[J-154-2001]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

LEON E. WINTERMYER, INC. AND AMERICAN GENERAL GROUP,	:	No. 41 MAP 2001
Appellants	:	Appeal from the Order of the Commonwealth Court entered on 6/27/00 at 2330 CD 1999, which affirmed the
v.	:	Order entered 10/29/97 and reversed the Order entered 8/11/99, at A98-4227 and remanded to WCAB
WORKERS' COMPENSATION APPEAL BOARD (MARLOWE),	:	
Appellees	:	
PENN NATIONAL INSURANCE CO.	:	
Intervenors	:	ARGUED: November 13, 2001

OPINION

MR. JUSTICE SAYLOR **Decided: December 10, 2002**

This appeal concerns the application, in the administrative law setting, of what has been termed the capricious disregard standard of appellate review.

In November of 1993, Linda Marlowe ("Claimant") filed a claim petition seeking benefits against Leon E. Wintermyer, Inc. ("Employer"), and its insurer, American General Group, pursuant to the Workers' Compensation Act.[1] Claimant alleged that, in March of 1993, she sustained an injury -- bilateral carpal tunnel syndrome ("CTS") -- in the course and scope of her employment primarily as a bookkeeper. On the same day,

[1] Act of June 2, 1915, P.L. 736 (as amended, 77 P.S. §§1 - 1041.4) (the "Act").

Claimant also asserted a claim against her previous employer, Lorne G. Seifert, Inc. ("Seifert"), alleging that her clerical duties at that company contributed to her injury. Employer filed a joinder petition against Seifert for the same reason and, subsequently, filed a second joinder petition, contending that any injury occurred while Claimant worked for another company, H & R Block, as a tax preparer.[2]

The WCJ treated the petitions on a consolidated basis for purposes of hearing and decision. The parties stipulated that Claimant's work with Employer spanned the fall of 1991 through mid-1993; her job with Seifert from 1987 through 1990; and her seasonal employment with H & R Block several months in 1991 (full time), as well as in 1992 through 1993 (part time). Claimant testified that her duties for all employers included substantial periods of repetitive hand motion, particularly typing and computer keyboarding; she experienced tingling and numbness in her fingers and right arm in December of 1989, while employed by Seifert; she was treated by a chiropractor in 1990 and ultimately referred to a physician, who diagnosed CTS; while working for Employer, she spent seventy percent of her time typing at a computer keyboard; working full time for Employer, her symptoms increased; she came under the care of James A. Yates, M.D., in February of 1992; and it was at such time that she learned that her CTS was work related.

Claimant also presented Dr. Yates' testimony via deposition transcript. His description concerning onset and treatment of the CTS was consistent with Claimant's; further, he explained that he performed several surgical procedures in 1992 and 1993 to alleviate the symptoms. According to Dr. Yates, Claimant's injury caused permanent nerve damage, and her condition was related to her employment and caused by

[2] This second joinder petition was eventually dismissed because Claimant failed to provide H & R Block with timely notice pursuant to Section 311 of the Act, 77 P.S. §631.

repetitive motion, including typing, keyboarding, and writing. On cross-examination, Dr. Yates indicated that his opinion concerning work-relatedness was predicated upon the work and medical history provided by Claimant, and that such history was generalized in nature.[3] Dr. Yates also identified a series of other causes for CTS, although he emphasized that repetitive motion activities were the most common source.

Employer presented testimony from its director of human services and the accounting employee who replaced Claimant, both of whom substantially contradicted Claimant's assertions concerning the amount of time that she spent performing data entry on a daily basis. The supervisor testified that the majority of Claimant's work involved working with invoices and other documents, and that she did not spend a great deal of time at a computer terminal. The clerical worker stated that, in performing Claimant's duties, she spent no more than two hours per day on data entry; the remainder of the workday involved non-repetitive tasks; and many days she did not spend any time at a keyboard. Employer did not present an expert medical witness, nor did Seifert present evidence.

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[3] For example, the following interchange occurred:

> Q. . . . Specifically, Doctor, do you have any clear-cut and specific occupational history as to what [Claimant] did for any given employer at any particular point in time?
>
> A. Only what she has told me and what her job description was, bookkeeping, et cetera.
>
> * * *
>
> Q. . . . [Y]ou don't know how much of the day she spent doing X activity versus Y activity, whether there were breaks or anything of that nature?
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> A. No, I do not.

In her findings, the WCJ emphasized inconsistencies, conflicts, and vagaries in Claimant's evidence. For example, she contrasted the extensive evidence to the effect that Claimant's difficulties with CTS were longstanding and clearly evident in June of 1990, with a disability claim form submitted to Employer by Claimant indicating that her CTS first appeared in August of 1992; credited the testimony of Employer's witnesses over Claimant's concerning the extent of repetitive motion activity she performed; and emphasized that Dr. Yates was unable to specify any particular event leading to or time of an onset or aggravation of Claimant's injury. The WCJ specifically stated that the testimony of Claimant and Dr. Yates was not credible. Therefore, the WCJ concluded that Claimant failed to sustain her burden of proving that her injury was work related and entered an order dismissing the claim petitions against Employer and Seifert, as well as Employer's joinder petition.

The Workers' Compensation Appeal Board ("WCAB"), however, reversed. Preliminarily, it acknowledged that its review was in an appellate capacity, and it was therefore not its function to weigh the evidence and resolve conflicts, but rather, such role was assigned to the WCJ. Further, the WCAB noted that it was within the WCJ's discretion to accept or reject, in whole or in part, the testimony of any witness, including an expert. Nevertheless, the WCAB indicated that, in instances in which only the party bearing the burden of proof presents evidence and relief is denied, it is appropriate for an appellate tribunal to review an administrative adjudication to ensure that it is free from any capricious disregard of competent evidence. Although acknowledging that Employer presented fact witnesses in rebuttal to Claimant's testimony, the WCAB emphasized that Employer had not presented expert evidence to challenge Dr. Yates' testimony. The WCAB invoked a traditional definition of capricious disregard as "a willful, deliberate disbelief of an apparently trustworthy witness, whose testimony one

has no basis to challenge." The WCAB then quoted extensively from Dr. Yates' testimony concerning Claimant's injury and his conclusion as to its work relatedness; characterized such testimony as unequivocal; and concluded that the WCJ erred in rejecting it, at least to the extent that it supported an aggravation of a pre-existing condition and/or a repetitive trauma injury. The WCAB therefore remanded the matter to the WCJ, requiring a determination of the date of injury and identification of the liable employer. On remand, the WCJ granted the claim petition for the work period from June 21, 1993, through June 1, 1994, and identified Employer as the liable party. The WCAB subsequently extended this period by fifteen months.

Before a panel of the Commonwealth Court, Employer argued, inter alia, that in its initial opinion, the WCAB improperly applied the capricious disregard standard of appellate review, thereby usurping the WCJ's determinations of credibility and evidentiary weight. Like the WCAB, the Commonwealth Court majority emphasized that Employer had not presented medical evidence and, accordingly, also invoked what it termed a capricious disregard standard of review. On such basis, the Commonwealth Court rejected Employer's argument, reasoning:

> In order to make such determination [concerning capricious disregard], the [WCAB] reviewed the medical testimony of record in order to determine if it was equivocal or unequivocal. Such a review required the Board's assessment of the competency of the evidence, not its credibility. Thus, Employer is mistaken in its assertion that the [WCAB's] assessment of the competency of the medical evidence of record was an evaluation of its credibility and evidentiary weight.

(emphasis in original). After resolving additional questions raised by Employer, the Commonwealth Court affirmed the WCAB's order in a memorandum opinion, remanding the matter for reasons unrelated to the present appeal.

Judge Friedman concurred in the result but wrote separately to express her belief that the WCAB should not have applied a capricious disregard review standard, but rather, should have employed a substantial evidence test. She reasoned that the court's precedent clearly established that review for capricious disregard applied in the limited circumstance in which the burdened party does not prevail and was the sole presenter of evidence. Judge Friedman noted a conflict in authority concerning the application of the review standard in cases in which only the burdened party presents medical evidence but both parties present lay testimony or other non-medical evidence. Compare Iacono v. WCAB (Chester Housing Auth.), 155 Pa. Cmwlth 234, 624 A.2d 814 (1993), aff'd per curiam, 536 Pa. 535, 640 A.2d 408 (1994), with Tomczak v. WCAB (Pro-Aire Transport, Inc.), 150 Pa. Cmwlth. 431, 615 A.2d 993 (1992). Citing to Iacono, Judge Friedman concluded that the controlling position is that, when both parties present evidence before the factfinder, however limited (there being no requirement that such proof include medical evidence), an appellate court must apply the substantial evidence standard to the exclusion of review for capricious disregard. See Iacono, 155 Pa. Cmwlth. at 240, 624 A.2d at 816-17.[4] According to Judge Friedman, Employer's presentation of factual testimony concerning the nature of Claimant's job duties removed the matter from the purview of capricious disregard review. Judge Friedman also chastised the majority for taking a position that unnecessarily confused what she viewed as a "clear-cut legal determination," and adopting an analysis that was both unnecessary and impractical. In this regard, Judge Friedman explained:

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[4] Judge Friedman also referred to other cases in which inconsistent standards were applied, including Crenshaw v. WCAB (Hussey Copper), 165 Pa. Cmwlth. 696, 645 A.2d 957 (1994), in which the court applied the standard as articulated in Iacono, and Tynan v. WCAB (Associated Cleaning Consultant and Services, Inc.), 162 Pa. Cmwlth. 393, 639 A.2d 856 (1994), and Van Duser v. UCBR, 164 Pa. Cmwlth. 96, 642 A.2d 544 (1994), in which the court did not consistently apply Iacono's formulation.

> The effect of the majority's opinion is that the standard of review must be decided separately for each issue raised within a single case. Former President Judge Craig pointed out the burdensome nature of this approach in Herbert v. [UCBR], 571 A.2d 526 (Pa. Cmwlth. [1990)], stating that if this court had to apply different standards depending upon whether only one or more parties produced evidence on a specific issue within a case, unworkable complications would result. . . . Because testimony on one issue can, and often does, impact to some extent on a different issue, or issues, in the same case, the parties could end up battling over pieces of evidence and their relevance to individual issues. This could require us to perform an extensive analysis of the evidence and to decide the question of the appropriate standard several times in a single case before we could address the issues raised in the case. There is no need for this court to invite such difficulties, and I would hope that we could avoid such inquiries in the future.

Finally, Judge Friedman referenced the reasoned decision requirement of Section 422(a) of the Act, 77 P.S. §834,[5] the application of which, in her view, would eliminate the need for a separate inquiry concerning capricious disregard.

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[5] Section 422(a) states:

> Neither the board nor any of its members nor any workers' compensation judge shall be bound by the common law or statutory rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based upon sufficient competent evidence to justify same. 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 [he] 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

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This Court granted limited review to revisit aspects of the standard governing appellate review of administrative agency adjudications in light of continuing differences among jurists concerning its appropriate composition.

Preliminarily, we note that courts do not rigidly employ precise verbiage in applying governing standards of review, but rather, frequently use differing terms, since the effort is to capture a conceptual manner of review. See generally Jeffrey P. Bauman, Standards of Review and Scopes of Review in Pennsylvania -- A Primer and Proposal, 39 DUQ. L. REV. 513 (Spring 2001). Nevertheless, in the area of administrative agency review, judges have sometimes described fundamentally different and irreconcilable concepts, as illustrated by the division of the Commonwealth Court panel in the present case. Indeed, in a few instances in this arena, unfortunately, form has overcome substance, causing confusion. We emphasize, at the outset, that the intermediate appellate courts cannot be greatly faulted in this regard, since several of this Court's own decisions reflect such fundamental inconsistencies. While recently, Madame Justice Newman, writing for a unanimous Court, articulated the essential concepts, see Fraternal Order of Police v. PLRB, 557 Pa. 586, 593-94, 735 A.2d 96, 99-100 (1999), it is apparent that vestiges of prior difficulties remain. A critical review of the historical development in Pennsylvania of what is now termed the capricious disregard standard of review serves to illustrate the difficulty, but more affirmatively, in conjunction with Fraternal Order of Police, to provide a framework for alignment.

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> 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.

For many years, the general standards governing appellate review in the administrative setting included a component of review for capricious disregard of evidence,[6] in addition to the equally well established review for errors of law and manifest abuse of discretion. See Gaudenzia, Inc. v. Zoning Bd. of Adjustment of Phila., 4 Pa. Cmwlth. 355, 363-64, 287 A.2d 698, 702-03 (1972) (citing Blumenschein v. Pittsburgh Housing Auth., 379 Pa. 566, 572-73, 109 A.2d 331, 334 (1954)). Review for capricious disregard clearly applied in cases in which evidence was presented by respective parties to support both a claim and defenses, see, e.g., Griep, 178 Pa. Super. at 157-58, 113 A.2d at 341, although in such circumstances, relief would infrequently be warranted, since the agency was to be accorded great deference in terms of its resolution of conflicts in the evidence and credibility determinations.[7] As

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[6] See, e.g., Cairgle v. American Radiator & Standard Sanitary Corp., 366 Pa. 249, 252, 77 A.2d 439, 440 (1951) (explaining that "unless there is a capricious disregard of relevant, credible testimony, the findings of fact by the referee, adopted or affirmed by the Board, if based upon adequate and competent evidence, will be sustained on appeal" (citations omitted)); Greap v. Oberdorff, 178 Pa. Super. 153, 157-58, 113 A.2d 339, 341 (1955) ("The credibility of witnesses and the weight to be attached to their testimony is for the compensation authorities and not for the court[;] [o]f course there may not be a capricious disregard of competent evidence.").

[7] As the Commonwealth Court has observed:

> [T]he referee has a critical fact finding role; he alone hears the testimony and observes the witnesses firsthand. In proceedings pertaining to benefits, therefore, it is for the referee to determine the credibility and weight of the evidence. In exercising that broad discretion, he may accept or reject the testimony of any witness in whole or in part. This includes the testimony of expert medical witnesses.

Container Corp. of America v. WCAB, 59 Pa.Cmwlth. 367, 372, 429 A.2d 1264, 1265 (1981); see also Phillips v. WCAB (Century Steel), 554 Pa. 504, 507, 721 A.2d 1091, 1092 (1999) (as fact finder, the WCJ is free to reject the testimony of any witness, including a medical witness, in whole or in part, even where that testimony remains (continued...)

regards decisions unfavorable to the burdened party, review for capricious disregard assumed a more visible role, since, in such matters, the adjudication need not necessarily rest upon affirmative factual findings, but rather, could also be predicated upon the agency's disbelief of the claimant's evidence (i.e., a negative finding or conclusion).[8] In such instances, Pennsylvania appellate courts often emphasized that their task was not to determine whether there was competent evidence that would support the requested relief (since it was denied), but rather, if there was capricious disregard in the refusal. See, e.g., Yanofchick v. State Workmen's Ins. Fund, 174 Pa. Super. 182, 187, 100 A.2d 387, 389 (1953).

With the promulgation of the Administrative Agency Law in 1978,[9] the General Assembly identified express criteria for review which it directed would generally govern appeals from agency adjudications. See 2 Pa.C.S. §§701, 704. Section 704 of the

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uncontradicted). See generally Borough of Tyrone v. UCBR, 52 Pa. Cmwlth. 18, 21, 415 A.2d 146, 148 (1980) (explaining that "[t]o accord greater credibility to one witness' testimony than to that presented by others is simply a manifestation of the Board's fact-finding role and does not constitute a capricious disregard of evidence"); Aluminum Co. of America v. WCAB, 33 Pa.Cmwlth. 33, 38, 380 A.2d 941, 943 (1977).

[8] In this regard, we note that the unburdened party has no obligation to present any proof, and may prevail if the burdened party's evidence, while credible, is insufficient. See Inglis House v. WCAB (Reedy), 535 Pa. 135, 141, 634 A.2d 592, 594 (1993). See generally Barrett v. Otis Elevator Co., 431 Pa. 446, 450, 246 A.2d 668, 670-71 (1968); Walsh v. Penn Anthracite Mining Co., 147 Pa. Super. 328, 333, 24 A.2d 51, 53 (1942) (stating that "[w]here the decision of the board is against the party having the burden of proof -- in this case, the claimant -- bearing in mind that a trier of fact is not required to accept even uncontradicted testimony as true, the question before the court is whether the board's findings of fact are consistent with each other and with its conclusions of law and its order, and can be sustained without a capricious disregard of the competent evidence" (citation omitted)).

[9] Act of April 28, 1978, P.L. 202, No. 53 (as amended 2 Pa.C.S. §§501-508, 701-704).

Administrative Agency Law, governing the disposition of appeals, provides, inter alia, as follows:

> After hearing, the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter A of Chapter 5 (relating to practice and procedure of Commonwealth agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence.

2 Pa.C.S. §704.

Subsequently, in light of such statutory formulation, this Court criticized the Commonwealth Court's adherence to a traditional statement of the appellate standard of review in an administrative context that included, as a component, review for capricious disregard. See McGovern's Estate v. State Employees' Retirement Bd., 512 Pa. 377, 381-82, 517 A.2d 523, 525 (1986). Further, in fairly cryptic terms, McGovern directed that it was no longer ever appropriate for appellate courts to apply a capricious disregard component in agency review.[10] Nevertheless, within a year, this Court again

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[10] In McGovern, the Court framed the issue on appeal as follows:

> Commonwealth Court reversed the Board, holding that it capriciously disregarded the evidence . . .. We granted allocatur to examine whether Commonwealth Court applied the appropriate standard of review . . ..

McGovern, 512 Pa. at 381, 517 A.2d at 525. McGovern then quoted the Commonwealth Court's traditional statement of the appellate standard of review in cases in which the agency's adjudication reflects a determination that the party bearing the burden of proof has failed to carry it, including the capricious disregard component, followed by a quotation of Section 704. See id. at 382, 517 A.2d at 525. Without further analysis, the Court concluded:

> Because the standard of review articulated by the Commonwealth Court finds no support in the [Administrative

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described a standard of review subsuming examination for capricious disregard as applicable to review of agency adjudications unfavorable to the burdened party. See Odgers v. UCBR, 514 Pa. 378, 390, 525 A.2d 359, 365 (1987) ("The standard of review any appellate court must apply where the party with the burden of proof lost before the [agency], is whether the [agency] erred as a matter of law or capriciously disregarded competent evidence.").

In Russell v. WCAB (Volkswagen of America), 121 Pa. Cmwlth. 436, 550 A.2d 1364 (1988), the Commonwealth Court undertook to reconcile McGovern with Odgers and other of this Court's later statements. The court attempted to remain faithful to McGovern, indicating that its reading of Section 704 must unquestionably be applied to agency proceedings in which both parties present evidence. See Russell, 121 Pa. Cmwlth. at 438, 550 A.2d at 1365. Although Russell is not explicit in this regard, it also appears that the Commonwealth Court believed that the interpretation also had to be applied generally to cases in which an adjudication was against the burdened party, since that was McGovern's fact paradigm. Nevertheless, the Commonwealth Court was concerned that strict application of McGovern to the discrete situation where a burdened party is the only party to present evidence and does not prevail before the agency would leave a substantial void in the review process. In such matters, Russell noted that application of the substantial evidence component of Section 704 was inapt:

> If no evidence was presented to support the prevailing party, there is no evidence upon which to apply the "substantial evidence" test; i.e., it is impossible to find substantial

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> Agency Law], we hold that Commonwealth Court's review of the present case was conducted pursuant to an improper and illegal standard.

Id.

> evidence to support a position for which no evidence was introduced. In such cases, therefore, the appropriate scope of review, as set forth in . . . Odgers, is whether the agency erred as a matter of law or capriciously disregarded competent evidence.

Russell, 121 Pa. Cmwlth. at 438-39, 550 A.2d at 1365. The Commonwealth Court subsequently characterized this review standard, which it has deemed applicable strictly in this discrete setting, as its capricious disregard standard of review. See, e.g., Linko v. WCAB (Roadway Express, Inc.), 153 Pa. Cmwlth. 552, 557, 621 A.2d 1188, 1190 (1993).

The Commonwealth Court's effort in Russell was salutary in that it preserved essential judicial review for capricious disregard in at least one category of cases, and the formulation has been applied regularly. See id. The difficulty with the approach, however, is that agencies are not foreclosed from making affirmative factual findings in matters decided against the claimant. There are many instances in which agencies predicate negative conclusions (for example, that a party failed to meet his burden of proof) upon affirmative facts adduced from the claimant's testimony and evidence, to include cross-examination. In such cases, Section 704 review for substantial evidence applies to all affirmative findings that are necessary to support the adjudication. See 2 Pa.C.S. §704 ("the court shall affirm the adjudication unless it shall find that . . . any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence"). Conversely, it is troubling to suggest that the General Assembly intended for judicial review to be simply unavailable in an instance in which substantial evidence supported the agency's factual findings, but where it was clear beyond doubt that its conclusions were based upon capricious disregard of other evidence. Such a situation would occur, for example, if the agency expressly refused to

resolve conflicts in the evidence and make essential credibility determinations.[11] Additionally, given the inadequate foundation upon which the exception allowing for review for capricious disregard was crafted, fractured opinions have developed concerning the appropriate manner of its application, as again illustrated by this case.

As noted, Fraternal Order of Police clarified the appellate standard of review applicable in the administrative agency setting. See Fraternal Order of Police, 557 Pa. at 593, 735 A.2d at 99-100. Although its focus was directed to the component of Section 704 review requiring that agency conclusions must be "in accordance with law," Justice Newman's core explanation is highly relevant:

> While [the in-accordance-with-law] standard has been described in a number of ways, its essential import is to establish limited appellate review of agency conclusions to ensure that they are adequately supported by competent factual findings, are free from arbitrary and capricious decision making, and, to the extent relevant, represent a proper exercise of the agency's discretion.

Id. at 593, 735 A.2d at 99 (citing Slawek v. Commonwealth, State Bd. of Med. Educ. and Licensure, 526 Pa. 316, 322, 586 A.2d 362, 365 (1991)). In further emphasizing the deferential character of the process, the Court explained that appellate courts are not free to invoke a generalized conception of reasonableness in order to substitute their judgment for that of an agency. See id. Nevertheless, recognition was also given to the boundaries of such discretion, as the Court explained that it remains within the purview of reviewing courts to consider whether a reasonable mind might make the

[11] Cf. Hamilton v. Procon, Inc., 434 Pa. 90, 99, 252 A.2d 601, 605 (1969) (stating, as a general proposition, that factual findings can be disturbed "if there has been a capricious disregard of competent evidence or if there is no evidence at all to support the finding"); In re Patterson's Estate, 333 Pa. 92, 93, 3 A.2d 320, 321 (1939) (characterizing a trial court's findings as "worthless" where there is a capricious disbelief of evidence).

same decision on the evidence before the agency. See id. at 593, 735 A.2d at 100 (citing Williams v. Commonwealth, State Civil Serv. Comm'n, 457 Pa. 470, 473, 327 A.2d 70, 72 (1974)). This, of course, overlaps with and, indeed, subsumes the traditional description of the "capricious disregard" facet of review.[12] Indeed, in cases in which there has been a capricious disregard of competent, material evidence, the error is not only legal but structural and, pursuant to legislative design and long-standing principles, requires correction.

Since an adjudication cannot be in accordance with law if it is not decided on the basis of law and facts properly adduced, we hold 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.[13] As at common

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[12] See, e.g., Arena v. Packaging Sys. Corp., 510 Pa. 34, 38, 507 A.2d 18, 20 (1986) (describing capricious disregard as a deliberate disregard of competent evidence which one of ordinary intelligence could not possibly have avoided in reaching a result); Kania v. Ebensburg State Sch. and Hosp., DPW, 49 Pa. Cmwlth. 136, 138, 410 A.2d 939, 940 (1980) ("A capricious disregard amounts to a willful or deliberate ignorance of evidence which a reasonable person would consider important.").

Although McGovern failed to acknowledge that review for capricious disregard is merely one sub-component of review for whether an adjudication is in accordance with law, the soundness of the disposition of the case is not in doubt. There, the Commonwealth Court erroneously discerned a capricious disregard of the evidence in an adjudication in which, not only was the central finding a negative one in the sense that the claimant had failed to sustain his burden of proof, but also, there appears to have been substantial evidence of record offered by the opposing party to support the contrary agency determination. See McGovern, 512 Pa. at 383-84, 517 A.2d at 525-26 (detailing such evidence). It is a quite different thing, nonetheless, to say that the capricious disregard standard is not met than that it should not be applied, and McGovern should not have suggested the latter.

[13] In light of the above, the exception crafted in Russell and reconciliation of its various permutations is no longer necessary. Indeed, as Judge Friedman noted, the General Assembly's emphasis upon a reasoned decision in the amendments to Section 422(a) of the Act evidences its intention that an appellate court must conduct its review in a (continued...)

law, this review will generally assume a more visible role on consideration of negative findings and conclusions.[14] Even in such context, however, this limited aspect of the review serves only as one particular check to assure that the agency adjudication has been conducted within lawful boundaries -- it is not to be applied in such a manner as would intrude upon the agency's fact-finding role and discretionary decision-making authority.

Since review for capricious disregard was an appropriate function of the Commonwealth Court and the WCAB in the present case, it remains only to consider whether those tribunals were correct in their conclusion that the WCJ had exceeded the boundaries of her decision-making authority.

After an extensive recitation of Dr. Yates' testimony, the WCAB summarily concluded that, because such testimony was unequivocal, the WCJ must have capriciously disregarded it in denying benefits. In reaching this decision, the WCAB failed to acknowledge that the WCJ based her disbelief upon the countervailing evidence presented by Employer pertaining to the nature of Claimant's work and the degree to which she engaged in repetitive motion activities on a daily basis. Dr. Yates acknowledged that his assessment of work relatedness was dependent upon the character and intensity of Claimant's activities at work, as related to him by Claimant. Therefore, the fact that Employer did not present medical testimony in rebuttal is not

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manner that ensures that the agency has not exceeded its fact-finding role or the outer limits of its discretion.

[14] It bears repeating that, where there is substantial evidence to support an agency's factual findings, and those findings in turn support the conclusions, it should remain a rare instance in which an appellate court would disturb an adjudication based upon capricious disregard.

necessarily dispositive. Moreover, while the Commonwealth Court majority was correct in concluding that the WCAB addressed competency and not credibility, it erred in treating this distinction as controlling. To support its determination of capricious disregard in the circumstance of a negative finding, the Commonwealth Court should have considered the impact of Employer's non-medical evidence.

We do acknowledge that, due to vagaries in the proofs, this is a close case, since uncontradicted, competent evidence was offered to establish the fact of the injury as well as Claimant's performance of potentially aggravating activities during her tenure with Employer. Nevertheless, the conflicts in the evidence were substantial and could reasonably have been viewed by the WCJ, consistent with her explanation, as detrimental to Claimant's overall credibility. It is most significant in this case, then, that the sole evidence of times of injury onset and aggravation derived from Claimant's accounts and testimony, and that Claimant's credibility was therefore an essential linchpin to the central question of work relatedness.

Since a determination of capricious disregard was unwarranted in this case, the orders of the WCAB and Commonwealth Court are reversed, and the matter remanded for reinstatement of the initial order of the WCJ.

Former Chief Justice Flaherty did not participate in the decision of this case.

Mr. Chief Justice Zappala files a concurring opinion.

Mr. Justice Cappy files a concurring opinion in which Mr. Justice Nigro joins.

Madame Justice Newman files a concurring opinion.