IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maria Figueroa,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 439 C.D. 2013
	:	Submitted: July 12, 2013
Workers' Compensation Appeal Board (Wolters Kluwer US Corp.),	:	
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE COLINS **FILED: December 12, 2013**

Maria Figueroa (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board) that affirmed the decision of a Workers' Compensation Judge (WCJ) denying a Penalty Petition brought by Claimant against Wolters Kluwer US Corp. (Employer). Finding no error, we affirm.

Claimant suffered a back injury during the course of her employment at Employer on January 15, 2002.[1] (July 18, 2011 WCJ Decision (7/18/11

[1] Claimant had previously suffered an injury to the same area of her back on November 14, 1999. (7/18/11 Decision F.F. ¶1, R.R. at 204a; July 21, 2005 Compromise and Release Agreement at 1, R.R. at 17a.)

Decision) Findings of Fact (F.F.) ¶1, Reproduced Record (R.R.) at 204a.) By Notice of Compensation Payable dated June 20, 2002, Employer admitted liability for the injury. (Oct. 20, 2009 WCJ Decision (10/20/09 Decision) at 1, R.R. at 24a.) The type of injury was indicated as a lumbar sprain and strain. (*Id*.) In 2005, Employer brought a Petition to Terminate Compensation Benefits, which was amended with Claimant's consent to a Compromise and Release Petition at a hearing before WCJ Michael J. Rosen on July 21, 2005. (R.R. at 13a-16a.) Pursuant to the Compromise and Release Agreement, which was approved by WCJ Rosen at the hearing, Claimant agreed to settle all future wage claims relating to the work-related injury in exchange for a lump sum payment of $85,000. (R.R. at 17a-19a.) Claimant's injury was listed as a "lumbar sprain/strain" in the Compromise and Release Agreement. (R.R. at 17a.)

On August 14, 2008, Employer brought a Petition to Terminate Compensation Benefits (2008 Termination Petition) against Claimant, arguing that Claimant was fully recovered and able to return to work. (10/20/09 Decision at 1, R.R. at 24a.) Following a hearing and after a review of the evidence, WCJ Joseph McManus, by a decision dated October 21, 2009, held that Claimant had not fully recovered from her work injury by May 8, 2008 – the cut-off date for that petition – and denied the 2008 Termination Petition. (10/20/09 Decision Conclusions of Law (C.L.) ¶¶1, 2, R.R. at 29a.) In so ruling, WCJ McManus accepted as credible reports submitted by Claimant's doctors, Dr. Sofia Lam, Dr. Jeffrey Lindenbaum and Dr. Andrew Freese, which WCJ McManus found to be consistent with Claimant's testimony that she continued to suffer from back pain arising from the work injury. (10/20/09 Decision F.F. ¶¶12, 14, R.R. at 28a-29a.) The October 21,

2009 decision also described the injury as a "lumbar sprain/strain." (10/20/09 Decision F.F. ¶1, R.R. at 25a.)

On January 21, 2010, Claimant filed the Penalty Petition that is at issue here, alleging that Employer and Employer's insurer had unilaterally stopped making payments on Claimant's medical bills from Dr. Lam and Dr. Freese after November 19, 2008. (R.R. at 1a-2a.) Shortly thereafter, on May 13, 2010, Employer filed a Petition to Terminate Compensation Benefits (2010 Termination Petition), in which Employer again argued that Claimant had fully recovered from her work injury. (R.R. at 3a-4a.)

The proceedings relating to the Penalty Petition and 2010 Termination Petition were before WCJ Rosen, who had presided over the 2005 proceedings that resulted in the settlement of the future wage loss claim. Hearings were held on March 2, 2010, July 6, 2010 and May 17, 2011. Claimant submitted depositions of Dr. Lam and Dr. Freese and a medical report of Dr. Lindenbaum, Claimant's primary care physician, into evidence. Claimant also testified at the final hearing. Employer relied upon the deposition of Dr. Elisabeth M. Post, who conducted an examination of Claimant and review of Claimant's files.

Dr. Lam, who is a board-certified anesthesiologist specializing in pain management, testified that she has continued treating Claimant since her last testimony in this matter in 2004. (June 4, 2010 Deposition of Dr. Lam (Lam Dep.) at 5-7, R.R. at 39a; 7/18/11 Decision F.F. ¶6, R.R. at 205a-206a.) Dr. Lam sees Claimant every one to three months and provides treatment during those visits, including nerve blocks. (Lam Dep. at 7-8, R.R. at 39a.) Dr. Lam testified that, in September 2008, she performed an intradiscal manometry and discogram that found two leaking discs at L4-L5 and L5-S1. (*Id*. at 9, R.R. at 40a.) Dr. Lam

stated that she referred Claimant to Dr. Freese who performed fusion surgery in October 2008, and Claimant returned to Dr. Lam in 2009 for treatment relating to post-operative pain. (*Id*. at 8-10, R.R. at 39a-40a.) Dr. Lam opined that Claimant sustained a lumbosacral sprain and strain as a result of the bulging discs and that Claimant had not fully recovered from her 2002 work injury. (*Id*. at 12, 15, R.R. at 40a, 41a.)

Dr. Freese, who is a board-certified neurosurgeon, testified that he first met with Claimant in August 2008, and at that time Claimant had severe lower back pain that traveled down her right leg. (Oct. 1, 2010 Deposition of Dr. Freese (Freese Dep.) at 5-11, R.R. at 125a-126a; 7/18/11 Decision F.F. ¶7, R.R. at 206a-207a.) Dr. Freese examined Claimant and after studying the results of the tests performed by Dr. Lam in September 2008, decided to operate on Claimant's bulging discs at L4-L5 and L5-S1. (Freese Dep. at 11-15, R.R. at 126a-127a.) Dr. Freese testified that the surgery, which occurred on October 21, 2008, consisted of laminectomies, facetectomies, discectomies, inter-body cage arthrodesis, fusion with antilogous graft and artificial material and screw fixation. (*Id*. at 15, R.R. at 127a.) Dr. Freese stated that Claimant responded well to the surgery, and, although she was not completely free from pain, he has not seen her since January 2010. (*Id*. at 15-16, 19, R.R. at 127a-128a.) Dr. Freese testified that the surgery was related to the 2002 work injury and that Claimant undoubtedly also had a degenerative condition in her spine that predated the work injuries. (*Id*. at 17, R.R. at 128a.) However, Dr. Freese disagreed with the exact characterization of Claimant's condition given by Dr. Lam; he opined that Claimant had bulging discs and annular tears and injury to the discs, in addition to the lumbosacral sprain and strain. (*Id*. at 21, R.R. at 129a.) Dr. Freese stated that surgery on someone with

only a lumbar sprain and strain would not be appropriate, but rather it is the combination of all Claimant's conditions that made it appropriate. (*Id*. at 21, 30, R.R. at 129a, 131a.) Dr. Freese testified that he was not aware that the accepted injury was a lumbar sprain and strain until just before his deposition. (*Id*. at 26, R.R. at 130a.)

Claimant testified that at the date of her testimony she suffered from extensive pain and she cannot return to a regular job and often cannot perform simple tasks like bending, lifting and dressing herself. (Feb. 7, 2011 Hearing Transcript (H.T.) at 15-17, 20-21, R.R. at 175a-177a, 180a-181a; 7/18/11 Decision F.F. ¶9, R.R. at 207a.) Claimant stated that she continued to see Dr. Lindenbaum, who is her primary care physician and prescribes her pain medication, and Dr. Lam, who gives her injections. (H.T. at 16, R.R. at 176a.) Claimant testified that she receives Social Security Disability benefits and still has unpaid bills for treatment provided by Dr. Lam and Dr. Freese. (*Id*. at 14, 17, R.R. at 174a, 177a.)

Employer offered into evidence the deposition testimony of its expert, Dr. Post, a board-certified neurosurgeon, who examined Claimant on April 22, 2010 and reviewed her medical records. (Sept. 9, 2010 Deposition of Dr. Post, (Post Dep.) at 5, 7, 13-14, R.R. at 67a, 69a, 75a-76a; 7/18/11 Decision F.F. ¶5, R.R. at 204a-205a.) Dr. Post felt that Claimant's examination was unremarkable, though Claimant had some discomfort during the tests and limited range of motion. (Post Dep. at 12-13, R.R. at 74a-75a.) Dr. Post opined that the cause of Claimant's current back pain was likely the after-effects of the surgery or related to Claimant's degenerative disease, and not related to Claimant's work injury in 2002. (*Id*. at 19-22, R.R. at 81a-84a.) Dr. Post believed that Claimant had fully recovered from her 2002 work injury, the lumbar sprain and strain, as of the date of her

examination, and that Claimant should have recovered from that injury within six months of the work-related incident in 2002. (*Id*. at 22, 32, R.R. at 84a, 94a.) Dr. Post admitted on cross examination that she had not reviewed the report prepared by Dr. Freese regarding Claimant's surgery. (*Id*. at 29, R.R. at 91a.)

After his review of the evidence, WCJ Rosen found Dr. Post to be not credible. (7/18/11 Decision F.F. ¶10, R.R. at 208a.) WCJ Rosen found Dr. Post's opinion that Claimant was fully recovered from her work injury and should have recovered within six months of the date of the incident neither persuasive nor supported by the prior litigation in this matter. (*Id*.) WCJ Rosen also found Dr. Lam's testimony to be not credible. (7/18/11 Decision F.F. ¶11, R.R. at 208a.) Specifically, WCJ Rosen determined that Dr. Lam's assertion that Claimant's work injury of a lumbar sprain and strain necessitated the surgery performed by Dr. Freese was contradicted by Dr. Freese's testimony. (*Id*.) WCJ Rosen rejected Dr. Lam's testimony that Dr. Lam's continuing treatment of Claimant solely arose out of a lumbar sprain and strain injury. (*Id*.)

WCJ Rosen did find the testimony of Claimant and Dr. Freese to be credible. Dr. Freese's testimony, according to the WCJ, supported the conclusion that Claimant's surgical procedure was required by Claimant's bulging discs at L4-L5 and L5-S1 and not the stipulated work injury of a lumbar sprain and strain. (7/18/11 Decision F.F. ¶12, R.R. at 208a.) WCJ Rosen found Claimant's testimony that she continued to have pain and discomfort in her lower back and legs to be credible. (7/18/11 Decision F.F. ¶13, R.R. at 208a.)

WCJ Rosen denied both the Penalty Petition brought by Claimant and the 2010 Termination Petition brought by Employer. This ruling was based on the conclusions that Claimant had not carried her burden of demonstrating that

Employer had violated the terms of the Workers' Compensation Act (the Act)[2] by failing to pay for medical treatment solely caused by Claimant's work-related injury of a lumbar sprain and strain and that Employer had not carried its burden of demonstrating that Claimant had fully recovered from her injury. (7/18/11 Decision C.L. ¶¶2, 3, R.R. at 209a.)

Claimant appealed the denial of the Penalty Petition and, on March 12, 2013, the Board issued an opinion and order in which it affirmed WCJ Rosen. The Board held that the testimony of Dr. Freese regarding the reasons for Claimant's surgery provided substantial evidence for WCJ Rosen's denial of the Penalty Petition and that WCJ Rosen had written a reasoned decision explaining why Employer's conduct in not paying Claimant's medical bills did not violate the Act. (Board Op. at 4-5.) Employer did not appeal WCJ Rosen's denial of the 2010 Termination Petition, and the validity of that decision is therefore not before this Court.

Claimant filed a timely petition for review of the Board's order affirming WCJ Rosen's denial of the Penalty Petition. Before this Court, Claimant argues that WCJ Rosen erred by declining to penalize Employer's unilateral refusal to pay Claimant's medical bills without seeking a utilization review or obtaining an order granting supersedeas or terminating Claimant's benefits.[3]

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[2] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4, 2501-2708.

[3] Our review is limited to determining whether there has been an error of law or violation of constitutional rights and whether the WCJ's necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704; *City of Pittsburgh v. Workers' Compensation Appeal Board (McFarren)*, 950 A.2d 358, 359 n.2 (Pa. Cmwlth. 2008).

The WCJ is authorized to impose penalties on employers and insurers upon a showing that the Act has been violated. Section 435(d) of the Act, added by the Act of February 8, 1972, P.L. 25, *as amended*, 77 P.S. § 991(d). In a penalty petition, the claimant bears the initial burden of establishing a violation, which the employer may then rebut with evidence that the violation did not occur. *Department of Transportation v. Workers' Compensation Appeal Board (Clippinger)*, 38 A.3d 1037, 1047 (Pa. Cmwlth. 2011). Even if a violation of the Act is shown, however, the WCJ is not required to impose penalties. *Budd Co. v. Workers' Compensation Appeal Board (Kan)*, 858 A.2d 170, 176 (Pa. Cmwlth. 2004); *Candito v. Workers' Compensation Appeal Board (City of Philadelphia)*, 785 A.2d 1106, 1108 (Pa. Cmwlth. 2001). The decision to award or not award a penalty is within the discretion of the WCJ, and this Court will not overturn the WCJ's decision absent an abuse of that discretion. *Budd Co.*, 858 A.2d at 176; *Candito*, 785 A.2d at 1108.

An employer is generally required to pay the reasonable and necessary medical expenses of a claimant who suffers an accepted work injury. Section 306(f.1)(1)(i) of the Act, *as amended*, 77 P.S. § 531(1)(i). "Once the employer's liability for the work injury has been established, the employer may not unilaterally stop making benefit payment in the absence of a final receipt, an agreement, a supersedeas or any other order of the WCJ authorizing such action." *McLaughlin v. Workers' Compensation Appeal Board (St. Francis Country House)*, 808 A.2d 285, 288–89 (Pa. Cmwlth. 2002); *see also Gardner v. Workers' Compensation Appeal Board (Genesis Health Ventures)*, 585 Pa. 366, 375 n.6, 888 A.2d 758, 763 n.6 (2005) (holding that "longstanding principle" requires that, "absent a

supersedeas, the burden remains on the employer to continue to pay compensation during the litigation period").

This Court has drawn a distinction, however, between cases in which the employer's decision to stop payment is based upon a challenge to the "causation" of the contested treatment as opposed to the "reasonableness" or "necessity" of the treatment. *J.D. Landscaping v. Workers' Compensation Appeal Board (Heffernan)*, 31 A.3d 1247, 1253 (Pa. Cmwlth. 2011); *Listino v. Workmen's Compensation Appeal Board (INA Life Insurance Co.)*, 659 A.2d 45, 47 (Pa. Cmwlth. 1995); *Buchanan v. Workmen's Compensation Appeal Board (Mifflin County School District)*, 648 A.2d 99, 102 (Pa. Cmwlth. 1994). When an employer believes that a particular treatment is unreasonable or unnecessary, the employer is liable for continuing coverage until a termination petition is granted, subject to retrospective evaluation of the necessity or reasonableness of the treatment through a utilization review. 77 P.S. § 531(6); *Warminster Fiberglass v. Workers' Compensation Appeal Board (Jorge)*, 708 A.2d 517, 521 (Pa. Cmwlth. 1998). On the other hand, in "causation" cases, the employer can stop payment for treatment but then assumes the risk of penalty liability if a WCJ later determines that the treatment was causally related to the work injury. *Pryor v. Workers' Compensation Appeal Board (Colin Service Systems)*, 923 A.2d 1197, 1203-04 (Pa. Cmwlth. 2006); *Listino*, 659 A.2d at 48. If a WCJ determines that the treatment was not causally related to the work injury, then the employer is not subject to penalties and does not have to pay retroactively for the treatment. *Kuemmerle v. Workers' Compensation Appeal Board (Acme Markets, Inc.)*, 742 A.2d 229, 232 (Pa. Cmwlth. 1999); *Leonard v. Workmen's Compensation Appeal*

Board (Germantown Savings Bank), 687 A.2d 16, 19 (Pa. Cmwlth. 1996); *Listino*, 659 A.2d at 47.

Here, it is undisputed that Employer unilaterally ceased paying for Claimant's October 2008 surgery and related treatment and that Employer did not seek a utilization review for the surgery. Employer's decision was not premised on the reasonableness or necessity for the surgery, but rather on whether the procedure was causally related to the accepted work injury of a lumbar sprain and strain. By taking that position, Employer assumed a risk of liability for penalties if the WCJ disagreed with Employer's position and found that the surgery was related to the lumbar sprain and strain. *Pryor*, 923 A.2d at 1203-04; *Listino*, 659 A.2d at 48. After reviewing the testimony, WCJ Rosen agreed with Employer that the surgery and related treatment were not related to the lumbar sprain and strain and found that Employer did not violate the Act. (7/18/11 Decision F.F. ¶15, C.L. ¶3, R.R. at 208a, 209a.) Thus, because WCJ Rosen found that the treatment was not related to the accepted injury, the WCJ appropriately denied the Penalty Petition.[4] *Pryor*, 923 A.2d at 1204; *Buchanan*, 648 A.2d at 102.

[4] The cases cited by Claimant to support her argument that an employer may not unilaterally terminate benefits are inapposite as in each of these cases the employer challenged only whether the claimant had fully recovered from the work injury. *McLaughlin*, 808 A.2d 285 (affirming penalty award where employer ceased paying medical bills on belief that claimant had fully recovered from work injury without challenging the reasonableness or necessity of the surgery through a utilization review); *Consolidated Freightways v. Workmen's Compensation Appeal Board (Jester)*, 603 A.2d 291 (Pa. Cmwlth. 1992) (holding that, when a termination petition is granted because a claimant's disability has ended, the employer must pay benefits up until the date of the grant, not the date that the claimant fully recovered); *Loose v. Workmen's Compensation Appeal Board (John H. Smith Arco Station)*, 601 A.2d 491 (Pa. Cmwlth. 1991) (holding that employer who unilaterally refused to pay benefits on grounds that employee had recovered from disability was required to pay benefits until the date of a petition to review the reasonableness of the treatment was granted). Here, by contrast, the WCJ's denial of the Penalty Petition was not based on the fact that Claimant had fully recovered from the work injury or that

(Footnote continued on next page…)

Claimant also challenges the findings of fact that WCJ Rosen relied upon in denying the Penalty Petition as not supported by competent evidence on the record. Specifically, Claimant argues that Dr. Freese's testimony did not support the conclusion that the surgery was necessitated by reasons other than the lumbar sprain and strain, but rather only a conclusion that it was a combination of the lumbar sprain and strain and the degenerative disc issues that led to the surgery. Claimant also contends that it was improper for WCJ Rosen to conclude that Claimant's surgery was unrelated to the lumbar sprain and strain when the WCJ found the testimony of Employer's sole witness, Dr. Post, not credible. Finally, Claimant argues that WCJ Rosen's finding that Dr. Lam was not credible was erroneous because WCJ McManus had previously found her credible in the October 21, 2009 decision denying Employer's 2008 Termination Petition.

The WCJ is the ultimate finder of fact, with exclusive province over questions of credibility and evidentiary weight, including whether to accept or reject the testimony of any witness in whole or in part, be it the testimony of a medical expert or lay witness. *Anderson v. Workers' Compensation Appeal Board (Penn Center for Rehab)*, 15 A.3d 944, 949 (Pa. Cmwlth. 2010); *Remaley v. Workers' Compensation Appeal Board (Turner Dairy Farms, Inc.)*, 861 A.2d 405, 409 (Pa. Cmwlth. 2004). When supported by "substantial evidence," that is "such relevant evidence as a reasonable mind might accept to support a conclusion," this Court cannot and will not disturb the WCJ's findings of fact. *Ryan v. Workmen's Compensation Appeal Board (Community Health Services)*, 550 Pa. 550, 559, 707

(continued…)

the surgery was an unnecessary or unreasonable treatment for that injury, but rather that the surgery was not causally related to the lumbar sprain and strain.

A.2d 1130, 1134 (1998); *Anderson*, 15 A.3d at 949. The WCJ is required by Section 422(a) of the Act to issue a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole and clearly stating the rationale for the decision. 77 P.S. § 834. The Act further requires that the WCJ, when faced with conflicting evidence, explain the reasons for rejecting or discrediting competent evidence. *Id*.

In denying the Penalty Petition, WCJ Rosen relied upon the testimony of Dr. Freese, Claimant's surgeon. Dr. Freese testified that he differed from Dr. Lam's conclusion that Claimant sustained a lumbosacral sprain and strain as a result of the bulging disc in the lumbosacral area, finding Dr. Lam's "choice of words . . . a little bit awkward for me." (Freese Dep. at 21, R.R. at 129a.) Rather, Dr. Freese made clear that Claimant's bulging discs were a separate condition from the lumbosacral sprain and strain. (Freese Dep. at 21, 30, R.R. at 129a, 131a.) Dr. Freese testified that it was a "combination of those different things that led to the surgery," but also that for "[s]omebody who has simply just sprain and strain, I do not believe that surgery is required or appropriate." (Freese Dep. at 30, R.R. at 131a.) Moreover, Dr. Freese testified that he was not aware that Claimant's accepted injury was a lumbar sprain and strain when he treated her and only learned this information on the day of his deposition. (Freese Dep. at 26, R.R. at 130a.) Claimant maintains that Dr. Freese's testimony shows that surgery was a result of a "combination" of the disc injury and the lumbar sprain and strain. While this is one possible interpretation of Dr. Freese's testimony, we disagree that this was the only reasonable conclusion to draw from Dr. Freese's testimony. WCJ Rosen's conclusion that the surgery was unrelated to the lumbar sprain and strain accords with various decisions of this Court that have recognized that sprain and

strain and disc disease are distinct injuries and strong medical evidence is required to demonstrate a causal link between them. *See, e.g.*, *Pryor*, 923 A.2d at 1203-04; *Indian Creek Supply v. Workers' Compensation Appeal Board (Anderson)*, 729 A.2d 157, 161-62 (Pa. Cmwlth. 1999). Claimant here bore the burden of proving a violation of the Act that would warrant a penalty, *Department of Transportation*, 38 A.3d at 1047, and we cannot say that WCJ Rosen erred in deciding that Claimant failed to meet her burden.

We also disagree with Claimant's contention that WCJ Rosen's decision to discredit Dr. Post, Employer's sole witness, undermined the denial of the Penalty Petition. A WCJ "is free to accept or reject the testimony of *any* witness, including a medical witness, in whole or in part." *Anderson*, 15 A.3d at 949 (emphasis added). WCJ Rosen rejected Dr. Post's testimony regarding the reasons for Claimant's October 2008 surgery because Dr. Post admitted in her testimony that she did not review Dr. Freese's surgical report. (7/18/11 Decision F.F. ¶10, R.R. at 208a; Post Dep. at 29, R.R. at 91a.) WCJ Rosen also found Dr. Post's conclusion that Claimant had recovered from her lumbar sprain and strain within six months of the 2002 injury to be not credible. (7/18/11 Decision F.F. ¶10, R.R. at 208a; Post Dep. at 32, R.R. at 94a.) The order identifies verifiable reasons for the credibility determinations regarding Dr. Post's testimony, *Dorsey v. Workers' Compensation Appeal Board (Crossing Construction Co.)*, 893 A.2d 191, 196 (Pa. Cmwlth. 2006), that do not conflict with the conclusion that the medical treatment at issue was not causally related to the work injury. Therefore, we see no reason why a finding that Dr. Post's testimony was credible was necessary for the denial of the Penalty Petition.

Finally, we perceive no conflict between WCJ Rosen's finding that Dr. Lam was not credible and WCJ McManus's previous finding of Dr. Lam as credible. In denying the 2008 Termination Petition, WCJ McManus reviewed a medical packet submitted by Claimant containing reports of Dr. Lam, Dr. Freese and Dr. Lindenbaum, Claimant's primary care physician. (10/20/09 Decision F.F. ¶12, R.R. at 28a.) WCJ McManus found these reports credible and consistent with Claimant's testimony that she continued to suffer from back pain, but these findings were confined to the period before May 8, 2008, the cut-off date for the 2008 Termination Petition. (10/20/09 Decision at 1, F.F. ¶¶13, 14, R.R. at 24a, 28a, 29a.) The medical treatment at issue in the Penalty Petition, by contrast, relates to medical bills submitted after November 19, 2008. (R.R. at 2a.) Indeed, Claimant was not even referred to Dr. Freese until August 2008 (Freese Dep. at 8, R.R. at 125a), and his medical records were therefore entirely irrelevant to the 2008 Termination Petition. Furthermore, the reason cited by WCJ Rosen for finding Dr. Lam not credible in the instant matter – Dr. Lam's attribution of the cause of the surgery to the lumbar sprain and strain – is unrelated to Claimant's medical condition prior to May 8, 2008. (7/18/11 Decision F.F. ¶11, R.R. at 208a.)

For the foregoing reasons, the order of the Board affirming the WCJ's decision denying Claimant's Penalties Petition is affirmed.

JAMES GARDNER COLINS, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maria Figueroa,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 439 C.D. 2013
	:	
Workers' Compensation Appeal Board (Wolters Kluwer US Corp.),	:	
	:	
Respondent	:	

O R D E R

AND NOW, this 12th day of December, 2013, the order of the Workers' Compensation Appeal Board in the above matter is affirmed.

JAMES GARDNER COLINS, Senior Judge