

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

Robert E. White,)	
)	
Appellant,)	
)	
v.)	C.A. N12A-02-010 PRW
)	
Masley Enterprises, Inc.,)	
)	
Appellee.)	

Submitted: March 1, 2013
Decided: March 8, 2013

Upon Appeal from the Decision of the Industrial Accident Board.
AFFIRMED.

OPINION AND ORDER

Gary S. Nitsche, Esquire, Michael B. Galbraith, Esquire (argued), Weik, Nitsche & Dougherty, Wilmington, Delaware Attorneys for Appellant Robert E. White.

Christopher T. Logullo, Esquire, Chrissinger & Baumberger, Wilmington, Delaware, Attorney for Appellee Masley Enterprises.

WALLACE, J.

I. INTRODUCTION

Robert E. White (“White”) has appealed the January 18, 2012 decision of the Industrial Accident Board (“Board”). The Board denied White’s Petition to Determine Additional Compensation Due for White’s right upper extremity symptoms. White contends that the Board’s decision was not supported by substantial evidence.

II. FACTUAL AND PROCEDURAL CONTEXT

In August 2009, White began working at Masley Enterprises (“Masley”) as an assembler of military gloves.¹ On January 25, 2010, White manifested a mild left carpal tunnel syndrome and a moderate left cubital tunnel syndrome injury.² White contended that these injuries were the result of the repetitive nature of his work activities at Masley.³

As a result of his injury, White filed a Petition to Determine Compensation Due, seeking a determination that his left arm and hand injuries were causally related to his work activities at Masley.⁴ Masley contested causation, pointing primarily to White’s alleged lack of candor

¹ Industrial Accident Board Hearing Record at 28-29 [hereinafter, IAB Hrg. R.].

² Industrial Accident Board Hearing Stipulation of Facts at ¶¶ 3, 5 [hereinafter, IAB Hrg. Stip. of Facts].

³ *Id.* at ¶ 2.

⁴ *Id.*

regarding the precise onset of symptoms. A hearing was held on White's Petition on February 3, 2011.⁵

On March 25, 2011, the Board found that the cumulative detrimental affect of White's work activities – *e.g.*, repetitive pushing, pulling, grabbing and pinching while assembling gloves – was a substantial cause of White's mild left carpal tunnel and moderate cubital tunnel syndrome.⁶ In turn, the Board found White's left upper extremity symptoms compensable.⁷ Masley did not appeal that decision.

On August 17, 2011, White filed a Petition to Determine Additional Compensation Due, claiming a recurrence of total disability related to his treatment for his left-side injury as well as a temporary partial disability as to a right upper extremity injury.⁸ On December 16, 2011, an administrative hearing was held before the Board.⁹ By decision dated January 18, 2012,

⁵ *Id.* at ¶ 4.

⁶ *White v. Masley Enterprises, Inc.*, Industrial Accident Board Hearing No. 1350060 (Mar. 25, 2011) (determination of compensation due).

⁷ *Id.*

⁸ Pet. to Determine Add'l Comp. Due (Aug. 15, 2011).

⁹ *White v. Masley Enterprises, Inc.*, Hearing No. 1350060 (Jan. 18, 2012) (determination of additional compensation due).

the Board found that White had failed to prove that his right cubital tunnel syndrome symptoms were causally related to his work activities at Masley.¹⁰

White timely appealed the Board's January 18, 2012 decision. White challenges the Board's finding that his right upper extremity symptoms were not causally related to Masley work activities.

A. White's Work Experience and Relevant Background

From August 2009 through March 2010,¹¹ White worked for Masley assembling military gloves.¹² White's work activities at Masley entailed "constant[] pulling, pinching and grabbing" in order to assemble the gloves.¹³ In late February 2010, upon reporting symptoms in his left arm, White was given a modified duty job.¹⁴ White alleges that he started to complain about symptoms in his right arm in early March, after having been transferred from his assembly job to one with wholly different work activities.¹⁵

¹⁰ *Id.*

¹¹ IAB Hrg. Stip. of Facts at ¶ 1.

¹² IAB Hrg. R. at 29.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 29-30.

One month later, in April 2010, White began working for Bernard Personnel Consultants as a truck driver.¹⁶ There, White worked 8 hours a day, 5 days a week; his duties included not only operating the truck, but loading and unloading the truck, which entailed lifting packages that weighed approximately 95 pounds.¹⁷ White ceased working at Bernard Personnel Consultants after four months in August 2010.¹⁸

B. White's Medical Treatment

In January 2010, White was seen by Dr. Domingo C. Singson, his primary care physician.¹⁹ Dr. Singson performed a nerve conduction test on White, which showed left carpal tunnel syndrome and a mild right median sensory neuropathy.²⁰

On March 9, 2010, White was seen by Dr. Randeep Kahlon, an orthopaedic surgeon.²¹ White complained of left hand, arm, shoulder, neck and carpal tunnel problems.²² White did not complain of any right-sided

¹⁶ *Id.* at 27-28.

¹⁷ *Id.* at 42-44.

¹⁸ *Id.* at 29.

¹⁹ *Id.* at 47.

²⁰ *Id.*

²¹ *Id.* at 37.

²² *Id.* at 38.

symptoms.²³ White followed-up with Dr. Kahlon on April 6, 2010.²⁴ During this appointment, White complained of problems with his right upper extremity.²⁵

On June 8, 2010, White was seen by Dr. Peter F. Townsend, an orthopaedic surgeon, with a specialty in upper extremity surgery.²⁶ White complained of numbness and tingling in his left index, long and small fingers for the past six months.²⁷ White also noted some symptoms in his right ring and small fingers.²⁸ According to White, the symptoms in his left hand were worse than those in his right hand.²⁹ White stated that “driving was bothersome to him.”³⁰ Dr. Townsend performed a physical examination on White and noted a positive Tinel’s sign at both the left and right elbow at the cubital tunnel.³¹

²³ *Id.*

²⁴ *Id.* at 39.

²⁵ *Id.* at 31.

²⁶ *Id.* at 32.

²⁷ *Id.* at 40.

²⁸ *Id.*

²⁹ *Id.* at 13.

³⁰ *Id.* at 41.

³¹ *Id.* at 14.

White did not return to Dr. Townsend until a year later, on June 28, 2011.³² At that appointment, Dr. Townsend reviewed the electromyogram that had been performed on White's right upper extremity on December 14, 2010.³³ According to Dr. Townsend, the EMG showed very mild right ulnar neuropathy at the level of the cubital tunnel, abnormalities seen or consistent with a mild focal nerve demyelination, without evidence of an axonal injury.³⁴ White complained of numbness, tingling and a "pins and needles" sensation in all fingers of both hands.³⁵ Dr. Townsend only examined White's left upper extremity during this appointment.³⁶

On July 12, 2011, White underwent another EMG on both upper extremities.³⁷ As to White's right upper extremity, the EMG showed moderate right cubital tunnel syndrome.³⁸ The EMG showed no evidence of right carpal tunnel syndrome.³⁹

³² *Id.* at 15, 32-33.

³³ *Id.* at 15.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 15-16.

³⁷ *Id.* at 16.

³⁸ *Id.*

³⁹ *Id.*

On July 26, 2011, White returned to Dr. Townsend, reporting that his symptoms remained the same as those presented at the June 28, 2011 appointment.⁴⁰

On August 18, 2011, Dr. Townsend performed ulnar nerve release surgery on White's right elbow.⁴¹ On September 1, 2011, White underwent the same surgery on his left elbow.⁴² Following the surgeries, White was placed on total disability from August 18, 2011 through September 13, 2011.⁴³ White was permitted to return to work thereafter, but was restricted from loading and unloading the truck for eight weeks.⁴⁴ White was referred to physical therapy, which commenced on September 14, 2011.⁴⁵

In between White's right and left elbow surgeries, he was evaluated by Dr. Andrew Gelman, a board certified orthopaedic surgeon, for a defense medical examination.⁴⁶ White refused to discuss his left arm symptoms with Dr. Gelman and refused to allow Dr. Gelman to examine his left arm.⁴⁷ He

⁴⁰ *Id.* at 16-17.

⁴¹ *Id.* at 17.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 35.

⁴⁷ *Id.* at 35, 50.

provided limited information as to his right arm symptoms.⁴⁸ White indicated that his right upper extremity symptoms began after he first received treatment for his left upper extremity symptoms.⁴⁹ Because White's right arm was still bandaged from the surgery, Dr. Gelman was unable to examine it.⁵⁰

C. December 16, 2011 Hearing

At issue at the December 16, 2011 hearing, and therefore the only subject of the Board's decision appealed here, was whether White proved by a preponderance of the evidence that his right-sided cubital tunnel syndrome was a cumulative detrimental effect of his glove-making work activities at Masley. In short, he had to prove that the right-side cubital tunnel syndrome that he first made a claim for in August 2011 was the result of a cumulative detrimental effect of the glove-making work activity he engaged in from August 2009 through March 2010. The Board found he had not.

White's Medical Expert

Dr. Townsend testified by deposition that White's right and left elbow symptoms – moderate bilateral ulnar nerve entrapment at both elbows –

⁴⁸ *Id.* at 50.

⁴⁹ *Id.*

⁵⁰ *Id.* at 36.

were causally related to White's work activities at Masley.⁵¹ According to Dr. Townsend, White's "description of what he did at Masley," including, "the position he would hold his arms during the process of assembling and packing the gloves . . . can put pressure on the ulnar nerve as it goes around the corner of the bent [sic] of the elbow and produce the symptoms that [White] had."⁵² Dr. Townsend opined that nothing in White's past medical history, aside from his work activities at Masley, caused or could potentially have exacerbated White's symptoms.⁵³

Dr. Townsend further testified that the ulnar nerve release surgery, performed on both of White's elbows, was causally related to White's work activities at Masley.⁵⁴ Dr. Townsend opined that such surgery was reasonable and necessary.⁵⁵

Interestingly, Dr. Townsend only learned of White's employment with Masley and his work activities on the day of his deposition.⁵⁶ Dr. Townsend testified that White never discussed his work at Masley at any of his

⁵¹ *Id.* at 18. Although only White's right-sided symptoms are at issue, Dr. Townsend offered his opinion as to White's right- and left-sided symptoms.

⁵² *Id.*

⁵³ *Id.* at 20.

⁵⁴ *Id.* at 18.

⁵⁵ *Id.* at 19.

⁵⁶ *Id.* at 22.

appointments.⁵⁷ White only reported to Dr. Townsend that he was a truck driver and that driving was bothersome to him.⁵⁸ Dr. Townsend testified that White did not elaborate on his duties as a truck driver.⁵⁹ However, Dr. Townsend opined that driving a truck could put a person at risk for developing symptoms in the elbows.⁶⁰

Masley's Medical Expert

Dr. Gelman testified by deposition as Masley's medical expert. Dr. Gelman concurred with Dr. Townsend's diagnosis that White suffered from an ulnar entrapment through the right cubital tunnel.⁶¹ Dr. Gelman further concurred with Dr. Townsend's treatment plan – *i.e.*, ulnar release surgery on the right elbow.⁶²

Dr. Gelman, however, opined that White's right upper extremity symptoms were not causally related to White's work activities at Masley.⁶³ According to Dr. Gelman, White's work activities at Masley did not exert

⁵⁷ *Id.*

⁵⁸ *Id.* at 21-23.

⁵⁹ *Id.* at 23.

⁶⁰ *Id.* at 25.

⁶¹ *Id.* at 59.

⁶² *Id.*

⁶³ *Id.* at 60.

the amount of force necessary to cause an ulnar nerve entrapment.⁶⁴ As noted by Dr. Gelman, assembling gloves – that is, applying glue, maneuvering the fabric of the glove, and then placing the glove on a hand model – does not produce the amount of force that would cause White’s right upper extremity symptoms.⁶⁵ Rather, for White’s right upper extremity symptoms to be causally related to his work activities, White would need to be participating in work that required “substantial force,” such as lumberjacking or operating power tools to drill cement.⁶⁶ Dr. Gelman further testified that White’s repetitive movement in assembling gloves was not, in and of itself, an independent factor with regard to peripheral entrapment.⁶⁷

Ultimately, Dr. Gelman opined that White’s right upper extremity injury was idiopathic in nature.⁶⁸

⁶⁴ *Id.* at 60-61.

⁶⁵ *Id.* at 61-62.

⁶⁶ *Id.* at 61.

⁶⁷ *Id.* at 61-62. In reaching this conclusion, Dr. Gelman expressly rejected the Board’s prior determination as to White’s left upper extremity symptoms – specifically, White’s left moderate cubital tunnel syndrome. In the Board’s March 25, 2011 decision on White’s Petition to Determine Compensation Due for White’s left upper extremity symptoms, the Board found that White’s injury was causally related to his repetitive work activities for Masley, which included pushing, pulling, pinching and grabbing gloves while working on an assembly line. This finding, Dr. Gelman contended, is not supported by scientific data.

⁶⁸ *Id.* at 60.

White's Testimony

White testified that he worked at Masley from August 2009 through March 2010. White's work activities involved "constant[] pulling, pinching, and grabbing."⁶⁹ White testified that his right-sided symptoms started in early March 2010, after he had begun working a modified duty job at Masley (on account of his left-sided symptoms).⁷⁰ White later testified that he believed he complained of problems with his right arm in January 2010.⁷¹ Regardless of the precise onset of symptoms, White suggested that he elected not to tell Masley of his right-sided symptoms because he needed the job.⁷²

In April 2010, following his employment with Masley, White began working at Bernard Personnel Consulting as a truck driver.⁷³ In addition to driving a box truck, White's work at Bernard Personnel Consulting entailed

⁶⁹ *Id.* at 29.

⁷⁰ *Id.* at 29-30.

⁷¹ *Id.* at 47.

⁷² *Id.* at 30.

⁷³ *Id.* at 27-28.

unloading and loading items weighing up to 95 pounds.⁷⁴ White testified that “driving was bothersome.”⁷⁵

White testified that he did not seek treatment for his right-sided symptoms until April 6, 2010.⁷⁶ Thereafter, in August 2011, White underwent surgery on his right elbow, which, to a certain extent, provided some relief.⁷⁷

Testimony of Donna Masley

Donna Masley (“Ms. Masley”), President of Masley Enterprises, testified that White first complained of left-sided symptoms in January 2010.⁷⁸ As a result of his complaints, Ms. Masley placed White on a modified duty job.⁷⁹ In his modified duty role, White was a door greeter and an assembler of small buckles.⁸⁰ White also performed minimal cleaning responsibilities – *i.e.*, wiping down tables.

⁷⁴ *Id.* at 42-44.

⁷⁵ *Id.* at 41.

⁷⁶ *Id.*

⁷⁷ *Id.* at 33.

⁷⁸ *Id.* at 67, 71.

⁷⁹ *Id.* at 71.

⁸⁰ *Id.* at 71, 76.

Ms. Masley further testified that White never complained of right-sided symptoms, despite the fact that she interacted with White daily and regularly inquired as to how he was doing.⁸¹

D. The Board's Opinion⁸²

By decision dated January 18, 2012, the Board found that White had failed to establish by a preponderance of the evidence that the cumulative detrimental effect of his work activities at Masley was a substantial cause of his right cubital tunnel syndrome. In reaching this conclusion, the Board noted White's failure to seek medical care for his right-sided symptoms until June 2010 – four months after his symptoms allegedly started. Moreover, White did not seek surgical intervention until the following year, well after he was working for Bernard Personnel Consultants as a truck driver who daily engaged in heavy lifting.

The Board also found White's medical records to be inconsistent with his testimony. For instance, the Hearing Officer noted that White did not report right-sided symptoms to Dr. Kahlon at his March 9, 2010 appointment, despite the fact that White alleges that these symptoms began just two days prior. Additionally, the Hearing Officer noted that “the

⁸¹ *Id.* at 77-78.

⁸² *White v. Masley Enterprises*, Industrial Accident Board Hearing No. 1350060 (Jan. 18, 2012) (determination of additional compensation due).

records reflect that White told Dr. Kahlon of right sided symptoms in April of 2010, but then when he saw Dr. Townsend in June 2010 he said that these symptoms had only recently started and that *driving* was bothersome to him.”⁸³

The Board ultimately concluded that White’s right-sided symptoms likely began in June 2010, well after White stopped working for Masley. At this point in time, White was working as a truck driver, who performed heavy duty lifting, an activity his own expert, Dr. Townsend, opined could put a person at risk for developing elbow symptoms.

In rendering its decision, the Board reviewed Dr. Kahlon’s medical testimony in the February 3, 2011 hearing on White’s initial petition to determine whether White’s left-sided symptoms were compensable. There, Dr. Kahlon testified that if White were removed from his work situation and his symptoms improved, then causation would be substantiated. As the Board noted, however, White was removed from the alleged aggravating work situation and his symptoms got worse, eventually requiring surgical treatment.

The Board rejected, in part, the testimony of Dr. Townsend, White’s medical expert. According to the Board, Dr. Townsend’s opinion “lacked a

⁸³ *Id.* at 17 (emphasis added).

foundation” because he was not able to explain why White’s work activities at Masley were the substantial cause of White’s right-sided symptoms, as opposed to White’s work at Bernard Personnel Consulting.⁸⁴

III. STANDARD OF REVIEW

On appeal from the Industrial Accident Board, this Court must determine if the Board’s factual findings are supported by substantial evidence in the record.⁸⁵ “Substantial evidence” is less than a preponderance of the evidence but is more than a “mere scintilla.”⁸⁶ It is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁸⁷ The Court must review the record to determine if the evidence is legally adequate to support the Board’s factual findings. In doing so the Court will only evaluate the record, in the light most favorable to the prevailing party, here, Masley, to determine whether substantial evidence existed to reasonably support the Board’s conclusion.⁸⁸ The Court does not “weigh evidence, determine questions of credibility or make its

⁸⁴ *Id.* at 19.

⁸⁵ *Histed v. E.I. duPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

⁸⁶ *Richardson v. Perales*, 402 U.S. 389, 401 (1971).

⁸⁷ *Histed*, 621 A.2d at 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

⁸⁸ *Burmudez v. PTFE Compounds, Inc.*, 2006 WL 2382793, at *3 (Del. Super. Ct. Aug. 16, 2006).

own factual findings.”⁸⁹ Rather, the Court must afford “a significant degree of deference to the Board’s factual conclusions and its application of those conclusions to the appropriate legal standards.”⁹⁰ Only if the record lacks satisfactory proof in support of the Boards finding or decision, may the Court overturn the Board’s decision.

On appeal, the Court reviews legal issues *de novo*.⁹¹ There is no claim here by Appellant that any questions of law arise from the Board’s decision.

IV. PARTIES’ CONTENTIONS

White’s Argument

White argues that the Board erred in finding that his right-sided symptoms – *i.e.*, right cubital tunnel syndrome – were not causally related to his work activities at Masley.⁹² White argues that the record evidence demonstrates that White first had some sign of right-sided involvement in

⁸⁹ *Olney*, 425 A.2d at 614.

⁹⁰ *Burmudez*, 2006 WL 2382793, at *3 (citing DEL. CODE ANN. tit. 29 § 1142(d)).

⁹¹ *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

⁹² Op. Brf. at 12.

January 2010 when he was seen by his family physician, Dr. Singson.⁹³ At this time, White was still working for Masley.⁹⁴

White further suggests that the Board implicitly accepted Dr. Gelman's medical opinion, which runs contrary to the Board's prior determination regarding White's left-sided symptoms.⁹⁵ Dr. Gelman testified that the repetitive nature of White's work activities could not cause the right upper extremity injury suffered by White, despite the fact that the Board previously found those very same work activities caused the exact same injury to White's left arm.⁹⁶

Masley's Argument

Masley argues that there is substantial record evidence to support the Board's finding that White's right-sided symptoms did not emerge until at least two months after he ceased employment with Masley.⁹⁷ Masley credits the Board with properly assessing White's credibility and reconciling the many inconsistencies between the medical records and White's testimony.⁹⁸

⁹³ *Id.* at 13.

⁹⁴ *Id.*

⁹⁵ *Id.* at 14.

⁹⁶ *Id.* at 14-15.

⁹⁷ Ans. Brf. at 7-8.

⁹⁸ *Id.*

Further, Masley contends that the Board acted within its discretion in discounting Dr. Townsend's expert opinion.⁹⁹ Because the Board found Dr. Townsend's testimony to be less than credible in some respects, Masley contends that the Board properly determined that White had failed to establish causation.¹⁰⁰

V. DISCUSSION

It is well-settled Delaware law that a claimant who files a petition with the Board for disability benefits must establish, by a preponderance of the evidence, a causal connection between the claimant's work activities and the injury.¹⁰¹ Here, the Board found that White failed to meet his burden in establishing that his right-sided symptoms were causally related to his work activities with Masley. The sole issue before the Court is to determine whether the Board's decision is supported by substantial record evidence.

It is clear from a review of the evidence that the Board's decision was supported by substantial record evidence. In finding that White failed to establish causation, the Board first noted that "White's medical records [we]re inconsistent with his testimony and internally inconsistent" as to the

⁹⁹ *Id.* at 9.

¹⁰⁰ *Id.*

¹⁰¹ *Gen. Motors Corp. v. Freeman*, 157 A.2d 889, 892 (Del. Super. Ct. 1960).

onset of right-sided symptoms.¹⁰² For instance, White testified that his right-sided symptoms manifested in January 2010, and that such complaints were relayed to Dr. Singson. Dr. Kahlon's medical records, however, reflect that White did not complain of right-sided symptoms until April 2010. In yet another medical record, White stated that his right-sided symptoms began shortly before June 2010. The Board could properly consider such inconsistencies when evaluating White's credibility.¹⁰³ Such credibility determinations are within the sole province of the Board.¹⁰⁴

The Board also rejected, in part, the testimony of Dr. Townsend, White's medical expert. Dr. Townsend rendered his opinion as to the causation of White's right-sided symptoms with absolutely no knowledge as to the work activities performed by White for either Masley or Bernard Personnel Consulting. And consequently, as the Board noted, "Dr. Townsend d[id] not explain why White's work assembling gloves for Masley was the substantial cause of his right sided symptoms, rather than his

¹⁰² *White v. Masley Enterprises*, Industrial Accident Board Hearing No. 1350060 (Jan. 18, 2012) (determination of additional compensation due).

¹⁰³ *See Rivera v. Arthur Jackson Co.*, 2009 WL 418303, at *2-3 (Del. Super. Ct. Jan. 20, 2009); *see also Dehoyos v. Gen. Motors Corp.*, 1990 WL 28485, at *4 (Del. Super. Ct. Feb. 28, 1990) ("It is within the Board's discretion to disbelieve claimant's testimony based on the evidence of the record . . .").

¹⁰⁴ *Rivera*, 2009 WL 418303, at *3 (such credibility findings are "the Board[']s to make and will not be second guessed by the Court unless clearly unsupported by the record").

concurrent work with Bernard Personnel Consulting where he was driving a truck and lifting heavy siding.”¹⁰⁵ The Board deemed Dr. Townsend’s opinion incomplete, given the fact that he rendered it without distinguishing between White’s job activities with each employer.

Further, and contrary to White’s contention, the Board did not consider Dr. Gelman’s testimony in making its decision. The Board’s decision rested solely on the fact that White was unable to meet his burden in establishing causation.¹⁰⁶ On appeal from the Board, this “[C]ourt does not sit as trier of fact with authority to weigh evidence, determine questions of credibility, and make its own factual findings and conclusions.”¹⁰⁷ Contrary to White’s want here, those functions are reserved solely for the Board. The Board’s decision that White failed to establish his burden that his right-sided injury was the result of his work activity at Masley was supported by substantial evidence and will not be disturbed by this Court.

¹⁰⁵ *White*, Hearing No. 1350060 (Jan. 18, 2012) (determination of additional compensation due).

¹⁰⁶ Had the Board accepted and relied solely on the testimony of Dr. Gelman over that of Dr. Townsend – that White’s right-sided symptoms were not and could not be caused by the repetitive nature of White’s work activities – White *could* make some argument that the Board’s decision was not supported by substantial evidence. Such an argument would have to then rely on the fact that Dr. Gelman’s opinion was in direct contravention to the Board’s prior finding with respect to White’s left-sided symptoms. That seeming incongruence, however, need not be resolved here.

¹⁰⁷ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

V. CONCLUSION

For the forgoing reasons, the decision of the Industrial Accident Board denying Robert E. White's August 2011 Petition to Determine Additional Compensation Due is hereby **AFFIRMED**.

IT IS SO ORDERED.

/s/ Paul R. Wallace _____

Paul R. Wallace, Judge

Original to Prothonotary

cc: All counsel via File & Serve