IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gerri Germany,	:	
Petitioner	:	
	:	
v.	:	No. 292 C.D. 2014
	:	Submitted: October 17, 2014
Workers' Compensation Appeal	:	
Board (City of Pittsburgh, Police	:	
and UPMC Benefit Management	:	
Services, Inc.),	:	
Respondents	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: November 6, 2014

Gerri Germany (Claimant) petitions, *pro se*, for review of the order of the Workers' Compensation Appeal Board (Board) denying her request for remand to present additional evidence and amending and reaffirming its prior opinion and order that affirmed the decision of a workers' compensation judge (WCJ). The WCJ's decision had denied Claimant's review petition and granted the petition of the City of Pittsburgh (Employer) to terminate her workers' compensation benefits under the Pennsylvania Workers' Compensation Act (WC Act).[1] We affirm.

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

I.

A.

In 2002, while walking to criminal court as a police officer for Employer, Claimant sustained a left knee sprain when her ankle got caught in a sidewalk grate and she fell. As a result, Claimant received benefits under the Heart and Lung Act (H&L Act)[2] in lieu of workers' compensation benefits. In March 2006, Claimant's H&L Act benefits were terminated by an arbitrator's decision due to the permanency of her work-related injury, and a notice of compensation payable (NCP) was issued indicating that her benefits were converted to workers' compensation benefits.[3] The NCP described her work-related injury as a left knee sprain. In 2008, Employer issued a Notice of Ability to Return to Work based on the affidavit of full recovery signed by Jeffrey Kann, M.D. (Dr. Kann).

In 2008, Employer filed a petition to terminate Claimant's workers' compensation benefits because Dr. Kann opined that Claimant had fully recovered from her work-related left knee injury. Employer also sought to suspend Claimant's benefits because although Dr. Kann released her to return to work, she had not looked for employment in good faith. Claimant filed a review petition to amend the

[2] Act of June 28, 1935, P.L. 477, *as amended*, 53 P.S. §§637-638. The H&L Act allows "police and fire personnel to collect full salary benefits for temporary injuries sustained in the performance of their duties." *Cohen v. Workers' Compensation Appeal Board (City of Philadelphia)*, 909 A.2d 1261, 1262 n.1 (Pa. 2006).

[3] An employer's obligation to pay benefits under the H&L Act is concurrent with its obligation to pay benefits under the WC Act. *City of Erie v. Workers' Compensation Appeal Board (Annunziata)*, 838 A.2d 598, 604-05 (Pa. 2003).

description of her work-related injury in the NCP to include an injury to the right knee and left ankle and bilateral carpal tunnel syndrome (CTS).

To support Employer's petition to terminate benefits, Dr. Kann testified that he conducted three independent medical examinations (IME) of Claimant and reviewed diagnostic studies all of which showed little to justify her myriad of complaints. (Reproduced Record (R.R.) at 73). His initial 2005 IME revealed that her left knee had no swelling, a normal range of motion and no instability, and it was "'completely unremarkable.'" (*Id.*). He explained that her 2003 MRI and the x-rays taken at the time of examination did not even show arthritis; she "'had undergone the gold standard procedure … twice;'" that her own treating surgeon could not explain her ongoing complaints; that her functional limitations were unreasonable with no evidence of ongoing pathology; and that she had fully recovered from her work-related injury. (*Id.*). With his second 2008 IME, he reviewed updated medication records and noted that her surgeon "'continued to document … no evidence of any bony abnormalities in either right or left knees.'" (*Id.* at 74). He explained that his physical examination was identical to the one performed three years earlier and objective testing and recent diagnostic test results again confirmed full recovery. (*Id.*). In his final IME in 2009, Dr. Kann noted that Claimant did not report any right knee or left ankle complaints and the x-ray and examination revealed that "'her knees were unremarkable.'" (*Id.*). He stated that over the four-year period, he found no arthritis or ongoing pathology; she had fully recovered from the left knee injury; and she had not sustained either a right knee or left ankle injury. (*Id.*). He could not substantiate any impairment or disability relating to her work injury or to the need for further treatment. (*Id.*).

In opposition to the termination of her benefits and in support of her review petition, Claimant testified that she lived with her college-aged son on her workers' compensation benefits and her service disability pension. She stated that she uses prescribed Percocet daily, a medication salve, braces for her knees and back, and carpal tunnel braces. (R.R. at 70). She testified that after her work injury, she initially treated with Dr. Foster for a year, and also treated with Yram Groff, M.D. (Dr. Groff), who gave her injections in both knees and performed surgery on the left knee in 2003 and 2004. (*Id.*). She stated that she primarily treats with Frank Kunkel, M.D. (Dr. Kunkel), for her bilateral CTS and pain in both knees and ankles, and that he prescribed Percocet for the pain and salve for the arthritis in both knees. (*Id.*). She testified that she returned to work in 2003 to a light-duty job and eventually returned to full duty, but left work in 2004 because Dr. Kunkel advised that she could not perform any type of work within her physical limitations and that she ultimately retired on March 1, 2006. (*Id.* at 70, 71). She stated that she does not believe that she is capable of working in any capacity and that she has not sought employment until Employer's petitions were filed in 2008 when she filed job applications for sedentary positions on the internet with no response. (*Id.* at 70, 71).

Claimant presented the testimony of Dr. Kunkel, an anesthesiologist practicing in pain management and addiction medicine. He first examined Claimant in 2004, followed by monthly visits with all examinations showing "'pain with range of motion of her left knee, left ankle, some problems with her right knee and some symptoms consistent with [CTS]…'" (R.R. at 72). He noted that Claimant has undergone operative intervention and her complaints have been managed with medication, and opined that she has reached maximum medical improvement and that

her CTS developed from using crutches and canes and depression from the chronic pain. (*Id.*). He diagnosed Claimant with joint pain lower extremity syndrome of both knees and the left ankle and generalized chronic pain "'to cover the other parts of her body that seem to be in disarray'" that were all attributable to her 2002 work-related injury. (*Id.*). He firmly opined that Claimant was not exaggerating or faking her symptoms, and that she could not sustain regular employment due to her chronic pain syndrome and medications and early signs of depression. (*Id.*). He disputed the IME results based on his multiple examinations over the years and Claimant's honesty, her age and her overuse of crutches and a cane. He concluded that he generally expects her overall condition to worsen as her chronic pain deepens her depression. (*Id.*).

B.

The WCJ credited Claimant's testimony that she believed that her work-related injury caused the deterioration of her overall physical condition, but that the credible and persuasive medical evidence "belies that conclusion." (R.R. at 75). Specifically, the WCJ found Dr. Kunkel's testimony less persuasive than Dr. Kann's, noting that Dr. Kunkel only provided a general "syndrome" diagnosis to cover Claimant's complaints regarding the injuries that she wanted to add to the NCP, and that Dr. Kann "provided definitive and substantive reasons" for his opinions that were "backed by objective physical examination and diagnostic test results." (*Id.* at 76). The WCJ also accepted Claimant's testimony that she is not actively seeking employment and considers herself retired "due to her own perception of disability." (*Id.*). However, the WCJ found "that the claimant was not forced out of the workforce by her work injury given the lack of objective medical findings long after her retirement." (*Id.*). Accordingly, the WCJ suspended her benefits as of her March

1, 2006 retirement and terminated her benefits as of April 14, 2008, and denied Claimant's review petition. (*Id.* at 77).

On appeal to the Board, Claimant argued through new counsel that the WCJ's findings were not supported by substantial evidence; that the WCJ erred in determining the extent and status of Claimant's injuries and in finding that she removed herself from the labor market; and that the matter should be remanded to the WCJ to consider after-discovered evidence in the form of a medical report regarding Claimant's condition from Dr. Groff that Claimant obtained after the WCJ had issued her decision. (R.R. at 60-65). Specifically, Claimant alleged that prior counsel's proven incompetence by failing to offer medical evidence from Dr. Groff in the proceedings before the WCJ constituted "good cause" under Section 426 of the WC Act[4] and required remand for rehearing by the WCJ. (*Id.* at 65).

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[4] Section 426 of the Act provides, in pertinent part:

> The board, upon petition of any party and upon cause shown, may grant a rehearing of any petition upon which the board has made an award or disallowance of compensation or other order or ruling, or upon which the board has sustained or reversed any action of a [WCJ]….

77 P.S. §871. *See also* Section 419 of the Act, 77 P.S. §852 ("The board may remand any case involving any question of fact arising under any appeal to a [WCJ] to hear evidence and report to the board the testimony taken before him or such testimony and findings of fact thereon as the board may order…."); *Puhl v. Workers' Compensation Appeal Board (Sharon Steel Corp.)*, 724 A.2d 997, 1000 n.4 (Pa. Cmwlth. 1999) ("[W]e note that a petition for rehearing under section 426 of the Act is properly filed only *after* the WCAB has issued a decision. Because Claimant filed his petition *before* the WCAB ruled in this matter, Claimant's Petition for Rehearing was premature. Thus, Claimant's request to present new evidence is properly considered a Petition for Remand under section 419 of the Act…. Further, we recognize that our courts have frequently analyzed remand issues under the same standards used in section 426 rehearing cases.") (citations omitted and emphasis in original).

In 2011, the Board affirmed the WCJ's decision. The Board cited Dr. Kann's testimony supporting the termination of benefits where he opined that Claimant sustained no arthritis or ongoing pathology; that Claimant did not sustain any left ankle or right knee injuries; and that Claimant was fully recovered from her work-related injury. (Board 3/15/11 Opinion at 3). The Board also cited the WCJ's finding that Claimant failed to seek employment and "'considered herself retired due to her own perception of disability'" and noted that Claimant's argument in this regard related to the weight that the WCJ gave the evidence and not its competence. (*Id.* at 4). The Board also explained that Employer was entitled to a suspension of benefits because Claimant took a pension and has failed to look for work or establish that her work injury forced her retirement. (*Id.* at 4-5).

C.

Claimant did not appeal the Board's order to this Court. Rather, in July 2012, Claimant filed a petition with the Board for rehearing under Section 426[5] again seeking remand for the introduction of Dr. Groff's medical testimony and report and arguing that: (1) collateral estoppel prevented Employer from re-litigating the issue of the permanence of Claimant's injuries; (2) her appeal of the WCJ's decision was timely under Section 423 of the WC Act, 77 P.S. §853; (3) the proven incompetence

[5] *See City of Philadelphia v. Workers' Compensation Appeal Board (Harvey)*, 994 A.2d 1, 5-6 (Pa. Cmwlth. 2010) ("Section 426 of the Act permits the Board to grant a rehearing as long as the request for rehearing is made within eighteen months of the issuance of its opinion. The Board has broad powers to grant a rehearing and may do so when justice requires. The Board's authority to grant a rehearing is to prevent manifest injustice. The authority to grant a rehearing is to be liberally administered in the interest of the claimant. A rehearing has been appropriate to allow the Board to correct a mistake of law or misapprehension of an issue.") (citations omitted).

of prior counsel by failing to offer medical evidence from Dr. Groff is cause for remand under Section 426; (4) remand under Section 426 is appropriate because the new after-discovered medical evidence is material and non-cumulative; and (5) the Board erred in determining that she had removed herself from the labor market thereby supporting the suspension of benefits.

The Board granted rehearing and in January 2013, issued an opinion and order denying Claimant's request for remand and amending and reaffirming its prior order that affirmed the WCJ's decision. The Board first determined that collateral estoppel was inapplicable because a finding of permanence under the H&L Act did not permanently prevent Employer from later seeking a termination of benefits under the WC Act. (Board 1/3/14 Opinion at 3-4).[6] The Board next found that a remand

[6] The Board explained:

> [T]he Commonwealth Court has held that an employer was precluded from filing a petition to terminate [WC Act] benefits at the same time that it was attempting to terminate [H&L Act] benefits by arguing that the claimant's injury was permanent. *Kohut v.* [*Workmen's Compensation Appeal Board*] *(Township of Forward)*, 621 A.2d 1101 (Pa. Cmwlth.[), *appeal denied*, 633 A.2d 154 (Pa. 1993)]. On the other hand, the Court has held that an employer was not precluded from filing a termination petition five years and nine years after a finding of permanency for [H&L Act] purposes and the commencement of [WC Act] benefits. *Galloway v.* [*Workmen's Compensation Appeal Board*] *(Pennsylvania State Police)*, 690 A.2d 1288 (Pa. Cmwlth.[), *appeal denied*, 701 A.2d 579 (Pa. 1997)]; [*City of Pittsburgh v. Workers' Compensation Appeal Board (McGrew)*, 785 A.2d 170 (Pa. Cmwlth. 2001)].
>
> Here, the petition to terminate Claimant's [H&L Act] benefits, due to the permanency of her condition, was granted effective March 1, 2006, with the payment of [WC Act] benefits commencing as of that date. [Employer] did not file its Termination Petition, alleging

(Footnote continued on next page…)

was not required due to prior counsel's incompetence because prior counsel did present Dr. Kunkel's medical testimony in support of her review petition and in opposition to Employer's suspension and termination petitions, and his failure to also present Dr. Groff's testimony does not rise to the level of negligence requiring remand. (*Id.* at 4-5).[7] Finally, the Board concluded that Claimant's argument that a

(continued…)

> that Claimant was fully recovered from her work injury, until July 3, 2008, over two years later. We believe this situation to be analogous to the Commonwealth Court's decisions in *Galloway* and *McGrew*, wherein the Court found that the employer's termination petition was not precluded due to the substantial period of time that had elapsed between the commencement of [WC Act] benefits and the filing of the termination petition. We conclude therefore that [Employer] was not precluded from filing its Termination Petition in this case on the basis of the prior [H&L Act] determination finding Claimant's condition to be permanent.

(Board 1/3/14 Opinion at 3-4).

[7] The Board explained:

> In *Bickel* [*v. Workmen's Compensation Appeal Board (Williamsport Sanitary Authority)*, 538 A.2d 661 (Pa. Cmwlth. 1988)], the claimant's attorney indicated before the WCJ that he planned to present medical testimony to support medical records that were conditionally admitted into the record. *Id.* However, the attorney later indicated to the WCJ that the record could close, without the submission of this testimony. *Id.* As a result, the claimant was unable to meet his burden of proof on the claim petition. *Id.* The Court, upon reviewing the record, could discern no reasonable explanation for the attorney's actions. *Id.* The Court also noted that the situation appeared to have come as a surprise to the claimant, and that it was quite apparent that the presentation of medical testimony was the claimant's only means of medical proof of his injury, his disability, and the causal connection between his injury and disability. *Id.* The Court held that in that circumstance, a petition

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suspension was not appropriate because Employer did not prove that Claimant voluntarily removed herself from the workforce was addressed in its prior opinion and declined to revisit the issue. (*Id.* at 5 n.3).[8]

(continued…)

> for rehearing was warranted to permit the claimant to show that medical evidence was available that was not presented due to his attorney's negligence, and if the claimant made such a showing, then the case should proceed for a redetermination as to the claim. *Id.*
>
> Here, by contrast, a review of the record reveals numerous references to Claimant's treating physician, Dr. Groff, with Claimant indicating that she was treating with both Dr. Groff and Dr. Kunkel for her work injury. It is apparent from the record that Claimant's former attorney was aware of Claimant's treatment with Dr. Groff, but chose not to present Dr. Groff's testimony. Rather, he chose to present testimony from Dr. Kunkel, who was also treating Claimant for her work injury. While the record is devoid of any reason as to why Claimant's former attorney might have chosen not to present testimony from Dr. Groff, we simply cannot analogize this case to *Bickel* where the claimant's attorney failed to present any medical testimony whatsoever on the claimant's behalf, because in this case Claimant's former attorney did present medical testimony from Claimant's other treating physician. Because the conduct of Claimant's former attorney does not rise to the level of negligence that was exhibited by the attorney in *Bickel*, we deny Claimant's request to remand to present additional evidence.

(Board 1/3/14 Opinion at 4-5) (footnote omitted).

[8] The Board explained:

> Claimant argues in her Petition for Rehearing that the WCJ erred in finding that [Employer] met its burden of proving that Claimant voluntarily removed herself from the entire workforce. This argument was addressed in our March 15, 2011 Opinion and Order, affirming the Decision and Order of the WCJ. In conducting our analysis, we relied on the Commonwealth Court's decision in *City of Pittsburgh v.* [*Workers' Compensation Appeal Board*] *(Robinson)*, 4

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II.

In this appeal,[9] Claimant alleges that the Board erred in affirming the WCJ's decision that denied her review petition and granted Employer's suspension and termination petitions for the same reasons that she raised before the Board. Claimant argues[10] that: (1) Employer was collaterally estopped from re-litigating the permanence of her work-related injury; (2) the Board erred in refusing to remand to the WCJ for the reception of her after-discovered medical evidence; and (3) the WCJ erred in finding that she had removed herself from the workforce.

A.

Claimant contends Employer was collaterally estopped from re-litigating the permanence of her work-related injury because that had been determined in the H&L Act hearing that her injuries were permanent. However, Employer was not collaterally estopped from seeking a termination of Claimant's benefits under the WC

(continued…)

> A.3d 1130 (Pa. Cmwlth. 2010). Since that time the *Robinson* decision was affirmed by the Supreme Court of Pennsylvania at 67 A.3d 1194 (Pa. 2013). Claimant has advanced no new arguments in support of her position, except for those already addressed above. We therefore decline to revisit this issue.

(Board 1/3/14 Opinion at 5 n.3).

[9] Our review is limited to determining whether errors of law were made, constitutional rights were violated, and whether necessary findings of fact are supported by substantial evidence. *Paxos v. Workmen's Compensation Appeal Board (Frankford-Quaker Grocery)*, 631 A.2d 826, 829 n.8 (Pa. Cmwlth. 1993).

[10] We consolidate the claims raised by Claimant in the interest of clarity.

Act based on a full recovery more than two years after her benefits under the H&L Act were terminated because her injuries were considered "permanent." Ignoring that "permanent" in the workers' compensation context does not mean forever, in *McGrew*, 785 A.2d at 174, we rejected a similar argument, stating:

> Here, Claimant's [H&L Act] benefits were terminated in 1993, and he began receiving [WC Act] benefits that same year. In 1998, five years later, the employer filed a petition to terminate Claimant's [WC Act] benefits. Based on our reasoning in *Galloway*, a substantial period of time had elapsed between the issuance of [WC Act] benefits and the filing of the termination petition, and Employer was not precluded, therefore, from filing its termination petition in this case.

Because two years had elapsed between the finding of "permanence" in the H&L Act proceeding and the WC Act proceeding, this case is distinguishable from *Kohut* and Employer is not collaterally estopped from seeking termination of Claimant's WC Act benefits.

B.

The Board also did not err in denying Claimant's remand request. In deciding whether to grant a rehearing under Section 426 based on after-discovered evidence, it is within the Board's broad power to grant a remand "when justice requires." *Cudo v. Hallstead Foundry, Inc.*, 539 A.2d 792, 794 (Pa. 1988). As this Court has explained:

> A rehearing petition may not be used as a vehicle for testing the merits of an unappealed decision. It is appropriate for use as a means of seeking to present after[-]discovered, non-cumulative evidence which could not have been, by the

> exercise of ordinary diligence, produced at the original hearing. However, "a rehearing should not be allowed simply for the purpose of strengthening weak proofs which have already been presented…."

Young v. Workmen's Compensation Appeal Board (Britt & Pirie, Inc.), 456 A.2d 1150, 1152 (Pa. Cmwlth. 1983) (citations omitted).[11]

Claimant has failed to set forth how the new evidence is not merely being used to strengthen the weak proof of her continuing disability that was already presented through Dr. Kunkel's discredited expert testimony[12] and to impeach the credited expert testimony of Dr. Kann. Claimant has also failed to allege how the new evidence could not have been, by the exercise of ordinary diligence, produced in the prior proceedings before the WCJ. As a result, the Board did not err in failing to

[11] The decision to grant or deny a rehearing is within the Board's discretion and the Board's decision will not be disturbed absent an abuse of that discretion. *Stitchick v. Workers' Compensation Appeal Board (Trumball Corporation)*, 782 A.2d 1133, 1136 (Pa. Cmwlth. 2001). An abuse of discretion occurs not merely when the Board reaches a decision contrary to one that this Court would have reached; rather, an abuse of discretion occurs "when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will." *Payne v. Workers' Compensation Appeal Board (Elwyn, Inc.)*, 928 A.2d 377, 379 (Pa. Cmwlth. 2007) (citation omitted).

[12] As noted by the Board, the fact that prior counsel presented Dr. Kunkel's expert testimony distinguishes the instant matter from *Bickel* in which counsel failed to present any evidence in support of the claimant's petition. *See, e.g., Johnson v. Workmen's Compensation Appeal Board (Bernard S. Pincus Co.)*, 321 A.2d 728, 730 (Pa. Cmwlth. 1974) ("That [the claimant]'s prior counsel merely misjudged the weight the [WCJ] would give to the evidence submitted does not amount to incompetence even under the standard applicable in criminal cases. We find that the Board did not abuse its discretion in denying a rehearing on this ground.").

grant a remand for the reception of evidence that could have been submitted to the WCJ to merely strengthen weak proofs that were already presented.

C.

Finally, Claimant contends that the WCJ erred in finding[13] that she had voluntarily removed herself from the workforce[14] because there is no record evidence supporting this determination. We do not agree.

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[13] Questions of credibility and weight of the evidence are within the province of the WCJ who is free to accept or reject the testimony of any witness in whole or in part. *Reyes v. Workers' Compensation Appeal Board (AMTEC)*, 967 A.2d 1071, 1076 n.3 (Pa. Cmwlth.), *appeal denied*, 980 A.2d 611 (Pa. 2009); *Greenwich Collieries v. Workmen's Compensation Appeal Board (Buck)*, 664 A.2d 703, 706 (Pa. Cmwlth. 1995). The WCJ's findings of fact will not be disturbed if they are supported by substantial, competent evidence. *Id.*

[14] As the Supreme Court has explained:

> Where the employer challenges the entitlement to continuing compensation on grounds that the claimant has removed … herself from the general workforce by retiring, the employer has the burden of proving that the claimant has voluntarily left the workforce. There is no presumption of retirement arising from the fact that a claimant seeks or accepts a pension, much less a disability pension; rather, the worker's acceptance of a pension entitles the employer only to a permissive inference that the claimant has retired. Such an inference, if drawn, is not on its own sufficient evidence to establish that the worker has retired–the inference must be considered in the context of the totality of the circumstances. The factfinder must also evaluate all of the other relevant and credible evidence before concluding that the employer has carried its burden of proof.
>
> If the employer produces sufficient evidence to support a finding that the claimant has voluntarily left the workforce, then the burden shifts to the claimant to show that there in fact has been a compensable loss of earning power. Conversely, if the employer fails to present sufficient evidence to show that the claimant has retired,

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It is undisputed in this case that Claimant retired on March 1, 2006. (*See* N.T. 8/15/08 at 21).[15] Regarding that retirement, the WCJ made the following relevant finding of fact:

> The claimant did not actively seek employment and clearly considers herself retired due to her own perception of disability. Although she suggested she applied for jobs online, no specific information or evidence was offered and even if true, the applications were made after [Employer]'s petitions were filed. I find this was not a genuine intention to locate employment but rather to deflect [Employer's] petitions. I also find as fact that the claimant was not forced out of the workforce by her work injury given the lack of objective medical findings long after her retirement.

(R.R. at 76). The foregoing findings are amply supported by Claimant's testimony before the WCJ. (*See* N.T. 10/20/09 at 13-14).[16]

(continued…)

> then the employer must proceed as in any other case involving a proposed modification or suspension of benefits.

Robinson, 67 A.3d at 1209-10.

[15] "N.T. 8/15/08" refers to the transcript of Claimant's testimony at the WCJ hearing of August 15, 2008.

[16] "N.T. 10/20/09" refers to the transcript of Claimant's testimony at the WCJ hearing of October 20, 2009. Specifically, Claimant testified, in pertinent part, as follows:

> **Q. Have you ever told [Dr. Kunkel], specifically, that you had indicated that you would not do any type of – wouldn't be reliable in terms of being able to work?**
> A. I tried to work, but I wasn't reliable.

(Footnote continued on next page…)

Likewise, the WCJ's findings of full recovery and lack of functional limitations or impairment as of the June 2005, April 2008 and May 2009 IMEs are amply supported by Dr. Kann's testimony. (*See* N.T. 9/24/09 at 13, 14-17, 18-21, 21-27, 32, 38-42).[17] In sum, and contrary to Claimant's assertion, there is ample record

(continued…)

> **Q. And you're talking about when you last worked for [Employer]?**
> A. Yes, 2004.
>
> **Q. Currently do you think you're capable of working in any type of capacity?**
> A. No.
>
> **Q. And am I correct that you're not seeking any type of work on your own, currently?**
> A. I did seek it when I received the letter from the city, I sought out work.
>
> **Q. Currently, as we sit here today, are you seeking any type of employment on your own?**
> A. Not really. Dr. Kunkel told me that I wouldn't be able to gainfully work.
>
> **Q. And when was the last time you actually tried to find any type of work on your own?**
> A. The middle part of 2008, I believe.
>
> **Q. You said that's after you received the petition that was asking to stop your medicals?**
> A. I believe that was the petition.
>
> **Q. From the time that you last worked for [Employer] in 2004 through 2008 you didn't seek any type of work on your own?**
> A. That's correct.

[17] "N.T. 9/24/09" refers to Dr. Kann's September 24, 2009 deposition testimony.

evidence to support the WCJ's finding that Claimant voluntarily removed herself from the workforce by retiring and her retirement was not caused by any purported disability. We will not accede to her request to reweigh or reconsider the evidence presented to the WCJ supporting contrary conclusions.

Accordingly, the Board's order is affirmed.

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DAN PELLEGRINI, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gerri Germany,	:	
Petitioner	:	
	:	
v.	:	No. 292 C.D. 2014
	:	
Workers' Compensation Appeal Board (City of Pittsburgh, Police and UPMC Benefit Management Services, Inc.),	:	
Respondents	:	

O R D E R

AND NOW, this 6th day of November, 2014, the order of the Workers' Compensation Appeal Board dated January 3, 2014, at No. A10-0916, is affirmed.

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DAN PELLEGRINI, President Judge