

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

MARY LOU FIENI,	)	
Appellant,	)	
	)	
v.	)	CA. No.: 12A-03-005 FSS
	)	<b>(E-FILED)</b>
	)	
CATHOLIC EAST HEALTH,	)	
Appellee.	)	

Submitted: August 17, 2012  
Decided: November 7, 2012

**ORDER**

**Upon Appeal from the Industrial Accidental Board – *AFFIRMED*.**

1. While at work on June 6, 2008, Appellant was bitten on her left hand by a small dog. Two and a half years later, Appellant began experiencing pain in the same hand, which she attributed to the bite. Accordingly, Appellant filed for workers' compensation benefits, which were denied November 15, 2011, after an evidentiary hearing.

2. At the hearing, Appellant submitted expert medical opinion supporting her claim that the hand problems she experienced, two and a half years

later, were attributable to the bite. Employer, however, presented counter-medical expert testimony.

3. Here, Appellant argues the Board mis-weighed the competing opinions and, in the process, ignored the “but for” causation standard.

4. Appellant’s argument turns on the significance Appellant places on pre and post-injury x-rays of her hand. Appellant contends that because the old and recent x-rays show arthritis, employer’s expert could not attribute Appellant’s recent problems exclusively to arthritis. Accordingly, “but for” the dog bite, Appellant would not have problems now.

5. In its decision, the Board carefully recapitulates the competing opinions, including the pro-Appellant testimony that “the dog bite changed the previously arthritic [. . .] joint [from] stable to unstable. That, in combination with a little bit of a crush component around the soft tissue, would be enough to make the joint symptomatic.”

6. The Board also recapitulated inconsistencies in Appellant’s recent complaints and her expert’s opinion. For example, taking the original injury into account, Appellant’s own expert characterized Appellant’s recent “intolerable pain” claims as “atypical.”

7. The Board, however, also took into account the employer’s

expert's review of a recent operative report that "found no indication of a crush injury as [Appellant's expert ] had hypothesized." Thus, even if the x-rays were as Appellant describes them, "[t]he surgical findings were typically arthritis." Appellee's expert believed arthritis developed in the base of Appellant's thumb over time, regardless of the dog bite. Paraphrasing, Appellee's expert told the Board that basing Appellant's arthritis on a small dog bite, years before, makes no sense. Appellant's condition is seen in people as they age, regardless of trauma. Arthritic symptoms usually develop at Appellant's age. Finally, Appellant's expert noted "quite a difference" between the bite's location and Appellant's recent hand surgery.

8. The Board specifically addressed Appellant's argument concerning the x-rays:

[t]he Board was not convinced by the evidence presented that the incident of the soft-tissue dog bite was serious enough to aggravate or accelerate arthritis . . . . [Appellant's expert's] theory that a crushing injury occurred to produce joint instability and increase pain was not supported by the operative report.

9. In the final analysis, although Appellant presented expert testimony supporting her claim, the Board viewed employer's evidence as more

persuasive. Thus, this case boils down to a “battle of the experts.”<sup>1</sup>

Because the Board’s findings are supported by substantial evidence, they cannot be overturned on appeal.<sup>2</sup> Accordingly, the Board’s November 15, 2011 decision is **AFFIRMED**.

**IT IS SO ORDERED.**

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/s/ Fred S. Silverman  
Judge

cc: Prothonotary (Civil)  
Gary S. Nitsche, Esquire  
Michael B. Galbraith, Esquire  
Andrew J. Carmine, Esquire

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<sup>1</sup> *Kirkwood Animal Hosp. v. Foster*, 2004 WL 2187621 \*1, \*4 (Del. Super. June 17, 2004) (Silverman, J).

<sup>2</sup> *Id.* at \*1.