IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BRENDA COWARD,	:	
	:	C.A. No. 01A-07-003 WLW
Claimant-Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
MODERN MATURITY CENTER, INC.,	:	
	:	
	:	
Employer-Below,	:	
Appellee.	:	

Submitted: December 18, 2002
Decided: March 13, 2003

ORDER

Upon the Appeal of the Decision of the
Industrial Accident Board. Reversed and Remanded.

Walt F. Schmittinger of Schmittinger & Rodriguez, P.A., Dover, Delaware, attorneys for the Claimant-Below, Appellant.

Erik C. Grandell of Heckler & Frabizzio, Wilmington, Delaware, attorneys for the Employer-Below, Appellee.

WITHAM, J.

I. Introduction

Before this Court is an appeal from an Industrial Accident Board (IAB) decision denying Brenda Coward's petition for workers' compensation benefits. After reviewing the parties' briefs, the IAB's opinion and the transcript, it appears to this Court that the IAB's decision should be ***reversed and remanded***.

II. Background

A. Facts

On January 30, 2001, Ms. Coward was injured while working at Modern Maturity Center. At the time of the accident, Ms. Coward had been an employee of Modern Maturity Center for approximately four months as a prep cook and server. Ms. Coward fell while working on a serving line. When Ms. Coward fell she injured her back, her hip and her knee, and sprained her ankle.

Ms. Coward claims that she slipped while preparing to serve vegetables from the serving line. Although she did not see anything on the floor prior to the fall, she claims when she was getting up she noticed some greens and juice on the floor. Ms. Lowengood was standing next to Ms. Coward on the serving line. Ms. Lowengood testified that she did not believe that Ms. Coward slipped because there was nothing on the floor to cause her to slip, and that at the time of the fall she was standing on the line with both feet on the ground. To account for the fall, Ms. Lowengood further postulated that she believed that Ms. Coward "passed out" rather than slipped.

After the fall, Ms. Coward saw her family doctor and was given a no work

slip. Subsequently, she was referred to a another doctor who released her to sedentary duty. Prior to returning to work, Ms. Coward's supervisor, Mark Briggs, telephoned her to inform her she was fired. During the hearing, Mr. Briggs explained that he fired Ms. Coward because she retained a lawyer and started legal proceedings. Subsequently, Mr. Briggs learned that it was illegal to fire someone because they had filed a claim. A day later he called Ms. Coward back and explained to her that he could not terminate her on those grounds and inquired as to when she would be returning to work. For the next two days she returned to sedentary work. On the second day, she was called into the director's office and told that she must bring in a doctor's note indicating the exact day she was released to work. According to the IAB Summary of the evidence, "the director gave her a hard time about the fact she had retained an attorney and filed a claim for workers' compensation benefits [and] when she brought the requested documentation back she was terminated."[1]

B. IAB's Decision

On February 5, 2001, Ms. Coward filed a petition to Determine Compensation Due seeking benefits arising out of the injury she had sustained. On July 9, 2001, the IAB issued a decision denying Ms. Coward's petition for workers' compensation benefits. The IAB determined that it was undisputed that Claimant

[1] *Coward v. Modern Maturity Ctr.*, Hearing No. 1183349, Decision on Petition to Determine Compensation Due at 2 (Industrial Accident Board July 9, 2001) (hereinafter IAB Decision Below).

fell on January 30th while working at Modern Maturity. The sole issue of dispute was the cause of her fall. Ms. Coward's position was that she slipped on something on the floor and fell. Modern Maturity's position is that she did not fall because of her work related activities.[2]

In its decision the IAB relied upon *Gray's Hatchery & Poultry Farm v. Stephens*, stating that the "Claimant carries the burden to establishing by a preponderance of the evidence that her 'injury happened at a fixed time and place and was attributable to a clearly traceable incident of the employment.'"[3] The IAB found that Ms. Coward failed to prove by a preponderance of the evidence that her injuries were attributable to her work activities.[4] In its decision, the IAB explains that the only testimony in support of the claim was that of Ms. Coward, and it found her testimony unpersuasive. In short, the IAB found that Ms. Coward's testimony was inconsistent because at one point in her testimony she said that she was walking up to the serving line when she fell, and during cross-examination she stated that she was standing at the table getting ready to serve when she slipped. Further, the IAB found Ms. Lowengood's testimony that it appeared that Ms. Coward "passed out" to be credible. Therefore, the IAB denied Ms. Coward's petition for compensation.

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[2] *Id.*

[3] *Id.* at 4 (quoting *Gray's Hatchery & Poultry Farm v. Stephens*, 81 A.2d 322, 324 (Del. 1950)).

[4] *Id.* at 5.

On July 11, 2001, Ms. Coward filed this appeal before the Superior Court seeking a reversal of the IAB's decision. Briefing on this appeal was not completed until December 6, 2002.

C. Parties' Contentions

The Appellant argues that the IAB's decision should be reversed for three reasons. First, Ms. Coward claims that the IAB's decision was not supported by substantial evidence. The IAB denied benefits because of Ms. Lowengood's testimony that it appeared to her that Ms. Coward "passed out." Appellant contends that Ms. Lowengood's testimony can not constitute substantial evidence for many reasons including: (1) Ms. Lowengood is not a medical expert; (2) Ms. Lowengood could not point to any specific reasons why she felt that Ms. Coward fainted; (3) there was no testimony that Ms. Coward was unconscious once she had fallen; and (4) Ms. Coward specifically testified that she never had any fainting spell, nor did she faint on this occasion. Secondly, Appellant contends that there is a public policy problem with the Employer's questioning regarding when Ms. Coward retained counsel. Ms. Coward's supervisor stated that she was fired for retaining counsel, and that "there was no problem. I mean, we have Workman's Comp insurance for things like this."[5] Appellant contends that: "The clear implication of Mr. Biggs' testimony is that Ms. Coward's claim would have been accepted and paid had she not retained counsel. That the Employer determined to fight Ms.

[5] Transcript of June 26, 2001 Hearing Before the Industrial Accident Board at 101 (hereinafter Tr. of IAB Hearing).

Coward's case simply because she retained counsel certainly runs against the public policy underlying the workers' compensation system."[6] Finally, Appellant argues that the IAB's decision misstated the law. The IAB relied upon *Gray's Hatchery* to articulate the requirements for causation as follows:

> [T]he evidence clearly establish that the injury happened at a fixed time and place and was attributable to a clearly traceable incident of the employment. Otherwise, the causal connection between the application of force and the resulting internal injury would be rendered vague and the element of unexpectedness, without which the definition of an accident is incomplete, would be lacking.[7]

Ms. Coward contends that this language is not consistent with current case law on causation. Specifically, Ms. Coward claims that this language in *Gray's Hatchery* would preclude the cumulative detrimental effect theory of recovery.

The Appellee contends that the IAB's decision should not be reversed because issues of credibility are solely within the province of the IAB. In its decision the IAB specifically stated that it did not find Ms. Coward's testimony credible, but did find Ms. Lowengood's testimony credible. In addition, Appellee offers that the IAB correctly stated the law in Delaware on causation in this type of case, and then properly found that Ms. Coward failed to meet her burden under the *Gray's Hatchery* test.

III. Analysis

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[6] Opening Brief for Appellant at 15.

[7] *Gray's Hatchery & Poultry Farm v. Stephens*, 81 A.2d 322, 324 (Del. 1950).

A. Standard of Review

The limited appellate review of the factual findings of an administrative agency is well settled in Delaware. The scope of review for appeal of an IAB's decision is limited to examining the record for errors of law and determining whether substantial evidence is present on the record to support the IAB's findings of fact and conclusions of law.[8] Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[9] This Court, when sitting as an appellate court, does not weigh the evidence, determine questions of credibility, or make its own factual findings.[10] This Court simply determines if the evidence is legally adequate to support the agency's factual findings.[11] This Court must give "due account of experience and specialized competence of the agency and of the purposes of the basic law under which the

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[8] *Histed v. E. I. Dupont de Nemours & Co.,* 621 A.2d 340, 342 (Del. 1993); *Willis v. Plastic Materials*, 2003 Del. Super. LEXIS 9 (Del. Super. Ct. 2003); *Robinson v. Metal Masters, Inc.,* 2000 Del. Super. Lexis 264 (Del. Super. Ct. 2000); *see also Gen. Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).

[9] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981); *see also Oceanport Indus. v. Wilmington Stevedores, Inc*., 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986), app. dism., 515 A.2d 397 (Del. 1986). .

[10] *Johnson,* 213 A.2d at 66.

[11] DEL. CODE. ANN. tit. 29, § 10142(d) (1997); s*ee also Willis*, 2003 Del. Super. LEXIS at *2.; *ILC of Dover, Inc. v. Kelley*, 1999 Del. Super. LEXIS 573, at *3 Del. Super. Ct. 1999)

agency acted."[12] However, the Court's review of questions of law is *de novo*.[13] In short, "The Court acts 'to correct errors of law and to review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process.'"[14]

B. Analysis of the Merits of Ms. Coward's Appeal

Work related injuries are governed by title 19, section 2304 of the Delaware Code (part of the Workers' Compensation Act) which states:

> Every employer and employee . . . shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.[15]

The fundamental goal of the Workers' Compensation Act is to fulfill the "twin purposes of providing a scheme for assured compensation for work related injuries without regard to fault and to relieve employers and employees of the expenses and

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[12] DEL. CODE. ANN. tit. 29, § 10142(d); *see also Histed*, 621 A.2d at 342; *State v. Cephas*, 637 A.2d 20, 23 (Del. 1994) (specifically stating that the Superior Court must take "due account of the experience and specialized competence" of the IAB and the purposes of the Workers' Compensation Act).

[13] *Duvall v. Charles Connell Roofing,* 564 A.2d 1132 (Del. 1989).

[14] *Brittingham v. Daimler Chrysler*, 2002 Del. Super. LEXIS 292, *3 (Del. Super. Ct. 2002).

[15] DEL. CODE ANN. tit.19, § 2304.

uncertainties of civil litigation."[16] In determining the scope of Workers' Compensation law the Delaware Supreme Court has "taken the position that the Delaware Workers' Compensation Act may not be construed so as to be transformed into a health insurance statute."[17] Nevertheless, "while the [Delaware Workers'

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[16] *Delmarva Warehouses, Inc. v. Yoder*, 784 A.2d 1080 (Del. 2001); *see also Pierce v. International Ins. Co.,* 671 A.2d 1361, 1366 (Del. 1996) ("Our decisions have recognized that the policy of the WCL is to provide for a quick resolution of workers' compensation claims without resort to costly and uncertain litigation*."*); *State v. Armistead*, 734 A.2d 160 (Del. 1999); *Streett v. State*, 669 A.2d 9, 12 (Del. 1995); *New Castle County v. Goodman*, 461 A.2d 1012, 1014 (Del. 1983).

The Delaware Supreme Court in *Rafferty v. Hartman Walsh Painting Co.*, 760 A.2d 157 (Del. 2000), throughly explained the policy goals of the Workers' Compensation Statute stating:

> One of the General Assembly's purposes in enacting the statute was to provide more direct and economical compensation for injured employees and create a pool of employers that would bear the burden of ameliorating the losses resulting from industrial accidents. The Delaware Workers' Compensation Act was also designed to provide prompt financial and medical assistance to injured employees and their families because the lengthy and protracted nature of tort litigation arising out of injuries to an employee often delayed such assistance for an extended period of time. Workers' Compensation statutes similar to the Delaware Act were adopted in most states early in the last century in response to the failure of the common law to provide a quick, practical, cost effective remedy for on the job injuries suffered by workers.
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> In Delaware, as well as under many other state statutes, there was a trade off. On one side, compensation was to be promptly awarded to a worker for a job related injury without the worker being required to prove any fault. Conversely, the statutes precluded the employee from bringing a suit for a common law tort against the employer arising out of a job related accident. Under these statutes, most courts have held that the exclusivity provision of a Workers' Compensation statute precludes a suit for negligence under the common law, even if the injury was caused by the gross, wanton, wilful, deliberate, reckless, culpable or malicious negligence, or other misconduct of the employer.

Rafferty, 760 A.2d at 159.

[17] *Air Mod Corp. v. Newton*, 215 A.2d 434, 442 (Del. 1965)*; see also Giofre v. G.C. Capital Group*, 1995 Del. Super. LEXIS 157, *8 (Del. Super. Ct. 1995).

Compensation] law is not a general health insurance statute it should be interpreted liberally to fulfill its intended compensation goal under § 2304."[18]

To foster these goals, an employee is entitled to receive benefits pursuant to the workers' compensation act for injuries "arising out of and in the course of employment."[19] However, § 2304 is limited to accidents that occur "while the employee is engaged in, on or about the premises where the employee's services are being performed, which are occupied by, or under the control of the employer (the employee's presence being required by the nature of the employee's employment), or while the employee engaged elsewhere in or about the employer's business where the employee's services require the employee's presence as a part of such service at the time of the injury . . ."[20]

Under § 2304 the IAB should utilize a two-step analysis to determine if compensation should be awarded to an employee.[21] First, did the accident occur in the course of employment, and second, did the accident arise out of the employment. The first prong of analysis is to determine whether the accident occurred in the course of employment. Courts have defined the phrase "course of

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[18] *Id.* (citing *Duvall*, 564 A.2d at 1134).

[19] DEL. CODE ANN. tit. 19, § 2304.

[20] *Id.* at § 2301 (15)(a).

[21] *Stevens v. State*, 802 A.2d 939, 945 (Del. Super. Ct. 2002); *Rose v. Cadillac Fairview Shopping Ctr.,* 668 A.2d 782, 786 (Del. Super. Ct. 1995).

employment" to refer to the time, place, and circumstances of the injury.[22] This prong of analysis "covers those things that an employee may reasonably do or be expected to do within a time during which he is employed and at a place where he may reasonably be during that time."[23] Whether a particular accident occurred during the course and scope of employment is a highly factual inquiry and must be resolved under the totality of the circumstances.[24] Under the current state of the law, an employee does not have to be injured during a job-related activity to be eligible for workers' compensation benefits.[25] In fact, Delaware has recognized the general rule that a reasonable interval before working hours is in the course of employment as well as when the employee is on the premises engaging in preparatory or other incidental acts.[26] This step of the analysis is easily met in the case at bar since according to all accounts Ms. Coward was performing work duties when she fell.

Turning now to the second prong of the analysis under the statute, the courts have defined arising out of the employment as referring to the origin of the accident

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[22] *Stevens v. State*, 802 A.2d 939, 945 (Del. Super. Ct. 2002); *see also Seinsoth v. Rumsey Elec. Supply Co.*, 2001 Del. Super. LEXIS 263 (Del. Super. Ct. 2001).

[23] *Rose*, 668 A.2d at 786 (quoting *Dravo Corp. v. Strosnider*, 45 A.2d 542, 543-44 (Del. Super. Ct. 1945)).

[24] *Steven*, 802 A.2d at 945; *see also Histed v. E. I. Du Pont Nemours & Co.*, 621 A.2d 340, 344 (Del. 1993).

[25] *Steven*, 802 A.2d at 945.

[26] *Tickles* v. *PNC Bank*, 703 A.2d 633, 636 (Del. 1997).

and its cause.[27] Three distinct lines of jurisprudence have arisen concerning the causal link between the accident and the activities of employment.[28]

The first theory of causation was enunciated in *Gray's Hatchery* which states that in order to prevail in a workers' compensation case an employee must prove that "the injury happened at a fixed time and place and was attributable to a *clearly traceable* incident of the employment."[29] This theory was reiterated is *Chicago Bridge & Iron Co. v. Walker.*[30] The *Gray's Hatchery* theory of causation was utilized by the IAB in this case. The Appellant argues that this language from *Gray's Hatchery* is not consistent with current case law. It is argued that the "fixed time and place" language runs counter to the cumulative detrimental effect theory that was specifically approved of in *Duvall v. Charles Connell Roofing.*[31] However, since *Duvall,* many cases have held that the language concerning causation in *Gray's Hatchery* and *Chicago Bridge* is still applicable to cases involving a specific

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[27] *Stevens*, 802 A.2d at 945.

[28] This Court notes that when dealing with job related injuries there are two causal links that the employee must show in order to recover. First, there is the casual link between the activities of the employment and the injury. Second, there is the causal link between the injury and the ensuing medical condition for which the employee is attempting to get compensation. In the case at bar, this Court will only be addressing the standard for causation concerning the first causal link.

[29] *Gray's Hatchery*, 81 A.2d at 324.

[30] 564 A.2d 1132 (Del. 1977).

[31] 564 A.2d 1132 (Del. 1989).

and identifiable industrial accident.[32] However, courts have not applied this standard to all cases when there is an identifiable industrial accident. In fact, two other standards for causation have emerged, and these theories are discussed below.

The second theory of causation still utilized was set forth in a line of cases beginning with *Dravo Corp. v. Strosnider.* [33] *Dravo* states that the accident arose out of the employment if: "the injury arises from a situation which is incident or has a reasonable relation to the employments, and that there be *some causal connection* between the injury and the employment."[34] *Rose v. Cadillac Fairview Shopping Ctr.*[35] further states that "there must be a *reasonable* causal connection between the injury and the employment."[36] Furthermore, some cases state that although there clearly must be a causal relationship between the injury and the employment, the employment does not necessarily need to be the sole or proximate cause of the

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[32] *Giorfre v. G.C. Capital Group*, 1995 Del. Super. LEXIS 157, *14 (Del. Super. Ct. 1995); *Barr v. George and Lynch*, 1992 Del. Super. LEXIS 44 (Del. Super. Ct. 1992); *Builders & Managers, Inc. v. Cortilesso*, 1991 Del. Super. LEXIS 301 (Del. Super. Ct. 1991); *Gen. Motors Corp. v. Ciccaglione*, 1991 Del. Super. LEXIS 470 (Del. Super. Ct. 1991).

[33] 45 A.2d 542 (Del. Super. Ct. 1945).

[34] *Rose*, 668 A.2d at 786 (quoting *Dravo*, 45 A.2d at 544) (emphasis added); *see also Duzick v. Anchor Motor Freight,* 1991 Del. Super. LEXIS 128, *9 (Del. Super. Ct. 1991).

[35] 668 A.2d 782 (Del. Super. Ct. 1995).

[36] *Id.* (emphasis added)

accident.[37]

Finally, under the recent cases of *Stevens v. State*,[38] and *Tickles* v. *PNC Bank*,[39] "an essential causal relationship between the employment and the injury is unnecessary"[40] This line of cases demonstrates the recent trend in the law to interpret the workers' compensation law broadly in order to include, rather than exclude, cases under the statute. Furthermore, this standard of causation appears to this Court to be more in line with the policy goals of the workers' compensation act which were discussed above. Consequently, this Court concludes that the IAB erroneously applied the *Gray's Hatchery* standard for causation and should have applied the more modern *Stevens/Tickles* standard.

Utilizing the *Stevens/Tickles* theory of causation, it appears to this Court that Ms. Coward is covered by § 2304. This is because even if this Court assumes Ms. Coward fainted, as opposed to fell, while on the serving line, the accident nevertheless occurred in the course of employment and arose out of the

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[37] *Cross v. State*, 2000 Del. Super. LEXIS 212, *12 (Del. Super. Ct. 2000) (stating "There clearly must be shown a causal relation between the injury and the employment and that the injury arose out of the nature, conditions, obligations or incidents of the employment, or that a connection exists between the employment and the injury by which the employment was a substantially contributing, but not necessarily the sole or proximate, cause of the injury."); *Scarberry v. Chrysler Corp.*, 1996 Del. Super. LEXIS 462, *7-*8 (Del. Super. Ct. 1996).

[38] 802 A.2d 939, 945 (Del. Super. Ct. 2002).

[39] 703 A.2d 633, 636 (Del. 1997).

[40] *Tickles*, 703 A.2d at 636*; Stevens*, 802 A.2d at 945.

employment. However, this case is remanded to determine whether the medical treatment claimant received was reasonable and necessary for her injury and to determine the amount of compensation to which Ms. Coward is entitled.

IV. Conclusion

In conclusion, after delving into the various standards for causation relating to an identifiable industrial accident, it appears to this Court that the IAB erroneously applied the *Gray's Hatchery/Chicago Bridge* standard of causation. Applying the more modern *Stevens/Tickles* theory of causation, it appears to this Court that Ms. Coward's injury is covered by the Workers' Compensation Act, specifically § 2304 of the Delaware Code. Therefore, this case is ***remanded*** to the IAB for the sole purpose that the IAB determine the amount of compensation owed to Ms. Coward.

/s/ William L. Witham, Jr.
J.

WLW/dmh
oc: Prothonotary
xc: Distribution List
File