

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Jorge Perez,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 820 C.D. 2012
	:	
Workers' Compensation Appeal	:	Submitted: August 10, 2012
Board (Miller Brothers Wallpapering	:	
Co., Inc.),	:	
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: October 5, 2012**

Jorge Perez (Claimant) petitions for review of an Order of the Workers' Compensation Appeal Board (Board) affirming the decision and Order of a Workers' Compensation Judge (WCJ) that denied Claimant's Claim Petition. Claimant argues that the WCJ did not issue a reasoned decision or make necessary credibility determinations, and contends that substantial evidence was capriciously disregarded. Because we conclude that the decision was reasoned when the WCJ articulated objective reasons for his credibility determinations, we affirm.

Claimant was employed as a painter/wallpaper laborer with Miller Brothers Wallpapering Co., Inc. (Employer). Claimant filed his Claim Petition<sup>1</sup> in December 2007, averring that he was injured in a motor vehicle accident on Allegheny and Belgrad Streets in Philadelphia on May 31, 2006 at approximately 8:00-8:25 p.m., while driving Employer's van with Claimant's brother, Carlos, also an employee of Employer, as a passenger. Claimant alleged that the purpose of the trip was to get keys to Employer's storage facility from his supervisor, Pete, to obtain materials. Claimant seeks payment for total disability, medical bills, and counsel fees, averring that the accident occurred during the course and scope of his employment.<sup>2</sup> Employer denied the averments in the Claim Petition, and the matter was assigned to a WCJ. (WCJ Decision, Findings of Fact (FOF) ¶¶ 1-3.)

The WCJ conducted hearings on the Claim Petition during which Claimant testified in person for his direct examination, and by deposition for his cross-examination.<sup>3</sup> Claimant also submitted the deposition testimony of a medical

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<sup>1</sup> In a Claim Petition proceeding, the employee bears the burden to prove all elements to support an award. Vista International Hotel v. Workmen's Compensation Appeal Board (Daniels), 560 Pa. 12, 22, 742 A.2d 649, 654 (1999); Inglis House v. Workmen's Compensation Appeal Board (Reedy), 535 Pa. 135, 141, 634 A.2d 592, 595 (1993). Thus, to sustain an award of benefits, a claimant has the burden to establish that he "suffered a work-related injury and that this injury resulted in" disability. Ruhl v. Workmen's Compensation Appeal Board (Mac-It Parts, Inc.), 611 A.2d 327, 329 (Pa. Cmwlth. 1992).

<sup>2</sup> Claimant's original Claim Petition describes Claimant's injuries as affecting his neck and back, tinnitus, herniations, cephalgia, myofascitis, and radiculopathy. (Claim Petition ¶¶ 1, 3-5, 7, 14.) In May 2009, Claimant submitted a second claim petition for psychiatric injuries that he subsequently withdrew. (WCJ Decision, Finding of Fact (FOF) ¶ 6.)

<sup>3</sup> Interpreters were present for Claimant's personal and deposition testimony and interpreted intermittently as needed.

expert. Employer submitted the deposition testimony of its owner, Thomas Miller, the deposition testimony of Employer's medical experts, and the third party liability testimony from Claimant's case with Employer's insurance company. The WCJ resolved the conflicting testimony, in pertinent part, as follows:

The [WCJ] reviewed the evidence on the issue of whether the Claimant's motor vehicle accident occurred in the course and scope of employment and finds that it did not. In making this finding, the [WCJ] did not find the Claimant's testimony credible that he was furthering the employer's business at the time of his accident. In short, the [WCJ] found Claimant's testimony totally contradictory and not believable, and notes that every time Claimant testified, more inconsistencies would occur. The [WCJ] finds Mr. Miller's testimony credible, logical, and believable. The [WCJ] finds on May 31, 2006, Claimant was called by his brother, Carlos, to help assist Carlos to fix Peter[s<sup>4</sup>] (Carlos' brother-in-law) personal car which was stuck somewhere in Philadelphia. On the way back from fixing the car after getting coffee, the vehicle Claimant was driving was rear ended, causing minimal damage to the vehicle. Claimant's own testimony, if believed, shows that he was not directed by a supervisor to make this trip, as he testified that Carlos was not his supervisor. Claimant's testimony was totally inconsistent on the purpose of the trip. His testimony that the purpose of the trip was to obtain a key from Pete is totally rejected as not credible in favor of the testimony of Mr. Miller. Claimant seemed to concede this point in his deposition as on cross when he agreed the reason that he went to see Pete was to assist Carlos with Pete's personal vehicle and not getting a key. He acknowledged that this was the reason Carlos was with him, because Carlos had "knowledge" of the car. Moreover, Mr. Miller's testimony was very credible on this issue that his practice was to always have his foremen pick up the supplies in the morning or on Fridays during the day, because he did not want to pay them additional time at night. Moreover, he testified credibly that Carlos had a key, and therefore there was no need to get the key from Pete. Claimant again was inconsistent on this point. He first testified he didn't know if Carlos had keys, but then testified on rebuttal that Carlos definitely did not have keys.

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<sup>4</sup> Peter is referred to as "Pete" throughout the record.

(FOF ¶ 9) (internal citations omitted). Therefore, the WCJ “[did] not find as credible, the Claimant’s explanation that he was trying to obtain a key to gain access to the [E]mployer’s warehouse to pick up supplies.” (FOF ¶ 12.)<sup>5</sup> In sum, the WCJ found “no credible evidence that this trip had anything to do with work” and “not only was there no credible evidence that Claimant was ordered to make this trip,” but that “the use of the company van at this time and for this purpose was prohibited.” (FOF ¶¶ 10-11.)

In finding that “Claimant was not in the course and scope of his employment at the time of the motor vehicle accident,” (FOF ¶ 10), the WCJ cited the 1993 amendment to Section 301(c)(1) of the Workers’ Compensation Act<sup>6</sup> (“Act”), 77 P.S. § 411(1), which he considered an admonishment that injury in the course of employment shall *not* include “injuries sustained while the employe is operating a motor vehicle provided by the employer if the employe is not otherwise in the course of employment at the time of injury.” (FOF ¶ 10) (quoting 77 P.S. § 411(1)). The WCJ further recited that “[t]he statute does head off the potential

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<sup>5</sup> The WCJ further noted that the entire set of circumstances did not square with Claimant’s allegation that the purpose of the trip was to get materials for work the next day. If getting materials for work was the goal, the WCJ believed Claimant would have done this by going directly from work to the storage facility rather than first going home, then going totally out of his way, as the maps showed, to pick up Carlos, and then take Carlos’ company van to help Pete. (FOF ¶ 12.) The WCJ additionally pointed out that Claimant could not recall where his last project was for the day and did not know where his work was the next day. (FOF ¶ 12.) The WCJ stated that even Claimant did not dispute that he had completed his day and went home in a company van that was to be left at home. (FOF ¶ 12.)

<sup>6</sup> Act of June 2, 1915, P.L. 736, as amended.

argument that, because a vehicle has been provided, the contract of employment necessarily includes transportation and hence that all commuting is covered.” (FOF ¶ 10) (quoting Torrey & Greenberg, Pennsylvania Workers’ Compensation Law & Practice, 6 Pa. Practice § 4:97, West 3<sup>rd</sup> ed. 2008). The WCJ concluded that Claimant failed to meet his burden to prove, “through competent and credible evidence, that he sustained an injury in the course and scope of his employment or that he suffered any disability from a work related injury.”<sup>7</sup> (Conclusion of Law (COL) ¶ 2.)

Claimant appealed to the Board, arguing that the WCJ’s decision was not a reasoned decision, as required by Section 422(a) of the Act, 77 P.S. § 834, because the WCJ failed to reconcile the testimony of Claimant and Employer. The Board affirmed, finding no error, and concluded that the WCJ issued a reasoned decision and provided sufficient reasons for his credibility determinations. (Board Op. at 2-3.) Claimant filed a Petition for Review with this Court,<sup>8</sup> arguing that the WCJ

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<sup>7</sup> The WCJ acknowledged that, because the Claimant was not in the course and scope of employment at the time of the accident, there was no need to consider the parties’ medical proofs. However, the WCJ stated for the record that he completely rejected Claimant’s doctor’s opinion about the cause and extent of Claimant’s injuries and disability, and did not find it credible that Claimant’s doctor found evidence of a continuing injury or disability when he first examined Claimant 2½ years after the accident, noting that the doctor’s findings were inconsistent with what Claimant reported to the earliest treating physician and Claimant’s doctor’s findings were based only on Claimant’s subjective complaints. (WCJ Decision, FOF ¶ 13.)

<sup>8</sup> Our “review is limited to determining whether the necessary findings of fact are supported by substantial evidence, whether errors of law were made, or whether constitutional rights were violated.” Peters Township School District v. Workers’ Compensation Appeal Board (Anthony), 945 A.2d 805, 810 n.8 (Pa. Cmwlth. 2008). We further acknowledge our Supreme Court’s holding in Leon E. Wintermyer, Inc. v. Workers’ Compensation Appeal Board (Marlowe), 571 Pa. 189, 812 A.2d 478 (2002), that “review for capricious disregard of material,  
(Continued...)

failed to issue a reasoned decision, made improper and contradictory findings of fact, failed to issue all necessary credibility determinations, and capriciously disregarded substantial evidence.

Our legal analysis is framed by Section 422(a) which provides:

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 [WCJ] shall specify the evidence upon which the [WCJ] relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the [WCJ] 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 [WCJ] must identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

77 P.S. § 834. When there is conflicting evidence, as there is here, Section 422(a) requires the WCJ to specify the evidence he or she is relying upon and to state the reasons for accepting or rejecting that evidence, but is not required to explain inherently subjective credibility determinations of a witness testifying before him. Daniels v. Workers' Compensation Appeal Board (Tristate Transport), 574 Pa. 61, 67-68, 828 A.2d 1043, 1047 (2003). “[A] WCJ’s observation of a witness’s demeanor alone is sufficient to satisfy the reasoned decision requirement.” Amandeo v. Workers' Compensation Appeal Board (Conagra Foods), 37 A.3d 72,

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competent evidence is an appropriate component of appellate consideration in every case in which such question is properly brought before the court.” Id. at 203, 812 A.2d at 487.

77 (Pa. Cmwlth. 2012) (citing Daniels, 574 Pa. at 77, 828 A.2d at 1052-53). Where a witness testifies via a deposition, the WCJ is required to articulate some objective factors for his or her credibility determinations. Daniels, 574 Pa. at 78, 828 A.2d at 1053. The WCJ need not discuss all of the evidence presented, but must issue a decision that permits an appellate court to exercise adequate appellate review. Dorsey v. Workers' Compensation Appeal Board (Crossing Construction Co.), 893 A.2d 191, 194-95 n.4 (Pa. Cmwlth. 2006). "Thus, while summaries of testimony alone would be insufficient to satisfy the reasoned decision requirement, where a WCJ summarizes testimony and also objectively explains his credibility determinations, the decision will satisfy the requirement." Amandeo, 37 A.3d at 76. A reasoned decision "spare[s] the reviewing court from having to imagine why the WCJ believed one witness over another." Lewis v. Workers' Compensation Appeal Board (Disposable Products), 853 A.2d 424, 429 (Pa. Cmwlth. 2004) (emphasis omitted). Additionally, Section 422(a) does not permit a party to challenge or second-guess the WCJ's reasons for credibility determinations. Dorsey, 893 A.2d at 195.

Claimant testified personally before the WCJ for his direct examination and, therefore, the WCJ "was in a position to render a demeanor-based assessment of his credibility." Daniels, 574 Pa. at 78, 828 A.2d at 1054. The WCJ found Claimant "not believable," "totally contradictory," and stated that "every time Claimant testified, more inconsistencies would occur." (FOF ¶ 9.) This credibility determination was properly based both on a demeanor-based assessment of Claimant from his testimony and on the inconsistencies in Claimant's testimony, both personally and in relation to the record as a whole. The WCJ found that "Claimant provided no corroborating evidence of his inconsistent version of

events,” noting that “not even his brother testified to support his story.” (FOF ¶ 11.) Claimant did provide both live and deposition testimony; however, we have previously stated that where “there is contextual overlap in Claimant’s live and deposition testimony. . . it makes little sense to require a WCJ in such circumstances to offer objective reasons for a credibility determination [regarding the deposition testimony].” Amandeo, 37 A.3d at 77. Moreover “the WCJ should not be required to provide additional objective reasons for discrediting the same testimony that is given by deposition.” Id. Notwithstanding the foregoing, the WCJ did specifically articulate many objective reasons for his credibility determinations for Claimant’s live and deposition testimony in findings of fact nine through twelve. Furthermore, the WCJ accepted the deposition testimony of Mr. Miller, Employer’s owner, because the testimony was logical and believable. (FOF ¶ 9.) This objective explanation by the WCJ is sufficient to meet the reasoned decision standard because it explains why the WCJ believed this witness.

As the Supreme Court stated, “[w]e do not believe that the statute, as amended, was intended to mandate that adjudicative officers explain inherently subjective credibility decisions according to some formulaic rubric or detailed to the ‘nth degree.’” Daniels, 574 Pa. at 77, 828 A.2d at 1053. Here, we conclude that the WCJ not only summarized the witnesses’ testimony, but met and exceeded the specific credibility determinations that are required by Daniels and Amandeo for a reasoned decision.

Claimant additionally argues that the WCJ selected certain facts from Claimant’s testimony and capriciously disregarded others. (Claimant’s Br. at 17-18, 20.) Claimant essentially is asking this Court to remand this case in order for



the WCJ to reweigh the evidence and reassess his credibility determinations to believe Claimant's version of events rather than Employer's. However, "[i]t is well established that the [WCJ], as fact finder, has exclusive province over questions of credibility and evidentiary weight, and the [WCJ]'s findings will not be disturbed when they are supported by substantial, competent evidence." Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck), 664 A.2d 703, 706 (Pa. Cmwlth. 1995). "The [WCJ] is free to accept or reject the testimony of any witness . . . in whole or in part." Id. The fact that one party to a proceeding may view testimony differently than the fact finder is not grounds for reversal if the findings are supported by substantial evidence. Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994). "Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion." Hoffmaster v. Workers' Compensation Appeal Board (Senco Products, Inc.), 721 A.2d 1152, 1155 (Pa. Cmwlth. 1998). In analyzing whether a finding of fact is supported by substantial evidence, "this [C]ourt must view the evidence in a light most favorable to the party who prevailed before the fact[]finder" and "we are to draw all reasonable inferences which are deducible from the evidence in support of the fact[]finder's decision in favor of that prevailing party." Id.

Our review confirms there is substantial evidence of record to support the WCJ's findings in this case, including that Claimant's testimony was inconsistent about the purpose of his trip with Employer's van. Moreover, Claimant's testimony was equivocal and often inconsistent. See, e.g., Claimant's Dep. at 16, 18, R.R. at 69a, 71a. Notably here, Claimant's own testimony, *even if believed*, did not support that Claimant was directed by a supervisor to use Employer's

vehicle during the time in question. (FOF ¶ 9.) The WCJ explained that the inconsistency in the testimony itself is why the WCJ did not ascribe credibility to Claimant. (FOF ¶ 9.) As for the other facts that Claimant argues are taken out of context or are not objective reasons for questioning Claimant's credibility, we conclude that there is substantial evidence to support the findings and the necessary credibility determinations that have been made. Drawing all reasonable inferences in support of the WCJ's decision, considering the evidence as a whole, and, in view of the credited testimony, we conclude that the WCJ's findings have the requisite measure of support in the record. Thus, the record supports the Board's determination that there is substantial evidence to support the WCJ's decision.

Accordingly, we affirm the Board's Order.

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**RENÉE COHN JUBELIRER, Judge**

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Workers' Compensation Appeal	:	
Board (Miller Brothers Wallpapering	:	
Co., Inc.),	:	
	:	
Respondent	:	

**ORDER**

**NOW**, October 5, 2012, the Order of the Workers' Compensation Appeal Board entered in the above-captioned matter is **AFFIRMED**.

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**RENÉE COHN JUBELIRER, Judge**