IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DALE KNOWLES,	:	
	:	C.A. No. K10A-12-004 WLW
Claimant Below-Appellant,	:	
	:	
v.	:	
	:	
A GREENER SOLUTION, LLC,	:	
	:	
Employer Below-Appellee.	:	

Submitted: August 5, 2011
Decided: October 20, 2011

ORDER

Upon Appeal of a Decision of the
Industrial Accident Board. *Affirmed*.

Craig T. Eliassen, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware; attorney for Claimant Below-Appellant.

Andrea C. Panico, Esquire of Heckler & Frabizzio, Wilmington, Delaware; attorney for Employer Below-Appellee.

WITHAM, R.J.

Issue

Whether the Industrial Accident Board's decision to deny the Appellant's petition for a finding of a compensable injury, payment of related medical expenses, and compensation for total disability and attorney's fees and witness fees was supported by substantial evidence?

Facts

Claimant-Appellant, Dale Knowles, brings this appeal after hearing and denial of his claim by the Industrial Accident Board (hereinafter "IAB"). The appeal of the IAB decision was filed timely pursuant to 19 Del. C. § 2349.[1] The Appellant alleges that he suffered a compensable injury while working for his employer, A Greener Solution LLC, a recycling company. The claim relates to an alleged accident that occurred during the course of his duties as a processor and material handler. The Appellant claims that on March 31, 2010, while working for his employer at its Proctor and Gamble site, he reached into a large dumpster-style bin to pull out a slab of material for sorting. As he pulled out what was alleged to be a fifty foot slab of material, he felt a pop in his back followed by burning that radiated down his left leg. The Appellant testified that he immediately sat down and called his Supervisor, Joseph Niebergall. His Supervisor arrived a short time later and took the Appellant to the emergency room at Kent General Hospital for treatment. The Supervisor

[1]The statute requires an IAB appeal to be filed within 30 days of the date that the IAB notice of award, or lack thereof, was mailed to the parties. Notice was mailed on December 9, 2010. Notice of appeal was filed on December 30, 2010.

testified that he did not see a fifty foot slab of material upon arrival at the work site. He noted that the Appellant continued to invite him to go fishing, that the Appellant had no altered gait, and that he did not complain of pain while on light duty after his back injury.

The Employer sent the Appellant to Health Works, an occupational walk-in clinic in Dover, Delaware. Health Works referred the Appellant to Dr. Stephen Malone, an orthopedic specialist. After several months of treatment with Dr. Malone, the Appellant sought treatment with Dr. Michael Sugarman, a board certified neurosurgeon. Dr. Sugarman testified that an MRI from May 5, 2010 showed both degenerative findings and acute findings. The acute findings involved a disc herniation displacing a nerve root. In Dr. Sugarman's medical opinion, the acute herniations caused the Appellant's symptoms and not the preexisting degeneration, and he believed that the work injury created the new herniation instead of aggravating or accelerating a preexisting condition. The Appellant underwent surgery with Dr. Sugarman for his acute herniation on November 11, 2010. The Appellant's number of previous back surgeries is a matter of controversy. The Supervisor who took the Appellant to the emergency room after his injury stated that he heard the Appellant report five previous back surgeries. The Appellant responded that he sometimes refers to back injections as surgeries but that he made no such report in the hospital. The Appellant acknowledges one previous surgery in 1995 in which he had a herniated disk decalcified.

Dr. Jerry Case, a board certified orthopedic surgeon, testified by deposition on

behalf of the Employer. Dr. Case did not dispute the testimony of Dr. Sugarman. Instead, he made the self-evident assertion that "if one accepts Claimant's report of the circumstances of his injury than [sic] his present injury is related to work; if, however, one does not find Claimant's report credible than [sic] there is no nexus upon which to find causation between a work activity and Claimant's back injury."[2] Dr. Case also noted that if the Appellant provided an incorrect medical history, then a causal connection between his injuries and the work incident could not be drawn. Otherwise, Dr. Case found the Appellant's treatment, including surgery, to be medically reasonable and necessary.

Standard of Review

The function of Superior Court in evaluating an appeal from the IAB is to determine whether there exists substantial evidence free from legal error to support the finding of the Board.[3] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a particular conclusion.[4] It is more than a scintilla and less than a preponderance.[5] In reviewing the record for substantial evidence, the Court will consider the record in the light most favorable to

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[2]*Knowles v. A Greener Solution, LLC*, No. 1351750, at 7 (Del. I.A.B. Dec. 8, 2010).

[3]*General Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super. 1985).

[4]*Parks v. Wal-Mart*, 2004 WL 1427016, at *2 (Del. Super. June 24, 2004).

[5]*City of Wilmington v. Clark*, 1991 WL 53441, at *2 (Del. Super. Mar. 20, 1991) (*citing Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

the party prevailing below.[6] Only when no satisfactory proof in support of a factual finding of the Board exists, may Superior Court overturn a decision of the Board.[7] Superior Court does not hold responsibility as a trier of fact with authority to weigh evidence, determine credibility, or to make findings of fact and conclusions.[8]

Medical testimony is necessary to establish the injury and the causal connection between act done by the claimant and the injury.[9] An employer is obligated to pay the necessary and reasonable medical expenses related to an employee's work injury.[10]

Discussion

The IAB concluded that the Appellant did not meet his burden of proving by a preponderance of the evidence that the injury arose out of and in the course of employment.[11] Although the IAB acknowledged that the doctors testified that the Appellant's acute back injury related to his work accident in March, 2010, both of these analyses depended upon the veracity of the Appellant's medical history and his

[6] *Benson v. Phoenix Steel*, 1992 WL 354033, at *2 (Del. Super. Nov. 6, 1992).

[7] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 67 (Del. 1965).

[8] *Id.* at 66.

[9] *McCormack Transp. Co. v. Barone*, 89 A.2d 160, 162-63 (Del. Super. 1952).

[10] 19 Del. C. § 2322(a); *e.g. Waples v. State*, 2004 WL 2828279, at *3 (Del. Super. May 11, 2004).

[11] 19 Del. C. § 2304; 29 Del. C. § 10125(c); *Goicuria v. Kauffman's Furniture*, 706 A.2d 26, 1998 WL 67720, at *1 (Del. Feb. 5, 1998) (TABLE).

account of the alleged accident. The IAB simply did not believe the Appellant. The IAB cited several reasons that it doubted his credibility.

First, the Supervisor testified that the Appellant missed significant work time leading up to the alleged injury event. The IAB felt it equally likely that the Appellant's back injury occurred during this period of frequent absences. Second, according to testimony, the Appellant did not limp, nor did he complain of pain, while on light duty at work. Third, the Supervisor, who arrived on the scene shortly after the accident, saw no fifty foot slab of material that allegedly caused the injury. Fifth, the IAB found troubling the Supervisor's testimony that he overheard the Appellant report five previous surgeries to hospital staff on March 31, 2010.

In reviewing the record for substantial evidence, the Court will consider the record in the light most favorable to the party prevailing below.[12] Only when no satisfactory proof in support of a factual finding of the Board exists, may Superior Court overturn a decision of the Board.[13] Superior Court does not hold responsibility as a trier of fact with authority to weigh evidence, determine credibility, or to make findings of fact and conclusions.[14]

As noted above, Superior Court does not determine credibility. Viewing the evidence in the light most favorable to the Employer, the IAB simply did not find the

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[12]*Benson*, 1992 WL 354033, at *2.

[13]*Johnson*, 213 A.2d at 67.

[14]*Id.* at 66.

Appellant to be credible in his account. The IAB was well within its purview in discounting the testimony of the Appellant and finding that the Appellant did not meet his threshold of proving by a preponderance of the evidence that his back injury arose out of and in the course of his employment. The IAB had substantial evidence for its factual finding that his injury was just as likely caused outside of work.

The Appellant advances *City of Wilmington v. Clark* for the proposition that despite the low threshold of proof for substantial evidence, the appellate court should not hesitate to reverse a manifestly unreasonable judgment.[15] Although this is certainly true, the facts of *Clark* are easily distinguishable from this case. In *Clark*, the IAB broke its own rule of procedure by making a decision on attorney's fees without an affidavit from the attorney regarding his fees.[16] It was also unclear whether the IAB considered the *Cox* factors for a reasonable fee.[17] In the case at hand, the IAB applied the law properly to the case, had all of the requisite facts before it, and wrote a thirteen page decision that was grounded in logic and reason.

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[15]*See Clark*, 1991 WL 53441, at *3.

[16]*Id.* at *6.

[17]*Id.* at *8.

Conclusion

The IAB had substantial evidence free from legal error to deny the Appellant's claim. The IAB's decision is hereby *affirmed*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Craig T. Eliassen, Esquire
Andrea C. Panico, Esquire
Industrial Accident Board