc.)*, 680 A.2d 24, 26 (Pa. Cmwlth. 1996). We are not persuaded that the WCJ's previous work with Genova

² We note only that "[t]he term 'injury arising in the course of his employment,' as used in this article, shall not include an injury caused by an act of a third person intended to injure the employe because of reasons personal to him, and not directed against him as an employe or because of his employment." Section 301(c)(1) of the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. § 411(1).

raised substantial reasonable doubt as to the WCJ's ability to preside impartially.
The WCJ did not abuse his discretion in declining recusal.

For these reasons, the Board's order is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 29th day of September, 2008, the order of the
Workers' Compensation Appeal Board is AFFIRMED.

JOHNNY J. BUTLER, Judge