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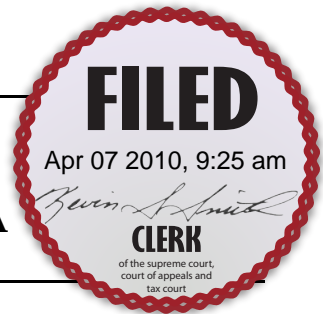
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**IN THE  
COURT OF APPEALS OF INDIANA**

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KENNETH FELDER,

Appellant/Plaintiff,

vs.

UNITED STATES STEEL CORPORATION  
f/k/a USX CORPORATION,

Appellee/Defendant.

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No. 93A02-0911-EX-1157

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APPEAL FROM THE WORKER'S COMPENSATION BOARD OF INDIANA  
The Honorable Linda Hamilton, Chairwoman  
Application Nos: C-156663, C-169903

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**April 7, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant/Plaintiff Kenneth Felder appeals from a November 3, 2009 order of the Full Worker's Compensation Board (the "Board"), denying his claim for worker's compensation benefits. Specifically, Felder claims that the Board erroneously determined that he had failed to prove that he was mentally incompetent, which would have tolled the statute of limitations relating to his otherwise untimely worker's compensation claim. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Felder began working at United States Steel Corp. ("U.S. Steel") as a laborer in 1976. Felder was discharged and rehired by U.S. Steel in 1978. Felder claims that he was injured during the course of his employment at U.S. Steel on April 24, 1979, when the pneumatic hammer that he was operating slipped into a hole. Felder also claims that he was injured during the course of his employment at U.S. Steel on January 8, 1980. Felder's employment at U.S. Steel was terminated in 1980.

On April 16, 1981, Felder filed a worker's compensation claim against U.S. Steel. Felder's application alleged that he was injured when the pneumatic hammer that he was operating slipped into a hole on April 24, 1979. This claim was subsequently dismissed by the Board on June 20, 1983, for want of prosecution.

Felder filed a second worker's compensation claim against U.S. Steel on March 1, 2001. Felder's second application again alleged that he was injured when the pneumatic hammer that he was operating slipped into a hole. The second application additionally alleged that Felder was injured on January 8, 1980, during an altercation at U.S. Steel. The second application was subsequently dismissed with prejudice by the Board for failure to

prosecute the claim within a timely manner pursuant to Indiana Code section 22-3-3-3 (2000). Felder did not appeal the Board's denial of the second application.

On April 28, 2004, Felder filed a third worker's compensation claim against U.S. Steel. The third application alleged that Felder was injured during an altercation at U.S. Steel on January 8, 1980. The instant application referred to Felder's second application for additional information in support of the claim. In bringing this claim, Felder argued that his claim should be allowed and the time limitation for bringing a worker's compensation claim set forth in Indiana Code section 22-3-3-3 should be tolled because he was mentally incompetent during the years between the date he suffered the alleged injury and the date he filed the instant claim. The Board determined that Felder had failed to prove that he was incompetent during those years and denied Felder's third application as untimely pursuant to Indiana Code section 22-3-3-3. Felder now appeals.

### **DISCUSSION AND DECISION**

"The Indiana Worker's Compensation Act requires employers to provide their employees with 'compensation for personal injury or death by accident arising out of and in the course of the employment.'" *Outlaw v. Erbrich Prods. Co.*, 777 N.E.2d 14, 25 (Ind. Ct. App. 2002) (quoting Ind. Code § 22-3-2-2), *trans. denied*. An injury arises out of employment when there is a causal relationship between the employment and the injury. *Id.* A causal relationship exists when the injury would not have occurred in the absence of the accident. *Id.* Upon making a claim for worker's compensation benefits, the claimant bears the burden of proving the right to compensation. *Bertoch v. NBD Corp.*, 813 N.E.2d 1159,

116 (Ind. 2004). The Board, as the trier of fact, has a duty to issue findings that reveal its analysis of the evidence and that are specific enough to permit intelligent review of its decision. *Perkins v. Jayco*, 905 N.E.2d 1085, 1088 (Ind. Ct. App. 2009). However, the Board is not obligated to make findings demonstrating that a claimant is not entitled to benefits; rather, the Board need only determine that the claimant has failed to prove entitlement to compensation. *Id.*

In evaluating the Board's decision, we employ a two-tiered standard of review. *Id.* First, we review the record to determine if there is any competent evidence of probative value to support the Board's findings. *Id.* We then assess whether the findings are sufficient to support the decision. *Id.* We will not reweigh the evidence or assess witness credibility. *Id.* Where, as here, the claimant fails to prove that he is entitled to receive compensation, the claimant appeals from a negative judgment. *Id.* Upon review of a negative judgment, we consider only the evidence supporting the Board's determination together with any uncontradicted adverse evidence and will not disturb the Board's findings of fact unless we conclude that the evidence is undisputed and leads inescapably to a contrary result. *Id.* Further, while this court is not bound by the Board's interpretations of law, we should reverse only if the Board incorrectly interpreted the Worker's Compensation Act. *Id.*

Indiana Code section 22-3-3-3 (2003) provides that "the right to compensation under IC 22-3-2 through IC 22-3-6 shall be forever barred unless within two (2) years after the occurrence of the accident ... a claim for compensation thereunder shall be filed with the worker's compensation board." However, "no limitation of time ... shall run against any

person who is mentally incompetent.” Ind. Code § 22-3-3-30 (2003). Indiana Code section 1-1-4-5(12) (2003) provides that “mentally incompetent” means “of unsound mind.”

Felder argues that the Board erred in denying his claim for worker’s compensation benefits. In support, Felder argues that the Board erred when it found that he presented no evidence to support his claim of incompetence “because the undisputed medical evidence establishes [that he] has been incompetent to manage his legal affairs since 1979 until the present.” Appellant’s Br. p. 5. Specifically, Felder challenges four factual findings by the Board. Felder challenges the Board’s findings that “Dr. [Anthony L.] Berardi did not state [that Felder] was incompetent at any time during the last 25-plus years, but did suffer from some mental health issues” and “Dr. Berardi did not state [that Felder] was incompetent at any time.” Appellant’s App. p. 15. Felder also challenges the Board’s finding that he “has offered no medical evidence that he was incompetent during the filing of his three applications.” Appellant’s App. p. 15. Felder further challenges the Board’s finding that the Board “believes [that Felder] is sincere in his beliefs but is unable to comply with Indiana law in presenting evidence which would prove his claim of incompetence.”

The record contained a report completed by Dr. Berardi and Dr. Berardi’s deposition testimony relating his opinion of Felder’s mental state. Dr. Berardi’s report suggested that, at the time of their first meeting in 2005, Felder suffered from Paranoid Personality Disorder and mild Dysthymic disorder (depression). Dr. Berardi found Felder’s impairment to be along the low end of the moderate impairment range. Although Dr. Berardi opined that he believed Felder was at an increased risk of incompetence, he admitted that he could not make

a determination within a reasonable degree of professional certainty regarding Felder's competency prior to their first meeting in 2005. Dr. Berardi stated that while he believed that Felder may have difficulty managing his legal affairs, he did not believe that Felder was totally unaware of his legal rights or that Felder was incapable of managing his own affairs. Dr. Berardi further stated that Felder did not appear to be experiencing any significant impairment in his activities of daily living. Dr. Berardi at no time stated that Felder was incompetent. At most, Dr. Berardi opined that Felder was merely at an increased risk of incompetence.

In addition, the record contained the deposition testimony of Dr. Raymond Bucur, who examined Felder in 2001 and 2007. Dr. Bucur stated that in both 2001 and 2007, he considered Felder to be a competent and intelligent individual. Dr. Bucur stated that he had no opinion relating to Felder's competence prior to their first meeting in 2001. Dr. Bucur further stated that while he could not say with any certainty whether Felder suffered from Paranoid Personality Disorder in 1981, he believed that individuals who suffered from Paranoid Personality Disorder could be both mentally and physically capable of working and managing their affairs.

Notably, neither Dr. Berardi nor Dr. Bucur could give an opinion with any reasonable degree of professional certainty regarding Felder's competence prior to their first interactions with Felder in 2005 and 2001, respectively. Moreover, Felder presented no additional evidence relating to his mental state prior to 2001. Thus, we conclude that the Board's findings regarding Dr. Berardi's testimony and Felder's failure to present evidence relating to

his competence prior to 2001 are supported by competent evidence of probative value. In light of the lack of any testimony suggesting that Felder was incompetent during any of the years between the date he suffered the alleged injury in January of 1980 and his filing of the instant petition on April 28, 2004, we further conclude that the Board's findings are sufficient to support its determination that Felder failed to prove that he was incompetent so as to excuse his failure to file a timely worker's compensation claim pursuant to Indiana Code section 22-3-3-3.

The judgment of the Worker's Compensation Board is affirmed.

RILEY, J., and MATHIAS, J., concur.