SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3267-15T2

ROY HENDRICKSON,

Petitioner-Respondent,

v.

UNITED PARCEL SERVICE - EDISON,

Respondent-Appellant.

Argued June 7, 2017 – Decided July 11, 2017

Before Judges Alvarez and Accurso.

On appeal from the New Jersey Department of Labor, Division of Workers' Compensation, Claim Petition No. 2014-10726.

Shealtiel Weinberg argued the cause for appellant (Brown & Connery, LLP, attorneys; Mr. Weinberg, on the brief).

Richard N. Schibell argued the cause for respondent (Schibell & Mennie, LLC, attorneys; Mr. Schibell, of counsel; Ellen D. Fertakos, on the brief).

PER CURIAM

United Parcel Service – Edison appeals from the March 16, 2016 decision of the Division of Workers' Compensation granting petitioner Roy Hendrickson's motion for temporary benefits and

medical treatment. Because the decision by the Judge of Compensation finds ample support in the record, we affirm.

Hendrickson was fifty-nine years old and had worked for UPS for almost thirty years at the time of the hearing in this matter. For his first nineteen years with the company, he worked as a package car driver. The job entailed making over one hundred stops a day to deliver or pick up packages weighing up to one hundred and fifty pounds. Although drivers were entitled to assistance with packages weighing over seventy pounds, Hendrickson testified he never received such assistance. He suffered his first back problem while working a Staten Island route within the first four or five years of his employment. He testified that sometime around 1992, his "[l]ower back gave out" and his "legs went out from under [him]." He did not file a workers' compensation claim. He received chiropractic treatment and returned to work with no residual effects.

Ten years later, in 2002, Hendrickson's route had changed. He was driving out of Lakewood, serving industrial customers. He hurt his back lifting a heavy package and was out of work for almost two months. Hendrickson was diagnosed with "residuals of repetitive lumbar sprains," "degenerative disc disease at multiple levels with bulging discs at L4-L5 and L5-S1," "mild foraminal stenosis at L5-S1," and "chronic lumbar myositis and

fibromyositis." After a course of physical therapy, he returned to work. Hendrickson filed a claim and was awarded 15% partial total disability.

The claim was reopened in 2004, after Hendrickson complained of constant and severe pain in his mid to low back radiating into his left leg. It was settled in 2006 for an increase to 17.5% permanent partial total with a credit for the prior award.

Shortly before the claim was settled in 2006, Hendrickson began working as a feeder driver for UPS, driving tractor-trailers to New York City, the Meadowlands, Secaucus and Cranbury, as well as to other locations in New York, Connecticut and Rhode Island. He drove single-axle International or Mack trucks without air ride suspensions, which he testified transmitted pronounced shock and vibration over the pot-hole ridden roads he drove regularly. Hendrickson's back was still painful, exacerbated by the poor suspensions and bad roads he confronted on a daily basis. He underwent occasional acupuncture treatment, which was not successful.

In 2008 or 2009, Hendrickson, while still working as a feeder driver, also began working as a shifter driver. A shifter uses his tractor to move trailers at slow speeds (five miles per hour or less), repositioning them around the terminal.

The work involves backing the truck into a trailer and "hitting the pin" to connect the two. Hendrickson testified that every time he made that connection, at least seventy-five times a day, there is "a good impact," which he likened to "getting punched in the back."

Hendrickson testified he collapsed at a mall in 2012 or 2013 as a result of pain and numbness radiating down his legs from his low back. When he told his chiropractor that he was losing feeling in his legs, the chiropractor sent him for an MRI. An MRI of Hendrickson's spine taken in August 2013, revealed focal disc herniation at L3-4 and L4-5, substantial foraminal and lateral recess stenosis at L3-4 and severe stenosis at L4-5, substantial nerve root impingement at L3-4 and a minimal disc bulge at L5-S1. When the results of the MRI came back, Hendrickson's chiropractor refused to continue to treat him.

Hendrickson began treatment with a physician in 2014, who, after examining him and reviewing the MRI, diagnosed him with severe sciatica, lumbar disc herniation at L3-4 and L4-5, and lumbar radiculopathy. The doctor recommended bilateral nerve root blocks at L4-5 and disc decompression at L3-4 and L4-5. Hendrickson continued to try and work, notwithstanding his pain, but testified his situation soon became intolerable. He

underwent surgery in March 2014 to decompress the disc at L4-5, and remained out of work for six weeks.

Hendrickson got pain relief from the procedure for about three months. In June, the pain returned and Hendrickson's doctor again put him out of work while he underwent a new MRI and was further assessed for surgery. Hendrickson's MRI revealed persistent left lateral recess and foraminal disc herniation at L4-5 causing severe narrowing of the left lateral recess and foramen and impingement upon the left L5 nerve root. The study also revealed left foraminal disc herniation at L3-4.

At the time of the trial, Hendrickson testified he was still working, although putting his pain most days at a level of about seven or eight on a scale of ten. He generally eschews medication, but admitted to having recently taken a six-day course of steroids, muscle relaxers and anti-inflammatories for "temporary relief to keep [his] sanity." He testified he is restricted and careful regarding his activities outside of work "because [he] need[s] to work to pay the bills." There was no evidence to suggest Hendrickson had ever suffered any injury outside of work that would have contributed to his back condition.

At trial, both Hendrickson's and UPS's experts agreed that Hendrickson likely required additional surgery, they disagreed

as to why. Relying on the operative notes of the spine surgeon, Hendrickson's expert, Dr. Michael M. Cohen, testified the surgeon observed significant disc disruption creating entrapment and compression including inflammatory tissue effacing the route consistent with evidence of acute and chronic inflammatory changes, including annular disruption, degeneration, and neurovascularization. In other words, Hendrickson's disc was broken apart around the nerve, causing the body to react with white blood cells, which caused the tissue to become inflamed and likely caused the pain he experienced.

In Dr. Cohen's opinion, that injury was a result of the stresses Hendrickson suffered as a feeder driver and shifter, the vibration, compression and rotation of his discs from being bounced around on bad roads in a truck with poor suspension and the repetitive impact of backing his tractor into trailers in the yard. In his view, Hendrickson's injuries were not the natural progression of the trauma he suffered in 2002, but the result of "a rather extreme form of repetitive occupational stress," rapidly accelerating the degeneration of the discs in Hendrickson's spine.

UPS's expert, Dr. Nirav Shah, disagreed. Dr. Shah testified to his understanding that Hendrickson suffered an injury to his back on April 16, 2014 from lifting packages at

work.[1] Upon examination, he found Hendrickson had subjective limitations, but no significant deficits attributable to his spine. After reviewing the 2013 and 2014 MRIs, Dr. Shah agreed with Hendrickson's spine surgeon that they revealed herniations at L3-L4, L4-L5 and "a little bit so at L5-S1" that may have caused radiculopathy, an inflammation of the nerve root, making him a surgical candidate. He concluded, however, that those injuries were the result of chronic degenerative changes flowing from the "2002 disability and injury that progressed naturally" and not from repetitive occupational activity. In his opinion, Hendrickson's job duties as a feeder driver and shifter had no impact on the development of his current condition.

The compensation judge rejected the testimony of UPS's expert. After summarizing the procedural history and testimony presented, the judge began his findings with Hendrickson, who he deemed

> very credible. He appeared honest and forthright in his responses. He never attempted to hide or diminish the fact that he did suffer previously work-related trauma to the same area of his lumbar spine.
>
> It is the court's belief that the petitioner has been a faithful, hard working and honest employee of UPS for 29 years. Unlike many individuals in this day and age,

[1] Hendrickson was at home on disability on that date, recovering from his discectomy and neural decompression surgery.

> this petitioner believes in working through the average ailments caused by stressful work conditions. The court believed him when he said that his 2006 transfer to feeder and shifter driver worsened his back condition due to the different types of stresses he underwent there as opposed to when he was a package car driver, and the court also believes that he intended to work as long as he could as he thought it was just the right thing to do. The court was very impressed with his testimony and found him credible.

Turning to Hendrickson's expert, Dr. Cohen, the judge stated he was

> exceedingly impressed with Dr. Cohen. His examination and history were very thorough. He explained from a medical point of view how the stresses which the human body endures while driving a tractor trailer can greatly exacerbate an underlying, preexisting traumatic condition. The doctor's explanations and conclusions just made sense to the court, and the court believes that the doctor has shown with objective medical evidence that the petitioner's occupational exposure worsened to a material degree his preexisting condition and is, in fact, the direct and proximate cause for the petitioner's current need for treatment.

Regarding UPS's expert, Dr. Shah, the judge stated he was

> impressed with Dr. Shah as a physician. His resume and history are undeniably preeminent. As a witness, however, the court was not impressed. This case alleged an exposure between 2006 and 2013 and the court observed that the doctor would not answer questions directly regarding the exposure period. Instead he would

> consistently talk about the 2013, 2014 MRI's and their lack of findings. He seemed to actively avoid the fact that there was a surgical procedure in between these two MRIs and that all the doctors now recognize that the need for treatment due to, among other things, nerve root compression which was not mentioned at any time during the 2002 claim or its reopener and not diagnosed until well into the occupational exposure period.
>
> Furthermore, the doctor mistakenly believed at the time of his examination of the petitioner that there was a 2014 accident. There was not.
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> This court was not impressed with the doctor's testimony, and the court believes that the doctor was merely defending a position he was asked to defend to the point of being evasive and nonresponsive to the questions being asked. At one point, the court implored the doctor to attempt to decide the overall case without mentioning the 2013, 2014 MRI's. The doctor could not do this. For these reasons, the court does not find Dr. Shah's testimony persuasive.

Applying the law to his factual findings, the judge concluded that Hendrickson had

> shown by a preponderance of the credible evidence that the occupational activities he engaged in with United Parcel Service from 2006 to 2013 accelerated and exacerbated his preexisting lumbar condition.
>
> Furthermore, the court finds that the specific work as a feeder driver and a shifter driver were of such a nature that the stresses on Mr. Hendrickson's lumbar spine were characteristic of and peculiar to that type of employment.

Beginning in 2006 and continuing until 2012, Mr. Hendrickson, as a feeder driver for respondent, drove single-axle trucks over roads ridden with potholes and unevenness and under construction. Mr. Hendrickson testified in detail as to the constant bouncing around in the cab of his truck. When Mr. Hendrickson's truck hit a bump or a pothole or any other sort of road imperfection, he would receive a "complete shock" to his lower back, a feeling which he likened to playing football and taking a solid punch to the back. At times his body would be bounced around so much that his head would hit the ceiling of the cab.

Beginning in 2008 and continuing to the present, Mr. Hendrickson has been a shifter for respondent. He described what a rough ride this was and how 75 times a day he would have to back up and connect to a trailer, which is commonly referred to as hitting the pin, and that this sensation was equivalent to getting hit in the back.

Outside of his employment it should be noted Mr. Hendrickson has an exceptionally sedentary life.

The court rejects in total respondent's arguments that no objective evidence exists to show a worsening and that his condition is merely related to the 2002 claim. There are new levels of disc involvement[,] nerve root compression and all parties believe that Mr. Hendrickson is now a candidate for further treatment.

The court finds that Mr. Hendrickson's job at UPS from 2006 to 2013 is the overwhelming cause of his current medical condition, and the court finds in favor of the petitioner and grants his motion for medical treatment.

UPS appeals, contending Hendrickson's claim is barred by the two-year statute of limitations for occupational claims, that the "claim is barred by the holding in Peterson v. Hermann Forwarding[2] regarding filing occupational claims subsequent to accidental claims for overlapping injuries" and that the judge's "factual and procedural errors" undermine the finding that Hendrickson "proved he incurred a compensable occupation injury for which he required treatment." We reject those arguments as unpersuasive.

Although UPS claims the judge of compensation "failed to properly apply the law" regarding the statute of limitations for compensation claims and "the filing of an occupational claim when a petitioner fails to timely 'reopen' a prior accidental workers' compensation claim," it is plain its arguments are premised entirely on its disagreements with the compensation judge's fact findings. Those findings, however, are binding on us because they have ample support in the record. See Sager v. O.A. Peterson Constr., Co., 182 N.J. 156, 164 (2004). The Supreme Court has commanded that "[d]eference must be accorded the factual findings and legal determinations made by the Judge of Compensation unless they are manifestly unsupported by or

[2] Peterson v. Hermann Forwarding Co., 267 N.J. Super. 493 (App. Div. 1993), certif. denied, 135 N.J. 304 (1994).

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) (internal quotation marks omitted); see also Kovach v. Gen. Motors Corp., 151 N.J. Super. 546, 549 (App. Div. 1978) ("It must be kept in mind that judges of compensation are regarded as experts.").

Here, there is no question but that the Judge of Compensation properly understood the deadlines for filing a compensation claim and a reopener. The judge did not misunderstand the law. His ruling was premised on the facts he found after evaluating the testimony. The timeliness of Hendrickson's claim turned on whether his continued employment at UPS, "merely cause[d] pain from pre-existing conditions to be manifested" as in Peterson, supra, 267 N.J. Super. at 505, or whether it resulted from "additional 'physical insult,' . . . materially attributable to [his] job duties" as in Singletary v. Wawa, 406 N.J. Super. 558, 568 (App. Div. 2009).

Based on Hendrickson's detailed testimony about the different stresses to his back from the different jobs he held at UPS, and Dr. Cohen's testimony linking Hendrickson's duties as a feeder driver and shifter to the 2013 and 2014 MRIs and his opinion that Hendrickson's need for treatment resulted from

occupational exposure and not the 2002 injury, the judge concluded "the overwhelming cause of [Hendrickson's] current medical condition" was his work at UPS from 2006 to 2013, making this case consistent with Singletary and unlike Peterson. The judge expressly rejected Dr. Shah's view that Hendrickson's current complaints and the 2013 and 2014 MRIs reflected the natural progression of the 2002 injury, and thus the factual basis for UPS's arguments that the claim was untimely.[3] We find no error in that conclusion based on the judge's assessment of the evidence in the record.

We reject UPS's argument that factual errors in the judge's rendition of the testimony undermines the deference ordinarily due his findings. Our review of the testimony and the judge's findings do not lead us to conclude the judge misread Hendrickson's testimony or misunderstood the MRI findings. The

[3] Even assuming a 2012 date as when Hendrickson collapsed at the mall with pain and numbness in both legs as the date for accrual of the claim, instead of the date of the 2013 MRI revealing new herniation and substantial nerve root impingement at L3-4, Hendrickson's April 15, 2014 petition would be timely. See Earl v. Johnson & Johnson, 158 N.J. 155, 163 (1999) (noting "it is possible to have a work-related health problem that is not sufficiently debilitating to be compensable"). The judge accepted Hendrickson's testimony acknowledging his back pain had progressively worsened over the years, but that it was not until the end of 2012 or 2013 when he sought treatment for new pain and numbness greater than anything he had previously experienced.

judge's findings were "reasonably . . . reached on sufficient credible evidence present in the whole record." Kozinsky v. Edison Prods. Co., 222 N.J. Super. 530, 537 (App. Div. 1988). UPS's remaining arguments, to the extent we have not addressed them, lack sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(D) and (E).

Affirmed.