

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICIA BOONE,	§	
	§	No. 525, 2012
Claimant Below-	§	
Appellant	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
SYAB SERVICES/CAPITOL	§	C.A. No. K11A-10-003
NURSING,	§	
	§	
Employer Below-	§	
Appellee	§	

Submitted: May 8, 2013  
Decided: July 16, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

***ORDER***

On this 16<sup>th</sup> day of July, 2013, it appears to the Court that:

(1) Claimant-below/Appellant Patricia Boone appeals from a Superior Court order affirming a decision of the Industrial Accident Board (the “Board”) permitting Employer-below/Appellee Syab Services/Capitol Nursing (“Syab”) to require Boone to use Syab’s contracted prescription service to obtain pain medication. Boone raises one claim on appeal. Boone claims that the Board erred as a matter of law in ruling that Boone must obtain her prescriptions from Syab’s preferred pharmacy provider instead of her own doctor. We find no merit to Boone’s appeal and affirm.

(2) In 2001, Boone suffered a work-related lower back injury while employed

by Syab. Syab petitioned the Board to require Boone to have the prescription filled by Syab's "preferred provider" benefit program known as Express Scripts. Using this program would save Syab money at no additional cost to Boone. With Express Scripts, Boone would be able to go to any covered pharmacy or have her medication mailed to her home. Boone objected to Syab's request as she had been getting her prescriptions filled at the office of her treating physician, Dr. Genesh Balu, a more convenient option for her. Though Express Scripts is less expensive, Dr. Balu charges the amount set forth in the Delaware Fee Schedule.<sup>1</sup>

(3) The Board found that Syab's request was reasonable and permissible under the Workers' Compensation statute.<sup>2</sup> The Superior Court affirmed the Board's order.<sup>3</sup> This appeal followed.

(4) We review a decision of the Board for errors of law and determine whether substantial evidence exists to support the Board's findings of fact and conclusions of law.<sup>4</sup> "Substantial evidence equates to 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"<sup>5</sup> We will not weigh the evidence,

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<sup>1</sup> See 19 Del. Admin. C. § 1341-4.13.1 ("Reimbursement for pharmacy services, prescription drugs, and other pharmaceuticals is 100% of the Average Wholesale Price (AWP) as of the date of service, or the actual charge, whichever is less").

<sup>2</sup> *Boone v. SYAB Services*, Hearing No. 1198151 (I.A.B., Oct. 5, 2011).

<sup>3</sup> *Boone v. SYAB Services*, C.A. No. K11A-10-003 (Del. Super., Aug. 23, 2012)

<sup>4</sup> *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009) (citing *Stanley v. Kraft Foods, Inc.*, 2008 WL 2410212, at \*2 (Del. Super. Mar. 24, 2008)).

<sup>5</sup> *Id.* (quoting *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

determine questions of credibility, or make our own factual findings.<sup>6</sup> Errors of law are reviewed *de novo*.<sup>7</sup> Absent an error of law, the standard of review for a Board's decision is abuse of discretion.<sup>8</sup> "The Board has abused its discretion only when its decision has 'exceeded the bounds of reason in view of the circumstances.'"<sup>9</sup>

(5) Boone argues that the Board erred in requiring her to obtain her prescriptions from Syab's preferred pharmacy provider. The claim centers on Section 2322(a) of the Workers Compensation statute, which states:

During the period of disability the employer shall furnish reasonable surgical, medical, dental, optometric, chiropractic and hospital services, medicine and supplies, including repairing damage to or replacing false dentures, false eyes or eye glasses and providing hearing aids, as and when needed, *unless the employee refuses to allow them to be furnished by the employer*.<sup>10</sup>

(6) A plain reading of Section 2322(a) shows that it does not provide an absolute right for an employee to choose his or her own pharmacy. Rather, it only requires the employer to furnish "medicine and supplies . . . as and when needed" and then gives the employee the right to refuse what is supplied. Section 2323 of the Workers Compensation statute provides employees with the absolute right to choose certain other physicians:

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<sup>6</sup> *Id.* (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

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

<sup>8</sup> *Person-Gaines*, 981 A.2d at 1161 (citing *Stanley*, 2008 WL 2410212, at \*2).

<sup>9</sup> *Id.* (quoting *Stanley*, 2008 WL 2410212, at \*2).

<sup>10</sup> 19 *Del. C.* § 2322(a) (emphasis added).

Any employee who alleges an industrial injury shall have the right to employ a physician, surgeon, dentist, optometrist or chiropractor of the employee's own choosing.<sup>11</sup>

Significantly, Section 2323 does not include “pharmacist” or “pharmacy.” Absent case law to the contrary,<sup>12</sup> the Board’s interpretation of the law was without error.

(7) After determining the statute did not provide Boone with an absolute right to choose her own pharmacy, the Board made a factual determination that Syab’s request was reasonable. Boone argues it is also reasonable for her to receive her prescriptions from Dr. Balu, as Dr. Balu’s charges are within the fee schedule. But, as reasonable as Dr. Balu’s charges may be, it does not diminish the reasonableness of Syab’s less costly alternative. It was within the Board’s discretion to determine that Boone must obtain her prescriptions from Syab’s preferred pharmacy provider instead of her own doctor.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>11</sup> 19 *Del. C.* § 2323.

<sup>12</sup> Boone cites to *Davis Plumbing Co. v. Burns*, 967 So.2d 94 (Ala. Civ. App. 2007) to support her argument. In *Davis*, the Court of Civil Appeals of Alabama considered facts very similar to this case and found a right to choose a pharmacist. Alabama has a markedly different Workers Compensation law, which requires the employer to “pay an amount not to exceed the prevailing rate or maximum schedule of fees as established herein of reasonably necessary ... medicine ... as may be obtained by the injured employee....” *Ala. Code* § 25-5-77 (1975). This Alabama statute more clearly gives the employee power to obtain the medication independently.