

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BEATRIZ HERNANDEZ,	§
	§ No. 79, 2005
Employee-Appellant Below,	§
Appellant,	§ Court Below: Superior Court of
	§ the State of Delaware in and for
v.	§ New Castle County
	§
BOSTON MARKET, INC.,	§ C. A. No. 04-05-009
	§
Employer-Appellee Below,	§
Appellee.	§

Submitted: June 15, 2005

Decided: June 29, 2005

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

ORDER

This 29th day of June 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. The claimant-below appellant, Beatriz Hernandez (“Hernandez”), appeals from a Superior Court order affirming an Industrial Accident Board (“IAB”) order denying her motion for additional compensation due. Hernandez argues that the IAB’s determination that her medical expenses were not “reasonable and necessary” was not supported by substantial evidence. Because the Board’s decision is supported by the record, as the Superior Court found, we affirm.

2. Hernandez was injured in two compensable accidents while employed by Boston Market, Inc. She received wage compensation for partial permanent impairment to her cervical spine and lower back. In October 2003, Hernandez filed a petition for additional compensation, for the chiropractic treatment she received between August 2001 and June 2002.

3. At the hearing on her petition, Hernandez presented the testimony of her chiropractor, Dr. Brian McDonald, who testified that he treated Hernandez from January 2001 through June 2002. Hernandez and Dr. McDonald both testified that Hernandez's symptoms were alleviated by the treatment. Hernandez stopped seeing Dr. McDonald in June 2002 after Dr. McDonald told Hernandez she had reached a "plateau," and that additional chiropractic therapy would provide no further benefit to her.

4. Dr. Jeffrey Meyers, who testified on behalf of Boston Market, examined Hernandez on four occasions following Hernandez's accident. Initially, Meyers determined that chiropractic treatment would be beneficial to Hernandez. Dr. Meyers next examined Hernandez in June 2001, at which time he concluded that Hernandez had reached a plateau, and that she would not experience any significant improvement with further chiropractic treatment. In August 2001, on the basis of Dr. Meyers' opinion, Boston Market stopped paying for Hernandez's

chiropractic visits. Despite that, Hernandez continued to see Dr. McDonald until June 2002.

5. After hearing the evidence, the IAB rejected Hernandez's petition for reimbursement for the costs of her chiropractic treatment. The IAB determined that the medical expenses were not "reasonable" or "necessary," and, therefore, were not compensable under the worker's compensation statute.¹ The Superior Court affirmed the IAB.² Hernandez appeals from that decision.

6. The IAB determined that Hernandez was not entitled to compensation under 19 *Del C.* § 2322(a), which requires an employer to pay any "necessary" and "reasonable" medical expenses that are related to an employee's work injury. The Superior Court affirmed. This Court reviews to determine whether the IAB's factual findings are supported by substantial evidence.³ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to

¹ 19 *Del. C.* § 2301, *et. seq.*

² *Hernandez v. Boston Market, Inc.*, C.A. No. 04A-05-009, 2005 WL 181655 (Del. Super. Jan. 26, 2005).

³ *Scheers v. Indep. Newspapers*, 832 A.2d 1244, 1246-47 (Del. 2003). On appeal from a decision of an administrative agency, this Court must determine whether the agency's ruling is supported by substantial evidence and free from legal error. *Stoltz Management v. Consumer Affairs Board*, 616 A.2d 1205, 1208 (Del. 1992). Where there is a review of an administrative decision by both an intermediate and a higher appellate court and the intermediate court received no evidence other than that presented to the administrative agency, the high court directly examines the decision of the agency. *Id* (citing *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985)).

support a conclusion.⁴ This Court will not determine questions of credibility or make independent factual findings or conclusions.⁵

7. On appeal, Hernandez does not appear to dispute the IAB's finding that after June 2001 the chiropractic treatment she received provided no further improvement in her condition. Instead, she argues that the treatment was "necessary and reasonable" because it offered palliative relief from her symptoms. Although Dr. Meyers acknowledged that Hernandez might have obtained some temporary palliative relief from additional chiropractic visits, he opined that Hernandez could have obtained the same relief by using over-the-counter pain relievers and a heat pad. Dr. Meyers' opinion was consistent with Hernandez's actual experience: after discontinuing chiropractic treatment in June 2002, she obtained temporary relief by using anti-inflammatory medication. The IAB concluded that the chiropractic treatment beyond June 2001 was not "reasonable and necessary" based on Dr. Meyers' testimony that after June 2001, Hernandez could have obtained the same palliative relief through at-home remedies.

8. The IAB is free to accept one expert's opinion over another,⁶ and this Court does not second-guess such credibility determinations. Because the IAB's

⁴ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

⁵ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1106 (Del. 1988).

⁶ *DiSabatino Bros., Inc. v. Wortman*, 453 A.2d 102, 106 (Del. 1982) (citing *General Motors v. Veasey*, 371 A.2d 1074, 1076 (Del. 1977)).

decision was supported by substantial evidence, namely Dr. Meyers' opinion and his observations of Hernandez, the order of the Superior Court affirming the IAB is free from error.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice