

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2212-11T2

JOHNNIE JACKSON,

Petitioner-Appellant,

v.

TOWNSHIP OF MONTCLAIR,

Respondent-Respondent.

Argued June 6, 2012 - Decided July 5, 2012

Before Judges Graves, J. N. Harris, and Koblitz.

On appeal from the Department of Labor and
Workforce Development, Division of
Workers' Compensation, No. 2008-30697.

Pablo N. Blanco argued the cause for appellant
(The Blanco Law Firm, LLC, attorneys; Mr. Blanco,
on the brief).

Gregg S. Malovany argued the cause for respondent
(Adelson, Testan, Brundo & Jimenez, attorneys;
Mr. Malovany, on the brief).

PER CURIAM

Petitioner Johnnie Jackson appeals from a December 2, 2011 amended order of the Department of Labor and Workforce Development, Division of Workers' Compensation, which denied his claim for workers' compensation benefits and required him to repay a portion of the temporary benefits that he previously

received. After reviewing the record and the applicable law in light of the arguments advanced on appeal, we affirm.

Petitioner sustained injuries to his right knee as a result of an automobile accident that occurred on April 13, 2007. Following the accident, petitioner was treated by Jerald P. Vizzone, M.D., an orthopedic surgeon. An MRI taken on August 25, 2007, revealed the following injuries to petitioner's right knee: a "tear of the posterior horn of the medial meniscus," a "partial tear of the anterior cruciate ligament," "suprapatellar joint effusion," and a "small Baker's cyst posteromedially." Dr. Vizzone treated petitioner with "intraarticular injections to the right knee for pain relief." After an October 10, 2007 evaluation, Dr. Vizzone wrote in his notes that petitioner "will require surgical arthroscopy of the right knee" and that he would review the films, then "discuss [petitioner's] surgical options with him at that point." However, petitioner did not see Dr. Vizzone again after that visit and never received the recommended surgery.

On August 4, 2008, petitioner was moving large boxes of books as part of his job in the maintenance department at the Montclair Public Library when he "heard something pop" in his right knee. Petitioner immediately stopped working and told the assistant director of the library that he "wanted to get it

checked out." Petitioner was taken to Mountainside Hospital where a brace was put on his right knee and he was given crutches.

Two days later, on August 6, 2008, petitioner was seen by Britt H. Hatfield, M.D., at Concentra Urgent Care Center. In his post-examination report, Dr. Hatfield wrote that petitioner stated he was "moving boxes when [he] injured his knee" and that petitioner reported "no direct trauma to his right knee." Dr. Hatfield's report did not indicate whether petitioner disclosed any prior knee injuries. An MRI of petitioner's right knee taken on August 28, 2008, showed "a tear involving the posterior horn, body of the medial meniscus," a "sprain" of both the anterior cruciate ligament and the medial collateral ligament, and a "trace" Baker's cyst.

On September 11, 2008, petitioner was seen by John F. Mendes, M.D. In his report, Dr. Mendes stated that petitioner "felt a pop in the medial side of his right knee" while "loading or shifting boxes" at work. Dr. Mendes wrote that petitioner "denie[d] any history of knee injuries or pain in the past." After examining petitioner's knee, Dr. Mendes recommended that petitioner undergo surgery, and on September 18, 2008, Dr. Mendes performed an "arthroscopic partial medial meniscectomy" on petitioner's right knee. At a follow-up appointment it was

discovered that petitioner had a staphylococcal infection, and an "arthroscopic irrigation and debridement of the right knee" was performed by Dr. Mendes on September 26, 2008.

On November 5, 2008, petitioner filed a workers' compensation claim, in which he alleged that he injured his right knee in an accident "arising out of and in the course of [his] employment."

On December 15, 2008, petitioner provided answers to interrogatories in connection with a civil lawsuit he had filed following the April 2007 automobile accident. In his answers, petitioner stated that the injuries he suffered in the automobile accident, which included the injury to his right knee, "are considered to be permanent" and that they "continue to limit his activities" and "cause great pain on a daily basis." Petitioner also stated that he suffered "pain" and "discomfort" while working, bending, lifting, sitting, and sleeping.

Petitioner underwent another MRI on February 13, 2009, and he saw Wayne A. Colizza, M.D., on March 5, 2009. In his report, Dr. Colizza noted petitioner "injured his right knee" in a workplace accident in August 2008, and he "denie[d] any problems with respect to his right knee prior to his work injury." Dr. Colizza stated that petitioner had undergone "extensive physical

therapy" and was seeing him "for a second opinion at the request of Dr. John Mendes." Dr. Colizza wrote that petitioner still had "some difficulty with squatting and crawling," but there was considerable improvement in his overall function. Dr. Colizza concluded that petitioner had "reached maximum medical improvement and that physical therapy [was] no longer required."

In connection with petitioner's workers' compensation claim, an independent medical evaluation was conducted at respondent's request by Carl F. Mercurio, M.D. In his report dated August 18, 2009, Dr. Mercurio noted that during the interview, petitioner "was able to sit normally," his "[g]ait was normal," and he "was able to go into a full squat without difficulty." Dr. Mercurio found petitioner had "an internal derangement of the right knee with a tear of the medial meniscus," and there was a "causal relationship" between this injury and the August 2008 workplace accident. However, Dr. Mercurio noted there was "a prior injury as a result of a motor vehicle accident in 2007" and "[i]f these records could be provided, this may affect [his] opinion."

At his attorney's request, petitioner was evaluated by Arthur M. Tiger, M.D., on September 8, 2009. Dr. Tiger noted in his report that petitioner had been injured in an automobile accident prior to his workplace injury. After examining

petitioner's right knee and reviewing his medical records, including the records from the April 2007 automobile accident, Dr. Tiger estimated "a disability for [the workplace] accident of 55% of the leg" and a disability for the automobile accident of 25% of the leg, thus creating an "overall disability" of "80% of the leg."

After Dr. Mercurio was provided with the records from petitioner's April 2007 automobile accident, he issued an addendum to his report on October 16, 2009. Dr. Mercurio stated that "[a]fter reviewing the new information, in particular a comparison of the MRIs pre and post claim, it is obvious there was a pre-existing internal derangement of the right knee with a tear of the medial meniscus." Dr. Mercurio concluded petitioner "did not have any orthopedic pathology except for a soft tissue sprain" as a result of his workplace accident. Dr. Mercurio further found that petitioner suffered from only a "7 1/2% permanent partial disability of the right knee," which was attributable to the April 2007 automobile accident. Dr. Mercurio stated that his conclusion was based on "a comparison of the diagnostic studies, in particular the MRI scans, review of the medical record and [his] objective physical examination" of petitioner.

Petitioner's workers' compensation hearing began on January 20, 2011. Petitioner testified he continued to have "problems" with his right knee, he could not "go up and down stairs," his knee "gives out on [him] constantly," and "a lot of days[,] it still swells up on [him]." Petitioner testified these symptoms began after the August 2008 workplace accident, and that prior to the workplace accident his right knee was "feeling great."

On cross-examination, petitioner was asked to explain the contradiction between his testimony that prior to the August 2008 workplace accident he was "feeling great," and his answers to the December 2008 interrogatories in which he stated the injuries he suffered after the April 2007 automobile accident caused him "great pain on a daily basis." Petitioner stated "[s]ome of" the answers to his interrogatories were "incorrect," yet he signed them because he "didn't know what they were." Petitioner stated "[t]he lawyer was just talking and asking [him] questions about the [automobile] accident [in] '07 and [he] was giving him details of what happened."

Petitioner testified he did not recall "being told at any point" that he had a tear in his knee as a result of the April 2007 automobile accident. However, later in his testimony, petitioner contradicted himself when he stated that Dr. Vizzone had told him he had "a partial tear of the ACL" and this was the

reason why Dr. Vizzone recommended surgery. Petitioner also testified the surgery never took place because he "was never gotten in touch with about the surgery after [Dr. Vizzone] said it."

At one point, the workers' compensation judge asked petitioner if he could explain why the three doctors who treated him following his work-related accident (Dr. Hatfield, Dr. Mendes, and Dr. Colizza) had no record of his right knee injury resulting from the April 2007 motor vehicle accident. Petitioner responded, "I don't know." Petitioner also stated he did not recall whether Dr. Hatfield asked him if he had suffered any prior injuries to his right knee, and he claimed he told Dr. Mendes his "knee got banged" in a car accident. However, petitioner stated he did not know why this information was not included in Dr. Mendes's report.

Dr. Tiger testified on petitioner's behalf. Dr. Tiger stated that, in his opinion, petitioner's injuries were "due to the accident of August of 2008." Dr. Tiger also expressed his belief that as a result of the August 2008 workplace accident, petitioner sustained a "permanent disability." In support of this conclusion, Dr. Tiger cited the fact that petitioner had "more aggressive treatment to his knee following the second accident which appeared to make him more symptomatic" and the

staphylococcal infection "caused a significant amount of disability."

On cross-examination, Dr. Tiger was shown the reports from the August 25, 2007 MRI and the August 28, 2008 MRI. When asked if there was "any change in the meniscal tear," Dr. Tiger responded, "That appears to be a similar problem in the meniscus. There's a tear of the posterior horn and medial meniscus." Dr. Tiger admitted the findings made following the two MRIs were "similar." Dr. Tiger acknowledged that petitioner "denied a history of knee injuries in the past" when he saw Dr. Mendes, and this was "obviously inconsistent" with the "actual history in this case." Dr. Tiger also acknowledged that Dr. Colizza was not provided with an "accurate histor[y]" in regard to petitioner's knee injuries. Dr. Tiger stated that without an accurate history, the treating doctors "would have been confused about the causal relationship" between the accidents and petitioner's knee injury.

Dr. Mercurio testified at the hearing on behalf of respondent. Dr. Mercurio stated that after reviewing petitioner's medical history, in particular a "comparison of the MRIs pre- and post-present claim, it was obvious to [him] there was a pre-existing internal derangement of the right knee with a tear of the medial meniscus." Dr. Mercurio expressed his belief

that following the August 2008 workplace accident, petitioner "did not have any orthopedic or pathology except for the soft tissue sprain." Dr. Mercurio testified he did not think there was an "aggravating" of petitioner's injury because there was no "objective material change" or "physical change" with regard to petitioner's injuries, and the findings from Dr. Vizzone's last examination were "identical" to the findings from Dr. Mendes's first evaluation.

Following Dr. Mercurio's testimony, respondent moved to dismiss petitioner's claim for future benefits and to require petitioner to repay the temporary benefits he had already received. In support of the motion, respondent argued that petitioner had made fraudulent statements in order to secure workers' compensation benefits in violation of N.J.S.A. 34:15-57.4 because he "denied prior knee problems, injuries or pain" to his treating doctors following the August 2008 workplace accident. In addition, respondent argued petitioner's credibility was "severely compromised" because his testimony that he did not have any knee pain prior to the August 2008 workplace accident was "significantly at odds with information obtained in certified answers to interrogatories in which petitioner certified that he had a severe injury to his right knee which caused him pain."

In an initial decision dated October 20, 2011, the compensation judge stated the "objective medical evidence," which included the "treatment reports, the comparative MRIs and progress notes," demonstrated "the car accident of 2007 entailed a more seriously damaged knee than the work injury," and the "tears in the knee resulted from the 2007 car accident." The judge found that a "soft tissue injury was sustained to the knee as a result of the work accident," but it was "treated with physical therapy and resolved." In addition, the judge determined the workplace accident "did not accelerate, aggravate or exacerbate the prior diagnosed tears to the meniscus and ligament."

The judge of compensation found petitioner's failure to disclose his prior right knee injury, which "was serious enough to warrant a recommendation for knee surgery," was a deliberate and material omission; petitioner's "behavior was calculated and manipulative"; and petitioner's failure to disclose his prior injury "tainted his testimony" and "served to discredit him." The judge determined that petitioner's "fraudulent conduct" deprived him of all future benefits. Consequently, petitioner's claim was dismissed with prejudice.

The workers' compensation judge also granted, in part, respondent's request for repayment of the temporary benefits

that petitioner had already received. The judge ordered petitioner to repay \$17,497.71 of the \$20,760 that he had received in temporary benefits following the September 18, 2008 arthroscopic partial medial meniscectomy. In an amended order dated December 2, 2011, petitioner was also required to repay \$892.33 for the cost of the surgery performed by Dr. Mendes on September 18, 2008, bringing the total petitioner was required to repay to \$18,390.04. Petitioner was permitted to keep \$3262.86 as compensation for the time he missed from work as a result of the soft tissue sprain.

On appeal, petitioner argues the compensation judge erred by impermissibly relying on hearsay evidence to support the finding that he knowingly made a false statement to his treating doctors. Petitioner also argues "the judge of compensation committed reversible error in holding that [he] did not sustain a permanent injury." We find these arguments unpersuasive and affirm.

Our scope of review in a workers' compensation case is limited to

whether the findings made by the Judge of Worker's Compensation 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 with due regard to his [or her] expertise.

[Bradley v. Henry Townsend Moving & Storage Co., 78 N.J. 532, 534 (1979) (citing Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)).]

"Deference must be accorded the factual findings and legal determinations made by the Judge of Compensation unless they are manifestly unsupported by or inconsistent with competent relevant and reasonably credible evidence as to offend the interests of justice." Lindquist v. City of Jersey City Fire Dept., 175 N.J. 244, 262 (2003) (internal quotations and citation omitted). If a reviewing court "finds sufficient credible evidence in the record to support the agency's conclusions, that court must uphold those findings, even if the court believes that it would have reached a different result." Sager v. O.A. Peterson Constr. Co., 182 N.J. 156, 164 (2004).

Judges of compensation have "expertise with respect to weighing the testimony of competing medical experts and appraising the validity of [a petitioner's] compensation claim." Ramos v. M & F Fashions, Inc., 154 N.J. 583, 598 (1998). Therefore, they are "'not bound by the conclusional opinions of any one or more, or all of the medical experts.'" Perez v. Capitol Ornamental, Concrete Specialists, Inc., 288 N.J. Super. 359, 367 (App. Div. 1996) (quoting Lightner v. Cohn, 76 N.J. Super. 461, 465 (App. Div.), certif. denied, 38 N.J. 611

(1962)). "[S]o long as the judge's findings are supported by articulated reasons grounded in the evidence, we must give deference to his [or her] expertise in assessing disability." Ibid. In addition, judges of compensation are not bound by the rules of evidence. N.J.S.A. 34:15-56. Nevertheless, "it is well-settled that a judge of compensation's determination must be based on competent evidence." Reinhart v. E.I. Dupont de Nemours, 147 N.J. 156, 163 (1996).

Pursuant to N.J.S.A. 34:15-57.4(c)(1), a person who

purposefully or knowingly makes, when making a claim for benefits pursuant to [the Workers' Compensation Act, N.J.S.A. 34:15-1 to -142], a false or misleading statement, representation or submission concerning any fact which is material to that claim for the purpose of obtaining the benefits, the division may order the immediate termination or denial of benefits with respect to that claim and a forfeiture of all rights of compensation or payments sought with respect to the claim.

"[I]f that person has received benefits pursuant to [the Workers' Compensation Act], to which the person is not entitled, he is liable to repay that sum plus simple interest to the employer or the carrier." N.J.S.A. 34:15-57.4(c)(2).

In the present case, there is competent, credible evidence to support the compensation judge's determination that petitioner's conduct violated N.J.S.A. 34:15-57.4(c). That evidence included the similar MRIs, which were performed before

and after the work-related accident on August 4, 2008, and the written reports of petitioner's treating doctors. Although Dr. Hatfield's report did not specifically indicate that petitioner denied suffering a prior knee injury, the reports by Dr. Mendes and Dr. Colizza both explicitly stated that petitioner denied suffering any injury to his right knee prior to the August 2008 workplace accident. In addition, the judge found that petitioner was not a trustworthy witness and, therefore, his claim that he informed Dr. Mendes of the April 2007 automobile accident was entitled to little, if any, weight.

We conclude from our review of the record that there is sufficient evidence to support the compensation court's credibility assessments and its decision to accept Dr. Mercurio's testimony that petitioner did not sustain a permanent disability as a result of his workplace accident. Therefore, contrary to petitioner's argument, the judge's decision was not against the weight of the evidence.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION