IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher Ochal, Petitioner	:	
v.	:	No. 569 C.D. 2014
	:	Submitted: August 8, 2014
Workers' Compensation Appeal Board (NRG Roofing Systems, Inc.), Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: October 21, 2014

Christopher Ochal (Claimant) petitions for review of an adjudication of the Workers' Compensation Appeal Board (Board) that denied him medical or disability compensation for his knee replacement surgery.[1] The Board held that the evidence did not support a finding that the surgery was related to Claimant's work injury and, thus, his loss of earnings caused by the surgery was not compensable. Claimant contends that the Board impermissibly reweighed the evidence in reaching its conclusion. We affirm.

[1] At issue were two decisions of two different workers' compensation judges (WCJ). WCJ David Slom held that the knee surgery was work-related and ordered Claimant's employer to pay for the surgery. WCJ Holly San Angelo denied Claimant's effort to reinstate disability compensation while he was off work for the surgery. The Board reversed WCJ Slom and affirmed WCJ San Angelo.

On March 23, 2004, Claimant sustained an injury while working for NRG Roofing Systems, Inc. (Employer). Claimant was crawling across an icy roof and, when he turned to retrieve his welding gun, he tore the meniscus in his right knee. Employer issued a Notice of Compensation Payable (NCP) recognizing Claimant's torn meniscus as work-related and began paying Claimant weekly benefits at the rate of $566.48, based on an average weekly wage of $849.73.

Claimant underwent surgery for his torn meniscus and returned to work. On August 5, 2004, Claimant executed a Final Receipt, which memorialized that he had returned to work without a loss of earning power. This ended his disability compensation but not his medical compensation benefits.

On March 18, 2011, Claimant filed a petition to reinstate benefits, alleging that his right knee injury had worsened, which necessitated a partial right knee replacement. The reinstatement petition was limited to a request for payment for the partial knee replacement. Employer's answer denied that Claimant's impending surgery was related to the work injury.

At the hearing before WCJ David Slom, Claimant testified that in 2004, Gary Muller, M.D., surgically repaired his torn meniscus. In 2005, while working for a new employer, Claimant sustained an unrelated injury to his left knee and had left knee surgery, also performed by Dr. Muller. In July 2005, he returned to work. Claimant's treatment with Dr. Muller ended in 2006.

In June 2006, Claimant began working as a roofer for his current employer, the City of Philadelphia. Although Claimant works full-time as a roofer, he testified that his right knee pain interferes with his ability to walk and do his work. Further, the pain has made it impossible to participate in recreational activities such as kayaking or bike riding.

From 2006 through 2010, Claimant reported knee pain to his family doctor, who prescribed Ultram. In 2011, Claimant decided to seek additional medical treatment for his pain in both knees. He first contacted Dr. Muller, who refused to see him because Claimant's insurance would not cover the visit. Based on a friend's recommendation, Claimant saw David G. Nazarian, D.O., on February 7, 2011. Dr. Nazarian's office treated Claimant's left knee with a cortisone injection and recommended partial knee replacement surgery for Claimant's right knee. Claimant agreed to the surgery, but it was postponed when Employer's workers' compensation carrier denied the claim.

In support of his reinstatement petition, Claimant presented a medical report from Dr. Nazarian. In that report, Dr. Nazarian stated that he examined Claimant and found a full range of passive hip motion, with no pain on straight leg raise; patellofemoral crepitus with mild joint effusion; a negative McMurray's Test; a negative Lachman Test; no anterior or posterior drawer; normal muscle strength; and no swelling or edema. Dr. Nazarian then concluded that "[x]-ray shows moderate to severe right medial knee degenerative arthritis." Reproduced Record at 31a (R.R. __). He recommended a right knee arthroplasty.

In opposition, Employer presented a medical report by Joseph A. Jelen, Jr., M.D. Dr. Jelen did an independent medical examination (IME) of Claimant on July 12, 2011. According to his report, Dr. Jelen observed that Claimant wore two knee braces to the IME that showed no signs of wear and appeared to be new; Claimant admitted to Dr. Jelen that he did not wear the knee braces at work. Based on x-rays and a physical evaluation, Dr. Jelen found that Claimant had degenerative arthritis in both knees and that a partial right knee replacement was appropriate for the treatment of the degenerative arthritis in that

knee. He opined that Claimant's arthritic condition had evolved slowly over time and was not related to the 2004 work injury. Claimant's 2004 torn meniscus in the right knee was treated effectively with surgery and allowed Claimant to return to work without restrictions. Dr. Jelen expressed the view that "[a] partial knee replacement is appropriate treatment for [Claimant's] degenerative arthritis and not the meniscus injury that occurred seven years ago at work." R.R. 41a.

WCJ Slom credited the testimony of Claimant and his treating physician, Dr. Nazarian. Accordingly, he concluded that Claimant's partial right knee replacement was causally related to the 2004 work injury.

Employer appealed to the Board. While the Board appeal was pending, Claimant filed a second reinstatement petition,[2] seeking both medical and wage-loss compensation. The second petition stated that Claimant had knee replacement surgery on February 6, 2013, and the surgery had left him unable to work.

Employer filed a motion to dismiss the second reinstatement petition, asserting that the statute of limitations had expired for wage loss benefits. WCJ Holly San Angelo granted Employer's motion and dismissed the second reinstatement petition. Claimant had executed a Final Receipt on August 5, 2004, that was received by the Bureau of Workers' Compensation on September 14, 2004. A Final Receipt may not be set aside after three years have passed since the date of the last workers' compensation payment,[3] and that period is not extended

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[2] Claimant also filed a penalty petition because Employer had failed to pay for the surgery and his related medical expenses. WCJ San Angelo ruled solely on the second reinstatement petition, stating that the penalty petition remained pending.

[3] Section 434 of the Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, *as amended*, added by Section 6 of the Act of June 26, 1919, P.L. 642, provides:

(Footnote continued on the next page . . .)

by payment of medical bills. For these reasons, WCJ San Angelo found the second reinstatement petition time-barred.

Claimant appealed WCJ San Angelo's decision to the Board. The Board then rendered one opinion, addressing the grant of the first reinstatement petition by WCJ Slom and the dismissal of the second reinstatement petition by WCJ San Angelo. The Board reversed WCJ's Slom's decision and affirmed, on other grounds, WCJ San Angelo's decision.

As to the first reinstatement petition, the Board explained that an employer is responsible for medical treatment only if it is causally related to the work injury. Because Claimant's new symptoms were close to the location of the accepted work injury, *i.e.*, the knee, the Board reasoned that it was Employer's burden to prove the knee surgery was not work-related. WCJ Slom found Claimant's expert, Dr. Nazarian, credible, but he did not attribute Claimant's knee pain to the work injury. Instead, Dr. Nazarian's report stated that Claimant needed the surgery because of degenerative arthritis. Because Claimant's own credited medical expert diagnosed him with a different condition than the accepted work injury and did not connect the new condition to his work injury, the Board held

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> A final receipt, given by an employe or dependent entitled to compensation under a compensation agreement notice or award, shall be prima facie evidence of the termination of the employer's liability to pay compensation under such agreement notice or award: Provided, however, That a referee designated by the department may, at any time within three years from the date to which payments have been made, set aside a final receipt, upon petition filed with the department, or on the department's own motion, if it be shown that all disability due to the injury in fact had not terminated.

77 P.S. §1001.

that Employer met its burden of proving the recommended surgery was not work-related.

As to the second reinstatement petition, the Board concluded that Employer could not be held liable for any wage loss due to the knee replacement surgery, once it was determined that this surgery was unrelated to Claimant's work injury. Accordingly, the Board affirmed WCJ San Angelo's decision on other grounds.[4]

Claimant now petitions for this Court's review, raising two issues.[5] First, Claimant argues that the Board erred in concluding his knee replacement surgery was not work-related. Second, Claimant argues that because his knee replacement surgery was related to his work injury, it follows that his claim for wage loss benefits due to the surgery must be granted.

Claimant argues that he testified credibly regarding his worsening right knee pain and Dr. Nazarian, his medical expert, found he had right medial knee degenerative arthritis. His accepted work injury was for a right medial meniscus tear. Thus, he met his burden of proving his work injury continues.[6]

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[4] Claimant asserted that WCJ San Angelo erred in dismissing the second reinstatement petition as untimely. The Board explained that in light of its determination that any disability relating to the surgery was not work-related, it did not need to address this issue.

[5] Our scope of review of an order of the Board is limited to determining whether the necessary findings of fact are supported by substantial evidence, whether constitutional rights were violated or an error of law was committed. *City of Philadelphia v. Workers' Compensation Appeal Board (Brown)*, 830 A.2d 649, 653 n.2 (Pa. Cmwlth. 2003).

[6] Claimant offers no authority to support his argument that because the arthritis was in the medial part of the knee it must be related to the work injury. In *Pryor v. Workers' Compensation Appeal Board (Colin Service Systems)*, 923 A.2d 1197, 1205 (Pa. Cmwlth. 2006), we held that unequivocal medical testimony was necessary to establish a connection between "low back sprain/strain" and "degenerative disc disease" in the same location.

Claimant states that the Board improperly reweighed the evidence in reversing WCJ Slom.

Employer counters that the Board did not reweigh any evidence. The Board found that Claimant's evidence established that he needed surgery because of arthritis. This was not the accepted work injury, and Claimant's evidence did not link the arthritis to the accepted work injury.

While captioned as a reinstatement petition, Claimant's first petition sought payment only for medical expenses for his knee surgery. An employer is only liable "for a claimant's medical expenses that arise from and are caused by a work-related injury." *Kurtz v. Workers' Compensation Appeal Board (Waynesburg College)*, 794 A.2d 443, 447 (Pa. Cmwlth. 2002). Where an injury has been acknowledged by an employer through an NCP, and benefits have not been terminated, the claimant is not obligated to continually establish that the treatment is causally related because the injury has already been established. *Id.* In a case where a claimant is not alleging new symptoms, it is the employer's burden to establish the proposed medical treatment is unreasonable, unnecessary, or not related to the work injury. *Id.* at 447-48. However, where "there is no obvious causal relationship between the injury giving rise to the medical expenses claimed and the accident or other catalyzing injury giving rise to the original disability, 'unequivocal medical testimony [is] required to prove causation.'" *Hilton Hotel Corp. v. Workmen's Compensation Appeal Board (Totin)*, 518 A.2d 1316, 1318 (Pa. Cmwlth. 1986) (quoting *Workmen's Compensation Appeal Board v. Bethlehem Mines Corp.*, 349 A.2d 529, 530 (Pa. Cmwlth. 1975)).[7]

[7] An obvious connection "involves a nexus that is so clear that an untrained layperson would not have a problem in making the connection between the injury and a disability." *Tobias v.*
(Footnote continued on the next page . . .)

Here, Claimant testified that he had continuing and worsening knee pain. Claimant's medical evidence established that he needed knee replacement surgery because of degenerative arthritis. The Board concluded that because the surgery was needed for pain in the same body part involved in the work injury, the pain and the need for surgery was connected to the work injury. Accordingly, Employer had the burden to prove that that work injury did not continue. The Board concluded that Employer met this burden because Claimant's own doctor diagnosed him with arthritis and made no attempt to connect the arthritis to the torn meniscus. We agree with the Board's result but not its reasoning.

Claimant's expert established a medical condition, *i.e.*, arthritis, which was separate from that accepted in the NCP, namely a torn meniscus. Claimant had the burden of proving that the new medical condition was related to the accepted work injury. *Tobias*, 595 A.2d at 784.[8] Claimant did not offer the unequivocal medical testimony necessary to establish that connection. His own expert, Dr. Nazarian, reported that Claimant suffered from degenerative arthritis and needed a right knee unicompartmental arthoplasty. Dr. Nazarian made no attempt to connect the degenerative arthritis or the need for surgery to the work injury.

In his challenge to the second reinstatement petition, Claimant argued that his earning power was adversely affected by the surgery and related recuperation period. We agree with the Board that because the surgery was not

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Workmen's Compensation Appeal Board (Nature's Way Nursery, Inc.) 595 A.2d 781, 784 (Pa. Cmwlth. 1991).

[8] The Board's theory that Employer had the burden of proof was, at most, harmless error.

related to the work injury, Claimant did not make a case for reinstatement of disability compensation.

Accordingly, the order of the Board is affirmed.

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MARY HANNAH LEAVITT, Judge

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O R D E R

AND NOW, this 21st day of October, 2014 the order of the Workers' Compensation Appeal Board dated March 26, 2014, in the above-captioned matter is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge