

COMMONWEALTH COURT OF PENNSYLVANIA

**Philadelphia Housing Authority v. Workers' Compensation Appeal
Board (Butt)**

No. 633 C.D. 2020 (Pa. Commw. Ct. Apr. 22 2021) (memorandum) · No. No. 633 C.D. 2020 · Decided April 22,
2021

SUMMARY

The Commonwealth Court of Pennsylvania reversed the Workers' Compensation Appeal Board's order that had denied Philadelphia Housing Authority's petition to terminate Shenecqua Butt's workers' compensation benefits. The Court held that the employer's medical expert provided competent and sufficient evidence that Butt had fully recovered from her accepted April 2016 work-related lumbar conditions. The Court also concluded that the expert's characterization of lumbar radiculopathy as preexisting did not render his opinion incompetent.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Anne E. Covey; Renée Cohn Jubelirer; Ellen Ceisler
JURISDICTION	Pennsylvania
DECIDED	April 22, 2021
DOCKET	No. 633 C.D. 2020
DISPOSITION	reversed
PROCEDURAL POSTURE	Philadelphia Housing Authority petitioned for review of the Workers' Compensation Appeal Board's order reversing a workers' compensation judge's grant of the Authority's petition to terminate benefits.
STANDARD OF REVIEW	The Court reviewed whether constitutional rights were violated, an error of law was committed, Board procedures were violated, or necessary findings of fact were supported by substantial evidence. In reviewing substantial evidence, the Court viewed the evidence in the light most favorable to the prevailing party and drew all reasonable inferences in that party's favor. The Court did not reweigh evidence or disturb the WCJ's credibility determinations absent arbitrary or capricious disregard of competent evidence.

PRECEDENTIAL VALUE	Unreported memorandum opinion; precedential value not established in the source.
PARTIES	Philadelphia Housing Authority v. Workers' Compensation Appeal Board (Butt)

TOPICS

workers compensation administrative law appellate procedure standard of review employment law

PRACTICE AREAS

workers compensation administrative law appellate procedure employment law

QUESTIONS PRESENTED

1. Whether the employer's medical expert offered competent and sufficient evidence to establish that Butt had fully recovered from her judicially accepted work injuries and thereby support termination of workers' compensation benefits.
2. Whether a medical expert's characterization of an accepted lumbar radiculopathy as preexisting rather than as a new work injury rendered the expert's termination opinion incompetent.

HOLDINGS

1. An employer may establish entitlement to terminate workers' compensation benefits through unequivocal and competent medical evidence that the claimant's accepted work-related injuries have ceased or that any remaining disability is no longer related to those injuries.
2. A medical expert's testimony is not incompetent merely because the expert characterizes a judicially accepted lumbar radiculopathy as preexisting rather than as a new work injury, so long as the expert acknowledges the accepted work-related condition and unequivocally opines that the claimant has recovered from it.
3. The appellate court may not reweigh evidence or disturb the WCJ's credibility determinations when the WCJ's findings are supported by substantial evidence.

KEY QUOTATIONS

"a medical expert need not [even] necessarily believe that a particular work injury actually occurred[;] . . . the expert's opinion is competent if he assumes the presence of a previously accepted work-related injury and finds it to be resolved by the time of his examination." (13)

FACTUAL BACKGROUND

Shenecqua Butt, a Philadelphia Housing Authority home inspector, developed increased low-back and right-leg pain while performing physically demanding work in April 2016. A workers' compensation judge found that her work aggravated preexisting lumbar degenerative disc disease and spondylosis and caused lumbar radiculopathy, and awarded benefits. Following a 2018 independent medical examination, the employer's orthopedic expert

opined that Butt had fully recovered from the accepted conditions and could return to unrestricted work. The WCJ credited that opinion, but the Board reversed because the expert characterized the radiculopathy as preexisting rather than as a new work injury.

PROCEDURAL HISTORY

A workers' compensation judge initially granted Shenecqua Butt's claim petition and awarded temporary total disability benefits for an aggravation of preexisting lumbar degenerative disc disease and spondylosis, together with lumbar radiculopathy. After an independent medical examination, the Authority filed a termination petition. WCJ Craig granted the termination petition and denied Butt's penalty petition, finding that she had fully recovered as of June 5, 2018. The Board reversed, concluding that the employer's medical expert had not recognized all of the judicially accepted work injuries. The Commonwealth Court reversed the Board.

DISPOSITION

reversed

CASES CITED

- South Abington Township v. Workers' Compensation Appeal Board (Becker & ITT Specialty Risk Services), 831 A.2d 175, 181 (Pa. Cmwlth. 2003)
- Bryn Mawr Landscaping Co. v. Workers' Compensation Appeal Board (Cruz-Tenorio), 219 A.3d 1244, 1252 n.5 (Pa. Cmwlth. 2019)
- Donahay v. Workers' Compensation Appeal Board (Skills of Central PA, Inc.), 109 A.3d 787, 792 (Pa. Cmwlth. 2015)
- Baumann v. Workers' Compensation Appeal Board (Kellogg Co.), 147 A.3d 1283 (Pa. Cmwlth. 2016)
- Westmoreland County v. Workers' Compensation Appeal Board (Fuller), 942 A.2d 213, 217 (Pa. Cmwlth. 2008)
- Sarmiento-Hernandez v. Workers' Compensation Appeal Board (Ace American Insurance Co.), 179 A.3d 105 (Pa. Cmwlth. 2018)
- Hebden v. Workmen's Compensation Appeal Board (Bethenergy Mines, Inc.), 632 A.2d 1302, 1304 (Pa. 1993)
- Inservco Insurance Services v. Workers' Compensation Appeal Board (Purefoey), 902 A.2d 574, 578 (Pa. Cmwlth. 2006)
- City of Pittsburgh v. Zoning Board of Adjustment of the City of Pittsburgh, 559 A.2d 896, 901 (Pa. 1989)
- Sell v. Workers' Compensation Appeal Board (LNP Engineering), 771 A.2d 1246 (Pa. 2001)
- Pennsylvania Uninsured Employers Guaranty Fund v. Workers' Compensation Appeal Board (Lyle), 91 A.3d 297, 303 (Pa. Cmwlth. 2014)
- Dorsey v. Workers' Compensation Appeal Board (Crossing Construction Co.), 893 A.2d 191, 195 (Pa. Cmwlth. 2006)
- Williams v. Workers' Compensation Appeal Board (USX Corp.-Fairless Works), 862 A.2d 137, 145 (Pa. Cmwlth. 2004)

- 3D Trucking Co., Inc. v. Workers' Compensation Appeal Board (Fine & Anthony Holdings International), 921 A.2d 1281, 1288 (Pa. Cmwlth. 2007)
- Waldameer Park, Inc. v. Workers' Compensation Appeal Board (Morrison), 819 A.2d 164, 168 (Pa. Cmwlth. 2003)
- O'Neill v. Workers' Compensation Appeal Board (News Corp. Ltd.), 29 A.3d 50, 57 (Pa. Cmwlth. 2011)
- Hall v. Workers' Compensation Appeal Board (American Service Group), 3 A.3d 734 (Pa. Cmwlth. 2010)
- To v. Workers' Compensation Appeal Board (Insaco, Inc.), 819 A.2d 1222 (Pa. Cmwlth. 2003)

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