

COMMONWEALTH COURT OF PENNSYLVANIA

Kevin Shaw v. Workers' Compensation Appeal Board (Ken-Crest Services)

No. 699 C.D. 2019 (Pa. Commw. Ct. Dec. 13 2019) (mem.) (Commonwealth Court of Pennsylvania 2019) · No. No. 699 C.D. 2019 · Decided December 13, 2019

SUMMARY

The Commonwealth Court of Pennsylvania affirmed the Workers' Compensation Appeal Board's decision denying Kevin Shaw's claim petition and granting Ken-Crest Services' termination petition. The court held that substantial evidence supported findings that Shaw's work-related low back and left hip strains had resolved, while his surgeries and ongoing disability resulted from pre-existing degenerative conditions. The court also rejected Shaw's hearsay and credibility challenges.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Mary Hannah Leavitt, President Judge; Robert Simpson, Judge; Michael H. Wojcik, Judge
JURISDICTION	Pennsylvania
DECIDED	December 13, 2019
DOCKET	No. 699 C.D. 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant petitioned for review of the Workers' Compensation Appeal Board's order affirming a workers' compensation judge's denial of his claim petition and grant of the employer's termination petition.
STANDARD OF REVIEW	The court reviews whether the Board's necessary findings are supported by substantial evidence, whether Board procedures were violated, whether constitutional rights were violated, or whether an error of law was committed. The workers' compensation judge has exclusive authority over credibility and evidentiary weight, and credibility determinations will not be disturbed unless arbitrary and capricious, fundamentally dependent on a misapprehension of fact, or otherwise irrational.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; opinion not reported

PARTIES

Kevin Shaw v. Workers' Compensation Appeal Board, Ken-Crest Services

TOPICS

workers compensation

administrative law

hearsay

standard of review

appellate procedure

PRACTICE AREAS

workers compensation

administrative law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the Board erred in affirming denial of Shaw's claim petition because he failed to prove that the accepted work injury caused a loss of earning power or disability.
2. Whether the Board erred in affirming termination of benefits because the employer failed to prove that Shaw had fully recovered from the accepted work-related hip and low back strains and sprains.
3. Whether the workers' compensation judge improperly relied on hearsay medical evidence and arbitrarily credited the employer's medical experts.

HOLDINGS

1. The Board properly affirmed denial of Shaw's claim petition because Shaw did not prove that the work injury caused a loss of earning power or disability. Evidence that he sustained a work-related injury did not, by itself, establish disability, and the record did not show that his light-duty work caused a reduction in hours or earnings.
2. The Board properly affirmed termination of benefits because the employer presented substantial, credited medical evidence that Shaw had fully recovered from the accepted left hip and low back strains and sprains and that his continuing disability and surgeries resulted from preexisting degenerative conditions rather than the work injury.
3. The workers' compensation judge did not err in considering Dr. Gordon's testimony concerning an unobjected-to medical note because the testimony was corroborated by competent medical evidence, including diagnostic studies and other medical records.
4. The court could not disturb the workers' compensation judge's findings because substantial evidence supported the findings actually made, even though contrary evidence existed in the record.

KEY QUOTATIONS

"That a claimant suffered a work-related injury does not automatically establish a disability because injury and disability are two legally distinct terms." (7)

"An employer seeking to terminate workers' compensation benefits bears the burden of proving either that the employee's disability has ceased or that any current disability arises from a cause unrelated to the employee's work injury." (8)

“Hearsay evidence, [p]roperly objected to, is not competent evidence to support a finding.... (2) Hearsay evidence, [a]dmitted without objection, will be given its natural probative effect and may support a finding ... [i]f it is corroborated by any competent evidence in the record, but a finding of fact based [s]olely on hearsay will not stand.” (9-10)

“In sum, Claimant failed to establish that his work injury resulted in disability or a loss of earning power.” (11)

FACTUAL BACKGROUND

Shaw injured his left hip and low back while performing demolition work for Ken-Crest Services on July 8, 2015. The employer accepted the injury as left hip and low back pain, sprain, or strain, but Shaw later underwent a left hip replacement and low back surgery, both of which he claimed were related to the work injury. Medical experts for the employer attributed the surgeries and continuing disability to longstanding osteoarthritis and degenerative disc disease, while Shaw’s expert attributed the conditions to aggravation from the workplace incident. The workers’ compensation judge credited the employer’s experts and found that Shaw had recovered from the accepted strains and sprains.

PROCEDURAL HISTORY

Kevin Shaw sustained accepted left hip and low back strain/sprain injuries in a July 8, 2015 workplace incident. He filed a claim petition seeking disability benefits, and Ken-Crest Services filed a termination petition asserting full recovery; the petitions were consolidated before the workers’ compensation judge. The judge denied the claim petition and granted termination, the Board affirmed, and the Commonwealth Court affirmed the Board.

DISPOSITION

affirmed

CASES CITED

- Scobbie v. Workmen’s Compensation Appeal Board (Greenville Steel Car Co.), 545 A.2d 465, 466 (Pa. Cmwlth. 1988)
- School District of Philadelphia v. Workers’ Compensation Appeal Board (Lanier), 727 A.2d 1171, 1172 (Pa. Cmwlth. 1999)
- Cytemp Specialty Steel v. Workers’ Compensation Appeal Board (Crisman), 39 A.3d 1028, 1033 n.6 (Pa. Cmwlth. 2012)
- Halaski v. Hilton Hotel, 409 A.2d 367, 369 (Pa. 1979)
- Verizon Pennsylvania Inc. v. Workers’ Compensation Appeal Board (Mills), 116 A.3d 1157, 1162 (Pa. Cmwlth. 2015)
- Innovative Spaces v. Workmen’s Compensation Appeal Board (DeAngelis), 646 A.2d 51, 54 (Pa. Cmwlth. 1994)
- Campbell v. Workers’ Compensation Appeal Board (Antietam Valley Animal Hospital), 705 A.2d 503, 506-07 (Pa. Cmwlth. 1998)

- Udvari v. Workmen's Compensation Appeal Board (USAir, Inc.), 705 A.2d 1290, 1293 (Pa. 1997)
- Calcara v. Workers' Compensation Appeal Board (St. Joseph Hospital), 706 A.2d 1286, 1288 (Pa. Cmwlth. 1998)
- Walker v. Unemployment Compensation Board of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976)
- Edwards v. Workers' Compensation Appeal Board (Epicure Home Care, Inc.), 134 A.3d 1156, 1161 (Pa. Cmwlth. 2016)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/pennsylvania-commonwealth-court-of-pennsylvania/2019/kevin-shaw-v-workers-compensation-appeal-board-ken-crest-g8uhmm3l>