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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5757-12T1

MARINA DIAZ-PAREDES,

Petitioner-Appellant,

v.

WHOLE FOODS MARKET,

Respondent-Respondent.

Submitted January 7, 2015 – Decided January 23, 2015

Before Judges Alvarez and Waugh.

On appeal from the Department of Labor and Workforce Development, Division of Workers' Compensation, Docket Nos. 2008-29739 & 2009-6763.

Richard S. Mazawey, attorney for appellant.

Louis J. DeLucca (The Moritz Law Group, LLC) attorney for respondent.

PER CURIAM

Petitioner Marina Diaz-Paredes[1] appeals the final administrative decision of the Division of Workers' Compensation (Division) in the Department of Labor and Workforce Development,

[1] At the hearing, petitioner stated her full name as Marina Paredes Diaz, but the remainder of the record uses Diaz-Paredes for her surname.

which dismissed two claim petitions seeking workers' compensation benefits based on her allegations that she was injured while employed by respondent Whole Foods Market. We affirm.

We discern the following facts and procedural history from the record on appeal. Diaz-Paredes was employed by Whole Foods from 2000 until 2008. She was a fulltime packer. She described her job duties as requiring repetitive bending down, lifting, chopping ice, and pushing shopping carts. She alleges that her duties resulted in orthopedic, neurological, and neuropsychiatric injuries.

Diaz-Paredes filed her first petition in September 2008, alleging injuries from occupational exposures from 2000 to 2008, resulting in a disability involving her back and hands. She filed the second petition in March 2009, alleging a lumbar spine injury in June 2007. Whole Foods took the position that Diaz-Paredes's medical issues were not related to her work, but were the continuing result of injuries she sustained in a November 2004 automobile accident.

Following six days of hearings before a judge of compensation between May 2012 and March 2013, the judge issued an order on June 7, 2013, finding that Diaz-Paredes had failed to sustain her burden of proof. The order dismissed both

petitions with prejudice. The judge attached a five-page written opinion to the order, containing her findings of fact and credibility, and explaining her reasons for dismissing the petitions.

This appeal followed. On appeal, Diaz-Paredes argues that the judge's decision was against the weight of the evidence and that her findings with respect to the medical evidence were arbitrary and capricious.

Our standard of review is well-settled. We are bound by the judge's factual findings that are supported by substantial credible evidence in the record. Sager v. O.A. Peterson Constr. Co., 182 N.J. 156, 163-64 (2004) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)). We must give due regard to the judge's expertise. Id. at 164. "[D]eference must be accorded the factual findings and legal determinations made by the Judge of Compensation unless they are manifestly unsupported by or inconsistent with competent[,] relevant[,] and reasonably credible evidence as to offend the interests of justice." Lindquist v. City of Jersey City Fire Dep't, 175 N.J. 244, 262 (2003) (citations and internal quotation marks omitted). A petitioner bears the burden of establishing the compensability of the claim being made. Id. at 279; Perez v. Monmouth Cable

Vision, 278 N.J. Super. 275, 282 (App. Div. 1994), certif. denied, 140 N.J. 277 (1995).

However, it is well-established that our review of a judge's conclusions of law is de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference."). The same standard applies to the legal rulings of a judge of compensation. Sexton v. Cnty. of Cumberland/Cumberland Manor, 404 N.J. Super. 542, 548 (App. Div. 2009).

According to N.J.S.A. 34:15-31(a), "the phrase 'compensable occupational disease' [] include[s] all diseases arising out of and in the course of employment, which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment." "Material degree means a degree [substantially] greater than de minimis." Lindquist, supra, 175 N.J. at 256 (alteration in original) (internal quotation marks omitted).

"[A] successful petitioner in workers' compensation generally must prove both legal and medical causation when those issues are contested." Id. at 259. "Medical causation means

the injury is a physical or emotional consequence of work exposure." Ibid. The Supreme Court has explained that it is

> sufficient in New Jersey to prove that the exposure to a risk or danger in the workplace was in fact a contributing cause of the injury. That means proof that the work related activities probably caused or contributed to the employee's disabling injury as a matter of medical fact. Direct causation is not required; proof establishing that the exposure caused the activation, acceleration or exacerbation of disabling symptoms is sufficient.
>
> [Ibid. (internal citations omitted).]

"A petitioner is not required to prove his claim to a certainty. It is sufficient if the evidence establishes with reasonable probability that the employment caused or proximately contributed to the condition of disease of which he complains." Bober v. Indep. Plating Corp., 28 N.J. 160, 168 (1958).

Having reviewed the record before us, we find no basis to conclude that the judge's findings and conclusions were "manifestly unsupported by or inconsistent with competent[,] relevant[,] and reasonably credible evidence as to offend the interests of justice." Lindquist, supra, 175 N.J. at 262 (citations and internal quotation marks omitted). The judge's assessment of the medical evidence is something that necessarily involved credibility determinations, particularly with respect to the expert reports and testimony, and the expertise of a

judge of compensation. See Earl v. Johnson & Johnson, 158 N.J. 155, 161 (1999). We will not second guess those determinations.

Consequently, we affirm substantially for the reasons stated by Judge of Compensation Jill M. Fader in her written decision.

Affirmed.