

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

LINDA H. WILKINSON,)	
)	
Claimant-Below, Appellant,)	
)	
v.)	C.A. No. N10A-05-009 CLS
)	
GENERAL MOTORS CORPORATION,)	
)	
Employer-Below, Appellee.)	
)	

Date Submitted: November 16, 2011

Date Decided: January 24, 2012

On Appeal from the Industrial Accident Board.

AFFIRMED.

ORDER

Joseph W. Weik, Esq., Weik, Nitsche & Dougherty, 305 North Union Street,
Second Floor, P.O. Box 2324, Wilmington, DE 19805. Attorney for Appellant.

Linda Wilson, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, 1220 N.
Market Street, 5th Floor, P.O. Box 8888, Wilmington, DE 19899. Attorney for
Appellee.

Scott, J.

Introduction

Before this Court is the Appellant's appeal from the decision of the Industrial Accident Board ("Board"). Where there is substantial evidence and conflicting testimony, the Board is permitted to accept the testimony it finds credible. Therefore, the decision of the Board is **AFFIRMED**.

Background

On June 24, 2005, Linda Wilkinson ("Appellant") suffered a work-related injury to her Achilles tendon in her left foot while working in the course and scope of employment with General Motors Corporation ("General Motors"). On the day of the incident, Appellant received an emergency call that someone in her area needed assistance. The lights were turned off in that area. While walking over to assist the person in need, Appellant's left foot slammed into a ramp. Appellant underwent two surgeries to repair the ruptured Achilles tendon. The surgeries cured the Achilles tendon, but Appellant continued to experience a burning sensation in her left foot.

Appellant developed Complex Regional Pain Syndrome ("CPRS" or "RSD") in her left leg, from the knee down. On December 23, 2009, the parties agreed that the RSD progressed to the right lower extremity; General Motors compensated Appellant for a 25% impairment of the right lower extremities.

On September 24, 2010, Appellant filed a Petition to determine additional compensation due. Appellant claimed that she suffered a recurrence of CRPS that has spread to her head, as well as her right and left upper extremities. Appellant requested the following from General Motors: (1) an acknowledgement of compensability for the alleged recurrence; (2) payment of related medical expenses; and (3) payment of temporary total disability benefits at the rate of \$571.64 per week. General Motors denied that Appellant's head and upper extremities injuries were causally related to the work injury. A hearing was held by the board on April 18, 2011.

At the hearing, Appellant testified that she has experienced symptoms in her left leg beyond her knee, in her right leg below the knee, in both hands, up her left arm and through her shoulder and into the top part of her head and left ear for a couple of years. She testified that prior to the June 24, 2005 work injury, she was symptom-free from pain on the left side of her body for four or five years. Appellant has treated with four different doctors but currently treats with Dr. Ronald Goodman ("Dr. Goodman"). Appellant claimed that her health prior to the work accident was fine. However, on cross examination, General Motors presented medical records before the accident that reflect the same type of injuries

complained of now.¹ Appellant distinguished the injuries by testifying that the prior symptoms, before the accident, were muscular in nature, while the current symptoms are neurological in nature.

Dr. Goodman, who is board certified in family medicine, testified by deposition on behalf of Appellant. Dr. Goodman is currently treating Appellant's medical treatment by referring her to specialists and by prescribing medications approved by those specialists. Dr. Goodman testified that the prescribed medications are causally related to the work injury. Dr. Goodman relates Appellant's additional symptoms to the work injury. He testified that RSD spread to other areas of Appellant's body for an unknown reason.

In preparation for his testimony, Dr. Goodman did not review any pre-accident medical records and also had difficulty reading his notations in

¹ Appellant's medical history before the work accident indicates that: (1) starting in 2000, Appellant described a burning in her left hand; (2) in September 2000, Appellant was treated for sensory issues that started in her left leg and spread to her left face and arm. Appellant also complained of neck stiffness; (3) In October 2000, Appellant was treated at Rheumatology Associates for pain in her left thigh, left foot, left forearm and left shoulder; (4) in April 2001, she was treated for an onset of shooting pain down her left leg that was described as a cold burn; Appellant additionally complained of ongoing neck stiffness for six weeks, severe pain in her left hip, shooting pain described as a burning numbness that went up the left side of her face and down her left arm, pain to her left arm, right arm, and face; (5) in July 2001, Appellant treated with Dr. Goodman for pain in the left side of her body; (6) in August 2001, Appellant had an MRI of her brain because of facial and arm numbness; (7) in October 2001, Appellant reported numbness in her left cheek and left shoulder; (8) in November 2001, Appellant complained of a year and half of diffuse aching in her left scapular shoulder and arm region with soreness and numbness extending down the forearm and hand; (9) on November 25, 2003, Appellant complained of pain to the left side of her face, head, left shoulder and entire left side of her body; (10) in March 2004, Dr. Goodman treated Appellant for pain on the left side of her body; (11) in December 2004, about six months before the work accident, Appellant requested the prescription drug Celebrex to alleviate the symptoms she was experiencing for six years.

Appellant's file. On cross examination, General Motors went through Appellant's pre-accident medical history in detail with Dr. Goodman. Dr. Goodman maintained his opinion that Appellant's prior injuries were distinct from the work injury and resolved before the injury occurred.

Dr. Steven Mandel, ("Dr. Mandel") a board certified neurologist, testified on behalf of General Motors. Dr. Mandel reviewed Appellant's medical records that predated the work injury. He acknowledged that Appellant had CRPS in her lower extremities that was causally related to the work injury. According to Dr. Mandel, Appellant had similar symptoms prior to the work injury and there is not sufficient evidence in the record to suggest that the injuries resolved. Dr. Mandel testified that although her complaints could be CRPS, they could also be the same complaints Appellant had before the accident. Therefore, Dr. Mandel could not state, with medical probability, that the symptoms are more likely causally related than not related to the work injury.

On May 9, 2011, the Board issued an opinion finding that Appellant did not meet her burden of proving that the CRPS in her upper extremities and other areas of her body are related to the original work injury. The Board rejected Dr. Goodman's opinions because he did not review Appellant's pre injury records. Instead, the Board relied on Dr. Mandel's opinion. Additionally, the Board did not find Appellant to be a credible witness, as her testimony was unreliable and

evasive. When questioned about her health prior to the work accident, she was not forthcoming. Therefore, the Board held that because Appellant failed to meet her burden of proof on causation, her Petition to determine additional compensation was denied.

Appellant appealed the Board's decision to this Court and General Motors responded.

Standard of Review

The scope of review of an appeal from an administrative agency requires this Court to determine whether the ruling is free from legal error and supported by substantial evidence.² Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.³ Substantial evidence requires more than a scintilla but less than a preponderance of the evidence.⁴ When the decision is not supported by substantial evidence it must be reversed.⁵ When critical issues are overlooked or ignored, remand for further consideration is appropriate.⁶

However, this Court's review is limited.⁷ The Court will not weigh the evidence, determine the credibility of the witnesses, or make its own factual

² *Varga v. Gen. Motors*, 996 A.2d 794, at *2 (Del. 2010) (TABLE) (citation omitted).

³ *Martinez v. Gen. Metalcraft, Inc.*, 919 A.2d 561, at *1 (Del. 2007).

⁴ *Id.*

⁵ *Mladenovich v. Chrysler Group, LLC*, 2011 WL 379196 (Del. Super. Jan. 31, 2011)

⁶ *Sharpe v. W.L. Gore & Associates*, 1998 WL 438796 (Del. Super. May 29, 1998).

⁷ *Id.*

findings and conclusions.⁸ Deference is given to the decision of the Board.⁹ The record is viewed in the light most favorable to the party prevailing below.¹⁰

Discussion

The Board Did Not Commit Legal Error in Concluding that Appellant's Additional CRPS Injuries were Unrelated to the Work Accident on October 9, 2007.

The Board did not commit legal error in concluding that Appellant failed to meet her burden of proof of showing that subsequent injuries were related to the original work injury on June 9, 2007. Thus, the Board properly denied Appellant's Petition to determine additional compensation due.

Pursuant to 10 *Del. C.* § 2304, for an injury to be compensable by an Employer, the injury must arise out of and in the course of employment. Appellant had the burden of proving that the injuries to her head and upper extremities were caused by the work injury.¹¹ “[W]hen there is an identifiable industrial accident, the compensability of any resultant injury must be determined exclusively by an application of the ‘but for’ standard of proximate cause.”¹² Hence, Appellant was required to show that “but for” the injury at work, she would not have suffered symptoms in her head and upper extremities.¹³ The injury does not need to be the

⁸ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁹ 29 *Del. C.* § 10142.

¹⁰ *O'Brien v. Unemployment Ins. Appeals Bd.*, 1993 WL 603363 (Del. Super. Oct. 20, 1993).

¹¹ *Chubb v. State*, 961 A.2d 530, 535 (Del. 2008).

¹² *See State v. Steen*, 719 A.2d 930, 932 (Del. 1998).

¹³ *See 11 Del. C.* § 261.

sole cause or substantial cause of the injury.¹⁴ Instead, if the accident provides the setting or trigger, causation is satisfied for workers' compensation.¹⁵

The Board properly used the "but for" standard in determining that Appellant lacked evidence to establish that the work injury was the proximate cause of her additional injuries.

There is Substantial Evidence in the Record Supporting the Board's Decision.

There is substantial evidence in the record supporting the Board's decision denying additional compensation for medical treatment and prescription drugs. The record is replete with medical records indicating had similar injuries years before the work injury occurred. However, under the *Reese* standard, if the work injury was a trigger, causation is satisfied. Here, there is substantial evidence in the record suggesting that the injury was not a trigger because approximately six months before the accident, Appellant asked for prescription drugs to alleviate the pain she experienced for six and a half years prior to the injury.

In holding that the new injuries were unrelated to the work injury at General Motors, the Board accepted Dr. Mandel's testimony. The Board did not rely on Dr. Goodman's testimony because Dr. Goodman failed to review Appellant's pre-accident medical record. Also, the Board did not find Appellant to be a credible witness. She was not forthcoming about her prior medical history. She testified

¹⁴ *Reese v. Home Budget Ctr.*, 619 A.2d 907, 910 (Del. 1992).

¹⁵ *Id.*

that prior to the work accident, her health was fine and she was symptom-free for four or five years before the injury. The Board concluded that Appellant's medical history showed otherwise. She complained of the same general symptoms as recently as December 13, 2004.

Based on the proper standard of review on appeal, this Court does not determine credibility. The Board was permitted to determine credibility of witnesses and make their own findings of fact based on the evidence presented at the hearing. Therefore, the Board was within their purview to determine that Appellant was not a credible witness and Dr. Mendel's testimony was more reliable than Dr. Goodman's testimony.

The Board did not commit legal error and there is substantial evidence in the record supporting its decision.

Conclusion

Based on the forgoing, the decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.