

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

|                                |   |                          |
|--------------------------------|---|--------------------------|
| Susan Rathfon,                 | : |                          |
| Petitioner                     | : |                          |
|                                | : |                          |
| v.                             | : | No. 574 C.D. 2025        |
|                                | : |                          |
| Rite Aid Corporation (Workers’ | : | Submitted: July 24, 2026 |
| Compensation Appeal Board),    | : |                          |
| Respondent                     | : |                          |

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE CHRISTINE FIZZANO CANNON, Judge  
HONORABLE MATTHEW S. WOLF, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: September 23, 2026

Susan Rathfon (Claimant), petitions for review of the Workers’ Compensation Appeal Board’s (Board) April 4, 2025 order affirming the Workers’ Compensation Judge’s (WCJ) decision granting Rite Aid Corporation’s (Employer) petition to terminate Claimant’s benefits on the basis that she has fully recovered from her work injury. On appeal, Claimant contends the WCJ erred by failing to amend her work injury to include her cervical spine surgery, and also challenges the WCJ’s determination that she has fully recovered from her work injury. After careful review, we affirm.

**Background**

The relevant facts and procedural history of this case are as follows. Claimant sustained a work-related injury on January 24, 2019, while working as a

pharmacist for Employer. The WCJ granted Claimant's claim petition in October of 2020, describing her work injury as an aggravation of the degenerative condition of her cervical spine, most predominantly at the C6-7 vertebra causing C7 radiculopathy. The WCJ awarded Claimant total disability benefits of \$1,049.00 per week as of February 26, 2019. (Reproduced Record (R.R.) at 3a.) Claimant initially treated her injury with physical therapy and steroid injections before she ultimately underwent surgery in August of 2022.

Employer filed the instant termination petition (Termination Petition) on April 26, 2023, alleging that Claimant had fully recovered from her work injury as of April 4, 2023.<sup>1</sup> Claimant filed a claim petition (Claim Petition) on May 31, 2023, seeking disfigurement benefits because she had sustained a "[s]erious, permanent and unsightly anterior cervical scar, disfigurement." (R.R. at 16a.) Claimant identified her date of injury as January 24, 2019, and maintained that she "sustained [these] injuries from repetitive motion of holding the phone with her neck while entering information into the computer." *Id.*

The WCJ held a hearing on October 24, 2023, and at the outset, counsel for the parties confirmed that the scope of the proceeding was limited to Claimant's claim for disfigurement and Employer's Termination Petition. (R.R. at 120a.) Employer presented the deposition testimony of Gene Salkind, M.D., who was qualified to testify as an expert in the field of neurosurgery. Dr. Salkind conducted an independent medical evaluation (IME) of Claimant in April of 2023, and he testified that she was 64 years old and was not involved in any ongoing medical treatment. (R.R.

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<sup>1</sup> In a termination proceeding, the employer must establish "that the claimant fully recovered from h[er] work injury and has no remaining disability, or that any remaining disability is no longer related to the work injury." *City of Philadelphia v. Workers' Compensation Appeal Board*, 946 A.2d 130, 136 n.12 (Pa. Cmwlth. 2008).

at 28a.) Claimant advised Dr. Salkind that her work injury was caused by the repetitive motions she made with her neck over the course of her 40-year career as a pharmacist. Claimant further reported that she developed progressively worsening neck pain, and stopped working in January of 2019 because of the pain. Claimant then underwent surgery in August of 2022, which left her free of neck and left upper extremity pain. (R.R. at 29a-30a.) On a pain scale of zero to ten, Claimant rated her pain as a two during the IME.

Dr. Salkind testified that Claimant's IME showed her "cervical range of motion was completely free without any complaints of either neck or arm pain," but that she experienced numbness in three of her left fingers. (R.R. at 32a.) Dr. Salkind's impression was that Claimant sustained the accepted work-related injury, and that she had fully recovered from that injury at the time of the IME. (R.R. at 35a.) Dr. Salkind opined that Claimant needed no further treatment, and that she was clearly capable of returning to her pre-injury employment position without restriction. (R.R. at 36a-37a.)

Employer also entered into evidence a surveillance report concerning Claimant's activities at an amusement park with her family in May of 2023.<sup>2</sup> Dr. Salkind testified that he had reviewed the report, and that Claimant appeared essentially unencumbered on her trip with her grandson that day. (R.R. at 38a.)

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<sup>2</sup> The WCJ indicated that she carefully reviewed the surveillance video and described it as follows:

Claimant was observed at Dutch Wonderland with ostensibly her family, including 2 young children. **She carried items in her left hand** and arm with her right hand and arm free of items. She lifted a toddler boy, placing him on her left side. Claimant rode the child-sized train and was seen on another child ride in a log on the water. No apparent neck and/or left upper extremity restrictions or issues were seen.

(R.R. at 152a) (emphasis added).

Claimant presented the deposition testimony of Denis Rogers, M.D., who had been her treating physician since April of 2019, and had last examined her in September of 2023. Dr. Rogers explained that although Claimant's radicular pain had improved after surgery, she continued to experience residual numbness and weakness in her left hand and arm. (R.R. at 82a.) Dr. Rogers testified that Claimant had not fully recovered from her work injury, and that he had not released her to return to her prior position. (R.R. at 90a.) Dr. Rogers opined that if Claimant did return to work, she should avoid repetitive neck motions and lift no more than ten pounds. (R.R. at 88a.)

With respect to the surveillance report, Dr. Rogers testified that his review of it did not alter his opinion on the matter. On cross-examination, Dr. Rogers acknowledged that Claimant had likely plateaued with respect to her treatment and that he did not have any follow-up visits scheduled with her. (R.R. at 95a.)

At the outset of Claimant's testimony, her counsel advised with regard to the scope of the proceedings:

Q. We are here for two reasons today. One because we're trying to get an assessment for disfigurement of your scar, and another, because [Employer] has filed a petition in which they have taken the position that you fully recovered. Do you understand that?

A. I do.

(R.R. at 123a-24a.)

Claimant testified that she continues to experience numbness in her left fingers, tension in her left shoulder and arm area, and headaches. (R.R. at 126a-27a.) Claimant relayed that she takes ibuprofen to treat her symptoms, and that she declined a prescription for opioids. (R.R. at 127a, 133a.) Claimant indicated that she had not fully recovered from her injury and that she could not return to work in an unrestricted

capacity. (R.R. at 128a.) Regarding the surveillance report, Claimant acknowledged that she lifted her grandson to take a photograph. (R.R. at 128a.)

At the conclusion of the proceeding, the WCJ again confirmed with the parties' counsel, "with regard[] to the disfigurement claim, is [this] the only issue for me to decide the value?" to which they responded "yes." (R.R. at 135a.) Claimant did not ask the WCJ to amend the description of her work injury to include her August 2022 surgery.

On April 15, 2024, the WCJ issued a decision and order granting the Termination Petition, concluding that Employer met its burden of proving Claimant fully recovered from her work injury as of April 4, 2023. Notably, the WCJ found:

[•] The only issue to decide with regard to the disfigurement claim is the value of the disfigurement.

....

[•] Based on this Judge's observation of Claimant's demeanor while testifying, hearing her testimony firsthand in addition to careful review and consideration of the deposition testimonies of Drs. Salkind and Rogers, **this Judge rejects Claimant's testimony of ongoing work related complaints, with the exception of numbness in the thumb, index and middle fingers of the left hand, and her testimony of not being able to perform her pre-injury position due to her work injury as not credible and persuasive. Claimant is right-handed and acknowledges that she can use the thumb, index and middle fingers of her left hand** consistent with the testimony of Dr. Salkind. While she testified that she cannot feel her thumb, index and middle fingers of her left hand, Drs. Salkind and Rogers noted a history of numbness of these digits, not a lack of feeling. . . .

[•] Based upon a review of the evidentiary record as a whole, the Judge finds the testimony of Dr. Salkind more credible

and persuasive than any contrary testimony of Dr. Rogers. Accordingly, the testimony of Dr. Rogers is rejected wherever inconsistent with the testimony of Dr. Salkind and the testimony of Dr. Salkind is accepted as fact.

[•] Dr. Salkind is a board-certified neurosurgeon and his testimony is based on and supported by the examination performed, the history obtained and the records reviewed. His medical analysis is clear, logical and well supported.

[•] Dr. Rogers did not see Claimant in 2023 until 6/5/23 and after the 4/26/23 filing of the Termination Petition and he does not provide treatment. Claimant did not see Dr. Rogers until 10 months after surgery and after she was discharged by her surgeon.

[•] Dr. Rogers is of the opinion that Claimant is at maximum medical improvement, meaning she has plateaued regarding treatment. He does not have any follow-up visits scheduled for Claimant. He acknowledged that there is no suspicion or indication that the levels adjacent to the fusion level are experiencing any further degeneration or degradation. Claimant's testimony does not establish the use of ibuprofen contrary to Dr. Rogers' testimony.

(R.R. at 153a-54a) (case citations omitted; emphasis added). The WCJ also granted the Claim Petition, concluding that Claimant established her work injury caused disfigurement to her neck, and awarded her 50 weeks of specific loss benefits.

Claimant appealed the WCJ's decision to the Board, which issued an opinion and order affirming the decision on April 4, 2025. In doing so, the Board determined:

After careful review of the record, we conclude the WCJ did not err in granting [Employer's] Termination Petition. . . . [Employer] was able to meet its burden because the WCJ accepted Dr. Salkind's unequivocal medical testimony that Claimant was fully recovered from her work-

related injury as of April 4, 2023, and terminated her benefits as of that day. Furthermore, the WCJ rejected both Claimant's own testimony and the testimony of Dr. Rogers concerning the fact she continued to have symptoms related to her work injury. While Claimant makes numerous arguments as to why the WCJ should have accepted Dr. Roger's testimony over that of Dr. Salkind, the WCJ is free to accept or reject, in whole or in part, the testimony of any witness, including medical witnesses, and those credibility determinations will not be overturned by this Board absent an abuse of discretion. . . .

Claimant further argues the WCJ erred in not amending the description of her work injury to include cervical discectomy at the C6-7 level, despite awarding disfigurement benefits related to that cervical surgery. We disagree. We note that **Claimant did not seek an expansion of her work injury in her Claim Petition, but only sought disfigurement benefits related to neck scarring. . . . Claimant's Claim Petition was silent on expanding her injury description and she did not affirmatively seek an expansion of her injury during the litigation. Consequently, Claimant was not entitled to an expansion of her work injury to include a C6-7 discectomy.** Furthermore, in terms of the Termination Petition, Dr. Salkind testified concerning Claimant's C6-7-disc surgery and incorporated it into his opinion of full recovery. Thus, even if we were to retroactively add the C6-7 discectomy to Claimant's injury description, it would be deemed moot, as she was found fully recovered from her entire work injury, including the subsequent surgery.

(R.R. at 162a-63a) (emphasis added; citations omitted). This petition for review followed.

### **Issues**<sup>3</sup>

On appeal, Claimant contends the WCJ erred in failing to amend her work injury to include the cervical spine surgery she underwent in August of 2022. Claimant additionally challenges the WCJ's grant of Employer's Termination Petition by disputing the credibility of Dr. Salkind's testimony, which she characterizes as unreasonable and unsupported by the record.

### **Analysis**

#### **Amendment of Work Injury**

We first address Claimant's argument concerning the WCJ's failure to amend her work injury to include her August 2022 surgery. Claimant maintains that it was illogical for the WCJ to determine that the surgical scarring on her neck was work related, but not the procedure itself. (Claimant's Br., at 12-15.)

Employer counters that Claimant waived this issue for appellate review, as she never requested the WCJ to amend her work injury in her Claim Petition, or at any other point during the WCJ proceedings. (Employer's Br., at 19-22.)

"The doctrine of waiver applies in workers' compensation proceedings." *Gilbert v. S. Whitehall Township*, 341 A.3d 212, 222 (Pa. Cmwlth. 2025). "An issue is waived unless it is preserved at every stage of the proceeding." *Dennis v. Inglis House*, 303 A.3d 559, 566 (Pa. Cmwlth. 2023); *see also* Pa.R.A.P. 1551(a) (stating that "[o]nly questions raised before the government unit shall be heard or considered," with limited exceptions not applicable here). "The purpose of the waiver doctrine is to ensure that the WCJ is presented with all cognizable issues so that the integrity,

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<sup>3</sup> "Our standard of review of a Board order limits us to determining whether the necessary findings of fact are supported by substantial evidence, whether an error of law or a violation of Board procedure has occurred, or whether constitutional rights were violated." *Lawry v. County of Butler*, 310 A.3d 1286, 1288 n.5 (Pa. Cmwlth. 2024).

efficiency, and orderly administration of the [workers'] compensation scheme of redress for work-related injury is preserved.” *Dennis*, 303 A.3d at 566.

Instantly, a review of the record reflects that Claimant’s Claim Petition sought disfigurement benefits only, and did not request an expansion of her work injury to include her surgery. (R.R. at 16a.) Additionally, at multiple points during the WCJ hearing, counsel for the parties and Claimant herself addressed the scope of the proceeding, and agreed that it was limited to her claim for disfigurement benefits and Employer’s Termination Petition. The WCJ, in rendering her decision, reiterated as to the parameters of the proceeding that: “[t]he only issue to decide with regard to the disfigurement claim is the value of the disfigurement.” (R.R. at 153a.) Therefore, the record demonstrates that Claimant never asked the WCJ amend her work injury to include her surgery, and as such, cannot now claim that the WCJ “failed” to take such action. Accordingly, Claimant waived her first issue on appeal.<sup>4</sup>

### **Substantial Evidence Claim**

Claimant next contends the WCJ’s determination that she has fully recovered from her work injury was not supported by substantial and competent evidence. Claimant challenges the credibility of Dr. Salkind’s testimony, which she maintains was deficient in several respects, including because he did not explain how she is capable of performing her job duties, such as answering 100 phone calls per day. (Claimant’s Br., at 16-19.)

“[I]t is a fundamental tenet of workers’ compensation law that the WCJ, as fact finder, has complete authority over questions of witness credibility and

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<sup>4</sup> We additionally note our agreement with the Board’s observation that expanding Claimant’s work injury to include her surgery would be moot because Employer established through Dr. Salkind’s testimony that she has fully recovered and is able to return to work without restriction. (R.R. at 163a.)

evidentiary weight.” *County of Allegheny v. Marzano*, 329 A.3d 715, 727 (Pa. Cmwlth. 2024). “As the ultimate fact finder, the WCJ 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.” *Id.*

“Moreover, it is irrelevant whether the record contains evidence to support findings other than those made by the WCJ; the critical inquiry is whether there is evidence to support the findings actually made.” *Bedford Somerset MHMR v. Workers’ Compensation Appeal Board (Turner)*, 51 A.3d 267, 272 (Pa. Cmwlth. 2012). Therefore, on appeal, we examine the record to assess whether “it contains evidence a reasonable person might find sufficient to support the WCJ’s findings.” *Id.* “If the record contains such evidence, the findings must be upheld, even though the record may contain conflicting evidence.” *Id.* It is well settled that “we are bound by the WCJ’s credibility determinations on appeal,” and “[the] fact that one party to a proceeding may view testimony differently is not grounds for reversal if substantial evidence supports the lower tribunal’s findings.” *Waymart v. Workers’ Compensation Appeal Board (Feldman)*, 766 A.2d 900, 902 (Pa. Cmwlth. 2000).

Here, Dr. Salkind, after considering Claimant’s medical history and conducting an IME, unequivocally opined that she had fully recovered from her work injury and could return to her prior employment without restriction. He further testified that although Claimant had sustained the accepted work related injury, the subsequent surgery left her free of pain and with an unimpeded range of cervical motion. While Dr. Rogers and Claimant testified to the contrary, the WCJ found their testimony on this point not credible, after observing Claimant’s demeanor and considering the evidence as a whole.

Upon review of the record, including the findings of the WCJ and the Board, we conclude that ample evidence supports the determination that Claimant has fully recovered from her work injury. Because the WCJ's credibility determinations and findings are supported by substantial evidence in the record, we are bound by them on appeal. *See Waymart*, 766 A.2d at 902. The fact that Claimant views Dr. Salkind's testimony differently than the WCJ is not grounds for reversal, as it is "irrelevant whether the record contains evidence to support findings other than those made by the WCJ," where, as here, "there is evidence to support the findings actually made." *See Bedford Somerset MHMR*, 51 A.3d at 272. We therefore conclude the Board properly affirmed the WCJ's decision to grant Employer's Termination Petition. Accordingly, we affirm the order of the Board.

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PATRICIA A. McCULLOUGH, Judge

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| Susan Rathfon,                 | : |                   |
| Petitioner                     | : |                   |
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|                                | : |                   |
| Rite Aid Corporation (Workers' | : |                   |
| Compensation Appeal Board),    | : |                   |
| Respondent                     | : |                   |

**ORDER**

AND NOW, this 23<sup>rd</sup> day of September, 2026, the April 4, 2025 order entered by the Workers' Compensation Appeal Board is hereby AFFIRMED.

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PATRICIA A. McCULLOUGH, Judge