IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gwynedd Dental Associates and Donegal Mutual Insurance, Petitioners	:	
	:	No. 804 C.D. 2013
v.	:	
	:	Submitted: October 4, 2013
Workers' Compensation Appeal Board (Dunetz), Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: December 5, 2013

Gwynedd Dental Associates and its insurer, Donegal Insurance Group (collectively, Employer), petition for review of the April 16, 2013 order of the Workers' Compensation Appeal Board (Board), which affirmed the decision of a workers' compensation judge (WCJ) granting the claim petition of Howard Dunetz (Claimant). On appeal, Employer presents one issue for review: whether Claimant's medical expert, Todd Albert, M.D., rendered an opinion as to causation that was competent as a matter of law. Concluding that it was, we affirm.

The relevant facts and procedural history of this case are as follows. On February 8, 2008, Claimant filed a claim petition alleging that he sustained an injury to his neck during the course and scope of his employment on May 14, 2007.

Employer filed an answer denying the material allegations, and the matter was assigned to a WCJ for hearings.

At a March 26, 2008 hearing before the WCJ, Claimant testified that in January 2006, he suffered an injury to his neck while giving his son a tennis lesson; Dr. Albert, a board certified orthopedic surgeon, performed disc replacement surgery on October 2006, after which Claimant felt better. Claimant testified that he worked for Employer as a general dentist for approximately 20 years, concentrating his practice in root canals and endodontics. According to Claimant, a typical root canal procedure lasts between 2 to 2 and 1/2 hours, and, during this time, he would routinely be bent over the patient and required to assume awkward positions. Claimant said that on May 14, 2007, he performed a 4-hour root canal and experienced a sudden onset of pain in his neck near the end of the procedure. Claimant stated that he later saw Dr. Albert, complaining of intermittent pain in the left side of his neck with three episodes of severe pain, and Dr. Albert performed a second surgery -- a cervical fusion -- in October 2007. (WCJ's Findings of Fact Nos. 2-3; Reproduced Record (R.R.) at 561a.)

During two subsequent depositions, Claimant testified that he did not work for Employer from October 3, 2007, to October 29, 2007, and worked part-time from October 29, 2007, until October 6, 2008, at which point he ceased working altogether. Claimant testified that he does not perform dentistry anymore because he is very limited in how much he can bend his neck. Claimant stated that after discontinuing employment, he exercises by riding a bike, walking, and attending yoga classes and that no doctor ever told him that he should not engage in these activities. (WCJ's Findings of Fact Nos. 3-4.)

Claimant also presented the deposition testimony of Dr. Albert. He testified that he first met Claimant on September 28, 2006, when Claimant presented with neck and right arm pain that he had suffered from since January 2006. Dr. Albert said that he ordered a cervical MRI, which revealed a disc herniation on the right at C6-7, and he diagnosed Claimant with cervical radiculopathy due to a herniated disc and cervical spondylosis. Dr. Albert stated that he performed surgery to replace a cervical disc on October 30, 2006, and entered Claimant into a trial sponsored by the Food and Drug Administration for a porous-coated motion device. According to Dr. Albert, Claimant's preoperative symptoms had resolved by December 12, 2006. However, on January 16, 2007, Claimant complained of left-side neck pain and tingling in his left arm and hand, from which he still suffered on May 1, 2007. Dr. Albert stated that on June 12, 2007, Claimant began experiencing severe neck pain, tingling, and spinal pressure when he tried to extend his neck. Dr. Albert testified that he ordered another cervical MRI, which revealed a left-side disc bulge at C3-4 and a relatively new herniation at C4-5 on the right. Dr. Albert said that he diagnosed Claimant with junctional degeneration and herniation above the index level of his first surgery and performed fusion surgery at C4-5 and C5-6 on October 6, 2007. (WCJ's Findings of Fact No. 5.)

Regarding whether Claimant's injuries were work-related, Dr. Albert testified that his opinion was based upon his personal examinations, performance of two surgeries, and review of diagnostic studies and Claimant's medical history. From this information, Dr. Albert opined, to a reasonable degree of medical certainty, that Claimant's "breakdown of his spine above the [disc] replacement," i.e., the condition requiring fusion surgery, was an exacerbation that "was related to him performing dentistry." (R.R. at 52a.) Dr. Albert then noted "the wealth of literature about

dentistry increasing cervical spondylotic problems," whereupon Claimant's counsel asked:

> [Claimant's counsel]: What is it that the data tells us about dentistry that is causative of these types of problems?
>
> [Dr. Albert]: It's just the – [I] don't know all the literature perfectly well, but I know this, because I've operated on dentists before and they brought in literature and I've read there is some literature from Sweden and there's literature from America looking at the epidemiologic incidence of disc issues in the cervical spine in dentist compared to match cohorts in other occupations showing significant increase in problems.
>
> [Employer's counsel]: I'm compelled to object and make a motion to strike the lack of foundation and background.
>
> [Claimant's counsel]: Let's just talk about it based on your experience. You indicated that you have had a number of dentists come in for similar problems?
>
> [Dr. Albert]: Yes. I've operated on a lot of dentists for cervical spondylotic problems. It's one of those flashpoint occupations where people have a higher incidence of neck problems.

(R.R. at 52a.)

Claimant's counsel then posed Dr. Albert the following hypothetical:

> [Claimant's counsel]: I'd like you to assume that [Claimant] indicated that after May of 2007 he went to part-time status with regard to his dentistry practice. Before the first surgery and after the first surgery his practice was primarily in the area of endodontics doing root canals, crowns and replacements involving primarily the back teeth or molars. He indicated that he has slowed down doing endodontics after May and then eventually stopped doing them altogether, and that as of the time of his testimony, he was continuing to do work part time.

> Based upon your knowledge of his condition, were these changes in his practice appropriate for his medical condition?
>
> [Dr. Albert]: And in fact I suggested, told him that he do that.

(R.R. at 52a.) Dr. Albert then opined that Claimant should not continue working as a dentist because doing so would aggravate his condition. (R.R. at 52a-53a; WCJ's Findings of Fact No. 5.)

On cross-examination, Dr. Albert confirmed that Claimant's "job activities as a dentist" caused Claimant's cervical injuries, or, at the very least, aggravated any pre-existing condition that Claimant had. (R.R. at 53a.) Dr. Albert also discounted Claimant's history of participating in athletic activities as exacerbating or contributing to his cervical condition. Id.

Next, Claimant offered the deposition testimony of Ellen Rader-Smith, a certified vocational evaluator and professional ergonomist. She testified, among other things, that she physically evaluated Claimant and assessed his range of motion. Radar-Smith also stated that she went to Claimant's work station and asked Claimant to assume his normal work position, at which point she discovered that Claimant's job duties required him to assume positions that caused stress on his shoulder, upper body, and neck. Ultimately, Rader-Smith testified that based upon her interview, functional capacity evaluation, site visit, and review of medical records and literature, she related Claimant's increased pain and disability to his work as a dentist. (WCJ's Finding of Fact No. 6.)

In rebuttal, Employer introduced the deposition testimony of David Boscacco, M.D., a board certified orthopedic surgeon who opined that Claimant's injuries were not work-related. Dr. Bosacco agreed with Dr. Albert that Claimant

suffered an exacerbation of his cervical spine in May 2007 but opined that the exacerbation was not work related because there was no specific instance of trauma and an MRI taken in June 2007 did not reveal any objective changes. Employer also submitted the deposition testimony of Paul Land, D.C., a chiropractor who has treated Claimant with massage therapy. Dr. Land stated that he performed research regarding biomechanical stress in dentistry and recalled telling Claimant that his condition might be work-related. Further, Employer presented the deposition testimony of Andrew Rentschler, Ph.D., who holds a doctorate degree in biomechanics. He opined that Claimant's job activities while performing dentistry were within his physiological range and did not produce the appropriate mechanism or stress to cause his injuries. Finally, Employer submitted deposition testimony from laywitnesses, and they testified in general that they have seen Claimant riding his bicycle and/or running. (WCJ's Findings of Fact Nos. 8-13, 16.)

In her May 21, 2010 decision, the WCJ found the testimony of Claimant and Dr. Albert credible. The WCJ accepted the expert testimony of Dr. Albert over the testimony of Dr. Boscacco to the extent their testimonies conflicted. In so finding, the WCJ noted that Dr. Albert is a highly regarded neurosurgeon and that Dr. Albert was in a better position to assess Claimant's condition, having examined him before and after May 14, 2007, and having performed two cervical surgeries on Claimant. In addition, the WCJ found the testimony of Radar-Smith credible in its entirety, and the testimony of Dr. Land credible to the limited extent that it raised the possibility that Claimant's neck symptoms were related to his job as a dentist. The WCJ found Rentschler's testimony not credible, rejecting it in favor of the testimony of Dr. Albert and Radar-Smith. Finally, the WCJ found the testimony of Employer's

laywitnesses credible "but of marginal relevance." (WCJ's Findings of Fact Nos. 15-19.)

Based upon these credibility determinations, the WCJ concluded that Claimant met his burden of proving that he sustained a work-related injury to his cervical spine. In so doing, the WCJ found, in pertinent part, that Dr. Albert testified credibly that "the breakdown of Claimant's spine above the disc replacement was an exacerbation that was related to Claimant performing dentistry." The WCJ also found that Radar-Smith testified credibly that Claimant's increased pain and disability on and after May 14, 2007, was due to his job duties as a dentist. (WCJ's Findings of Fact Nos. 5-6, Conclusion of Law No. 1.) Therefore, the WCJ granted Claimant's claim petition.[1]

Employer appealed to the Board, contending, among other things, that the WCJ failed to rule on its evidentiary objections, namely to the testimony of Dr. Albert and Radar-Smith. The Board agreed, vacated the WCJ's decision, and remanded with instructions that the WCJ address Employer's preserved objections and issue additional findings of fact and conclusions of law. (Board's Decision at 6.)

On remand, the WCJ found that Employer preserved one objection to the testimony of Dr. Albert: "Objection to lack of foundation and background and motion to strike [Dr. Albert's] testimony regarding the contents of medical literature without presenting that literature for review." (R.R. at 12a.) The WCJ sustained this objection. However, the WCJ stated that she did not rely on the objected-to portion of Dr. Albert's testimony in her original findings of fact and, therefore, concluded

[1] In her order, the WCJ granted Claimant partial disability benefits from May 14, 2007, through October 6, 2008, and temporary total disability benefits from October 7, 2008, and into the future at a rate of $779.00 per week. (WCJ's Order.)

that the sustained objection did not affect her prior decision. The WCJ also reviewed Employer's preserved objections to the testimony of Radar-Smith but overruled these objections. (WCJ's Remand Findings of Fact Nos. 2-3.) Accordingly, by decision and order dated June 27, 2011, the WCJ reaffirmed her prior decision and granted Claimant's claim petition. (WCJ's Remand Conclusions of Law Nos. 2 and Order.)

Employer again appealed to the Board and baldly asserted, among other things, that Dr. Albert's expert opinion that Claimant's injury was work-related was incompetent and equivocal. The Board disagreed, citing *Callahan v. Workmen's Compensation Appeal Board (Pet Inc., Whitman's Chocolates)*, 507 A.2d 924, 927 (Pa. Cmwlth. 1986), for the proposition that an expert's opinion regarding causation is competent when the expert states that a claimant's disability is attributable to the kind of occupation the claimant performed. (Board's Decision after Remand at 3-4, 7-8.)[2] Noting that there was nothing in the record to indicate that Dr. Albert relied upon inaccurate information in rendering his opinion, the Board concluded that Dr. Albert's testimony that Claimant's cervical condition was "related to him performing dentistry" was sufficiently unequivocal to connect Claimant's neck injury to his occupation as a dentist and establish causation. *Id.* Accordingly, the Board affirmed the WCJ's decision.

[2] In *Callahan*, this Court concluded that the expert's statement that the claimant's job duties "would explain" the claimant's injury on a clinical level was adequately unequivocal as to causation. *Id.* at 927. In so doing, we likened the expert's testimony to a case wherein this Court found language unequivocal where an expert testified that a myocardial infarction "in all likelihood … was related to [the claimant's] activities" on a day at work. *Id.* (citation omitted).

On appeal to this Court,[3] Employer argues that the Board erred in concluding that Dr. Albert's testimony was competent evidence. Employer contends that Dr. Albert's causation testimony was incompetent because it lacked an adequate factual foundation in that Dr. Albert failed to discuss any particular physical activities or demands that Claimant was subjected to while working as a dentist and did not correlate any specific working condition to Claimant's injuries. We disagree.

Initially, we note that it is well-established that the WCJ, as fact finder, has exclusive province over questions of credibility and evidentiary weight, and the WCJ is free to accept or reject the testimony of any witness, including medical witnesses, in whole or in part. *Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck)*, 664 A.2d 703, 706 (Pa. Cmwlth. 1995). The WCJ's findings will not be disturbed when they are supported by substantial, competent evidence. *Hoffmaster v. Workers' Compensation Appeal Board (Senco Products, Inc.)*, 721 A.2d 1152, 1155 (Pa. Cmwlth. 1998). In analyzing whether a finding of fact is supported by substantial evidence, this Court must view the evidence in the light most favorable to the prevailing party, giving that party the benefit of all reasonable inferences to be drawn from the evidence. *Id.* Substantial evidence is defined as such relevant evidence as a reasonable person might accept as adequate to support a conclusion. *Id.*

An injured employee seeking to obtain workers' compensation benefits for a work-related injury bears the burden of proving all elements necessary to support an award, including that an injury was related to the employment. *Neidlinger*

[3] Our scope of review is limited to determining whether findings of fact are supported by substantial evidence, whether an error of law has been committed, or whether constitutional rights have been violated. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704.

v. Workers' Compensation Appeal Board (Quaker Alloy/CMI International), 798 A.2d 334, 338 (Pa. Cmwlth. 2002); *Povanda v. Workmen's Compensation Appeal Board (Giant Eagle)*, 605 A.2d 478, 486 (Pa. Cmwlth. 1992). To show that an injury was related to employment, the employee must establish a causal connection between work and the injury, and unequivocal medical evidence is required where it is not obvious that an injury is causally related to the work incident. *Povanda*, 605 A.2d at 456; *Cromie v. Workmen's Compensation Appeal Board (Anchor Hocking Corporation)*, 600 A.2d 677, 679 (Pa. Cmwlth. 1991). Medical evidence is unequivocal if the medical expert, after providing a foundation, testifies that in his medical opinion he thinks the facts exist. *ARMCO v. Workmen's Compensation Appeal Board (Carrodus)*, 590 A.2d 827, 829 (Pa. Cmwlth. 1991).

Competency, when applied to medical evidence, is merely a question of whether a witness's opinion is sufficiently definite and unequivocal to render it admissible. *Cerro Metal Products v. Workers' Compensation Appeal Boad (Plewa)*, 855 A.2d 932, 937 (Pa. Cmwlth. 2004). The issue of whether expert testimony is competent presents this Court with a question of law subject to plenary, *de novo* review. *See BJ's Wholesale Club v. Workers' Compensation Appeal Board (Pearson)*, 43 A.3d 559, 565 (Pa. Cmwlth. 2012). When evaluating expert testimony, this Court must consider the testimony as a whole and cannot base a decision upon a few words taken out of context. *Stalworth v. Workers' Compensation Appeal Board (County of Delaware)*, 815 A.2d 23, 28 (Pa. Cmwlth. 2002).

An expert's medical opinion regarding causation may be based on a history obtained from the claimant, assumed facts of record, and/or medical reports submitted into evidence. *Southeastern Pennsylvania Transportation Authority v. Workers' Compensation Appeal Board (Herder)*, 765 A.2d 414, 417 (Pa. Cmwlth.

2000). While an expert witness may base an opinion on facts of which he has no personal knowledge, those facts must be supported by evidence of record. *Newcomer v. Workmen's Compensation Appeal Board (Ward Trucking Company)*, 547 Pa. 639, 647, 692 A.2d 1062, 1066 (1997). Similarly, hypothetical questions must be based on matters appearing of record and on facts warranted by the evidence. *Haddon Craftsmen v. Workers' Compensation Appeal Board (Krouchick)*, 809 A.2d 434, 440 (Pa. Cmwlth. 2002).

This Court has previously held that the fact that a physician does not know all of the details of the mechanics of an injury is a matter that goes to the weight of the expert's testimony, rather than its competency. *DeGraw v. Workers' Compensation Appeal Board (Redner's Warehouse Markets, Inc.)*, 926 A.2d 997, 1002 (Pa. Cmwlth. 2007).

In *DeGraw*, the claimant filed a claim petition for total disability, alleging, in accordance with the description of the injury in the notice of compensation payable (NCP), that he aggravated a pre-existing degenerative disc disease while working as a produce clerk at a grocery store. In response, the employer presented the expert testimony of a doctor, who opined that the claimant's injury was in fact a lumbosacral sprain; the claimant's degenerative disc disease was not work-related; and the claimant did not sustain an aggravation of his pre-existing condition on the date of injury. The WCJ credited the testimony of the employer's medical expert and amended the claimant's injury description in the NCP to reflect an acute lumbosacral sprain.

On appeal to this Court, the claimant in *DeGraw* argued that the employer's expert rendered an equivocal and/or incompetent opinion because the expert lacked an adequate factual foundation upon which to base his opinion.

Specifically, the claimant contended that the employer's expert "admitted he did not review a job description, nor did he know the size or weight of the object [the claimant] was lifting at the time of his injury, or how far his arms were extended." 926 A.2d at 1001. This Court rejected the claimant's assertion. In doing so, we noted that although the expert conceded that he did not know the particular details of what happened at the time the claimant was injured, the expert testified that in general he was aware that the claimant was a produce worker and that he was injured while lifting produce. *Id.* at 1002 and n.4. On this record, we concluded that the fact that the expert did not know the specific details surrounding the manner in which the claimant was injured was a matter that "goes to the weight to be accorded [the expert's] testimony, not its competency." *Id.* at 1002.

In *Calex, Inc. v. Workers' Compensation Appeal Board (Vantaggi)*, 968 A.2d 822 (Pa. Cmwlth. 2009), the claimant, a truck driver, filed a claim petition, seeking compensation for injuries he sustained during a vehicular accident. The claimant presented the testimony of a neurosurgeon, who stated that an MRI indicated that the claimant sustained microfractures of the cervical spine. The witness opined that "typically" such microfractures are caused by motor vehicle accidents; however, he conceded on cross-examination that "his knowledge of the … accident was not detailed but limited to the simple fact that [the claimant's] truck hit some kind of immovable object." *Id.* at 824-25. The WCJ granted the claimant's claim petition, and the Board affirmed.

On appeal, the employer argued that the opinion of the claimant's expert was incompetent. This Court disagreed. Acknowledging that the expert did not know the precise details of the claimant's accident or how he was injured, we emphasized that the expert was aware that the claimant was driving a vehicle that hit

an immovable object and testified that an accident of this sort normally causes microfractures to the neck. Given this basic factual foundation, we concluded in *Calex, Inc.* that the expert's testimony was competent, determining that "there is enough in the record to support [the expert's] understanding of the accident, its impact on [the claimant,] and his opinion that [the claimant's] cervical injury was work-related." *Id.* at 828.

We conclude that our decisions in *DeGraw* and *Calex, Inc.* are controlling in the present case. When Dr. Albert's causation opinion is viewed as a whole, while discounting the sustained, objected-to portion of that testimony, the following is established. In response to a hypothetical, Dr. Albert assumed that Claimant was a dentist working in the area of endodontics, primarily doing root canals, crowns, and replacements involving the back teeth or molars. These assumed facts are supported by Claimant's testimony concerning his job duties. In addition, Dr. Albert stated that in his professional experience and opinion, dentistry is one of those occupations that has a relatively high incident rate for neck injuries, particularly of the type that Claimant sustained. Finally, Dr. Albert eliminated other possible causes for Claimant's cervical condition, and he opined unequivocally that Claimant's injuries were related to him performing dentistry. (R.R. at 52a-53a.)

We conclude that this factual foundation is as sturdy as those of the experts in *DeGraw* and *Calex, Inc.*, which consisted predominately of the experts' rudimentary grasp of what the claimant was doing when the alleged injury occurred, coupled with their professional, medical understanding of how (or to what extent) the injury and the work incident were causally related. It is true, as Employer points out, that Dr. Albert did not provide any intricate details as to the mechanics of Claimant's job duties and did not relate any particular job activity and/or physical movement to

Claimant's injuries. However, these omitted specifics parallel the experts' conceded lack of knowledge in *DeGraw* and *Calex, Inc.*, and, consequently, go to the weight of the evidence rather than the admissibility or competency of Dr. Albert's expert opinion. Notably, Employer does not contend on appeal that Dr. Albert relied upon any inaccurate or false information in formulating his opinion. Therefore, we conclude that the Board did not err in determining that the WCJ properly considered and credited Dr. Albert's expert testimony as competent evidence.

Accordingly, we affirm.

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PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gwynedd Dental Associates and Donegal Mutual Insurance, Petitioners	:	
	:	No. 804 C.D. 2013
v.	:	
Workers' Compensation Appeal Board (Dunetz), Respondent	:	

ORDER

AND NOW, this 5th day of December, 2013, the April 16, 2013 order of the Workers' Compensation Appeal Board is affirmed.

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PATRICIA A. McCULLOUGH, Judge