

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VERA BOLDEN,	§
	§ No. 363, 2005
Claimant/Appellant Below,	§
Appellant,	§ Court Below: Superior Court of
	§ the State of Delaware in and for
v.	§ Sussex County
	§
KRAFT FOODS, <sup>1</sup>	§ C. A. No. 04A-12-002
	§
Employer/Appellee Below,	§
Appellee.	§

Submitted: November 30, 2005

Decided: December 21, 2005

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

**ORDER**

This 21<sup>st</sup> day of December 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Vera Bolden, claimant-below appellant (“Bolden”), appeals from a Superior Court order affirming an Industrial Accident Board (“IAB”) denial of her petition for additional compensation. Bolden’s claim was that an industrial accident injury she sustained in 1988 while an employee of General Foods Corporation (“General Foods”) had become worse. Bolden contends that the denial of additional compensation was erroneous, because: (i) the IAB erred as a

---

<sup>1</sup> The appeal has been filed with the appellee being named as Kraft Foods. In the briefs, the appellee is identified as General Foods Corporation. For purposes of this Order appellee is referred to as General Foods Corporation.

matter of law in admitting the deposition of General Food's expert, Dr. Sopa, whose opinion testimony did not meet the *Daubert* standard for the admission of expert evidence; and (ii) in any event, Dr. Sopa's opinion, without more, did not constitute substantial evidence sufficient to support the IAB decision, because that opinion followed no acceptable scientific method and rested upon an erroneous assumption relating to causation.

2. In our view, Bolden has failed to establish as a matter of law that Dr. Sopa's opinion testimony did not meet the *Daubert* standard, or that substantial evidence of record to support the IAB decision is lacking. Therefore, we affirm.

3. Bolden suffered an injury to both knees after she fell while working at General Foods in 1988. Before that accident she had experienced no knee problems and was not diagnosed with any anatomical deformities in her knees or legs. Over the next two years, however, her knee condition worsened. In 1990, Bolden applied for disability benefits and was awarded benefits for a five percent permanent impairment for both legs. In 1996, after several surgeries, she was awarded an additional ten percent permanent impairment benefit for both legs.

4. Between 2001 and 2003, Bolden underwent several total knee replacement surgeries. To date, she has had eight surgeries on her knees. Walking currently causes her pain and requires her to use a cane. In 2004, Bolden filed a petition before the IAB to determine additional compensation due.

5. The IAB heard the matter on November 22, 2004. Dr. Rodgers, Bolden's expert witness, testified that as a result of the injury, the condition of her legs indicated a seventy-five percent impairment of her right leg and a fifty percent impairment of her left leg. Dr. Rodgers based his opinion on the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition (the "Guide"). In arriving at his opinion, Dr. Rodgers considered Bolden's pain, his clinical findings from an evaluation of her physical condition, the fact that she had undergone total knee replacement of both knees, the measured range of motion, and the stability of her joints in accordance with Table 17-35 of the Guide.

6. General Foods, Bolden's employer, sought to introduce the deposition of its expert witness, Dr. Sopa, into evidence at the hearing. Bolden objected to Dr. Sopa's testimony, arguing that it did not meet the *Daubert*<sup>2</sup> standard because it did not follow a scientifically valid methodology, and that it was based on assumed facts not in the record. The IAB overruled the objection without discussion.

7. In his deposition, Dr. Sopa testified that he had examined Bolden on seven occasions between 1995 and 2004, and that in his opinion it was "fair and reasonable" to accord Bolden a ten percent impairment rating in light of her pre-existing condition and her good recovery from the knee replacement surgeries. Dr.

---

<sup>2</sup> *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); *Nelson v. State*, 628 A.2d 69, 74 (Del. 1993) (holding that the *Daubert* standard is the correct interpretation of the Delaware Rules of Evidence for admission of scientific testimony or evidence).

Sopa testified that in reaching his opinion he: (1) used the Guide, although loosely, (2) made no calculations to arrive at the ten percent figure, (3) measured the range of motion of Bolden's legs, (4) used his clinical evaluations of Bolden and her surgeon's records, (5) underscored the problem with Bolden's anatomy, and (6) considered the fact that he was being asked to give an impairment rating in circumstances where he did not believe the condition was caused by a work-related injury.

8. The IAB denied Bolden's petition for additional compensation. In doing so, the IAB rejected Dr. Sopa's opinion that Bolden's injuries were not work related. The IAB did, however, accept the rest of Dr. Sopa's testimony on impairment as more persuasive than the testimony of Dr. Rodgers. Bolden appealed the IAB decision to the Superior Court, which held that: (i) Dr. Sopa's testimony was scientifically reliable and therefore, was properly admitted, and (ii) there was substantial evidence of record to support the IAB's decision denying Bolden additional compensation.

9. The standard of review on an appeal from an award of the IAB is well-established. "In an appeal from the IAB, the function of both this Court and the Superior Court 'is to determine only whether or not there was substantial evidence to support the findings of the Board.'"<sup>3</sup> Substantial evidence is relevant evidence

---

<sup>3</sup> *State v. Dalton*, 878 A.2d 451, 454 (Del. 2005).

that a reasonable mind might accept as adequate to support a conclusion.<sup>4</sup> Where substantial evidence supports the administrative decision, this Court must affirm the ruling unless it identifies an abuse of discretion or a clear error of law.<sup>5</sup>

10. Bolden first contends that the IAB committed legal error in allowing Dr. Sopa's opinion testimony to be admitted into evidence. A decision to admit or exclude expert witness testimony is reviewed for an abuse of discretion.<sup>6</sup> An administrative board abuses its discretion in admitting or excluding evidence where its decision exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice.<sup>7</sup>

11. For expert testimony to be admissible under *Daubert*, the court must consider the following:

- (1) Is the reasoning or methodology underlying the opinion scientifically valid?
- (2) Can that reasoning or methodology be properly applied to the facts at issue?
- (3) Has the theory or technique been tested, subject to peer review and publication?
- (4) Is it generally accepted?<sup>8</sup>

---

<sup>4</sup> *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1983).

<sup>5</sup> *DiGiacomo v. Bd. of Public Educ.*, 507 A.2d 542, 546 (Del. 1986).

<sup>6</sup> *M.G. Bancorporation v. Le Beau*, 737 A.2d 513, 522 (Del. 1999).

<sup>7</sup> *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988).

<sup>8</sup> *Crowhorn v. Boyle*, 793 A.2d 422, 429 (Del. Super. Ct. 2002) (citing *Daubert*, 509 U.S. at 593-94).

The purpose of the *Daubert* standard is to fulfill a gatekeeping role; *i.e.*, to prevent unreliable and irrelevant scientific evidence from being considered by the trier of fact.<sup>9</sup>

12. Bolden contends that the IAB abused its discretion by admitting Dr. Sopa's testimony which (she claims) was not scientifically valid under *Daubert* in three respects: (1) Dr. Sopa did not use the methodology specified in the Guide to arrive at his opinion; (2) Dr. Sopa did not explain what test or calculation he used to arrive at his ten percent impairment rating; and (3) Dr. Sopa relied on facts contradicted by the record, and upon an erroneous assumption as to the injury's cause, in reaching his impairment rating.

13. The IAB overruled Bolden's *Daubert* objection without discussion. The Superior Court, in reviewing the IAB decision, did discuss the *Daubert* issue, and concluded that both experts' opinions were "reliable and scientifically valid theories," in that both doctors had relied on the AMA guidelines, although in different ways. Therefore, the Superior Court concluded, the IAB committed no legal error in admitting Dr. Sopa's testimony. We agree.

14. The evidence of record before the IAB establishes that Dr. Sopa used an established and acceptable method of rating impairment, because he relied on the AMA Guidelines and took into account Bolden's comfort and functionality.

---

<sup>9</sup> *Daubert*, 509 U.S. at 589.

Dr. Sopa testified that he used the Guide’s “range of motion” model, although he followed it “loosely,” to derive his ten percent impairment rating. Dr. Sopa also considered Bolden’s good recovery after her total knee replacement surgeries, based on the records provided by Bolden’s surgeon and by her previous treating physicians. In assessing Bolden’s impairment, Dr. Sopa also took into account Bolden’s ability to perform daily activities such as walking, driving, riding a stationary bike, and cleaning. He also relied on his clinical experience with patients who had knee replacement surgeries.

15. The Superior Court also concluded that Dr. Sopa’s impairment rating was not fatally affected by his erroneous view that Bolden’s impairment was not work-related, because the IAB had specifically rejected that aspect of his opinion in its decision. Bolden contends on appeal that because Dr. Sopa’s impairment rating could not be divorced from his opinion that the knee injuries were the result of an anatomical defect rather than a work injury, his entire opinion was unreliable under *Daubert*.<sup>10</sup>

16. We disagree. Dr. Sopa consistently testified that in his view Bolden had an anatomical deformity in her knees and legs affecting her mobility, although

---

<sup>10</sup> Bolden argues that there was no evidence of a pre-existing condition, but if *arguendo* there was such a condition, it would be immaterial and Bolden’s disability award should not reflect it (citing *Reese v. Home Budget Center*, 619 A.2d 907 (Del. 1992) and *Sewell v. Delaware River & Bay Authority*, 796 A.2d 655 (Del. Super. Ct. 2000), *aff’d* 793 A.2d 1249 (Del. 2002)). Because the IAB did not consider Dr. Sopa’s opinion on causation of the injuries, but rather relied on his medical evaluation of Bolden’s current condition, we need not address that argument.

there was no evidence in Bolden's medical records or testimony of any pre-existing physical deformity. Dr. Sopa also testified, however, that even without regard to issues of causation, the work accident had resulted in a ten percent impairment to Bolden. As the Superior Court noted, the IAB explicitly rejected the causation aspect of Dr. Sopa's opinion. The Board was free, nonetheless, to accept the other portions of Dr. Sopa's opinion.<sup>11</sup> It was Bolden's burden, through vigorous cross-examination and presentation of contrary evidence, to challenge an expert opinion that is admissible, even though contestable.<sup>12</sup> Thus, contrary to Bolden's argument, the evidence supports the conclusion that Dr. Sopa's erroneous causation theory did not render his entire testimony unreliable under *Daubert*. Therefore, the IAB committed no abuse of discretion in admitting his testimony.

17. Bolden's second claim, that Dr. Sopa's opinion did not constitute substantial evidence to support the IAB's decision, also fails. The IAB is free to adopt the opinion testimony of one expert over another, and that opinion, if adopted, will constitute substantial evidence for purposes of appellate review.<sup>13</sup> The IAB accepted Dr. Sopa's reliable and scientifically valid testimony about Bolden's impairment, even though it rejected his theory of causation. The IAB

---

<sup>11</sup> See *Hart v. Columbia Vending Serv.*, C.A. No. 97A01-003, 1998 WL 281241, at \*5 (Del. Super. Ct. May 1, 1998), *aff'd* 1998 WL 985336 (Del. Nov. 13, 1998) (The Board is free to accept portions of a medical witness' testimony while rejecting the remainder.).

<sup>12</sup> See *Barriocanal v. Gibbs*, 697 A.2d 1169, 1173 (Del. 1997).

<sup>13</sup> *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992).



found Dr. Sopa's analysis of Bolden's injuries more credible than that of Dr. Rodgers because Dr. Sopa's analysis (loosely) followed the AMA guidelines, was based on years of observation, and considered Bolden's functional ability. Because the IAB's decision to deny Bolden's petition for an increase in benefits was grounded in substantial evidence, we affirm.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice