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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1311-21**

RICHARD FARHAT,

Petitioner-Appellant,

v.

JOE LEONE'S,

Respondent-Respondent.

Submitted January 23, 2023 – Decided March 9, 2023

Before Judges Whipple and Mawla.

On appeal from the Division of Workers' Compensation, Department of Labor and Workforce Development, Claim Petition No. 2019-3238.

Hobbie, Corrigan & DeCarlo, PC, attorneys for appellant (Michael R. Hobbie and Erin E. Mullen, of counsel and on the briefs).

McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys for respondent (Richard J. Williams, Jr., of counsel and on the brief).

PER CURIAM

Petitioner Richard Farhat appeals from a December 7, 2021 order denying compensation for medical and temporary-disability benefits. The decision was supported by sufficient credible evidence in the record. We affirm.

Petitioner worked as a deli and counter helper at respondent Joe Leone's. In December 2017, he was in the deli's basement when he hit his head on a pipe, fell, and lost consciousness. When he woke up on the floor, he did not immediately notice any pain. He reported the fall to a manager. Later, his wrist, back, and neck began to hurt. Thinking the pain would subside eventually, he waited to seek medical treatment. Nearly three months later, in March 2018, petitioner went to the emergency room with complaints of neck pain and a headache. He was diagnosed with a neck sprain.

Petitioner sought authorized medical care from Dr. Cary Glastein, who examined him for cervical pain. Dr. Glastein noted petitioner was experiencing pain in his right lower back but did not examine petitioner's lumbar spine as he was instructed strictly to treat only the cervical spine. Throughout the rest of 2018, petitioner continued to see Glastein for cervical pain.

Throughout 2019 and 2020, petitioner continued to seek orthopedic treatment; chiropractic treatment; and physical therapy for his neck, lower back, right hip, and leg pain. He also underwent MRIs and other diagnostic testing for his lower back and received epidural injections for the lower back pain.

In February 2019, petitioner filed a claim petition with the Division of Workers' Compensation, requesting compensation for injuries resulting from the fall in December 2017. Respondent answered the claim petition, admitting it employed petitioner on the date alleged and the injury arose out of and in the course of employment. It asserted coverage was provided on the date of the accident and that it rendered aid to petitioner. However, respondent included in its answer the nature of injury or disease was to be determined.

In April 2019, New Jersey Manufacturers Insurance Group (NJM) scheduled petitioner with an orthopedic physician for an evaluation for treatment for significant pain in the right shoulder resulting from a 2018 injury that occurred while petitioner was slicing meat. Dr. Alan Nasar, an orthopedic surgeon, diagnosed petitioner with a right shoulder strain with acromioclavicular joint separation attributable to the accident while petitioner

was slicing meat. Nasar also noted petitioner experienced tenderness in the lumbar spine.

On July 18, 2019, petitioner moved for temporary and/or medical benefits pursuant to N.J.A.C. 12:235-3.2, asserting he was currently in need of physical therapy and MRIs of the cervical and lumbar spine per Dr. Nasar's medical report. The court dismissed petitioner's motion without prejudice because he was already scheduled and authorized for right shoulder surgery pursuant to his other workers' compensation claim.

In May 2020, petitioner again moved for temporary and/or medical benefits, this time only requesting medical treatment for his lumbar pain resulting from the December 2017 fall. Respondent denied his lower back injuries were causally related to the fall.

On September 29, 2020, Dr. Steven M. Reich, an orthopedic surgeon, evaluated petitioner for an Independent Medical Evaluation (IME) per NJM's request. Dr. Reich diagnosed petitioner with multilevel degenerative spinal stenosis, degenerative spondylolisthesis, and superimposed herniated nucleus pulposus. He noted there was "some difficulty identifying the causal relationship."

The worker's compensation court conducted a trial on petitioner's motion for medical and temporary disability benefits for his back treatment. The trial took place over several months, from October 2020 to March 2021. Petitioner testified about the December 2017 fall and his subsequent treatment.

Dr. Nasar testified as petitioner's expert. He opined, in agreement with a second report he had provided to petitioner's counsel, that the lumbar injury was caused by the fall in December 2017. Additionally, he testified petitioner had compression of the lumbar nerves, which could be caused by traumatic injury, such as a fall. Dr. Nasar admitted everything in his initial report was based on what petitioner told him; he had no medical records to review at the time. For his second report, Dr. Nasar reviewed petitioner's medical records but did not receive petitioner's March 20, 2018 emergency room records.

Dr. Reich testified at the trial as an expert witness in spinal surgery specifically on the issue of causation. Dr. Reich, in contrast to Dr. Nasar, had notified NJM by letter he believed petitioner's lumbar injury was not caused by the December 2017 fall. According to Dr. Reich, it was uncharacteristic for severe back pain to occur four months after a traumatic event such as a fall. Further, spinal stenosis is degenerative, occurring over several years. Dr. Reich was "unable to correlate how a fall would result in the degenerative

cascade" He also explained at trial petitioner was "a difficult historian" because he "wasn't clear of the dates, what happened, [or] the timing."

Dr. Reich further noted "[t]here was no objective evidence of any traumatic event." He explained, if a traumatic event had occurred, there would be "a tremendous amount of edema, swelling, tearing, which is all well-visualized on MRI and none of that was present on [petitioner's] studies."

On December 5, 2021, the court issued a fifty-three-page written decision thoroughly summarizing petitioner's medical records, the testimony, and explaining the court's factual findings. The court considered the different versions of the accident put forth in the record:

The statements made to the various [d]octors and medical providers illustrate[] the fact that the [p]etitioner was, at best, a bad historian and unreliable in providing information to the medical providers.

. . . .

[A physical therapy] record notes that the [p]etitioner sustained a back injury in the same fall wherein a wrist injury was sustained and refers to the date of December 16, 2017. There is no supporting documentation to review to determine how or why the [o]ccupational [t]herapist determined that the injury occurred on December 16, 2017. It can only be assumed that the information was supplied by the [p]etitioner because of the absence of any reference to a lower back condition having been a result of an

injury on December 16, 2017[,] by any other medical provider.

. . . .

[Another] treatment record sets forth yet another version of the alleged mechanism of injury. The record states that the [p]etitioner fell while descending stairs and landed on his right lower back and right thigh which he hit against the leg of a chair. The [p]etitioner denied any such event having occurred during his testimony.

The court addressed petitioner's credibility using Model Jury Charges (Civil), 1.12(L), "General Provisions for Standard Charge – Credibility" (approved Nov. 1998). It noted petitioner's inability to recall certain dates and other information. It also noted petitioner's testimony contradicted itself: he testified both that he fell after striking his head on a pipe and that he had no recollection of how he fell. Additionally, though petitioner claimed to have told every medical provider about the pain in his back, the initial medical records make no reference to pain in his lower back. As a result, the court found petitioner was not a credible witness.

The court also addressed the expert testimony of Dr. Nasar and Dr. Reich. It noted Dr. Nasar authored his first report without reviewing the relevant medical records and wrote a subsequent report without examining petitioner. The court considered Dr. Reich's analysis "far superior" to that of

Dr. Nasar, observing Dr. Nasar had failed to review the MRI films. It concluded Dr. Nasar was not as experienced or knowledgeable as Dr. Reich was regarding this particular medical issue.

The court found Dr. Reich, on the other hand, provided credible and reliable testimony. It noted Dr. Reich specialized in treatment of the spine, used the results of diagnostic tests to support his conclusions, and "answered questions clearly, directly[,] and with great detail."

Overall, the court agreed with Dr. Reich's opinion petitioner's low back injuries and any necessary treatments were unrelated to the December 2017 fall. The court found petitioner "failed to establish by objective, reasonable evidence supported by facts in the record that a need for additional treatment regarding a 'work related' injury to the back exi[s]ts." On December 7, 2021, the court issued an order denying petitioner medical and temporary benefits. This appeal followed.

On this record, we see no error in the compensation judge's finding petitioner failed to prove compensability for medical and temporary benefits by the preponderance of credible evidence. Since ample, credible evidence in the record supported the judge's credibility findings as to the parties' orthopedic surgery experts, we affirm. To the extent we have not addressed

petitioner's remaining arguments, we are satisfied they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION