IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paul Lang, Petitioner	:	
v.	:	No. 586 C.D. 2013 Submitted: September 13, 2013
Workers' Compensation Appeal Board (Specialty Transport), Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED: November 18, 2013**

Paul Lang (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board). The Board affirmed a decision of a Workers' Compensation Judge (WCJ). The WCJ granted Claimant's petition to review compensation benefits, thereby adding De Quervain's tendonitis to the previously identified work-related injuries to Claimant's left hand and wrist. The WCJ also granted the termination petition filed by Claimant's employer, Specialty Transport Corporation (Employer). Thus, while recognizing a previously unidentified work-related injury, the WCJ determined that Claimant had recovered from all of his work-related injuries. We affirm the Board's order.

Based upon a notice of compensation payable issued in 2004, Claimant began to receive workers' compensation benefits for an injury described

as "left hand and wrist sprain—fracture." On April 20, 2010, Employer filed a termination petition, asserting that Claimant had fully recovered from his work-related injuries. Claimant filed an answer denying that he had fully recovered. On June 4, 2010, Claimant filed a petition to review compensation benefits, asserting that his work-related injury was incorrectly described and requesting that the description of his injury be expanded to include, among other alleged conditions, "a left De Quervain's tendonitis." (Reproduced Record (R.R.) at 7a.) Employer filed an answer denying that Claimant sustained work-related injuries other than a left wrist fracture and sprain.

The WCJ conducted a hearing, during which Claimant testified. Claimant explained that he injured his wrist and hand when he fell to the ground from the bed of a pick-up truck while attempting to unload a cement mixer. Claimant's first treating physician, Dr. Cautilli, M.D., put his wrist in a cast, prescribed physical therapy, and ultimately performed a surgical procedure on Claimant's left wrist. Claimant testified that before the surgery, he could not use his left hand for any purpose and that it remained the same, and perhaps worse, after the surgery. Claimant testified that he is unable to perform certain activities, such as: (1) wrap fingers around a steering wheel; (2) close hand more than half way; (3) write with his left (formerly predominant) hand; (4) carry a gallon of milk in his left hand without the aid of his forearm; and (4) hold a glass in his left hand to drink.

Dr. Asif M. Ilyas, M.D., testified by deposition for Claimant and acknowledged that he only saw Claimant once, which was for the purpose of this workers' compensation litigation. (R.R. at 21a.) Dr. Ilyas opined that Claimant had suffered or continued to suffer from three conditions with regard to his left

hand and wrist: (1) a work-related scaphoid fracture from which Claimant had fully recovered; (2) work-related De Quervain's tenosynovitis from which Claimant had not recovered; and (3) non-work-related osteoarthritis. (R.R. at 18a.) Dr. Ilyas testified that he would place work restrictions on Claimant because of the De Quervain's condition and that Claimant would not be able to return to his pre-injury work. (*Id.*) With regard to the De Quervain's condition, Dr. Ilyas testified that he performed the "Finklestein's" test, which is indicative of De Quervain's, and that Claimant tested positive for the condition. (R.R. at 16a.) Dr. Ilyas also testified that while Claimant tested positive for osteoarthritis, that condition and the symptoms of it were not work-related and were not the cause of problems Claimant is having with "his first regular thumb." (R.R. at 16a-17a.)

Dr. Ilyas also testified regarding negative Finklestein's tests obtained by Dr. Cautilli (after Dr. Cautilli performed surgery on Claimant's hand for De Quervain's syndrome), and by Employer's expert, Dr. Zohar Stark, M.D. In attempting to respond to the negative test results, Dr. Ilyas provided reasons why those results might not be valid. With regard to Dr. Cautilli's results, Dr. Ilyas opined that the test was unlikely to have been a true negative test, based upon the recurring pain Claimant experienced during post-operative therapy. (R.R. at 19a.) With regard to the negative test Dr. Stark obtained, Dr. Ilyas' testimony suggested that Dr. Stark's manner of performing the Finklestein test may not have been as stringent or revealing, given variables such as the amount of force and manipulation used. (*Id.*) On cross-examination, Dr. Ilyas' opinion remained consistent, indicating his belief that, although Dr. Cautilli's post-operative testing indicated that the surgery had corrected Claimant's De Quervain syndrome, he believed that Dr. Cautilli's surgery was not successful. (R.R. at 27a.)

Employer submitted the deposition testimony of Dr. Stark, who testified that he examined Claimant one time at the request of the State Workers' Insurance Fund. (R.R. at 33a.) When asked about his relevant findings, Dr. Stark testified that Claimant had "a scar over the dorsal aspect of his left wrist. He had tenderness on palpitation over the left upper extremity from the elbow down to the fingers. He had full range of motion of his wrist, a negative Finklestein test." (R.R. at 34a.) Dr. Stark opined as follows regarding the injuries he believed Claimant sustained as a result of his work accident:

> It appeared he sustained injuries to his left hand and left wrist. Dr. [Cautilli] noted that he had a fracture of his scaphoid, which I did not see any report of x-ray saying that. He treated it a[s a] fracture of the scaphoid for eight weeks with a cast, and that was followed by therapy. Subsequently, he diagnosed him as having a first dorsal compartment syndrome and did surgery to reduce that.
>
> When I examined him, I had no objective findings to substantiate his subjective complaints. I did find inconsistencies between the patient's subjective complaints and the objective findings. It was my opinion at that time that he was not disabled and could return to work as a truck driver with no restrictions.

(*Id.*)

Dr. Stark testified that Claimant's comments during the examination, indicating that "he had pain on palpitation over every point of his arm, from the elbow down to his hand," caused him to believe that Claimant intended to mislead him regarding his condition. (*Id.*)

Thereafter, Employer's counsel addressed specifically Claimant's review petition, seeking to add De Quervain's syndrome as a work-related injury. First counsel questioned Dr. Stark regarding an apparent positive Finklestein's test

obtained from Dr. Manaherz.[1] Dr. Stark testified that he disagreed with Dr. Manaherz's results. (R.R. at 35a.) Dr. Stark acknowledged that Dr. Cautilli had diagnosed Claimant with De Quervain's four months after Claimant's work injury and that Dr. Cautilli had performed surgery for that condition. (*Id.*) Dr. Stark noted that Dr. Cautilli had treated Claimant after the surgery, but Dr. Cautilli's records indicated that, as of the date of Dr. Cautilli's last report, Claimant "did not have any signs of De Quervain disease." (*Id.*) In fact, Dr. Stark also noted that Dr. Cautilli had obtained a negative Finklestein's test result at that time. (R.R at 38a.) Thus, Dr. Stark opined that, based upon Dr. Cautilli's records discharging Claimant, he did not find Dr. Manaherz's positive Finklestein's test reliable. (R.R. at 35a.) Dr. Stark repeated upon questioning his previous testimony that he found no objective evidence of De Quervain's when he examined Claimant. (*Id.*)

With regard to Dr. Ilyas' opinion as reflected in that physician's report, Dr. Stark testified that he did not agree entirely with Dr. Ilyas' opinion:

> I would partly agree and partly disagree. His impression is the patient—that Mr. Lang has a left scaphoid fracture, which is healed. He has osteoarthritis of this hand, but I didn't find any evidence that he has left de Quervain tenosynovitis. So I disagree with that second diagnosis. As far as his ability to work, I think he can do his regular work as a truck driver with no restrictions.

(R.R. at 36a.) Dr. Stark indicated during his testimony that he expressed his opinions within a reasonable degree of medical certainty. (*Id.*)

Thus, up to that point in the deposition testimony, Dr. Stark did not affirmatively accept that Claimant had De Quervain's or that he suffered from De

[1] Although Dr. Stark was questioned about Dr. Manaherz's test results, those results and the nature of Dr. Manaherz's examination of Claimant are not part of the record.

Quervain's as a result of his work accident. He acknowledged that Dr. Cautilli diagnosed De Quervain's, however, and opined that he did not find any objective findings of De Quervain's when he examined Claimant.

On cross examination, Claimant's counsel asked whether the results of a Finklestein's test can be negative or positive at a given time, suggesting that even if a person definitively has De Quervain's, a physician may nevertheless sometimes obtain a negative result. Dr. Stark responded "[n]o. If you have pathology, it's there all the time." (R.R. at 38a.) Then Claimant's counsel posed the following question, and Dr. Stark responded:

> Q: So if he had [D]e Quervain that was addressed by the surgery, the surgery could have resulted in the subsequent Finklestein's test being negative?
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> A: Yes.

(*Id.*) Dr. Stark also testified on cross-examination that Claimant had a full range of motion of his fingers and his thumb. (*Id.*)

The WCJ made the following credibility determination regarding the medical experts' testimony:

> [I] find[] the testimony of both credible, in part. Both doctors agree that the scaphoid fracture has healed. [I] find[] it more likely than not that Claimant sustained De Quervain's syndrome as a result of the fact that surgery for that condition was performed. Based on the lack of treatment for years, [I] find[] the complete full recovery opinion of Dr. Stark to be more credible than the opinion of Dr. Ilyas.

(R.R. at 59a.) With regard to Claimant's credibility, the WCJ determined that Claimant "may have the complaints to which he testified, but they are not related to the work-related injury." (R.R. at 60a.) Thus, the WCJ determined that Claimant did sustain De Quervain's syndrome as a result of his work-related

injury, but that he had recovered from the injury as of March 31, 2010, the date upon which Dr. Stark examined Claimant. In conclusion, the WCJ granted Claimant's review petition to add the De Quervain's syndrome as a work-related injury, but also granted Employer's termination petition based upon the determination that Claimant had fully recovered from that injury.

The Board affirmed the WCJ's decision, and Claimant appealed the Board's order.[2] Claimant raises the question of whether the Board erred in affirming the WCJ, arguing that, in light of evidence concerning the existence of ongoing symptoms of De Quervain's syndrome, it was improper for the WCJ to rely upon Dr. Stark's testimony. Claimant contends that the WCJ erred in relying upon Dr. Stark's testimony, arguing that the testimony only indicated that Claimant's De Quervain's syndrome was not work-related and does not indicate that Dr. Stark opined that Claimant is "fully recovered." In essence, Claimant argues that Dr. Stark failed to assume the existence of De Quervain's and opine unequivocally that it had resolved at the time of his examination of Claimant, and, thus, asserts that his testimony is not competent with regard to the termination petition.

The key issue in this case is whether, in a proceeding where a claimant is successful in adding an additional injury to those already acknowledged as work-related, and a WCJ addresses simultaneously an employer's attempt to terminate compensation, the employer's medical expert must not only acknowledge the existence of the alleged work-related injury but also acknowledge

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[2] This Court's review is limited to considering whether necessary factual findings are supported by substantial evidence, and whether an error of law or violation of constitutional rights occurred. 2 Pa. C.S. § 704.

that the injury is in fact work-related. The other issue is whether a medical expert's testimony that acknowledges that an injury existed (whether work-related or not), and opines that *no objective evidence exists* to show that a claimant continues to suffer from the injury, but does not specifically indicate that the claimant has *fully recovered from an injury*, is sufficient as a matter of law to support a termination of benefits.

Once an employer accepts that a particular injury is work-related, or, after such an issue has been litigated, the employer may not re-litigate such injuries. Thus, when an employer seeks to have benefits for a work-related injury terminated, the employer must support a termination petition with medical expert testimony that (1) recognizes the accepted work-related injury and (2) opines unequivocally that the claimant has recovered from the injury or injuries. *O'Neill v. Workers' Comp. Appeal Bd. (News Corp, Ltd.)*, 29 A.3d 50, 55 (Pa. Cmwlth. 2011). An employer's medical expert, however, need not express belief that a claimant actually sustained the accepted work-related injuries, nor even believe that the accepted injuries are in fact work-related. It is sufficient for a medical expert to testify regarding the accepted injuries and express an unequivocal opinion that the claimant has recovered from the injuries. *Id.* at 57; *Hall v. Workers' Comp. Appeal Bd. (America Serv. Group)*, 3 A.3d 734, 741 (Pa. Cmwlth. 2010). In *Hall*, we held that "[a] medical expert need not necessarily believe that a particular work injury actually occurred. The expert's opinion is competent if he *assumes* the presence of an injury and finds it to be resolved by the time of the IME." *Hall*, 3 A.3d at 741 (emphasis added).

In this case, Claimant contends that Dr. Stark's testimony was not competent to support the WCJ's factual findings, in part, because, Claimant

asserts, Dr. Stark did not provide an opinion based upon an acceptance of the fact that Claimant had De Quervain's syndrome at all, *i.e.*, either work-related or non-work-related. We disagree with Claimant's assessment of Dr. Stark's testimony.

Dr. Stark first testified regarding his review of the records of Dr. Cautilli, noting that that physician had diagnosed the fracture and, subsequently, "first dorsal compartment syndrome" (which appears to be another medical phrase to describe De Quervain's syndrome), and that Dr. Cautilli performed surgery to address that condition. (R.R. at 34a.) Dr. Stark never testified that he did not believe Claimant had suffered De Quervain's syndrome. His testimony reflects his understanding that Claimant had been diagnosed and treated for De Quervain's syndrome, based upon his review of Dr. Cautilli's records, which indicated that when Dr. Cautilli issued his last report regarding Claimant, Claimant "did not have any signs of De Quervain's disease." (R.R. at 35a.) Dr. Stark also testified that he performed the Finklestein test, which he found to illustrate a negative diagnosis for De Quervain's syndrome. (R.R. at 34a.) Moreover, on cross-examination, as noted in the quoted testimony above, Dr. Stark responded to the hypothetical question of whether, if Claimant had De Quervain's syndrome that was addressed by Dr. Cautilli's surgery, the surgery could have resulted in a negative Finklestein's test. (R.R. at 38a.) Thus, Dr. Stark's testimony reflects his opinion that, although he did not believe that Claimant had De Quervain's syndrome as a result of his work accident, he accepted for the purpose of evaluating Claimant's then-present condition, that Claimant indeed had De Quervain's syndrome following his work-related accident. Accordingly, we do not agree with Claimant's argument that Dr. Stark's opinion was not competent on those grounds.

Claimant, however, also argues that Dr. Stark's opinion was not competent because he did not opine that Claimant was fully recovered, but rather only testified that he found no objective findings to support a diagnosis of De Quervain's syndrome. Claimant argues that simply testifying that there are no objective findings to support a diagnosis leaves open the middle ground possibility that the condition is merely dormant, and, that, consequently, that opinion is not the equivalent of opining that a full recovery has occurred.

In order to sustain its burden in a termination petition where a claimant continues to complain of pain, an employer must provide unequivocal medical expert testimony that he or she believes, within a reasonable degree of medical certainty, that a claimant has fully recovered, that the claimant can return to work without restrictions, and that there are no objective medical findings that either substantiate a claimant's claim of pain or connect those claims to the work injury. *Thompson v. Workers' Comp. Appeal Bd. (Sacred Heart Med. Ctr.)*, 720 A.2d 1074, 1077 (Pa. Cmwlth. 1998) (quoting *Udvari v. Workmen's Comp. Appeal Bd. (USAir)*, 550 Pa. 319, 327, 705 A.2d 1290, 1293 (1997)).

With regard to the requirement that a medical expert opine unequivocally that a claimant has "fully recovered," we noted in *Thompson* that "the failure of the employer's expert to employ these 'magic words' is not fatal to the employer's claim. Instead, the expert testimony must be reviewed in its entirety to determine whether the conclusions reached are sufficient to warrant termination of benefits." *Thompson*, 720 A.2d at 1077 (citation omitted). We also referred again to the Supreme Court's decision in *Udvari*, 550 Pa. at 327, 705 A.2d at 1293 n.3, parenthetically noting that it is "sufficient that [the] physician testified

to releasing [the] claimant to work without restrictions because [the] work-related injury was resolved." *Thompson*, 720 A.2d at 1077.

In *Broughton v. Workers' Compensation Appeal Board (Disposal Corporation of America)*, 709 A.2d 443 (Pa. Cmwlth.), *appeal denied*, 556 Pa. 680, 727 A.2d 133 (1998), we concluded that medical testimony was sufficient to support a termination petition even where the expert testifying only opined regarding the following: (1) his review of the claimant's medical records and examination of the claimant; (2) his opinion that the examination resulted in negative findings relating to the claimant's work-related injuries; (3) his admission that previous tests revealed a bulge at the discs, but that he found no objective evidence of herniation or other neural compromise; and (4) his opinion that the claimant was capable of returning to his pre-injury employment as a garbage truck driver without restriction. *Broughton*, 709 A.2d at 444. The expert made no comments at all about the extent of the claimant's recovery. We held that "[a] medical opinion that, as here, is unequivocally rendered is sufficient without resort to 'magic words' such as 'fully recovered.'" *Id.* at 446.

Dr. Stark's opinion provides similar qualitative content. He referenced his review of Claimant's records, he examined Claimant, he recognized and explained his reasons for concluding that Claimant had recovered from De Quervain's syndrome based upon his objective findings upon examination of Claimant and Dr. Cautilli's records, and he also testified that, in his opinion, he would release Claimant to work without restrictions.

Based upon the foregoing, we conclude that the Board did not err in affirming the WCJ's decision terminating Claimant's workers' compensation benefits. Accordingly, we affirm the Board's order.

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P. KEVIN BROBSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paul Lang, :
Petitioner :
:
v. : No. 586 C.D. 2013
:
Workers' Compensation Appeal Board :
(Specialty Transport), :
Respondent :

ORDER

AND NOW, this 18th day of November, 2013, the order of the Workers' Compensation Appeal Board is AFFIRMED.

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P. KEVIN BROBSON, Judge