

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

March 6, 2013

Linda Wilson, Esquire
Marshall, Dennehey, Warner
Coleman & Coggin
1220 N. Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899-8888

Kenneth F. Carmine, Esquire
Potter, Carmine & Associates
840 N. Union Street
P.O. Box 30409
Wilmington, DE 19805

***RE: Rescare Home Care v. Amanda Wyatt
C.A. No. S12A-06-004-ESB***

Date Submitted: December 17, 2012

Dear Counsel:

This is my decision on the cross-appeals filed by Amanda Wyatt and Rescare Home Care in this workers' compensation case. Wyatt was employed as a certified nursing assistant with Rescare. Wyatt's job was to care for a five-year-old boy, Isaac. Isaac, who weighed approximately 50 pounds, was completely dependant on Wyatt for his care. She would care for him at his home and school. In caring for Isaac, Wyatt often had to lift him from his wheelchair to the floor or to another chair and back. On December 15, 2010, Wyatt was lifting Isaac from his wheelchair to his lunch chair when she lost feeling in her left leg. Wyatt described the feeling as

“everything was numb.” Four days later, Wyatt had surgery to correct a herniated disc in her back. Wyatt filed a Petition to Determine Compensation Due with the Industrial Accident Board on June 10, 2011. The main issue before the Board was whether Wyatt suffered a compensable work-related accident in the course and scope of her employment with Rescare.

The Board held a hearing on January 18, 2012. Six people testified at the hearing. Wyatt, LeAnne Waltz, Mary Leight and Dr. Balapur Venkataramana testified in favor of Wyatt. Dr. Kevin Hanley and Betty Alfree testified in favor of Rescare. Wyatt testified about the nature of her job, and how she injured her back and the medical treatment she sought for it. Leanna Waltz is Wyatt’s mother. She testified about her daughter’s complaints of back pain. Mary Leight is a physical therapy assistant at Isaac’s school. She testified about seeing Wyatt limping on December 15, 2010. Betty Alfree is a manager for Rescare. She testified about Wyatt’s complaints of back pain after December 15, 2010. Dr. Balapur Venkataramana is a board certified neurosurgeon. He testified about the surgical procedure he performed on Wyatt. He also testified that the nature of her work caused her back problem. Dr. Kevin Hadley is a board certified orthopedic surgeon. He examined Wyatt for Rescare. He testified that her back problem was not caused by her work. The Board issued its decision on February 3, 2012. The Board found

in favor of Wyatt and awarded her total disability benefits from December 15, 2010 through February 1, 2011 at a rate of \$364.33 per week, an award of attorney's fees of \$8,000.00, reimbursement of medical witness fees, and the payment of her medical bills. On February 15, 2012, Rescare filed a Motion for Reargument. The Board issued its decision on Rescare's Motion for Reargument on May 30, 2012. In that decision the Board found that Rescare was not obligated to pay for Dr. Venkataramana's medical bills, other than the initial consultation, because he is an in-state physician who is not certified and did not obtain preauthorization for Wyatt's treatment. The Board did find Wyatt's other medical bills to be compensable. On June 19, 2012, Rescare filed an appeal of the Board's finding on causation. On June 27, 2012, Wyatt filed a cross-appeal on the Board's finding on Dr. Venkataramana's bills.

STATEMENT OF FACTS

Wyatt's job was to provide individualized care to a five-year-old boy named Isaac. Isaac weighed approximately 50 pounds. Isaac was completely dependant on Wyatt for his care. Among other things, Wyatt would feed, bathe, transfer, and walk him. Wyatt would also have to frequently lift Isaac from his wheelchair to the floor or to another chair by herself. A normal work day for Wyatt involved meeting Isaac at school, caring for him throughout the school day, and making sure he got

back on the bus to go home at the end of the day. Two or three evenings a week, Wyatt would go over to Isaac's house to help care for him.

On the morning of October 21, 2010, prior to going into work, Wyatt experienced back pain while bending over to pick something up off of the floor. Wyatt attempted to get through the workday, but was unable to do so due to the pain in her back. Wyatt went to the emergency room for treatment. She was prescribed pain medication and told she had a lumbar back strain. Wyatt took three days off from work to recover.

On Friday, December 10, 2010, Wyatt experienced back soreness while at Isaac's school. Wyatt believed her back was sore from working. She did not seek medical treatment for her back. Wyatt instead used the weekend to rest her back. She also took Monday, December 13th off to give her back another day to heal. On the evening of Tuesday, December 14th, Wyatt went over to Isaac's house to help his mom with his care.

On Wednesday, December 15, 2010, Wyatt was taking care of Isaac at school. As she was lifting Isaac from his wheelchair to his lunch chair, Wyatt felt all of the pain in her back disappear and everything go numb. The numbness went into Wyatt's legs and caused her to walk with a limp because she was forced to drag her left foot due to a lack of feeling in it. She also had an urgency to urinate. Over the course of

the evening Wyatt's symptoms worsened.

Wyatt went to see Dr. Venkataramana on December 17, 2010. While in the waiting room, Wyatt and her mother were discussing her injury. The receptionist overheard the discussion and asked Wyatt if her injury was a workers' compensation case. Dr. Venkataramana does not handle workers' compensation cases. Wyatt told the receptionist that it was not a workers' compensation case because she feared she would not be able to see the doctor if she admitted she was hurt at work. Wyatt told Dr. Venkataramana about her October 21st and December 10th back incidents. Still scared that Dr. Venkataramana would not treat her if she told him the truth about the cause of her injury, Wyatt told Dr. Venkataramana that she woke up the morning of December 15th with numbness. She did not tell him that the numbness started after she lifted Isaac from his wheelchair to his lunch chair. Dr. Venkataramana sent Wyatt for x-rays, an MRI, and bloodwork. The MRI showed a large disc herniation at L5/S1 lateralized to the left, significant spinal stenosis at L4/5, and early degeneration of L5/S1.

Wyatt met Dr. Venkataramana to go over the results of her tests on December 18, 2010. He informed her that she needed surgery on an urgent basis, and scheduled the surgery for the following day. Dr. Venkataramana performed spinal surgery on Wyatt on December 19, 2010. In addition to decompressing the spinal canal, he

performed a discectomy, laminectomy, and fusion. Wyatt continued to treat with Dr. Venkataramana after the surgery. It was after surgery that Wyatt disclosed the true nature of her injury to Dr. Venkataramana.

Dr. Venkataramana's Testimony

Dr. Venkataramana is a board certified neurosurgeon. He first examined Wyatt on December 17, 2010. Dr. Venkataramana testified that Wyatt reported to him with numbness in both buttocks, the back of both thighs, and on the left side the numbness was all along the left leg to the heel and toes. Wyatt also informed him about her incontinence issues since the injury. Dr. Venkataramana testified that he was aware Wyatt had been working as a caregiver to a dependant child. Dr. Venkataramana reviewed Wyatt's medical files. Dr. Venkataramana testified, after reviewing the results of the x-rays and MRI, that he believed Wyatt needed surgery on an urgent basis. He reasoned that it was necessary to relieve the compression on the nerves before any permanent damage occurred. Dr. Venkataramana concluded that the type of work that Wyatt did caused the herniated disc which resulted in the need for surgery. Dr. Venkataramana acknowledged that Wyatt presented to Dr. Hanley with a different history of her December 15, 2010 injury. However, the symptoms she presented with were the same. Dr. Venkataramana did not find out until after the surgery that Wyatt injured herself while lifting Isaac on December 15, 2010.

Dr. Hanley's Testimony

Dr. Kevin Hanley testified on behalf of Rescare. Dr. Hanley is a board certified orthopaedic surgeon. He examined Wyatt on March 7, 2011, and again on October 18, 2011. He was aware of her job duties as a CNA. Unlike Dr. Venkataramana, Wyatt told Dr. Hanley that the numbness in her legs began when she attempted to lift Isaac out of his wheelchair on December 15, 2010 . On March 7, 2011, Dr. Hanley diagnosed Wyatt with a herniated nucleus pulposus with urinary tract symptomatology. Dr. Hanley believed that Wyatt tore an annulus and it had been leaking onto the nerve root prior to December 15, 2010. Dr. Hanley testified that he could not relate Wyatt's back problems to her work largely because she gave conflicting statements about what happened on December 15, 2010, making it difficult for him to rely on her statements for a diagnosis.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the Superior Court on appeal from a decision of the Industrial Accident Board is to determine whether the agency's decision is supported by substantial evidence and

whether the agency made any errors of law.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁴ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁵

DISCUSSION

I. Causation

Rescare argues that the Board's finding on causation is not supported by substantial evidence in the record because Dr. Venkataramana was not aware of what really happened to Wyatt on December 15, 2010. Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.⁶ In order

¹ *General Motors v. McNemar*, 202 A.2d 803, 805 (Del. 1964); *General Motors v. Freeman*, 164 A.2d 686 (Del. 1960).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986)(TABLE).

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

⁴ 29 *Del.C.* § 10142(d).

⁵ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

⁶ *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

for Wyatt to prove the necessary causal link between her injury and her employment, she must introduce medical testimony that establishes causation “within a reasonable degree of medical probability.”⁷ If there is an industrial injury that serves to produce a further injurious result by precipitating or accelerating a previous injury, a causal connection can be said to have been established.⁸ Where there is an identifiable accident, the “but for” standard applies.⁹

In support of its argument, Rescare points out that the Board accepted Wyatt’s statement that she injured herself when she was transferring Issac from his wheelchair to his lunch chair on December 15, 2010. However, that is not what she told Dr. Venkataramana. She told him that she woke up that morning with numbness in her legs instead of it coming on after she lifted Isaac at work. Based upon this contradiction, Rescare argues that Dr. Venkataramana’s testimony is insufficient to establish the necessary causal link between Wyatt’s injury and her employment, reasoning that a Board finding that is based on a medical opinion that is based on a different factual scenario than what actually existed is fatally flawed. I agree with Rescare’s reasoning.

⁷ *Diamond Fuel Oil v. O’Neal*, 734 A.2d 1060, 1066 (Del. 1999).

⁸ *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992).

⁹ *Id.*

In her Petition to Determine Compensation Due, Wyatt stated that she had an accident at work on December 15, 2010. She stated further in her petition that the accident occurred when she lifted a 45 pound client at work. Thus, the critical event occurred on December 15, 2010.

The Board did find that Wyatt injured her back at work while lifting Isaac on December 15, 2010. The Board based its decision on the testimony of Wyatt and Dr. Venkataramana. The trouble with the Board's finding is that Wyatt did not tell Dr. Venkataramana what really happened to her on that day. Wyatt told Dr. Venkataramana that on December 15, 2010, she woke up with no pain, but instead had numbness, had no feeling in her left foot and was limping and that she later became incontinent. Wyatt told the Board that all of this occurred after she transferred Issac out of his wheelchair to his lunch chair on December 15, 2010. Thus, Dr. Venkataramana was not aware of this critical event when he offered his opinion on causation.

Dr. Venkataramana's opinion was that "the type of work she does caused the herniated disc, which brought her to me and that needed surgery." The Board then relied on Dr. Venkataramana's opinion to conclude that Wyatt injured her back while lifting Isaac on December 15, 2010 even though Dr. Venkataramana was never aware of that and his opinion did not state that. The Board's decision is simply not

rationally related to or based on Dr. Venkataramana's opinion. The incident on December 15, 2010 is obviously a significant event. Before that, Wyatt was suffering from low back pain. Dr. Venkataramana testified that she did not have a herniated disc after the incident on October 21, 2010. Wyatt's back pain then largely went away until it reappeared on December 10, 2010. This persisted for a few days until December 15, 2010. Wyatt then lifted Isaac and suddenly her back pain went away and then an onslaught of numbness and other problems appeared. Dr. Venkataramana did not consider this information when he offered his opinion because he was not aware of it. The problem is that the Board's finding is based on a medical opinion that is in turn based on facts different from what the Board found to exist. A reasonable mind would not accept such a conflicting evidence as adequate support of the Board's conclusion.

CONCLUSION

The Board's decision on causation is **REVERSED**. Since I have reversed the Board's decision on causation, there is no need to consider the other issues on appeal.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley