

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

CARLOS SCOTT, )  
)  
Appellant, )  
) C.A. No. N11A-11-002 MMJ  
v. )  
)  
STATE OF DELAWARE, )  
)  
Appellee. )

Submitted: April 3, 2012  
Decided: July 2, 2012

On Appeal from a Decision of the Industrial Accident Board

**AFFIRMED**

**MEMORANDUM OPINION**

Leroy Tice, Esquire, Wilmington, Delaware, Attorney for Appellant

Natalie L. Palladino, Esquire, Tybout, Redfearn & Pell, Wilmington,  
Delaware, Attorney for Appellee

**JOHNSTON, J.**

Carlos Scott (“Claimant”) has appealed the October 6, 2011 decision of the Industrial Accident Board (“Board”). The Board granted the State of Delaware’s (“State” or “Employer”) Petition to Terminate Total Disability Benefits for Claimant’s left knee injury. The Board awarded Claimant partial disability benefits in light of his diminished earning capacity.

Claimant contends that the Board’s decision constituted legal error and was not supported by substantial evidence.

### **FACTUAL AND PROCEDURAL CONTEXT**

On March 22, 2009, while working as a shift supervisor for the Department of Services for Children, Youth, and their Families (“Department”), Claimant fell while descending a flight of stairs and injured his left knee. The State acknowledged that this injury was compensable, and Claimant was awarded temporary total disability benefits at a rate of \$610.67 per week.

On January 4, 2011, the State filed a Petition for Review of Compensation to terminate Claimant’s benefits, claiming that he was physically able to return to work. Claimant opposed the State’s Petition, claiming that in addition to the left knee injury, he also sustained a low back injury as a result of the March 22, 2009 work accident. Additionally,

Claimant argued that his low back injury was further aggravated by treatment for his left knee.

On July 29, 2011, a hearing was held by the Board. The Board found that Claimant did not establish by a preponderance of the evidence that his low back injury was causally related to the March 22, 2009 work accident. Focusing solely on Claimant's left knee injury, the Board concluded that Claimant was physically capable of returning to work with light duty restrictions. Therefore, the Board granted the State's Petition to Terminate Total Disability Benefits and awarded Claimant partial disability benefits in light of his diminished earning power.

Claimant timely appealed the Board's decision. Claimant only challenges the Board's decision with respect to its finding that Claimant's low back injury was not causally related to the March 22, 2009 work accident.

### **Claimant's Work Experience and Relevant Background**

Claimant began working for Employer in 1985 as a juvenile group leader for the Department. Claimant performed several jobs within the Department before his ultimate placement as a shift supervisor at Ferris School. Claimant's job responsibilities included, *inter alia*, supervision of staff, surveillance, training, and medical runs.

Claimant was diagnosed with diabetes in approximately 2001, and acknowledged, that, at times, it has been uncontrolled. Claimant has also been diagnosed as obese, weighing over 325 pounds.

### **Claimant's Injury**

On March 22, 2009, while in the performance of work activities, Claimant fell down a staircase, striking his left knee and back on a security door. Claimant claims that he experienced immediate pain in his left knee and left-side low back. Claimant testified that the left knee pain was excruciating and overshadowed the pain in his low back. Claimant worked the duration of his shift on March 22, 2009, but has not returned to work for Employer since.

### **Claimant's Treatment**

On March 22, 2009, the same day of Claimant's work accident, Claimant sought medical treatment at the Employer's medical department.<sup>1</sup> Two days later, Claimant was seen by his primary care physician, who evaluated, treated and released Claimant.<sup>2</sup>

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<sup>1</sup> No additional testimony or documentary evidence was presented regarding the treatment Claimant received on March 22, 2009.

<sup>2</sup> No additional testimony or documentary evidence was presented regarding the evaluation or treatment Claimant received on March 24, 2009.

Shortly thereafter, Claimant came under the treatment of Dr. Pushkarewicz, an orthopaedic surgeon. On April 20, 2009, Dr. Pushkarewicz performed arthroscopic surgery on Claimant's left knee. According to Dr. Pushkarewicz's medical records, it took eight attempts before the anesthesiologist successfully performed the spinal anesthesia on Claimant. Claimant claimed that he experienced shooting pain in his left lower extremity during placement of the spinal anesthesia, and woke up with low back pain radiating into his left lower limb. Following the surgery, Claimant continued to complain of knee pain.

Claimant returned to Dr. Pushkarewicz on June 4, 2009 for a follow-up appointment. Claimant complained of low back pain and weakness in his left leg. Dr. Pushkarewicz, concerned about bleeding in the spine, ordered an MRI.

On June 10, 2009, an MRI was performed on Claimant's lumbar spine. The MRI showed facet arthropathy at L4-5 and L5-S1. The parties' experts dispute whether the MRI showed evidence of a tiny central disk protrusion at L5-S1.

On September 30, 2009, Claimant was seen by Dr. James Moran, a specialist in pain management and rehabilitation. Claimant complained of low back pain radiating into his left lower extremity with numbness in his

low back and occasional give-way weakness in his left knee. Dr. Moran examined Claimant and made the following findings: lumbar flexion at the waist was restricted with central to left-sided low back pain; lumbar extension at the waist was restricted with central to left-sided low back pain; left extension rotation produced central to left-sided low back pain; paraspinal soft tissues on the left were tender; left buttock was tender to palpation; shearing or compressing of the spine at the lumbosacral junction was painful. Based on Claimant's subjective complaints and the physical examination, Dr. Moran diagnosed Claimant with low back pain with left lower extremity radicular symptoms related to spinal anesthesia and disruption of his L5-S1 disc. Dr. Moran recommended that Claimant be placed on medium-duty work restrictions.

Claimant returned to Dr. Moran on October 16, 2009, and again on November 25, 2009, for follow-up appointments. Claimant complaint's were largely the same as those presented at the September 30, 2009 appointment. Dr. Moran reviewed a recent EMG, which revealed that Claimant had a subacute left L5 radiculopathy. Dr. Moran diagnosed Claimant with low back pain with left lower extremity radicular symptoms likely related to the spinal anesthesia, as well as degenerative disc disease and herniated nucleus pulposus ("HNP") L5-S1.

On March 30, 2010, Dr. Pushkarewicz performed a second arthroscopic surgery on Claimant's left knee.

Claimant returned to Dr. Moran in May 2010 for nerve root block injections for his low back and left lower limb symptoms. Following the injection, Claimant stated that he had complete relief of his pain for about a month. Claimant received two more injections in October 2010 and November 2010.

On September 28, 2010, Claimant was seen by Dr. Samuel Matz, an orthopaedic surgeon, for a defense medical examination. Claimant complained of low back pain which radiated down his leg, as well as left knee soreness. Dr. Matz examined Claimant and made the following findings: mild retropatellar crepitus in both knees; no spinous process tenderness; vague discomfort to palpation in the paraspinals; and an inability to rise on toes and heels. Dr. Matz noted that Claimant's subjective complaints were inconsistent with the objective findings of the physical examination.

Dr. Matz diagnosed Claimant with a contusion and strain to the left knee and low back – all resulting from the work accident. Dr. Matz recommended light duty to sedentary duty work restrictions, progressing into full duty status with continued treatment. Dr. Matz believed that

Claimant would achieve maximum medical improvement in November 2010.

On January 11, 2011, Claimant returned to Dr. Pushkarewicz. Dr. Pushkarewicz noted some improvement in Claimant's left knee and low back symptoms. With respect to Claimant's left knee symptoms,<sup>3</sup> Dr. Pushkarewicz recommended full-time, light duty work restrictions.

Claimant was seen by Dr. Moran on February 2, 2011, complaining of increasing left low back pain radiating into his left lower extremity, as well as left knee pain. Claimant stated that he was unable to sit or stand for prolonged periods of time due to increased pain. With respect to Claimant's low back complaints, Dr. Moran recommended full-time, light duty work restrictions.<sup>4</sup> Specifically, Claimant was restricted from lifting over 20 pounds, running, jumping, climbing, repetitive bending, pushing or pulling.

Claimant returned to Dr. Moran on March 9, 2011 with the same complaints as presented in the February 2011 appointment. Dr. Moran reviewed an MRI, performed on March 7, 2011, which revealed mild central spinal stenosis at L5-S1; a disc bulge with left greater than right facet

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<sup>3</sup> Dr. Pushkarewicz deferred to Dr. Moran for any work restrictions concerning Claimant's low back complaints.

<sup>4</sup> Dr. Moran deferred to Dr. Pushkarewicz for any work restrictions concerning Claimant's left knee complaints.



arthropathy, and mild central and left greater than right neuroforaminal stenosis at L4-5; and a disc bulge with some facet arthropathy at L3-4. Dr. Moran diagnosed Claimant with an escalation of low back pain with left lower extremity radicular symptoms likely related to the spinal anesthesia, as well as degenerative disc disease and HNP L5-S1. Due to Claimant's escalating pain and ongoing weakness, Dr. Moran placed Claimant on temporary total disability.

On March 22, 2011, Claimant was again evaluated by Dr. Matz. Claimant complained of chronic pain in the low back radiating into the left leg and continued left knee pain. Dr. Matz examined Claimant and noted no significant changes since the September 2010 appointment. Dr. Matz believed that Claimant was capable of full-time work with restrictions that may be permanent in nature. Specifically, Dr. Matz opined that Claimant could not lift, push or pull over 50 pounds.

At some point in time after Claimant's March 2011 appointment with Dr. Matz, Claimant's left knee gave out and he fell. As a result of the fall, Claimant injured his right knee.

Dr. Matz evaluated Claimant again on June 28, 2011. Dr. Matz reiterated that he believed that Claimant could return to full-time work with

restrictions. Dr. Matz recommended sedentary to light duty work, with limitations of standing, walking, lifting and carrying.

Claimant returned to Dr. Moran on July 1, 2011 for a follow-up appointment. Claimant again complained of low back pain, left lower extremity radicular symptoms primarily at L5, and increasing weakness in his left foot. Dr. Moran examined Claimant and noted that Claimant was getting progressively weaker in his left foot and ankle. Dr. Moran felt that Claimant was still temporarily totally disabled.

### **The July 29, 2011 Hearing**

#### ***Claimant's Testimony***

Claimant testified that he fell down a staircase at work on March 22, 2009, and sustained injuries to his left low back and left knee. According to Claimant, he felt immediate pain. Claimant testified that the knee pain was excruciating, and for a period of time, it overshadowed the low back pain.

Claimant's stated that his low back pain escalated after his first knee surgery. Claimant testified that he believed the increasing low back pain to be the result of complications with the spinal anesthesia administered during the first knee surgery. According to Claimant, the low back pain radiated into his left leg, causing numbness. Claimant stated that he felt relief in his

low back for approximately a month following the nerve root block injections.

Claimant contended that he was unable to work in any capacity because he cannot sit or stand for prolonged periods of time. Claimant further testified that per Employer's internal policy, he is prohibited from returning to work until he is no longer taking pain medication. Additionally, Employer would require Claimant to transition from light duty to full duty work within 30 days of returning to work.

#### ***Claimant's Medical Expert***

Dr. Moran testified by deposition that Claimant's June 10, 2009 MRI revealed a disc abnormality and a tiny central disc protrusion, or herniation,<sup>5</sup> at L5-S1. Dr. Moran further testified that the second MRI, taken on March 7, 2011, showed evidence of advancement of the disc herniation at L5-S1.

Dr. Moran opined, within a reasonable degree of medical probability, that the herniation likely resulted from Claimant's positioning during the eight attempts at the spinal anesthesia for his first knee surgery. Such a disc injury, according to Dr. Moran, possibly could be the cause of Claimant's low back and left lower extremity pains. Dr. Moran testified that he did not

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<sup>5</sup> Dr. Moran testified that a protrusion is a small contained disc herniation where there is a tear in the disc wall such that disc material starts to protrude, causing the disc wall to bulge.

believe that Claimant's low back symptoms were related to Claimant's March 22, 2009 work accident.

Based on Claimant's subjective complaints and objective findings, Dr. Moran testified that Claimant was totally disabled. According to Dr. Moran, Claimant was experiencing an escalation of pain in his low back, causing him to be unable to sit for long periods of time. Additionally, Claimant's left foot and ankle were getting progressively weaker. As such, Dr. Moran testified that Claimant was not capable of performing any work.

***Employer's Medical Expert***

Dr. Matz testified by deposition that Claimant suffered a contusion and strain to the left knee and low back as a result of the March 22, 2009 work accident. According to Dr. Matz, Claimant's low back pain was "in some way, shape or form" related to the work accident. Dr. Matz further testified that the spinal anesthesia may have aggravated the underlying back pain caused by the accident.

Dr. Matz, however, testified that he did not believe that the disc herniation at L5-S1 was related to the work accident. Dr. Matz stated that the June 2009 MRI, taken approximately two months after the work

accident, showed no affirmative evidence of a disc herniation.<sup>6</sup> In support of this conclusion, Dr. Matz pointed to the radiologist's report, which indicated only that there *may* have been a tiny herniation at the L5-S1.

According to Dr. Matz, the disc herniation did not appear until the March 2011 MRI. The March 2011 MRI showed interval development of a central disc herniation at L5-S1, which was not apparent on the June 2009 MRI. As such, Dr. Matz opined that the work accident and post-accident circumstances could not have caused the herniation reflected in the March 2011 MRI because nearly two years had elapsed since the accident.

Dr. Matz opined that Claimant's weight possibly could have caused the disc herniation. According to Dr. Matz, "In an individual who weights in excess of 325 pounds, ... these kind of disc herniations occur quite frequently without there ever needing to have been ... an injury."

Dr. Matz acknowledged that Claimant was unable to sit or stand for prolonged periods of time, but contended that Claimant was capable of returning to full-time work with sedentary or light duty restrictions. These restrictions, according to Dr. Matz, were due to Claimant's work accident, as well as Claimant's diabetes and obesity.

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<sup>6</sup> According to Dr. Matz, the June 2009 MRI showed only evidence of facet arthropathy, a degenerative condition unrelated to the work accident.

### *Vocational Testimony*

Shelli Palmer, a senior vocational case manager, prepared a labor market survey that identified fourteen jobs which met Dr. Matz's recommendations. The average weekly wage of these fourteen positions was between \$520 and \$533.37 with a median wage of \$526.79 per week.

Palmer acknowledged that as a result of the work accident, Claimant's earning capacity had diminished.

### **The Board's Opinion**

The Board found that Claimant failed to prove by a preponderance of the evidence that his low back injury was causally related to the March 22, 2009 work accident. First, the Board noted that Claimant provided contradictory, and thus unreliable, statements regarding the onset of his low back symptoms. Moreover, the Court noted that neither Claimant nor any of the treating physicians testified that the more significant and lingering disc herniation had been caused by the work accident.

Additionally, the Board found inadequate evidence to support Claimant's theory that the complications from the spinal anesthesia caused his low back symptoms. The Board accepted Dr. Moran's testimony that the June 2009 MRI showed evidence of a tiny disc herniation, but ultimately

found that Claimant failed to prove that the disc injury was related to the spinal anesthesia.

Focusing solely on Claimant's left knee injury, the Board concluded that Claimant was no longer totally disabled as of January 22, 2011. Consistent with Dr. Pushkarewicz's recommendations, the Board found that Claimant could return to work in a reduced capacity, performing sedentary work. As such, the Board awarded Claimant partial disability benefits to account for Claimant's diminished earning capacity.

### **STANDARD OF REVIEW**

On appeal from the Industrial Accident Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record.<sup>7</sup> "Substantial evidence" is less than a preponderance of the evidence but is more than a "mere scintilla."<sup>8</sup> It is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>9</sup> The Court must review the record to determine if the evidence is legally adequate to support the Board's factual findings. The Court does not "weigh evidence, determine questions of credibility or make its own

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<sup>7</sup> *Histed v. E.I. DuPont deNemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

<sup>8</sup> *Richardson v. Perales*, 402 U.S. 389, 401 (1971).

<sup>9</sup> *Histed*, 621 A.2d at 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

factual findings.”<sup>10</sup> If the record lacks satisfactory proof in support of the Board's finding or decision, the Court may overturn the Board's decision. On appeal, the Superior Court reviews legal issues *de novo*.<sup>11</sup>

### **DISCUSSION**

Under Delaware law, the burden of proving a change in condition is on the party asserting the change through a petition for review.<sup>12</sup> “A party seeking to modify an award by subsequent review bears the burden of establishing by a preponderance of the evidence that the award should be modified.”<sup>13</sup> When any employer seeks to end paying disability benefits, it would proceed by filing a Petition to Terminate Benefits in which the employer has the burden of proving by a preponderance of the evidence that the claimant is no longer totally disabled and will not suffer an economic loss.<sup>14</sup>

Here, the record establishes that Employer and Claimant agreed that Claimant’s left knee injury was causally related to the March 22, 2009 work accident, and therefore, compensable. Employer subsequently filed a

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<sup>10</sup> *Olney*, 425 A.2d at 614.

<sup>11</sup> *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

<sup>12</sup> *Robinson v. Automodular Assemblies*, 2003 WL 21783360, at \*3 (Del. Super.).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*



Petition to Terminate Benefits, claiming that Claimant was no longer totally disabled. Claimant, coincident with Employer's Petition, claimed to have suffered a second injury to his low back. Instead of formally presenting that issue to the Board through a Petition to Determine Additional Compensation Due,<sup>15</sup> Claimant "bootstrapped" this new claim to the Employer's termination petition proceedings.

Notwithstanding Claimant's failure to follow Section 2347's procedural mandate, the Board nonetheless treated Claimant's new claim as a Petition to Determine Additional Compensation Due. The Court finds that the Board appropriately engaged in a two-step analysis as if the claim had been brought through the correct procedure.<sup>16</sup> The Board first applied the applicable legal standard for Claimant's de facto Petition to Determine Additional Compensation Due, before addressing Employer's Petition to Terminate Benefits.<sup>17</sup> Therefore, the Court finds Claimant's procedural error harmless.

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<sup>15</sup> See 19 Del. C. § 2347.

<sup>16</sup> First, the Board considered whether Claimant had met his burden in proving that his new low back injury was causally related to the work accident. After determining that Claimant had not met his burden, the Board then focused solely on Claimant's left knee injury in determining whether he remained totally disabled.

<sup>17</sup> See *Willing v. Midway Slots*, 2003 WL 21085398, at \*3 (Del. Super.) (holding that the Board erred in "mesh[ing]" together the standard used in a Petition to Terminate Total Disability with the standard used in a Petition to Determine Additional Compensation Due).

### ***Low Back Injury Not Causally Related to Work Accident***

Before turning to the merits of Employer's Petition to Terminate, the Board first considered Claimant's new claim of low back injury. The Board found that Claimant failed to establish by a preponderance of the evidence that his low back injury was causally related to the March 22, 2009 work accident. The Court finds that the Board's finding was supported by substantial evidence and is free from legal error.

In order to be compensated for his low back injury, Claimant must demonstrate, by a preponderance of the evidence, that "but for" his work activities, he would not have sustained the injury.<sup>18</sup> The work accident need not be the sole cause or even a substantial cause of Claimant's low back injury.<sup>19</sup> Rather, if the accident provides the "setting" or "trigger," causation is satisfied for purposes of compensability.<sup>20</sup>

In the instant matter, Claimant failed to establish that his low back injury was caused by the March 22, 2009 work accident. As noted by the Board, Claimant offered inconsistent statements regarding the onset of his low back pain. Claimant first testified that he experienced low back pain

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<sup>18</sup> *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992).

<sup>19</sup> *Davis v. Brandywine Raceway*, 1993 WL 545318, at \*1 (Del. Super.) (citing *Reese*, 619 A.2d at 910).

<sup>20</sup> *State v. Harris*, 2004 WL 26859, at \*2 (Del. Super.).

immediately after the work accident. Yet, later in his testimony, Claimant stated that the low back pain did not begin until a month after the accident. Still, later in his testimony, Claimant stated that his low back injury was caused by complications that arose during the spinal anesthesia for his left knee surgery. The Board properly weighed the testimony of Claimant and found it unreliable.<sup>21</sup>

Moreover, the record establishes that neither Dr. Matz nor Dr. Moran believed that Claimant's low back pain was caused by the March 2009 work accident. While Dr. Matz acknowledged that Claimant suffered some low back pain from the accident, he opined that Claimant's herniated disc and radicular symptoms, for which Claimant needed ongoing treatment, were not causally related to the accident. Likewise, Dr. Moran explicitly denied any knowledge of a causal relationship between the work accident and Claimant's low back pain.

***No Causal Relationship Between Low Back Injury and Spinal Anesthesia***

The Board also found that Claimant failed to establish that his low back pain was caused by complications during the spinal anesthesia process for his left knee injury. While the Board accepted Claimant's testimony that

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<sup>21</sup> See *Lemmon v. Northwood Constr.*, 690 A.2d 912, 913 (Del. 1996) (“The Board, sitting as the trier of fact, is permitted to pass on the credibility of witnesses and to accord their testimony the appropriate weight.”).

he began to suffer from low back pain in June 2009, the Board was not persuaded that Claimant's low back symptoms were caused or triggered by treatment for the left knee injury. The Court finds that the Board's decision was supported by substantial evidence and is free from legal error.

This Court previously has held that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the "direct and natural result" of the compensable primary injury.<sup>22</sup> "The simplest application of this principle is the rule that all the medical consequences and sequelae that flow from the primary injury are compensable."<sup>23</sup>

Here, Claimant urges the Court to find that Claimant's low back pain is compensable because it was a direct and natural result of treatment for Claimant's left knee injury. According to Claimant, his low back complaints began immediately after surgery on his left knee – a surgery which the State acknowledged was necessary, reasonable and causally related to the March 22, 2009 work accident. Claimant attributes his low back pain to the

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<sup>22</sup> *Neeley v. State*, 2007 WL 4201131, at \*3 (Del. Super.) (citing 1 Arthur Larson, *Larson's Workers' Compensation Law* § 10.01).

<sup>23</sup> *State v. Flinn*, 1985 WL 549238, at \*2 (Del. Super.) (citing 1 Arthur Larson, *Larson's Workers' Compensation Law* § 10.01).

multiple failed attempts to administer spinal anesthesia prior to the knee surgery.

The Court finds that Claimant did not meet his burden in demonstrating that his low back pain was the direct and natural result of treatment for his left knee injury.<sup>24</sup> As noted by the Board, there is no record evidence that Claimant complained of low back pain immediately following his surgery. Rather, the record reflects that Claimant first complained of low back pain on June 4, 2009, more than a month after his first left knee surgery. The Court finds that the Board reasonably concluded that “[i]t seems unlikely that Claimant would keep such post-surgical pain to himself, especially with the difficulty the anesthesiologist had in placing the spinal.”

Moreover, although not explicitly stated by the Board, it is evident that the Board rejected, in part, the medical testimony of Dr. Moran and

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<sup>24</sup> Although the Board did not explicitly reference the “direct and natural result test” in its decision, it is clear from the Board’s decision that it applied the test in concluding that Claimant’s low back pain was neither caused nor triggered by the spinal anesthesia for treatment for the left knee injury. *See Rhinehardt-Meredith v. State*, 2008 WL 5308388, at \*3 n.9 (Del.) (“Although the [Board] did not use the precise language ‘direct and natural result (or consequence),’ that is not controlling. The Superior Court determined the [Board] utilized the standard when it found causation, even though it did not use the words ‘direct’ or ‘natural.’”).

accepted, in part, the testimony of Dr. Matz,<sup>25</sup> in concluding that Claimant's low back pain was not caused by the spinal anesthesia.<sup>26</sup> While the Board agreed with Dr. Moran's testimony that Claimant's diagnostic tests showed evidence of abnormalities in Claimant's lumbar spine in June 2009, the Board rejected Dr. Moran's opinion that these abnormalities were caused by the spinal anesthesia process. Rather, the Board credited the medical testimony of Dr. Matz, who opined that Claimant's low back pain was not causally related to the spinal anesthesia process. The Court finds no error in the Board's decision to accept Dr. Matz's testimony while rejecting Dr. Moran's testimony.

### **CONCLUSION**

The Court finds the Board did not commit legal error in granting Employer's Petition to Terminate Total Disability Benefits, and in awarding Claimant partial disability benefits as a result of diminished earning capacity. The Court finds substantial record evidence to support the Board's finding that Claimant's low back injury was not causally related to Claimant's March 22, 2009 work accident or the spinal anesthesia process

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<sup>25</sup> See *Flowers v. Daimler Chrysler Corp.*, 2005 WL 2303811, at \*5 (Del. Super.) (“In case[s] of competing medical testimony ... the Board is free to accept or reject, in whole or in part, expert testimony and the Board is free to accept one expert's opinion over another, as long as substantial evidence supports that opinion.”).

<sup>26</sup> See *Gen. Motors Corp. v. Stewart*, 2011 WL 4638775, at \*6 (Del. Super.) (finding that the Board's failure to make its findings in expansive terms is not fatal so long as such findings can be determined, by implication, from the ultimate conclusion).

for Claimant's left knee surgery. In determining Claimant's entitlement to disability benefits, the Board properly limited its focus to Claimant's left knee injury.

**THEREFORE**, the Industrial Accident Board's October 6, 2011 decision on the State of Delaware's Petition to Terminate Benefits is hereby **AFFIRMED**.

**IT IS SO ORDERED.**

/s/ Mary M. Johnston  
The Honorable Mary M. Johnston