

Before the WCJ, Claimant testified on her own behalf. She testified she felt a “pop” in her back while lifting a patient in the performance of her job. Reproduced Record (R.R.) at 16a. She promptly advised her floor supervisor and filled out an incident report. A week later, she felt spasms in her back and again advised her supervisor. The supervisor instructed her to seek medical treatment at St. Luke’s Hospital, which she did. Claimant received treatment from St. Luke’s Hospital on three occasions for the work injury. During this time, she continued to work for Employer on a light-duty basis. At her last visit on June 4, 2008, St. Luke’s Hospital released Claimant to return to full-duty work, which she did.

Claimant testified she again had muscle spasm and pain in her lower back in August or September 2008, for which she sought treatment at the Pocono Medical Center. A year later, in November 2009, she treated with Dr. Fuhai Lee, a neurologist, and underwent an MRI of her lumbar spine.

Additionally, Claimant testified Employer terminated her employment on November 14, 2008, for absenteeism. Thereafter, Claimant received unemployment compensation benefits.

Claimant also presented the deposition of Dr. James B. Kim (Claimant’s Physician), a board certified physiatrist, who began treating her in June 2010. Based on his examination of Claimant and review of her history and medical records, Claimant’s Physician opined Claimant suffered from thoracic and lumbar myofascial pain. He noted the 2009 MRI indicated degenerative lumbar changes with disc desiccation and a broad-based disc herniation at L4-5 with

impingement of the thecal sac. He opined Claimant's back problems were caused by the work injury and she was not capable of returning to her job.

On cross-examination, Claimant's Physician admitted: he believed Claimant was out of work from the time of injury; he did not treat Claimant until two years after the injury; and, the medical record of June 4, 2008 indicated Claimant was no longer having pain and spasm and was ready to return to full-duty work without restrictions.

In opposition, Employer offered the testimony of Juliana Gierula, a nurse supervisor (Supervisor). She testified Claimant was in Employer's progressive discipline process because of absenteeism problems, which began before the work injury. According to Supervisor, Employer warned Claimant about her absenteeism and suspended her twice before ultimately terminating her employment on November 14, 2008. The WCJ found Supervisor's testimony concerning Claimant's absenteeism credible.

Employer also presented the deposition testimony of its medical expert, Dr. Scott Naftulin (Employer's Medical Expert), a board certified physiatrist, who examined Claimant in May 2010. Based on his physical examination of Claimant and review of her history and medical records, Employer's Medical Expert opined Claimant sustained a work injury in the nature of an upper back strain and sprain, from which she completely recovered.

To the extent the medical experts disagreed, the WCJ found the opinions of Employer's Medical Expert more credible than Claimant's Physician. The WCJ explained:

[C]laimant indicated she was pain free by June 4, 2008 and returned to full duty work without restriction, which she continued until the time of her termination in November of 2008. [C]laimant presented no medical evidence from any provider who treated her during the first two years after the work injury. [Claimant's Physician] did not see [C]laimant until more than two years after the injury and at the time he formulated his opinion he was utterly unaware that [C]laimant did full duty work for almost six months after the work injury.

WCJ Op., 12/20/10, Finding of Fact (F.F.) No. 12.

The WCJ concluded Claimant did not prove she suffered a disabling work injury or experienced any loss of wages during the brief period of light-duty work. Accordingly, the WCJ denied Claimant's claim petition. The Board affirmed. Claimant now petitions for review.¹

II. Discussion

On appeal, Claimant contends the WCJ erred by denying her claim petition because the WCJ's decision is neither reasoned nor supported by competent evidence. She claims Employer's Medical Expert's testimony is not competent as a matter of law because he did not review all of Claimant's medical

¹ Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were made, or whether constitutional rights were violated. Mora v. Workers' Comp. Appeal Bd. (DDP Contracting Co., Inc. & Penn Nat'l Ins.), 845 A.2d 950 (Pa. Cmwlth. 2004).

records. Additionally, Claimant contends the WCJ did not issue a reasoned decision by failing to explain why he credited the medical opinions of Employer's Medical Expert over Claimant's Physician.²

A. Medical Testimony

First, Claimant contends the WCJ's decision is not supported by competent evidence. Specifically, the WCJ relied on the testimony of Employer's Medical Expert, who did not review the medical records of Claimant's Physician or Dr. Stanley Mielnicki, her family physician. Therefore, his opinions are based on an incomplete review of medical records and, thus, incompetent.

The law is well settled that the WCJ, as fact finder, has exclusive power over questions of credibility and evidentiary weight, that the WCJ may reject the testimony of any witness in whole or in part, and that such determinations are not subject to appellate review. Potere v. Workers' Comp. Appeal Bd. (Kemcorp), 21 A.3d 684 (Pa. Cmwlth. 2011). However, whether medical evidence is competent is a conclusion of law reviewable on appeal. Dillon v. Workers' Comp. Appeal Bd. (City of Phila.), 853 A.2d 413 (Pa. Cmwlth. 2004). 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 Prods. v. Workers' Comp. Appeal Bd. (Plewa), 855 A.2d 932 (Pa. Cmwlth. 2004).

² In a proceeding on a claim petition, the claimant bears the burden of proving all the elements necessary to support an award of benefits, not the employer. Potere v. Workers' Comp. Appeal Bd. (Kemcorp), 21 A.3d 684 (Pa. Cmwlth. 2011).

In addition, a medical expert's opinion is not rendered incompetent unless it is based solely on inaccurate information. Am. Contracting Enters., Inc. v. Workers' Comp. Appeal Bd. (Hurley), 789 A.2d 391 (Pa. Cmwlth. 2001). "The fact that a medical expert does not have all of a claimant's medical records goes to the weight given the expert's testimony, not its competency." Marriott Corp. v. Workers' Comp. Appeal Bd. (Knechtel), 837 A.2d 623, 631 n.10 (Pa. Cmwlth. 2003) (quoting Samson Paper Co. & Fid. Engraving v. Workers' Comp. Appeal Bd. (Digiannantonio), 834 A.2d 1221, 1224 (Pa. Cmwlth. 2003)).

Here, Employer's Medical Expert took a history from Claimant, performed a physical examination, and reviewed various medical records. Specifically, he reviewed the 2009 MRI report and the medical records of St. Luke's OccuMed Resources, Dr. Fuhai Lee, Northeastern Rehabilitation and Pain Management Center, Pocono Medical Center, Portland Medical Center, and Dr. Darrell Covington. R.R. at 116a-117a. However, he did not review the medical records of Claimant's Physician or Dr. Mielnicki. Id. at 127a-128a.

Employer's Medical Expert testified Claimant received treatment at St. Luke's shortly after the injury. Id. at 116a. According to these records, Claimant received treatment for a "left upper back strain and sprain." Id. St. Luke's released Claimant to return to work without restrictions on June 4, 2008. Id.

He further testified the Pocono Medical Center and Portland Medical Center records indicate intermittent periods of disability between July and

September 2008. However, with the exception of one disability slip from Portland Medical Center, which noted abdominal problems, these records do not indicate the reason for the absence or identify the nature of the disability. Id. at 117a. He further testified Dr. Covington specializes in colon and rectal diseases. Id.

Employer's Medical Expert testified the medical records of Dr. Lee and the physical therapy records of Northeastern Rehabilitation and Pain Management Center noted Claimant experienced intermittent low back pain in November 2009. Id. at 116a. The 2009 MRI revealed degenerative lumbar changes with disc desiccation, mild broad-based disc herniation at L4-L5, and impingement of the thecal sac. Id. He testified the L4-L5 level is the lower back area. Id. at 130a.

Ultimately, Employer's Medical Expert opined Claimant suffered an injury on May 14, 2008, in the nature of an upper back strain and sprain. Id. at 123a-124a. He based his opinion on the medical records proximate to the date of injury. Id. at 130a. The injury rendered Claimant only partially disabled from the time of the injury until June 4, 2008, because she continued to work in a light-duty capacity. Id. at 124a-125a. On June 4, 2008, the treating physician at St. Luke's evaluated Claimant, reported symptomatic improvement and an unremarkable clinical evaluation, and released her to return to full-duty work. Id. at 124a.

Additionally, Employer's Medical Expert testified Claimant does not have any ongoing disability referable to her May 14, 2008, injury. Id. at 125a. Any treatment she received for her back after June 4, 2008, pertained to her lower

back, not the left upper back strain and sprain associated with the work injury. Id. at 130a.

Although Employer's Medical Expert did not review the medical records of Claimant's Physician or Dr. Mielnicki, this goes to evidentiary weight, a matter within the WCJ's discretion.³ Marriott Corp. Upon review of Employer's Medical Expert's testimony as whole, we conclude it provides competent evidence upon which the WCJ could render the necessary findings.

B. Reasoned Decision

Next, Claimant contends the WCJ's decision is not reasoned. Specifically, Claimant asserts the WCJ did not articulate an objective basis for finding Employer's Medical Witness more credible than Claimant's Physician.

Section 422(a) of the Workers' Compensation Act⁴ requires the WCJ to issue a "reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions" A decision is "reasoned" if it allows for adequate appellate review. Daniels v. Workers' Comp. Appeal Bd. (Tristate Transp.), 574 Pa. 61, 828 A.2d 1043 (2003); Dorsey v. Workers' Comp. Appeal Bd. (Crossing Constr. Co.), 893 A.2d 191 (Pa. Cmwlth. 2006).

³ As the WCJ observed, Claimant's Physician did not examine Claimant until two years after the work injury. F.F. No. 12. At the time of Employer's Medical Expert's examination of Claimant, Claimant's Physician's records were not available because he had not yet examined Claimant. Additionally, Claimant did not offer Dr. Mielnicki's medical records into evidence.

⁴ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §834.

Where medical experts testify by deposition, a WCJ's resolution of conflicting evidence must be supported by more than a statement that one expert is deemed more credible than another. Dorsey. The WCJ must articulate an actual objective basis for the credibility determination for the decision to be "reasoned." Daniels; Dorsey. As the Daniels Court explained:

[T]here are countless objective factors which may support the decision to accept certain evidence while 'rejecting or discrediting competent [conflicting] evidence.' For example, an expert witness's opinion may be based upon erroneous factual assumptions ... or an expert may have had less interaction with the subject ... or the interaction was in a less timely fashion ... or the expert may betray a bias or interest in the matter. In addition, an expert witness may be unqualified or less qualified than the opposing party's expert; or may be impeached with inconsistencies or contradictions in his or her testimony or reports; or may be impeached in some other convincing fashion.

Daniels, 574 Pa. at 78, 828 A.2d at 1053 (citations omitted).

Here, to the extent the opinions offered by the medical experts conflicted, the WCJ found the opinions offered by Employer's Medical Expert more credible than those offered by Claimant's Physician. F.F. No. 12. In so doing, the WCJ explained Claimant's Physician did not examine Claimant until two years after the work injury and was completely unaware Claimant returned to full-duty work after the injury. Id. The WCJ's reasons are supported by Claimant's Physician's testimony. R.R. at 69a, 93a-94a.

The WCJ's objective reasons for his credibility determination are adequate to satisfy Section 422(a)'s reasoned decision requirements. Indeed, the WCJ's reasons for rejecting Claimant's Physician's testimony here are among those specifically identified by the Daniels Court, namely, erroneous factual assumptions and interaction less proximate to date of the injury. See Daniels. Consequently, Claimant's argument fails.

Accordingly, we affirm.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rosaura Rolon,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 718 C.D. 2012
	:	
Workers' Compensation Appeal	:	
Board (Gracedale Nursing Home),	:	
Respondent	:	

ORDER

AND NOW, this 25th day of April, 2013, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

ROBERT SIMPSON, Judge