



## **Tarbell v. Workers' Compensation Appeal Board**

2001 | Cited 0 times | Supreme Court of Pennsylvania | September 27, 2001

Submitted: August 10, 2001

OPINION NOT REPORTED

MEMORANDUM OPINION

Mary Ann Tarbell (Claimant) appeals from an order of the Workers' Compensation Appeal Board (Board) which affirmed a decision of a Workers' Compensation Judge (WCJ) granting the termination petition of Bush Industries (Employer) and denying Claimant's petition to reinstate payment of her medical bills. We affirm.

Claimant was employed by Employer as a manager of an outlet store. On June 6, 1996, she sustained a work-related injury to her lower back and received workers' compensation benefits pursuant to a notice of compensation payable. On November 8, 1996, Employer filed a petition to suspend Claimant's benefits, alleging that, as of October 17, 1996, she was capable of returning to her pre-injury position without a loss of earnings and without restrictions. Employer later amended its petition to include a petition to terminate benefits. On December 26, 1997, Claimant filed a petition to reinstate payment of her medical bills, alleging that Employer had ceased paying her medical bills.

At a hearing before the WCJ, Employer presented the deposition testimony of Louis J. Iorio, M.D., a physician who specializes in orthopedic surgery. Dr. Iorio examined Claimant on October 17, 1996 at which time she complained of persistent mid-back pain. Dr. Iorio testified that, prior to the June 6, 1996 work injury, Claimant had a permanent 10-pound lifting restriction, as a result of a motor vehicle accident. Dr. Iorio testified that the only abnormal neurological finding was one that was present prior to Claimant's work injury. Dr. Iorio also testified that an MRI, performed on July 25, 1996, revealed mild degenerative disk involvement from L2 to L5-S1. Dr. Iorio also testified that X-rays of Claimant's left hip, taken on September 6, 1996, were unremarkable. Dr. Iorio testified that there was no indication on the diagnostic studies of trauma, and that all findings were consistent with degenerative change and early arthritic change. Based on the history he took from Claimant, his review of Claimant's medical records and the results of the physical examination he performed, Dr. Iorio opined that Claimant had no objective evidence of any residual disability from the June 6, 1996 work injury, was fully recovered from her work-related injury, and had clinically returned to the level of capacity that she was at prior to that injury.

Claimant presented the deposition testimony of David M. McGee, M.D., a board-certified



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neurological surgeon. Dr. McGee first saw Claimant on December 16, 1996 at which time she complained of not being able to walk or be upright for more than 20 minutes without resting. Dr. McGee took a history from Claimant, performed a physical examination and reviewed her diagnostic studies. Dr. McGee's impression was degenerative lumbar spinal stenosis, work trauma injury superimposed on the spinal stenosis, persisting back, hip and leg pain symptoms. Dr. McGee opined that the work injury aggravated Claimant's pre-existing lumbar spinal stenosis, causing the onset of symptoms.

Dr. McGee recommended lumbar epidural steroid injections to try to decrease nerve irritation and to enable Claimant to function better. When the injections did not provide relief, Dr. McGee recommended surgery to unpinch the nerves. Surgery was performed on April 30, 1997. Dr. McGee testified that Claimant did extremely well initially, but later had increasing back and leg pain. Dr. McGee opined that Claimant may have had some additional degenerative changes at a lower level of the spine. He further opined that Claimant remained disabled by her work-related trauma.

On March 5, 1999, the WCJ issued a decision granting Employer's termination petition. The WCJ found that Claimant had sustained an aggravation of a pre-existing low back problem in the course of her employment and that, as of October 17, 1996, her condition had improved to the pre-injury level and that Claimant was capable of returning to her position of store manager, without restrictions. The WCJ accepted as credible the testimony of Dr. Iorio and rejected the testimony of Dr. McGee. The WCJ noted that Dr. McGee based his opinion solely on Claimant's history, which did not include her motor vehicle accident or the prior lumbar spine MRI taken in 1993 which showed degenerative changes in the spine. Dr. McGee also did not know that Claimant had a 10-pound lifting restriction before she began working for Employer, nor did he know the duties of her pre-injury job.

The WCJ also denied Claimant's reinstatement petition. The WCJ found that the surgery performed on April 30, 1997 was not related to the work injury, but was necessitated by the pre-existing degenerative condition and that therefore, Employer was not responsible for any medical bills relative to the surgery. The WCJ ordered Employer to pay any of Claimant's unpaid medical bills that were causally related to her June 6, 1996 work-related injury. Claimant appealed to the Board which affirmed the decision of the WCJ. Claimant now appeals to this Court.

On appeal, Claimant argues that the findings of the WCJ are not supported by substantial evidence. This Court's scope of review is limited to determining whether the WCJ's necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated. *Russell v. Workmen's Compensation Appeal Board (Volkswagen of America)*, 550 A.2d 1364 (Pa. Cmwlth. 1988).

An employer petitioning for a termination of benefits must prove that a claimant's disability has ceased or that any remaining disability is no longer the result of a work-related injury. *Indian Creek*



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Supply v. Workers' Compensation Appeal Board (Anderson), 729 A.2d 157 (Pa. Cmwlth. 1999), petition for allowance of appeal denied, 563 Pa. 622, 757 A.2d 936 (2000). An employer can meet the burden of proving that a claimant's disability has ceased by presenting unequivocal medical evidence of a claimant's full recovery from a work-related injury or by presenting unequivocal medical evidence that an existing disability is not work-related. *Id.* In determining whether medical testimony is unequivocal, the medical witness's entire testimony must be reviewed and taken as a whole and a final decision should not rest upon a few words taken out of the context of the entire testimony. *Lewis v. Commonwealth*, 508 Pa. 360, 498 A.2d 800 (1985).

In the case before us, Employer's medical witness, Dr. Iorio, testified that Claimant had fully recovered from the June 6, 1996 work injury and was capable of resuming her pre-injury position with the same restrictions and guidelines that had been in place since the time of her motor vehicle accident. Dr. Iorio's testimony constitutes unequivocal medical evidence to support the WCJ's finding that Claimant had completely recovered from her work-related injury as of October 17, 1996.

Claimant argues that she is entitled to continue to receive workers' compensation benefits based on the credible testimony of her medical witness, Dr. McGee. In any workers' compensation proceeding, the WCJ, as the ultimate fact-finder, is free to resolve conflicts in evidence and to determine the credibility of witnesses. *Dow v. Workers' Compensation Appeal Board (Household Finance Co.)*, 768 A.2d 1221 (Pa. Cmwlth. 2001). Thus, the WCJ has the authority to accept or reject the opinions of any witness, including medical experts, and this court is bound by the credibility determinations made by the WCJ. *Id.* The WCJ was acting within his authority in crediting the testimony of Employer's medical witness and rejecting the testimony of Claimant's medical witness.

Under the Workers' Compensation Act,<sup>1</sup> in order for an employer to be liable for a claimant's medical treatment, the treatment must be causally connected to the claimant's work-related injury. *Catholic Health Initiatives v. Heath Family Chiropractic*, 720 A.2d 509 (Pa. Cmwlth. 1998); *Kurtiak v. Workmen's Compensation Appeal Board (Western Sizzlin' Steak House)*, 635 A.2d 732 (Pa. Cmwlth. 1993). It is the claimant's burden to establish the necessary causal connection. *Id.* The WCJ found that Claimant was completely recovered from her work injury as of October 17, 1996 and she therefore failed to prove that the medical bills she submitted were for a condition related to her work injury. Accordingly, the WCJ directed Employer to pay any unpaid medical bill that were causally related to Claimant's June 6, 1996 work injury

The order of the Board is affirmed.

CHARLES P. MIRARCHI, JR., Senior Judge

ORDER

AND NOW, this 27th day of September, 2001, the order of the Workers' Compensation Appeal Board



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in the above-captioned matter is hereby affirmed.

CHARLES P. MIRARCHI, JR., Senior Judge

1. Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1 - 1041.4, 2501 - 2626.

