SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

March 28, 2011

H. Garrett Baker, Esquire
Elzufon, Austin, Reardon, Tarlov &
Mondell, P.A.
300 Delawre Avenue
17th Floor
P.O. Box 1630
Wilmington, DE 19899

Eric M. Doroshow, Esquire
James R. Donovan, Esquire
Doroshow, Pasquale, Krawitz & Bhaya
1008 N. Walnut St.
Milford, DE 19963

RE: Pinnacle Foods v. Marian A. Chandler
C.A. No. S10A-09-001 ESB
Letter Opinion

Date Submitted: December 1, 2010

Dear Counsel:

This is my decision on the appeal filed by Pinnacle Foods of the Industrial Accident Board's decision granting Marian A. Chandler's Petition to Determine Compensation Due in this worker's compensation case involving an employee who worked for many years in a food processing plant. Chandler claimed that she was entitled to an award of total and partial disability benefits for her back problems that gradually worsened over her many years of working on a pickle processing line at Pinnacle's food processing plant in Millsboro, Delaware. The Board granted Chandler's petition, finding that she and her medical expert were more credible witnesses than were Pinnacle's witnesses. Pinnacle filed an appeal, arguing that the Board's decision was not supported by substantial evidence in the record. I have denied Pinnacle's appeal and affirmed the Board's decision

because the testimony offered by Chandler and her medical expert and the other medical evidence does adequately support the Board's findings.

STATEMENT OF THE FACTS

Chandler is 56-years-old. She was employed by Pinnacle Foods in a pickle processing plant for 33 years, the last 26 of which were as a full-time employee. Chandler sorted and packed pickles into jars and five gallon pails. Her job required her to spend most of her time on her feet leaning over a line of moving pickles, removing rotten and broken pickles and foreign objects. Chandler would also have to twist and turn in order to dispose of these items. She also spent part of her work-day lifting heavy bags of seeds and loading them into a machine.

Chandler had low-back pain for approximately three years. She managed her back pain by using over-the-counter medications, sports creams, heat, massages, and a hot tub. Chandler did not miss any work because of her back pain and was able to do her job. Her back pain increased in severity in the last week of January 2008. Chandler went to see Cindy Dickerson, a human resources employee at Pinnacle Foods, about her back pain. Chandler told Dickerson that she felt pain when she got out of her car and that it was so bad that she could barely move. Dickerson told Chandler to go see her family doctor. Dickerson followed up with Chandler the next week to see if she had gone to see her doctor yet. Chandler had not gone to see her doctor yet and was still in pain. She talked to Dickerson a few days later, telling her that she thought her back pain was related to her job. Chandler's back pain got so bad that she went to the Nanticoke Memorial Hospital emergency room on February 19, 2008. Chandler never returned to work and was terminated a year later.

Chandler filed a Petition to Determine Compensation Due with the Board on July 28, 2008. She sought total disability benefits from February 18, 2008 to April 22, 2008, ongoing partial disability benefits thereafter, authorization for back surgery, and payment of her medical expenses. The Board held a hearing on February 25, 2009. Stephanie Parker, Walter Wilman, Cindy Dickerson, Mary Ann Palmer, Richard P. Dushuttle, M.D., Jerry L. Case, M.D., and Chandler testified at the hearing. Parker is a crew leader at Pinnacle. She has worked with Chandler for many years. Parker testified about the nature of Chandler's job. Wilman is Chandler's boyfriend. He testified about Chandler's back pain and how she managed it. Dickerson testified about Chandler's work history and complaints of back pain. Palmer is a vocational case manager. She testified about jobs that Chandler could do. Drs. DuShuttle and Case are board certified orthopedic surgeons. Dr. DuShuttle testified for Chandler. Dr. Case testified for Pinnacle. Both testified about Chandler's back problems and they largely agreed that she has widespread degenerative disk disease at L2-3, L3-4 and L5-S1, with some degenerative spondylolisthesis at L3-4, and a possible annular tear at L3-4, with spondylotic disk protrusion at L5-S1. The two doctors disagreed over whether Chandler's back problems were caused by her job. Dr. Dushuttle testified that Chandler's back problems were aggravated over time by her job. Dr. Case testified that Chandler's back problems were not caused by her job. He testified further that the first time any doctor diagnosed Chandler's back problems was when she went to the Nanticoke Memorial Hospital emergency room on February 19, 2008. Chandler testified about the nature of her job and her back pain. The Board found that Chandler's Petition to Determine Compensation Due was barred by the statute of limitations, reasoning that she should have recognized the nature, seriousness and

probable compensable character of her back pain three years before she filed her claim.

I reversed the Board's decision and remanded the case back to the Board to consider the merits of Chandler's claims.[1] Pinnacle filed an interlocutory appeal of my decision with the Supreme Court, but the Supreme Court declined to hear it.[2] On remand, the Board ruled in favor of Chandler, finding that she and Dr. DuShuttle were credible witnesses and that, based on their testimony, Chandler was entitled to all of the relief she sought. Pinnacle then filed this appeal.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the Superior Court on appeal from a decision of the Industrial Accident Board is to determine whether the Board's decision is supported by substantial evidence and whether the Board made any errors of law.[3] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[4] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[5] It merely determines if the evidence is legally adequate to support the Board's

---

[1] *Chandler v. Pinnacle Foods*, 2010 WL 1138869 (Del. Super. March 22, 2010).

[2] *Pinnacle Foods v. Chandler,* 992 A.2d 1237, 2010 WL 1565302 (Del. April 20, 2010)(Table).

[3] *General Motors v. McNemar*, 202 A.2d 803, 805 (Del. 1964); *General Motors v. Freeman*, 164 A.2d 686 (Del. 1960).

[4] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.1986), *app. dism.*, 515 A.2d 397 (Del. 1986)(TABLE).

[5] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

factual findings.[6] Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.[7]

DISCUSSION

Pinnacle argues that (1) the Board's finding that Chandler's job required her to bend frequently and lift up to fifty pounds is not supported by substantial evidence in the record, (2) the Board's finding that Chandler was totally disabled from February 18, 2008 to April 22, 2008 is not supported by substantial evidence in the record, and (3) the Board's finding that Chandler is entitled to ongoing partial disability benefits after April 22, 2008 is not supported by substantial evidence in the record.

I. Bending and Lifting

Pinnacle argues that the Board's finding that Chandler's job required her to bend frequently and lift up to fifty pounds is not supported by substantial evidence in the record. The Board did find that Chandler's "job duties required her to bend frequently and lift up to fifty pounds."[8] However, Pinnacle's argument gives an incomplete view of the Board's findings and rationale for its decision, is based on selected snippets of testimony from Chandler and Parker, and ignores large parts of their testimony that the Board found credible and persuasive. Pinnacle's argument ignores the Board's finding that Chandler "worked on the line for Pinnacle for about thirty years," which finding immediately preceded the Board's finding on "bending frequently and lifting up to fifty pounds." Pinnacle's

---

[6] 29 *Del.C.* § 10142(d).

[7] *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

[8] *Chandler v. Pinnacle Foods,* No. 1323867, at 2 (Del. I.A.B. June 25, 2010).

argument also ignores the Board's finding that Chandler "worked on an assembly line for more than twenty-five years and bent over a lot in the pickle factory, which caused the injury." When you consider all of the Board's findings on the issue of bending and lifting, you see that the Board concluded that Chandler's back problems were caused, in part, by her many years of working while bent over a pickle processing line.

Parker testified that "the only time Claimant would have to bend and twist was when there was a foreign object in the pail" and that "[s]ome days there were no foreign objects in the pail all day and sometimes there are a few objects per day."[9] Pinnacle failed to note that Parker also testified that Chandler is on her feet all the time,[10] leans over most of the day,[11] that even if a whole day goes by without finding any foreign objects she does have to turn around for her machine,[12] and would not say that the bending and twisting that occurs on the pail line is merely incidental.[13]

When asked by her attorney if Parker's description of her work was accurate, Chandler said, "[m]ost of it, yes." Chandler then answered a number of questions by her attorney describing her work in detail. Her testimony offers a much more complete and accurate description of what she did at work than does Pinnacle's narrow view of her job. Chandler has worked on a number of different pickle processing lines during her 33 years

---

[9] *Chandler v. Pinnacle Foods,* No. 1323867, at 3 (Del. I.A.B. June 25, 2009).

[10] *Chandler v. Pinnacle Foods,* No. 1323867 at 8 (Del. I.A.B. Feb. 25, 2009)(TRANSCRIPT).

[11] *Id.*

[12] *Id.* at 13.

[13] *Id.*

at Pinnacle. She spent many years packing pickles into jars. During Chandler's last three years at Pinnacle she mostly worked on two different processing lines on a weekly basis. One processing line is known as the "pail line." This line required Chandler to spend most of her work-day on her feet standing over a line of moving pickles, removing rotten and broken pickles and foreign objects. The step on the "pail line" that Chandler had to stand on to do her job was too high for her, causing her to have to bend over and lay on her stomach in order to remove the broken and rotten pickles and foreign objects. She also had to twist and turn in order to dispose of the pickles and foreign objects behind her after removing them from the line. The other processing line is known as "line three." This line required Chandler to make sure that the pickle jars moved properly and did not get stuck. When the plant processed seeds on this line, Chandler had to load the seeds into a machine. This required her to bend over and pick up bags of seeds weighing 40 to 50 pounds each. Regardless of which line that Chandler was working on, she spent most of the day on her feet. In summary, the evidence, when taken as a whole and not selectively, shows that Chandler spent long periods of time during her work day standing on her feet, bending over one pickle processing line or another, twisting and turning, and lifting heavy bags of seeds in order to do her job.

The Board found that Chandler's job required her to bend frequently and lift up to fifty pounds. This finding does have to be supported by substantial evidence in the record. Substantial evidence in the record is the type of evidence that a reasonable mind might accept as adequate to support a conclusion. Chandler did have to bend over frequently when she worked on the "pail line." She also did have to lift 40 to 50 pound bags of seed when she worked on "line three." A reasonable mind certainly would accept this evidence

as adequate to support the Board's finding that Chandler's job required her to bend frequently and lift up to fifty pounds.

II. Total Disability

Pinnacle argues that the Board's finding that Chandler was totally disabled from February 18, 2008 to April 22, 2008 is not supported by substantial evidence in the record. "Total Disability" means a disability which prevents an employee from obtaining employment commensurate with the employee's qualification and training.[14] The Board's finding is based on the testimony of Chandler and Dr. DuShuttle and Dr. Harry Anthony's "no-work" order. The Board did not rely on Dr. Case's testimony in reaching its findings. Dr. Case did not consider that Chandler worked on various processing lines at Pinnacle for almost 30 years, did not consider that Chandler had symptoms for several years but did not seek medical treatment for her back pain, and did not know that Chandler's injury was a cumulative detrimental effect injury rather than a single-incident injury. Dr. DuShuttle did take all of this information into consideration when evaluating Chandler, making his testimony more persuasive to the Board than Dr. Case's testimony. When there is conflicting medical testimony, the Board must decide which physician is more credible.[15] As long as there is substantial evidence to support the Board's decision, the Board may accept the testimony of one physician over that of the other.[16] The Board's decision to accept Dr. DuShuttle's testimony over Dr. Case's testimony is certainly appropriate given

---

[14] *Federal Bake Shops, Inc. v. Maczynski,*180 A.2d 615, 616 (Del. 1962).

[15] *Scott v. First USA Bank*, 2002 WL1463091, at *2 (Del. Super. April 30, 2002).

[16] *Id*.

that Dr. DuShuttle considered some very important information that Dr. Case did not consider.

Chandler testified that her back pain became so severe that she had to go to the emergency room on February 19, 2008. The emergency room personnel gave Chandler pain medication. Chandler then went to see Dr. Anthony, her family doctor. He eventually issued a "no-work" order to her for the period from February 19, 2008 to April 22, 2008. Chandler then saw Dr. Kennedy Yalamanchili, a neurosurgeon. He sent her to physical therapy. Chandler underwent an MRI on March 4, 2008. It showed that she had a disc protruding into her low back at L5-S1 and an annular tear. Dr. Yalamanchili recommended that Chandler have back surgery. The back surgery involved two things. One was decompression surgery to take the pressure off of her nerves. The other was a fusion of her back to stabilize it. The surgery was scheduled for June 24, 2008. However, Dr. Yalamanchili did not perform the surgery because Chandler's insurance would not pay for it. Drs. Anthony and Yalamanchili also prescribed Vicodin and Skelaxin for Chandler. Vicodin is a narcotic pain medication. Skelaxin is a muscle relaxant. Dr. DuShuttle examined Chandler on January 13, 2009. He diagnosed her as having significant degenerative disc disease at L3-4 and L5-S1. Dr. DuShuttle testified that this was a preexisting asymptomatic condition in Chandler's low back that was aggravated by her job. He agreed with Dr. Anthony's assessment of Chandler and believed that it was reasonable to take her out of work for a period of time. Dr. DuShuttle characterized her proposed back surgery as major surgery, stating there are complications associated with it and that you would not perform it unless the patient was in pain. Chandler was still complaining of intense back pain and using a walker at the hearing on February 25, 2009. She testified

at the hearing that she still wanted to undergo the surgery on her back

The Board concluded that Chandler was totally disabled from February 18, 2008 to April 22, 2008. Substantial evidence in the record is the type of evidence that a reasonable mind might accept as adequate to support a conclusion. Chandler went to the emergency room because of severe back pain on February 19, 2008. She then saw Drs. Anthony and Yalamanchili. Both doctors put her on pain medication and a muscle relaxant. Dr. Anthony eventually issued a "no-work" order for the period of time from February 19, 2008 to April 22, 2008. Thus, Chandler was deemed to be totally disabled during the period of her doctor's "no-work" order regardless of her capabilities.[17] Dr. Yalamanchili scheduled Chandler for major back surgery for June 24, 2008. Dr. DuShuttle testified that Chandler had significant degenerative disc disease that was aggravated by her work. He also testified that Dr. Anthony's work restrictions were reasonable. A reasonable mind certainly would accept this evidence as adequate to support the Board's finding that Chandler was totally disabled for the very brief period of time starting on the day before she went to the emergency room because of severe back pain and ending about two months before she was scheduled for major back surgery.

III. Partial Disability

Pinnacle argues that the Board's finding that Chandler is entitled to ongoing partial disability benefits after April 22, 2008 is not based upon substantial evidence in the record. "Partial Disability" is not defined in the Worker's Compensation Act.[18] However, by

---

[17] *Gilliard-Belfast v. Wendy's Inc.,* 754 A.2d 251 (Del. 2000).

[18] 19 Del.C. §§ 2301 - 2396.

implication, it refers to the period of time during which an injured employee suffers a partial loss of wages as a result of his injury.[19] The Board's finding is based on Dr. Anthony's decision to release Chandler to work on a trial basis and Pinnacle's refusal to accommodate that type of work. Under the displaced worker doctrine, where an injured employee is able to work but only in a limited capacity, "[b]oth the employer and the employee share a mutual duty to obtain employment for the employee, the precise extent of which cannot be clearly and definitely expressed as a general rule."[20] However, "the primary burden is upon the employee to show that [s]he has made reasonable efforts to secure suitable employment which have been unsuccessful because of the injury."[21] A displaced employee, however, who does not know or have reason to know that [s]he is a displaced employee can not be expected to seek new employment.[22] Given the facts of this case, it was not reasonable to expect Chandler to look for work elsewhere until she had been told by Pinnacle that no light-duty work would be available to her and that she would be terminated.

Chandler remained an employee of Pinnacle for one year after she first went to the emergency room on February 19, 2008. During most of this time she was released by Dr. Anthony to return to work with light-duty restrictions. Pinnacle took the position that

---

[19] *Globe Union, Inc. v. Baker*, 310 A.2d 883, 887 (Del. Super. 1973).

[20] *Chrysler Corp. v. Duff,* 314 A.2d 915, 918 (Del. 1973).

[21] *Franklin Fabricators v. Irwin,* 306 A.2d 734, 737 (Del. 1973); *see also Governor Bacon Health Ctr. v. Noll,* 315 A.2d 601, 605 (Del. Super. 1974).

[22] *Hoey v. Chrysler Motors Corp.,* 655 A.2d 307, 1994 WL 723023, at *2 (Del. Dec. 28, 1994)(TABLE).

Chandler's back problems were not related to her job and refused to let her return to work unless she could do so without any restrictions. Had Pinnacle treated Chandler's back problems as related to her work, then it would have accommodated her work restrictions. Pinnacle's position ultimately turned out to be incorrect when the Board found that Chandler's back problems were caused by her job and that she was under no duty to look for work elsewhere because she had a reasonable expectation of returning to work at Pinnacle.

Pinnacle argues that the Board's finding is incorrect because Dr. Anthony issued a note releasing Chandler to return to work on February 16, 2009. However, Pinnacle's argument is undermined by Dickerson's testimony regarding how she interpreted Dr. Anthony's note. Anthony issued Chandler a note stating that she could attempt to return to work on a trial basis. Dickerson testified that she did not think this note was a full release to return to work, implying that she thought that Chandler was not healthy enough to work. The fact that Dr. Anthony issued the note on a trial basis indicates that he also was not sure if Chandler could work full-time on a pickle processing line without any restrictions. Pinnacle interpreted his note this same way. Moreover, the testimony of both Drs. DuShuttle and Case is also consistent with the tentative nature of Dr. Anthony's note and the manner in which Pinnacle interpreted it. Dr. DuShuttle put Chandler on "permanent sedentary restrictions." He testified that this meant that Chandler could only work in a sedentary job with a lifting restriction of five pounds. She could do some short periods of walking, but could not do any kind of work requiring any type of bending, squatting, or kneeling. Dr. DuShuttle testified that any type of work that required her to do more than sedentary work would aggravate her back problems and make her symptoms

worse. Pinnacle's own medical expert, Dr. Case, agreed with Dr. DuShuttle's findings in this regard. Dr. Case examined Chandler on November 10, 2008. He testified that Chandler was only capable of sedentary work and should avoid prolonged standing and walking, bending and twisting, and should not lift over 10 pounds. A reasonable mind certainly would accept this medical evidence as adequate to support the Board's finding that Chandler is entitled to ongoing partial disability benefits after April 22, 2008.

CONCLUSION

The appeal filed by Pinnacle Foods is denied and the Industrial Accident Board's decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley