

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joyce Martin,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 776 C.D. 2008
	:	SUBMITTED: August 1, 2008
Workers' Compensation Appeal	:	
Board (Glade Run Lutheran Services),	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: September 18, 2008

Joyce Martin (Claimant) petitions for review of the order of the Workers' Compensation Appeal Board (Board) that affirmed the decision of the Workers' Compensation Judge (WCJ) denying her claim petition. Claimant argues that the WCJ erred in requiring her to prove that her work activities worsened the pathology of her planter fasciitis in the right foot, without addressing whether pain attributable to her plantar fasciitis was aggravated by her work activities resulting in compensable disability. She further argues that the medical testimony accepted by the WCJ supports an award of benefits for her ongoing disability.

Claimant was employed by Glade Run Lutheran Services (Employer) as a part-time server from October 2002 to August 2004, and thereafter as a full-time "person in charge" in Employer's kitchen. Harry B. Burke, D.P.M., a board-

certified podiatrist, first treated Claimant's right foot in 1996 and performed surgery on her right foot in July 2003 to treat a neuroma (pinching of a nerve) and a cyst. Dr. Burke diagnosed Claimant with neuropathy and plantar fasciitis in the right foot with a heel spur in August 2005 and performed surgery on the plantar fascia in her right foot on November 1, 2005. Claimant returned to work on November 17, 2005, and continued to work until January 11, 2006, when Dr. Burke restricted her from working due to chronic right foot pain. On January 20, 2006, a physician at Heritage Valley Health System released Claimant to return to work without restrictions, stating that her right foot pain clearly was not work-related. Claimant then filed a claim petition, alleging aggravation of her preexisting right foot condition on January 11, 2006.

Claimant testified before the WCJ that the November 2005 surgery relieved her pain but that she again experienced pain two or three weeks after she returned to her regular job, which required her to work on her feet for eight hours. She testified that she had pain from the heel to the ball of the right foot, which was not constant, and constant numbness in the ball of the right foot and toes but that she was not taking medication. Dr. Burke testified that workers who are required to stand or walk on a hard surface at work often develop plantar fasciitis, which he described as "inflammation of the plantar fascia which is a ligamentous structure that serves as a support for the heel and the ball of the foot." Dr. Burke's October 10, 2006 Deposition at 17; Reproduced Record (R.R.) at 99a. According to Dr. Burke, it is very common for persons to develop such condition as they age. He opined that Claimant's pain was caused by the plantar fasciitis, which was aggravated by her work activities, and that she could not return to her regular job due to the pain but could work in any job which would not require her to be on her

feet.¹

Jeffrey N. Kann, M.D., a board-certified orthopedic surgeon, examined Claimant and reviewed her medical records on behalf of Employer. Dr. Kann's examination revealed that Claimant had no pain in the surgical area and had no pain or discomfort on the plantar fascia in her right foot. Dr. Kann found no evidence of sensory or motor deficits in the right foot or any neurological or structural cause for her complaints of persistent heel pain. He testified that plantar fasciitis is a common, chronic condition that occurs when the band on the bottom of the foot begins to wear off of the heel bone due to an overly tight Achilles tendon. Simply stretching out the Achilles tendon resolves symptoms 95% of the time. Dr. Kann further testified that Claimant's complaints of tingling and numbness in the right foot were related to the neuropathy, not to the plantar fasciitis.

Dr. Kann opined that Claimant's plantar fasciitis was neither caused nor aggravated by her work activities. He explained that no literature supports a theory that, the surface on which one stands or walks, or the length of time that one stands or walks, causes an onset of plantar fasciitis. Rather, one who works in a sedentary position is more likely to develop such condition. He further opined that the persistent right heel pain experienced by Claimant after the November 2005 surgery had no relationship to her employment.

The WCJ found Claimant's testimony regarding her right foot pain

¹ Claimant also presented a copy of the Journal of the American Medical Association, Vol. 290, No. 11 (2003), which stated: "Persons who are overweight, female, or older than 40 years or who spend[] long hours on their feet are especially at risk of developing plantar fasciitis." Claimant's Exhibit 10; R.R. at 150a. As of the first hearing in April 2006, Claimant was sixty-two years old.

credible. Accepting Dr. Kann's testimony as more credible than Dr. Burke's conflicting testimony, however, the WCJ found that Claimant's ongoing chronic condition of plantar fasciitis was neither caused nor aggravated by her work activities. The WCJ stated:

Dr. Kann's discussion of the development of the claimant's right foot problems as an ongoing chronic problem unrelated to her specific work duties and activities persuaded me that her work had no effect on her right foot problems over the course of the years and particularly with the development of plantar fasciitis. Dr. Kann clearly explained that although if the claimant returned to work, she might have increased pain symptomology, it was unrelated to the pathology in her right foot and was causing no worsening of the condition....

WCJ's Decision at 9, Finding of Fact No. 1. The WCJ denied the claim petition, and the Board affirmed, concluding that Claimant failed to meet her burden of proving that her plantar fasciitis was aggravated by her job duties.

In a claim petition proceeding, a claimant has the burden of proving all the elements required for an award of benefits. *Inglis House v. Workmen's Comp. Appeal Bd. (Reedy)*, 535 Pa. 135, 634 A.2d 592 (1993). Under Section 301(c)(1) of the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. § 411(1), a compensable injury includes "an injury to an employe, regardless of his previous physical condition, arising in the course of his employment and related thereto, and such disease or infection as naturally results from the injury or is aggravated, reactivated or accelerated by the injury." An aggravation of the preexisting condition occurs when an intervening event materially contributes to the claimant's disability. *SKF USA, Inc. v. Workers' Comp. Appeal Bd. (Smalls)*, 728 A.2d 385 (Pa. Cmwlth. 1999). *See also Knapp v. Workmen's Comp. Appeal Bd. (GTE)*, 671 A.2d 258 (Pa. Cmwlth. 1996) (an

aggravation of a preexisting condition is compensable where work-related stimuli are a substantial, contributing factor to the aggravation). Where a causal connection between the claimant's disability and his or her injury is not obvious, the claimant must establish such connection by unequivocal medical testimony. *City of Philadelphia v. Workers' Comp. Appeal Bd. (Sites)*, 889 A.2d 129 (Pa. Cmwlth. 2005).

Claimant argues that Dr. Kann's opinion that her plantar fasciitis was neither caused nor aggravated by her employment is irrelevant because an increase or aggravation of pain attributable to the plantar fasciitis by her work activities results in compensable disability. She relies on the WCJ's acceptance of her testimony that she had pain in the right foot and increased pain with weight bearing. She also relies on Dr. Kann's testimony regarding her persistent right heel pain after the November 2005 surgery and his concessions on cross-examination that standing for a long period of time on a hard surface could increase pain. She claims that Dr. Kann's testimony supports an award of benefits.

Pain is "an excellent symptom of an injury." *Morgan v. Giant Markets, Inc.*, 483 Pa. 421, 424, 397 A.2d 415, 416 (1979). Consequently, "pain itself, if causally related to employment, may be compensable." *Meadow Lakes Apartments v. Workers' Comp. Appeal Bd. (Spencer)*, 894 A.2d 214, 217 (Pa. Cmwlth. 2006). Dr. Kann testified that patients with plantar fasciitis usually feel pain after getting out of bed in the morning, after sitting for a period of time and at the end of a workday. Dr. Burke agreed that those with plantar fasciitis experience severe pain "usually in the morning and getting up from a chair during the day." Dr. Burkes' Deposition at 18-19; R.R. at 100-101a. According to Dr. Kann, he does not limit the activities of his patients with plantar fasciitis because the condition

causes only discomfort or annoyance. Further, Dr. Kann noted that Claimant's medical records revealed that her surgery wound had not healed when she returned to work in November 2005 and that she still had pain from the surgery and was taking antibiotics.

In a workers' compensation case, credibility determinations and the evaluation of evidentiary weight are within the province of the WCJ as a fact-finder. *Clear Channel Broad. v. Workers' Comp. Appeal Bd. (Perry)*, 938 A.2d 1150 (Pa. Cmwlth. 2007). The WCJ may accept or reject the testimony of any witness, including medical testimony, in whole or in part. *Id.* The WCJ in this matter resolved the conflicting medical testimony by accepting Dr. Kann's opinion and rejecting Dr. Burke's opinion that Claimant was disabled due to an aggravation of her plantar fasciitis and increased pain caused by her work activities. Where, as here, "the WCJ rejected Claimant's evidence on the issue [in a claim petition proceeding], Claimant simply failed to satisfy [her] burden." *Benginia v. Workers' Comp. Appeal Bd. (City of Scranton)*, 805 A.2d 1272, 1277 (Pa. Cmwlth 2002). As this Court has held, "a claimant with a preexisting, non-work-related condition, although disabled from the workplace because of [such] condition, is not entitled to benefits where the workplace did not cause or aggravate the condition." *Vazquez v. Workmen's Comp. Appeal Bd. (Masonite Corp.)*, 687 A.2d 66, 69 (Pa. Cmwlth. 1996).

Moreover, contrary to Claimant's argument, Dr. Kann's testimony does not support her entitlement to benefits. It is well settled that medical testimony must be reviewed and taken as a whole, and a final decision should not rest on a few words taken out of context of the entire testimony. *Reading Anthracite Co. v. Workers' Comp. Appeal Bd. (Felegi)*, 789 A.2d 404 (Pa. Cmwlth.

2001). Any concessions made by the medical witness on cross-examination do not affect the substantiality of a definite opinion rendered on direct examination; rather, such concessions go only to the weight of the opinion. *Stanner v. Workmen's Comp. Appeal Bd. (Westinghouse Elec. Co.)*, 604 A.2d 1167 (Pa. Cmwlth. 1992). During cross-examination, Dr. Kann conceded that foot problems "can" make normal activities very painful and that patients with plantar fasciitis "can" experience pain from standing on a hard surface for eight hours a day. Dr. Kann's Deposition at 31, 36; R.R. at 204a, 209a. Dr. Kann, however, never recanted his opinion rendered on direct examination that Claimant's plantar fasciitis was not aggravated by her work activities and that the persistent pain that she experienced after her return to work was not related to her employment. Dr. Kann's opinion, when reviewed in its entirety, supports the WCJ's decision to deny the claim petition.

Further, *Crowell v. Workmen's Comp. Appeal Bd. (Johnson Dairy Farm)*, 665 A.2d 30 (Pa. Cmwlth. 1995), relied on by Claimant, does not support her argument that the WCJ erred in denying benefits without making an additional finding as to whether an increase or aggravation of her pain from the plantar fasciitis by work activities resulted in compensable disability. In *Crowell*, the Court held that the claimant was entitled to a reinstatement of suspended benefits because the testimony of the only medical witness established that the claimant could not perform his job duties without pain related to the original right foot injury. In that case, however, the claimant's work-related disability was presumed to continue because the employer accepted liability for the original injury in a notice of compensation payable. See *Virgo v. Workers' Comp. Appeal Bd. (County of Lehigh-Cedarbrook)*, 890 A.2d 13 (Pa. Cmwlth. 2005) (disability, once

established, is presumed to continue until proven otherwise by the employer). The employer in that case failed to rebut that presumption.

Unlike in *Crowell*, Claimant had the burden of establishing that she was disabled due to an aggravation of the preexisting, non-work-related plantar fasciitis by her work activities. *Inglis House*. She failed to meet her burden because the WCJ rejected Dr. Burke's opinion that the symptoms of Claimant's plantar fasciitis "would totally come back" upon her return to work. Dr. Burke's Deposition at 31; R.R. 113a.² Accepting instead Dr. Kann's opinion, the WCJ found that her work activities had no effect on her right foot problems. The WCJ is only required to make findings that are necessary and relevant to resolving the issues. *Pryor v. Workers' Comp. Appeal Bd. (Colin Serv. Sys.)*, 923 A.2d 1197 (Pa. Cmwlth. 2006). Because the WCJ found that Claimant did not suffer from a work-related aggravation of her plantar fasciitis, it was unnecessary for the WCJ to make an additional finding.

Because the record supports the WCJ's decision to deny the claim petition, the order of the Board is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

² Moreover, even if that opinion had been credited, our Supreme Court has held that where a claimant suffers a work-related aggravation (or flare-up of disabling symptoms) of a non-work-related preexisting condition, he is entitled to disability benefits so long as the symptoms or physical condition caused by the aggravation prevent his returning to work. However, if he recovers from that aggravation but is unable to return to his pre-injury job because performing that job will cause a new aggravation or symptom flare-up of the non-work related condition, he is no longer entitled to disability benefits. *Bethlehem Steel Corp. v. Workmen's Comp. Appeal Bd. (Baxter)*, 550 Pa. 658, 708 A.2d 801 (1998).

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 Board (Glade Run Lutheran Services), :
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ORDER

AND NOW, this 18th day of September, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge