

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOHN A. PARKINS, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Attorney for Employer Below/ Appellant

Re: Children & Families First DE v. Delema Sharp
C.A. No. 09A-01-002 JAP

Submitted: November 2, 2009

Decided: December 15, 2009

On Appeal from a Decision of the Industrial Accident Board
AFFIRMED.

Dear Counsel:

Ms. Sharp injured her neck in a work-related motor vehicle accident while working for Children & Families First (“CFF”) in December 2004. In January 2008, Ms. Sharp filed a Petition to Determine Additional Compensation Due, seeking compensation for outstanding medical expenses related to the accident.

The Industrial Accident Board held a hearing on the petition in August 2008. At the hearing, Ms. Sharp presented an exhibit of her medical bills totaling \$84,641.39 (“Exhibit 1”), and CFF did not object to the admission of the exhibit. The Board awarded Ms. Sharp the medical expenses contained in Exhibit 1, finding them to be reasonable, necessary and causally related to her December 2004 work accident.¹ CFF then filed an appeal in this Court alleging that Exhibit 1 contains some medical bills that (1) were already paid by Liberty Mutual, (2) are unrelated to the work injury at issue in this case, and (3) are vague and ambiguous. It is clear from the record that these arguments were not raised at the hearing before the Board.

The failure to make a timely objection can result in a waiver of that issue on appeal, unless plain error exists.² Plain error is as an error that is so clearly prejudicial to one’s substantial rights that it jeopardizes the very fairness and integrity of the administrative hearing.³

It was not plain error for the Board to admit Exhibit 1. There is nothing on the face of the exhibit that would suggest that the contained

¹ The Board also considered CFF’s Petition to Review, which alleged that Ms. Sharp’s total disability benefits should cease. The Board held that Ms. Sharp remained totally disabled.

² *Johnson Controls, Inc. v. Wooleyhan*, 1998 WL 737985, at *3 (Del. Super.).

³ *Shortess v. New Castle County*, 2002 WL 388166, at *3 (Del. Super.); *Johnson Controls*, 1998 WL 737985, at *3.

medical bills were not outstanding. Although CFF has provided this Court with a cost summary from Liberty Mutual in support of its contention that some of the bills were already paid, these documents are not part of the record below, and therefore, this Court cannot consider them on appeal.⁴ Furthermore, there is no clear indication that certain medical bills in Exhibit 1 were not for the treatment of Ms. Sharp's work injury. The Delaware Supreme Court has stated that the lower tribunal cannot be faulted for failure to make a specific evidentiary ruling when the subject was never properly brought to its attention.⁵ Therefore, because the Court finds no plain error in the admission of Exhibit 1, the decision of the Board must be **AFFIRMED**.

oc: Prothonotary

⁴ *Bourbonnais v. Unemployment Ins. Appeal Bd.*, 2009 WL 1900396, at *2 (Del. Super.) (“On a review of a Board decision, the Court's decision is bound to the record that was presented before the Board.”); *Kiefer v. Nanticoke Health Servs., Inc.*, 2009 WL 1526916, at *2 (Del. Super.) (“This Court may not consider anything beyond the Board's hearing record.”).

⁵ *Johnson v. State*, 2009 WL 3655854 (Del. Supr.) (emphasizing that “counsel must explain the basis for admission or exclusion of evidence in order to preserve the issue for appeal.”).