



Alvin Moffit v. National Staffing

2012 | Cited 0 times | New Jersey Superior Court | April 26, 2012

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Submitted March 27, 2012

Before Judges Nugent and Maven.

Appellant Alvin Moffit appeals from the dismissal of his workers' compensation claim petition. We affirm.

Appellant was employed by respondent Nationwide Staffing Management, Inc.,¹ and assigned to Raymour & Flanigan furniture warehouse on November 17, 2006, the date of his claimed injury. He filed an incident report with respondent on November 20, 2006, in which he alleged he sustained injuries to his hamstring, ankle, knee, left leg, neck, and back during the course of his employment. He filed a claim petition seeking to have respondent provide temporary disability benefits and payment for medical treatments for a ninety-three week period from November 17, 2006 through August 27, 2008. Respondent filed an answer denying appellant's allegations.

The trial took place over three days. Appellant presented the testimony of Dr. John Gaffney and himself. Respondent presented Dr. Robert Bachman. Appellant testified that at the time of the accident he had two jobs, both involving heavy manual labor. He worked an eight-hour shift at Raymour & Flanigan, where he unloaded furniture from trucks, each piece weighing approximately 70 pounds to 275 pounds. He then went to his second job at LaBrya Bakery from 3:00 p.m. - 11:00 p.m., where he stood for seven hours, packing and moving boxes, weighing forty pounds each.

Appellant suffered residual symptoms from pre-existing injuries to the same body parts that he injured in the accident at issue. He suffered a torn cartilage in his left knee in 1988, for which he underwent ACL reconstruction surgery in 1998. In a work-related accident in October 2000, he tore his right rotator cuff, for which he underwent surgery in March 2006, and fractured his left hand and wrist, for which he had surgery in May 2001. He had experienced neck and back pain since 2000, for which he had physical therapy for his back before and after the 2006 accident, and epidural injections in his neck and back in 2007. He was in pain every day, even before the accident.

Prior to reporting to work on November 17, 2006, appellant was reportedly experiencing pain in his left knee, arms, neck and back from ten days of lifting and moving furniture. His assignment on the day of the accident was to unload one truck containing 41 entertainment centers weighing 275



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pounds each, then another truck containing 386 boxes. After unloading the two trucks, he had "excruciating" pain in his feet, arms, neck, shoulders and back. Next, while lifting a 150-pound sofa onto a dolly, his left leg, left ankle and left knee buckled under the weight of the furniture causing him to shift and break his fall by landing on the sofa. He testified that he injured both arms, his neck, lower back, left leg, left foot, ankle and knee. After completing his shift, he went to the bakery and worked the full eight-hour shift. From the bakery, he went to Crozer Chester Medical Center where he complained of pain to his left knee, left leg, left ankle and back. On Monday he returned to the hospital complaining of neck and back pain.

Appellant reported his injuries to National Staffing company manager, Candice Pezzi,² on Monday November 20, 2006, and she referred him to the authorized workers' compensation medical provider, Dr. Rosen of Riverfront Medical Center. Dr. Rosen saw appellant three times. On the first visit, November 21, 2006, after informing the doctor about the accident, appellant was treated for his complaint of leg pain. During the second visit, on November 24, appellant complained of pain in the lower back and neck, arms and legs. The progress notes of the last visit on December 1, 2006 indicate that the doctor diagnosed a lumbar strain but was concerned about appellant's medical history and the lack of documentation of prior injuries. The doctor advised appellant that he would not be able to continue with treatment unless he provided the information. Appellant stopped treating with the authorized medical provider and sought unauthorized care with his Medicaid primary physician, Dr. David Broyles.

Dr. Broyles referred appellant to a number of medical specialists to evaluate or treat his injuries. Dr. Priya Swamy, a pain management specialist, prescribed various modalities of treatment, including physical therapy, injections and pain medications, and psychological and psychiatric counseling, all to no avail. Other specialists evaluated and recommended treatment for appellant's knee and left shoulder pain. In January 2008, appellant was rear-ended in a motor vehicle accident that exacerbated the injuries to his neck and back, resulting in additional treatment.

Appellant was examined by Dr. John Gaffney in October 2009, to determine if there was a causal effect between the November 2006 work-related accident and appellant's injuries, and to assess the extent of any temporary or permanent disability. Dr. Gaffney reviewed medical documentation of pre-existing conditions as well as post-accident tests, treatments, evaluations and consultations. He also obtained a medical history from appellant, and conducted a physical examination. Dr. Gaffney opined that based on his record review and examination of appellant, the injuries noted are directly related and causally related to the work-related injury dated November 17, 2006. . . . The objective medical findings noted in the body of this report have resulted in an overall 42.5% permanent/partial disability of the cervical spine 42.5% permanent/partial disability of the lumbar spine 45% permanent/partial disability of the left leg 32.5% permanent/partial disability of the left shoulder.

Dr. Robert Bachman, who had evaluated appellant at respondent's request, testified that appellant suffered a lumbar strain in November 2006 but sustained no permanent disability as a result of the



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2006 accident.

In an oral opinion, the Judge of Compensation (JOC) made comprehensive findings of fact, credibility determinations, and conclusions of law. The JOC did not find appellant to be credible. He found appellant's complaints to be exaggerated and incongruent with the care he received.

As to the expert testimony, the JOC found Dr. Gaffney's testimony to be less credible than Dr. Bachman's and found no merit in Dr. Gaffney's opinion that appellant experienced permanent partial disability. The JOC explained,

As to the temporary total disability claim, Petitioner's counsel acknowledged in our oral argument³ that there was no support in the treating medical records for the proposition that Petitioner was, as a result of [the] November 17, 2006 incident, totally temporarily disabled during the claimed 93- week period. I find the treating medical records are much more persuasive than Dr. Gaffney's testimony . .

The JOC found Dr. Bachman's testimony more consistent with the medical records presented in evidence, the history of the claim and the nature of the injuries, particularly given appellant's pre-existing conditions.

Lastly, as part of his claim, appellant sought payment for the unauthorized medical care he received. The JOC found that appellant was offered medical care by the respondent and noted that the authorized medical provider, Dr. Rosen, was ready willing and able to continue to analyze the appellant's claim by seeking information regarding his past medical history.

This case presents the unusual set of facts of the Petitioner quitting on the authorized Dr. Rosen and taking his chances with unauthorized care. He has taken that chance and has not prevailed. The care rendered by Dr. Swamy essentially followed the course of care initiated by Dr. Rosen, mainly tending to the Petitioner's lumbar spine.

Concluding that appellant suffered only a low-back (lumbar) strain arising out of the November 17, 2006 workplace accident, the JOC dismissed his petition with prejudice and denied his motion for temporary medical benefits and payments for unauthorized medical care.

Appellant argues that the JOC's decision ignores objective medical evidence that the accident aggravated, accelerated and exacerbated pre-existing injuries to his left knee, lower back and left shoulder. We disagree.

Our review of the JOC's decision is limited to whether the findings made could reasonably have been reached on sufficient credible evidence present in the record, considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge of their credibility and, in



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the case of agency review, with due regard also to the agency's expertise where such expertise is a pertinent factor. [Sager v. O.A. Peterson Constr., Co., 182 N.J. 156, 163-64 (2004) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965) (citation and internal quotation marks omitted)).]

Appellant bore the burden of proving that his injury arose out of his employment and was therefore compensable under the Workers' Compensation Act, N.J.S.A. 34:15-1 to -142, by establishing a causal connection between the employment and the accident. Coleman v. Cycle Transformer Corp., 105 N.J. 285, 290 (1986); Acikgoz v. N.J. Tpk Auth., 398 N.J. Super. 79, 87 (App. Div.), certif. denied, 195 N.J. 418 (2008). We are satisfied that, giving appropriate deference to the JOC's opportunity to assess credibility and his expertise in the area, there is sufficient credible evidence to support his decision. We affirm, substantially for the reasons set forth in his opinion.

Affirmed.

1. Respondent, initially identified as ACCU Staffing Services, was later renamed Nationwide Staffing Management, Inc., an affiliated company sharing the same address, operating staff and claim number. A consent order changing respondent's name was signed by the court on August 4, 2010.
2. The spelling of her name was noted phonetically in the transcript. No other documents were presented to confirm the proper spelling.
3. The transcript of the oral argument, held on December 7, 2010, was not provided as part of the record on appeal.

