

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5590-13T1

KENNETH MESGLESKI,

Petitioner-Appellant,

v.

SPES COMPANY,

Respondent-Respondent.

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Submitted January 6, 2016 – Decided February 10, 2016

Before Judges Fuentes and Gilson.

On appeal from New Jersey Department of  
Labor and Workforce Development, Division of  
Workers' Compensation, Claim Petition No.  
1994-2060.

Shebell & Shebell, L.L.C., attorneys for  
appellant (Danielle S. Chandonnet, on the  
brief).

Freeman, Huber, Sacks, Brennan & Fingerman,  
attorneys for respondent (Shealtiel  
Weinberg, on the brief).

PER CURIAM

In 1992, appellant Kenneth Mesgleski injured his shoulders while working for Spes Company as a steamfitter and welder. Mesgleski has filed a series of claims and applications for modification of awards with the Division of Workers' Compensation. Initially, Mesgleski was found to be 27.5 percent

partially disabled. In 2000, that award was modified to forty percent partial disability. Mesgleski, thereafter, sought another modification claiming increased disability. Following a trial, a Workers' Compensation judge awarded Mesgleski fifty-five percent permanent partial disability, with a credit for the prior award of forty percent permanent partial disability. Mesgleski appeals that most recent Workers' Compensation judgment, which was entered on June 16, 2014. Because the fact findings supporting the judgment were based on substantial credible evidence, we affirm.

Mesgleski was employed by Spes Company through a union placement from November 1992 to January 1993. On December 24, 1992, Mesgleski injured his shoulders while lifting a hose at work. Initially, his complaints focused on his right shoulder and he received treatment, which included surgeries to his right shoulder. In 1998, Mesgleski received a Workers' Compensation award for 27.5 percent permanent partial disability. In 2000, that disability was increased through a settlement to forty percent permanent partial disability with credit for the previous finding of 27.5 percent.

After leaving the employment of Spes Company, Mesgleski continued to work as a welder for another employer for two years

until December 1994. The record does not disclose whether Mesgleski has worked since December 1994.

Mesgleski suffers from a number of health conditions, including injuries that are not work-related. His conditions include problems with both his shoulders, back problems, bilateral carpal tunnel, breathing problems, a knee problem, and heel spurs. Mesgleski underwent a series of surgeries during the 2000s for several of his conditions, including surgeries on his shoulders, back, and wrist.

In 2001, Mesgleski filed an application to modify his prior Workers' Compensation award. In 2004, he filed an application for total disability with the Second Injury Fund. The applications were tried before a Workers' Compensation judge in 2013 and 2014. The evidence at trial included testimony from Mesgleski, medical experts for both Mesgleski (Dr. Floyd Kregel) and Spes Company (Dr. Kelly Allen), and neuropsychiatric expert reports that were submitted by stipulation of the parties without live testimony.

At the conclusion of the trial, the compensation judge made findings of fact on the record on May 5, 2014. The judge supplemented his fact findings in a letter opinion filed on August 11, 2014, pursuant to Rule 2:5-1(b). An order and final judgment were filed on June 16, 2014. A separate order

dismissed the application against the Second Injury Fund. The final judgment modified Mesgleski's Workers' Compensation award, increasing his permanent partial disability to fifty-five percent and providing a credit for the prior award of forty percent permanent partial disability.

In making the 2014 award modification, the compensation judge made credibility and fact findings based on the testimony and evidence presented at trial. The judge found that certain of Mesgleski's claims were not substantiated, while other claims were substantiated. With regard to the unsubstantiated claims, the compensation judge found that (1) Mesgleski was not totally disabled, (2) Mesgleski had failed to prove that his bilateral carpal tunnel condition was related to his work accident; and (3) Mesgleski had not suffered any psychiatric disability related to his work accident. With regard to the substantiated claims, the compensation judge found that the only injuries Mesgleski suffered as a result of the 1992 work accident were the injuries to his right and left shoulders. The judge went on to find that those injuries had deteriorated since the award in 2000 and Mesgleski's disabilities had increased. Thus, the compensation judge set Mesgleski's permanent partial disability at fifty-five percent of total.

Mesgleski now appeals the June 16, 2014 judgment modifying his disability award. Mesgleski has not appealed the order dismissing his application against the Second Injury Fund. On this appeal, Mesgleski makes two arguments: (1) the Workers' Compensation judgment was insufficient to compensate him for his increased disabilities; and (2) he provided sufficient medical evidence to establish that his carpal tunnel condition was a work-related compensable claim.

Our role in reviewing a judge of compensation's decision is limited to examining "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." 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)). We give those factual findings "substantial deference." Bellino v. Verizon Wireless, 435 N.J. Super. 85, 94 (App. Div. 2014) (citing Ramos v. M & F Fashions, Inc., 154 N.J. 583, 594 (1998)). "We may not substitute our own factfinding for that of the [j]udge of [c]ompensation even if we were inclined to do so." Ibid. (alterations in original) (quoting Lombardo v. Revlon, Inc., 328 N.J. Super. 484, 488 (App. Div. 2000)). We will only disturb the judge of

compensation's decision if it is "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 (quoting Perez v. Monmouth Cable Vision, 278 N.J. Super. 275, 282 (App. Div. 1994), certif. denied, 140 N.J. 277 (1995)).

A compensation judge is considered to have expertise in weighing the testimony of competing experts and assessing the validity of the claim. Ramos, supra, 154 N.J. at 598. The judge is "not bound by the conclusional opinions of any one or more, or all of the medical experts." Bellino, supra, 435 N.J. Super. at 95 (quoting Kaneh v. Sunshine Biscuits, 321 N.J. Super. 507, 511 (App. Div. 1999)). We will not reverse a judgment simply because the judge gave more weight to the opinion of one physician over the other. Smith v. John L. Montgomery Nursing Home, 327 N.J. Super. 575, 579 (App. Div. 2000).

Mesgleski first argues that the award modification was insufficient to compensate him for his increased disabilities. Specifically, Mesgleski takes issue with the compensation judge's fifteen percent increase in his disability, from forty percent to fifty-five percent. He argues that given the deteriorated condition of his left shoulder, "it is difficult to

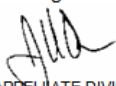
understand how [he] was only awarded an increase in disability of 15%." In essence, Mesgleski is asking us to substitute our judgment for the judgment of the compensation judge and make a different finding. Our standard of review precludes such a substitution. The compensation judge's award of fifty-five percent permanent partial disability was supported by the credible evidence presented at the trial and we find no basis to disturb that fact finding and award.

Second, Mesgleski contends that he presented sufficient medical evidence to establish that his carpal tunnel condition was a work-related compensable claim. Here again, Mesgleski is asking us to substitute our judgment and make a different fact finding. The compensation judge made an express finding that Mesgleski had not carried his burden to prove that the carpal tunnel condition was related to the 1992 work injury. In that regard, the compensation judge found that there was no manifestation of carpal tunnel or any hand-related problems or treatment during Mesgleski's employment with Spes Company. The compensation judge also relied on the opinion of Dr. Allen that the carpal tunnel condition was unrelated to Mesgleski's employment with Spes Company. Given our deferential standard of

review, we find no basis to disturb that fact finding, which is adequately supported by evidence in the record.

Affirmed.

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

A handwritten signature in black ink, appearing to be 'JWA', is written over the text of the certification.

CLERK OF THE APPELLATE DIVISION