IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David Thatcher, Petitioner	:	
v.	:	No. 950 C.D. 2008
	:	Submitted: September 5, 2008
Workers' Compensation Appeal Board (NCC Automated Systems, Inc.), Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: November 7, 2008

David Thatcher (Claimant) petitions for review of an adjudication of the Workers' Compensation Appeal Board (Board) affirming the decision of the Workers' Compensation Judge (WCJ). The WCJ granted a termination petition filed by NCC Automated Systems, Inc. (Employer) and denied Claimant's claim, penalty and review petitions. In this case we consider whether Claimant was entitled to recover medical expenses for treatment of injuries that were not described in his compromise and release agreement with Employer.

Claimant sustained a work-related injury to his left arm on June 12, 2003, and filed a claim petition alleging several injuries. Claimant and Employer executed a Compromise and Release Agreement (C&R Agreement) on September

9, 2004, to resolve the matter. With respect to Claimant's injuries and medical expenses, the C&R Agreement stated as follows:

> 4. State the injury, the precise nature of the injury and the nature of the disability, whether total or partial.
>
> The claimant filed a Claim Petition alleging a work-related injury on 6/12/03 to the cervical spine with radiculopathy, left shoulder impingement, disc bulge at C3-C4, C4-C5, C5-C6 and disc herniation C6-C7, C7-T1 and T1-T2 causing total disability as of 6/12/03. In exchange for this Compromise & Release claimant's Claim Petition is withdrawn with prejudice. This Agreement relieves the Defendant/Employer of all liability with regard to any and all Claims for injuries arising out of this work injury with the exception of paragraph nine (9).
>
> * * *
>
> 9. Summarize all of the medical benefits paid, or due and unpaid, to or on behalf of the employee … up to the date of this agreement.
>
> The Defendant/Employer agrees to pay medical bills that are reasonable, necessary and causally related to the work injury of 06/12/03 only in the nature of radiculopathy in the left upper extremity consistent with thoracic outlet syndrome.

Claimant's Reproduced Record at 10a-12a (C.R.R. __).

Before the C&R Agreement became effective, a hearing was conducted. At the hearing, Claimant testified that he fully understood the agreement; signed it voluntarily; and was aware that he was giving up all future claims to workers' compensation benefits relating to the June 12, 2003, incident. Employer's Reproduced Record at 49a (E.R.R. __). Claimant also stated that he understood that "the only medical bills that are to be paid are the reasonable, necessary and causally related ones in the nature of radiculopathy in the left

up[per] extremity consistent with thoracic outlet syndrome." E.R.R. 53a-54a. Crediting Claimant's testimony, the WCJ found that Claimant understood the full legal significance of the C&R Agreement, and knowingly and voluntarily entered into the agreement. By decision dated September 23, 2004, the WCJ approved the C&R Agreement. No appeal was taken.

On May 25, 2006, Claimant filed a petition to review medical treatment and compensation benefit payments, alleging that his condition had worsened and that he had unpaid medical bills. Employer denied these allegations. Employer filed a termination petition on August 9, 2006, alleging that Claimant was fully recovered as of June 27, 2006. Thereafter, on August 24, 2006, Claimant filed a claim petition alleging that his original work injury included cervical spine radiculopathy; left shoulder impingement; disc bulges at C3-C4, C4-C5, and C5-C6; disc herniations at C6-C7, C7-T1, and T1-T2; and thoracic outlet syndrome. He sought partial disability benefits for those injuries as well as medical expenses. C.R.R. 19a. Claimant also filed a penalty petition on August 24, 2006, alleging that Employer had refused to pay for medical expenses. Employer moved to dismiss Claimant's petitions.

By letter dated August 29, 2006, the WCJ informed the parties as follows:

> The language of the Compromise & Release read in combination with the colloquy conducted at the hearing of September 9, 2004, make it crystal clear that [Employer's] liability is limited to reasonable and necessary medical expenses flowing from the accepted work injury of a radiculopathy in the left upper extremity consistent with thoracic outlet syndrome.
>
> To the extent that [Claimant] now intends to seek recognition of broader injuries with the payment of medical expenses far

> beyond those agreed to in the Compromise & Release, it is my intention to grant [Employer's] Motion to Dismiss. However, it may be that a portion of the medical expenses currently sought by [Claimant] are payable pursuant to the agreed upon description of the work injury.

C.R.R. 34a. Accordingly, the WCJ instructed Claimant to submit a list of expenses related to the accepted work injury in the C&R Agreement.

Claimant responded by letter dated September 6, 2006. He averred that the symptoms in his left shoulder and arm were caused by the work injury and, echoing the language in the C&R Agreement, the pain in his left upper arm was encompassed by "a radiculopathy in the left upper extremity consistent with thoracic outlet syndrome." Exhibit J-4. Claimant referenced Employer's independent medical examiner, Anthony Puglisi, M.D., who diagnosed Claimant with a "stretch of the brachial plexus over disc herniation," which "may have occurred at the time of the incident." *Id*. Claimant suggested that his symptoms were caused by a "combination" of thoracic outlet syndrome and disc herniation because both involve the same body part and can cause similar symptoms. In addition, Claimant offered a report by Zigmund F. Strzelecki, M.D., opining that Claimant's shoulder pain is due to his cervical disc herniation and related to the work injury. Finally, Claimant noted that Employer's expert, Marc Manzione, M.D., had determined that although the thoracic outlet syndrome had resolved, Claimant still experiences symptoms resulting from a left cervical radiculopathy.

By letter dated October 20, 2006, the WCJ stated that he would accept evidence concerning unpaid medical bills incurred pursuant to the diagnosis accepted in the C&R Agreement, but he would not accept evidence pertaining to other diagnoses. The WCJ further advised that "[n]o evidence concerning a cervical disc herniation will be accepted." C.R.R. 38a. Claimant responded on

November 1, 2006, that he took exception to the WCJ's refusal to accept evidence concerning the cervical disc herniation and that he would submit no further medical evidence.

The WCJ determined that all of Claimant's petitions were an attempt to expand the description of the injury to include injuries previously excluded from the C&R Agreement. He concluded that Claimant's allegations of new injuries were barred by collateral estoppel and *res judicata*, and he denied Claimant's petitions. The WCJ also credited the testimony of Dr. Manzione that Claimant had fully recovered from the accepted radiculopathy consistent with thoracic outlet syndrome. Accordingly, the WCJ terminated benefits effective June 27, 2006.

Claimant appealed to the Board, arguing that the WCJ erred by precluding him from submitting evidence related to diagnoses other than thoracic outlet syndrome, specifically a disc herniation. Claimant argued that the C&R Agreement did not limit his injury description to radiculopathy caused by thoracic outlet syndrome. Claimant contended that the description "radiculopathy in the left upper extremity *consistent with thoracic outlet syndrome*" encompasses any radiculopathy similar to that caused by thoracic outlet syndrome, such as that related to a herniated cervical disc. In other words, "consistent with" means "similar to" rather than "caused by." The Board agreed that the language in paragraph 9 of the C&R Agreement was ambiguous but rejected Claimant's interpretation as too broad. Finding that the accepted injury was limited to radiculopathy caused by thoracic outlet syndrome, the Board affirmed the WCJ's adjudication. Claimant now petitions for this Court's review.

Before this Court,[1] Claimant raises several issues which we summarize as follows. Claimant maintains that paragraph 9 of the C&R Agreement does not, as the Board concluded, limit the accepted injury to radiculopathy *caused by* thoracic outlet syndrome. Rather, the phrase "radiculopathy in the left upper extremity *consistent with* thoracic outlet syndrome" encompasses any radiculopathy *similar to* that caused by thoracic outlet syndrome, including radiculopathy associated with a cervical disc herniation. Claimant contends that the WCJ erred by excluding proposed testimony from his medical expert regarding symptoms of left cervical radiculopathy, which Claimant posits is a condition that manifests itself in much the same way as a radiculopathy directly caused by thoracic outlet syndrome. Claimant's arguments are unavailing.

Contract interpretation is a question of law that requires the court to ascertain and give effect to the intent of the contracting parties as embodied in the written agreement. *Department of Transportation v. Pennsylvania Industries for the Blind and Handicapped*, 886 A.2d 706, 711 (Pa. Cmwlth. 2005). Courts assume that contractual language is chosen carefully and that the parties are mindful of the meaning of the language used. *Id*. " 'When a writing is clear and unequivocal, its meaning must be determined by its contents alone.' " *Id*. (quoting *Murphy v. Duquesne University Of The Holy Ghost*, 565 Pa. 571, 591, 777 A.2d 418, 429 (2001)). Applying the foregoing principles, we hold that the C&R

[1] Our review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. *Stiles v. Workers' Compensation Appeal Board (Department of Public Welfare)*, 853 A.2d 1119, 1122 n.4 (Pa. Cmwlth. 2004) (citing Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704).

Agreement, viewed in toto, clearly and unambiguously excludes radiculopathy caused by cervical disc herniation from the accepted work injury.

To begin, paragraph 4 of the C&R Agreement recites the various injuries alleged in Claimant's claim petition. These were "a work-related injury … to the cervical spine with radiculopathy, left shoulder impingement, disc bulge at C3-C4, C4-C5, C5-C6 and disc herniation C6-C7, C7-T1 and T1-T2." C.R.R. 10a-11a. Paragraph 4 continues with the proviso that "[i]n exchange for this Compromise & Release claimant's Claim Petition is withdrawn with prejudice. This Agreement relieves the Defendant/Employer of all liability with regard to any and all Claims for injuries arising out of this work injury with the exception of paragraph nine (9)." C.R.R. 11a. Paragraph 9 then obligates Employer "to pay medical bills that are reasonable, necessary and causally related to the work injury of 06/12/03 only in the nature of radiculopathy in the left upper extremity consistent with thoracic outlet syndrome." C.R.R. 12a.

Reading paragraphs 4 and 9 together, it is clear that the parties intended to exclude injuries to the cervical spine and disc herniations, which had been alleged in the claim petition. Concomitantly, Employer's liability was expressly limited to medical expenses for one injury alone: radiculopathy in the left upper extremity related to thoracic outlet syndrome. Claimant cannot now include one of the excluded injuries as part of the accepted injury simply because it happens to manifest itself with radiculopathy in the same region of the body. Thus, based on our contextual reading of paragraphs 4 and 9, we agree with the

Board that radiculopathy "consistent with" thoracic outlet syndrome means radiculopathy "caused by" or "associated with" thoracic outlet syndrome.[2]

For all of the foregoing reasons, we affirm the Board's order.

MARY HANNAH LEAVITT, Judge

[2] We note our disagreement with the Board's statement that paragraph 9 of the C&R Agreement contains an ambiguity. As explained more fully above, paragraph 9 cannot be read in a vacuum; it must be read together with paragraph 4 and in the context of the entire agreement. We nevertheless agree with the Board's ultimate holding regarding the nature and extent of the accepted work injury.

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O R D E R

AND NOW, this 7th day of November, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter, dated May 8, 2008, is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge