



## Champion Design Contractors v. Workers' Compensation Appeal Board

2004 | Cited 0 times | Supreme Court of Pennsylvania | February 6, 2004

Submitted: December 12, 2003

OPINION NOT REPORTED

MEMORANDUM OPINION

Champion Design Contractors and Laundry Owners Mutual Liability Insurance Company (collectively, Employer) appeal from an order of the Workers' Compensation Appeal Board (Board) which affirmed a decision of a Workers' Compensation Judge (WCJ) denying Employer's termination petition. We affirm.

John Cole (Claimant) was employed by Employer as a carpenter. On February 28, 2000, he sustained a work-related injury to his thoracic spine and received workers' compensation benefits pursuant to a notice of compensation payable. On July 19, 2001, Employer filed a termination petition alleging that Claimant was completely recovered from his work-related injury.

At a hearing before the WCJ, Claimant testified as follows. He was injured when he slipped on an icy roof and fell thirty-five to forty feet to the ground. He underwent surgery on his back and then wore a fiberglass back brace for seven months. Claimant received physical therapy and attended a work hardening program. Claimant continued to have some back pain and spasms. He believed that he could no longer work on roofs because he is now afraid of heights. On July 14, 2001, Claimant began working at a light-duty job installing door hardware for T.D. Contractors. Claimant works forty hours a week and earns \$10 per hour.<sup>1</sup>

Claimant also presented the deposition testimony of Alexander Kandabarow, M.D., a board-certified orthopedic surgeon and his treating physician. Dr. Kandabarow saw Claimant at the hospital immediately after his work injury and diagnosed him as having a T-12 burst fracture and a flexion distraction injury at T-12 - L-1. He testified that Claimant's fracture was unstable and required surgery. Dr. Kandabarow removed the twelfth vertebra and stabilized the area with a piece of Claimant's rib and a plate. Dr. Kandabarow also inserted a titanium cage, filled with bone, which acts as a structural support. Dr. Kandabarow testified that Claimant continues to have some functional impairment, pain, and loss of motion. Dr. Kandabarow also restricted Claimant from lifting more than fifty pounds.

Employer offered the deposition testimony of Richard B. Kasdan, M.D., a board-certified neurologist,



## Champion Design Contractors v. Workers' Compensation Appeal Board

2004 | Cited 0 times | Supreme Court of Pennsylvania | February 6, 2004

who examined Claimant on June 20, 2001. Dr. Kasdan testified that he found no objective abnormalities or any objective findings during the physical examination which would substantiate any complaints of pain or persistent symptoms. Dr. Kasdan opined, based on the history he obtained, the physical examination he performed and the medical records he reviewed, that Claimant had recovered from his work-related injury and was capable of performing his pre-injury job without restrictions.

On March 25, 2002, the WCJ issued a decision denying Employer's termination petition. The WCJ found the testimony of Dr. Kandabarow more credible than the testimony of Dr. Kasdan. The WCJ also found that Claimant's complaints of pain and stiffness were truthful and credible. The WCJ concluded that Employer met its burden of proving that Claimant had returned to work at wages below his pre-injury wage. Accordingly, the WCJ modified Claimant's benefits to \$52 per week. Employer appealed to the Board which affirmed the decision of the WCJ. Employer now appeals to this Court.<sup>2</sup>

On appeal, Employer argues that (1) Dr. Kandabarow's testimony cannot support a finding of continued disability, and (2) the WCJ erred in calculating Claimant's average weekly wage based upon Claimant's testimony alone.

It is well established that an employer seeking to terminate workers' compensation benefits bears the burden of proving by substantial evidence either that the claimant's disability has ceased, or that any current disability arises from a cause unrelated to the claimant's work injury. *Parker v. Workers' Compensation Appeal Board (Dock Terrace Nursing Home)*, 729 A.2d 102 (Pa. Cmwlth. 1999). An employer's burden in a termination petition is considerable because disability is presumed to continue until demonstrated otherwise. *Indian Creek 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). The claimant does not have the burden of proving anything at all. *Jones v. Workers' Compensation Appeal Board (J.C. Penney Co.)*, 747 A.2d 430 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 564 Pa. 718, 764 A.2d 1074 (2000).

In the case before us, Employer's medical witness, Dr. Kasdan, opined that Claimant had recovered from his work-related injury and was capable of performing his pre-injury job without restrictions. Claimant's medical witness, Dr. Kandabarow, testified that Claimant continued to have some functional impairment, pain and loss of mobility. In workers' compensation proceedings, the WCJ is the ultimate finder of fact and may credit the testimony of any witness in whole or in part. *Samson Paper Co. & Fidelity Engraving v. Workers' Compensation Appeal Board (Digiannantonio)*, 834 A.2d 1221 (Pa. Cmwlth. 2003). The WCJ found the testimony of Dr. Kasdan to be less credible than the testimony of Dr. Kandabarow. Having rejected the testimony of Employer's medical witness, the WCJ correctly concluded that Employer did not meet its burden of proving that Claimant had fully recovered from his work-related injury.



## Champion Design Contractors v. Workers' Compensation Appeal Board

2004 | Cited 0 times | Supreme Court of Pennsylvania | February 6, 2004

Employer next argues that the WCJ erred in relying solely on Claimant's testimony to establish the amount of his current wages. Employer argues that the matter should be remanded to the WCJ for a finding as to Claimant's actual wages.<sup>3</sup> Employer cites no authority to support its argument that a WCJ may not base a modification of benefits solely on a claimant's testimony.<sup>4</sup>

The amount of Claimant's wages is a question of fact to be determined by the WCJ. *Thomas Jefferson University Hospital v. Workmen's Compensation Appeal Board* (Giordano), 541 A.2d 1171 (Pa. Cmwlth. 1988). The WCJ, in the exercise of her factfinding authority, credited Claimant's testimony as to the amount of his wages. Claimant's testimony thus provides substantial evidence to support the WCJ finding as to the amount of Claimant's wages.

We note that in an analogous situation, a claimant is not required to provide documentation of his or her earnings. Pursuant to Section 311.1(a) of the Workers' Compensation Act<sup>5</sup>, a claimant is required to provide the following information to the insurer: any wages from employment, the name and address of the employer, the amount of wages from employment, the dates of employment, the nature and scope of employment, and any other information which is relevant in determining the entitlement to or amount of compensation. The claimant is obligated to cooperate with the insurer in an investigation of employment and wages. 77 P.S. §631.1(c). Section 311.1 thus requires a claimant to report the amount of wages received from employment, but does not require the claimant to provide verification of the amount of the wages. Investigation into the accuracy of the claimant's report of earnings is left to the insurer.<sup>6</sup>

The order of the Board is affirmed.

### ORDER

AND NOW, this 6th day of February, 2004, the order of the Worker's Compensation Appeal Board in the above-captioned matter is hereby affirmed.

1. At the conclusion of the hearing, the WCJ stated that she would issue an interlocutory order basing Claimant's compensation on his actual earnings. On August 28, 2001, the WCJ issued an order modifying his compensation to \$52 per week based on wages of \$400 per week.
2. Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, and whether the necessary findings of fact are supported by substantial evidence. *Dobash v. Workers' Compensation Appeal Board* (PG Energy), 836 A.2d 1085 (Pa. Cmwlth. 2003).
3. Employer makes no argument that the WCJ miscalculated Claimant's modified benefits.
4. At the hearing before the WCJ, Employer did not object to Claimant's testimony regarding his wages, nor did Employer request that the WCJ order Claimant to produce verification of his wages.



## Champion Design Contractors v. Workers' Compensation Appeal Board

2004 | Cited 0 times | Supreme Court of Pennsylvania | February 6, 2004

5. Act of June 2, 1915, P.L. 736, 77 P.S. §631.1, added by Section 6 of the Act of June 24, 1996, P.L. 350.

6. Employer also complains that it has sent numerous verification of employment forms (Form LIBC-760, "Employee Verification of Employment, Self-employment or Change in Physical Condition") to Claimant and that Claimant has not returned them. Pursuant to 77 P.S. §631.1(e), the claimant is obligated to complete the verification form and return it to the insurer within thirty days of receipt of the form. The regulations at 34 Pa. Code §123.502 provide a procedure for an employer to follow if the claimant does not timely return a verification form. Employer thus has a remedy if Claimant has not timely returned the verification form.

