

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

STEPHANIE DYE,)
Claimant-Below/Appellant,)

v.)

CARA MERRIT-SPARKS, et. al,)
Employer-Below/Appellees.)

C. A. No.: 08A-09-009 CLS

Submitted: May 12, 2009
Decided: August 31, 2009

Upon Appeal from a Decision of
the Industrial Accident Board.
Affirmed.

ORDER

M. Jean Boyle, Esq., Longobardi Law Office, 1303 Delaware Avenue, Suite 105,
Wilmington, DE 19806, *attorney for Appellant.*

Robert W. Ralston, Esq., 1220 N. Market Street, Suite 602, Wilmington, DE 19801,
attorney for Appellee, Cara Merritt-Sparks..

SCOTT, J.

Introduction

Before the Court is Appellant's appeal from the decision of the Industrial Accident Board ("Board"). Having reviewed the parties' submissions and the record below, the Court concludes that the Board's decision must be **Affirmed**.

Statement of the Facts

Stephanie Dye, Claimant and Appellant (hereinafter Claimant,) began working in the home of Cara Merritt-Sparks, Respondent and Appellee (hereinafter Respondent,) in July 2004 as a caregiver. Claimant provided nursing care to Respondent's son, Brandon, who suffered a brain injury.

Prior to the alleged work accident, Claimant suffered a back injury while cheerleading in high school. She treated the injury with Motrin and continued to play sports and live a normal life. In 2003, she began experiencing pain in her lower abdomen and lower back causing her to undergo diagnostic testing. An MRI revealed that Claimant suffered from a herniated disc and she was treated with injections. Further testing revealed that Claimant also suffered from endometriosis. She underwent surgery to remove her appendix and she had a partial hysterectomy. Her pain subsided and she continued to lead a normal life.

On the evening of February 6, 2005, Claimant worked in Respondent's home from 11p.m. until 7 a.m. According to Claimant, Brandon was very sick that night so she stayed by his bedside. At one point, Claimant believed that Brandon was gagging

on his own vomit so she sat him up in bed. Claimant claims that as she was moving him, she felt an immediate sharp stabbing pain in her low back. Claimant continued to work the rest of her shift in pain. After work, she went home and went straight to bed.

The next night, on February 7, 2005, Claimant worked again from 5 p.m. to 11 p.m. even though she was in pain. The next day, on February 8, 2005, Claimant was scheduled to baby-sit Respondent's other son, Joshua, while Respondent took her nursing boards. Claimant called Respondent and told her that she was unable to baby-sit because her back was hurting and she couldn't move her legs. Respondent insisted the Claimant come to work so that she could take her nursing boards. Claimant arrived at Respondent's house to baby-sit Joshua. When Respondent returned home she took Claimant to see Dr. McDermott, a chiropractor. Respondent claims that they stopped for lunch on the way to see Dr. McDermott but Claimant does not recall stopping for lunch.

While at the doctor's office, Respondent ran into Chuck Ferguson, a massage therapist from First State Physicians. Mr. Ferguson had gone to high school with Respondent and he recognized her immediately. He testified that Respondent told him that Claimant suffered a back injury while caring for her son. He does not, however, remember exactly what Respondent said.

Claimant told Dr. McDermott that she suffered an injury while caring for Respondent's son, Brandon. Dr. McDermott found Claimant's range of motion to be severely restricted. He ordered x-rays which showed that Claimant had decreased disc spacing at L5-S1. He sent her for an MRI on February 15, 2005 which he compared to the results of her 2003 MRI. Claimant's 2003 MRI showed that she had a herniated disc. The 2005 MRI revealed her pre-existing disc herniation had worsened and she had a small annular tear not previously found on her 2003 MRI. Claimant saw Dr. McDermott twice a day at first, but then decreased her visits to once a day. Dr. McDermott referred her to Dr. Grossinger, a neurologist, for injections and pain medication.

On February 10, 2005, Claimant called Respondent and asked her for her workers' compensation insurance number. Respondent claims that this was the first time she heard that Claimant had injured herself at work. Respondent told Claimant that she would try to get the information for her.

On February 17, 2005, Claimant filed a Petition to Determine Compensation Due. She sought a finding of compensability and payment of her medical and prescription expenses, lost wages and mile reimbursement. She also sought a finding that an agency relationship existed between Respondent and the Trustee. That issue is not currently before this Court. A Board hearing was held on June 23, 2008. The Board issued its decision on September 2, 2008 finding that Claimant was not injured

at work thus denying her Petition. Presently before this Court is Claimant's appeal of the Board's decision.

Grounds for Appeal

On appeal, Claimant argues that the Board's decision is not supported by substantial evidence.¹ Specifically, she claims that the Board failed to give appropriate weight to evidence that shows she was injured at work. Claimant also argues that the Board unreasonably relied on Respondent's testimony that she did not know about the work injury until February 10, 2005, two days after the alleged injury occurred. She claims that the Board failed to give appropriate weight to evidence that shows Respondent knew about the alleged work injury on February 8, 2005.²

In opposition, Respondent argues that sufficient evidence exists to support the Board's decision.³ Respondent contends that the Board properly considered the evidence that was presented to it and simply decided that it could not accept Claimant's testimony that she had injured herself at work as credible.

Standard of Review

When reviewing the decision of an administrative agency, this Court's role is to determine only whether the agency exercised its power arbitrarily, committed an error

¹ Claimant's Op. Br., Docket Item (D.I.) 6.

² *Id.*

³ Respondent's Answ. Br. at 28, Docket Item (D.I.) 8.

of law, or made findings of fact which are unsupported by the evidence.⁴ The agency's decision must stand so long as it is supported by substantial evidence.⁵ Substantial evidence is relevant evidence that a reasonable person would accept as adequate, this standard requires more than a scintilla but less than a preponderance.⁶ The Court is not the trier of fact and will not assess the credibility of witnesses.⁷ However, review of the Board's application of legal principles is *de novo*.⁸

Discussion

The Delaware Workers' Compensation Act states that employees are entitled to compensation for "personal injury or death by accident arising out of and in the course of employment."⁹ An employer is under no obligation to identify or prove the existence of a non-work cause of injury; the employer simply needs to present evidence rebutting the claim that an injury was work related.¹⁰

In this case, the Board did not question that Claimant has a herniated disc in her back. It determined, however, that Claimant's injury was not work-related.¹¹ The scope of review for this Court is to determine whether substantial evidence exists to support the Board's decision. The Board noted that there were no witnesses to the

⁴ *Olney v. Cooch*, 425 A.2d 610, 613 (Del. 1981) citing *Kreshtool v. Delmarva Pwr. & Light Co.*, 310 A.2d 649 (Del. Super. 1973).

⁵ *Id.*

⁶ *Olney*, 425 A.2d at 614.

⁷ *Id.* at 613

⁸ *E.I. DuPont De Nemours & Co. Inc., v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985).

⁹ 19 *Del. C.* § 2304.

¹⁰ *See Strawbridge & Clothier v. Campbell*, 492 A.2d 853, 854 (Del. 1985).

¹¹ IAB Decision on Petition to Determine Additional Compensation Due, D.I. 3.

alleged work incident. Therefore, the Board focused primarily on Claimant's testimony and her credibility was of particular importance. Unfortunately, the Board did not find Claimant's testimony to be entirely credible.

The Board discredited Claimant's testimony for several reasons. First, the Board was troubled by the fact that Claimant did not report the incident to anyone for two days. On the night she claims to have been injured, Claimant finished her shift, gave her nightly nursing notes to the next caregiver and headed home. She did not report the incident to anyone, including the caregiver that took over after her shift. Later that same night, Claimant worked another full shift without mentioning the incident to anyone. On direct examination, Claimant did not testify that she told anyone about the incident. On cross examination, however, she stated for the first time that she told Respondent that she was injured at work on the evening of February 7, 2005. Claimant, however, could not recall any details of or the circumstances surrounding the conversation. The Board found that her inability to remember any details of the conversation undermined her credibility.

The Board also did not believe that Claimant was forthcoming regarding the extent of her cheerleading injury. Claimant initially testified that she pulled a muscle in her back while cheerleading in high school but that she took Motrin and was fine the next day. Claimant later testified, however, that she suffered a herniated disc as a result of her cheerleading incident. The Board found her testimony reinforced Ms.

Brock and Ms. Baker's testimony that Claimant believed that she had re-aggravated her prior cheerleading injury.

The Board found the testimony of Ms. Brock to be credible. Ms. Brock testified that she saw Claimant on February 7, 2005 and that she had a strange gait. Ms. Brock testified that Claimant told her she had been injured in high school and she thought she may have re-injured herself while performing a new exercise routine. Ms. Brock testified that Claimant never mentioned being injured while at work. The Board found her ability to recall the details of the conversation to lend to her credibility. The Board also found the testimony of Ms. Baker to be credible. Ms. Baker testified that Claimant told her that she injured herself while exercising. Although Ms. Baker is Respondent's mother, the Board reasoned that if Ms. Baker were not being truthful, she likely would have embellished her story to include the cheerleading injury. The fact that she did not mention the cheerleading injury led the Board to find her testimony persuasive.

Although the Board found inconsistencies in Respondent's testimony, it found her to be more credible than Claimant. Respondent testified that she was unaware that Claimant injured herself at work until Claimant called her on February 10, 2005 asking for her worker's compensation insurance number. The Board acknowledged that Respondent's testimony conflicted with Ms. Brock's initial testimony that Respondent asked her to write down what Claimant had told her about injuring herself

in high school on February 8, 2005, two days before Respondent claims she first found out about the alleged work-related injury. Ms. Brock further testified, however, that she may have written the statement on March 1, 2005. The Court reasoned that it was reasonable for Ms. Brock to be unsure about the exact date she wrote the statement.

The Board did not give much credence to the opinion of Dr. McDermott that the alleged work incident was casually related to the worsening of Claimant's pre-existing herniated disc. Dr. McDermott testified that his opinion was based on the information provided to him by Claimant. Therefore, the accuracy of Dr. McDermott's opinion ultimately turned on Claimant's credibility.

Although the Board did not address the testimony of Chuck Ferguson, the Court finds that omission insufficient to reverse the decision of the Board in light of the evidence supporting the Board's decision.

Respondent did not have the burden of disproving that Claimant suffered an injury at work. Rather, Respondent only had to present evidence rebutting such a claim. Essentially, the decision came down to an issue of credibility and the Board sided with Respondent. These credibility findings are within the sole province of the Board to make and will not be second guessed by the Court unless clearly unsupported by the record. Unfortunately for the Claimant, the Court finds adequate support in the record for the Board's decision.

Conclusion

For the above-stated reasons, the Board's decision is hereby **AFFIRMED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.