

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

PATRICIA L. DEENEY, )  
 ) C.A. No. 02A-02-007 JTV  
 Claimant-Below / )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF DELAWARE, )  
 )  
 Employer-Below / )  
 Appellee. )

*Submitted: January 08, 2003*

*Decided: April 29, 2003*

Roy S. Shiels, Esq., Brown, Shiels, Beauregard & Chasanov, Dover, Delaware.  
Attorney for Claimant-Below / Appellant.

Susan A. List, Esq., Tybout, Redfearn & Pell, Wilmington, Delaware. Attorney for  
Employer-Below / Appellee.

*Upon Consideration of Claimant's Appeal From  
The Industrial Accident Board*

**AFFIRMED**

**VAUGHN, Resident Judge**

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## **ORDER**

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

1. Patricia Deeney ("claimant") appeals from a decision of the Industrial Accident Board ("Board") which denied her Petition to Determine Compensation Due. She sought medical expenses and total disability benefits based upon an alleged work-related mental injury. She alleged that her work environment and certain events which occurred at work caused her to suffer post-traumatic stress disorder, and that the condition rendered her unable to continue with her employment. Her claim was supported by Dr. Peggy M. Hullinger, a psychiatrist. The employer, the State of Delaware, presented testimony of Dr. Neil S. Kaye, another psychiatrist, who testified that the claimant does not suffer from post-traumatic stress disorder. His testimony was that she suffers from a personality disorder which is not work related. The Board accepted the testimony of Dr. Kaye over the testimony of Dr. Hullinger and rejected the claimant's petition.

2. In this appeal, the claimant contends that the Board failed to make adequate findings of fact as required by 19 *Del. C.* § 2345.<sup>1</sup> She asks that the Court remand the matter to the Board for certain additional, specified fact findings. For the reasons which follow, I conclude that remand for further findings is not necessary and that the decision of the Board should be affirmed.

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<sup>1</sup> The Board "shall hear and determine the matter in accordance with the facts and the law and state its conclusions of fact and rulings of law."

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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.<sup>2</sup> "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>3</sup> On appeal, the court does not "weigh the evidence, determine questions of credibility, or make its own factual findings."<sup>4</sup> The court is simply reviewing the case to determine if the evidence is legally adequate to support the agency's factual findings.<sup>5</sup>

4. The claimant was employed at the Department of Motor Vehicles in New Castle County. The Board received testimony from numerous witnesses, many of whom testified about the conditions at the work place. The evidence is summarized in some detail in the Board's decision, and will be referred to here only as needed to decide the appeal.

5. In its findings of fact and conclusions of law, the Board correctly identified the applicable legal standard. It stated as follows:

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<sup>2</sup> *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).

<sup>3</sup> *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981); *see Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620 (1966).

<sup>4</sup> 213 A.2d at 66.

<sup>5</sup> *ILC of Dover, Inc. v. Kelley*, 1999 Del. Super. LEXIS 573, at \*3 (Del. Super. 1999).

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The rule in Delaware regarding mental injury is as follows:

[I]n order to be compensated for a mental injury in the absence of a specific and identifiable accident (i.e. a mental injury which is gradually caused by stress), a claimant must offer evidence demonstrating objectively that his or her work conditions were actually stressful and that such conditions were a substantial cause of claimant's mental disorder. The stress causing the injury need not be unusual or extraordinary, but it must be real and proved by objective evidence. Where a claimant merely imagines or subjectively concludes that his or her work conditions have caused a psychological illness, there is no basis for holding the employer responsible since the connection between work and injury is perceived only by the impaired worker.

*State v. Cephas*, Del. Supr., 637 A.2d 20, 27-28 (1994) (citations omitted).

*Cephas* notes that the objective causal nexus test does not require the claimant to prove that a reasonable or average person would have been affected by the job-related stress. Rather, it must be shown only that actual, objectively proven job-related stress impacted upon the particular claimant. *Id.* at 28, n. 43.

6. The Board then stated as follows:

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When there is a conflict in medical testimony, the Board must decide which physician is more credible. The Board accepts Dr. Kaye's opinion over Dr. Hullinger's opinion. Dr. Hullinger determined that Claimant suffers from PTSD.<sup>6</sup> However, Dr. Kaye is of the opinion that Claimant is not suffering from PTSD, as she does not exhibit the symptoms of a person suffering from PTSD. In order to suffer from PTSD, a person must experience a severe life-threatening event. Claimant's situation at work was not life threatening. If having cancer or an abusive husband did not cause PTSD, then Claimant's work situation did not cause PTSD. If Claimant does have PTSD, it was probably caused by her abusive husband or her cancer.

The Board is persuaded by Dr. Kaye's testimony that the incidences described were not competent to cause PTSD, even assuming that everything Claimant says is true and the events happened as described. The stressors of being singled out and treated differently than other employees and the sexual harassment from Dino were not significant levels of stress to cause PTSD. Furthermore, Claimant's symptoms are not consistent with someone suffering from PTSD as a result of sexual harassment, such as recurrent, intrusive nightmares. Dr. Kaye's opinion that Claimant suffers from a preexisting personality disorder is more persuasive than Dr. Hullinger's opinion that Claimant suffers from PTSD.

Claimant did not prove that she suffers from PTSD as a result of her work situation at DMV. The Board finds that Claimant did not present objective evidence of actual

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<sup>6</sup> "PTSD" is an abbreviation for Post-traumatic Stress Disorder.

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stressful conditions at work which were the substantial cause of Claimant's mental disorder.

7. The claimant contends that the case should be remanded for the Board to make findings of fact on the following points: whether the claimant suffered sufficient specific stress at work to cause her to be unable to work; what facts support any conclusion that actual stress at work was not a substantial cause of her inability to work; the testimony regarding stressful events at work and that such stress disabled the claimant; the testimony regarding actual stress at work and its effect on the claimant's ability to work; and the fact that the claimant may have been predisposed to suffer from stress at work because of past experiences with an abusive husband, or with cancer.

8. It is evident that the Board based its decision on the opinions expressed by Dr. Kaye, and that it did so "even assuming that everything Claimant says is true and the events happened as described." The Board's summary of Dr. Kaye's testimony, both in the summary of the evidence and in its findings of fact and conclusions of law, is an accurate account of his testimony. He was of the opinion that the claimant has a personality disorder which preexists the work place stress factors and which was caused by events or conditions separate and apart from work stress. He also stated that the claimant did not suffer from post-traumatic stress disorder and that the work place incidents complained of did not have any

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significant effect on her preexisting mental disorder.<sup>7</sup> He testified, as mentioned in the Board's summary of the evidence, that the sexual harassment which the claimant described, and being singled out and treated differently as she described, were not sufficient to give rise to post-traumatic stress disorder. In addition, as mentioned in the Board's summary of the evidence, he testified that he did not believe that the work place factors in any way exacerbated the claimant's preexisting personality disorder.

9. While the Board must, of course, make findings of fact and conclusions of law sufficient to enable this Court to perform its appellate function,<sup>8</sup> it need not comment on every fact situation.<sup>9</sup> Where the evidence has been explained as part of the preface to the formal findings of fact and conclusions of law and where the Board's decision explains its reasoning, a remand for further findings is not normally required.<sup>10</sup> And where certain findings, although not expressly set forth by the Board, are capable of being inferred by the court from the Board's conclusions, a remand for further proceedings may simply be an unnecessary

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<sup>7</sup> The claimant argues that the Board contradicted itself by stating "If Claimant does have PTSD, it was probably caused by her abusive husband or her cancer." I find, however, that this statement does not detract from the Board's finding that the claimant does not suffer from any PTSD that was caused by her working conditions.

<sup>8</sup> *Barnes v. Panaro*, 238 A.2d 608 (Del. 1968).

<sup>9</sup> *Petrea And Son Oil Co. v. Moore*, 442 A.2d 75 (Del. 1982).

<sup>10</sup> *Johnson v. E.I. de Nemours & Co.*, 2000 WL 33115805 (Del. Super. 2000).

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formality.<sup>11</sup>

10. The gist of Dr. Kaye's opinion was that the work-place conditions and events of which Ms. Deeney complained were insufficient to cause post-traumatic stress disorder, and that she has a personality disorder not caused by her work-related stress conditions. The Board has discretion to accept the testimony of one expert over that of another expert when evidence is in conflict and the opinion relied upon is supported by substantial evidence.<sup>12</sup> The Board's acceptance of Dr. Kaye's opinion over the opinion of Dr. Hullinger was a clear rejection of Ms. Deeney's claim that she suffered a compensable mental injury which was caused by her employment. The claimant contends that Dr. Kaye conceded that his diagnosis would be different if the events and conditions at work of which she complained were, in fact, true. While it is true that Dr. Kaye indicated that his diagnosis might be different if he were presented with a different factual situation, his testimony, taken as a whole, supports the conclusion that the matters of which the claimant complained were insufficient to give rise to post-traumatic stress disorder.

11. I conclude that a remand for further proceedings would be an unnecessary formality. I also conclude that Dr. Kaye's opinion and the Board's

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<sup>11</sup> *Keith v. Dover City Cab.*, 427 A.2d 896, 899 (Del. Super. 1981).

<sup>12</sup> *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).



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decision to deny benefits on the basis of it are supported by substantial evidence.

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

**IT IS SO ORDERED.**

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**Resident Judge**

oc: Prothonotary  
cc: Order Distribution  
File