NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1815-20

LAURIE LINDELL,

Petitioner-Appellant,

v.

W.H. INDUSTRIES, INC.,

Respondent-Respondent.

———————————————

Argued March 2, 2022 – Decided June 1, 2022

Before Judges Gilson, Gooden Brown, and Gummer.

On appeal from the Department of Labor and Workforce Development, Division of Workers' Compensation, Claim Petition Nos. 2009-17087, 2009-17088 and 2012-1470.

Herbert L. McCarter argued the cause for appellant (Wind & McCarter, PA, attorneys; Herbert L. McCarter, on the brief).

John V. Mallon argued the cause for respondent (Chasan Lamparello Mallon & Cappuzzo, PC, attorneys; John V. Mallon, of counsel and on the brief; Richard W. Fogarty, on the brief).

PER CURIAM

Petitioner Laurie Lindell appeals a decision dismissing her worker's compensation claim petitions with prejudice. Because we defer to the judge of compensation's credibility determinations and because the decision was supported by sufficient credible evidence in the record, we affirm.

I.

Petitioner started working for respondent W.H. Industries, Inc. in 1999. For the next ten years, she worked in an office with responsibilities relating to accounts payable, human resources, workers' compensation, "import/export," and purchasing. In her job, petitioner, who was right-handed, used a calculator and a computer and made notes on paper or in notebooks. She sometimes would go out on "the floor" to make sure a shipment contained the correct parts.

In 2001, petitioner was hit by a car while she was crossing a street. Her right hand went through the car's windshield. She had surgery to repair her hand and surgery later to remove a neuroma. After the 2001 pedestrian accident, petitioner received treatment for pain management from Dr. Todd Schlifstein, who prescribed physical and occupational therapy and pain medication. Dr.

Schlifstein diagnosed petitioner as having in her right hand reflex sympathetic dystrophy (RSD), which is a form of complex regional pain syndrome (CRPS).[1]

In 2009, petitioner filed with the Division of Workers' Compensation two claim petitions in which she alleged she had injured her right hand at work in accidents that had occurred on June 27, 2007, and September 14, 2007. At the time of the June 27, 2007 accident, petitioner was still receiving treatment from Dr. Schlifstein for the hand injury she had sustained in the 2001 pedestrian accident. She subsequently filed a third claim petition, alleging she had injured her right hand at work on August 12, 2009. Petitioner stopped working after the August 12, 2009 accident. Petitioner claims the pre-existing RSD in her right hand was aggravated by the three work-site accidents.

In its answer to petitioner's claim petition regarding the June 27, 2007 accident, respondent answered "Yes" to "[a]rose out of and in the course of employment" and clarified it "admit[ted] a hand injury only." Respondent paid all authorized medical bills related to the June 27, 2007 accident. In its answer to petitioner's claim petition regarding the August 12, 2009 accident, respondent admitted the accident "[a]rose out of and in the course of employment."

[1] At trial, counsel agreed to use RSD and CRPS interchangeably. For ease of reading, we are using RSD.

Respondent paid all authorized medical bills related to the August 12, 2009 accident and paid petitioner 128.28 weeks of temporary disability.

Each of the worksite accidents involved a similar set of facts: one of the steel doors that separated petitioner's office from "the floor" was opened onto her right hand. After the 2007 worksite accidents, petitioner was authorized to continue treatment with Dr. Schlifstein. He treated her until 2013, when her treatment was transferred to Dr. Eric Freeman, who prescribed pain and other medication for her. She typically saw Dr. Freeman every four to six weeks. At her first appointment with him, Dr. Freeman was aware she previously had been diagnosed with RSD because respondent's workers' compensation carrier had instructed him to treat her for RSD of the right hand "based on the previous work history." Dr. Freeman diagnosed petitioner as having "a very mild case" of RSD of the right hand "if you believe her subjective complaints." He did not make any determination as to the causation of her RSD because he understood she had come to him with that condition. Dr. Freeman treated petitioner based on her subjective complaints of pain. He relied "on [petitioner's] word and numerous examinations, some evidence of findings that are all subtle and mild in this case."

Petitioner saw Dr. Freeman on September 1, 2015. His office notes indicate she had a mild swelling in her right hand. On September 21, 2015, petitioner was hit by a car while she was riding a ten-speed bicycle. Petitioner had an appointment with Dr. Freeman on September 29, 2015, eight days after the bicycle accident. Dr. Freeman's office notes indicate petitioner complained that day about a flare-up of pain, which she attributed to the weather. She did not tell Dr. Freeman about the bicycle accident. According to petitioner, she did not disclose the bicycle accident to him because her head was "fuzzy" that day due to the loss of a family member.

In 2016, petitioner had a cervical-fusion and a lumbar surgery because of the 2015 bicycle accident. Petitioner did not advise Dr. Freeman, who was still treating her, of those surgeries, even though she had seen him eight days after the cervical fusion surgery and one day before the lumbar surgery. Dr. Freeman found out about the 2015 bicycle accident when respondent's workers' compensation carrier advised him about it in 2017. According to Dr. Freeman, when he asked petitioner why she had not told him about the 2015 bicycle accident, she stated she did not think he needed to know about it.

Petitioner also saw Dr. Schlifstein after the 2015 bicycle accident. She asserted she was seeing him "only for the left side" and "not for the [right] hand."

According to Dr. Schlifstein's records, he prescribed oxycodone, a fentanyl patch, and a transdermal patch for her at the same time she was being treated by Dr. Freeman. According to petitioner, those prescriptions were not filled. Dr. Freeman was not aware she was being treated by and being prescribed medications by Dr. Schlifstein or other doctors. Based on his subsequent review of pharmacy records, Dr. Freeman concluded petitioner on numerous occasions had filled controlled substance medication prescriptions from other providers while he was treating her for pain management. Had Dr. Freeman known about the other prescriptions, he would have reduced or eliminated the medications he prescribed for petitioner.

The judge of compensation heard testimony over the course of four days. On the first hearing day, the parties stipulated that as to the claims regarding the June 27, 2007 and August 12, 2009 accidents, the "sole remaining issue [was] the nature and extent of any permanent disability" petitioner had sustained as a result of those accidents.

After petitioner testified, she called Dr. Freeman as a witness. In addition to testifying about his treatment of petitioner, Dr. Freeman testified there was no medical evidence the 2009 work accident caused petitioner's RSD and that he found no demonstrable objective evidence her RSD became worse after "the

work-related accident." He confirmed that after the 2015 bicycle accident, petitioner complained of having pain flare-ups; Dr. Freeman testified those flare-ups could have been related to the surgeries petitioner had after the 2015 bicycle accident, and not her work-related accidents.

Petitioner called as an expert witness neurologist Stephen Dane. Dr. Dane, who had examined petitioner once in 2017 and once in 2019, opined petitioner had "right-sided cervical radiculitis" and "[s]econdly, [RSD] with permanent neurological impairment." Dr. Dane believed the 2009 worksite accident had aggravated petitioner's RSD but that "[t]here is no evidence of any subsequent aggravation following 2009." He testified on cross-examination that when he examined petitioner in 2017, she did not tell him about the surgeries she had had after the 2015 bicycle accident and that many of petitioner's complaints, including numbness, tingling, and pain, could have been the result of cervical radiculitis from the cervical fusion petitioner underwent after the 2015 bicycle accident. Dr. Dane confirmed his RSD diagnosis was based on petitioner's subjective complaints and his findings of sensitivity and coolness in her right hand compared to the left. He conceded the only record he had reviewed regarding the injuries to her hand that pre-dated the 2009 accident was one progress note from Dr. Schlifstein.

Respondent called as an expert witness neurologist Charles Effron. Dr. Effron had examined petitioner three times. He found no objective findings of RSD. He found petitioner had normal strength and range of motion in her right wrist and elbow. He acknowledged she had told him she felt nothing when he touched her right hand, but he testified that her reported lack of sensation was "not organic" because if she has "absolutely no sensation at all, that would not go along with her ability to use the hand at all." He observed her holding a pen, "writing quickly and normally with her right digits," tying her shoelaces with both hands, "carrying in her right hand a large thin plastic container of an iced beverage" as she entered his office, grabbing the strap of her bag with her right hand when she was leaving, and "actively gestur[ing] with her right hand in casual conversation," all of which Dr. Effron found to be "inconsistent with her allegations during the actual physical examination" because they are "all findings which are incompatible with her complaints of loss of sensation and pain with using the hand." He concluded petitioner "does not have [RSD]" and "[a]s a result of the [work-related] incident of August 12, 2009, . . . there is no permanent disability . . . ."

In a decision she placed on the record, the compensation judge dismissed all three claim petitions, finding petitioner had failed to sustain her burden of

proof. The judge found petitioner not credible and explained in detail why she found her not credible. The judge did not believe petitioner's testimony that her failure to tell Dr. Freeman about the 2015 bicycle accident was due to a death in her family and found petitioner had "intentionally decided" not to tell Dr. Freeman about that accident. She found petitioner's assertion that after the 2015 bicycle accident she had seen Dr. Schlifstein for treatment of only her left side to be "blatantly absurd." The judge found incredible petitioner's testimony that Dr. Freeman had not asked her about changes in her medical history and credible Dr. Freeman's testimony that he had asked petitioner for updates at every appointment. The judge believed Dr. Effron's testimony that petitioner had failed to disclose the injuries she had sustained in the 2015 bicycle accident in response to a direct question and concluded petitioner had "blatantly lied" to Dr. Effron. The judge found petitioner had given "false testimony" when she denied filling prescriptions written by Dr. Schlifstein "while simultaneously filling prescriptions written by Dr. Freeman." Ultimately, the judge found petitioner's "non-disclosure of the bike accident to Drs. Freeman, Dane and Effron, coupled with her lying on the stand about never having prescriptions filled by doctors other than Dr. Freeman beginning mid-2013, acutely and irreparably damaged petitioner's credibility." The judge concluded "[g]iven the extent of lying and

misrepresentation in this case, the [c]ourt as the trier of fact completely rejects all of [petitioner's] testimony."

The judge found petitioner had failed to sustain her burden of proof, citing Perez v. Pantasote, Inc., 95 N.J. 105, 116-17 (1984). The judge dismissed the claim petitions relating to the 2007 worksite accidents because "[t]he entirety of [petitioner's] trial testimony concerned her functional status after the August 12, 2009 worksite accident, and all of the permanency evaluations took place after the August 12, 2009 accident." The judge found petitioner had continued to work full-time after each of the 2007 work-site accidents and had stopped working only after the 2009 work-site accident.

Noting that "not one doctor opined [petitioner] was 100% totally disabled and [petitioner had] presented no expert testimony that she was incapable of working," the judge dismissed the claim petition regarding the 2009 worksite accident for failure to sustain the burden of proof for two reasons: "[o]ne, the objective medical findings made by petitioner's treating and evaluating doctors are de minimis, and, two, . . . petitioner lacks all credibility." Acknowledging petitioner's testimony that she had received treatment from Dr. Schlifstein after the 2001 pedestrian accident, the judge found "there was no testimony regarding any functional loss" and no "evidence that the accidents prior to August 12, 2009

negatively impacted [petitioner's] working ability or in any way impaired her ability to carry on her ordinary life pursuits." The judge held petitioner had not established the pre-existing RSD injury from the 2001 pedestrian accident resulted in any partial permanent disability.

The judge found the medical findings of both Dr. Freeman and Dr. Dane to be based largely on petitioner's subjective complaints, which she held "have no credibility with this [c]ourt." The judge found credible Dr. Freeman's testimony that petitioner's RSD symptoms are very mild and consistent with Dr. Dane's "de minimis and insignificant" assessment of ten to twenty percent partial total disability for the 2009 worksite accident. The judge found petitioner lacked all credibility concerning her alleged injuries from the 2009 worksite accident and found her subjective complaints about her right hand to be uncorroborated and inconsistent with petitioner being able to ride a ten-speed bicycle following the 2009 worksite accident and with Dr. Effron's undisputed testimony he had observed petitioner using her right hand and fingers frequently in a way that would be impossible if petitioner's subjective complaints were true. The judge issued an order dismissing petitioner's claim petitions with prejudice.

On appeal, petitioner argues she met her burden of proof and the judge of compensation erred by dismissing her claim petitions due to her lack of

credibility, admitting pharmacy records into evidence, purportedly ignoring the parties' stipulations, using the 2015 bicycle accident records to question petitioner's credibility and support her decision, and failing to consider "the inconsistency" in respondent's arguments. Unpersuaded by those arguments, we affirm.

II.

Our review in workers' compensation cases is "limited to whether the findings made could have been reached on sufficient credible evidence present in the record." Hersh v. Cnty. of Morris, 217 N.J. 236, 242 (2014) (quoting Sager v. O.A. Peterson Constr., Co., 182 N.J. 156, 164 (2004)). We give "substantial deference," Ramos v. M & F Fashions, Inc., 154 N.J. 583, 594 (1998), to the factual and credibility findings of a judge of compensation "in recognition of the compensation judge's expertise and opportunity to hear witnesses and assess their credibility." Goulding v. NJ Friendship House, Inc., 245 N.J. 157, 167 (2021). A compensation judge's findings "should not be reversed unless they are 'manifestly unsupported by or inconsistent with competent relevant and reasonably credible evidence as to offend the interests of justice.'" McGory v. SLS Landscaping, 463 N.J. Super. 437, 452-53 (App. Div. 2020) (quoting Perez v. Monmouth Cable Vision, 278 N.J. Super. 275, 282

(App. Div. 1994)). "[W]e review the court's legal findings and construction of statutory provisions de novo." Hager v. M&K Constr., 246 N.J. 1, 13 (2021).

In 1979, our Legislature amended the New Jersey Workers' Compensation Act (the Act), N.J.S.A. 34:15-1 to -147, "to eliminate awards for minor partial disabilities, to increase awards for the more seriously disabled, and to contain the overall cost of workers' compensation." Perez, 95 N.J. at 114; see also Schorpp-Replogle v. N.J. Mfrs. Ins. Co., 395 N.J. Super. 277, 296 (App. Div. 2007) ("A central objective the Legislature accomplished through the 1979 amendments is the elimination of minor injuries not worthy of compensation from serious workplace-induced disabilities . . . ."). In Perez, our Supreme Court articulated a two-part test a petitioner must meet to merit compensation under the Act: "The first essential that must be met is a satisfactory showing of demonstrable objective medical evidence of a functional restriction of the body, its members or organs. . . . [T]he next issue is determining whether the injury is minor or is serious enough to merit compensation." 95 N.J. at 116. "The first prong of the Perez test requires a 'satisfactory showing' of 'demonstrable objective evidence of a functional restriction of the body.'" Schorpp-Replogle, 395 N.J. Super. at 297 (quoting Perez, 95 N.J. at 116). To establish the first prong, a petitioner must support a claim with something more than just his or

her subjective statements. Perez, 95 N.J. at 116. A "[m]aterial lessening of an employee's working ability is a significant, although not necessarily controlling, criterion in" determining the second prong. Ibid. Regarding the second prong, a judge of compensation may consider "whether there has been a disability in the broader sense of impairment in carrying on the 'ordinary pursuits of life.'" Id. at 117. "[A]n injury or disease that is minor in nature . . . is not compensable." Ibid.

Because the judge's decision was supported by sufficient credible evidence present in the record, we affirm. Petitioner would have us disregard the judge's assessment of her credibility. That we cannot do, especially in a case, like this one, in which the petitioner's treating physician and expert witness rely extensively on the petitioner's subjective complaints.

Petitioner faults the judge for admitting into evidence petitioner's pharmacy records and for purported errors in analyzing those records. But, as petitioner recognizes, a judge of compensation is not bound by the Rules of Evidence, see N.J.S.A. 34:15-56, and may admit documents into evidence without authentication testimony, see Lindquist v. City of Jersey City Fire Dep't, 175 N.J. 244, 260 (2003). Even if we were to set aside the pharmacy records and the judge's factual findings based on those records, her conclusion that

petitioner lied about not filling prescriptions issued by other doctors while she was being treated by Dr. Freeman was supported by Dr. Freeman's testimony – which petitioner did not challenge – about his prior analysis of her pharmacy records and his conclusion petitioner, on numerous occasions and without disclosing it to him, had filled controlled substance medication prescriptions from other providers while he was treating her for pain management. We also perceive no error in the judge's consideration of evidence regarding the 2015 bicycle accident for the limited purpose of assessing the credibility of petitioner's testimony and her subjective complaints to the testifying physicians.

Petitioner contends the judge ignored the parties' stipulations. The record reflects otherwise; the judge expressly acknowledged those stipulations on the record and focused on the "sole remaining issue" as stipulated by the parties: "the nature and extent of any permanent disability" petitioner had sustained as a result of the worksite accidents. On that issue, the judge found petitioner had failed to establish the required elements of the Perez test. As to the 2007 worksite accidents, the judge found petitioner had presented no "demonstrable objective medical evidence of a functional restriction of the body" or evidence of a "[m]aterial lessening of an employee's working ability" or ability to "carry[] on the 'ordinary pursuits of life.'" Perez, 95 N.J. at 116-17. The evidence she

presented in support of the Perez elements regarding the 2009 worksite accident was not credible, given her lack of credibility and her treating and expert physicians' admitted significant reliance on her subjective complaints. And it was not sufficient. Even Dr. Freeman, petitioner's treating physician, testified he diagnosed petitioner as having "a very mild case" of RSD, "if you believe her subjective complaints."

What petitioner is really arguing is that because respondent paid petitioner's medical bills in connection with the worksite accidents and made temporary-disability payments to her after the 2009 worksite accident the judge had to determine she was partially permanently disabled as a result of those accidents. But that is not the law. As the judge recognized, "[b]eing paid medical and temporary disability benefits is markedly different from a determination that you have a partial permanent disability. All medical treatment provided under the statute is without prejudice and does not mean that there is a partial permanent disability." See N.J.S.A. 34:15-15 ("The mere furnishing of medical treatment or the payment thereof by the employer shall not be construed to be an admission of liability."). Respondent never stipulated petitioner was partially permanently disabled after the work-site accidents.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION