

**IN THE SUPERIOR COURT OF THE STATE OF  
DELAWARE IN AND FOR NEW CASTLE COUNTY**

<b>ELIZABETH YATES</b>	)	
	)	CIVIL ACTION NUMBER
Appellant	)	
	)	11A-05-007-JOH
v.	)	
	)	
<b>MASLEY ENTERPRISES</b>	)	
	)	
Appellee	)	

*Submitted: December 14, 1011*

*Decided: February 29, 2012*

***MEMORANDUM OPINION***

*Upon Appeal from the Industrial Accident Board - AFFIRMED*

***Appearances:***

Elizabeth Yates, *Pro Se*, 2812 Market Street, Wilmington, Delaware 19802, Appellant

Christopher T. Logullo, Esquire, of Chrissinger & Baumberger, Wilmington, Delaware, Attorney for Masley Enterprises, Appellee

HERLIHY, Judge

Appellant Elizabeth Yates (“Yates”) filed a petition to determine compensation due with the Industrial Accident Board (the “Board”) on June 26, 2010. Yates alleges she suffered a hand, arm and cervical injury as a result of work activities while employed by Masley Enterprises. The Board concluded that claimant failed to prove her injuries were caused by work related activities and denied her petition. Claimant filed this appeal alleging multiple Board errors. Because the Board’s decision is supported by substantial evidence and free from legal error, it is AFFIRMED.

### ***Factual Background and Procedural History***

#### ***A. Employment History***

Masley Enterprises was formed in 2000 to manufacture gloves for the military. Yates began working there in July 2009 as a glove assembler. The manufacturing process is divided into fourteen different manufacturing stations. During her employment at Masley, which lasted only seven months, Yates worked at five different manufacturing stations.

On February 22, 2010, Masley Enterprise’s owners, Frank and Donna Masley, met with Yates because she seemed unhappy. During the meeting, she expressed dissatisfaction at her co-workers’ laziness. After voicing these concerns to the Masley’s, Yates said she felt better. At no point during that meeting, including when asked whether she had any other concerns, did she mention pain in her arms.

The following day, Yates called out of work complaining that her hands hurt. She never returned to work. Masley Enterprises sent her a dismissal letter on March 10, 2010

stating her position would be terminated if she could not return to work. She did not respond to the dismissal letter and her position was eventually terminated.

***B. Yates' Injury and Treatment***

In Yates' petition and testimony before the Board, she alleges the injuries which caused her to stop working were caused by repetitive work activities at Masley Enterprises. The symptoms of her arm and cervical injury began in September 2009. At that time, Yates first noticed aches in her arm when she was in bed at night. She alleges she informed her direct supervisor, Brian, about the pain in her arms. Neither of the Masleys ever received information that Yates was experiencing pain related to her job functions. She testified that the pain got progressively worse and she sought medical treatment beginning in November 2009. At that time, she saw Dr. Wilson,<sup>1</sup> her primary care physician, at Westside Family Healthcare. Dr. Wilson's notes indicate she had full range of motion and no swelling of her wrists. To alleviate the pain in her wrists, Dr. Wilson prescribed an anti-inflammatory drug. Yates sought treatment several times at Westside Family Healthcare from November 2009 through February 2010.

Sometime in January or February 2010, Yates suffered a miscarriage six weeks into her pregnancy. She alleges she missed one or two days of work after it but then returned to work. On February 23, 2010, a day after her meeting with the Masleys, Dr. Wilson ordered her out of work until February 26, 2010 because of her arm pain, but she never returned to work. Dr. Wilson referred Yates to undergo an Electromyography

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<sup>1</sup> The Court continues to be frustrated by the Board's constant failure to use doctors' first names whenever a doctor's name is first used in a decision. It is a fundamental courtesy.

("EMG") and see Dr. Sowa, a board certified orthopedic surgeon, sometime around the end of February 2010.

The EMG test was conducted on March 24, 2010 at Wilmington Hospital. It produced normal results. Yates also had a MRI on March 29, 2010 which revealed small posterior disc osteophyte complex at C6/C7 and it was indenting the ventral thecal sac with tiny right paracentral disc protrusion at C3/C4. After reviewing the EMG and examining her, Dr. Sowa did not believe that Yates had any specific extremity diagnosis. He believed her symptoms were related to neck pain and stiffness and not carpal tunnel syndrome. He referred her to Dr. Kim, a pain management specialist affiliated with First State Orthopedics, for further treatment. Yates saw Dr. Kim one time in June 2010 and then discontinued treatment at First State Orthopedics.

On July 2, 2010, Yates sought additional treatment from Dr. Glen Rowe, a board certified orthopedic surgeon. Dr. Rowe reviewed claimant's history and prior treatment and then conducted a physical examination. He also had her complete a job requirements questionnaire. In that questionnaire, Yates asserted that her job required repetitive use of her hands while essentially standing in one position. She said the job also required continuous stooping, pushing, pulling, bending and grasping, and occasional lifting and frequent carrying.

Yates complained of numbness in both hands and pain from her neck down both arms. Dr. Rowe found tenderness to palpation in the muscles along the neck and across the shoulder, pain in the muscles inside the shoulder blades, limited range of motion in the neck and pain in the musculature around the neck. Dr. Rowe's initial diagnosis was

cervical thoracic strain, brachial plexus compromise bilaterally and some right radial tunnel nerve compromise -- in other words, a neck and arm injury. The initial treatment plan included pain management, physical therapy and chiropractic treatment to help her with her neck and upper back pain. Yates continued taking a medication for nerve pain and added a muscle relaxer and pain medication.

Yates returned to Dr. Rowe's office on September 2, 2010 for a follow-up visit. Her diagnosis was unchanged, and he ordered another EMG on her upper extremities to evaluate for radiculopathy. The EMG was performed on September 30, 2010 at Tidewater Electromyography, now seven months after Yates had left her job. The EMG impression was bilateral brachial plexus level nerve compromises involving upper plexus components bilaterally and significantly and right lower plexus component moderately. The EMG indicated Yates also had significant bilateral radial posterior interosseus nerve compromise at the radial tunnel level. After discussing the symptoms and the EMG, Dr. Rowe and Yates agreed to try a surgical procedure, radial tunnel release, on her right arm to treat symptoms of carpal tunnel syndrome.

Dr. Rowe performed surgery on November 12, 2010. Dr. His operative notes indicate the radial nerve/posterior interosseus nerve was very tight and the radial tunnel was very tight with thick fascial bands around it. The surgery was successful and Dr. Rowe anticipated Yates would get relief as a result of the procedure. Although she did not have a job at the time, she would have been unable to work for up to four weeks following surgery.

Yates' first post-op visit was November 22, 2010, with Dr. Kates in Dr. Rowe's office. She also had a visit with Dr. Kates in December 2010. She reported the surgery helped her right arm approximately 25 percent but she still had pain in her shoulder radiating into her arm. She was instructed to continue physical therapy and chiropractic treatment. At another follow-up visit with Dr. Kates in January 2011, Yates indicated she was doing well and requested radial tunnel release surgery on her left arm. She had not had that surgery by March 1, 2011, the date of Dr. Rowe's deposition for this case.

### ***C. Hearing Testimony***

Dr. Rowe testified by deposition on Yates' behalf. He testified that he believed the surgery was necessary because the results of the EMG and clinical findings. He believed Yates was suffering from a cervical thoracic strain, brachial plexus compromise bilaterally and radial nerve compromise in her tunnel. He attributed these injuries to the type of work Yates performed while employed at Masley Enterprises. His opinion is based on the history and mechanism provided by Yates.

Dr. Rowe testified that following surgery claimant would have been out of work for up to four weeks. Although Yates never requested a return to work note from Dr. Rowe, she would have been released to light duty activities without repetitive work, after her recovery from surgery. He concluded that her injury was related to her work activities to a reasonable degree of medical probability. This opinion is based on the history Yates provided. Dr. Rowe believes her diagnostic results, particularly the EMG, were consistent with her symptoms when considering her mechanism at work.

During cross-examination, counsel for Masley Enterprises focused on several areas of Dr. Rowe's testimony and Yates' treatment history. First, she had not complained of any neck pain during her visits to Westside Family Healthcare. The first complaint of neck pain is noted by Dr. Sowa on April 21, 2010, two months after she stopped working at Masley Enterprises. Dr. Sowa conducted a physical examination and reviewed the March 2010 EMG before concluding that she did not have any specific upper extremity diagnosis. Second, the EMG performed in March 2010 was performed by a licensed medical doctor, unlike the EMG performed at Tidewater which Dr. Rowe used in forming his diagnosis. Third, Dr. Rowe only saw Yates two times before performing the radial release surgery. Dr. Ger also stated that the results of her physical examinations, such as the tenderness in her neck and range of motion limitations, were subjective findings rather than objective diagnostic tests. Dr. Rowe confirmed that the results of the MRI, which showed cervical issues, could be degenerative changes related to Yates' age. Dr. Rowe also admitted that his opinions are based, in part, on Yates' answers to the job requirements questionnaire.

Frank and Donna Masley testified. He described in detail the process used to manufacture the gloves. He also described Yates' various roles in the manufacturing process. Her jobs are considered light duty. The materials used to manufacture the gloves weigh very little and the manufacturing process does not require strenuous exertion. In fact, applying too much pressure to the materials used in the manufacture of gloves would cause them to rip. Masley discussed her answers to the job requirement questionnaire. His testimony indicates some differences from her answers to the

questionnaire. Although manufacturing gloves does require some physical effort, he emphasized that Yates' responses exaggerate what is actually required of a glove assembler.

Donna Masley testified regarding the injury reporting process and human resources policies at Masley Enterprises. Donna did not receive a report that she had complained of a work related injury, as would be required by company policy stated in the employee manual given to all employees on their first day of work. The first time Donna Masley received information about Yates' injury was after she had called out of work on February 23, 2010. She conducted an investigation to determine whether there was any information suggesting that the injury had previously been reported, however, she could not find any support that it had been. In addition, She did not recall Yates voicing concerns during company meetings that the manufacturing tables were causing employees injuries, as Yates contends she did.

Dr. Errol Ger evaluated claimant at the request of Masley Enterprises. Dr. Ger conducted physical examinations of claimant on September 13, 2010 and February 7, 2011. During the September 13, 2010 examination, Yates described her work and the history of her injury. Dr. Ger reviewed claimant's medical records and conducted a physical examination. All objective tests for carpal tunnel syndrome were negative. Dr. Ger explained these tests in detail during his testimony. He also conducted tests involving a subjective component and obtained varied results. For example, Dr. Ger considered the results of the grip test invalid because Yates results were not consistent with valid measurements. The results of the subjective tests were not supported by Yates' physical

condition either. Dr. Ger found no results to support a diagnosis of an arm injury or carpal tunnel syndrome.

Dr. Ger also examined Yates' cervical spine. The results of that examination were normal except for a slightly limited range of motion -- which he said contains a subjective component. He reviewed the EMG report from March 2010 noting that it is an objective diagnostic test. His physical examination correlated with the negative EMG done at least a month after Yates stopped working -- in March 2010. Dr. Ger also reviewed the results of Yates' MRI, which he opined, are degenerative conditions attributable to her age.

Dr. Ger reported his findings that Yates was normal and not suffering from any particular diagnosis in September 2010. He found she had symptoms involving her upper extremities and neck but the objective diagnostic tests did not support a clinical diagnosis. Further, she was not showing any objective signs for carpal tunnel. Dr. Ger also reviewed the notes from Dr. Sowa and Dr. Kim. Dr. Sowa believed Yates' symptoms related to a cervical spine injury. Dr. Kim believed she suffered from a degenerative cervical injury and cervical radiculopathy. Dr. Ger found nothing in his physical examination of Yates to support a diagnosis of cervical radiculopathy. Dr. Ger concluded that she was able to work light duty. She was only able to perform light duty jobs because of her physical build -- not because any particular injury. Because Dr. Ger did not find any objective signs to support a clinical diagnosis, he opined that claimant did not suffer any work related injury. Dr. Ger also suggested that he did not necessarily disagree with Yates' prior treating physicians' diagnosis based on the subjective symptoms presented

by her but those diagnoses could not be made based on his objective clinical findings. He also testified that carpal tunnel syndrome is common during pregnancy, which Yates reported she was during the end of 2009 and beginning of 2010.

On cross-examination, Dr. Ger agreed that Yates' alleged symptoms could be caused by the type of work she described. Dr. Ger did not believe symptom magnification played a role in any diagnosis of claimant. He also discussed the results of Yates' MRI and did not believe that the type of work she described could cause the diagnosis revealed by the MRI. Dr. Ger clarified that he did not disagree with the diagnosis and treatment provided to claimant by other doctors, but he believes they relied on subjective complaints rather than objective measures.

Dr. Ger was deposed again after Yates' second EMG and subsequent surgery. He also conducted another examination of claimant on February 7, 2011. During that physical exam, he found no objective signs of a problem with her upper extremities, no objective signs of a problem with her radial nerves and no additional problems with her cervical spine. Dr. Ger also reviewed Yates' Tidewater EMG. He reported the Tidewater EMG was performed by a physical therapist, not a medical doctor. Dr. Ger does not believe Tidewater is a reputable facility and he does not believe the results of her EMG at that location are valid. He reported that her physical examination does not correlate to the findings in the Tidewater EMG. Yates stopped working in February 2010, had a normal EMG in March 2010, during the acute phase of her alleged injury, and six months later, in September 2010, had an abnormal EMG. This history did not support a work related radial tunnel injury, according to Dr. Ger.

Dr. Ger also questioned the validity of the Tidewater EMG findings because he said an EMG will pick up damage to the posterior interosseus nerve but has never seen an EMG diagnose a radial tunnel problem. He has routinely reviewed EMGs for many years and does not find Tidewater EMGs to be valid. Nor does he believe the radial tunnel release surgery was necessary for Yates because it was performed based on the findings of the Tidewater EMG, which he does not believe to be valid. Yates' physical exams also did not support the decision to operate on her, according to Dr. Ger. He also believes she is fit to work with her only restrictions based on her physical build, not on any injury.

On cross-examination during the second deposition, Dr. Ger was asked about Dr. Rowe's operative findings regarding Yates' tight radial nerve. He said the findings in Dr. Rowe's operative report are normal conditions not related to any type of injury. Yates' reported improvement following surgery can be attributed to what is known as a sham surgery or placebo effect. That is where a person experiences subjective improvement from knowing that surgery has occurred. Dr. Ger believes Dr. Rowe's findings during surgery are a normal condition and do not indicate the presence of a particular radial nerve diagnosis.

Dr. Ger's opinion did not change based on his second evaluation of Yates. He still believes that she does not have any particular extremity diagnosis and any work restrictions are related to her physical build, not an injury. In addition, he did not believe work related activities caused her to suffer any injury. This opinion is based on his review of the medical records, including the lack of objective support for a diagnosis of her alleged injury, especially during the acute phase, that is while she was working.

#### ***D. Board's Decision***

The Board found that Yates had failed in her burden of showing the cumulative effect of her work activities was a substantial cause of her cervical thoracic strain, bilateral plexus compromise and the radial nerve compromise. The Board found the issues revolved around Yates' credibility and it found her not to be credible.

Various reasons for doubting her credibility were listed. One, she testified she had complained to Frank Masley three times about neck pain. But during the time of these alleged complaints, she was seeing Dr. Wilson to whom she made no such complaints. The first complaint to a doctor of neck pain was about two months after she did not return to work. The Board was troubled by this inconsistency. It found her complaints about neck pain not credible.

Two, the Board was troubled by her complaints worsening many months after she stopped working. She alleged her symptoms changed and worsened months after she stopped working, leading the Board to conclude they were unrelated to her job. Three, the Board found her version of the degree of force to do her job was not credible compared to Mr. Masley's description of how little force was needed, and if too much was used, the liners she worked with would tear.

Four, in the same regard, there was a vast difference between her description of her job activities given to Dr. Rowe and Mr. Masley's description of those duties. The Board was particularly troubled by the testimony regarding the meeting with Mr. Masley's on February 22nd, her last day at work. No physical complaints were mentioned, except maybe something about her pregnancy, only her complaints that her

co-workers were not working hard enough. Yet she testified she had been having arm and hand pain since September 2009. She saw Dr. Wilson on September 17, 2009 yet mentioned nothing to the Masleys, even when asked if she had anything else to say, about any medical complaints.

The Board noted Dr. Ger testified that carpal tunnel syndrome is common during pregnancy. It chose to accept the testimony of Dr. Ger over that of Dr. Rowe regarding the radial nerve surgery; one reason being the EMG results Dr. Rowe relied upon were, according to Dr. Ger, invalid. Besides those results were noted seven months after she quit work.

### *Parties' Contentions*

Yates was represented by counsel during the proceedings before the Board. She is representing herself on the appeal. She submitted a page and a half "memo" itemizing a number of claims essentially challenging the Board's credibility determinations and the burden of proof the Board utilized. She said the Board found she had lied about several prior workers' compensation awards in reaching its credibility determination. She complains the tape broke during the hearing. Yates also argues Masley Enterprises did not rebut her testimony and that she had made her claim.

Masley Enterprises responds to her appeal by asking the Court to dismiss her "brief" pursuant to Superior Court Civil Rule 107 and consequently dismiss the appeal. Even if the Court does not dismiss the "brief" and appeal, Masley Enterprises argues the decision of the Board should be affirmed. Masley Enterprises contends the Board applied the correct burden of proof and its decision that Yates is not credible is supported by the

record. In addition, the Board's determination that Dr. Ger's testimony was more persuasive than Dr. Rowe's testimony is supported by substantial evidence and free from legal error.

### *Standard of Review*

This Court's duty in reviewing an appeal from the Board is to determine whether the Board's decision is supported by substantial evidence and free from legal error.<sup>2</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>3</sup> In reviewing the record for substantial evidence, the Court will consider the record in the light most favorable to the party prevailing below.<sup>4</sup> This Court does not sit as a trier of fact with authority to weigh the evidence, determine questions of credibility and make its own factual findings and conclusions.<sup>5</sup> The Board is entitled to reject a portion of a witness' testimony and accept another portion or accept one document over another.<sup>6</sup> The testimony of one doctor, even if in contradiction to another, constitutes sufficient competent evidence.<sup>7</sup> Claimant has the burden of establishing a work related injury and the extent of the injury.<sup>8</sup> When an expert's opinion

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<sup>2</sup> *General Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super. 1985).

<sup>3</sup> *Scheers v. Indep. Newspapers*, 832 A.2d 1244, 1246 (Del. 2003).

<sup>4</sup> *Stigars v. Speakman Co.*, 1993 WL 138720 (Del. Super. Mar. 19, 1993).

<sup>5</sup> *Glanden v. Land Prep, Inc.*, 918 A.2d 1098, 1100 (Del. 2007).

<sup>6</sup> *Munyan v. Daimler Chrysler Corp.*, 909 A.2d 133, 136 (Del. 2006).

<sup>7</sup> *Reese v. Home Budget Ctr.*, 619 A.2d 907, 910 (Del. 1992).

<sup>8</sup> *Histed v. E.I. Du Pont De Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

is based in large part on the patient's recital of subjective symptoms and the fact finder finds facts to be different, the fact finder is free to reject that expert's conclusion.<sup>9</sup> The Board must provide reasons for its credibility determinations.<sup>10</sup> It must also set forth the basis for its factual findings.<sup>11</sup>

### ***Discussion***

Yates alleges her injury arose from repetitive work related activities, not from an identifiable industrial accident. Under the "usual exertion" rule this type of injury is only compensable if an employee can show by a preponderance of the evidence that the ordinary stress and strain of employment is a substantial cause of the injury.<sup>12</sup> The Board used the correct burden of proof standard and determined Yates had not met it. It found she had not proved that work activities caused an injury and denied her petition for compensation due.

Masley Enterprises first argues Yates' brief should be stricken due to her failure to comply with Superior Court Rule 107. That Rule requires briefs to contain the following items: table of contents, table of citations, statement of the case, statement of the questions involved and argument.<sup>13</sup> Admittedly her "brief" does not contain the items required by Rule 107. This Court has carefully reviewed the contents of that "brief" and

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<sup>9</sup> *Clements v. Diamond State Port Corp.*, 831 A.2d 870, 878 (Del. 2003).

<sup>10</sup> *Turbitt v. Blue Hen Lines, Inc.*, 711 A.2d 1214, 1215 (Del. 1998).

<sup>11</sup> *Devine v. Advanced Power Control, Inc.*, 663 A.2d 1205, 1209 (Del. Super. 1995).

<sup>12</sup> *Duvall v. Charles Connell Roofing*, 564 A.2d 1132, 1133 (Del. 1989).

<sup>13</sup> Super. Ct. Civ. R. 107(e).

believes that the deficiencies do not require her “brief” to be stricken and the appeal dismissed. As stated in the parties’ contentions, the substance of her arguments are identifiable. Because Yates has provided sufficient notice of her claims to Masley Enterprises, the Court finds it is most efficient to address the issues in her appeal.

Yates alleges a procedural error by the Board which this Court will address before the substantive arguments. She asserts in her brief that the “tape stopped running [and] the full hearing was not recorded.” She and Masley Enterprises presented expert testimony through depositions. Each party introduced expert depositions as exhibits at the Board hearing and counsel read summaries of them to the Board. The record indicates that a portion of the summary of Dr. Ger’s deposition was not recorded at the hearing.

The following exchange occurred after this problem was identified:

Hearing Officer:	It looks like some time during [Dr. Ger’s] deposition we stopped recording.
[Masley’s Counsel]:	The parties can stipulate on the record that the deposition has been read into evidence and that we trust that the Board has heard it and that it will review it in conjunction with doing, or with rendering its decision.
[Claimant’s Counsel]:	Absolutely. <sup>14</sup>

The hearing transcript supports Yates’ contention that the recorder stopped recording. However, counsel representing her at the hearing stipulated that the missing testimony was already in the record by way of the deposition transcript of Dr. Ger. The Court finds that the record is, therefore, complete because the “missing” testimony can be

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<sup>14</sup> Hr’g R. at 134-35.

found as an exhibit which is part of what the Board considered. Because the record is complete, her argument is without merit.

Yates' remaining arguments can be grouped into three categories. The first category involves claims that the Board erred in making credibility determinations. The second category involves the burden of proof applied by the Board and the third relates to the Board's factual findings.

Claimant contends the board erred in three separate credibility determinations. Those are that the Board incorrectly found claimant not credible because she lied about prior workers' compensation claims, finding Dr. Ger's testimony more persuasive than Dr. Rowe's testimony and concluding the October 2010 EMG results were invalid.

When the Board makes credibility determinations, it must set out its reasons.<sup>15</sup> In this case, the Board was commendably detailed and clear in setting out its reasons for finding Yates not credible. First, it is important to note that contrary to Yates assertion in this Court, the Board did not say anything about any of her prior workers' compensation claims when making its credibility determination.

The Board found inconsistencies about Yates' claims that she mentioned her physical problems to people at work but not to doctors whom she was seeing at the same time. The Board also found the testimony unbelievable that Yates' symptoms or complaints, made only several months after she quit her job, allegedly worsened seven

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<sup>15</sup> *Turbitt*, 711 A.2d at 1215.

months later. There was substantial evidence to support these credibility determinations.<sup>16</sup>

Another of her contended erroneous credibility determinations was that the Board accepted Dr. Ger's testimony over that of Dr. Rowe. That choice is a power the Board has.<sup>17</sup> Here again, the Board was clear and specific why it chose to give greater weight to Dr. Ger's testimony. Among its reasons were the paucity of pre-surgery visits she had with Dr. Rowe, the questionable second EMG with results showing problems seven months after she stopped work, etc. Again, there is substantial evidence to support the Board's decision to accept Dr. Ger's testimony over that of Dr. Rowe.

The Board is to determine the credibility of witnesses, not the Court.<sup>18</sup> The Court finds no error in the Board's determinations.

Yates argues the Board did not apply the correct burden of proof in denying her claim. What she overlooks, but the Board did not, is that she had the burden of proof.<sup>19</sup> Masley Enterprises had no burden of proof. Dr. Ger's testimony provides the substantial evidence to support the Board's decision to deny Yates' claim.<sup>20</sup>

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<sup>16</sup> *Munyan*, 909 A.2d at 136.

<sup>17</sup> *Delaware Tire Ctr. v. Fox*, 401 A.2d 97, 100 (Del. Super. 1979).

<sup>18</sup> *Air Mod Corp. v. Newton*, 215 A.2d 434, 438 (Del. 1965).

<sup>19</sup> *Streett v. State*, 669 A.2d 9, 11 (Del. 1995).

<sup>20</sup> *Reese*, 619 A.2d at 910.

The Court, finally, finds no errors in the Board's fact findings. Since the Board's decision is supported by substantial evidence it must be affirmed.<sup>21</sup>

*Conclusion*

For the reasons stated herein, the decision of the Industrial Accident Board is **AFFIRMED.**

**IT IS SO ORDERED.**

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J.

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<sup>21</sup> *M. A. Hartnett v. Coleman*, 226 A.2d 910 (Del. 1967).