

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

U.S. Steel Mining Company, L.L.C., :
Petitioner :
 :
v. : No. 806 C.D. 2008
 : Submitted: October 3, 2008
Workers' Compensation Appeal Board :
(Pascia), :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: November 13, 2008

U.S. Steel Mining Company (Employer) petitions for review of an order of the Workers' Compensation Appeal Board (Board) that affirmed a decision of a Workers' Compensation Judge (WCJ), granting a fatal claim petition filed by Josephine Pascia (Claimant). We now vacate and remand.

The facts as determined by WCJ Anne Coholan can be summarized as follows. Claimant is the widow of Joseph Pascia (Mr. Pascia), who died on April 19, 2005. Mr. Pascia worked for Employer as a coal miner. In 1988, WCJ Barbara Luich determined that Mr. Pascia was partially disabled as a result of coal worker's

pneumoconiosis caused by his cumulative exposure to coal dust.¹ In 2001, WCJ William Lowman, addressing a petition for modification of benefits filed by Mr. Pascia, concluded that Mr. Pascia's pneumoconiosis had caused such deterioration in his condition as to render him totally disabled as of May 8, 1997.

Following an appeal to the Board, which affirmed WCJ Lowman's decision granting the modification petition, this Court reversed the Board's decision in 2003, concluding that Mr. Pascia had failed to sustain his burden to establish that he could not work in any capacity. Mr. Pascia appealed this decision to our Supreme Court. The Supreme Court remanded the case to this Court with the direction to apply the modification-of-benefits standard set forth in Dillon v. Workmen's Compensation Appeal Board (Greenwich Collieries), 536 Pa. 490, 640 A.2d 386 (1994) and Stanek v. Workers' Compensation Appeal Board (Greenwich Collieries), 562 Pa. 411, 756 A.2d 661 (2000). Nevertheless, after applying the standard set forth in these decisions on remand, this Court again reversed the Board's decision, thereby denying Mr. Pascia a modification of benefits from partial to total. Mr. Pascia again appealed to our Supreme Court. However, the Court denied Mr. Pascia's petition for allowance of appeal.

At some point during or following the above noted proceedings, Mr. Pascia began to suffer from other health conditions, including prostate cancer, lung cancer that had metastasized to his right rib, lymph nodes and the tissue surrounding his heart and liver and an enlarged heart. Mr. Pascia died on April 19, 2005, after which Claimant filed her fatal claim petition.

¹ At the time of this decision, workers' compensation judges were referred to as referees. However, following the 1993 amendments to the Pennsylvania Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-1041.4; 2501-2708, referees were referred to workers' compensation judges. For the sake of clarity, we will use this latter term.

Claimant retained the services of Cyril Wecht, M.D., for the purpose of performing an autopsy, and thereafter submitted his report and deposition testimony to WCJ Coholan. Dr. Wecht opined that, although Mr. Pascia's lung cancer was the primary cause of his death, Mr. Pascia's heart problems and pneumoconiosis were substantial contributing factors to his death. Dr. Wecht reasoned that Mr. Pascia's malfunctioning lungs compromised the functioning of his heart and that, were it not for his work-related condition, he would have lived longer even with his lung cancer.

In opposition to Claimant's petition, Employer submitted the deposition testimony and report of Everett F. Oesterling, Jr., M.D. Dr. Oesterling stated that, although he saw evidence of pneumoconiosis, he did not believe that that condition was severe enough to have affected Mr. Pascia's lung function or to have hastened his death. Dr. Oesterling opined that Mr. Pascia's death related solely to his lung and prostate cancer complicated by his impaired heart function. However, on cross-examination, and significant to the underlying decisions, Dr. Oesterling also stated that if Mr. Pascia's pneumoconiosis had been of such a character as to totally disable him, he would have concluded that the work-related disease was a substantial contributing factor in Mr. Pascia's death.

WCJ Coholan accepted the testimony of Dr. Wecht as credible. Relying upon that testimony, the WCJ concluded that Mr. Pascia's work-related pneumoconiosis was a substantial contributing factor to his death. WCJ Coholan rejected Dr. Oesterling's testimony because she believed his opinions regarding Mr. Pascia's pneumoconiosis were inconsistent with Dr. Wecht's and she believed that Dr. Wecht's opinions regarding the extent of the pneumoconiosis were more credible. Additionally, WCJ Coholan noted that Dr. Oesterling's testimony was based upon his conclusion that the pneumoconiosis was not totally disabling and that such a characterization of Mr.

Pascia's condition was in conflict with WCJ Lowman's 2001 determination, in which he concluded that Mr. Pascia was totally disabled. However, WCJ Coholan apparently was not aware that WCJ's Lowman's 2001 determination of total disability had been reversed. WCJ Coholan proceeded to grant Claimant's fatal claim petition.

In its appeal to the Board, the only specific argument Employer asserted was that WCJ Coholan's decision was not well reasoned because she relied upon the 2001 decision in weighing the evidence. The Board reasoned that the doctrine of issue preclusion, or collateral estoppel, applied and conclusively established that Mr. Pascia was totally disabled from his pneumoconiosis. Thus, the Board concluded that Dr. Oesterling's testimony conflicted with WCJ Lowman's determination of total disability and, hence, WCJ Coholan did not err in rejecting said testimony. The Board then affirmed WCJ Coholan's decision and order. Employer thereafter filed a petition for review with this Court.

On appeal,² Employer argues that the Board erred as matter of law in relying upon the doctrine of collateral estoppel, as WCJ Lowman's 2001 decision had been reversed. We agree.

We begin by noting that a claimant seeking to obtain fatal claim benefits bears the burden to establish that the decedent suffered a work-related injury and that the decedent's death was causally related to that injury. Whelan v. Workmen's

² 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. Moreover, 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.

Compensation Appeal Board (F.H. Sparks Co.), 532 A.2d 65 (Pa. Cmwlth. 1987). Further, when there are several causes of death, and the immediate cause of death is not work related, a claimant must establish that an occupational disease, while not the primary cause of death, was nevertheless a substantial contributing factor in the death. McCloskey v. Workmen's Compensation Appeal Board (J.H. France Refractories, Inc.), 501 Pa. 93, 460 A.2d 237 (1983).

In this case, Employer argues that it did not have an opportunity to litigate the current issue, i.e., the question of the degree to which Mr. Pascia's pneumoconiosis contributed to his death, as the Board erroneously applied the doctrine of collateral estoppel. Employer notes that WCJ Coholan and the Board improperly relied upon a previous WCJ's decision finding Mr. Pascia totally disabled, when in fact that decision had been reversed. Employer also notes that WCJ Coholan even relied on this earlier decision in declaring the testimony of Dr. Oesterling not credible. We agree with Employer that WCJ Coholan and the Board erred in this regard.

Prior to WCJ Coholan's decision and the Board's decision in the present matter, our Supreme Court had denied Mr. Pascia's petition for allowance of appeal from our decision on remand. In that decision, we reversed the order of the Board affirming WCJ Lowman's decision finding Mr. Pascia totally disabled.³ At most then, Mr. Pascia only remained partially disabled as previously determined by WCJ Luich in

³ In a footnote in its opinion, the Board noted our Supreme Court's action in vacating this Court's first reversal decision, but elected to disregard our first decision as well as our subsequent decision on remand. The Board noted that our decisions were not published and were not part of the record. While our first decision was reversed by the Supreme Court, said Court refused to consider Mr. Pascia's appeal of our remand decision. The Board cannot simply choose to ignore this decision and we strongly caution the Board against such action in the future.

1988.⁴ Moreover, the issue in this case did not involve Mr. Pascia's disability status preceding his death, but whether Mr. Pascia's coal worker's pneumoconiosis was a substantial contributing factor in his death.

Thus, to the extent that WCJ Coholan relied on the 2001 decision in making her credibility determinations and the Board relied upon the same in concluding that the doctrine of collateral estoppel applied herein, WCJ Coholan and the Board erred.

Next, Employer argues that WCJ Coholan failed to issue a reasoned decision under Section 422(a) of the Act, 77 P.S. §834, especially with respect to the testimony of Dr. Oesterling. Again, we agree.

Section 422(a) of the Act provides, in pertinent part, as follows:

All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. Uncontroverted evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must identify that evidence and

⁴ WCJ Luich's decision is perplexing in that he determined that Employer had not established that any work was available to Mr. Pascia, but nevertheless concluded that partial rather than total disability benefits were appropriate. This apparent incongruity may be explained by the simple fact that Mr. Pascia only sought partial benefits in his claim petition.

explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

77 P.S. §834. Furthermore, in Daniels v. Workers' Compensation Appeal Board (Tristate Transport), 574 Pa. 61, 828 A.2d 1043 (2003), our Supreme Court discussed the reasoned decision requirement, indicating that where a party submits deposition testimony rather than presenting such testimony live before a WCJ, the WCJ must offer an objective basis for accepting or rejecting the testimony.⁵

With respect to the testimony of Dr. Oesterling, the WCJ issued the following finding of fact:

I fully recognize that Dr. Everett Oesterling, Jr., has concluded that Mr. Pascia's death was brought about by his two aggressive metastatic tumors. In addition, I am fully aware that Dr. Oesterling has concluded that coal workers' pneumoconiosis did not play any type of role in causing or hastening the decedent's death. I am, however, choosing to reject Dr. Oesterling's opinions concerning the role, or lack thereof, that coal workers' pneumoconiosis played in bringing about the decedent's death, because his opinions in this regard are inconsistent with the credible opinions offered by Dr. Wecht. In addition, I find that Dr. Oesterling's opinion that the decedent's coal worker's pneumoconiosis was not significant enough to have altered his pulmonary function during his lifetime and/or to have cause significant lifetime disability, is inconsistent with the Decision that [WCJ] Lowman rendered in 2001, concluding that Mr. Pascia was totally disabled due to coal workers'

⁵ The Court in Daniels listed various objective factors that may support a WCJ's credibility determinations, including (1) whether a deponent rendered an opinion based upon incorrect factual assumptions; (2) the timing of a particular witness's interaction with a claimant; (3) the deponent's testimony suggested he or she was biased or had an interest in the outcome; (4) the deponents' relative qualifications were not comparable; and (5) impeachment of the deponent's testimony through inconsistencies, contradictions or other factors. Daniels, 574 Pa. at 78, 828 A.2d at 1053.

pneumoconiosis. As such, I find Dr. Oesterling's opinion that coal worker's pneumoconiosis did not contribute to the decedent's death lacks credibility.

(WCJ Coholan's Decision, Finding of Fact No. 9).

In this finding, it is evident that WCJ Coholan improperly relied upon WCJ's 2001 decision in making her credibility determination regarding Dr. Oesterling's testimony. As explained above, any such reliance on the 2001 decision was in error and was misplaced, as the issue in this case concerned whether Mr. Pascia's coal worker's pneumoconiosis was a substantial contributing factor in his death. Additionally, the only other reason offered by WCJ Coholan for rejecting Dr. Oesterling's testimony was the fact that it conflicted with the testimony of Claimant's medical expert, Dr. Wecht, which she found credible. Hence, we must conclude that WCJ Coholan failed to adequately explain her reasons for rejecting Dr. Oesterling's testimony and, therefore, her decision was not reasoned.

Accordingly, the order of the Board is vacated. The matter is remanded to the Board, with specific instructions to remand to WCJ Coholan, for new findings consistent with this opinion.

JOSEPH F. McCLOSKEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

U.S. Steel Mining Company, L.L.C.,	:	
Petitioner	:	
	:	
v.	:	No. 806 C.D. 2008
	:	
Workers' Compensation Appeal Board	:	
(Pascia),	:	
Respondent	:	

ORDER

AND NOW, this 13th day of November, 2008, the order of the Workers' Compensation Appeal Board (Board) is vacated. The matter is remanded to the Board, with specific instructions to remand to the Workers' Compensation Judge, for new findings consistent with this opinion.

Jurisdiction relinquished.

JOSEPH F. McCLOSKEY, Senior Judge