

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James Schuck,	:
	:
Petitioner	:
	:
v.	: No. 533 C.D. 2024
	: Submitted: March 4, 2025
City of Philadelphia	:
(Workers' Compensation	:
Appeal Board),	:
	:
Respondent	:

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

FILED: March 28, 2025

James Schuck (Claimant) petitions for review from an April 5, 2024 decision and order of the Workers' Compensation Appeal Board (Board), affirming a decision and order of a Workers' Compensation Judge (WCJ). The WCJ's decision and order denied Claimant's petitions for reinstatement of workers' compensation benefits (Reinstatement Petition) and for penalties (Penalty Petition) (collectively, Petitions) against the City of Philadelphia (Employer or City) pursuant to the Workers' Compensation Act (Act).¹ For the reasons that follow, we affirm.

¹ Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§1-1041.1; 2501-2710.

Background

Claimant is employed by Employer as a police officer. He was diagnosed with COVID-19 (COVID) on November 3, 2020. Claimant informed his supervisor and commanding officer of his diagnosis and that he believed he contracted COVID while at work. Claimant has not returned to work since his diagnosis. WCJ's Decision, Finding of Fact (F.F.) Nos. 1, 2(b), 2(d), 2(f). Claimant was paid wage continuation benefits, referred to as "E-time." *Id.*, F.F. No. 2(e). Claimant stopped receiving E-time in January of 2022. *Id.*, F.F. No. 2(j).

Employer issued a Notice of Compensation Denial (NCD) and on March 2, 2022, Claimant filed the instant Petitions. WCJ's Decision, F.F. No. 1. Specifically, Claimant's Reinstatement Petition alleged that "[Employer] unilaterally terminated benefits in January 2022 after accepting the claim for COVID with wages in lieu of benefits as a matter of law." Certified Record (C.R.) at No. 3. The matter proceeded before the WCJ.

Claimant's Evidence

Claimant testified on his own behalf via a telephonic deposition held on June 17, 2022.² Claimant related that he was 64 years old and had worked for Employer as police officer for over 41 years. At the time of diagnosis, Claimant was assigned to the Narcotics Field Unit. WCJ's Decision, F.F. No. 2(a).

Claimant indicated that he was suffering from "long-haul" COVID. His current symptoms included heart palpitations, memory issues, problems with concentration, headaches, and fatigue. Claimant did not have any of these symptoms prior to contracting COVID. WCJ's Decision, F.F. No. 2(f). Since his diagnosis,

² Claimant's deposition can be found in the Certified Record at No. 17.

Claimant was treating with a cardiologist, his family medical provider, and a neurologist. Claimant indicated that he did not feel capable of returning to full-duty work as a police officer because of his current symptoms. *Id.*

Claimant also testified that he was familiar with Employer's Injured on Duty (IOD) and Heart and Lung Act³ disability systems. Claimant did not, however, utilize those benefits as it was Employer's policy to "carry [police officers with COVID] on [E-time]." WCJ's Decision, F.F. No. 2(e).

Employer's Evidence

In its defense, Employer offered the August 15, 2022 deposition testimony of Barry Scott, its Deputy Finance Director for Risk Management (Risk Management) and its Risk Manager (Mr. Scott) and the August 25, 2022 deposition testimony of Lieutenant Donald Lowenthal, the Philadelphia Police Department's (Department) Infection Control Officer (Lieutenant Lowenthal).⁴

Mr. Scott testified that he has served in his position since 2003. Risk Management administers several different types of disability benefits to Department police officers, including workers' compensation, Heart and Lung Act benefits, and benefits pursuant to Act 17.⁵ When Department police officers believe they have

³ The Heart and Lung Act, Act of June 28, 1935, P.L. 477, *as amended*. 53 P.S. §§637-638, provides public safety officers with their full salary while they recover from temporary, work-related ailments.

⁴ Mr. Scott's deposition can be found in the Certified Record at No. 20. Lieutenant Lowenthal's deposition can be found in the Certified Record at No. 21.

⁵ Act of April 29, 2020, P.L. 118, No. 17, 35 Pa.C.S. §§57a01-02. Act 17 provides that a person who is eligible for Heart and Lung Act benefits who is temporarily incapacitated from performing his or her duties following a COVID diagnosis may receive up to 60 days of Heart and Lung Act benefits.

sustained a work injury, they report the injury to their supervisor and the supervisor fills out a “COPA II” form.⁶ From there, the supervisor and the Department’s third-party administrator, PMA Management Corporation (PMA), investigate the alleged injury, and PMA determines if the claim is compensable. In turn, PMA notifies the employee whether their claim has been accepted or denied and what, if any, benefit they are to receive.

On March 23, 2020, following a stay-at-home order issued by the Employer, Risk Management, along with other members of City government, began “addressing how to protect City workers from contracting COVID as well as ways to minimize the spread in the community as it impacted City operations.” Deposition of Barry Scott at 10. Mr. Scott related that in the early days of COVID, Risk Management did not have a written policy for police officers who believed that they contracted COVID at work. Furthermore, Mr. Scott testified, at no time throughout the Pandemic was there a Risk Management written position that precluded police officers from making claims if they believed they contracted COVID at work.

With regard to E-time, Mr. Scott then explained that “E[-]time, or excused time, is a timekeeping tool that -- which enables an employee to continue to receive their salary when they can’t or they’re not at work for whatever reason.” Deposition of Barry Scott at 12. To Mr. Scott’s knowledge, employees on E-time historically continued to receive their regular salary and accrue benefits and did not deplete their personal leave time. From Risk Management’s perspective, if a police officer received E-time because of COVID, it was not an acknowledgment that he or she had contracted COVID at work; rather

⁶ “COPA II” is shorthand for “City of Philadelphia Accident, Injury, Illness Form.” See Deposition of Barry Scott at 7.

[i]t was meant to signify that [Employer] was not trying to punish these officers and that it was -- so that they were not losing anything by being in this status, that this was, you know, a situation we were not expecting but we were looking to have a situation where, you know, folks who succumbed to this condition were not -- weren't financially penalized by the condition.

Id. at 13. Mr. Scott emphasized that E-time was not sick leave or personal time off but was a “sort of an administrative timekeeping category.” *Id.* at 14. Mr. Scott confirmed that if a police officer filled out a COPA II form and the investigation determined that he or she did contract COVID at work, they would not be put on E-time but would be placed on a disability benefit under the employee disability program.

Mr. Scott testified that in January 2022, Employer became aware that several Department police officers who claimed disability due to long-haul COVID were still out of work and receiving E-time. Employer decided to transition the officers from E-time to Act 17 benefits. Mr. Scott indicated that once their Act 17 benefits ceased, the officers would have to use their accrued sick time if they did not return to work. It was after this change that many of these officers filed for workers' compensation benefits although they had not previously sought disability benefits from Employer related to their COVID diagnoses.

On cross-examination, Mr. Scott acknowledged that he is not a Department employee and that Risk Management “provides direction to departments across the City in order to minimize the risk to City employees from hazards on the job[,]” but it does not have “a managerial authority to control the actions taken in a particular department.” Deposition of Barry Scott at 21. Mr. Scott further acknowledged that in 2020 and 2021, Risk Management was not actively involved in contact tracing “which might have identified cases in the Department.” *Id.* at 25.

Finally, Mr. Scott indicated that he was never advised that Department supervisors were telling officers that they could only receive E-time for COVID and that COPA II forms were unnecessary.

For his part, Lieutenant Lowenthal testified that he had been serving as the Department's Infection Control Officer since 2007. He explained that prior to March 2020, he was involved in coordinating care and testing of police officers who had bodily fluid exposures. In March 2020 the nature of his position changed from handling bodily fluid exposures to "nothing but C[OVID]." Deposition of Lieutenant Donald Lowenthal at 10. Lieutenant Lowenthal became responsible for communication with Department officers who may have been infected with COVID. Lieutenant Lowenthal described various COVID policies implemented by Employer beginning in March 2020. While Lieutenant Lowenthal did not write the policies, he did interpret them and answer questions. Lieutenant Lowenthal indicated that when asked by Department supervisors how to report an employee who was out with COVID on the Daily Activity Report, he indicated that the policies provided that those employees should be listed as being on E-time, regardless of whether the COVID was work-related or non-work-related. Further, he related that if a Department supervisor asked him whether they should fill out a COPA II form for an officer who claimed to have contracted COVID from work, he would advise the supervisor to do so. Lieutenant Lowenthal acknowledged that the first time a Department policy indicated that a COPA II form should be completed when an officer believed he or she contracted COVID at work was in July 2022.

WCJ's Decision

Based on his review of the evidence, the WCJ denied Claimant's Petitions. In reaching this decision, the WCJ stated:

7. Having closely reviewed the testimony of [] Claimant along with all the evidence in this matter, this [WCJ] finds [] Claimant to be credible in most respects. In this regard, this [WCJ] finds the testimony of [] Claimant credible that he experienced [COVID-]type symptoms on or about November 3, 2020[,] and sought medical attention for the same. Further, this [WCJ] accepts the testimony of [] Claimant regarding the nature of his police duties and his interactions with fellow police office[r]s and the general public immediately preceding the onset of his symptoms. However, this [WCJ] rejects the testimony of [] Claimant to the extent he may have identified any specific source or cause(s) of his exposure to the [COVID] virus or any opinion that his symptoms were due to a work-related exposure to the virus[,] or any other medical opinions offered by [] Claimant. Further, this [WCJ] accepts the testimony of [] Claimant that he promptly reported his COVID symptoms to his supervisor. However, this [WCJ] rejects the portion of his testimony to the extent he indicated he contracted the virus at work or was attempting to report a work-related injury or illness to his supervisor. Instead, this [WCJ] finds [] Claimant properly and professionally reported a serious health issue to his supervisor in an effort to protect the health and safety of other police officers and the general public. If [] Claimant was attempting to report his symptoms as a work-related injury or illness, his four decades of service should have told him that he needed to complete some type of written or electronic injury report.

WCJ's Decision, F.F. No. 7. Further, regarding the testimonial evidence presented by Employer, the WCJ found the testimony of both Mr. Scott and Lieutenant Lowenthal to be credible. *Id.*, F.F. Nos. 8-9.

The WCJ emphasized that he faced a “narrow legal issue” of whether Employer’s issuance of E-time payments to Claimant for an approximate two-year period constituted “wages in lieu of compensation” such that Employer was estopped from disavowing its acceptance to pay compensation “with the same legal effect as would apply if [it] had formally complied with the Act and the applicable Rules and Regulations” WCJ’s Decision, F.F. No. 10 (quoting *Mosgo v. Workmens’ Compensation Appeal Board (Tri-Area Beverage, Inc.)*, 480 A.2d 1285, 1288 (Pa. Cmwlth. 1984)). The WCJ found the case of *Findlay Township v. Workers’ Compensation Appeal Board (Phillis)*, 996 A.2d 1111 (Pa. Cmwlth. 2010) to be “the most instructive[.]” *Id.*, F.F. No. 11. The decision in *Findlay* indicated that the critical legal element when analyzing the nature of payments made by an employer to an employee is the intent in making the payments. Similar to the employer in *Findlay*, the WCJ determined that Employer in this case “did not *intend* to pay workers’ compensation benefits to [] Claimant simply because he (or any other employee) reported experiencing COVID[-]type symptoms.” *Id.* (emphasis in original). Highlighting Mr. Scott’s credible testimony, the WCJ emphasized that E-time “simply means excused time and it is used as an administrative timekeeping tool which enables an employee to continue to receive their salary when they are not working for any reason.” *Id.* Importantly, Mr. Scott explained that the payment of E-time was not an acknowledgment that a police officer contracted COVID at work. The WCJ found:

It is evident from the record that E-time was offered to all employees of [] Employer, not just police officers, without consideration of where exposure to the virus occurred. Further, it is evident that [] Claimant could have (and was not actively discouraged nor prevented from) filing [sic] for IOD benefits In summary, this [WCJ] finds [] Employer’s use of its “E-time” payroll

designation in this case did not constitute the payment of wages in lieu of workers' compensation benefits

Id.

As to Claimant's Penalty Petition, the WCJ reasoned that Claimant failed to meet his burden of proving that Employer violated the Act or Regulations sufficient to warrant the imposition of a penalty. WCJ's Decision, F.F. No. 12.

Claimant appealed and the Board affirmed. Claimant now appeals to this Court.⁷

Discussion

On appeal, Claimant argues that the E-time payments he received were made in lieu of compensation for his work-related COVID, that Employer's payment of E-time was an admission of liability, and that Employer's payment of E-time benefits estopped it from denying liability under the Act. Claimant further argues that the WCJ erred in denying his Penalty Petition because Employer accepted liability for a work-related injury, and Employer violated the Act by unilaterally terminating payments for his work-related injury. In the recent case of *Brown v. City of Philadelphia (Workers' Compensation Appeal Board)*, 330 A.3d 12 (Pa. Cmwlth. 2025), this Court performed an exhaustive analysis of the identical issues raised here, and issued a well-reasoned opinion affirming the Board. *See also Clarke v. City of Philadelphia (Workers' Compensation Appeal Board)* (Pa. Cmwlth., No.

⁷ This Court's review is limited to determining whether the WCJ's findings of fact are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated. *DiLaqua v. City of Philadelphia Fire Department (Workers' Compensation Appeal Board)*, 268 A.3d 1, 4 n.5 (Pa. Cmwlth. 2021). "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Waldameer Park, Inc. v. Workers' Compensation Appeal Board (Morrison)*, 819 A.2d 164, 168 (Pa. Cmwlth. 2003).

508 C.D. 2024, filed January 17, 2025); *Tymes v. City of Philadelphia (Workers' Compensation Appeal Board)* (Pa. Cmwlth., No. 464 C.D. 2024, filed January 29, 2025).⁸ For the reasons set forth in *Brown, Clarke*, and *Tymes*, we conclude there was no error of law or abuse of discretion in denying Claimant's Petitions.

Accordingly, the order of the Board is affirmed.

MICHAEL H. WOJCIK, Judge

Judge Dumas did not participate in the decision of this case.

⁸ Unreported memorandum opinions of this Court filed after January 15, 2008, may be cited for their persuasive value pursuant to Rule 126(b) of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 126(b), and Section 414(a) of the Court's Internal Operating Procedures, 210 Pa. Code §69.414(a).

