# Spinelli v. Workers' Compensation Appeal Board

2003 | Cited 0 times | Supreme Court of Pennsylvania | December 22, 2003

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OPINION NOT REPORTED

MEMORANDUM OPINION

Anthony Spinelli (Claimant) petitions for review of the adjudication of the Workers' Compensation Appeal Board (Board) that denied him workers' compensation benefits for the reason that Claimant had not provided adequate notice of his injury to his employer. In doing so, the Board reversed the decision of the Workers' Compensation Judge (WCJ) to grant benefits for a closed period.

Claimant was employed by the Vanguard Group (Employer) for 9-1/2 years as a processing associate, spending most of his time at the keyboard of a computer. In November 1999, his position was eliminated. In December 1999, Claimant filed a workers' compensation claim petition alleging a work related injury, as of April 30, 1999, to his hand, wrist and elbow caused by typing and writing. The petition averred that Claimant gave notice of his injury to his immediate supervisor on April 30, 1999. Employer did not respond to the petition, and on March 17, 2000, the WCJ awarded Claimant compensation from June 4, 1999 to December 8, 1999. Employer appealed the decision and the Board remanded the matter for a hearing on the merits. [1]

At the remand hearing, Claimant testified that his job as a process associate "consisted of keyboarding all day and computer usage" as he processed retirement requests. Reproduced Record 7a. (R.R.___). He had noticed some twinges and tremoring before April 30, 1999 and he "wasn't really sure what was wrong." Id. Then, Claimant testified that on April 30, 1999, "I mention[ed]to my supervisor at the end of April, at that particular day [the 30th] my arm and hand was on fire. I mean I had--really, I didn't understand why. I told her about it. She said, maybe you should go to a doctor." R. R. 11a.

Claimant did not see a doctor until the end of May 1999. A Work Ability Report dated May 5, 1999 and signed by Claimant's orthopedic surgeon, diagnoses Claimant with carpal tunnel syndrome and recommends work restrictions. [2] After a visit to the doctor on June 4, 1999, Claimant stopped working and received short term disability pursuant to Employer's group policy with CNA Insurance Company. S.R. 5b-12b. He later had surgery, a carpal tunnel release and ulnar nerve transposition, after which he returned to work on September 7, 1999, working half days.

On February 12, 2002, the WCJ issued a second decision concluding that Claimant had provided proper notice to Employer regarding the work related nature of the injury and granted Claimant benefits for the closed period of June 4, 1999 through January 31, 2000. The WCJ also granted the Employer the right to modify the benefits based on the disability payments or wages earned by Claimant during this time period.

Employer appealed, and the Board reversed. It held that the WCJ's finding that Claimant had given notice to the Employer that his carpal tunnel syndrome was work-related was not supported by substantial evidence. Claimant then petitioned for our review.

On appeal, Claimant contends this his notice to Employer was complete, and it was timely. He also contends that, in any case, Employer knew that his carpel tunnel syndrome was work-related. Accordingly, he seeks reinstatement of the WCJ's decision.

Notice to an employer is a prerequisite to receiving compensation for a work-related injury. Pennsylvania Mines, Corporation/Greenwich Collieries v. Workmen's Compensation Appeal Board (Mitchell), 646 A.2d 28 (Pa. Cmwlth. 1994). A claimant's failure to provide notice to an employer within 120 days of the injury generally operates as a bar to compensation unless a claimant can show that the employer had actual knowledge of the injury and its relationship to the workplace. Section 311 of the Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §631. [3] Section 311 also provides that the time for giving notice does not begin to run until the employee knows, or by the exercise of reasonable diligence, should have known of the existence of the injury and its possible relationship to his employment. Id. Section 312 of the Act additionally requires that, "[t]he notice referred to in Section 311 shall inform the employer that a certain employee received an injury, described in ordinary language in the course of his employment on or about a specified time, at or near a place specified." 77 P.S. §632 (emphasis added).

In short, Sections 311 and 312 make notice to the employer an absolute prerequisite to an award of workers' compensation benefits. The notice requirements are not onerous to the claimant, and they protect the employer from receiving stale claims for injuries made after the opportunity for a full and complete investigation has been lost. Sun Oil Co. v. Workers' Compensation Appeal Board (Ford), 626 A.2d 1251 (Pa. Cmwlth. 1993).

In the matter sub judice, the WCJ found the "Claimant is credible and convincing that he notified the [Employer] through his supervisor of the allegations that these conditions were work-related." Findings of Fact No. 9 (F.F.___) (emphasis added). He concluded that "Claimant has met the burden of proof necessary that he suffered an employment related injury on April 30, 1999, which rendered him disabled from his former employment with the [Employer] from June 4, 1999 to January 31, 2000." Conclusion of Law No. 2.

We are mindful that the WCJ as factfinder has exclusive province over questions of credibility, and a

WCJ's findings will not be disturbed when they are supported by substantial, competent evidence. Kocher's IGA v. Workers' Compensation Appeal Board (Dietrich), 729 A.2d 145 (Pa. Cmwlth. 1999). Further, whether a claimant has complied with the notice requirements of the Act is a question of fact for the WCJ. Greenwich Collieries, 646 A.2d at 30. However, this record does not support either the WCJ's finding of fact or his conclusion of law.

Claimant testified that "[o]n that date, I mention[ed]to my supervisor at the end of April, at that particular day [30th] my arm and hand was on fire. I mean I had--really, I didn't understand why. I told her about it. She said, maybe you should go to the doctor." R. R. 11a. This testimony merely demonstrates that he notified his Employer that he was in pain on April 30, 1999. It does not support a factual finding or legal conclusion that Claimant notified his Employer that the pain was related to a work-related injury. In short, that message did not inform the Employer, as required by Section 312, that the injury occurred "in the course of" Claimant's employment. Gribble v. Workers' Compensation Appeal Board (Cambria County Association for the Blind), 692 A.2d 1160 (Pa. Cmwlth. 1997) (claimant's testimony that he had an injury without relating it to work, held to be insufficient notice).

Claimant next argues that Employer was aware that "Claimant had an injury, made worse by his employment, so as to require that he take off." Claimant's Brief at 11. However, the evidence does not show that Claimant was off work from June 4, 1999 to September 7, 1999, for work-related reasons. Indeed, the evidence supports the contrary. The policy under which Claimant was paid disability during this period specifically provides that "benefits will not be paid...[where] benefits are payable under any Workers' Compensation...plan...." S.R. 7b.

Finally, Claimant's own testimony shows that he himself was not aware that his carpal tunnel syndrome was related to his employment until September or October of 1999. When asked whether he sought treatment from a panel physician for his carpal tunnel surgery, as required for work-related injuries, Claimant responded as follows:

A. No, because at that time it was not being handled as a workers' comp issue.

Q. Did you think it was a workers' comp issue at that time?

A. I did not know what extent it was injured until I came back.

Q. When was that?

A. September 7 '99 I came back half days because of the ---I had two surgeries on the arm and so my doctor was concerned about the work load and the active use....

...

Q. And you said it wasn't until September 7 th of [19]99 that you thought that this might be work related?

A. Well, the problem - that's when I started. I came back to work. I was working half a day. What they were having me do was they buried me in a lot of departmental work. They were saving work for me from the entire department. I was back there hurt so bad. I started going back to my doctor and explaining this. And it was [the orthopedic surgeon] at that time who after going into details of what I did every day the nature of what was aggravated by my function on the job.

R.R. 13-15a. If Claimant was not aware that his carpal tunnel syndrome was work-related until September or October 1999, it is not possible that he informed Employer in April 1999 that his hand problems were work-related.

Claimant next argues that the notice he gave Employer on October 29, 1999, [4] when Claimant was still employed, was sufficient for a repetitive stress injury. Claimant argues that he "knew he had a sore arm, but its relation to his work was not known until September. [Because] the employer clearly had knowledge within one month of his being advised by his physician." Claimant's Brief at 15. Claimant tries to make the October 29, 1999 notice fit the discovery provision of Section 311 of the Act and the 120-day rule for repetitive type trauma, which does not begin to run until an employee's last day of work.

However, Claimant's claim petition alleged a notice date and injury date of April 30, 1999. He cannot now, on appeal, unilaterally amend his claim petition with a new notice and concomitant injury date. Such a claim is different from the one under review and must be pursued in a separate proceeding. While it is clear that an injury that develops over time as a consequence of a number of work activities can be compensable as a cumulative trauma, the determination of the date of injury depends largely on the facts of each case, the purpose of which must be established and the medical evidence presented. Piad Corporation v. Workers' Compensation Appeal Board (Moskyok), 761 A.2d 640 (Pa. Cmwlth. 2000).

For these reasons, the decision of the Board is affirmed.

President Judge Colins dissents.

ORDER

AND NOW, this 22nd day of December, 2003, the order of the Workers' Compensation Appeal Board dated March 21, 2003 in the above-captioned matter is hereby affirmed.

1. The Board noted that the Employer's address was different from those contained in the Notice of Assignment, Notice of Hearing and WCJ's Decision. Further, the WCJ's Decision and notices listed the incorrect insurance carrier and

incorrect address for the carrier. Claimant ultimately stipulated that Employer did have a reasonable excuse for its late answer, and thus the matter proceeded to a decision on the merits.

2. See Supplemental Record 35b (S.R. ___). It is unknown when or if this Work Ability Report was made available to the Employer. Although he excuses Claimant from doing work at the computer for one month the physician does not state that Claimant's carpal tunnel syndrome was work-related. The WCJ stated that he reviewed the Work Ability Reports in his Findings of Facts, but he makes no reference to them in his reasoning or analysis.

3. It provides, Unless the employer shall have knowledge of the occurrence of the injury, or unless the employe or someone in his behalf, or some of the dependents or someone in their behalf, shall give notice thereof to the employer within twenty-one days after the injury, no compensation shall be due until such notice be given, and, unless such notice be given within one hundred and twenty days after the occurrence of the injury, no compensation shall be allowed. However, in cases of injury resulting from ionizing radiation or any other cause in which the nature of the injury or its relationship to the employment is not known to the employe, the time for giving notice shall not begin to run until the employe knows, or by the exercise of reasonable diligence should know, of the existence of the injury and its possible relationship to his employment. The term "injury" in this section means, in cases of occupational disease, disability resulting from occupational disease. 77 P.S. §631 (emphasis added).

4. Assuming this to be factually accurate, it does not advance Claimant's argument that notice was timely. October 29, 1999 is well beyond 120 days of Claimant's alleged injury date of April 30, 1999 or even June 3, 1999, his last day of work before undergoing carpal tunnel surgery.