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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-5616-15T4

LARRY D. BATTS,

Petitioner-Appellant,

v.

FLAG HOUSE,

Respondent-Respondent.

Argued telephonically December 4, 2017 –
Decided January 16, 2018

Before Judges Fasciale and Summers.

On appeal from the Division of Workers'
Compensation, Claim Petition No. 1999-12455.

Alan T. Friedman argued the cause for
appellant (Bagolie-Friedman, LLC, attorneys;
Alan T. Friedman, on the brief).

Daniel A. Lynn argued the cause for respondent
(Braff Harris Sukoneck & Maloof, attorneys;
Daniel A. Lynn, on the brief).

PER CURIAM

Petitioner Larry D. Batts filed a motion for medical treatment
and temporary benefits related to a Division of Workers'
Compensation award arising from a seventeen-year-old work-related

accident. Petitioner claimed his initial ten percent psychiatric disability award increased since the accident, which necessitated treatment for chronic depression and anxiety disorder. The judge of compensation denied the motion, ruling in his July 15, 2016 written reserved decision, which he amplified in a September 13, 2016 letter filed under Rule 2:5-1, that petitioner failed to sustain his burden of proof to establish a causal connection between his need for psychiatric treatment and the previous work-related injury award.

In this appeal, petitioner essentially contends the judge erred because the evidence demonstrated that his psychiatric condition worsened since the initial award and was causally related to the work-related accident. He argues the judge failed to recognize the res judicata effect of prior workers' compensation orders awarding him ten percent psychiatric disability. We disagree with these contentions, and affirm.

On April 2, 1998, a forklift ran over petitioner's right ankle while he was working for respondent Flag House. After filing an employee claim petition alleging disability for his injuries, a settlement was reached on April 25, 2003, resulting in a workers' compensation judge awarding petitioner fifty percent disability for his right foot and ten percent psychiatric disability for chronic depression and anxiety disorder. Four years later,

petitioner's disability award for his right foot was increased to fifty-seven and one half percent. And five years later, another award increased the right foot disability to sixty percent. Neither award changed the initial ten percent psychiatric disability. Thus, the same day petitioner's right foot disability was increased to sixty percent, he filed another application for review and modification along with a motion for medical and temporary benefits seeking psychiatric treatment.

At the motion hearing, petitioner testified that his divorce nine years earlier was because he could not be intimate with his wife due to the pain he experienced from the forklift accident. Following the accident, his weight increased almost fifty pounds and he was diagnosed with diabetes. Petitioner also stated he needs treatment to address various psychiatric issues he has experienced over the last year, which stem from his accident. To date, petitioner has not been prescribed any psychiatric medication.

Petitioner presented Dr. Devendra Kurani as an expert witness in psychiatry. Dr. Kurani did not treat petitioner but based his testimony on his examination of petitioner and review of petitioner's medical files. According to the doctor, petitioner's divorce, lack of mobility, weight gain, hypertension, diabetes, unemployment, finances, inability to socialize, and depression are

attributed to the accident. He opined that petitioner receive psychotherapy and medication for his disability.

Respondent presented Dr. David Gallina as its psychiatric expert, who also examined petitioner and reviewed his medical files. Dr. Gallina agreed with Dr. Kurani's diagnosis that petitioner had depression. However, he opined the condition was unrelated to the accident, but attributable to his obesity and loneliness due to his divorce. He does believe that psychiatric and medical treatment would benefit petitioner.

In denying petitioner's motion, the compensation judge issued a written reserved decision, amplified in a September 13, 2016 letter filed under Rule 2:5-1, that petitioner did not meet his burden of proof in showing the work-related accident caused his depression. The judge explained:

Considering all of the evidence presented, I find that the testimony of both doctors concerning this potentially harmful side effect undercuts a finding of medical necessity. Also undercutting such a finding is the fact that petitioner never sought psychiatric treatment from 1998 through early 2016, despite his physical condition remaining largely unchanged during that time.

The judge also found petitioner's reasoning that his divorce was the result of his work-related injury lacked credibility. He noted that petitioner failed to establish any evidence accounting

"for [his] substantial fluctuations in weight that [he] apparently experienced over the last several years, while his injuries from the accident remained unchanged." The judge further noted Dr. Gallina's testimony was more convincing, stating "petitioner's obesity could be attribute[ed] to a variety of lifestyle choices . . . during the more than [seventeen] years between his accident and . . . examinations of Dr. Kurani and Dr. Gallina."

In our review of decisions by workers' compensation judges decisions, we generally give substantial deference to their determinations, limiting our review to "whether the findings made 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 . . . their credibility." Lindquist v. City of Jersey City Fire Dep't., 175 N.J. 244, 262 (2003) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)). "Deference must be accorded . . . unless . . . manifestly unsupported by or inconsistent with competent relevant and reasonably credible evidence as to offend the interests of justice." Ibid. (citation omitted). "[T]he judge of compensation's legal findings are not entitled to any deference and, thus, are reviewed de novo." Hersh v. Cty. of Morris, 217 N.J. 236, 243 (2014).

Based upon our careful review of the record and applicable legal principles, we "conclude that all of the[] factual determinations made by the workers' compensation judge were supported by substantial credible evidence in the record 'and [were] not so wide off the mark as to be manifestly mistaken.'" Acikgoz v. N.J. Tpk. Auth., 398 N.J. Super. 79, 87 (App. Div. 2008) (second alteration in original) (quoting Tlumac v. High Bridge Stone, 187 N.J. 567, 573 (2006)); see also R. 2:11-3(e)(1)(D). Hence, we affirm substantially for the reasons expressed by the judge of compensation. We add only the following comments.

There is no merit to petitioner's argument that the judge ignored prior orders establishing petitioner's "psychiatric disability related to his work related accident," and that res judicata compels a ruling that his psychiatric disability increased since the initial award. The principle of res judicata "contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to relitigation." Lubliner v. Bd. of Alcoholic Beverage Control, 33 N.J. 428, 435 (1960). Here, the denial of petitioner's request to increase his psychiatric disability did not disturb or contradict any prior workers' compensation court decision. The two modifications to petitioner's initial award did not address

the initial ten percent psychiatric disability award; they only dealt with the disability to petitioner's right foot. Thus, there is no basis for the assertion that petitioner had a right to have his psychiatric disability award increased because of a prior court order. Furthermore, we agree with respondent that the judge did not determine petitioner had no right to increase his psychiatric disability award. The judge merely concluded petitioner did not prove that his current depression was caused by an accident that occurred eighteen years ago.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION