

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wade Schauer,	:	
Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation	:	
Appeal Board	:	
(Schauer Physical Therapy, Inc.),	:	No. 1323 C.D. 2014
Respondent	:	Submitted: December 26, 2014

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE MCGINLEY

FILED: April 23, 2015

Wade Schauer (Claimant) petitions for review of the decision of the Workers' Compensation Appeal Board (Board) which affirmed the Workers' Compensation Judge's (WCJ) denial of Claimant's Claim Petition.

The WCJ made the following relevant findings of fact:

1. The Claimant filed a Claim Petition on February 16, 2012 alleging that he injured his head, left knee, left shoulder, cervical spine and lumbar spine on December 21, 2011 when he slipped and fell in a parking lot. The Claimant requested total disability benefits from December 21, 2011 and into the future.
2. The Defendant [Employer] filed an answer denying the material averments of this petition.
3. At the time of the first hearing on April 4, 2012 the parties agreed to bifurcate the issue of whether the

Claimant was in the course and scope of his employment at the time of his alleged injury.

4. The Claimant testified that he was a physical therapist at Schauer Physical Therapy, Inc. He testified that he was a stock holder and employee of the corporation. The Claimant testified that on December 21, 2011 he was getting out of his truck in the parking lot at work and the next thing he remembers is cold, wet, freezing rain waking him up. He said he was lying in the parking lot and patients of his were coming to his aid. He said this occurred around 8:00 in the morning. After he woke up in the parking lot, the Claimant said he was taken by ambulance to the emergency room.

The Claimant said that the parking lot is connected to the building that houses the Schauer Physical Therapy. He said that he and Ken Andryc own the parking lot through a partnership. He said that Schauer Physical Therapy, Inc. pays rent to the partnership. The Claimant said that Ken Andryc is a dentist that has a practice in the same building. He and Dr. Andryc are partners owning the real estate where Schauer Physical Therapy is located. He said there are other businesses located there, including ACL Blood Lab, a physician, a chiropractor and a gym called 'Body by Wade'. The Claimant said each of the businesses are separate entities and they all pay rent to the real estate partnership that owns the property, with Dr. Andryc and the Claimant. The Claimant was unsure if there was specific language relating to the privilege to park in the parking lot, that every business has rights to park in the parking lot for their [sic] patients and business patrons. He did submit a copy of the lease agreement as Claimant's Exhibit 6.

On cross-examination, the Claimant testified that he owned Schauer Physical Therapy for approximately 16 years. He is the sole shareholder. He said there were three employees at the time of his injury, an office manager/billing specialist, an aid and an assistant. He said the hours of operation were [sic] from 7:00 in the morning until 3:00 or 4:00 in the afternoon, whenever patients were done, on Mondays, Wednesdays and

Fridays. He said on Tuesdays and Thursdays patient care time was in the afternoon but there was billing and paperwork time in the morning. The Claimant said he was the only physical therapist.

The Claimant against testified that he opened the door of his truck and the next thing he knew he was on the ground. He does not know anything that happened in between. He said he did not know if he hit the running board or missed the running board. He said he does not know. He did not remember. The Claimant said that he arrived at work at 8:00 for an appointment that was to occur a little bit after 8:00.

5. The Claimant submitted Exhibit 3, which shows his appointments for December 21, 2011. Although the Claimant referred to the people who helped him up as patients, it does not appear that any of them are listed on his December 21, 2011 appointment calendar. There are appointments listed for 8:00, 10:00, 11:00 and 12:00. It looks like there were three appointments at 12:30 and one at 3:00. The appointments for 8:00 am and 3:00 pm have a notation C/A beside them. The appointment for 8:00 am is handwritten while all of the other appointments are typed. There was no explanation provided.

6. The Claimant testified that he was arriving at work at 8 am for an appointment scheduled shortly after 8. His appointment calendar said that the appointment was actually scheduled at 8, not shortly after 8. In addition, this appointment was handwritten while the others were typed. Therefore, in this regard, **the Claimant's testimony is not accepted. It is unknown exactly why the Claimant drove his truck onto the parking lot in question around 8 am on December 21, 2011, but his explanation is not credible. Since the Claimant had many business interests related to this same property, there are many viable explanations for his being in this area on December 21, 2011.**

7. The Claimant's testimony that he does not know how the injury occurred is credible. He is unsure whether he slipped getting out of the truck, fell out of the truck

and/or struck the truck while getting out. The medical records document various ‘guesses’, but the Claimant’s testimony that he does not know what happened is consistent and found to be credible.

CONCLUSIONS OF LAW

....

4. The Claimant was not furthering the business affairs of the employer at the time of his alleged injury.

5. The Claimant was not required by the nature of his employment to be on the employer’s premises at 8 am on December 21, 2011.

6. The Claimant has not proven that his injuries were the result of the condition of the premises since he does not know how the injuries occurred.

7. The Claimant has not met his burden of proving that he was in the course and scope of his employment at the time of a work injury.

WCJ’s Decision, July 23, 2012, (Decision), Findings of Fact (F.F.) Nos. 1-7 and Conclusions of Law Nos. 4-7; Claimant’s Brief at 23-26. (Emphasis added.)

The Board affirmed and noted:

Claimant testified he is a physical therapist... He has an ownership interest in Defendant [Employer], but he is also an employee of Defendant [Employer] and is paid a salary by Defendant [Employer]....

....

[The WCJ] rejected as not credible Claimant’s testimony that he was arriving for an appointment at work at 8:00 a.m. In this regard, she noted that the 8:00 appointment on Claimant’s appointment schedule was handwritten rather than typed like the other appointments that were scheduled for that day. She also found Claimant’s explanation for his 8:00 a.m. arrival not credible because he had other interests related to the same property, and

therefore, there were other viable explanations for his being in the area at the time of his injury.

Board's Decision, July 16, 2014, at 2 and 4; Claimant's Brief at 30 and 32.

First, Claimant contends¹ that substantial evidence does not support the WCJ's finding that Claimant was in Schauer Physical Therapy, Inc.'s (Employer) parking lot for some purpose other than going to work.

In a claim petition, a claimant must establish all the necessary elements to prevail. A claimant must prove that the injury occurred in the course of employment and that it is related to that employment. *Inglis House v. Workmen's Compensation Appeal Board (Reedy)*, 634 A.2d 592 (Pa. 1993).

Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion. *Bethenergy Mines v. Workmen's Compensation Appeal Board (Skirpan)*, 612 A.2d 434 (Pa. 1992). Additionally, in performing a substantial evidence analysis, this Court must view the evidence in a light most favorable to the party who prevailed before the factfinder. *Birmingham Fire Insurance Company v. Workmen's Compensation Appeal Board (Kennedy)*, 657 A.2d 96 (Pa. Cmwlth. 1995). Moreover, the party prevailing before the factfinder is entitled upon appellate review to "have the benefit of the most favorable inferences deducible from the evidence[.]" *Flexer v. Workmen's*

¹ This Court's review is limited to a determination of whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence, or whether constitutional rights were violated. *Vinglinsky v. Workmen's Compensation Appeal Board (Penn Installation)*, 589 A.2d 291 (Pa. Cmwlth. 1991).

Compensation Appeal Board (Wilson), 317 A.2d 53, 53 (Pa. Cmwlth. 1974). Furthermore, it does not matter that there is evidence in the record which supports a factual finding contrary to that made by the WCJ, rather, the pertinent inquiry is whether there is any evidence which supports the WCJ's factual finding. *Grabish v. Workmen's Compensation Appeal Board (Trueform Foundations)*, 453 A.2d 710 (Pa. Cmwlth. 1982).

In the present case, Claimant testified that on December 21, 2011, his patients "weren't scheduled until a little bit after eight." Notes of Testimony, April 4, 2012, (N.T.) at 44; Reproduced Record (R.R.) at 60a. Claimant is a partner in AHW Partnership which owns the building and parking lot where his accident occurred. N.T. 4/4/12 at 15; R.R. at 31a and Notes of Testimony, July 3, 2012, (N.T. 7/3/12) at 23; R.R. 140a. Body By Wade Fitness Center is located in the same building as Claimant's office and Claimant is the sole shareholder of Body By Wade. N.T. at 48; R.R. at 64a. Claimant goes into Body By Wade several times a day. N.T. at 50; R.R. at 66a. Claimant did not recall how he was injured while exiting his vehicle on December 21, 2011:

I was getting out of my truck and the thing I know, I was on the ground and my patients were waking me up. I don't know anything in between. People were surmising whether I stepped on the running board, missed the running board, slipped on the concrete. All I remember is getting out of my truck and the next thing I know is my patients are waking me up and a cold rain in [sic] my face, that's all I remember.

N.T. 7/3/12 at 24; R.R. at 141a.

The WCJ determined that Claimant's testimony that he does not know how he became injured was credible. WCJ's Decision, F.F. No. 7 at 2; Claimant's Brief at 25. However, the WCJ rejected Claimant's testimony that his injuries were the result of the condition of the premises since he does not know how the injuries occurred and explained that "[i]t is unknown exactly why the Claimant drove his truck onto the parking lot...around 8 am...but his explanation is not credible. Since the Claimant had many business interests related to this same property, there are many viable explanations for his being in this area on December 21, 2011." WCJ's Decision, F.F. No. 6 at 2; Claimant's Brief at 25. Claimant failed to establish that he was injured during the course and scope of his employment. The WCJ as the ultimate factfinder in workers' compensation cases has exclusive province over questions of credibility and evidentiary weight, and is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. *General Electric Company v. Workmen's Compensation Appeal Board (Valsamaki)*, 593 A.2d 921 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 600 A.2d 541 (Pa. 1991). Here, the WCJ explained that she found Claimant's testimony not credible. This Court will not disturb a WCJ's finding when those findings are supported by substantial evidence. *Nevin Trucking v. Workmen's Compensation Appeal Board (Murdock)*, 667 A.2d 262 (Pa. Cmwlth. 1995).

Claimant also contends that the WCJ failed to issue a reasoned decision with respect to her determination that Claimant failed to sustain his burden of establishing that he suffered a work-related injury because Claimant was not required to be on Employer's premises at the time of his injury.

Section 422(a) of the Workers' Compensation Act (Act)², 77 P.S. §834, provides that the WCJ shall file 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 decision so that all can determine why and how a particular result was reached.” Further, “[t]he 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.” *Id.* A decision is reasoned if it allows for adequate review by the appellate courts. “A reasoned decision is no more, and no less.” *Daniels v. Workers’ Compensation Appeal Board (Tristate Transport)*, 828 A.2d 1043, 1052 (Pa. 2003).

Here, the WCJ set forth concise findings of fact and adequately explained the bases for her factual findings and credibility determinations to sufficiently support appellate review. This Court is satisfied that the WCJ issued a reasoned decision pursuant to Section 422(a) of the Act, 77 P.S. §834.

Accordingly, the decision of the Board is affirmed.

BERNARD L. MCGINLEY, Judge

² Act of June 2, 1915, P.L. 736, *as amended*.

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ORDER

AND NOW, this 23rd day of April, 2015, the Order of the Workers' Compensation Appeal Board in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge