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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0710-23**

VICTORIA SALOMONE,

Petitioner-Appellant,

v.

SPECTRUM360,

Respondent-Respondent.

Argued June 5, 2024 – Decided June 24, 2024

Before Judges Firko and Susswein.

On appeal from the Division of Workers' Compensation, Department of Labor and Workforce Development, Claim Petition No. 2021-22297.

Daniel O. Sloan argued the cause for appellant (Law Office of Daniel O. Sloan, LLC, attorneys; Daniel O. Sloan, of counsel and on the briefs).

Keeley A. McDonald argued the cause for respondent (Law Office of Frank A. Viscomi, attorneys; Keeley A. McDonald, on the brief).

PER CURIAM

In this workers' compensation case, petitioner Victoria Salomone appeals from a November 2, 2023 order denying her motion for medical and temporary disability benefits. We affirm.

I.

Salomone was employed as a special education teacher by her former employer respondent Spectrum360. She worked with children on the autism spectrum and taught at a middle school. On July 26, 2021, a male student kicked Salomone in her left breast. Salomone had bilateral saline breast augmentation approximately eleven years earlier. She claims the kick caused her tremendous pain, tenderness, extreme redness, and blood clotting to her left breast.

A medical examination was performed that day and revealed a contusion to Salomone's left breast and abrasions on both hands. On September 11, 2021, Salomone filed a claim petition seeking workers' compensation benefits. Respondent filed an answer. In its answer, respondent disputed the existence, nature, extent, causation, and permanency of Salomone's alleged injuries.

On March 29, 2022, Salomone filed a motion for temporary medical and disability benefits supported by the certification of her counsel. The motion sought medical treatment—breast reconstruction surgery—as set forth in the

November 30, 2021 report of her treating board certified plastic surgeon, Dr. Boris Volshteyn. Respondent had not authorized the surgery.

In his report, Dr. Volshteyn noted that Salomone had breast augmentation surgery "over [eleven] years ago"—in 2011—and since then, she gained a "significant amount of weight," which resulted in significant increase in her breast size overall." He explained Salomone reported she has different sizes of implants, and due to her weight change, "she would like to reduce the size of the implants to reduce the impact on her neck and back."

Dr. Volshteyn stated he suspected Salomone "sustained fracture of the silicone implant on the left side and therefore was sent [by him] for [an] MRI on September 30, 2021, . . . which demonstrated significantly increased folding of the implant on the affected left side compared to the right side." (emphasis added). During Dr. Volshteyn's examination, Salomone observed a deformation in her left breast when she raised her arms.

In addition, based on Salomone's complaints of "sharp" left breast pain, increased back pain, neck pain, and "shoulder discomfort associated with increase in her breast size over the years," Dr. Volshteyn recommended breast reconstruction surgery and removal and replacement of both breast implants to repair what he felt was a suspected slow leak rupture of the left breast implant.

He found the right implant was "intact." Dr. Volshteyn noted Salomone's left shoulder was higher than her right.

In opposition, respondent's counsel certified that Dr. Volshteyn diagnosed a "nonspecific injury" and recommended an MRI, which revealed the implants had "prominent folds, left greater than right . . . but no definitive evidence of rupture bilaterally." The MRI report stated there was "[n]o evidence of implant rupture on the left." Respondent's counsel stated that "[d]espite the MRI finding no evidence of rupture," Dr. Volshteyn opined he "has enough evidence" of rupture to recommend removal of the left implant and replacement with a smaller implant, which necessitated "downsizing" the right implant.

Because of the "incongruity" in Dr. Volshteyn's opinions, counsel certified that respondent sent Salomone for a second opinion with Dr. Beverly Friedlander, a board certified plastic surgeon. Counsel stated that Dr. Friedlander examined Salomone and "confirmed no clinical evidence of implant damage or rupture." Counsel certified Dr. Friedlander explained that "if punctured, saline implants like these would deflate very quickly, unlike silicone implants, and the MRI showed no such deflation." (emphasis added). Respondent's counsel further certified that based on Dr. Friedlander's opinion that Salomone's "subjective complaints are unrelated to the subject incident, and

instead related to her significant weight gain and resulting implant discomfort." In addition, counsel certified Salomone's complaints include "her significant comorbidities of lupus and rheumatoid arthritis," and her motion should be denied.

The judge of compensation ordered a plenary hearing on the motion, which took place over three non-consecutive days. Salomone and the two doctors—Volshteyn and Friedlander—testified. Salomone said that due to the subject incident, she has pain in her left breast with sudden movements and when laying down. Salomone testified that she did not have any noticeable differences in the left implant except for the bottom skin. Salomone explained that she did not want the implants removed because she paid a lot of money for them and just wanted the pain to go away.

Dr. Volshteyn testified that at the time of his examination, he based his opinion on the assumption that Salomone had silicone implants, but prior to testifying, he learned she had saline implants. Dr. Volshteyn testified that if a saline implant is compromised, its contents will leak and reabsorb into the body in a short amount of time. He added that if the valve was to "extravasate"—leak out—this would also happen in a relatively short amount of time. Dr. Volshteyn testified in reviewing the medical records of Salomone's prior surgeon, Dr. Gary

Breslow, he did not find any problems mentioned, with the exception of extra skin fold under the left breast. Dr. Breslow's records note that he addressed and improved the asymmetry of Salomone's breasts during the original breast implant procedure back in 2011.

Dr. Friedlander testified that during her examination of Salomone six months after the incident, Salomone complained of tenderness in her left chest. Dr. Friedlander stated that since any contusion would have healed by that time, Salomone's complaints of left breast pain were subjective and not due to superficial bruising. Dr. Friedlander testified Salomone had natural breast symmetry following her 2011 procedure evidencing the left implant had not ruptured and the valve had not lost its integrity. While Dr. Friedlander concluded Salomone sustained trauma to her left breast as a result of the incident, she also determined the trauma was not the pivotal cause for breast revision surgery. Dr. Friedlander noted that Salomone's other medical conditions, such as weight gain and lupus, could indicate a need for breast revision surgery.

Dr. Friedlander testified that the proposed surgery by Dr. Volshteyn was unnecessary and unrelated to the incident because there was no evidence of a rupture to the left breast implant, both implants are intact, and were not impacted

by the trauma. Dr. Friedlander also testified that Salomone's left breast implant had not lost any integrity because neither the implant nor the valve was ruptured. When questioned about pain due to trauma to a breast implant, Dr. Friedlander testified that trauma to the implant is not a cause of pain directly, and trauma to a valve is also not a direct cause of pain.

Dr. Friedlander explained that ripples in breast implants are common. She opined that Salomone's breast implants are intact and were not impacted by the trauma. Dr. Friedlander opined that all breast implants ripple, and if an implant is underfilled, ripples can become more noticeable. Following the close of the evidence, the judge reserved decision.

On October 17, 2023, the judge denied Salomone's motion for medical and temporary disability benefits in a written decision. The judge found Salomone to be a "credible witness" and both expert medical witnesses "to be relatively credible." However, the judge highlighted that she "cannot overlook the fact that in Dr. Volshteyn's office notes, he refers to [Salomone's] prior implants as being silicone and not saline" but acknowledged at the hearing that the implants were "saline."

The judge noted that Dr. Volshteyn, who only saw Salomone on two occasions, testified that "an injury to a valve on a saline implant would leak out

in a relatively short time," but Salomone "testified that her breast has not changed size since the incident." The judge emphasized that Dr. Volshteyn "could not say with any certainty that the folds shown on the . . . MRI were not a natural development that occurred" since Salomone's original breast surgery, and he could not confirm replacing the implants would alleviate her pain, but reducing the size of the implants might "lessen" the discomfort in her neck, back, and shoulder, "associated with her increased breast size since 2011."

The judge found Dr. Friedlander "to be more credible" because she relied on "objective information," specifically the MRI report, and Salomone's prior records, which "made it clear that the left implant is intact and not ruptured." The judge credited Dr. Friedlander's testimony that Salomone sustained a contusion to her left breast, but not a rupture or a leak because the breasts are "basically symmetrical," and if the left implant had ruptured, "there would be a noticeable size difference in the breasts."

The judge emphasized that Dr. Friedlander did not notice "any rippling" in Salomone's left breast, and opined that the left breast implant "was not violated" as a result of the incident. The judge concluded that Salomone failed to prove by a preponderance of the evidence that the surgery Dr. Volshteyn

recommended was causally related to the work incident and denied the motion. A memorializing order was entered. This appeal followed.

On appeal, Salomone primarily argues that the judge's decision was not based on credible evidence and no reasonable factfinder could conclude Dr. Volshteyn's treatment plan was unrelated to the work-connected injury. Salomone also contends the judge misapplied the medical standard for the proposed treatment because it was not incumbent upon her to prove that an actual rupture of the breast implant existed in order to establish medical causation.

II.

Our standard of review in a workers' compensation case is whether the judge of compensation's "findings reasonably could have been reached on the sufficient credible evidence present in the record." Hersh v. Cnty. of Morris, 217 N.J. 236, 242 (2014) (quoting Sager v. O.A. Peterson Constr. Co., 182 N.J. 156, 164 (2004)).

We give "substantial deference," Ramos v. M & F Fashions, Inc., 154 N.J. 583, 594 (1998), to the factual and credibility findings of a judge of compensation "in recognition of the compensation judge's expertise and opportunity to hear witnesses and assess their credibility." Goulding v. NJ

Friendship House, Inc., 245 N.J. 157, 167 (2021). A judge of compensation's findings "should not be reversed unless they are 'manifestly unsupported by or inconsistent with competent relevant and reasonably credible evidence as to offend the interests of justice.'" McGory v. SLS Landscaping, 463 N.J. Super. 437, 452-53 (App. Div. 2020) (quoting Perez v. Monmouth Cable Vision, 278 N.J. Super. 275, 282 (App. Div. 1994)). "[W]e review the court's legal findings and construction of statutory provisions de novo." Hager v. M&K Constr., 246 N.J. 1, 13 (2021).

In 1979, our Legislature amended the New Jersey Workers' Compensation Act (the Act), N.J.S.A. 34:15-1 to -147, "to eliminate awards for minor partial disabilities, to increase awards for the more seriously disabled, and to contain the overall cost of workers' compensation." Perez v. Pantasote, Inc., 95 N.J. 105, 114 (1984); see also Schorpp-Replogle v. N.J. Mfrs. Ins. Co., 395 N.J. Super. 277, 296 (App. Div. 2007) ("A central objective the Legislature accomplished through the 1979 amendments is the elimination of minor injuries not worthy of compensation from serious workplace-induced disabilities . . .").

In Perez, our Supreme Court articulated a two-part test a petitioner must meet to merit compensation under the Act: "The first essential that must be met is a satisfactory showing of demonstrable objective medical evidence of a

functional restriction of the body, its members or organs. . . . [T]he next issue is determining whether the injury is minor or is serious enough to merit compensation." 95 N.J. at 116. To establish the first prong, a petitioner must support a claim with something more than just his or her subjective statements. Perez, 95 N.J. at 116.

Regarding the second prong, a judge of compensation may consider "whether there has been a disability in the broader sense of impairment in carrying on the 'ordinary pursuits of life.'" Id. at 117. "[A]n injury or disease that is minor in nature . . . is not compensable." Ibid.

III.

A.

A workers' compensation petitioner has "the burden of proof to establish all elements of his [or her] case." Bird v. Somerset Hills Country Club, 309 N.J. Super. 517, 521 (App. Div. 1998). A successful petitioner "generally must prove both legal and medical causation when those issues are contested." Lindquist v. City of Jersey City Fire Dep't, 175 N.J. 244, 259 (2003). "[P]roof of medical causation means proof that the disability was actually caused by the work-related event. Ibid. (citing Hone v. J.F. Shea Co., 728 P.2d 1008, 1011 (Utah 1986)).

"Proof of legal causation means proof that the injury is work connected." Ibid. (citing Kasper v. Bd. of Trs. of Tchrs.' Pension and Annuity Fund, 164 N.J. 564, 591 (2000) (Coleman, J., concurring)); "It is the petitioner's burden to establish a causal link between the employment and the [injury]." Kiczula v. Am. Nat'l Can Co., 310 N.J. Super. 293, 303 (App. Div. 1998) (citing Laffey v. Jersey City, 289 N.J. Super. 292, 303 (App. Div. 1996)).

Nevertheless, the Act is social legislation that is liberally construed "to implement the legislative policy of affording coverage to as many workers as possible." Lindquist, 175 N.J. at 258 (quoting Brower v. ICT Group, 164 N.J. 367, 373 (2000)). To that end, the judge of compensation "conducting the hearing shall not be bound by the rules of evidence." N.J.S.A. 34:15-56. "The purpose of this section was to simplify the nature of proof that can be offered without regard to technical exclusionary rules of evidence. Thus, hearsay evidence need not be excluded but the ultimate award must be based on legally competent evidence." Gunter v. Fischer Sci. Am., 193 N.J. Super. 688, 691 (App. Div. 1984) (citing Gilligan v. Int'l Paper Co., 24 N.J. 230, 236 (1957)).

Because the judge's decision here was supported by sufficient credible evidence in the record, we affirm. Salomone would have us disregard the judge's assessment of the experts' credibility. Salomone faults the judge for crediting

Dr. Friedlander's testimony because she is not qualified to read MRI films, and the radiologist who read the MRI did not testify at the hearing. Salomone contends that Dr. Friedlander's opinion, which is based largely on the MRI report, is not credible, and the judge abused her discretion by not barring Dr. Friedlander's testimony on this issue. Salomone also claims Dr. Friedlander is not credible because she never examined the implants. We disagree.

As to the experts' testimony, the judge accorded greater weight to Dr. Friedlander's testimony in light of her accuracy in testifying about Salomone's saline implants. The judge found Dr. Volshteyn erroneously believed Salomone had silicone—not saline—implants and that mistake regarding the composition of the implants undermined his overall opinion. The judge also reasoned Dr. Friedlander was more credible because "she gave a thorough explanation of her conclusions, which were reasonable and made logical sense," opining Salomone's left breast implant is intact and not ruptured. Dr. Volshteyn's opinion regarding the proposed surgery was mostly based on his subjective examination findings unsupported by objective evidence.

Moreover, Dr. Friedlander testified that the MRI report did not impact her examination of Salomone but supported her conclusions. The MRI report states there were "folds on the implant, or ripples on the implant," and Dr. Friedlander

explained "one implant was inflated more than the other implant, leading to irregularities on the surface." Dr. Friedlander stated that the MRI report "supported everything that [she] had read in the record, which was [Salomone] had saline implants, they were differentially inflated, and there was no evidence that the radiologist saw on the MRI . . . of rupture[.]" Dr. Friedlander did not render a different interpretation of the MRI report; she merely stated the MRI's findings.

On cross-examination, Dr. Friedlander testified that an MRI "can be diagnostic in some instances." Dr. Friedlander also stated "[v]alve failure is not something that you can visualize . . . even during surgery."

Thus, we reject Salomone's assertion that the judge improperly gave greater weight to Dr. Friedlander's testimony, which was ostensibly based on her "improper review of the MRI report "and "lackluster evaluation." To the contrary, Dr. Friedlander testified that she relied on objective information, her examination of Salomone, her medical history, and review of her prior medical records in reaching her opinion and conclusions. And, both experts reviewed the MRI report, which they took into consideration in arriving at their opinions.

The record reflects Dr. Friedlander's opinion was based on Salomone's description of the incident, clinical information, prior records, and her

assessment of the MRI report, which she concurred with and supported her conclusion. Based upon our deferential standard of review, we are satisfied the factual findings and legal determinations made by the judge are supported by the competent, relevant, and credible evidence in the record. Lindquist, 175 N.J. at 262. Accordingly, we need not intervene.

B.

Next, Salomone argues the judge erred by requiring a finding of an actual fracture of the implant when the correct medical standard merely requires a suspected fracture. Salomone further contends she is entitled to medical treatment under the Act due to an aggravation of a latent condition, namely her weight gain or lupus, which combined with the trauma sustained in the incident, necessitates and correlates the surgery to her work incident because it is the incident that "ultimately produced the injury." We disagree.

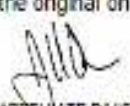
The judge determined that Dr. Volshteyn could not testify with any certainty that replacing the implants would alleviate Salomone's pain. His testimony was essentially limited to the aesthetic benefits of Salomone having reconstruction surgery. Salomone did not proffer any expert testimony on the issues of her latent conditions in support of her argument. Salomone failed to

sustain her burden of proving the need for breast reconstruction surgery is causally related to the July 26, 2021 incident.

Dr. Friedlander noted in her report that Salomone has had "chronic pain related to her [2007] motor vehicle accident and/or her lupus/rheumatoid arthritis" and "also [has] a history of discomfort in both breasts secondary to significant weight gain since her augmentation." The judge did not abuse her discretion in denying Salomone's motion when medical evidence on her latent conditions was nonexistent. We are satisfied the judge's findings are supported by the "competent relevant and reasonably credible evidence" in the record. See McGory, 463 N.J. Super. at 452-53.

Further, while Dr. Friedlander indicated that other factors like weight gain and lupus "could indicate revision surgery," she also concluded the breast implant was not violated at the time of the incident. Accordingly, Salomone did not prove any injury or underlying medical condition was causally related to the incident to warrant granting her motion. The judge focused on the nature and extent of Salomone's injury and whether reconstruction surgery was warranted.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION