

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CHRISTINE A. EBERT,)
) C.A. No. 02A-07-002 JTV
 Employee-Below,)
 Appellant,)
)
 v.)
)
 STATE OF DELAWARE,)
)
 Employer-Below,)
 Appellee.)

Submitted: March 3, 2003

Decided: June 19, 2003

Christine A. Ebert, *Pro se.*

John J. Klusman, Esq. and Noriss E. Cosgrove, Esq., Tybout, Redfearn & Pell,
Wilmington, Delaware. Attorneys for Appellee.

*Upon Consideration of Appellant's
Appeal From Decision of Industrial Accident Board*

AFFIRMED

VAUGHN, Resident Judge

ORDER

Ebert v. State of Delaware
C.A. No. 02A-07-002 JTV
June 19, 2003

Upon consideration of the parties' briefs and the record of the case, it appears that:

1. The claimant, Christine Ebert, appeals a June 10, 2002 decision of the Industrial Accident Board ("Board") which denied her Petition to Determine Additional Compensation Due. The history of her worker's compensation case may be said to begin with a decision which the Board rendered on October 5, 1998. That decision awarded her total disability benefits for the period from February 27, 1997 to May 1, 1998 for work-related mental stress injuries which she sustained while working at her job at the State of Delaware Office of Information Systems ("OIS"). Her current petition alleges, in substance, that her work-related total disability continued after May 1, 1998 and is ongoing. In its June 10, 2002 decision, however, the Board determined that claimant failed to meet her burden of establishing that she is totally disabled, or that any mental injury past May 1, 1998 is related to her previous OIS employment. The last day she worked at OIS was February 27, 1997.

2. Subsequent to receiving her award of total disability benefits for the period from February 27, 1997 to May 1, 1998, the claimant filed a claim in the United States District Court for the District of Delaware alleging that she had suffered a mental breakdown as a result of being treated wrongfully at OIS in violation of federal law. Her claim was decided against her at the district court level and her appeal to the Third Circuit was denied. In the meantime, the claimant made several unsuccessful attempts to work, including unsuccessful efforts to establish a sewing business and a clown business.

Ebert v. State of Delaware
C.A. No. 02A-07-002 JTV
June 19, 2003

3. The scope of review for appeal of a Board decision is limited to examining the record for errors of law and determining whether substantial evidence is present on the record to support the Board's findings of fact and conclusions of law.¹ "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² On appeal, the court does not "weigh the evidence, determine questions of credibility, or make its own factual findings."³ The court is simply reviewing the case to determine if the evidence is legally adequate to support the agency's factual findings.⁴

4. On a Petition to Determine Compensation Due, the burden is on the claimant to prove by a preponderance of the evidence that she is entitled to the petitioned compensation.⁵ The Board has discretion to weigh the credibility of witnesses and determine whether to accept or reject medical testimony.⁶ This includes the discretion to accept the opinion of one expert over that of another

¹ *Robinson v. Metal Masters, Inc.*, 2000 Del. Super. LEXIS 264 (Del. Super. 2000); see *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981); see *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620 (1966).

³ 213 A.2d at 66.

⁴ *ILC of Dover, Inc. v. Kelley*, 1999 Del. Super. LEXIS 573, at *3 (Del. Super. 1999).

⁵ *Johnson v. Industrial Accident Board*, 1994 Del. Super. LEXIS 278, at *5 (Del. Super. 1994); see *Lawson v. Chrysler Corp.*, 199 A.2d 749, 751 (Del. Super. 1964).

⁶ *Oakes v. Triple C. Railcar*, 1994 Del. Super. LEXIS 490, at *9 (Del. Super. 1994).

Ebert v. State of Delaware
C.A. No. 02A-07-002 JTV
June 19, 2003

expert when their opinions conflict and the opinion accepted is supported by substantial evidence.⁷

5. Dr. Lillian Kraman-Roach, the claimant's treating psychiatrist, diagnosed the claimant as having major depression. In a July 1998 proceeding before the State Board of Pension Trustees, she expressed the opinion that the claimant was, however, able to work. In the current proceeding she testified that in her opinion the claimant was not able to work. She acknowledged that this represented a change in her opinion and stated that this change occurred over time based upon the claimant's unsuccessful efforts to work after 1998. She hoped that at some point the claimant would be able to work part-time. The Board correctly observed in its findings of fact and conclusions of law that Dr. Kraman-Roach's opinion that the claimant is unable to work seems to be based in significant part on events occurring after she left her employment with OIS.

6. The Board found the testimony of Dr. Neil Kaye, a psychiatrist who examined the claimant, more persuasive than the testimony of Dr. Kraman-Roach. Dr. Kaye testified that the claimant suffers from a mental condition known as somatoform disorder, which means that she experiences stress, anxiety or emotions through physical symptoms. In his opinion, however, this condition does not prevent her from working and she is capable of holding full-time employment. He

⁷ *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992); *DiSabatino v. Wortman*, 453 A.2d 102, 106 (Del. 1982); *General Motors Corp. v. Veasey*, 371 A.2d 1074, 1076 (Del. 1977) (rev'd on other grounds by *Duvall v. Charles Connell Roofing*, 564 A.2d 1132 (Del. 1989)); *Butler v. Ryder M.L.S.*, 1999 Del. Super. LEXIS 29, at *5-6 (Del. Super. 1999).

Ebert v. State of Delaware
C.A. No. 02A-07-002 JTV
June 19, 2003

also expressed the opinion that her mental disorder is related to her own personality and distress over marital and financial issues and her unsuccessful litigation, not her former employment. He also expressed the opinion that, medically, stress from litigation is not caused by employment, even though the subject matter of litigation may involve a work related event. Dr. Kaye's opinions were based upon his examination of the claimant, her medical records, and testing which included a global assessment of functioning and the Minnesota Multiphasic Personality Inventory - 2. There was clearly an adequate basis for Dr. Kaye's opinions, and his testimony constitutes substantial evidence to support the Board's conclusion.

7. The claimant also complains that the Board refused to accept certain documents into evidence, that appellee's counsel took steps at the hearing relating to the questioning of witnesses which were designed to deny her a fair hearing, and that appellee's counsel interfered with her examination of Dr. Kaye at his deposition. The record indicates that at the conclusion of the hearing, after the parties had completed their summations, the claimant wanted the Board to accept as exhibits certain papers which appear to include letters to the governor and the attorney general, other legal correspondence and a canceled check. The Board acted within its discretion in not accepting such papers. Nothing in the record suggests that the Board improperly refused to receive any probative evidence. A review of the record leads to the conclusion that appellee's counsel, the hearing officer and the board members all conducted themselves professionally and that the claimant's hearing was fairly conducted. As to Dr. Kaye's deposition, the claimant did not object when it was offered into evidence. It would appear that this complaint is

Ebert v. State of Delaware
C.A. No. 02A-07-002 JTV
June 19, 2003

waived because it was not presented to the Board. In addition, I have reviewed Dr. Kaye's deposition and I am satisfied that the claimant had an adequate opportunity to conduct her cross-examination.

8. The decision of the Board is ***affirmed***.

IT IS SO ORDERED.

Resident Judge

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