IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MATTHEW TAYLOR Employee	)	
v.	)	C.A. No. 07A-05-013 JRS
WILLIAM HOUCK, INC., Employer	)	

Date Submitted: January 21, 2008
Date Decided: January 31, 2008

Upon Consideration of
Appellant's Motion for Reargument.
DENIED.

This 31st day of January, 2008, Matthew Taylor ("Mr. Taylor"), having moved for reargument of this Court's decision affirming the Industrial Accident Board's denial of his Petition for Worker's Compensation, it appears to the Court that:

1. On April 21, 2006, Mr. Taylor sustained injuries as a result of a motor vehicle accident while working as a painter for William Houck, Inc. ("Houck"). On December 15, 2006, Mr. Taylor filed a Petition to Determine Compensation Due, alleging that the injuries he sustained as a result of this accident occurred within the course and scope of his employment with Houck.[1] Houck challenged Mr. Taylor's

[1] 19 *Del. C.* § 2301(18).

petition and argued that Mr. Taylor was injured while he was commuting to work and, therefore, was excluded from collecting workman's compensation.[2] A hearing was held on April 20, 2007 before the Industrial Accident Board ("Board").

2. Prior to the hearing, on April 18, 2007, at 4:49 p.m., Mr. Taylor's attorney emailed counsel for Houck requesting "any documents Employer plans to rely on at the Hearing..."[3] This was the first time he requested documents from Houck. Counsel for Houck did not respond to the email or produce any documents prior to the hearing.

3. At the hearing, counsel for Houck sought to introduce certain documents, over the objection of Mr. Taylor's attorney. Mr. Taylor's attorney argued to the Board that he was entitled to review any documents Houck intended to introduce into evidence prior to the hearing, but did not cite any specific rule as authority for his argument. In response to the objection, the Board asked counsel for Houck why he did not produce the documents he intended to rely upon prior to the hearing in accordance with his continuing obligation to produce documents to opposing counsel.[4] Counsel responded that the duty to produce documents and continue to do

---

[2] *Devine v. Advanced Power Control, Inc.*, 663 A.2d 1205, 1210 (Del. 1995).

[3] Docket Item ("D.I.") 6, Appellant's Brief, at 13.

[4] D.I. 3, Hr'g Tr. at 27.

so was not triggered until an appropriate request for production was made by opposing counsel. Unless and until such a request was made by Mr. Taylor's attorney, counsel for Houck argued that he had no duty to produce documents to opposing counsel as he prepared for the hearing.[5] The Board agreed and overruled Mr. Taylor's objection. The Board then confirmed its decision in a footnote to its opinion denying the Petition. The Board decided the matter according to Industrial Accident Board Rule ("IAB Rule") No. 9 and concluded that this rule applied only to the production of medical bills and did not cover all documents intended to be introduced at the hearing.[6]

4. On January 15, 2008, this Court issued its decision affirming the Board's decision to deny the Petition. Mr. Taylor now moves for reconsideration of the Court's decision on the ground that the Court neglected to consider his argument that the Board erred in admitting certain of Houck's documentary evidence over his objection. Mr. Taylor is correct that the Court did not address this argument in its January 15, 2008 decision. It will do so now.

5. Mr. Taylor argues that, pursuant to IAB Rule No. 11, he properly propounded a request for production of documents to which Houck never responded.

---

[5] *Id.*, at 28.

[6] D.I. 7, Decision of the Industrial Accident Board, at 4 n. 1 (May 1, 2007).

He further argues that the Board abused its discretion in allowing the documents into evidence and that he was prejudiced as a result. According to Mr. Taylor, the Board never addressed the applicability of IAB Rule No. 11 in its decision. Houck responds that Mr. Taylor never mentioned IAB Rule No. 11 at the hearing, that the request Mr. Taylor made did not meet the requirements for a written request under the rule, and that the timing of the request did not allow him fifteen days to respond, as required by the rule.

6. In reviewing a decision of the Board, the Court's role is to determine whether the Board's findings are supported by substantial evidence and are free from legal error.[7] Questions of law that arise from the hearing officer's decision are subject to *de novo* review, pursuant to Superior Court Civil Rule 3(c), which requires the Court to determine whether the Board erred in formulating or applying legal precepts.[8]

7. Pursuant to IAB Rule No. 11, a request for production of documents must be detailed and "describe each item with reasonable particularity." The rule also states that the party receiving the request has fifteen days to respond. If a party fails to respond to a proper request, the requesting party may seek an order from the Board

---

[7] *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del.Super. 1979).

[8] *See Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998); *Hudson v. State Farm Mut. Ins. Co.*, 569 A.2d 1168, 1170 (Del. 1990).

compelling discovery after notice and argument on the issue.[9]

8. During the April 21, 2006 hearing, Mr. Taylor never argued that IAB Rule No. 11 supported his position, nor did he provide any other authority as support for the argument that Houck's documents should not be admitted as evidence. Ultimately, the Board did rule on the discovery issue, albeit under a different provision of its rules.[10] The Board concluded that the email sent by Mr. Taylor's attorney on April 18th regarding documents for an April 21st hearing was not sufficient to require a response by Houck. While Mr. Taylor cites to a prior Board decision where a simple request for production of documents that will be used at trial was deemed sufficient to trigger IAB Rule No. 11 under the circumstances presented there,[11] this Board did not reach the same result under these circumstances. In its footnote, the Board explained that "Claimant did not present a Request for Production that would have required Houck to produce documents that it offered at the hearing."[12] This conclusion does not constitute legal error given the content and timing of the email which Mr. Taylor now claims to be a formal request to produce

---

[9] IAB Rule No. 11.

[10] D.I. 7, Decision of the Industrial Accident Board, at 4 n. 1.

[11] *Vivian Mosely v. Guardian Companies*, IAB Hearing No. 1255139.

[12] *Id.*

documents under the Board's rules.

10. Rule 11 requires the requesting party to identify the documents subject to the request with reasonable particularity. The Board reasonably could construe its rules to require more specificity than was provided in the April 18 email. More significantly, the rule states that the requesting party must allow the receiving party fifteen days to respond to the request. Mr. Taylor's request was not timely because it gave Houck less than seventy-two hours to respond. The insufficient time Mr. Taylor allotted for a response also precluded him from seeking the proper remedy of an order from the Board compelling Houck to produce the documents after notice and hearing. Based on the language of the rule and these facts, the Board properly allowed Houck to introduce into evidence documents not previously produced to Mr. Taylor.

11. Based on the foregoing, Mr. Taylor's Motion for Reargument is **DENIED.**

IT IS SO ORDERED.

_____

Judge Joseph R. Slights, III

Original to Prothonotary