

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

CONTI ELECTRIC,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 08A-12-007-JEB
	)	
JAMES STEPPI,	)	
	)	
Appellee.	)	

Submitted: July 20, 2009  
Decided: July 30, 2009

*Appeal from a Decision of the Industrial Accident Board.  
Reversed and Remanded.*

**OPINION**

*Appearances:*

Eric D. Boyle, Esquire, Wilmington, Delaware.  
Attorney for Conti Electric.

Richard T. Wilson, Esquire, Wilmington, Delaware.  
Attorney for James Steppi.

**JOHN E. BABIARZ, JR., JUDGE**

This is an appeal from the Industrial Accident Board (“Board”). Employer

Conti Electric, Inc. (“Employer” or “Conti”) has appealed the Board’s decision granting Claimant James A. Steppi’s Petition to Determine Compensation Due. The Court finds that there is not substantial evidence to support the Board’s finding that Claimant was exposed to hydrogen sulfide which caused a somatoform disorder, a condition which includes physical symptoms that have no known cause. The decision is reversed and the matter is remanded to the Board for proceedings consistent with this Opinion.

**Facts.** Claimant has been an electrician for more than 40 years. At the time of the incident, he was working as a union electrician for Conti Electric, and was assigned to the Valero Petroleum Refinery in Delaware City. Claimant worked in the Sulfur Recovery Unit (“SRU”) and carried a mobile gas meter that was calibrated to go off in the presence of either hydrogen sulfide or sulfur dioxide, both highly toxic gases. Five stationary meters were placed at locations throughout the work area. The gas meters were very sensitive and often alerted the workers not only when toxic amounts of hydrogen sulfide in the area but also when trace amounts were given off by food, human waste and portable bathrooms. No evidence was presented that the sensors failed to go off when toxic fumes were present.

On December 11, 2006, Claimant had a small cup of coffee, which he rarely drank. Once at work, he began managing supplies in the SRU. He walked away from

the SRU to go to a supply trailer. As he was walking, he began to feel extremely warm, lightheaded, flustered, nauseated, and experienced a tightening in his chest and tingling in his hands. He continued walking until he reached the supply trailer where he spoke to Lou Prada, foreman for materials. Claimant sat down and nearby workers noted that his face was bright red. Claimant said he felt fuzzy and experienced a tingling in his back, neck and fingers. His co-workers removed his chemical suit, gave him oxygen and called Valero's EMT staff and also the ambulance.

When EMT personnel arrived, they talked to both Claimant and Mr. Prada and wrote up a report. The report does not mention chemical exposure, confusion or related symptoms. It focuses instead on back pain from a prior injury. At the hospital, Claimant indicated that he had previously thrown out his back and that he felt pain in his neck, head and body, and had a sense of rigidity and tension. At the hearing, there was evidence presented that Claimant had seen a doctor at least once for these problems.

The hospital report also stated that Claimant's face was bright red but then turned pale white, that he had no chest pain, but felt shaky and had lower back and right hip pain. There is no mention of nausea, confusion, possible neurological issues or possible exposure to toxic gases. After being sent back to work, Claimant drove himself home. The next day Claimant went to a chiropractor, then a podiatrist, then

to Dr. Carlos Reyes, whose assistant scheduled certain tests, including MRI's and X-rays. In May 2007, Claimant went to Dr. Eliasson complaining of difficulty in breathing, heart and liver problems, as well as confusion and lack of focus. Three days later, Claimant filed a Petition to Determine Compensation Due. Hearings were held in June and August 2008. The Board issued a decision granting Claimant's petition for total disability benefits, and Employer appealed to this Court.

**Standard of review.** On appeal of a decision of an administrative body, this Court is limited to examining the record for errors of law and determining whether substantial evidence exists on the record to support the factual findings.<sup>1</sup> Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>2</sup> This Court does not weigh the evidence, determine questions of credibility or make its own factual findings.<sup>3</sup> The Board's factual findings are overturned only where there is no satisfactory proof to support them.<sup>4</sup>

**The Board's decision.** The Board found that it was believable, to use the Board's phrase, that there was a hydrogen sulfide leak in the area where Claimant

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<sup>1</sup>*Histed v. E.I. de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

<sup>2</sup>*Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

<sup>3</sup>*Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>4</sup>*Day & Zimmerman Security v. Simmons*, 965 A.2d 652, 656 (Del. 2008)(citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

was walking when he had his incident, even though the sensors did not go off. The Board accepted Claimant's doctors' opinion that Claimant suffered the symptoms of hydrogen sulfide exposure and rejected Employer's doctor's opinion that Claimant had a panic attack. The Board concluded that Claimant was exposed to hydrogen sulfide on December 11, 2006, which caused his ongoing somatoform disorder, which in turn prevents him from working in any capacity. Claimant was awarded Claimant compensation for total disability beginning the date of the incident and ongoing.

**Issues.** On appeal, Employer argues that the Board's conclusion that Claimant's injuries were caused by hydrogen sulfide is not supported by substantial evidence because there is no evidence of a hydrogen sulfide leak on the day in question. Claimant argues that there is substantial evidence to support the Board's finding that the gas meters were unreliable and that the medical evidence provided substantial evidence for the Board's decision.

**Discussion.** The first issue is whether the record contains substantial evidence to support the Board's finding that there was a hydrogen sulfide leak in the area where Claimant was walking when he had his attack. This analysis must begin with the fact that none of the sensors went off. Claimant had an individual meter with him and there were also sensors attached to the walls. Evidence was presented that the sensors were over-sensitive and sometimes went off when trace amounts of toxic gas

were present in the air. It is important that no evidence was presented that the sensors did not go off when toxic gas was present in the air. No one was with Claimant when he had his attack, no one smelled gas, and no other employees experienced symptoms. Robert Hoosier, who worked as a safety consultant for Employer at the time in question, testified that none of the sensors recorded any leakages and that neither Claimant nor anyone else mentioned gas exposure to the ambulance personnel. On cross examination he said he had been present at a hearing where there was testimony that the sensors had been going off when no gas was present and not going off when there was gas present. He himself was unaware of any such incident. Hoosier also testified that the records generated by the sensors did not reflect any leakages at the date and time in question.

The Board reasoned that if the sensors could be too sensitive they could also be under sensitive:

Claimant's individual gas meter did not go off and Employer maintains that there was no leak at Valero that day. Employer points to the fact that no air meters or individual meters went off that day, and there is no record of any leaks. . . . Mr. Horgan, Project Manager, who testified on behalf of Employer, [stated] that the sensors were sensitive and were going off at times there were no leaks. Mr. Horgan's testimony that the air and individual sensors have gone off when there were no leaks confirms Claimant's testimony regarding the lack of dependability of the meters. Additionally, Mr. Horgan testified that he personally believes that if the sensors failed, they failed on the positive side. **However, if the sensors were going off on the positive side, it is clear that they**

**were not always accurate. The Board finds that it is believable that there was a toxic gas leak even though the sensors did not go off.<sup>5</sup>**

Despite this conclusion, there is no evidence from the sensors or the safety personnel to support a finding that there was a hydrogen sulfide leak. The evidence showed that the sensors were calibrated to be overly sensitive, not under-sensitive. It is not disputed that Claimant experienced an episode of some sort, but it cannot be attributed to hydrogen sulfide exposure because there is no evidence of a leak. The Court concludes that the record does not contain substantial evidence to support the Board's finding that a leak of hydrogen sulfide caused Claimant's initial episode or his continuing condition. The Board's reasoning is illogical and does not provide substantial evidence for a finding that Claimant was exposed to hydrogen sulfide.

A prerequisite to recovery in a workmen's compensation case is a causal connection between an accident or incident occurring within the course of a claimant's employment and the resulting disability.<sup>6</sup> If Claimant cannot show that a gas leak occurred, he cannot show the leak caused his ailments, even though his doctors found his symptoms to be consistent with hydrogen sulfide exposure..

The Board also relied on the testimony of Dr. Eliasson and Dr. Bleecker. All

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<sup>5</sup>Bd. Dec. at 34.

<sup>6</sup>*Lawson v. Chrysler Corp.*, 199 A.2d 749, 751 (Del. Super. Ct. 1964).

the doctors agreed that Claimant experienced some sort of incident on December 11, 2006, and that he now suffers from a somatoform disorder, which means that Claimant has physical symptoms for which there is no medical explanation. However, the doctors disagree as to the nature of the original incident and the cause of the somatoform disorder, as well as Claimant's ability to work. Claimant's experts attribute his condition to hydrogen sulfide exposure while Employer's experts believes Claimant had a panic attack and is suggestible as to physical problems. Both Claimant's doctors expressed the opinion that Claimant's symptom's were consistent with exposure to hydrogen sulfide, but they did not testify that this is the only explanation. In light of the lack of evidence of a gas leak, their opinion that his condition was consistent with toxic gas exposure does not constitute substantial evidence to conclude that there was a hydrogen sulfide leak and that Claimant was exposed to the toxic fumes.

**Conclusion.** This Court is to accept findings of the Board when they are sufficiently supported by the record and are the product of an orderly and logical deductive process.<sup>7</sup> It is only when the findings made below are clearly wrong and that this Court will overturn the Board's decision.<sup>8</sup> Sadly, this is such a case.

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<sup>7</sup>*Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

<sup>8</sup>*Id.*



The decision of the Board awarding total disability benefits to James A. Steppi is ***Reversed***. The case is ***Remanded*** to the Board to enter an order consistent with this Opinion.

***It Is So ORDERED.***

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Judge John E. Babiarez, Jr.

JEB,jr./rmc/bjw  
Original to Prothonotary