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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5419-11T3

INEZ GRAHAM,

Petitioner-Respondent/  
Cross-Appellant,

v.

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY,

Respondent-Appellant/  
Cross-Respondent.

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Submitted January 27, 2014 - Decided March 12, 2014

Before Judges Harris and Guadagno.

On appeal from the Division of Workers'  
Compensation, Department of Labor, Claim  
Petition No. 2002-28999.

Margaret Taylor Finucane, New Jersey  
Solicitor (Port Authority of New York and  
New Jersey), attorney for appellant/cross-  
respondent (Christopher J. Neumann and  
Howard D. Conkling, on the brief).

Clifford N. Kuhn, Jr., attorney for  
respondent/cross-appellant.

PER CURIAM

The Port Authority of New York and New Jersey appeals from  
the May 16, 2012 order of the Division of Workers' Compensation

finding petitioner Inez Graham permanently disabled stemming from psychiatric and orthopedic injuries she claims to have suffered during the September 11, 2001 attack on the World Trade Center. The judge of compensation initially found Graham eighty-five percent disabled with a credit of five percent. After a motion for reconsideration, the judge reduced the percentage to seventy-five with a credit of twelve and one-half percent. For the reasons that follow, we reverse and remand.

I.

Graham began working for the Port Authority in June 1987 as a toll collector. In 1989, she slipped and fell while working at the Holland Tunnel and injured her back and leg. She was out of work for one year and returned to work in 1990 as a timekeeper at the Lincoln Tunnel. In 1991, Graham filed a workers' compensation claim against the Port Authority alleging orthopedic occupational injury involving her left leg, left hand, and back. On August 10, 1993, she was awarded thirty percent partial total disability of her left leg, and twelve and one-half percent partial total disability of her lumbar spine (the 1993 judgment).

On September 11, 2001, Graham was attending a training session on the sixty-first floor of the North Tower of the World Trade Center when American Airlines Flight 11 hit the building.

As she was approximately thirty floors below the impact zone, Graham was able to walk down the stairs and out of the building. Once outside, she was directed to an ambulance but soon thereafter the ambulance attendant told her to "run for [her] life." As Graham got out of the ambulance, she "scraped" her knee, but walked away from the impact zone as the South Tower collapsed. Graham was covered in white ash and reached a center where others helped to clean her up. At the center, one of Graham's Port Authority supervisors arranged for her to be transported to University Hospital in Newark. There, Graham changed her clothes and was "decontaminated." She was examined by a doctor and sent home. She has not returned to work since.

On September 12, 2002, Graham filed a claim for workers' compensation benefits alleging orthopedic and psychiatric injuries from the September 11 attack. She described her injuries as "injured back with left radiculopathy finding while runni[ng] for her life, witnessed a co-worker being crushed in ambulance as tower tw[o] fell, neuro psych overlay[.]" The Port Authority filed an answer, denying the occurrence of the accident, injury, and occupational disease.

A trial took place before a judge of compensation over five-nonconsecutive days from September 2010 to September 2011. Graham testified and called two experts, Dr. Vin Gooriah and Dr.

Morris Horwitz. Dr. David J. Gallina testified on behalf of the Port Authority and a report of Dr. Philip K. Keats was admitted into evidence by mutual agreement in lieu of his testimony.

The judge of compensation issued an oral decision awarding Graham seventy-five percent of total disability for her psychiatric claim and five percent of total disability for her orthopedic claim. The order calculated Graham's disability at eighty-five percent of partial total consisting of "[seventy-five percent] neuropsychiatric for major depressive disorder, anxiety disorder and post-traumatic stress disorder secondary to the 9/11 incident at the World Trade Center [and] [ten percent] orthopedic for residuals of lumbosacral sprain and strain with credit of [five percent] for previous award for lumbosacral sprain and strain."

The Port Authority moved for reconsideration based on Graham's prior workers' compensation judgment that the court and the parties were unaware of during the trial. The 1993 judgment awarded Graham thirty percent partial total disability of her left leg, and twelve and one-half percent partial total disability of her lumbar spine. The Port Authority argued that, when combined, the two judgments result in an award of one hundred thirteen percent partial total disability.

The judge amended his prior decision and issued a final order for fifteen percent partial total orthopedic disability with a credit of twelve and one-half percent partial total and neuropsychiatric disability of sixty percent of partial total for a finding of a cumulative disability of seventy-five percent of partial total.

On appeal, the Port Authority claims the judge did not properly consider the objective medical evidence and failed to properly credit the Port Authority for petitioner's prior psychiatric condition or for the prior compensation claim. Graham filed a cross-appeal arguing the court should not have reduced its award but should have modified the order to enable her to collect one hundred percent of total disability, less credit for the prior compensation award.

## II.

We begin our analysis by noting the scope of our review in a workers' compensation case. We must determine

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 of their credibility and, in the case of agency review, with due regard also to the agency's expertise where such expertise is a pertinent factor.

[Close v. Kordulak Bros., 44 N.J. 589, 599 (1965).]

"Deference 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) (quoting Perez v. Monmouth Cable Vision, 278 N.J. Super. 275, 282 (App. Div. 1994), certif. denied, 140 N.J. 277 (1995)).

This deference is in part because the compensation court has "the opportunity to evaluate witnesses' credibility [and has] expertise with respect to weighing the testimony of competing medical experts and appraising the validity of [a petitioner's] compensation claim." Ramos v. M & F Fashions, Inc., 154 N.J. 583, 598 (1998).

"Where our review of the record 'leaves us with the definite conviction that the judge went so wide of the mark that a mistake must have been made,' we may 'appraise the record as if we were deciding the matter at inception and make our own findings and conclusions.'" Manzo v. Amalgamated Industries Union Local 76B, 241 N.J. Super. 604, 609 (App. Div.) (quoting C.B. Snyder Realty Inc. v. BMW of N. Amer. Inc., 233 N.J. Super. 65, 69 (App. Div.) certif. denied, 117 N.J. 165 (1989)), certif. denied, 122 N.J. 372 (1990).

The Workers' Compensation Act, N.J.S.A. 34:15-30, provides that an employee may be compensated for personal injuries from a "compensable occupational disease arising out of and in the course of his employment[.]" It is the policy of this State to "liberally constru[e] the Act to implement the legislative policy of affording coverage to as many workers as possible." Brower v. ICT Group, 164 N.J. 367, 373 (2000).

Pursuant to N.J.S.A. 34:15-36:

"Disability permanent in quality and partial in character" means a permanent impairment caused by a compensable accident or compensable occupational disease, based upon demonstrable objective medical evidence, which restricts the function of the body or of its members or organs; included in the criteria which shall be considered shall be whether there has been a lessening to a material degree of an employee's working ability. . . .

"Disability permanent in quality and total in character" means a physical or neuropsychiatric total permanent impairment caused by a compensable accident or compensable occupational disease, where no fundamental or marked improvement in such condition can be reasonably expected.

Factors other than physical and neuropsychiatric impairments may be considered in the determination of permanent total disability, where such physical and neuropsychiatric impairments constitute at least 75% or higher of total disability.

The Port Authority first argues that the judge of compensation failed to properly consider objective medical

evidence, failed to set forth the legal standard or criteria required to prove a psychiatric disability, and failed to analyze or apply Graham's symptoms to the standard.

Graham submitted to a neuro-psychiatric examination by Dr. Gooriah on October 1, 2007, more than six years after the attack on the World Trade Center. Dr. Gooriah diagnosed Graham with major depressive disorder, anxiety disorder, and post-traumatic stress disorder (PTSD), all three, secondary to the September 11 incident. He concluded that her "symptoms are quite severe," and that she is "suffering from a neuropsychiatric disability of [seventy-five percent] partial of total."

At the request of the Port Authority, Graham submitted to a neuro-psychiatric exam by Dr. Gallina, who examined her on three separate occasions, June 10, 2004, February 15, 2005, and September 28, 2006. Dr. Gallina diagnosed Graham with PTSD that was in partial remission and concluded that she had a permanent psychiatric disability of five percent of partial total.

To obtain workers' compensation benefits for a disability, one must make "a satisfactory showing of demonstrable objective medical evidence of a functional restriction of the body, its members or organs." Perez v. Pantasote, Inc., 95 N.J. 105, 116 (1984). "This determination can no[t] . . . rest upon [a claimant's] subjective complaints." Ibid.



In Saunderlin v. E.I. DuPont Co., 102 N.J. 402, 410 (1986), the Court held that claims of psychiatric disability require "demonstrable objective medical evidence" pursuant to N.J.S.A. 34:15-36. The Court concluded that objective medical evidence may rest on:

- (1) analysis of the subjective statement of the patient;
- (2) observations of physical manifestations of the symptoms related in the subjective statement; and/or
- (3) observations of manifestations of physical symptoms and analyses of descriptions of states of mind beyond those related in the patient's subjective statement.

[Id. at 416.]

The Saunderlin Court affirmed our reversal of multiple claimants' awards, concluding that "the psychiatric examinations in all of these cases amount to little more than parroting the subjective statements of the petitioners." Id. at 419-20.

Here, the judge of compensation indicated "the findings and the testimony of Dr. Gooriah was more persuasive[,]" but failed to explain how he reached that conclusion. The court's reasoning in not crediting Dr. Gallina's more extensive findings is truncated and conclusory. The court explained that it rejected Dr. Gallina's finding that Graham was only five percent

disabled, because of its conclusion that Graham's disability is "serious."

In accepting Dr. Gooriah's recommended disability of seventy-five percent, the court made no findings and gave no explanation as to how it arrived at the figure. The court simply restated Graham's complaints, and concluded that the award is "fully supported by the testimony of Dr. Gooriah, by the petitioner's testimony concerning her inability to function both at work and a normal life pursuits[.]"

We note that Graham was seen by Dr. Gooriah only once. Dr. Gallina saw Graham on three occasions and was able to track her progress with specificity, noting her psychiatric improvement. During his first evaluation in 2004, Dr. Gallina rated Graham's Global Assessment of Functioning (GAF) at between sixty and seventy out of a possible one-hundred, as "she was fairly symptomatic and those symptoms did negatively impact on her functioning[.]" When Dr. Gallina saw Graham in 2005, he noted that "she had really substantially improved." Dr. Gallina attributed the improvement to Graham's treatment with a psychologist that had been "quite effective and . . . encouraged her to function better." Dr. Gallina also noted that Graham's husband had been supportive and had encouraged her to "get out and start doing things . . . and she had responded to that."

Finally, Dr. Gallina remarked that the medication prescribed by Graham's psychiatrist had helped to calm down some of the anxiety she had been experiencing. Dr. Gallina's assessment after his second evaluation of Graham was that she had demonstrated "considerable functional improvement although she still indicated that she had some symptoms." He placed her GAF score at seventy.

When Dr. Gallina saw Graham in 2006, he estimated her GAF at between seventy and seventy-five and described her range of symptoms as "mild to moderate." During the three-year time span from his first examination, Dr. Gallina wrote that Graham's

[m]ental status examination continues to improve since the time of my last evaluation. Affect is not constricted. Her anxiety has improved on an overall basis.

. . . .

Functional ability continues to improve with time and treatment. Ms. Graham continues to get out more, and has a positive outlook each day. She goes to restaurants with her husband. She goes out with her children. Her sexual libido has improved.

As to her speech and demeanor, Dr. Gallina found:

Ms. Graham readily entered the evaluation room, and demonstrated no anxiety. She greeted me in a friendly manner, and remembered coming to see me previously. She was talkative with a good level of spontaneous, expressive speech. She showed me an article about her in the Star Ledger on 9/8, just before the anniversary of 9/11.

There was no evidence of depression in her voice.

Although Graham still displayed some symptoms of PTSD, Dr. Gallina found it was in partial remission and she was functioning on a much better level when he saw her the third time. He found no signs of depression and noted that she was able to drive a car, go to restaurants, go shopping, and her sexual libido had improved.

When Dr. Gooriah was questioned at trial, more than three years after he examined Graham, whether her PTSD condition had improved, he responded that "[w]ithout examining her it's very difficult to say." He then candidly admitted: "I do not know what state she's in."

Clearly, Dr. Gooriah could not present a reliable opinion based on objective medical evidence as to whether Graham showed improvement or regressed, as he only saw her on one occasion. The Court in Saunderlin rejected a diagnosis of generalized anxiety disorder after such a "single cursory psychiatric examination[.]" Saunderlin, supra, 102 N.J. at 418-419.

The judge of compensation failed to explain why it rejected the findings and conclusions of Dr. Gallina, arrived at after examining Graham over the course of a three-year period, and credited those of Dr. Gooriah, who saw her once. Faced with these disparate expert opinions, the judge, who had the

opportunity to evaluate the conflicting testimony, was required to utilize his "expertise with respect to weighing the testimony of competing medical experts" in appraising the validity of Graham's compensation claim. See Ramos, supra, 154 N.J. at 588. As the judge failed to make such findings, we are constrained to remand for findings as to whether Graham satisfied the requirements of N.J.S.A. 34:15-36.

"[A]n expert opinion that a person has suffered a permanent partial disability must be supported by a recent medical examination." Ramos, supra, 154 N.J. at 596. Given the passage of time, the judge of compensation may reopen the trial to permit either party to submit additional medical information to determine if there is recent objective medical evidence of continued impairment. See Perez, supra, 95 N.J. at 119.

Graham's argument that the judge of compensation erred in granting Port Authority's motion for reconsideration lacks sufficient merit to warrant further discussion in our opinion.

R. 2:11-3(e)(1)(E).

Reversed and remanded. We do not retain jurisdiction.

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

  
CLERK OF THE APPELLATE DIVISION