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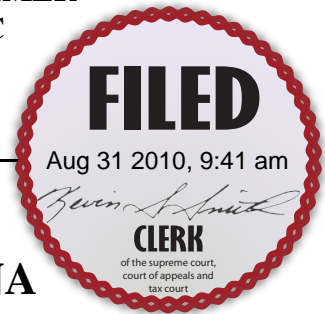
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**IN THE
COURT OF APPEALS OF INDIANA**



PIONEER AUTO TRUCK SALES, INC.,

Appellant-Defendant,

vs.

DOLORES BURCH,

Appellee-Plaintiff.

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No. 93A02-1002-EX-207

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Application No. C-186767

August 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

The Worker's Compensation Board of Indiana awarded benefits to Dolores Burch for an injury she sustained at work. Pioneer Auto Truck Sales, Inc. ("Pioneer") asserts the Board erred in awarding benefits because the expert medical report of Ralph Buschbacher, M.D., did not comply with Indiana Code § 22-3-3-6(e). Specifically, Pioneer contends Dr. Buschbacher did not physically examine Burch; the report does not contain the history of the injury, or claimed injury, as given by the patient; and the report does not contain a medical diagnosis. Because the report meets the statutory requirements for admission, we affirm.

FACTS AND PROCEDURAL HISTORY

Pioneer employed Burch at a truck stop. On November 3, 2006, Burch injured her right shoulder while lifting a thirty to forty pound bucket from the floor onto a pushcart. Burch felt a snap and a burning sensation in her right shoulder when lifting the bucket. The next day Burch went to the emergency room and was diagnosed with acute shoulder pain and limited range of motion. She was given medication for the pain and her arm was placed in a sling. Three days later, Burch saw her family physician regarding the shoulder pain, and the doctor recommended physical therapy.

Burch returned to work with Pioneer on November 9, 2006, and remained employed until January 19, 2007. Between November 6, 2006, and March 19, 2007, Burch did not seek additional medical care for her shoulder,¹ but she continued to take her medication and kept her arm in a sling. The record does not contain evidence of other incidents during those

¹ Burch visited her family physician again on November 30, 2006, and on January 26, 2007, for reasons unrelated to her shoulder injury.

months that might have injured or aggravated her shoulder.

On March 19 and 30, 2007, Burch sought medical care for her right shoulder. During those visits, a physician recommended Magnetic Resonance Imaging (MRI). On April 2, 2007, Burch underwent an MRI that revealed among other things a small full thickness rotator cuff tear² and possible mild impingement.³

Burch filed an Application for Adjustment of Claim with the Worker's Compensation Board on May 29, 2007, and claimed thereafter to continue experiencing pain. To support her claim for worker's compensation, Burch hired an expert, Dr. Buschbacher, to assess her injury. Dr. Buschbacher prepared a report based on Burch's medical records. He did not communicate with Burch. His report was divided into three sections: Source of Information, History, and Assessment. The report did not indicate any evidence of an intervening injury that would have caused Burch to continue having pain in her right shoulder.

Pioneer objected to the admission of Dr. Buschbacher's report, but it was admitted. The single hearing member found Burch sustained a personal injury from an accident arising out of and in the course of her employment. Pioneer appealed to the Full Worker's Compensation Board, which affirmed the award.

² A rotator cuff tear is an injury of the rotator cuff that may be acute or chronic and either partial or full thickness. Orthoinfo.aaos.org, American Academy of Orthopaedic Surgeons – Your Orthopaedic Connection <http://orthoinfo.aaos.org/topic.cfm?topic=A00064> (last visited July 30, 2010).

³ Mild impingement of the shoulder is one of the most common causes of pain in the adult shoulder. Impingement occurs when an arm is raised, if the shoulder blade (scapula) puts pressure on the rotator cuff. Orthoinfo.aaos.org, American Academy of Orthopaedic Surgeons – Your Orthopaedic Connection <http://orthoinfo.aaos.org/topic.cfm?topic=A00032> (last visited July 30, 2010).

DISCUSSION AND DECISION

When reviewing a decision of the full Worker's Compensation Board, we are bound by the factual determinations of the Board and may consider only errors in the Board's conclusions. *Obetkovski v. Inland Steel Indus.*, 911 N.E.2d 1257, 1260 (Ind. Ct. App. 2009).

We will not disturb the Board's factual determinations unless the evidence is undisputed and leads inescapably to a contrary result. *Id.* Accordingly, we disregard evidence unfavorable to the decision and consider only the evidence and reasonable inferences drawn therefrom that support the findings. *Inland Steel Co. v. Pavlinac*, 865 N.E.2d 690, 697 (Ind. Ct. App. 2007). We neither reweigh evidence nor assess the credibility of witnesses. *Colburn v. Kessler's Team Sports*, 850 N.E.2d 1001, 1005 (Ind. Ct. App. 2006), *reh'g denied, trans. denied*. While we are not bound by the Board's legal conclusions, we will disturb them only if the Board incorrectly interpreted the Worker's Compensation Act. *Pavlinac*, 865 N.E.2d at 697.

Pioneer argues the Board erred by admitting the report from Dr. Buschbacher. The Worker's Compensation Act provides, in relevant part:

All statements of physicians or surgeons required by this section, whether those engaged by employee or employer, shall contain the following information:

- (1) The history of the injury, or claimed injury, as given by the patient.
- (2) The diagnosis of the physician or surgeon concerning the patient's physical or mental condition.
- (3) The opinion of the physician or surgeon concerning the causal relationship, if any, between the injury and the patient's physical or mental condition, including the physician's or surgeon's reasons for the opinion.
- (4) The opinion of the physician or surgeon concerning whether the injury or claimed injury resulted in a disability or impairment and, if so,

the opinion of the physician or surgeon concerning the extent of the disability or impairment and the reasons for the opinion.
(5) The original signature of the physician or surgeon.

Notwithstanding any hearsay objection, the worker's compensation board shall admit into evidence a statement that meets the requirements of this subsection unless the statement is ruled inadmissible on other grounds.

Ind. Code § 22-3-3-6(e). A medical report of a physician who did not physically examine the claimant may be admissible, notwithstanding a hearsay objection, if the report meets the statutory requirements for admissibility provided by the Worker's Compensation Act. *Borgman v. Sugar Creek Animal Hosp.*, 782 N.E.2d 993, 997-98 (Ind. Ct. App. 2002) (holding medical report was admissible even though doctor did not examine claimant), *trans. denied*.

Pioneer contends Dr. Buschbacher's report is inadmissible because it does not meet those statutory requirements. Pioneer notes the doctor did not physically examine Burch but instead based his opinion on a review of her medical records. Pioneer also claims the report does not contain the history of the injury, or claimed injury, as given by Burch and does not contain a medical diagnosis.

Dr. Buschbacher's report included the history of Burch's injury, her diagnosis, his opinion on the cause and extent of her injury, and his signature. Burch's injury history is based on Dr. Buschbacher's examination of her medical records, which included Burch's explanation of the history of her injury as given to other medical providers. Dr. Buschbacher diagnosed Burch with right shoulder pain, and a small rotator cuff tear with a possible

element of adhesive capsulitis.⁴ The report explains the extent of Burch’s impairment by assessing the length of impairment and possible treatment. In Dr. Buschbacher’s opinion, Burch’s “condition was caused by her work injury of [November 3, 2006].” (App. at 14.) Thus, the report met the requirements of Ind. Code § 22-3-3-6(e) and was admissible. *See Borgman*, 782 N.E.2d at 998.

The medical report was admissible and provides substantial evidence to support the decision. Therefore, we affirm.

Affirmed.

BAILEY, J., and BARNES, J., concur.

⁴ Adhesive capsulitis, also known as “frozen shoulder,” is a self-limiting condition resulting from any inflammatory process in which capsular scar tissue is produced, which results in pain and limited range of motion. Orthoinfo.aaos.org, American Academy of Orthopaedic Surgeons – Your Orthopaedic Connection, <http://orthoinfo.aaos.org/glossary.cfm> (last visited July 30, 2010).