

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wilner Dorvilus, :
 :
 : Petitioner :
 :
 : v. : No. 1460 C.D. 2013
 : Submitted: January 10, 2014
 :
 Workers' Compensation Appeal :
 Board (Cardone Industries), :
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON

FILED: March 7, 2014

Wilner Dorvilus (Claimant) petitions for review of an adjudication of the Workers' Compensation Appeal Board (Board), which affirmed a Workers' Compensation Judge's (WCJ) determination that Claimant sustained a work injury, but reversed the determination that the injury resulted in an ongoing disability. We now affirm the Board.

Claimant worked for Cardone Industries (Employer) as a puller/packer, whose duty it was to locate, pickup, and pack parts onto a cart. (R.R. at 161.) On September 18, 2009, while Claimant was packing his cart, another cart ran into him from behind and hit him in the lower back, just above his belt line. (R.R. at 274, 287-88.) Claimant fell forward onto his knees, and he immediately went to report the incident to his supervisor. (*Id.*) Claimant applied ice to his back and rested for half an hour. (R.R. at 275.) Claimant then went to

Jeanes Hospital, where he was examined and discharged. (R.R. at 276.) Claimant returned to work on Monday, September 21, 2009, but was unable to continue working after that because of pain in his lower back. (R.R. at 278, 291-93.) He subsequently filed a claim petition.

Before the WCJ, Claimant testified that he continues to experience back pain whenever he descends to or rises from a seated position. (R.R. at 281.) He also testified that the pain radiated down his right leg to his foot, and up to his right shoulder. (R.R. at 298.) Claimant also testified that, in addition to the pain, he was experiencing other problems, namely difficulty going to the bathroom and having relations with his wife. (R.R. at 281.)

Claimant presented the deposition testimony of Sofia Lam, M.D., who is board-certified in pain management and anesthesiology. (R.R. at 129.) Dr. Lam first examined Claimant on February 23, 2010, and diagnosed Claimant with lumbosacral sprain and strain, lumbar abscess resolved, discogenic lumbar radiculopathy due to disc bulging and disc rupture at L5-S1, and mechanical low back symptomology. (R.R. at 91, 100.) She further testified that Claimant's symptoms were the result of his injury on September 18, 2009, and that Claimant was incapable of returning to his pre-injury job, though he was capable of part-time light duty work. (R.R. at 100-01.)

Employer presented the deposition testimony of Stephanie Kao, M.D., the Medical Director of Business Health at Jeanes Hospital. (R.R. at 205.) Dr. Kao examined Claimant on September 22, 2009, and she reviewed his emergency room records. (R.R. at 184-95.) The emergency room records showed an abscess coming to a head, for which Claimant was prescribed an antibiotic, as well as swelling and redness on Claimant's lower back, for which he was

prescribed Motrin. (R.R. at 185, 193.) Dr. Kao testified that Claimant did not complain of back pain when she examined him, though he did complain of some pain in connection with the abscess. (R.R. at 185-88.) Dr. Kao opined that Claimant suffered a sprain and strain injury as a result of the work incident and was fully recovered at the time of her examination. (R.R. at 187-88.) Because he had no complaints at the time of her examination, Dr. Kao opined that Claimant could return to his regular duty work without restriction. (R.R. at 188-89.)

Employer also presented the deposition testimony of Ira C. Sachs, D.O., an orthopedic surgeon who examined Claimant on March 10, 2010. (R.R. at 224, 228.) At the time, Claimant complained of pain in both legs, lower back, front left shoulder, and upper right arm. (R.R. at 224-25.) Dr. Sachs found no abnormalities in his exam, and he diagnosed Claimant with a resolved lumbar contusion. (R.R. at 227-28.) He completed a Physician's Affidavit of Full Recovery for the lumbar contusion and opined that Claimant could return to work with no restrictions. (R.R. at 227.)

Employer also presented the deposition testimony of two fact witnesses, Sandy Chomynacky and Thomas Abraham. Ms. Chomynacky worked for Employer as an Occupational Health Nurse and saw Claimant on September 21, 2009. (R.R. at 141, 143.) She reviewed his emergency room records and referred Claimant to Dr. Kao. (R.R. at 144.) Ms. Chomynacky started an investigation into the incident, but she could find no witnesses. (R.R. at 147.) Mr. Abraham is a supervisor for Employer, although not Claimant's direct supervisor. (R.R. at 160, 165.) He testified that he spoke with Claimant after his injury on September 18, 2009. (R.R. at 166.) Although Claimant initially went back to work, he returned to Mr. Abraham about 45 minutes later complaining of

pain and claiming he could not perform his job duties. (*Id.*) Mr. Abraham sent Claimant to the emergency room. (R.R. at 167.)

The WCJ issued a decision and order, granting Claimant's claim petition. (R.R. at 20.) The WCJ found that Claimant suffered a "lumbosacral sprain and strain on September 18, 2009 while performing his job duties and the injury continues to cause wage loss." (*Id.*) The WCJ accepted as credible Claimant's testimony regarding his back pain and its relatedness to the work injury, but rejected Claimant's testimony regarding any "radicular symptoms, any difficulty with urination or bowel movements, relations with his wife, or any pain in his right arm or left shoulder relating to the work injury." (*Id.*) The WCJ noted that all the medical experts agreed that Claimant's abscess predated his work injury, and it, therefore, was not related. (R.R. at 21.)

The WCJ deemed Dr. Kao's testimony regarding Claimant's injury as the most credible, because Dr. Kao examined Claimant closest to the date of injury. (*Id.*) The WCJ, however, did not find Dr. Kao's testimony credible as to the issue of Claimant's ongoing disability. (*Id.*) Instead, the WCJ credited Dr. Lam's testimony about Claimant's ongoing symptoms and Dr. Lam's opinion that Claimant remains disabled from his pre-injury job. (*Id.*) The WCJ rejected Dr. Lam's testimony regarding her diagnosis of Claimant, because it was based upon test studies that could not date when the bulges occurred. (*Id.*) The WCJ rejected Dr. Sach's testimony that Claimant only suffered a contusion from which he had fully recovered, because it "flies in the face of the medical records of his examinations both on the date of injury (Jeanes Hospital) as well as three days later (Dr. Kao)." (*Id.*)

Lastly, the WCJ rejected the testimony of both Ms. Chomynacky and Mr. Abraham as neither credible nor persuasive, and the WCJ deemed Claimant's testimony of how the injury occurred more credible than Ms. Chomynacky's and Mr. Abraham's. (*Id.*) The WCJ concluded that Claimant suffered a lumbosacral sprain and strain during the course and scope of his employment on September 18, 2009, and that the work injury had resulted in wage loss from that date and ongoing. (R.R. at 21-22.)

Employer appealed. The Board affirmed the WCJ's determination that Claimant sustained a work-related injury, but it reversed the award of disability benefits. (R.R. at 60-69.) The Board concluded that the WCJ's finding of an ongoing disability was not supported by substantial evidence, because the WCJ rejected all but Dr. Lam's testimony on the issue. The Board, however, did not accept Dr. Lam's entire diagnosis, which was the basis for her opinion that Claimant could not return to his pre-injury job:

While Dr. Lam opined that Claimant cannot return to his pre-injury position with [Employer], she offered this opinion in the context of her overall diagnoses and our review of her testimony fails to reveal any instance where she opined that Claimant's disability was due specifically to a work-related lumbosacral strain and sprain, which is the only injury the WCJ accepted as work-related.

(R.R. at 69.) Claimant then petitioned this Court for review.

On appeal,¹ Claimant asserts that the Board erred in reversing the WCJ's award of benefits. He argues substantial evidence supports the WCJ's

¹ This Court's standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. 2 Pa. C.S. § 704.

decision because the causal connection between his injury and disability is obvious, and, in the alternative, that he established the causal connection by unequivocal medical testimony. Employer counters that the causal connection was not obvious because Claimant sustained previous back injuries, and that the Board correctly concluded that Claimant failed to establish the causal connection by unequivocal medical testimony.

In a claim petition, a claimant bears the burden of proving all the necessary elements for an award of workers' compensation benefits. *Inglis House v. Workmen's Comp. Appeal Bd. (Reedy)*, 535 Pa. 135, 141, 634 A.2d 592, 595 (1993). The claimant must prove not only that he sustained a work-related injury, but also that the work-related injury is the cause of his disability. *Cardyn v. Workmen's Comp. Appeal Bd. (Heppenstall)*, 517 Pa. 98, 101, 534 A.2d 1389, 1390 (1987). Unless the causal connection between the injury and the disability is obvious, unequivocal medical testimony is required to establish the causal connection. *Weaver v. Workmen's Comp. Appeal Bd. (Pa. Power Co.)*, 487 A.2d 116, 117 (Pa. Cmwlth. 1985). Even where the cause of an injury is obvious, the causal connection between the injury and disability may not be obvious. *Cardyn*, 517 Pa. at 101-02, 534 A.2d at 1390. "There is a difference between an injury and its consequences, and tracing those consequences is often beyond the skill and experience of laymen since the answers can lay in complicated etiologies known only to experts." *Id.* at 102, 534 A.2d at 1390. Thus, only where a claimant's disability is "obviously and directly the result of a work incident," will the causal connection between the injury and disability be considered obvious. *Hills Dep't Store v. Workmen's Comp. Appeal Bd. (Breon)*, 457 A.2d 226, 227 (Pa. Cmwlth. 1983).

Claimant argues that the causal connection between his work-related injury and his ongoing disability is obvious, and, therefore, unequivocal medical testimony is not needed to establish the connection. We disagree. Claimant is a 43-year-old man (R.R. at 208) who has twice before sustained lower back injuries (R.R. at 283-85) and who has been diagnosed with lumbosacral sprain and strain, lumbar abscess resolved, discogenic lumbar radiculopathy due to disc bulging and disc rupture at L5-S1, and mechanical low back symptomology (R.R. at 100). Of these, only the sprain and strain was found to be related to his work injury. (R.R. at 21.) Because Claimant suffers from additional, non-work related ailments that could very well be responsible for his continuing symptoms, most notably discogenic lumbar radiculopathy due to disc bulging and disc rupture at L5-S1, this Court cannot conclude that the cause of Claimant's disability is obvious.

When the causal connection between a claimant's injury and disability is not obvious, the claimant bears the burden to prove the connection by unequivocal medical testimony. *Fotta v. Workmen's Comp. Appeal Bd. (U.S. Steel/USX Corp. Maple Creek Mine)*, 534 Pa. 191, 194, 626 A.2d 1144, 1146 (1993).

Where medical testimony is necessary to establish a causal connection, the medical witness must testify, not that the injury or condition might have or possibly come from the assigned cause, but that in his professional opinion *the result in question did come from the assigned cause*. Medical evidence which is less than positive or which is based upon possibilities may not constitute legally competent evidence for the purpose of establishing the causal relationship.

Id. at 194-95, 626 A.2d at 1146 (emphasis added) (quoting *Lewis v. Workmen's Comp. Appeal Bd. (Pittsburgh Bd. of Educ.)*, 508 Pa. 360, 365-66, 498 A.2d 800, 802 (1985)).

Here, Claimant's medical expert, Dr. Lam, testified that she believed, to a reasonable degree of medical certainty, that Claimant was partially disabled as a result of his work injury on September 18, 2009. The relevant portion of testimony is as follows:

Q. [D]o you have an opinion to a reasonable degree of medical certainty as to claimant's diagnosis?

A. Yes, Counselor.

Q. And what is that?

A. *He was diagnosed with, number one, lumbosacral sprain and strain; number two, discogenic lumbar radiculopathy due to the disc bulge and disc rupture at L5-S1 level; mechanical low back symptomology and sacroiliac pathology.*

Q. And Dr. -- Dr. Lam, again, have you formed an opinion as to a reasonable degree of medical certainty as to whether or not Mr. Wilner is disabled *as a result of the condition that you've diagnosed* and treated?

A. With a reasonable degree of medical certainty I believe he cannot return to his previous employment, but I do believe he is capable of doing some type of light duty employment.

Q. And, Doctor, do you have an opinion as to a reasonable degree of medical certainty as to what caused the claimant's condition?

A. *I believe [a] work-related accident[] on 9/18/2009 is the cause of his condition.*

(R.R. at 99-100 (emphasis added).)

The Board found, and we agree, that Dr. Lam's testimony is insufficient to establish unequivocally a causal connection between Claimant's work injury and his alleged disability. The problem here is not the certainty of Dr. Lam's testimony, but rather the content of her testimony. Dr. Lam diagnosed claimant with several conditions, all of which she attributed to Claimant's work injury, and she testified that Claimant was disabled as a result of those conditions. (*See id.*) The WCJ, however, rejected most of those conditions as not work-related

and found that only one of the conditions, the lumbar sprain and strain, was work-related. (R.R. at 21.) Dr. Lam offered only a general opinion regarding Claimant's disability and did not testify that Claimant's only work-related injury specifically caused Claimant's disability. A plain reading of Dr. Lam's testimony indicates that she based her opinion on the whole of her diagnosis, including conditions which the WCJ specifically excluded as non-work related. As such, her testimony cannot serve to unequivocally establish that Claimant's alleged disability is the result of his work injury. Therefore, because Dr. Lam's testimony was insufficient to unequivocally establish causation and no other medical expert offered testimony linking Claimant's work injury to his alleged disability, the WCJ's conclusion that Claimant is disabled is not supported by substantial evidence.

The order of the Board is affirmed.

P. KEVIN BROBSON, Judge

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	:	
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Board (Cardone Industries),	:	
Respondent	:	

ORDER

AND NOW, this 7th day of March, 2014, the order of the Workers' Compensation Appeal Board is hereby AFFIRMED.

P. KEVIN BROBSON, Judge