DOCKET NO. 175

| NUMBER | TERM | YEAR |
| --- | --- | --- |
| 169 | November | 1961 |

Natale Ferlazzo

VERSUS

Harbisonwalker Refractories Co.
Defendant

Indemnity Insurance Company of
North America, Insurance Carrier

REGISTERED NO. 1700

Value $ [illegible] Spec. del'y fee $

Fee $ .60 Ret. receipt fee $ .10

Surcharge $ Rest. del'y fee $

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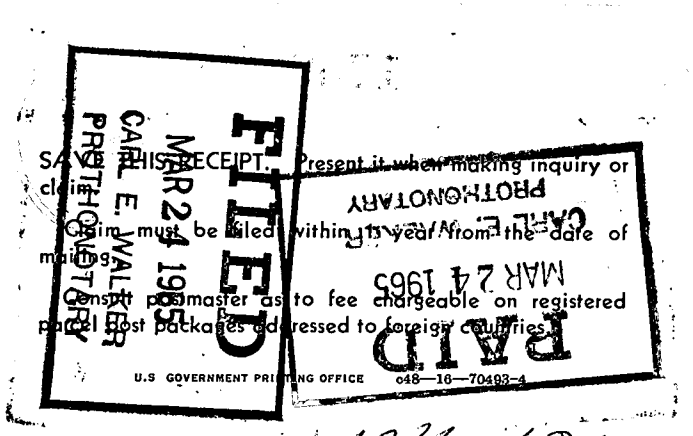


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SUPERIOR COURT OF PENNSYLVANIA
456 CITY HALL

*Philadelphia 7,* Oct. 19, 1962

*Dear Sir:*

*I hereby acknowledge receipt of*

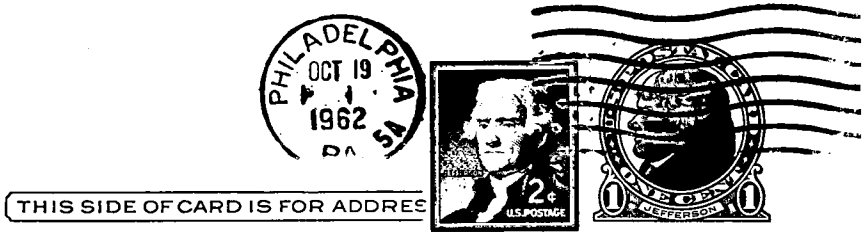
WRIT OF CERTIORARI

*in re* FERLAZZO, Claimant, Appellant;, v. Harbison-Walker Refractories Co., et al

*No.* 359 , *October Term* 1962 (To be put with Record at No. 348 Oct. Term, 1962)

No. 169 November Term, 1961
C. P. CLEARFIELD COUNTY

BLAIR F. GUNTHER
*Prothonotary*




THIS SIDE OF CARD IS FOR ADDRES

Prothonotary
Court of Common Pleas,
Clearfield County Court House,
Clearfield, Pennsylvania.

NO. 169 Nov. TERM, 1961

Sent to Supreme Court @ Philadelphia

NO. Apr. 5-1963 TERM, 19

Returned papers to be found in drawer #14

NO. TERM, 19

NO. TERM, 19

NO. TERM, 19

NO. 364 February TERM, 1962

John B. Gates

NO. ..... TERM, 19.....

NO. ..... TERM, 19.....

NO. ..... TERM, 19.....

Natale Ferlasso, Claimant

Vs.

Marbison Walker Refractories Defendant and Indemnity Insurance Company of North America, Insurance Carrier

NOVEMBER 29, 1961, APPEAL FROM THE DECITION OF THE WORKMEN'S COMPENSATION BOARD made November 15, 1961, on Claim Petition No. 160,937, filed.

NOVEMBER 29, 1961, Appellant's Exceptions filed.

NOVEMBER 29, 1961, Certiorari issued to the Workmen's Compensation Board, Department of Labor and Industry, Harrisburg, Pa.

DECEMBER 2, 1961, Certified Transcript of Record from the Workmen's Compensation Board, filed.

DECEMBER 7, 1961, On praecipe filed, Gleason, Cherry & Cherry, Attorneys, enter their appearance for the Defendant.

JULY 7, 1962, OPINION filed: This is an appeal from the action of the Workmen's Compensation Board, reversing the Referee, who found, in effect, claimant had suffered an injury as result of an accident sustained by the claimant, while in the course of his employment, aggravating his pre-existing osteo arthritis, bringing about a total disability from May 10th to August 10th, 1960; and that the injuries resulting from this accident were of such violence to the physical structure of the body as contemplated by Section 301, Article III, of the Workmen's Compensation Act; and, therefore, the claimant was entitled to compensation for his total disability for thirteen and one-seventh weeks; but disallowed hospital and doctor bills paid by the Blue Cross and Blue Shield.

On Appeal from the Finding of Fact and Conclusion of Law that claimant was entitled to compensation, the Board set aside the findings of fact and conclusions of law, in that the claimant was injured accidentally, in the regular course of his employment, and directed that the claim be disalloed.

The claimant testified that on the day he received his injuries, he was lifting, or pulling, a window frame, while standing on a ladder, and his foot slipped, causing the wrenching or twisting of his back, resulting in severe pain and requiring him to go to a hospital the next day and undergo traction and other hospital treatment, being totally disabled from May 10th to August 10, 1960.

There was evidence that claimant at first stated he was not feeling well and was going home; a claim made to an accident and health insurance carrier, in which nothing was set forth about any injury received while at work; and not until

claimant visited the doctor, did he give to the doctor a history of having slipped and twisted his back while lifting a heavy window frame.

The Board based its reversal of the Referee in that they did not find the evidence submitted by the plaintiff, even including his statement of how his foot slipped on the ladder when he was trying to lift a heavy window frame, and thereby wrenched his back, sufficient to establish that he suffered an accidental injury in the course of his employment.

The general policy of the Workmen's Compensation Law has been at all times to give to the claimant the benefit of any doubt, in evaluating the evidence and the inferences to be taken therefrom. This the Board refused to do when it overruled and set aside the Referee's finding.

In evaluating the evidence submitted, not only of the claimant but that of his doctor, an expert, the decision of the Compensation Board, being against the party having the burden of proof, the question for review is whether the Compensation Board's findings of fact are consistent with each other, and the conclusions of law, and do not disclose a capricious disregard of the complete evidence.

Up to the point of review by the Compensation Board, the evidence giving to the claimant the benefit of all doubts, considering his inability to read and write the English language, or to speak it very clearly, supports the finding of the Referee that he received accidental and compesable injury; and setting that aside, by the Board, is a disregard of the evidence and weight it is to receive, not only from the Referee but from the Board, when produced by a claimant under the circumstances and conditions of the claimant in the instant case.

This is a case closely analogous to the facts in GASPAROVICH VS. FEDERAL RESERVE BANK OF CLEVELAND, 194 Superior Court 135. In this case, however, the Compensation Board affirmed the findings of the Referee; and the Superior Court again reiterates, in affirming the findings of the Compensation Board, that "The Court must, on appeal, view the evidence in the light most favorable to the prevailing party, giving him the benefit of every inference which can be logically and reasonably drawn."

In the instant case, the prevailing party is considered to be the claimant, with his favorable award by the Referee.

The award by the Referee of the hospital and doctor bills, to be paid the claimant direct, which were paid by Blue Cross and Blue Shield, allowed by the Referee and refused by the Board, is not collectible by the claimant.

In any action for damage sustained, outside the Workmen's Compensation Law, the injured party recovers all the medical, surgical and hospital expenses to which he has been put, without being required to give credit for those expenses covered by insurance. In the instant case, the claimant has his hospital and doctor expenses payable by the employer, and he is entitled to have them paid

DOCKET ENTRIES. No. 169 November Term, 1961 - Natale Ferlazzo, Claimant, Vs. Harbison Walker Refractories, Defendant, and Indemnity Insurance Company of North America, Insurance Carrier.

up to a limited amount. (In the instant case that limit was not exceeded.) The fact that some agency other than the employer paid the expenses, we do not think entitles the claimant to recover that amount. Under the Workmen's Compensation Law, so long as the hospital, medical and surgical expenses, to the required amount, are paid, the claimant has no right to recover therefore; nor does the Workmen's Compensation Act in any way provide that claimant shall be reimbursed for such expenses that are paid by Blue Cross or Blue Shield; nor does the fact that payment of the costs of Blue Cross and Blue Shield were one of the fringe benefits, subrogation for which reimbursement is provided by Section 317 of the Workmen's Compensation Act, and the fact that the Blue Cross or Blue Shield did not ask for subrogation, does not entitle the claimant to demand it.

The Board's reversal of the Referee's conclusion of law that claimant suffered compensable injury on May 10, 1960, which continued as a total disability until August 9, 1960, a period of thirteen and one-seventh weeks, totalling $558.57, is set aside, and the award of the Referee in that amount and for that time, will be affirmed. The reversal of the award to the claimant for the sum paid by Blue Cross and Blue Shield, by the Workmen's Compensation Board, is affirmed. BY THE COURT, John J. Pentz, President Judge.

JULY 16, 1962, a copy of Opinion certified to the Workmen's Compensation, Department of Labor & Industry.

JULY 27, 1962, CERTIORARI to the Court of Common Pleas for the County of Clearfield, Returnable the Second Monday of September, 1962, No. 169 November Term, 1961, (WORKMEN'S COMPENSATION), SUPERIOR COURT No. 348, October Term, 1962, filed.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| NATALE FERLAZZO, Claimant | : | |
| | : | |
| VS | : | No. 169 November Term 1961 |
| | : | |
| HARBINSON-WALKER REFRACTORIES COMPANY, Defendant | : | Bureau of Workmen's Compensation, Department of Labor & Industry, Claim Petition No. 160,937 |
| And | : | |
| | : | |
| INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier | : | |

## O P I N I O N

This is an appeal from the action of the Worknen's Compensation Board, reversing the Refree, who found, in effect, claimant had suffered an injury as result of an accident sustained by the claimant, while in the course of his employment, aggravating his pre-existing osteo arthritis, bringing about a total disability from May 10th to August 10, 1960; and that the injuries resulting from this accident were of such violence to the physical structure of the body as contemplated by Section 301, Articles III, of the Workmen's Compensation Act; and, therefore, the claimant was entitled to compensation for his total disability, for thirteen and one-seventh weeks;,but disallowed hospital and doctor bills paid by the Blue Cross and Blue Shield.

On appeal from the Finding of Facts and Conclusion of Law that claimant was entitled to compensation, the Board set aside the findings of fact and conclusions of law, in that the claimant was injured accidentally, in the regular course of his employment, and directed that the claim be disallowed.

The claimant testified that on the day he received his injuries, he was lifting, or pulling, a window frame, while standing on a ladder, and his foot slipped, causing the wrenching or twisting of his back, resulting in severe pain and requireingthim to go to a hospital the next day and undergo traction and other hospital treatment, being totally disabled from May 10th to August 10, 1960.

There was evidence that claimant at first stated he was not feeling well ans was going home; a claim made to an accident and health insurance carrier, in which nothing was set forth about any injury received while at work; and not until claimant visited the doctor, did he give to the doctor a history of having slipped and twisted his back while lifting a heavy window frame.

The Board based its reversal of the Referee in that they did not find the evidence submitted by the plaintiff, even including his statement of how his foot slipped on the ladder when he was trying to lift a heavy window frame, and thereby wrenched his back, sufficient to establish that he suffered an accidental injury in the course of his employment.

The general policy of the Workmen's Compensation Law has been at all times to give to the claimant the benefit of any doubt, in evaluating the the evidence and the inferences to be taken therefrom. This the Board refused to do when it overruled and set aside the Referee's finding.

In ecaluating the evidence submitted, not only of the claimant but that of his doctor, an expert, the decision of the Compensation Board, being against the party having the burden of proof, the question for review is whether the Compensation Board's findings of fact are consistent with eachother, and the conclusions of law, and do not disclose a capricious disregard of the competent evidence.

Upto the point of review by the Compensation Board, the evidence giving to the claimant the benefit of all doubts, considering his inability to read and write the English Language, or to speak it very clearly, supports the finding of the Referee that he received accidental and compensable injury; and setting that aside, by the Board, is a disregard of the evidence and weight it is to receive, not only from the Referee but from the Board, when produced by a claimant under the circumstances and conditions of the claimant in the instant case.

This is a case closely analogous to the facts in GASPAROVICH VS. FEDERAL RESERVE BANK OF CLEVELAND, 194 Superior Court 135. In this case, however, the Compensation Board affirmed the findings of the Referee; and the Superior Court again reiterates, in affirming the findings of the Compensation Board, that

> " The Court must, on appeal, view the evidence in the light most favorable to the prevailing party, giving him the benefit of every inference which can be logically and reasonably drawn."

In the instant case, the prevailing party is considered to be the claimant, with his favorable award by the Referee.

The award by the Referee of the hospital and doctor bills, to be paid the claimant direct, which were paid by Blue Cross and Blue Shield, allowed by the Referee and refused by the Board, is not collectible by the claimant.

In any action for damage sustained, outside the Workemen's Compensation Law, the injured party recovered all the medical, surgical and hospital expenses to which he has been put, without being required to give crêdit for those expenses covered by insurance. In the instant case, the claimant has his hospital and doctor expenses payable by the employer, and he is entitled to have them paid up to a limited amount. (In the instant case that limit was not exceeded). The fact that some agency other than the employer paid the expenses, we do not think entitles the claimant to recover the amount. Under the Workmen's Compensation Law , so long as the hospital, medical and surgical expenses, to the required amount, are paid, the claimant has no right to recover therefore; nor does the Workmen's Compensation Act in any way provide that claimants shall be reinbursed for such expenses that are paid by Blue Cross or Blue Shield; nor does the fact that payment of the costs of Blue Cross and Blue Shield were one of the fringe benefits, subrogation for which reimbursement is provided by Section 317 of the Workmen's Compensation Act, and the fact that the Blue Cross or Blue Shield did not ask for subrogation, does not entitle the claimant to demand it.

The Board's reversal of the Referee's conclusion of law that claimant suffered compensable injury on May 10, 1960, which continued as a total disability until August 9, 1960, a period of thirteen and one-seventh weeks, totaling $558.57, is set aside, and the award of the Referee in that amount and for that time, will be affirmed.

The reversal of the award to the claimant for the sum paid by Blue Cross and Blue Shield, by the Workemen's Compensation Board, is affirmed.

Dated: July 7,1962.

BY THE COURT

John J. Pentz
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

| | | |
|---|---|---|
| NATALE FERLAZZO, Claimant | : | |
| | : | No. 169 November Term 1961 |
| VS | : | |
| | : | Bureau of Workmen's Compensation, |
| HARBISON-WALKER REFRACTORIES COMPANY, Defendant | : | Department of Labor & Industry, |
| | : | Claim Petition No. 160,937 |
| | : | |
| And | : | |
| | : | |
| INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, | : | |
| | : | |
| Insurance Carrier | : | |

O P I N I O N

This is an appeal from the action of the Workmen's Compensation Board, reversing the Referee, who found, in effect, claimant had suffered an injury as result of an accident sustained by the claimant, while in the course of his employment, aggravating his pre-existing osteo arthritis, bringing about a total disability from May 10th to August 10, 1960; and that the injuries resulting from this accident were of such violence to the physical structure of the body as contemplated by Section 301, Article III, of the Workmen's Compensation Act; and, therefore, the claimant was entitled to compensation for his total disability, for thriteen and one-seventh weeks; but disallowed hospital and doctor bills paid by the Blue Cross and Blue Shield.

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> "The Court must, on appeal, view the evidence in the light most favorable to the prevailing party, giving him the benefit of every inference which can be logically and reasonably drawn."

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Dated: July 7, 1962.

BY THE COURT

President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 169 November Term 1961
Bureau of Workmen's Comp.,
Dept. of Labor & Industry
Claim Petition No. 160,937

NATALE FERLAZZO
VS
HARBISON-WALKER REFRACTORIES
COMPANY
AND
INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA

OPINION

FILED
JUL 1 - 1962
CARL E. WALKER
PROTHONOTARY

JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

NOW, August 12, 1963, Appeal Records in this case are to be returned to Workmen's Compensation Fund.

By the Court

President Judge.


Prothonotary,
Court of Common Pleas,
Clearfield County Court House,
Clearfield, Pennsylvania

NO. 169, NOVEMBER TERM, 1961 - C. P. CLEARFIELD

In Re: Natale Ferlazzo, Claimant, Appellant v. Harbison-Walker Refractories, Company, Defendant, et al.

No. 359, OCTOBER TERM, 1962

Dear Sir:—

The above-entitled case has been advanced for argument to the week of November 12, 1962. Therefore, would you kindly send the original record to me at 456 City Hall, Philadelphia 7, Pa., so that it reaches this office no later than September 17, 1962

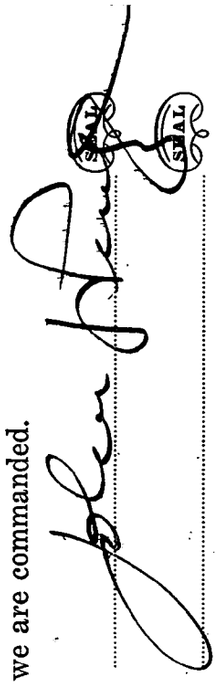
Very truly yours,

~~CHARLES M. McKIBBEN~~

Prothonotary, ~~Supreme and~~ Superior Courts

To the Honorable the Judges of the Superior Court of the Commonwealth of Pennsylvania, sitting at Philadelphia:—

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.



C. P. Clearfield with # 348
No. 169 November Term, 1961
(WORKMEN'S COMPENSATION)
No. 359 October Term, 19 62

# SUPERIOR COURT

NATALE FERLAZZO, Claimant,
Appellant

v.

HARBISON WALKER REFRACTORIES COMPANY, Defendant
and
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,
Insurance Carrier.

**CERTIORARI** to the Court of Common Pleas ~~XX~~ for the County of Clearfield

Returnable the **Second** Monday of **December**, 19 62.

Rule on the Appellee to appear and plead on the Return-day of the Writ.

Blair F. Gunther
~~CHARLES M. MERRIGER~~,
Prothonotary

FILED
OCT 16 1962
CARL E. WALKER
PROTHONOTARY

FILED IN
SUPERIOR COURT
OCT 18 1962

Edward T. Kelley, Esq.

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PHILADELPHIA
} ss:

# The Commonwealth of Pennsylvania,

TO THE JUDGES of the Court of Common Pleas ~~of~~. for the County of CLEARFIELD

GREETING: We being willing for certain causes, to be certified of the matter of the Appeal of

NATALE FERLAZZO

WORKMEN'S COMPENSATION

from the Order of your said Court at No. 169 of November Term, A. D., 1961, wherein

SAID APPELLANT IS CLAIMANT AND HARBISON WALKER REFRACTORIES COMPANY AND INDEMNITY INSURANCE COMPANY OF NORTH AMERICA ARE DEFENDANT AND INSURANCE CARRIER, RESPECTIVELY

before you, or some of you, depending, DO COMMAND YOU, that the record and proceedings aforesaid, with all things touching the same, before the Judges of our Superior Court of Pennsylvania, at a Superior Court to be holden at Philadelphia, the Second Monday of December next, (1962)
so full and entire as in your Court before you they remain, you certify and send, together with this Writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness, the Honorable CHESTER H. RHODES, Doctor of Laws, President Judge of our said Superior Court, at Philadelphia, the Thirtieth day of July, in the year of our Lord one thousand nine hundred and sixty-two.

Blanche L. Gunther
Prothonotary.

IN THE SUPERIOR COURT OF PENNSYLVANIA:

# The Commonwealth of Pennsylvania,

TO THE JUDGES of the Court of Common Pleas for the County of Clearfield GREETING:

Whereas, By virtue of our Writ of Certiorari from our SUPERIOR COURT of Pennsylvania, Sitting at Philadelphia returnable in the same Court on the second Monday of December in the year of our Lord one thousand nine hundred and sixty-two a Record was brought into the same Court, upon appeal by

NATALE FERLAZZO, Claimant

from your Order made in the matter of No. 169 November Term 1961, wherein

SAID APPELLANT is PLAINTIFF and HARBISON WALKER REFRACTORIES COMPANY is DEFENDANT and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA is INSURANCE CARRIER

And it was so proceeded in our said Superior Court, that the following judgment was made, to wit:

THE ORDER OF THE COURT OF COMMON PLEAS IS REVERSED AND THE DECISION OF THE WORKMEN'S COMPENSATION BOARD DENYING BENEFITS IS REINSTATED.

And the record and proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of Assembly in such cases made and provided) ordered by the said Superior Court to be remitted to the Court of Common Pleas for the County of Clearfield aforesaid, as well for execution or otherwise as to justice shall appertain: Whereupon we here remit you the record of the judgment aforesaid, and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

**Witness**, the Honorable CHESTER H. RHODES, Doctor of Laws, President Judge of our said Superior Court, at Philadelphia, the Second day of April in the year of our Lord one thousand nine hundred and sixty-three.

George W. Dunn, Jr.

Deputy Prothonotary.

No. 359 October Term, 19 62

# Superior Court

NATALE FERLAZZO, Claimant

v.

HARBISON WALKER REFRACTORIES COMPANY, Defendant

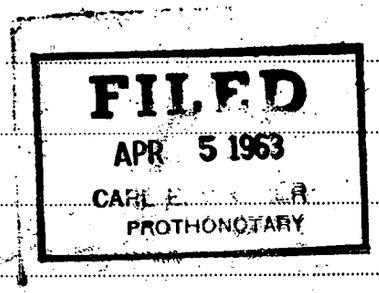
and

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA

APPEAL OF: NATALE FERLAZZO
Claimant

## REMITTITUR

Att'y .....



IN THE SUPERIOR COURT OF PENNSYLVANIA:

# The Commonwealth of Pennsylvania,

TO THE JUDGES of the Court Common Pleas for the

County of Clearfield GREETING:

Whereas, By virtue of our Writ of Certiorari from our SUPERIOR COURT of Pennsylvania, Sitting at Philadelphia returnable in the same Court on the second Monday of September in the year of our Lord one thousand nine hundred and sixty-two a Record was brought into the same Court, upon appeal by HARBISON-WALKER REFRACTORIES COMPANY, Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier from your Judgment made in the matter of No. 169 November Term 1961 wherein

NATALE FERLAZZO, Claimant, is PLAINTIFF and SAID APPELLANTS are DEFENDANTS

And it was so proceeded in our said Superior Court, that the following judgment was made, to wit:

THE ORDER OF THE COURT OF COMMON PLEAS IS REVERSED AND THE DECISION OF THE WORKMEN'S COMPENSATION BOARD DENYING BENEFITS IS REINSTATED.

And the record and proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of Assembly in such cases made and provided) ordered by the said Superior Court to be remitted to the Court of Common Pleas for the County of CLEARFIELD aforesaid, as well for execution or otherwise as to justice shall appertain: Whereupon we here remit you the record of the judgment aforesaid, and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

**Witness**, the Honorable CHESTER H. RHODES, Doctor of Laws, President Judge of our said Superior Court, at Philadelphia, the Second day of April in the year of our Lord one thousand nine hundred and sixty-three.

**Prothonotary.**

C.P. Clearfield County
No. 169 November Term 1961

No. 348 October Term, 19 62

# Superior Court

NATALE FERLAZZO, Claimant

v.

HARBISON WALKER REFRACTORIES COMPANY, Employer,
and
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,
Insurance Carrier,
Appellants

## REMITTITUR

Att'y .....

NO. 95

| | | |
|---|---|---|
| NATALE FERLAZZO | : | IN THE SUPERIOR COURT OF |
| v. | : | PENNSYLVANIA |
| HARBISON WALKER REFRACTORIES COMPANY, Defendant, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Appellants | : | Nos. 348 and 359 October Term, 1962 |

Appeal from the Judgment of the Court of Common Pleas of Clearfield County at No. 169 November Term, 1961.

OPINION BY WATKINS, J. FILED: March 20, 1963

The claimant, Natale Ferlazzo, in this workmen's compensation case, seeks benefits for an alleged accidental injury resulting in a "hurt back". The Referee awarded benefits, including medical and hospital reimbursement, despite the fact that the Blue Cross and Blue Shield had paid these costs. The premiums for the coverage had been paid by the employer.

The Workmen's Compensation Board reversed, setting aside the findings of fact, conclusions of law, and the award of benefits by the referee. The board substituted its own findings of fact and conclusions of law, entering an order of disallowance on the ground that the claimant did not sustain an accident and that there was not sufficient competent evidence to establish disability from an accident sustained in the course of his employment; and further that there is

no provision in the Workmen's Compensation law for reimbursement for medical and hospital benefits paid by the Blue Cross and the Blue Shield.

The Court of Common Pleas of Clearfield County reversed the findings of fact and order of disallowance made by the board, and, in effect, reinstated the findings of the referee. However, the court below affirmed the workmen's compensation board's disallowance of the sums paid by the Blue Cross and Blue Shield.

The claimant appealed from the disallowance of the medical and hospital costs to No. 359 October Term, 1962; the employer appealed from the allowance of compensation to No. 348 October Term, 1962.

The court below was under a misapprehension as to the scope of judicial review. "When a claim goes to the courts the appeal is not from the findings of the referee, but from the findings and conclusions of the board." Lorigan v. W. O. Gulbranson, Inc., 184 Pa. Superior Ct. 251, 254, 132 A. 2d 695 (1957). The board is the final arbiter of facts, the referee is only an agent of the board and the board may reject, change or adopt the findings of the referee. Rodgers v. Methodist Episcopal Hospital, 188 Pa. Superior Ct. 16, 145 A. 2d 893 (1958). Here, when the board substituted its own findings for those of the referee, his findings disappear from the case. The court below was clearly in error when it determined that "the prevailing party is considered to be the claimant, with his favorable award by the referee". The evidence must be reviewed in the light most favorable to the prevailing party, in this case, the employer. Gasparovich v. Federal Reserve Bank of Cleveland, 194 Pa. Superior Ct. 137, 166 A. 2d 57 (1960).

The court below treated this appeal as though it were necessary for the reviewing court to seek sufficient competent evidence to support the findings of the referee, while its appellate function was to determine whether the board's findings of fact were consistent with each other and with the conclusions of law and could be sustained without a capricious disregard of the competent evidence. "The board may accept or reject, in whole or in part, the testimony of any witnesses as it is its province to pass upon the testimony and determine the credibility to be accorded the witnesses and the weight to be given their testimony. Kubler v. Yeager, 189 Pa. Superior Ct. 339, 150 A. 2d 383 (1959). In Dindino v. Weekly Review Pub. Co. Inc., 188 Pa. Superior Ct. 606, 610, 149 A. 2d 475 (1959), we said: 'Questions of fact are for the compensation authorities and the appellate court may not make an independent appraisement of the evidence.' . . . .It is well settled that the credibility of expert witnesses and the weight to be attached to their testimony, are matters exclusively for the board and in a conflict of medical opinion it is for the board to decide which conclusion it will adopt. Gasior v. Pittsburgh, 188 Pa. Superior Ct. 371, 146 A. 2d 320 (1958)." Erwin v. L. & H. Construction Co., 192 Pa. Superior Ct. 632, 634, 636, 161 A. 2d 639 (1960). "In a workmen's compensation proceedings, the tryer of facts is not required to accept even the uncontradicted testimony as true." Zilek v. C. C. Coal Co., 186 Pa. Superior Ct. 628, 631, 142 A. 2d 507 (1958).

From a review of the testimony it is difficult to tell exactly what happened on May 10, 1960. The claimant, age 62, suffered from an osteo arthritic condition. While working as a laborer mixing concrete, he was taking bricks out of a frame when one of his feet started

slipping on the step of a ladder and he suffered a sharp pain in his back.

As the board put it: "This Board has reviewed the testimony given by the claimant relative to the matters which took place on May 10, 1960. We note that in his testimony he does not set forth specifically the events which spell out an accident. The claimant, in effect, testified that he experienced difficulty in loosening a frame; that when he exerted by pulling hard, his foot started to slip on the step ladder and he got a pain in the back. The claimant further set forth that he did not fall off the step ladder but merely one foot did. In reviewing the history this claimant gave to the doctor who treated him, the doctor stated that he did not recall the claimant giving him that history, but rather the history he received was that the claimant was lifting a heavy object and he noticed that while in the act of lifting, he had a pain in his back. The statement which claimant gave to the representative of the defendant company and to which the referee gave little or no credibility, is to the effect that the claimant stated that the injury did not happen sudden; that his back got bad while he mixed cement; thatwhile working with bricks the next day, he had to stop because his back hurt too much. No where in the statement can it be inferred that an accident occurred."

The Board vacated the findings of fact of the referee and made the following salient findings:

"2. That on May 9, 1960, the claimant, while in the course of his employment, sustained a pain in his back and that on the following day, at or around 9:30 a.m., his back still hurt him from the day previously and that he informed his boss he was going home because he hurt his back.

"3. That claimant rendered three different stories relative to the history of how he incurred pain in his back. The history given to his physician was that he sustained pain in his back while in the act of lifting a heavy object. Testimony by the claimant sets forth that claimant started slipping on the step ladder when using force to loosen a frame and, as a result, he received pain in his back. A signed statement, given in the presence of his daughter to a representative of the defendant, sets forth that the injury did not happen sudden, but that he endured pain in his back during the performance of his employment mixing cement for his employer.

"4. That as a result of the pain sustained, the claimant was rendered medical aid by Thomas H. Aughinbaugh and later admitted to the Clearfield Hospital on May 10, 1960, where he remained as a patient through May 28, 1960, under traction and other medication. The claimant continued under the care of Dr. Aughinbaugh until September 23, 1960. Claimant, however, returned to work for the defendant on August 10, 1960, at wages equal to or greater than he was earning at the time of the alleged accident.

"5. That claimant, while in the ordinary course of his employment performing his regular task, sustained pain in his back which was not an injury within the intendment of the Workmen's Compensation Act.

"6. That the medical evidence rendered at the hearing failed to unequivocally establish a causal connection between the disability and the injury sustained during the course of his employment."

"The Board's decision against the claimant in the instant case falls within the general rule that an accident may not be inferred

from the fact that disability overtakes an employe in the performance of his usual duties." Urbasik v. Johnstown, 198 Pa. Superior Ct. 232, 237, A. 2d (1963). Our review of this record does not disclose any inconsistencies in the findings and conclusions of the Board or a capricious disregard of competent evidence that an accident took place.

Having determined that his injury was not a result of an accident in the course of his employment, the question of proof of causal relationship, between the disability and the accident, is moot. However, the following medical testimony is pertinent to the question. The only doctor who testified was Dr. Aughinbaugh. He testified as follows: "Q. He had osteo arthritis? A. Yes. Q. Was that diffuse? A. Yes. Q. Was it throughout the lumbar back? A. Yes." He further testified: "Q. In your opinion was this caused by this heavy lifting which he gave you a history of on the day he was in pain? A. I can't very well answer that that way. It would be impossible for me to say the thing actually happened at that time. . . .Q. Taking all facts into consideration would it be reasonable for you to say this heavy lifting, which caused him to go home after one and a half hours work, would indicate this heavy lifting was the cause of this lesion? A. I can't answer it that way. I can say, from the history presented and the findings at the time, it would be proper to presume the accident had caused his pain. Whether or not then, he had a pre-existing lesion, such as osteo arthritis, whether the wedging was prior present I can't say and have no x-ray."

In the case of Smith v. Pull.-Stand. Car Mfg. Co., 194 Pa. Superior Ct. 263, 166 A. 2d 299 (1960), we reviewed the burden upon

the claimant to prove causal relationship. The claimant's doctor in that case testified: "A. I determined that the condition was a result of it. I said it was very probable and highly possible that it could have occurred. I don't know that he didn't injure his ankle some place else but he gave this history and the fact that he had developed this, I assumed that it was a result of that." And this Court said at page 269: "The circumstances of the instant case required unequivocal medical testimony: Anthony v. Lee Coal Co., 168 Pa. Superior Ct. 397, 77 A. 2d 657. See also Meehan v. Philadelphia, 182 Pa. Superior Ct. 161, 126 A. 2d 488; Elonis v. Lytle Coal Co., 134 Pa. Superior Ct. 264, 3 A. 2d 995. It is readily apparent that the testimony of Dr. Christie falls short of the standard set forth in Washko v. Ruckno, 180 Pa. Superior Ct. 606, 121 A. 2d 456, in which case we held that, where medical testimony is necessary to establish causal connection, the medical witness must testify, not that the injury or condition might have, or even possibly did, come from the assigned cause, but that in his professional opinion the result in question did come from the assigned cause."

In the instant case the doctor used the word "presume", while in the Smith case the doctor used the word "assumed". Neither of these words are sufficiently unequivocal to permit a finding that a pre-existing osteo arthritic condition was aggravated by an alleged accident. And in the very recent case of Urbasik v. Johnstown, supra, at page 239, 240, we said: "The credibility of the medical experts and the issues created by their testimony were for the compensation authorities: Allen v. Patterson-Emerson-Comstock, Inc., 186 Pa. Superior Ct. 498,

142 A. 2d 437. Passing the employer's argument that the opinions of appellant's medical witnesses did not meet the required standard of proof, see Vorbnoff v. Mesta Machine Co., 286 Pa. 199, 133 A. 256, it seems abundantly clear that the Board is not chargeable with legal error in refusing to find that claimant had established the necessary causal relationship. We all agree with Judge MacDonald, speaking for the court below, that 'there has not been a capricious disregard of competent evidence by the Board'. Notwithstanding our sympathy for this appellant, we have no alternative other than to dismiss her appeal." See also: Lind v. Argo Lamp Co., 198 Pa. Superior Ct. 247, A. 2d (1962).

As the question of hospital and medical expenses is moot, now that it has been determined that the claimant did not sustain an accident, we will not discuss the question.

The order of the Court of Common Pleas is reversed and the decision of the Workmen's Compensation Board denying benefits is reinstated.

DOCKET ENTRIES. No. 169 November Term, 1961 - Natale Ferlazzo, Claimant, Vs. Harbison Walker Refractories, Defendant, and Indemnity Insurance Company of North America, Insurance Carrier.

up to a limited amount. (In the instant case that limit was not exceeded.) The fact that some agency other than the employer paid the expenses, we do not think entitles the claimant to recover that amount. Under the Workmen's Compensation Law, so long as the hospital, medical and surgical expenses, to the required amount, are paid, the claimant has no right to recover therefore; nor does the Workmen's Compensation Act in any way provide that claimant shall be reimbursed for such expenses that are paid by Blue Cross or Blue Shield; nor does the fact that payment of the costs of Blue Cross and Blue Shield were one of the fringe benefits& subrogation for which reimbursement is provided by Section 317 of the Workmen's Compensation Act, and the fact that the Blue Cross or Blue Shield did not ask for subrogation, does not entitle the claimant to demand it.

The Board's reversal of the Referee's conclusion of law that claimant suffered compensable injury on May 10, 1960, which continued as a total disability until August 9, 1960, a period of thirteen and one-seventh weeks, totalling $558.57, is set aside, and the award of the Referee in that amount and for that time, will be affirmed. The reversal of the award to the claimant for the sum paid by Blue Cross and Blue Shield, by the Workmen's Compensation Board, is affirmed. BY THE COURT, John J. Pentz, President Judge.

JULY 16, 1962, a copy of Opinion certified to the Workmen's Compensation, Department of Labor & Industry.

JULY 27, 1962, CERTIORARI to the Court of Common Pleas for the County of Clearfield, Returnable the Second Monday of September, 1962, No. 169 November Term, 1961, (WORKMEN'S COMPENSATION), SUPERIOR COURT No. 348, October Term, 1962, filed.

Among the Records and Proceedings *enrolled in the Court of Common Pleas in and for the County of Clearfield, in the Commonwealth of Pennsylvania, to* No. 169 November Term, 1961, *is contained the following,*

*COPY OF DOCKET ENTRY*

| | |
|---|---|
| Natale Ferlazzo, Claimant<br><br>Vs.<br><br>Harbison Walker Refractories Defendant and Indemnity Insurance Company of North America, Insurance Carrier | NOVEMBER 29, 1961, APPEAL FROM THE DECITION OF THE WORKMEN'S COMPENSATION BOARD made November 15, 1961, on Claim Petition No. 160,937, filed.<br>NOVEMBER 29, 1961, Appellant's Exceptions filed.<br>NOVEMBER 29, 1961, Certiorari issued to the Workmen's Compensation Board, Department of Labor and Industry, Harrisburg, Pa. |

DECEMBER 2, 1961, Certified Transcript of Record from the Workmen's Compensation Board, filed.

DECEMBER 7, 1961, On praecipe filed, Gleason, Cherry & Cherry, Attorneys, enter their appearance for the Defendant.

JULY 7, 1962, OPINION filed: This is an appeal from the action of the Workmen's Compensation Board, reversing the Referee, who found, in effect, claimant had suffered an injury as result of an accident sustained by the claimant, while in the course of his employment, aggravating his pre-existing osteo arthritis, bringing about a total disability from May 10th to August 10th, 1960; and that the injuries resulting from this accident were of such violence to the physical structure of the body as contemplated by Section 301, Article III, of the Workmen's Compensation Act; and, therefore, the claimant was entitled to compensation for his total disability for thirteen and one-seventh weeks; but disallowed hospital and doctor bills paid by the Blue Cross and Blue Shield.

On Appeal from the Finding of Fact and Conclusion of Law that claimant was entitled to compensation, the Board set aside the findings of fact and conclusions of law, in that the claimant was injured accidentally, in the regular course of his employment, and directed that the claim be disalloed.

The claimant testified that on the day he received his injuries, he was lifting, or pulling, a window frame, while standing on a ladder, and his foot slipped, causing the wrenching or twisting of his back, resulting in severe pain and requiring him to go to a hospital the next day and undergo traction and other hospital treatment, being totally disabled from May 10th to August 10, 1960.

There was evidence that claimant at first stated he was not feeling well and was going home; a claim made to an accident and health insurance carrier, in which nothing was set forth about any injury received while at work; and not until

claimant visited the doctor, did he give to the doctor a history of having slipped and twisted his back while lifting a heavy window frame.

The Board based its reversal of the Referee in that they did not find the evidence submitted by the plaintiff, even including his statement of how his foot slipped on the ladder when he was trying to lift a heavy window frame, and thereby wrenched his back, sufficient to establish that he suffered an accidental injury in the course of his employment.

The general policy of the Workmen's Compensation Law has been at all times to give to the claimant the benefit of any doubt, in evaluating the evidence and the inferences to be taken therefrom. This the Board refused to do when it overruled and set aside the Referee's finding.

In evaluating the evidence submitted, not only of the claimant but that of his doctor, an expert, the decision of the Compensation Board, being against the party having the burden of proof, the question for review is whether the Compensation Board's findings of fact are consistent with each other, and the conclusions of law, and do not disclose a capricious disregard of the complete evidence.

Up to the point of review by the Compensation Board, the evidence giving to the claimant the benefit of all doubts, considering his inability to read and write the English language, or to speak it very clearly, supports the finding of the Referee that he received accidental and compesable injury; and setting that aside, by the Board, is a disregard of the evidence and weight it is to receive, not only from the Referee but from the Board, when produced by a claimant under the circumstances and conditions of the claimant in the instant case.

This is a case closely analogous to the facts in GASPAROVICH VS. FEDERAL RESERVE BANK OF CLEVELAND, 194 Superior Court 135. In this case, however, the Compensation Board affirmed the findings of the Referee; and the Superior Court again reiterates, in affirming the findings of the Compensation Board, that "The Court must, on appeal, view the evidence in the light most favorable to the prevailing party, giving him the benefit of every inference which can be logically and reasonably drawn."

In the instant case, the prevailing party is considered to be the claimant, with his favorable award by the Referee.

The award by the Referee of the hospital and doctor bills, to be paid the claimant direct, which were paid by Blue Cross and Blue Shield, allowed by the Referee and refused by the Board, is not collectible by the claimant.

In any action for damage sustained, outside the Workmen's Compensation Law, the injured party recovers all the medical, surgical and hospital expenses to which he has been put, without being required to give credit for those expenses covered by insurance. In the instant case, the claimant has his hospital and doctor expenses payable by the employer, and he is entitled to have them paid

Commonwealth of Pennsylvania,
County of Clearfield } SS.

I, Carl E. Walker, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

Natale Ferlazzo

Plaintiff, and Harbison Walker Refractories, Defendant, and Indemnity Insurance Company of North America, Insurance Carrier

~~Defendant~~, so full and entire as the same remains of record before the said Court, at No. 169 November Term, A.D. 19 61,

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this _____ day of _____ 19____.

PROTHONOTARY

I, _____, President Judge of the Forty-sixth Judicial District, composed of the Courts of Oyer and Terminer, Quarter Sessions and General Jail Delivery, Orphans' Court and Court of Common Pleas, do certify that _____ by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary in and for said county of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

PRESIDENT JUDGE

Commonwealth of Pennsylvania,
County of Clearfield } SS.

I, _____, Prothonotary of the Court of Common Pleas in and for said county, do certify that the Honorable _____, by whom the foregoing attestation was made and who has thereunto subscribed his name, was at the time of making thereof and still is President Judge of the Court of Oyer and Terminer, Quarter Sessions and General Jail Delivery, Orphans' Court and Court of Common Pleas, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 10th day of August, A. D. 1962

PROTHONOTARY

*No.* 169 November *Term, 19* 61

Natale Ferlazzo, Claimant

*versus*

Harbison Walker Refractories, Defendant

and Indemnity Insurance Company of North America, Insurance Carrier

# Exemplified Record

*From Clearfield County*

*Debt* - - - $

*Int. from*

*Costs* $ 22.00

*Entered and filed* *19*

PROTHONOTARY