

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

STATE OF DELAWARE,)	
Appellant,)	
)	
v.)	
)	C.A. No.: 10A-01-023 FSS
ANGELA RANDALL)	
Appellee.)	

Submitted: June 16, 2010
Decided: September 30, 2010

ORDER

Upon Appeal From the Industrial Accident Board – *AFFIRMED*

Angela Randall had back surgery for pain caused by an accident she suffered while working for the State of Delaware. A workers’s compensation hearing officer awarded total disability benefits after Randall and her surgeon testified the accident aggravated a pre-existing back injury. On appeal, the State argues the officer’s findings were not supported by substantial evidence and the award of benefits was an abuse of discretion. The court concludes here that the officer did not abuse her discretion and the decision is supported by substantial evidence.

1. Randall drove a paratransit bus for the State in the Red Clay Consolidated School District. While employed by the State, she injured her neck and

back in two accidents: the first happened outside of work; the second happened on the job. She treated with physical therapy, pain medicine, and chiropractic care before finally having surgery on March 7, 2008. On April 9, 2009, she filed a petition to determine compensation due. Pursuant to the parties' stipulation, a hearing officer heard the Petition on August 17, 2009. The basic facts are undisputed.

2. The first accident happened December 22, 2006. Randall was in her car when another driver rear-ended it. The collision caused serious neck and back injuries. She sought treatment at the emergency room and later with Dr. Reginald Agard, her family doctor, who ordered an MRI. The MRI showed a moderate hernia at the C5-6 disc. Randall was removed from work after the 2006 accident.

3. Dr. Agard recommended physical therapy and referred her to Dr. Magdy Boulos. She saw Dr. Boulos in January 2007. He diagnosed cervical and lumbar radiculopathy. They discussed surgery as an option depending on Randall's progress in physical therapy.

4. Despite some lingering pain, she returned to work in February 2007, in part for financial reasons and in part because she felt well enough to work. It is unclear who cleared Randall to return and whether she was under any restrictions; but, when she returned, she performed the same job as before the accident.

5. The second accident happened on April 27, 2007, while Randall was using a bus's hydraulic lift to help a child in a wheelchair. The lift jammed, forcing Randall to insert a lever into the lift to manually lower it. After four or five pumps, she heard a pop. An intense pain that started in her neck and back pulsed throughout her body. Another employee finished lowering the lift. Randall filled out an incident report when she returned to the bus yard. Despite the pain, she did not go to the emergency room.

6. Several days after the workplace accident, on May 1, 2007, Randall saw Dr. T. Shane Palmer, a chiropractor. She saw Dr. Agard, on May 4, 2007, and Dr. Boulos, on July 9, 2007. Randall testified she saw the doctors to treat the pain caused by the workplace accident. Dr. Agard's notes mentioned the workplace accident, but Dr. Boulos's notes and Dr. Palmer's original evaluation omitted it.¹ Dr. Palmer amended his paperwork in September 2007, by adding a sentence attributing Randall's symptoms to the workplace accident.

7. On July 30, 2007, Dr. Palmer removed Randall from work. She returned to work on October 15, 2007, after a second MRI of her back showed the herniated disc at C5-6 had not changed, even though Randall's pain had intensified since the workplace accident. Based on this showing, Dr. Palmer believed she had

¹ Dr. Palmer's evaluations also misspelled Dr. Boulos's name as Dr. Bose.

returned to her status before the workplace accident.

8. On February 6, 2008, Randall could not lift her arm. She felt pain in her neck and back, and drove to the emergency room. She saw Dr. Boulos, and told him about the workplace accident. A third MRI was taken. This MRI showed the hernia at C5-6 had worsened. Dr. Boulos scheduled surgery for March 7, 2008, and removed Randall from work.

9. At the hearing, Dr. David Stephens and Dr. Boulos testified by deposition. The doctors agreed Randall's symptoms increased after the workplace accident, and the surgery was reasonable and necessary. Dr. Stephens related the surgery to the non-workplace accident, while Dr. Boulos related the surgery to the workplace accident. Dr. Stephens also testified Randall was well enough to return to work full time at sedentary levels, based on his June 30, 2009 exam.

10. The officer concluded Randall's "work activity aggravated, and in combination with the preexisting condition, caused the need for surgery at the time it occurred." The officer accepted Dr. Boulos's testimony, and found Randall's testimony was consistent with her health status before and after the accident. The officer awarded total disability benefits for the closed period from July 30, 2007 until October 14, 2007, and ongoing since February 6, 2008.

11. The State appeals both awards. On appeal, this court's role

is limited.² It does not weigh the evidence or determine questions of credibility.³ That is the officer's responsibility.⁴ This court reviews the officer's decision to determine if it is supported by substantial evidence and is free from legal error.⁵ Substantial evidence is enough relevant evidence that a reasonable person would accept as adequate to support the officer's conclusions.⁶

12. The State is not challenging the awards as excessive. Instead, it argues Randall is not entitled to any award because “[a] clear review of the Board’s decision illustrates numerous legal errors in the Board’s decision.” Although the State argues the officer committed numerous legal errors, its arguments challenge the officer’s factual findings. It claims the awards are not supported by substantial medical evidence relating Randall’s treatment to the workplace accident. It argues the officer “improperly discredited [Dr. Stephens] for relying upon a record without any history of the work accident.” Next, the officer erred because Dr. Boulos “could

² *Unemployment Ins. Appeal Bd v. Div. of Unemployment Ins.*, 803 A.2d 931, 936 (Del. 2002) citing 19 *Del. C.* § 3323(a).

³ *Coury v. Lowe’s Home Ctrs., Inc.*, 2009 WL 3290730 at *3 (Del. Super. Aug. 31, 2009) (Vaughn, P.J.).

⁴ 19 *Del. C.* § 3323(a).

⁵ *Vincent v. E. Shore Mkts.*, 970 A.2d 160 (Del. 2009).

⁶ *Oceanport Ind. V. Wilm. Stevedores*, 636 A.2d 892 (Del. 1994).

not within reasonable medical certainty relate Dr. Palmer's treatment to the work accident." Finally, it argues the officer's "reliance merely upon the increased symptoms without determining whether there was an aggravation of [Randall's] condition constitutes legal error."

13. Dr. Boulos's medical opinion relating Randall's treatment to the workplace accident was reliable. In Delaware, a medical expert has to testify within a reasonable degree of medical probability.⁷ At the outset, Dr. Boulos agreed his "answers [would] be given within a reasonable degree of medical probability."⁸ At the end, he confirmed all his "opinions [had] been given within a reasonable degree of medical probability."⁹ The State does not cite any case, and its reasoning does not persuade the court to abandon the accepted standard.

14. Substantial evidence supports the officer's decision to accept Dr. Boulos's opinion. Dr. Boulos related Randall's treatment to the workplace accident because it aggravated her injury. The officer was free to accept Dr. Boulos's opinion or Dr. Stephens's opinion because both were supported by substantial

⁷ *Diamond Fuel v. O'Neil*, 734 A.2d 1060 (Del. 1999).

⁸ Boulos Dep. 6:4, Aug. 13, 2009.

⁹ *Id.* at 30:2.

evidence.¹⁰ The doctors' testimony was mostly consistent. They agreed the surgery was reasonable and necessary. They agreed Randall's symptoms increased after the workplace accident, even if her condition remained the same. The officer noted the doctors reviewed the same medical records, except Dr. Boulos reviewed Dr. Palmer's amended evaluation, while Dr. Stephens reviewed the original.¹¹ This difference was inconsequential. Dr. Stephens testified neither evaluation would change his opinion because it was based on Randall's condition, not the symptoms described in the evaluation. The officer found Dr. Boulos more persuasive. She found Dr. Stephens's "distinction between an increase in symptoms and an increase in [Randall's] condition" unpersuasive.

15. The officer's award relating Dr. Palmer's treatment to the workplace accident is supported by substantial evidence. In this context, substantial evidence "does not mean that in every case the testimony of medical experts must show at least a probability that the injury was caused by the trauma."¹² For example,

¹⁰ *Reese v. Home Budget Ctr.*, 619 A.2d 907 (Del. 1992).

¹¹ *Randall v. State*, No. 1303031, at 6, 8 (Del. I.A.B. Jan. 12, 2010).

¹² *Gen. Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

if a medical expert's "uncertain" testimony is supported by other credible evidence, such as the Claimant's testimony, "such evidence is sufficient to sustain an award."¹³

16. The officer heard testimony from Dr. Boulos, Dr. Stephens, and Randall. When questioned, Dr. Boulos was uncertain why Dr. Palmer's original evaluation omitted mention of the workplace accident. But, even if Dr. Boulos was uncertain about Dr. Palmer's paperwork, he and Dr. Stephens agreed Randall's symptoms increased after the workplace accident.

17. The officer found Randall's testimony credible. She testified she saw Dr. Palmer three days after the workplace accident because it caused her pain. She testified she told Dr. Palmer about the workplace accident. Randall's testimony was consistent with the doctors' opinions and Dr. Agard's notes. Randall's credible testimony, supported by the doctors' opinions about her health status before and after the accident, is sufficient evidence to affirm the award.

18. There is substantial evidence the workplace accident aggravated Randall's injury and accelerated the need for surgery. The officer relied on Dr. Boulos's opinion the surgery was related to the workplace accident. As mentioned,

¹³ *Id.* See also *Streett v. State*, 669 A.2d 9 (Del. 1995); *Custom Iron Shop v. Roxbury*, 1999 WL 743307 (Del. Super. Aug. 6, 1999) (Barron, J.).

Dr. Boulos answered within a reasonable degree of medical probability. He testified the February 2008 MRI showed Randall's hernia worsened and required surgery.¹⁴ He testified the workplace accident "obviously caused her an aggravation or acceleration of symptoms that eventually needed the surgery to be done."¹⁵

19. Finally, the State claims the "failure of the Board to address the fact that Dr. Boulos had opined that [Randall] was capable of sedentary work, and to examine the labor market survey, clearly constitutes legal error." A worker is entitled to compensation for injuries resulting in total disability.¹⁶ Because the officer determined Randall was totally disabled, she was entitled to compensation.

20. At the time of the hearing on August 17, 2009, Dr. Boulos still had Randall out of work. He testified "she could probably do some sedentary type of work and I recommended that she gets a functional capacity evaluation to see where she can fit in that." The evaluation was scheduled for August 25, 2009. The officer awarded total disability benefits, adding that the parties could seek an order clarifying the benefits after the evaluation. In her answering brief, Randall conceded the total disability period is over and she returned to work on September 28, 2009.

¹⁴ Boulos Dep. 26:24, 27:1-11, Aug. 13, 2009.

¹⁵ *Id.* at 21:3-11.

¹⁶ 19. *Del. C.* § 2324.

For the foregoing reasons, the officer's award of total disability benefits for the closed period from July 30, 2007 to October 14, 2007, and ongoing since February 6, 2008, is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary
Susan List Hauke, Esquire
Lawrence S. Kimmel, Esquire