

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ROBERT HUDSON,)
)
 Claimant-Below/)
 Appellant,)
)
 v.) C. A. No. 07A-10-009 MJB
)
 AMERICAN MIRREX,)
)
 Employer-Below/)
 Appellee.)
)

Submitted: April 3, 2008
Decided: July 23, 2008

On Appeal From the Industrial
Accident Board.
AFFIRMED.

OPINION AND ORDER

Tara E. Bustard, Esquire, Wilmington, Delaware, Attorney for Appellant.

Robin M. Grogan, Esquire, Wilmington, DE, Attorney for Appellee.

BRADY, J.

Robert Hudson (“Hudson”) appeals a decision of the Industrial Accident Board (“Board”) granting a Petition for Review filed by his employer American Mirrex Corporation (“AMC”). According to AMC’s Petition, Hudson is physically capable of returning to work and is, therefore, no longer entitled to receive total disability compensation.

After a hearing on August 13, 2007, the Board found that Hudson is no longer totally disabled from his work accident. Accordingly, the Board reduced his disability compensation from \$372.23 per week to \$287.34 per week. Hudson filed the instant appeal, arguing that the Board erred as a matter of fact and law in finding that he is no longer totally disabled. Specifically, Hudson argues that the Board erred in accepting the testimony of AMC’s expert witness over the testimony of Hudson’s expert witness. Hudson claims that the Board erroneously discredited his own expert witness because the Board relied on the results of a Functional Capacity Evaluation that never took place and, further, because the Board erroneously concluded that Hudson failed to provide his expert witness with necessary information. Additionally, Hudson argues that the Board erred in relying upon the opinion of a vocational expert who failed to consider the side effects of Hudson’s pain medications. For the reasons that follow, the Board’s decision is **AFFIRMED**.

BACKGROUND

Hudson injured his lumbar spine on January 29, 1997 while working as an electronics technician for AMC. Subsequent medical evaluations revealed a L4-L5 disk herniation (the “work injury”). Pursuant to an agreement reached between AMC and Hudson, AMC began paying total disability benefits to Hudson.

On September 3, 1998, Dr. Bruce Rudin (“Dr. Rudin”) conducted a L4-L5 laminectomy to repair the work injury. Hudson apparently returned to work sometime thereafter, but he re-injured his back. On February 13, 2003, Dr. Rudin performed a second laminectomy at the L5-S1 level.

In 1999 Hudson was in a serious car accident that resulted in injuries to his head, neck, shoulders, and hips. He eventually required two hip replacements due to the accident. One hip replacement took place in 2002 and one took place in 2003.

An MRI taken on February 25, 2004 revealed another disc herniation in Hudson’s lumbar spine at the L3-L4 level. According to Dr. Rudin, the L3-L4 injury is not related to Hudson’s work injury.

The Hearing Below

Dr. Ali Kalamchi, M.D. (“Dr. Kalamchi”),¹ an orthopedic spine surgeon, testified on behalf on AMC. Dr. Kalamchi testified that he evaluated Hudson on two occasions on October 3, 2005 and May 31, 2007. Both evaluations involved a physical examination as well as a review of Hudson’s medical records. Dr. Kalamchi concurred with Dr. Rudin’s conclusion that the L3-L4 injury was not related to Hudson’s work injury.

Dr. Kalamchi completed a Physical Capabilities Evaluation (“PCE”) after his October 3, 2005 examination. He ordered Hudson to undergo a Functional Capacity Evaluation (“FCE”), but he is not aware that one ever took place.²

Dr. Kalamchi opined that Hudson has reached maximum medical improvement with regard to his work injury and that he is no longer totally disabled from the work injury. Dr. Kalamchi based this conclusion on the fact that both physical examinations revealed that Hudson had no residual, major lower back limitations following two, apparently successful, lumbar spine surgeries. He testified that, in his experience, patients that do well following a lumbar laminectomy can usually go back to work in a limited

¹ Dr. Kalamchi testified via deposition on July 31, 2007.

² According to AMC, a Physical Capabilities Evaluation is a form completed by a physician to document a patient’s physical limitations whereas a Functional Capacities Evaluation is an examination done by a physical therapist at a physician’s request. Appellee’s Answering Br. at 14.

capacity. He opined that Hudson requires no further treatment for the work injury except for treating occasional pain. Dr. Kalamchi concluded that Hudson could return to light- to medium-duty, sedentary work with restrictions on lifting anything more than 35 pounds. Dr. Kalamchi testified that during both of his examinations, Hudson reported that he is able to occasionally perform odd jobs around the house such as mowing the grass, vacuuming, and repairing small appliances for friends and family members. Dr. Kalamchi testified that Hudson's ability to perform these tasks also indicates that he is capable of returning to work.

Dr. Kalamchi testified that his report did not contain any specific limitations on standing, bending, squatting or kneeling. He testified that a restriction of light- to medium-duty, sedentary work implies reasonable restrictions on repetitive standing, sitting, bending, climbing, etc.

Dr. Kalamchi testified that Hudson is currently prescribed morphine and Neurontin for pain. He testified that these medications may affect Hudson's ability to work. The morphine was prescribed by the Veteran's Administration ("VA") hospital to treat pain that is not related to Hudson's work injury. Dr. Kalamchi opined that the Neurontin is not an appropriate long-term treatment for Hudson's work injury.

Danny O’Neal (“Mr. O’Neal”), a vocational expert, also testified on behalf of AMC. He stated that he performed a Labor Market Survey (“LMS”) based on the work restrictions contained in Dr. Kalamchi’s reports as well as Hudson’s education and experience. The LMS included ten jobs within the Newark area that fit Hudson’s qualifications and physical limitations. The LMS did not consider the side effects of Hudson’s pain medications, because this information was not contained in Dr. Kalamchi’s reports.

Dr. Elva Delport, M.D. (“Dr. Delport”) testified on behalf of Hudson.³ Dr. Delport is a board-certified pain-management specialist. Dr. Delport has been treating Hudson since February 2004, and continues to treat him for pain associated with his back injuries.

Dr. Delport testified that she believes Hudson’s L3-L4 injury is related to his work injury, but she did not explain how she reached this conclusion. When asked if she spoke with Dr. Rudin about how Hudson injured his back at the L3-L4 level, she responded that she did not. Dr. Delport testified that she has been treating both injuries with epidural steroid injections approximately every six months. She has also prescribed Neurontin to treat both injuries. Dr. Delport testified that she has not

³ Dr. Delport testified via deposition on August 1, 2007.

prescribed any narcotic pain medication to Hudson because his records indicate that he has some addiction potential.

Dr. Delport conducted a Functional Capacity Questionnaire on December 21, 2005. According to the questionnaire, Hudson reported that he is unable to do anything consistent during the workday because he is constantly distracted by pain or drowsiness due to his pain medication. He also reported that he could walk only one city block without severe pain, could not sit or stand for more than 30 minutes at a time, and needed to lay down for at least 60 minutes during any given eight hour period. Dr. Delport testified that based upon these limitations, Hudson is totally disabled because “his restrictions would not allow him to be competitive in the workplace.”⁴

Dr. Delport stated that she would reach this same conclusion today. She stated that even light- to medium-duty, sedentary work would significantly increase the intensity and frequency of his episodic pain. She testified that Hudson would not be able to perform the duties of the positions contained in the LMS prepared by Mr. O’Neal, due to the effects of his pain medications and because the jobs would aggravate his condition. She testified that morphine is not a necessary or reasonable treatment for

⁴ Dep. of Dr. Delport at 20-21.

Hudson's work injury. She also testified that the side effects of Neurontin, by itself, would not prevent Hudson from working.

Hudson testified on his own behalf. He testified that he is 49 years old and has been working with electronics since he was in ninth grade. Hudson received training as an electrician when he was in the Navy, and he worked as an electrician/instructor at the A.I. Dupont Institute for ten years. He started working at AMC in 1991.

In addition to his car accident that necessitated his hip replacements, he has been in two, more-recent car accidents that he attributes to driving with morphine in his system. He testified that he was shot in the stomach while he was in the Navy. He acknowledged that he has pain in many areas of his body, and that he has been in many bad accidents. He admitted that he occasionally feels well enough to complete household chores and to repair small appliances when friends and family ask him to do so. He stated that most of the time all he is able to do is lay around the house and watch television because his medication makes him feel tired and groggy.

The Board's Decision

In evaluating the extent to which the work-related injury affects Hudson's ability to work, and after considering the conflicting medical

opinions of Dr. Delpont and Dr. Kalamchi, the Board concluded that the L3-L4 injury was not related to Hudson's employment at AMC and accepted Dr. Kalamchi's testimony over that of Dr. Delpont, because she "apparently related the diagnosis of lumbar stenosis at the L3-L4 to the work accident."⁵ The Board noted that Dr. Delpont's conclusion on this issue contradicted the conclusions drawn by both Dr. Kalamchi and Dr. Rudin. The Board also noted that the L3-L4 injury did not appear in an MRI until more than seven years after the work accident.

The Board also found that Dr. Delpont's opinion rested, in part, on a Functional Capacity Questionnaire conducted in 2005, and noted that a questionnaire is not an objective measurement of Hudson's disability. Additionally, the Board noted that Dr. Delpont was not particularly informed in several important respects. She failed to read medical records from the VA which not only showed the medications prescribed to him there, but which also indicated that, during relevant time periods, Hudson used marijuana, was addicted to codeine and had previously purchased Oxycontin off the street when he could not get a prescription for narcotic pain medication. Additionally, she did not document Hudson's activities of daily living such as doing chores and repairing small appliances.

⁵ *Hudson v. American Mirrex*, No. 1098284, at 16 (Del. I.A.B. Aug. Oct. 4, 2007) hereinafter "IAB."

Lastly, the Board noted that Dr. Delport's opinion was based, in part, on her belief that Hudson's pain medication hampered his ability to work even though the narcotic pain relievers were not prescribed to treat his work injury. Accordingly, the Board accepted Dr. Kalamchi's testimony and stated that "looking only at the injuries resulting from his work accident, the Board finds that Claimant is able to work in a sedentary to light duty" capacity.⁶

The Board then considered the LMS prepared by Mr. O'Neal and found that Hudson could earn a weekly salary of \$651.00 and that, accordingly, he was entitled to, and was awarded, partial disability payments of \$287.34.

STANDARD OF REVIEW

The Court has a limited role when reviewing a decision by the Industrial Accident Board. If the decision is supported by substantial evidence and free from legal error,⁷ the decision will be affirmed.⁸ Substantial evidence is evidence that a reasonable person might find

⁶ IAB at 18.

⁷ *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

⁸ *Sirkin and Levine v. Timmons*, 652 A.2d 1079 (Del. Super. Ct. 1994).

adequate to support a conclusion.⁹ The Board determines credibility, weighs evidence and makes factual findings.¹⁰ This Court does not sit as the trier of fact, nor should the Court substitute its judgment for that rendered by the Board.¹¹ The Court must affirm the decision of the Board, if properly supported, even if the Court might have, in the first instance, reached an opposite conclusion. Only when there is no satisfactory proof in support of a factual finding of the Board may this Court overturn it.¹²

ANALYSIS

Hudson claims that the Board committed errors of fact and law in deciding that Hudson is no longer totally disabled. Hudson argues that the Board erroneously accepted Dr. Kalamchi's opinion over Dr. Delport's, relied upon facts that were not in the record, and accepted the results of an unreliable LMS.

The Board is free to accept the opinion of one expert over another as long as the Board provides "specific relevant reasons for doing so."¹³ The Court finds that the Board provided specific, relevant reasons for accepting

⁹ *Oceanport Indus. Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).

¹⁰ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).

¹¹ *Id.* at 66.

¹² *Id.* at 67.

¹³ *Turbitt v. Blue Hen Lines, Inc.*, 711 A.2d 1214, 1215 (Del. 1998); *Wyrick v. Leaseway*, 2002 WL 537591 (Del. Super. April 10, 2002).

Dr. Kalamchi's testimony. Moreover, the Court finds that the reasons articulated by the Board are supported by substantial evidence in the record. The Court also finds that the Board committed no error in relying upon the results of the LMS. Therefore, the decision of the Board is **AFFIRMED**.

Dr. Delport's Opinion Considered Factors Other Than the Work Injury

AMC had the burden of proving that Hudson was medically able to return to work.¹⁴ However, as the Board correctly stated in its analysis, "AMC can only be held responsible for treatment related to the work accident of 1997."¹⁵ Hudson obviously suffers from a litany of ailments and injuries which impair his ability to work. The Board was faced with the difficult task of separating the work injury from Hudson's other health problems, and determining the amount of disability attributable solely to the work injury.

Dr. Kalamchi testified that Hudson is no longer totally disabled due to the work injury, and Dr. Delport testified that Hudson is still totally disabled due to the injury. Ultimately, the Board found Dr. Kalamchi's opinion more persuasive, because Dr. Kalamchi's testimony was specific to the work

¹⁴ *Bailey v. State*, 2004 WL 745716 at *4 (Del. Super. April 5, 2004).

¹⁵ IAB at 18. *See generally* *Rogers v. Lear Corp.* 2002 WL 819140 (Del. Super. April 30, 2002); *Anderson v. General Motors Corp.*, 2002 WL 233747 (Del. Super. Jan. 29, 2002).

injury, whereas Dr. Delport's testimony considered factors other than the work injury.

Specifically, the Board found that Hudson's L3-L4 injury was unrelated to his work injury. However, Dr. Delport's opinion was premised on her belief that the two injuries were related. Similarly, Dr. Delport concluded that Hudson's pain medication prevented him from obtaining steady employment, but the Board determined that the side effects of his pain medication were not causally connected to the work injury. Since Dr. Delport's opinion considered factors that – according to the Board's findings – were not relevant to Hudson's work injury, the Board properly rejected her ultimate conclusion that Hudson is totally disabled.

Dr. Kalamchi testified that the L3-L4 injury was not related to the work injury. Dr. Rudin, who performed both of Hudson's back surgeries, did not testify before the Board. However, the information in Hudson's medical records – upon which Dr. Kalamchi relied – indicates that Dr. Rudin also did not believe the two injuries were related. Further, the Board noted that the L3-L4 herniation did not appear on Hudson's MRI until almost seven years after he first injured his back at work. During that time period, Hudson was in a serious car accident, resulting in injuries to his head, neck, shoulders, and hips.

Dr. Delport testified that, in her opinion, the two injuries were related, but she did not expound on how the work injury caused Hudson's L3-L4 injury seven years later. She acknowledged to the Board that she had not spoken with Dr. Rudin regarding the cause of the L3-L4 injury. The Board, relying on the evidence before it, had substantial evidence to find that Hudson's L3-L4 injury was not related to his work injury.

Dr. Delport also testified that the effects of Hudson's pain medication impair his ability to work. However, when asked about the side effects of Neurontin, the only medication that she has prescribed for Hudson's back pain, she responded as follows:

Q: "So, just taking the Neurontin on its own for medication wouldn't necessarily impair Mr. Hudson's ability to work, would it.?"

A: "No, it would not."¹⁶

The only other pain medication prescribed for Hudson is morphine, which was prescribed by the VA to treat unrelated injuries. Therefore, the evidence in the record supports a finding that Dr. Delport's opinion included considerations relevant to factors other than the work injury, and that the medication Hudson is taking for the work-related injuries is not such that it interferes with his ability to work.

¹⁶ Dep. of Dr. Delport at 33.

In contrast, Dr. Kalamchi's opinion was specifically targeted toward the level of disability that should be attributed solely to the work injury. He concluded that the two surgeries and subsequent treatments have resulted in maximum medical recovery for Hudson's work injury, and that the work injury in itself does not prevent Hudson from returning to work with reasonable limitations. He also testified that most patients with injuries similar to Hudson's work injury return to work after a successful surgery. Accordingly, substantial evidence supports a finding that Dr. Kalamchi's opinion was more persuasive.

Hudson's Medical History

The Board also rejected Dr. Delpont's opinion because she did not document relevant information contained in Hudson's medical history, calling into question when she knew certain facts. The Board stated the following:

She admitted to not documenting Claimant's activities of daily living. She was remised [sic] for having done so. It was not until February 2006 that she realized that Claimant had been working, doing small appliance repairs, that he stopped working regularly but not totally. In addition, Dr. Delpont started seeing Claimant in March 2004, but she failed to read medical records from the VA Hospital indicating Claimant had been using marijuana medicinally (October 2005) and indicating addiction to codeine for a year and a half (June 2004). Also, Claimant had been

buying Oxycodone off the street... Claimant placed Dr. Delport in the dark, weakening her opinion by not informing her of medications he was taking and activities he was doing. Now, he wants the Board to rely on her opinion.¹⁷

Hudson argues that the Board erred in this regard because Dr. Delport testified that she knew of Hudson's addiction potential in general and also knew that he occasionally repaired small appliances and did other chores around the house. Hudson also claims that his marijuana and Oxycontin use is irrelevant to Dr. Delport's treatment because she did not prescribe him any narcotics

Contrary to Hudson's implication, the Board's decision did not state that Dr. Delport was unaware of Hudson's addiction potential. The Board merely stated that Dr. Delport failed to read Hudson's VA records and did not specifically document his codeine addiction. Further, Hudson's argument about his past use of marijuana and Oxycontin is not persuasive. The Board concluded, and Hudson concedes, that Dr. Delport was not aware of this information. Hudson did not fully inform Dr. Delport of his past drug use, and the Board reasonably inferred that such an omission indicates that Dr. Delport, through no fault of her own, based her opinion on incomplete information.

¹⁷ IAB at 17.

As for Dr. Delport's knowledge of Hudson's daily activities, Hudson is correct that the record does not support the Board's finding that Dr. Delport was unaware of Hudson's limited work capacity until February 2006. Dr. Delport testified that as of February 2006 Hudson was working in a limited capacity.¹⁸ However, she never stated that she was unaware of this fact prior to February 2006. The record is simply unclear as to when Dr. Delport first became aware of Hudson's ability to work. She testified that she did not document his responses to inquiries on this subject.¹⁹ The Board erroneously equated her lack of documentation with a lack of knowledge.

However, the Court finds that this mistake amounts to harmless error.²⁰ It was one erroneous conclusion among several other, relevant and rational deductions made upon the evidence presented at the hearing.

The Board's decision to give less weight to Dr. Delport's opinion was not solely because her records were incomplete in several respects, but for the numerous, other reasons discussed, and the evidence supports this overall conclusion.

¹⁸ Dep. of Dr. Delport at 31-32.

¹⁹ *Id.*

²⁰ See *Wyrick* at *4.

The Functional Capacity Evaluation

Hudson also argues that the Board's decision must be reversed because the Board relied on a Functional Capacity Evaluation (FCE) that never took place. AMC concedes that a FCE never occurred, but argues that the Board's inaccuracy amounts to harmless error.

The Court finds that the Board did not rely upon its erroneous understanding that an FCE occurred, and is satisfied that the Board would have reached the same conclusion absent its mistaken belief about the FCE.²¹

Although Hudson devotes a substantial portion of his brief to his argument regarding the FCE, the Board's decision and the parties' witnesses scarcely mention the subject. The Board's 20-page Opinion mentions the FCE on just two occasions. In the Summary of Evidence, the Board states:

Mr. O'Neal was aware that Dr. Kalamchi had done a functional capacity evaluation ("FCE") in October 5, 2005, and concluded that Claimant could work in a sedentary capacity with restrictions for standing, walking and crawling.²²

Then, in the Board's Findings of Fact and Conclusions of Law, the Board explains its decision to reject Dr. Delpert's opinion as follows:

²¹ *Id.*

²² IAB at 7.

The Board also discounted Dr. Delpont's opinion because she relied on a December 2005 functional capacity questionnaire and testified that she would come to the same conclusion of total disability today. The Board notes that Dr. Kalamchi did an FCE just two months prior, in October 2005, and he determined that Claimant could work in a restricted capacity. If there is any reliance on a 2005 document, the Board would rather rely on the results of an FCE, which involves physical testing, rather than a questionnaire.²³

As AMC concedes, an FCE never took place. However, the evidence shows that Dr. Kalamchi did perform a PCE (emphasis added), which does involve a physical examination, on October 5, 2005 and that this evaluation was based upon his October 3, 2005 physical examination. The PCE indicated that Hudson could return to sedentary work with restrictions on lifting items over 10 pounds.²⁴ It is clear to the Court that the Board mistakenly referred to the evaluation as an FCE rather than a PCE. The Board decided that Dr. Kalamchi's evaluation was more reliable because it was based upon a physical examination and not a questionnaire, and the record conclusively shows that such an examination took place. The fact that the Board referred to it as an FCE, rather than a PCE, is of little consequence.

²³ IAB at 17.

²⁴ Kalamchi at 27-28.

Moreover, it is clear from the above excerpt, that the Board did not place significant weight on either evaluation because they both occurred in 2005, almost two years prior to the August 2007 hearing. Neither evaluation shed much light on Hudson's present ability to work, and the Board did not rest its opinion on the results of either one.

The Labor Market Survey

Hudson also argues that the Board lacked substantial evidence to find that employment is available to a person with his physical limitations.

AMC contends that it had no burden to prove the availability of employment. AMC further submits that it proved the availability of employment despite its position that it had no burden to do so. Essentially, AMC argues that it exceeded the minimum burden of proof on a petition to terminate total disability benefits.

The Court finds that AMC did have the burden to prove the availability of employment. The Court further finds that the Board had substantial evidence to find the availability of employment that fit Hudson's physical limitations.

On a petition to terminate total disability benefits, the employer has the initial burden of showing that the claimant is no longer totally

incapacitated from working.²⁵ If the employer satisfies this burden, the burden of proof shifts to the employee, who must then show that he/she is a displaced worker. “Assuming that the employee can demonstrate that she is displaced, the burden shifts back to the employer to show the availability of work within the employee’s capabilities.”²⁶

AMC contends that it met its initial burden through the expert testimony of Dr. Kalamchi, who testified that Hudson’s work injury, by itself, does not prevent Hudson from finding employment with reasonable physical limitations. AMC argues Dr. Kalamchi’s testimony shifted the burden to Hudson to show that he is a displaced worker.

However, as the Board’s opinion correctly reflects, in order for an employer to show that a worker is no longer totally incapacitated from working, the employer must satisfy a two-part inquiry:

To show that a claimant’s incapacity has terminated, evidence must be presented that the claimant is medically able to return to work and that employment is available within the claimant’s restrictions.²⁷

In the instant case, Dr. Kalamchi testified that Hudson is medically able to return to work with certain restrictions, and the Board found this testimony credible. Mr. O’Neal testified regarding the LMS that he

²⁵ *Torres v. Allen Family Foods*, 672 A.2d 26, 30 (Del. 1996).

²⁶ *Id.*

²⁷ *Bailey v. State*, 2004 WL 745716 at *4 (Del. Super. April 5, 2004).

prepared. Mr. O'Neal identified ten positions that would fit Hudson's education, experience level and the physical restrictions set forth by Dr. Kalamchi.

Hudson argues that the Board erroneously relied upon the results of the LMS because (1) Dr. Kalamchi never provided specific recommendations to Mr. O'Neal regarding Hudson's restrictions (2) Mr. O'Neal relied on an FCE that never took place and (3) Mr. O'Neal did not consider the side effects of the medications that Hudson was taking.

The Court finds that there was substantial evidence for the Board to rely upon the LMS.

Mr. O'Neal testified that he reviewed two medical reports prepared by Dr. Kalamchi, dated October 5, 2005 and May 31, 2007. The latter indicated that Hudson was capable of light- to medium-duty, sedentary work with restrictions on lifting anything over 35 pounds. Mr. O'Neal used these restrictions to prepare the LMS.

Hudson argues that Dr. Kalamchi never gave specific restrictions on Hudson's physical activities. The Board obviously determined that the general restrictions contained in Dr. Kalamchi's reports provided sufficient information to prepare the LMS. The Court has no basis upon which to disturb that finding.

Hudson also states that Mr. O’Neal relied upon a non-existent FCE. Mr. O’Neal testified that to his knowledge, an FCE was ordered. When he was asked whether or not the FCE was completed he responded, “I am not sure because it was irrelevant in a sense that, that was 2005...”²⁸

The evidence, then, clearly indicates that Mr. O’Neal did not rely on the FCE. To the contrary, he testified that the 2005 FCE was not relevant to his analysis.

Mr. O’Neal testified that Dr. Kalamchi did not include any limitations related to the medications that Hudson was taking. Accordingly, the LMS did not consider the side effects of Neurontin and morphine. In accepting the results of Mr. O’Neal’s LMS, the Board stated:

While Mr. O’Neal did not tell the employers of Claimant’s narcotic medication, the Board does not find this omission fatal in that the medication is not causally related to the work accident.²⁹

Hudson claims this conclusion is erroneous, because his non-narcotic medication (Neurontin) is causally related to his work injury and would impair his ability to work. However, as stated above, even his own physician, Dr. Delport, when asked about the side effects of Neurontin, stated that it would not, on its own, impair Hudson’s ability to work.

²⁸ IAB Hr’g Trans. at 28.

²⁹ IAB at 19.

Therefore, the Court is satisfied that the Board committed no error in accepting the results of the LMS.

CONCLUSION

For the forgoing reasons, the decision of the Industrial Accident Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

M. Jane Brady
Superior Court Judge

cc: Prothonotary