

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

BANK OF AMERICA, )  
 )  
Employer-Appellant, )  
 )  
v. )  
 )  
LYNN ROBINSON-MCKNIGHT, )  
 )  
Claimant-Appellee. )

C.A. No. N12A-01-006 DCS

Submitted: April 23, 2012  
Decided: August 23, 2012

*On Appeal from the Industrial Accident Board of the State of Delaware  
In and For New Castle County – **AFFIRMED***

**ORDER**

*Appearances:*

Jillian M. Pratt, Esquire, Philadelphia, Pennsylvania  
Attorney for Appellant Bank of America

Joseph M. Jachetti, Esquire, Wilmington, Delaware  
Attorney for Appellee Lynn Robinson-McKnight

**DIANE CLARKE STREETT  
JUDGE**

## **Factual and Procedural Background**

Appellee Lynn Robinson-McKnight (“Robinson-McKnight”) fell from her desk chair, injuring her low back and feet, on April 13, 2010 while working for Appellant Bank of America (the “Employer”). On March 25, 2011, Robinson-McKnight filed a Petition to Determine Compensation Due with the Industrial Accident Board (the “Board”), in which she sought acknowledgement that her injury was compensable and payment for her medical treatment. Robinson-McKnight also sought ongoing total disability as of July 2010.

At the hearing before the Board on November 2, 2011, Robinson-McKnight testified that she began working for the Employer in 2007.<sup>1</sup> Prior to the April 2010 work accident, Robinson-McKnight testified that she worked full time and was able to perform her job for eight hours a day.<sup>2</sup>

Robinson-McKnight further testified that prior to the April 2010 accident she injured her back<sup>3</sup> and sought treatment with Dr. Madgy Boulos, a board certified neurosurgeon, as well as Dr. Pramod Yadhati who managed Robinson-McKnight’s pain symptoms with aqua therapy and lumbar injections.<sup>4</sup> In February 2010, Robinson-McKnight saw Dr. Yadhati and told him that she had a flare up of

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<sup>1</sup> Transcript of Administrative Hearing, p. 14 (Nov. 2, 2011).

<sup>2</sup> Tr. at 18.

<sup>3</sup> Tr. at 15.

<sup>4</sup> Tr. at 16.

low back pain in January 2010.<sup>5</sup> Dr. Yadhati treated Robinson-McKnight with lumbar block injections on March 3, March 17, and March 31, 2010.<sup>6</sup> Robinson-McKnight testified that her pain was tolerable immediately before the April 2010 work accident.<sup>7</sup>

Robinson-McKnight stated that, on April 13, 2010, the side of her chair collapsed and she fell on to the floor;<sup>8</sup> she heard a “pop”<sup>9</sup> and was initially unable to move for approximately 45 minutes.<sup>10</sup> She had “excruciating” pain “shooting from [her] lower back,” which continued down to her foot.<sup>11</sup> Robinson-McKnight testified that she immediately called Dr. Yadhati’s office once she was able to get up from the floor and told the nurse she had fallen out of her chair at work and needed to be seen because she was in pain.<sup>12</sup>

The next day, she went to Dr. Yadhati’s office.<sup>13</sup> Robinson-McKnight thought that her pain was not as bad as the previous day because she had taken medication and used a heating pad and ice pack.<sup>14</sup> On Dr. Yadhati’s intake form, she rated her pain level at two on a ten point scale believing that one correlated

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<sup>5</sup> Tr. at 47.

<sup>6</sup> Tr. at 48.

<sup>7</sup> Tr. at 18.

<sup>8</sup> Tr. at 19.

<sup>9</sup> Tr. at 22.

<sup>10</sup> Tr. at 23.

<sup>11</sup> Tr. at 20.

<sup>12</sup> Tr. at 23.

<sup>13</sup> Tr. at 24.

<sup>14</sup> Tr. at 25.

with severe pain and two correlated with milder pain.<sup>15</sup> Robinson-McKnight did not have her glasses on when she completed the intake form that day,<sup>16</sup> so she was unable to read the word “mild” below the number two that she circled.<sup>17</sup> However, Robinson-McKnight was able to complete the remainder of the intake form, because she went to the window and asked a member of Dr. Yadhati’s staff for assistance.<sup>18</sup> Robinson-McKnight testified that there were no questions on the April 2010 intake form that prompted her to answer whether she had new problems since her last visit,<sup>19</sup> so Robinson-McKnight told Dr. Yadhati about her fall at work the previous day and that her level of pain was very bad.<sup>20</sup>

Robinson-McKnight returned to work and continued to work full time until July 15, 2010,<sup>21</sup> but she testified that each day was a challenge.<sup>22</sup> Following the April 2010 work accident, Robinson-McKnight suffered with some pain every day.<sup>23</sup> She also experienced numbness and trembling in her leg.<sup>24</sup> On July 11, 2010, while at work, she experienced spasms, her right leg went numb, and she was unable to move.<sup>25</sup> Dr. Boulos, who saw her for the first time after the April 2010 work accident on July 15, 2010, determined Robinson-McKnight was unable

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<sup>15</sup> Tr. at 25 & 26.

<sup>16</sup> Tr. at 26 & 39-40.

<sup>17</sup> Tr. at 40.

<sup>18</sup> *Id.*

<sup>19</sup> Tr. at 27.

<sup>20</sup> Tr. at 29-30.

<sup>21</sup> Tr. at 35.

<sup>22</sup> Tr. at 32.

<sup>23</sup> Tr. at 34.

<sup>24</sup> Tr. at 36.

<sup>25</sup> Tr. at 34.

to return to work,<sup>26</sup> and she continued her treatment consisting of aqua therapy and pain management.<sup>27</sup>

On November 2, 2010, Robinson-McKnight again saw Dr. Yadhati and completed another one of Dr. Yadhati's intake forms.<sup>28</sup> She testified that the intake form had been modified since her April 14, 2010 visit and contained a new question.<sup>29</sup> The new intake form's additional question prompted Robinson-McKnight to write down any new problems or testing since her last visit.<sup>30</sup> On the November 2, 2010 intake form, Robinson-McKnight rated her pain level at six on a ten point scale and indicated that she had fallen out of the shower the previous week.<sup>31</sup>

Robinson-McKnight also testified that hydrotherapy helped her condition, but that one year after the April 2010 work accident she continued to have spasms and pain shooting down to her foot.<sup>32</sup>

Clara Fisher ("Fisher"), Robinson-McKnight's co-worker, testified on behalf of Robinson-McKnight.<sup>33</sup> Fisher said that she was seated beside Robinson-McKnight on the day of the accident.<sup>34</sup> She heard Robinson-McKnight scream and

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<sup>26</sup> *Id.*

<sup>27</sup> Tr. at 36.

<sup>28</sup> Tr. at 28.

<sup>29</sup> Tr. at 29.

<sup>30</sup> Tr. at 28.

<sup>31</sup> Tr. at 28-29.

<sup>32</sup> Tr. at 37.

<sup>33</sup> Tr. at 51.

<sup>34</sup> Tr. at 52.

saw Robinson-McKnight fall to the floor.<sup>35</sup> Robinson-McKnight was shaking and crying and could not move.<sup>36</sup> Fisher said that Robinson-McKnight would not permit anyone to touch her because she was in a lot of pain.<sup>37</sup> Fisher testified that Robinson-McKnight called her doctor once she was able to get off of the floor and “told them she had just fallen.”<sup>38</sup> Fisher maintained that Robinson-McKnight was, prior to the work accident, able to perform her job despite pain from a previous injury.<sup>39</sup>

In addition, Robinson-McKnight presented expert deposition testimony from Dr. Boulos.<sup>40</sup> Dr. Boulos testified that he began treating Robinson-McKnight on January 23, 2009 for a back injury, which he diagnosed as lumbar radiculopathy.<sup>41</sup> He referred Robinson-McKnight for pain management in March 2009, and she saw Dr. Yadhati.<sup>42</sup> When Dr. Boulos saw Robinson-McKnight on May 8, 2009, he recommended that she return to work on May 11, 2009.<sup>43</sup>

Dr. Boulos also testified that Dr. Yadhati treated Robinson-McKnight after the work accident of April 2010 with pain medication and epidural injections.<sup>44</sup> Dr. Yadhati gave Robinson-McKnight three lumbar injections in March 2010, one

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<sup>35</sup> Tr. at 54.

<sup>36</sup> Tr. at 53.

<sup>37</sup> Tr. at 55.

<sup>38</sup> *Id.*

<sup>39</sup> Tr. at 58.

<sup>40</sup> Deposition of Dr. Boulos, 2 (Oct. 27, 2011).

<sup>41</sup> *Id.* at 4.

<sup>42</sup> *Id.* at 5.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 7.

in December 2010, and one in January 2011.<sup>45</sup> Dr. Boulos explained that he thought the injections could not be given frequently as there must be a period of time before the injections can be repeated.<sup>46</sup> Dr. Boulos also testified that, based on a May 3, 2010 note from Dr. Yadhati's office, Robinson-McKnight told Dr. Yadhati's office that she had a significant amount of low back pain that radiated down her buttock to her ankle and she was unable to move or walk.<sup>47</sup>

Dr. Boulos testified that he did not see Robinson-McKnight again until July 15, 2010<sup>48</sup> when she told Dr. Boulos that she fell from a chair at work.<sup>49</sup> Dr. Boulos testified that the examination revealed Robinson-McKnight was in a considerable amount of pain and discomfort in her back that radiated down her buttock to her calf with paresthesias in her right foot.<sup>50</sup> Dr. Boulos diagnosed Robinson-McKnight as having recurrent lumbar radiculopathy, spinal stenosis, and spondylolysis with radiculopathy.<sup>51</sup> Dr. Boulos referenced the April 2010 work accident in a note in Robinson-McKnight's medical record and stated that the accident exacerbated her low back condition.<sup>52</sup> Although Dr. Boulos' dictation indicates that the work accident occurred in April 2008, he testified it was a

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<sup>45</sup> *Id.* at 24.

<sup>46</sup> *Id.* at 26.

<sup>47</sup> *Id.* at 8.

<sup>48</sup> *Id.* at 5.

<sup>49</sup> *Id.* at 6.

<sup>50</sup> *Id.* at 10.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 9 & 21.

misprint that should read April 2010.<sup>53</sup> In addition, Dr. Boulos testified that the results of a July 2010 follow-up MRI of Robinson-McKnight's lumbar spine were "primarily close" to the results of an MRI performed in December 2008 after her previous low back injury.<sup>54</sup> He recommended that Robinson-McKnight continue with conservative treatment, hydrotherapy, and pain management with Dr. Yadhati.<sup>55</sup>

When Dr. Boulos saw Robinson-McKnight on November 4, 2010, she continued to have back pain, and she indicated to him that she was continuing to fall.<sup>56</sup> Dr. Boulos testified that it is common for an individual diagnosed with recurrent lumbar radiculopathy to fall due to unsteadiness and loss of balance associated with pain.<sup>57</sup>

Robinson-McKnight continued to have pain in her right leg down to her toes as well as neck and right arm pain when Dr. Boulos examined her on September 22, 2011.<sup>58</sup> At that time, Dr. Boulos diagnosed Robinson-McKnight as having recurrent lumbar radiculopathy and cervical radiculopathy.<sup>59</sup> Dr. Boulos maintained that Robinson-McKnight's pain worsened with time.<sup>60</sup> Dr. Boulos

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<sup>53</sup> *Id.* at 6-7.

<sup>54</sup> *Id.* at 11.

<sup>55</sup> *Id.* at 12.

<sup>56</sup> *Id.* at 13.

<sup>57</sup> *Id.* at 14.

<sup>58</sup> *Id.* at 16.

<sup>59</sup> *Id.* at 17.

<sup>60</sup> *Id.* at 9.



testified that Robinson-McKnight's treatment as it relates to the April 2010 work accident has been reasonable and necessary.<sup>61</sup>

The Employer presented expert deposition testimony from John B. Townsend, III, M.D., who is board certified in neurology, sleep medicine, and clinical neurophysiology in Delaware.<sup>62</sup> Dr. Townsend examined Robinson-McKnight once<sup>63</sup> on September 22, 2011, in addition to reviewing Robinson-McKnight's medical records.<sup>64</sup>

In Dr. Townsend's opinion, it was difficult to ascribe Robinson-McKnight's symptoms and treatments to the work accident in April 2010.<sup>65</sup> He based his opinion, in part, on the fact that Robinson-McKnight had received treatment for similar complaints prior to the April 2010 work accident.<sup>66</sup> As an additional basis for his opinion, Dr. Townsend noted the lack of documentation in Robinson-McKnight's medical records that the work accident occurred in April 2010.<sup>67</sup> He testified that there was no mention of the April 2010 work accident in Robinson-McKnight's medical records until an August 2010 physical therapy note.<sup>68</sup> Dr. Townsend expected that Robinson-McKnight would have referenced the April 2010 work accident as having worsened her pain when she completed Dr.

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<sup>61</sup> *Id.* at 19.

<sup>62</sup> Deposition of Dr. Townsend, 5 (Oct. 31, 2011).

<sup>63</sup> *Id.* at 17.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 13.

<sup>66</sup> *Id.* at 20.

<sup>67</sup> *Id.* at 20.

<sup>68</sup> *Id.* at 10.

Yadhati's intake form on April 14, 2010.<sup>69</sup> However, Dr. Townsend acknowledged that Dr. Yadhati's intake form was updated to specifically prompt patients to disclose whether they were experiencing new problems after Robinson-McKnight's April 2010 visit.<sup>70</sup> Dr. Townsend agreed that the modification to Dr. Yadhati's intake form may explain why Robinson-McKnight did not reference the work accident on the April 2010 intake form.<sup>71</sup> In addition, Dr. Boulos' records that were reviewed by Dr. Townsend did not reference the work accident of April 2010.<sup>72</sup> Dr. Boulos' note from July 15, 2010 indicates Robinson-McKnight was involved in an April 2008 fall, and Dr. Townsend was unaware that the date is a misprint that should read April 2010.<sup>73</sup>

Dr. Townsend thought there was a discrepancy in Robinson-McKnight's records because Robinson-McKnight did not start complaining about increased pain until May 3, 2010 when she called Dr. Yadhati's office.<sup>74</sup> However, Dr. Townsend did not deny that the amount of pain Robinson-McKnight experienced on May 3, 2010, which is referenced in a note from Dr. Yadhati's office, would be consistent with an injury to Robinson-McKnight's low back that resulted from a fall weeks earlier.<sup>75</sup> He also noted that the 2008 and 2010 MRI studies "seemed

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<sup>69</sup> *Id.* at 21-22.

<sup>70</sup> *Id.* at 24.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 27.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 11.

<sup>75</sup> *Id.* at 29.

quite similar.”<sup>76</sup> Dr. Townsend testified that degenerative changes due to disk herniation, such as those shown on the 2008 MRI, may worsen over time without any association to an injury, but he did not rule out the possibility that degenerative changes could make Robinson-McKnight more susceptible to future injuries.<sup>77</sup> Dr. Townsend also believes Robinson-McKnight’s treatment has been reasonable and necessary.<sup>78</sup>

On December 15, 2011, the Board found that Robinson-McKnight was entitled to compensation for the medical expenses she incurred as a result of the April 2010 work accident as well as ongoing total disability as of July 15, 2010.<sup>79</sup> The Board determined that Robinson-McKnight and Fisher testified credibly.<sup>80</sup> The Board also found Dr. Boulos’ testimony more persuasive than the testimony of Dr. Townsend.<sup>81</sup> Noting that the Employer does not dispute that the April 2010 work accident occurred, the Board concluded that the work accident exacerbated Robinson-McKnight’s preexisting low back condition.<sup>82</sup>

The Employer has timely petitioned the Court to overturn the Board’s decision.

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<sup>76</sup> *Id.* at 14.

<sup>77</sup> *Id.* at 17-19.

<sup>78</sup> *Id.* at 30.

<sup>79</sup> Decision on Petition to Determine Compensation Due, 19 (Dec. 15, 2011).

<sup>80</sup> *Id.* at 15.

<sup>81</sup> *Id.* at 14.

<sup>82</sup> *Id.*

## **Contentions of the Parties**

The Employer maintains that the Board abused its discretion by crediting Robinson-McKnight's testimony because of the inconsistencies in her medical record, and the lack of substantial evidence to support Robinson-McKnight's testimony that the April 2010 work accident exacerbated her preexisting low back condition. In addition, the Employer contends that Dr. Boulos' testimony and opinions were not supported by substantial evidence. The Employer also argues that the Board committed legal error by finding that Robinson-McKnight's low back condition is causally related to the April 2010 work accident.

Robinson-McKnight maintains that there is substantial evidence in the record to support the Board's findings and that the Board did not commit legal error.

## **Standard of Review**

The role of the Court is to determine whether substantial evidence supports the Board's findings of fact and conclusions of law.<sup>83</sup> Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>84</sup>

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<sup>83</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>84</sup> *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998).

Unless there is an abuse of discretion or an error of law, a Board decision that is supported by substantial evidence will not be overturned by the Court.<sup>85</sup> Where satisfactory evidence supports the Board's factual findings, its decision will stand.<sup>86</sup> The Court does not weigh evidence, determine questions of credibility, or make findings of fact.<sup>87</sup> In its review of the record, the Court will evaluate it "in the light most favorable to the prevailing party below."<sup>88</sup>

Questions of law are reviewed *de novo* to ascertain "whether the Board erred in formulating or applying legal precepts."<sup>89</sup>

## **Discussion**

### *The Board Did Not Abuse Its Discretion By Finding Robinson-McKnight's Testimony Credible*

Pursuant to Delaware law, a claimant is entitled to compensation for personal injury resulting from an accident that occurs within the course of employment.<sup>90</sup> The claimant must prove, by a preponderance of the evidence, that were it not for the accident, the claimant's injury would not have occurred.<sup>91</sup> A preexisting injury is compensable even though the accident is neither the lone nor

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<sup>85</sup> *Ohrt v. Kentmere Home*, 1996 WL 527213, \*3 (Del. Super. Aug. 9, 1996).

<sup>86</sup> *Johnson* at 67.

<sup>87</sup> *Id.* at 66.

<sup>88</sup> *General Motors Corp. v. Guy*, 1991 WL 190491, \*3 (Del. Super. Aug. 16, 1991); *Shively v. Allied Systems*, 2010 WL 537734, \*9 (Del. Super. Feb. 9, 2010).

<sup>89</sup> *Bermudez v. PTFE Compounds*, 2006 WL 2382793, \*3 (Del. Super. Aug. 16, 2010).

<sup>90</sup> 19 *Del. C.* § 2304.

<sup>91</sup> *Tenaglia-Evans v. St. Francis Hospital*, 2006 WL 3404651, \*3 (Del. Super. May 1, 2006). *See also Scott v. State*, 2012 WL 2580746, \*7 (Del. Super. Jul. 2, 2012).

the “substantial cause of [claimant’s] injury.”<sup>92</sup> If the accident is the “setting” or “trigger” of the claimant’s injury, the element of causation is satisfied.<sup>93</sup>

As the trier of fact, the Board determines the credibility of witnesses and “accord[s] their testimony appropriate weight.”<sup>94</sup> Such determinations are reserved exclusively for the Board.<sup>95</sup> Moreover, when the testimony of a witness is inconsistent, it is within the Board’s discretion to resolve such conflict.<sup>96</sup>

Despite some inconsistencies in Robinson-McKnight’s medical record, which the Board acknowledged, the Board found her testimony to be credible.

Robinson-McKnight’s testimony that she reported and described the April 2010 work accident in a phone call to Dr. Yadhati’s office on the day it occurred was corroborated by her co-worker who witnessed the accident and telephone call. In addition, on the day after the work accident, Dr. Yadhati’s intake form did not contain a question that prompted Robinson-McKnight to indicate on the form whether she had new problems. As a result, Robinson-McKnight testified that she told Dr. Yadhati on April 14, 2010 during his examination of her that the work accident had occurred. Dr. Yadhati’s intake form was thereafter updated, because the November 2010 intake form Robinson-McKnight completed contained a

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<sup>92</sup> *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992).

<sup>93</sup> *Id.*

<sup>94</sup> *Saunders v. DaimlerChrysler, Corp.*, 2006 WL 390098, \*4 (Del. Feb. 17, 2006); *Lemmon v. Northwood Construction*, 690 A.2d 912, 913 (Del. 1996).

<sup>95</sup> *Opportunity Center, Inc. v. Jamison*, 2007 WL 3262211, \*3 (Del. May 24, 2007); *Johnson*, 213 A.2d at 66.

<sup>96</sup> *Playtex Products, Inc. v. Leonard*, 2002 WL 31814637, \*6 (Del. Nov. 14, 2002); *Georgia-Pacific Corp. v. Walden*, 1995 WL 656822, \*7 (Del. Super. Sept. 27, 1995).

question, which was not on the April 2010 intake form, that prompted her to list new problems.

Although Robinson-McKnight rated her pain level at two on a ten point scale on Dr. Yadhati's April 2010 intake form, the Board found that she was unable to read the form well and, therefore, she made an error as to how she rated her level of pain on the day after the work accident. Robinson-McKnight testified that she did not have her glasses on as she completed the April 2010 intake form, so she was unable to read "mild" written below the number two that she circled. Moreover, Robinson-McKnight believed that the number one on the intake form correlated with severe pain. She indicated that her pain was better on April 14, 2010 than on the day of the work accident because she had taken medication and treated the injured area with a combination of heat and ice. To complete the remainder of the intake form, Robinson-McKnight sought the help of one of Dr. Yadhati's staff members.

Thus, Robinson-McKnight's statement that, on the date of the work accident, she informed Dr. Yadhati's office that the work accident had occurred was consistent with the testimony of a co-worker who witnessed the April 2010 work accident. In addition, Robinson-McKnight's testimony that she told Dr. Yadhati about the April 2010 work accident the following day is supported by the evidence that Dr. Yadhati's intake form was updated thereafter. Robinson-

McKnight's statement that she made an error as to how she rated her pain the day after the accident on Dr. Yadhati's intake form is consistent with the fact that she was unable to read the intake form without her glasses. Therefore, the Board resolved the inconsistencies within Robinson-McKnight's medical record thereby determining that Robinson-McKnight was a credible witness. Moreover, the Board had the exclusive authority to determine Robinson-McKnight's credibility.

In light of the foregoing, the Board did not abuse its discretion by finding Robinson-McKnight's testimony credible.

*The Board Did Not Abuse Its Discretion By Finding Dr. Boulos' Expert Opinion Testimony Credible and More Persuasive*

The Board, as the finder of fact, may determine that the opinion testimony of one medical expert is more persuasive than that of another.<sup>97</sup> It may do so "based on its experience in gauging testimony of witnesses who give conflicting testimony."<sup>98</sup> When the Board is presented with varying expert medical opinions, it is free to accept or reject the testimony, in whole or in part.<sup>99</sup> The Board's adoption of one expert's opinion over another constitutes sufficient evidence for the purposes of the Court's review.<sup>100</sup>

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<sup>97</sup> *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009); *Reese*, 619 A.2d 907 at 910.

<sup>98</sup> *Hildebrandt v. Daimler Chrysler*, 2006 WL 3393588, \*3 (Del. Super. Mar. 31, 2006) (quoting from *Lewis v. Formosa Plastics Corp.*, 1999 WL 743322, \*3 (Del. Super. Jul. 8, 1999)).

<sup>99</sup> *Johnson Controls v. Evans*, 2009 WL 1964941, \*2 (Del. Super. May 13, 1999); *Lewis*, 1999 WL 743322 at \*3.

<sup>100</sup> *Person-Gaines* at 1161; *Reese* at 910.



Dr. Boulos, who began treating Robinson-McKnight in 2009, determined that the April 2010 work accident exacerbated Robinson-McKnight's preexisting low back condition. Prior to the April 2010 work accident, Dr. Boulos referred Robinson-McKnight to Dr. Yadhati who specializes in pain management and Robinson-McKnight continued to see Dr. Yadhati to manage her pain. Although Robinson-McKnight received three lumbar injections in the month before the April 2010 work accident, Dr. Boulos testified the injections could not be given frequently. Thus, even though Robinson-McKnight did not receive a lumbar injection again until December 2010, she received other treatment in the form of pain medication and hydrotherapy following the April 2010 work accident. Moreover, in a May 3, 2010 note from Dr. Yadhati's office, Dr. Boulos testified that Robinson-McKnight indicated that she had a significant amount of low back pain and was unable to move. Therefore, Dr. Boulos believes that Robinson-McKnight's pain symptoms following the April 2010 work accident worsened with time.

Prior to the April 2010 work accident, Robinson-McKnight sought treatment with Dr. Boulos, but Dr. Boulos did not see Robinson-McKnight again for over one year. On July 15, 2010, Dr. Boulos examined Robinson-McKnight who told him that she fell from her chair at work. At that time, Robinson-McKnight had a considerable amount of pain and discomfort from her back to her right foot.

Despite the fact that his dictation indicates that Robinson-McKnight's work accident occurred in April 2008, the Board determined Dr. Boulos' testimony was credible that the date was a misprint that should read April 2010. The Board also noted that Dr. Townsend did not have the benefit of this explanation when he formed his opinion, because the records Dr. Townsend reviewed indicated that the work accident occurred in April 2008, and he was unaware that the date was a misprint. Since the April 2010 work accident, Dr. Boulos has continued to treat Robinson-McKnight. When Dr. Boulos examined Robinson-McKnight on September 22, 2011, he testified that Robinson-McKnight continued to have pain in her right leg down to her foot.

Dr. Townsend, on the other hand, examined Robinson-McKnight once over a year and a half after the work accident, and on the same day Dr. Boulos examined her. Although, he agreed that Robinson-McKnight's treatment was both reasonable and necessary, Dr. Townsend formed the opinion that it was difficult to ascribe her symptoms and need for treatment to the April 2010 work accident because Robinson-McKnight had received treatment for similar complaints prior to the work accident. He also based his opinion on the lack of documentation referencing the April 2010 work accident in Robinson-McKnight's medical record and assumed the work accident would have been documented if Robinson-McKnight had informed her doctors accordingly. However, Dr. Townsend

acknowledged that he was unaware there was a misprint in the records he reviewed. In addition, Dr. Townsend agreed that Dr. Yadhati's intake form was modified after April 2010 to prompt patients to disclose new problems on the intake form, which may explain why Robinson-McKnight did not reference the April 2010 work accident when she completed Dr. Yadhati's intake form on April 14, 2010.

The Board reasoned that Dr. Boulos' testimony was credible because he believed Robinson-McKnight's pain likely worsened with time. The Board also noted that Dr. Boulos was credible because he testified that there was a misprint in his dictation as to the date of the April 2010 work accident, and Dr. Townsend did not have the benefit of Dr. Boulos' explanation when he formed his opinion. The Board pointed out that Dr. Boulos did not allege that the MRI results from before and after the April 2010 work accident showed that Robinson-McKnight's condition was caused by the April 2010 work accident because he thought the work accident exacerbated her condition. Thus, the Court finds the Board's reasoning to be based on substantial evidence.

In its decision, the Board summarized the opinions of both medical experts and provided reasons for its acceptance of Dr. Boulos' opinion over Dr. Townsend's.<sup>101</sup> The Board is not required to do anything further.<sup>102</sup> Thus, the Board did not abuse its discretion by finding Dr. Boulos' testimony credible and more persuasive than Dr. Townsend's.

*The Board Did Not Commit Legal Error In Its Decision to Causally Relate Robinson-McKnight's Low Back Condition to the April 2010 Work Accident*

Finally, where a preexisting injury is involved, there must be a means by which "the extent of aggravation or acceleration" of the injury can be measured.<sup>103</sup> The evidence demonstrates that, although Robinson-McKnight's preexisting low back condition was not asymptomatic, it was not "objectively worsening" prior to the work accident.<sup>104</sup> In fact, the evidence suggests that the April 2010 work accident was the triggering event, which re-aggravated Robinson-McKnight's low back condition. Thus, the Board did not commit legal error in causally relating Robinson-McKnight's low back condition to the April 2010 work accident.

Robinson-McKnight had been working full time since May 2009 and was able to perform her job for eight hours each day before the work accident in April 2010. Although Robinson-McKnight previously treated with Dr. Boulos prior to the April 2010 work accident, he cleared Robinson-McKnight to return to work

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<sup>101</sup> *Johnson Controls*, 2009 WL 1964941 at \*2.

<sup>102</sup> *Hildebrandt*, 2006 WL 3393588 at \*3.

<sup>103</sup> *State v. Blake*, 2001 WL 1483016, \*5 (Del. Super. Sept. 20, 2001).

<sup>104</sup> *Id.*

and did not see her again for over a year. As a result of her symptoms after the April 2010 work accident, Robinson-McKnight was unable to work as of July 2010.

Before the April 2010 work accident, Robinson-McKnight was diagnosed with lumbar radiculopathy. As of July 2010, her diagnosis was recurrent lumbar radiculopathy as well as spinal stenosis and spondylolysis with radiculopathy. By September 2011, cervical radiculopathy was an additional diagnosis. Although the 2010 MRI results are similar to the 2008 MRI results, the Board noted that Dr. Boulos alleged the work accident exacerbated Robinson-McKnight's condition, but did not cause it. Moreover, noting the degenerative changes shown in the 2008 MRI, Dr. Townsend could not rule out the possibility that such a result would make Robinson-McKnight more susceptible to injury in the future.

As the Board noted, prior to the April 2010 work accident, Robinson-McKnight was doing well, and her pain was tolerable, because she continued to see Dr. Yadhati who managed her pain. Robinson-McKnight testified that she saw Dr. Yadhati monthly. In January 2010, Robinson-McKnight had a "flare up" of pain, and in March 2010, she received three lumbar injections. When the April 2010 work accident occurred, however, Robinson-McKnight heard a "pop" and was unable to move and in excruciating pain. She also had not experienced pain shooting down into her foot prior to the work accident. Thus, the Board's finding

that the April 2010 work accident exacerbated Robinson-McKnight's preexisting low back condition is supported by substantial evidence.

Additionally, it is undisputed that Robinson-McKnight treated with Dr. Yadhati the day after the work accident. The Board acknowledges the fact that there is no written documentation of the work accident in Robinson-McKnight's medical records until July 2010. However, the Board found Robinson-McKnight's testimony credible that she informed Dr. Yadhati of the work accident, on April 13, 2010, the day the accident occurred, as well as the following day, on April 14, 2010, when Robinson-McKnight treated with Dr. Yadhati. Robinson-McKnight indicated that her pain was not as severe the day after the accident, because she had taken medication and used a combination of ice and heat to treat the injury. However, on May 3, 2010, as Dr. Boulos testified, the medical records indicate that Robinson-McKnight complained of a significant amount of low back pain. Moreover, Dr. Townsend conceded that he could not rule out the work accident as the precipitating cause of such pain. Both medical experts agree that Robinson-McKnight's treatment has been reasonable and necessary.

Therefore, due to its determination that the testimony of Robinson-McKnight and Dr. Boulos was credible, the Board's decision is supported by substantial evidence. Moreover, the Board did not commit legal error in finding that Robinson-McKnight's low back condition is causally related to the April 2010

work accident, which the evidence suggests is the triggering event that re-aggravated Robinson-McKnight's low back condition, causing her need for treatment.

*Robinson-McKnight's Request for Interest and Attorneys Fees Upon Affirmation of the Board's Decision is Granted*

In her Answering Brief, Robinson-McKnight petitioned the Court to award her post hearing interest and attorneys fees. Robinson-McKnight's attorney, Joseph M. Jachetti ("Mr. Jachetti"), certifies that he spent ten hours related to this appeal and requests an hourly fee in the amount of \$350.00, or at total of \$3,500.00. The Employer did not file a Reply Brief<sup>105</sup> and consequently asserted no position regarding Robinson-McKnight's request.

Pursuant to 19 *Del. C.* §2350(e), an employee is entitled to compensation plus interest at the legal rate from the time of the Board's decision upon affirmation by the Court. Where a claimant has successfully defended an appeal of the Board's decision, the Court has the discretion to order claimant's employer, or the employer's insurance carrier, to pay claimant's attorney a reasonable fee for the attorney's services.<sup>106</sup> In determining the amount of a reasonable fee, the Court considers: "(1) The time and labor required; the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2)

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<sup>105</sup> In a June 8, 2012 letter to the Court, the Employer's counsel, Jillian Pratt, Esq., indicated the Employer would not file a Reply Brief and would rely solely on the Employer's Opening Brief.

<sup>106</sup> 19 *Del. C.* §2350(f)

the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fees customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.”<sup>107</sup> With regard to workers compensation cases, counsel’s experience may justify a requested fee that is on the higher end of the spectrum.<sup>108</sup> Awards of attorneys fees pursuant to 19 *Del. C.* §2350(f) have ranged in recent cases from \$200.00 per hour<sup>109</sup> to \$300.00 per hour<sup>110</sup> and coincide with counsel’s experience in the area of workers compensation.

Here, the Board awarded Robinson-McKnight ongoing total disability benefits and related medical expenses after determining her low back condition is causally related to the April 2010 work accident. Since “the touchstone for an

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<sup>107</sup> *Bruce v. Chrysler Group, LLC*, 2012 WL 2353538, \*1 (Del. Super. Jun. 13, 2012) quoting *General Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973); See also *Del. Prof. Cond. R.* 1.5 (a)

<sup>108</sup> *Zenith Products Corp. v. Rodriguez*, 2006 WL 1520192, \*1 (Del. Super. Jun. 5, 2006).

<sup>109</sup> *Id.* at \*2 (Finding \$200.00 per hour a reasonable rate for associate attorneys where Industrial Accident Board decision affirmed on appeal).

<sup>110</sup> *Falconi v. Coombs & Coombs, Inc.*, 2006 WL 3393489, \*3 (Del. Super. Nov. 26, 2006) (Holding hourly rate of \$300 reasonable where counsel had been a member of the Delaware bar for over twenty-five years devoting most of his practice to workers compensation cases and the employer did not object); See *Zenith Product Corps.*, 2006 WL 1520192 at \*1 (Holding \$275.00 was “on the high end of the spectrum,” but was reasonable in light of counsel’s experience and seventeen years as a member of the Delaware bar); *Bruce*, 2012 WL 2353538 at \*2 (Holding hourly rate of \$250.00 reasonable where counsel has been a member of the Delaware bar in good standing for over twenty-four years with experience in workers compensation and personal injury cases).



award of counsel fees on appeal is success,”<sup>111</sup> and the Board’s decision has been affirmed by the Court, Robinson-McKnight is entitled to an award of attorneys fees. The Court has no reason to doubt that Mr. Jachetti worked the ten hours he certified to on this appeal.<sup>112</sup> Furthermore, Mr. Jachetti certified that the \$350.00 hourly rate is similar to the hourly rate of other experienced workers compensation attorneys. As previously noted, the Employer did not contest the requested hourly rate of \$350.00.

Since the Board’s decision is affirmed by the Court, and because the Employer has made no objection otherwise, Robinson-McKnight is entitled to interest at the legal rate effective December 15, 2011. Thus, Robinson-McKnight’s request for an award of attorneys fees pursuant to 19 *Del. C.* §2350(f) is hereby granted in the amount of \$350.00 per hour, for a total of \$3,500.00.

**ACCORDINGLY**, the Board’s decision is **AFFIRMED**.

***IT IS SO ORDERED.***

/s/ Diane Clarke Streett  
Diane Clarke Streett  
Judge

Original to Prothonotary

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<sup>111</sup> *Digiacomio v. Bd. of Pub. Educ.*, 507 A.2d 542, 546 (Del. 1986).

<sup>112</sup> *Sussex Pines Country Club v. Conaway*, 2011 WL 5966733, \*2 (Del. Super. Nov. 29, 2011).