

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

JOSEPH YEAGER, )  
Claimant )  
Below-Appellant, )  
 )  
v. ) C.A. No.01A-01-002 HLA  
 )  
DAIMLERCHRYSLER )  
CORPORATION, )  
 )  
Employer )  
Below-Appellee. )

Date Submitted: May 23, 2001  
Date Decided: August 30, 2001

**ORDER**

**UPON CLAIMANT'S APPEAL FROM THE  
INDUSTRIAL ACCIDENT BOARD**

**AFFIRMED**

David J. Lyons, Esq., The Lyons Law Firm, 1526 Gilpin Avenue, Wilmington, DE 19801. Attorney for Claimant Below-Appellant.

Jessica L. Julian, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, 1220 N. Market Street, Suite 202, P.O. Box 130, Wilmington, DE 19899. Attorney for Employer Below-Appellee.

**ALFORD, J.**

On this 30<sup>th</sup> day of August 2001, upon consideration of the Appeal filed by Joseph Yeager (“Appellant”) and the record of the proceedings below, it appears to the Court that:

(1) On December 27, 2000 the Industrial Accident Board (“Board”) denied Appellant’s Petition to Determine Additional Compensation Due and award him disfigurement benefits for a work-related hernia injury, which led one of his testicles to be drawn up into his body after surgery. The sole issue in this appeal is whether Appellant can recover disfigurement benefits for his injuries that can only be seen when he is naked. The Board did not take testimony on the issue, but rather ruled as a matter of law that disfigurement benefits are not available when the disfigurement is only visible when the claimant is naked.

(2) Appellant argues that the language of 19 *Del. C.* § 2326(f)’s “clothed normally” encompasses times when the claimant will be unclothed, such as changing or showering in an employee locker room or having sexual relations with his wife. Appellant relies on *Bean v. Chrysler Corp.*<sup>1</sup> for the proposition that the above statute’s “clothed normally” provision means “clothing normally worn by the employee/claimant when involved in any regular activities, including recreational, vocational and avocational

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<sup>1</sup> *Bean v. Chrysler Corp.*, Del. Supr., 332 A.2d 1143 (1975).

activities.”<sup>2</sup> In addition, Appellant contends that in such activities situations arise that can cause his hernia scar and the absence of the right testicle to become visible.

(3) The function of the Court reviewing the findings of an administrative agency is to determine if there is substantial evidence to support the agency’s decision.<sup>3</sup>

Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>4</sup> The appellate Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>5</sup> As the appellate

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<sup>2</sup> *Id.*

<sup>3</sup> *Johnson v. Chrysler Corp.*, Del. Supr., 213 A.2d 64, 66-67 (1965); *Histed v. E.I. duPont de Nemours*, Del. Supr., 621 A.2d 340, 342 (1993).

<sup>4</sup> *Ocean Ind. v. Wilmington Stevedores*, Del. Supr., 636 A.2d 892, 899 (1994); *Olney v. Cooch*, Del. Supr., 425 A.2d 610, 614 (1981).

<sup>5</sup> *Johnson*, 213 A.2d at 66.

Court is not the trier of fact it does not substitute its judgment for that of the Board's judgment<sup>6</sup>. Instead, the Court simply determines if the agency's findings are supported by legally adequate evidence.<sup>7</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> 29 *Del. C.* § 10142 (d).

(4) Pursuant to 19 *Del. C.* § 2326(f), “[t]he Board shall award proper and equitable compensation for serious and permanent disfigurement to any part of the human body up to 150 weeks, provided that such disfigurement is visible and offensive when the body is clothed normally.”<sup>8</sup> Since *Beam*, the Board has utilized the “bathing suit rule” in determining if a disfigurement is visible, thus showing some clothing is needed for a disfigurement to be compensable. The Board determined that accepting Appellant’s argument, the statutory phrase, “clothed normally,” would become meaningless. The Board reasoned that the General Assembly is presumed to have inserted the provision for some useful purpose and construction.<sup>9</sup> In addition, the common meaning of the words “clothed normally” inherently imply the presence of some clothing is needed. The Board, thus, denied Appellant’s claim for disfigurement benefits.

(5) The Court finds that Appellant is not entitled to disfigurement benefits for one of his testicles being drawn up into his body. The record consists of substantial evidence to support the affirmation of the Board’s decision. Using ordinary statutory

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<sup>8</sup> 19 *Del C.* § 2326(f).

<sup>9</sup> *General Motors Corp. v. Burgess*, Del. Supr., 545 A.2d 1186, 1191 (1988).

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construction, which is settled law in Delaware, there is substantial evidence that the statutory language of 19 *Del. C.* § 2326(f) implies the presence of some clothing to satisfy the statute's requirement that the disfigurement is "visible and offensive when the body is clothed normally."

(6) For the forgoing reasons the decision of the Industrial Accident Board is hereby **AFFIRMED**.

**IT IS SO ORDERED.**

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**ALFORD, J.**

Original: Prothonotary's Office - Civil Div.