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

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| TRISTATE ROOFERS T/A THE ROOFERS, INC. | ) | |
| Appellant, | ) | |
| v. | ) | C.A. No. N18A-05-004 RRC |
| GRACIANO GONZALEZ-RODRIQUEZ | ) | |
| Appellee. | ) | |

Submitted: October 1, 2018
Decided: December 31, 2018

On Appeal from the Industrial Accident Board.
**AFFIRMED.**

# MEMORANDUM OPINION

William D. Rimmer, Esquire, Heckler & Fabrizzio, Wilmington, Delaware, Attorney for Appellant Tristate Roofers T/A The Roofers, Inc.

Gary S. Nitsche, Esquire, and Joel H. Fredericks, Esquire, Weik, Nitsche & Doughery, Wilmington, Delaware, Attorneys for Appellee Graciano Gonzalez-Rodriguez.

COOCH, R.J.

## I. INTRODUCTION

This is Tristate Roofers' ("Employer" or "Appellant") appeal from the April 17, 2018, decision of the Industrial Accident Board (the "Board") granting Graciano Gonzalez-Rodriguez's ("Claimant" or "Appellee") claim for total disability from

March 3, 2017, to August 15, 2017, as a result of low back, neck, and left knee injuries sustained during a work accident which occurred on March 3, 2017. Employer asserts that the Board erred by failing to make sufficient findings with respect to the specific diagnoses, nature, and/or extant of Claimant's injuries. Employer also argues that the Board erred by failing to sufficiently indicate the reasons it found Claimant's expert more persuasive than Employer's expert. Claimant argues that the Board's decision is supported by substantial evidence, and should be affirmed.

The Court concludes that the Board's decision was supported by substantial evidence and that the Board otherwise committed no error of law. Accordingly, the Court affirms the decision of the Board.

## II. FACTS AND PROCEDURAL HISTORY

Claimant worked for Employer from January 31, 2017, through March 10, 2017. On March 3, 2017, Claimant was riding in a work vehicle when another vehicle sped through a traffic light and collided with the side of the work vehicle, propelling the work vehicle into a guardrail (the "March 3 Accident"). On June 12, 2017, as a result of injuries sustained during the March 3 Accident, Claimant filed a Petition to Determine Compensation Due with the Industrial Accident Board. He sought a finding of injury to his neck, low back, and left knee, prior and ongoing total disability, compensability of medical expenses, medical witness fees, and attorney's fees.[1] While the Petition was pending, Claimant continued medical treatment.

The Board conducted a hearing on Claimant's petition on January 22, 2018. The Board heard testimony from Claimant, three of Claimant's coworkers, and considered the deposition testimony of Dr. James Zaslavsky, D.O. for Claimant and the deposition testimony of Dr. Robert Smith, M.D. for Employer. The Board ultimately found that Claimant met his burden to establish that he suffered work-related injuries, that his medical expenses were reasonable in light of the injuries, and that he was entitled to attorney's fees and medical witness fees. A key issue at the hearing was the existence and scope of Claimant's injuries.

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[1] Decision on Petition to Determine Compensation Due, *Graciano Gonzalez-Rodriguez v. Tristate Roofers T/A The Roofers, Inc.*, Hearing No. 1459260, at 2 (I.A.B. April 17, 2018) (hereinafter "IAB Decision").

Claimant testified that immediately following the March 3 Accident he experienced pain in the low back, neck, index finger, and left knee.[2] Despite the pain, Claimant denied sustaining any injuries to the police officer who arrived on the scene of the accident. Upon his return to work, Claimant was asked "whether he was okay," and he did not complain of pain.[3] Claimant explained that "his pain level was pretty low on the day of the accident, so he did not say anything."[4]

Claimant soon began to experience the onset of increased pain in is low back, neck, and left knee. The pain increased to the point that Claimant sought treatment at Abby Medical Center on March 7, 2017. Claimant complained of problems with his work during this time, and had difficulty performing heavy duties at his job due to physical pain. Claimant advised physicians at Abby Medical of pain in his back, neck, and down his left leg. Physicians at Abby Medical Center diagnosed Claimant with injuries to the neck and low back, and referred Claimant to Andrew Leitzke, D.C. for treatment. Dr. Leitzke treated Claimant from March through July 2017.[5]

> [Dr. Leitzke's] records indicate that Claimant complained of bilateral neck pain, bilateral low back pain, left knee joint pain, mid back pain, bilateral hand pain, left sacroiliac pain. Dr. Leitzke provided Claimant with manual therapy, including massage, electrical stimulation, heating pads and ultrasound. He also prescribed a home exercise program, and took Claimant out of work .... Dr. Leitzke's partner, Dr. Shelly McPhatter, had provided Claimant "excused from work" notes on April 21, 2017 and May 22, 2017. These notes covered Claimant to be out of work through June 22, 2017, and referred to "injuries sustained in motor vehicle accident."[6]

Dr. Leitzke eventually referred Claimant to James Zaslavsky, D.O, for further treatment. "Dr. Zaslavsky ... agreed with Dr. Leitzke that Claimant was totally disabled, and he continued his out of work status[.]"[7]

> [Dr. Zaslavsky] first treated Claimant in July 2017. At that time, Claimant reported that he was a back seat passenger on March 3, 2017 when he was involved in a MVA [motor vehicle accident]. He felt increasing pain across his lumbar spine about two to three days later .... Claimant reported that he was waking four to five times at night with increasing pain across his lower lumbar spine that was shooting

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[2] IAB Decision, at 2.
[3] Appellant's Opening Br. at 4.
[4] IAB Decision, at 2.
[5] "Dr. Zaslavsky also confirmed that Claimant treated once with a family care physician in April 2017. That record indicates that Claimant noted continued neck and back pain." *Id.* at 6, n.3.
[6] *Id.* at 6, 9.
[7] *Id.* at 6.

> into his left leg. He had to shift positions while sleeping to get comfortable. He reported that most of his pain was located between his lumbar spine and left buttock.
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> On physical exam, Dr. Zaslavsky noted that Claimant had tenderness to palpation across his lower lumbar spine. He had palpable muscle spasms and trigger point nodules in the lumbar paraspinal muscle region and left PSIS region. He was able to bend forward 30 degrees and backwards 5 degrees. Claimant had good strength in his bilateral lower extremities. He had a positive left straight leg raise, and a positive leg lowering test. [Dr. Zaslavsky stated that the] results [were] indicative of radiculopathy and of an annular tear.[8]

Dr. Zaslavsky reviewed MRI films of Claimant's lumbar spine which were taken on March 29, 2017.

> The MRI showed significant annular tears and bulging disc herniations at L4-5, L5-S1, and more minor findings at L3-4. To Dr. Zaslavsky, the findings are acute in nature. The T2-weighted images show edema (or a high-intensity zone lesion) in the annulus, [which appeared] as a bright white spot. [Dr. Zaslavsky stated that] [t]his is consistent with a more recent event, such as a MVA. A tear in the annulus develops this type of inflammation and fluid, typically signifying that an injury occurred sometime in the last six to nine months from the time the MRI was taken. The white area will slowly dissipate over time; in about a year, it turns into a dark area. After even more time has passed, it will start to calcify and become a hard area known as a disc osteophyte complex. The edema consists of inflammatory chemicals in the back of the disc; the edema and inflammation irritate the nerves. The pressure of the bulging disc against the nerves and from the chemical irritation can cause shooting pain into one or both legs. … Dr. Zaslavsky agreed that there are acute changes shown in the lumbar spine, but there are also degenerative parts of those changes. He clarified that the edema that is seen in the annulus tells him that something acutely happened to rip the annulus off of the bone, which is common. Dr. Zaslavsky acknowledged that annular tears can be degenerative in nature, but an annular tear with edema in the annulus is not degenerative. There is not always a finding of edema as part of an annular tear; some are chronic and have been there for years; thus, they do not light up white on a T2 weighted MRI image.[9]

Dr. Zaslavsky also reviewed an April 21, 2017, Electromyography ("EMG") study of Claimant's spine. "It was an abnormal study, showing lumbar radiculopathy affecting the L2 to L4 nerve roots bilaterally. There was no evidence of cervical radiculopathy. [Dr. Zaslavsky stated that the EMG] study correlated with the MRI and with Claimant's physical presentation on exam."[10] Based on the examinations,

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[8] *Id.* at 6–7.
[9] *Id.* at 7, 9–10.
[10] *Id.* at 8.

Dr. Zaslavsky stated that, "within a reasonable degree of medical probability, he believe[d] that Claimant had had a trauma to cause the edema in his annulus."[11]

Continuing treatment, Dr. Zaslavsky ordered an updated cervical spine MRI, which was taken on July 25, 2017. "The July 2017 MRI was fairly normal, but showed a small disc bulge at C3-4 and also at C7-Tl ... that could be a pain generator."[12] Instead of C7-Tl, Dr. Zaslavsky believed "that the pain was most likely coming from another area other than the discs or soft tissues."[13] Dr. Zaslavsky, through his physician's assistant Sarah Wagner, saw Claimant in follow up on August 15, 2017.

> At that time, claimant was attending medical massage and doing a little better. Dr. Zaslavsky recommended that he incorporate some cervical massage into his routine, and increase his frequency to twice per week. Claimant was to follow up with Dr. Zaslavsky in a month, but he [did not return]. The records are indicative that he [continued] medical massage through September 2017, however. ... Dr. Zaslavsky was unsure why Claimant never returned after August 2017. He was not aware of Claimant having any treatment beyond September 26, 2017.[14]

Dr. Zaslavsky also addressed Dr. Smith's findings, or lack thereof, from the defense medical examinations of Claimant. "Dr. Zaslavsky agreed that Dr. Smith['s] ... defense medical examinations revealed no positive findings."[15] However, Dr. Zaslavsky found Dr. Smith's conclusions "inconsistent with [his] own exams of Claimant in which he found palpable muscle spasm and a positive straight leg raise, indicative of radiculopathy."[16] Dr. Zaslavsky further explained that "Claimant's objective diagnostic test results were consistent with his clinical exams."[17]

As to the extent of Claimant's disability, Dr. Zaslavsky, "based on his review of the records from treatment providers prior to Claimant's first presentation to him in July 2017," believed that Claimant had been totally disabled prior to July 2017.[18] Dr. Zaslavsky opined to a reasonable degree of medical probability that Claimant was totally disabled from March 3, 2017 to August 15, 2017. "To Dr. Zaslavsky, Claimant was able to perform his activities of daily living to tolerance. He [did] not

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[11] *Id.* at 10.
[12] *Id.* at 8.
[13] *Id.* at 10.
[14] *Id.* at 8, 10.
[15] *Id.* at 8.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 10.

believe that Claimant could have worked, however, even if Claimant had asked to try to work a desk job, based on his physical exam and the way he presented to Dr. Zaslavsky."[19] Although Dr. Zaslavsky believed Claimant would have continued to be totally disabled beyond August, he did not meet with Claimant after that date, and cannot be certain. Thus the Board only had evidence of total disability until August 15, 2017. The Board recognized "that Dr. Zaslavsky was the most persuasive regarding the injuries that Claimant suffered to the neck and back, particularly given the fact that there was no evidence that Claimant ever had complaints or treatment for any of the body parts at issue prior to the work accident."[20]

The Board found that Claimant proved "that he suffered injuries to the low back, neck and left knee in relation to the work accident[,]" had "met his burden to show that he was totally disabled up through [August 15, 2017]," and lastly that Claimant proved "his low back, neck and/or left knee treatment [was] compensable through September 26, 2017."[21] Specifically, the Board found that Claimant sustained a "lumbar spine injury," "a strain and/or sprain type of cervical injury," and "a left knee injury to some degree" as a result of the March 3 Accident.[22] Although Claimant "personally believe[d]" he continued to be incapable of working beyond August 15, 2017, expert testimony only supported a finding of total disability through August 15, 2017.[23] The Board also found that medical expenses through September 26, 2017, were compensable, and that Claimant was entitled to attorney's fees and medical witness fees.[24]

## III. PARTIES' CONTENTIONS

### *A. Employer's Contentions*

Employer raises two grounds for appeal. First, Employer argues that the Board "erred by failing to address with specificity the actual and specific diagnosis, nature, and/or extent of any alleged injury and/if each injury resolved[.]"[25] Employer maintains that Claimant did not meet his burden to prove "the *nature and extent* of

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[19] *Id.* at 9.
[20] *Id.* at 22.
[21] *Id.* at 21–22.
[22] *Id.* at 23–25.
[23] *Id.* at 27
[24] *Id.* at 29.
[25] Appellant's Opening Br. at 14.

[his] injury."[26] Employer argues that the Board's written decision implies that Claimant did not satisfy his burden, because the Board failed to make "any specific finding as to the nature or extent of [Claimant's injuries]" and merely found Claimant sustained vague and nebulous injuries to his lower back, neck, and left knee.[27] Employer argues the Board would have explained with specificity the nature and extent of Claimant's injuries if Claimant had so proved. Employer contends that the Board merely "punt[ed]" the significant issue before it, and such non-action necessitates remand.

Secondly, Employer argues that the Board's finding that Claimant was "totally disabled for any period of time and finding compensable injuries…as well as finding compensable medical treatment" was not supported by substantial evidence because the Board discounted the testimony of Employer's witnesses, especially the testimony of Dr. Smith.[28] Employer acknowledges that the Board, as the trier of fact, is entitled to discount the testimony of expert witnesses on the basis of credibility. However, Employer contends that the Board "must provide specific, relevant reasons" for doing so but failed to do so in the instant matter.[29] Employer contends that the Board should have provided a more comprehensive explanation than simply stating "Dr. Zaslavsky was most persuasive," and the Board should have explained in detail why it preferred the testimony of Dr. Zaslavsky over Dr. Smith.[30]

*B. Claimant's Contentions*

Claimant argues that the Board's decision is supported by substantial evidence, as it is based on credible testimony from both Claimant and Dr. Zaslavsky. Claimant argues that the Board's findings of fact must be accepted by the reviewing Court, even if the reviewing Court disagrees with the weight afforded to certain evidence. Claimant contends that the Board, in its discretion as trier of fact, gave more weight to certain evidence presented by Claimant than the Board gave to

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[26] *Id.* at 15–16. (citing *Conagra, Inc. v. Mayra Tijerino*, 1999 WL 1427799, at *6 (Del. Super. Ct. Oct. 29, 1999)) (emphasis added); *see also McCormick Transp. Co. v. Barone*, 89 A.2d 160, 162 (Del. Super. Ct. 1952) ("In order to award the claimant compensation in the present case, two essential requirements must be must: (1) Adequate proof establishing the injury and the extent thereof, and (2) the causal connection between the [work activity] and the injury complained of[.]"); *Streett v. State*, 669 A.2d 9, 11 (Del. 1995) ("The claimant has the burden of establishing a work-related injury and the extent of the injury[.]").
[27] *Id.* at 17–18.
[28] *Id.* at 14, 20.
[29] *Id.* at 22 (citing *Turbitt v. Blue Hen Lines*, 711 A.2d 1214, 1215 (Del. 1998)).
[30] IAB Decision, at 22; Appellant's Opening Br. at 24.

evidence presented by Employer. As such, the issue is wholly factual in nature. "While the Employer may disagree with the Board's findings," Claimant argues, "it cannot be reasonably be disputed that there was substantial evidence to support their conclusions."[31]

## IV. STANDARD OF REVIEW

This Court does not sit as trier of fact, nor should this Court replace its judgment for that of the Board.[32] In reviewing a decision of the Board, "[t]he function [of this] Court is limited to determining whether substantial evidence supports the Board's decision regarding findings of fact and conclusions of law and is free from legal error."[33] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[34] If the Board's decision is supported by substantial evidence, this Court must sustain the Board's decision even if this Court would have decided the case differently if it had come before it in the first instance.[35] "The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted."[36] "The burden of persuasion is on the party seeking to overturn a decision of the Board to show that the decision was arbitrary and unreasonable."[37] In this process, "the Court will consider the record in the light most favorable to the prevailing party below."[38]

## V. DISCUSSION

### *A. The Board's decision, when read as a whole, is sufficiently specific for judicial review.*

The Board's written decision determined the nature and extent of Claimant's injuries and is sufficiently specific for further judicial review. Although Employer

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[31] Appellee's Answering Br., at 13.
[32] *Holowka v. New Castle Cty. Bd. of Adjustment*, 2003 WL 21001026, at *4 (Del. Super. Ct. Apr. 15, 2003).
[33] *Holowka*, 2003 WL 21001026, at *3 (citing 29 *Del. C.* § 10142).
[34] *Forrey v. Sussex Cty. Bd. of Adjustment*, 2017 WL 2480754, at *3 (Del. Super. Ct. June 7, 2017).
[35] *Id.*
[36] 29 *Del. C.* § 10142(d).
[37] *Forrey*, 2017 WL 2480754, at *3 (quoting *Mellow v. Bd. of Adjustment of New Castle Cty.*, 565 A.2d 947, 955 (Del. Super. Ct. 1988)).
[38] *Holowka*, 2003 WL 21001026, at *4 (quoting *Gen. Motors Corp. v. Guy*, 1991 WL 190491, at *3 (Del. Super. Ct. Aug. 16, 1991)) (internal brackets omitted).

contends that the Board failed to make specific finding as to the nature and extent of Claimant's injuries, a thorough reading of the Board's decision, coupled with the testimony, suggests otherwise. The Board summarized the evidence presented, and then reached conclusions based on the evidence provided.

A similar situation, in which the Board bifurcated its conclusions and supporting facts within its written decision, was presented to this Court in *Justison v. Home Health Corp.* In *Justison*, the Board evaluated deposition testimony from two medical witnesses who disagreed as to the permanency of injuries sustained by the claimant. The Board prefaced their conclusions with an explanation of the testimony presented. This Court held that although the reasoning of the Board must be apparent,

> where the testimony has been explained as part of the preface to the findings of fact and law and where the Board's decision contains the appropriate details which led to its reasoning, this Court will not reverse simply because the Board did not repeat those facts in its "Findings."[39]

Taken together, each part of the Board's findings of fact and the Board's summary of the testimony combine to provide sufficient detail as to the Board's reasoning. The Board evaluated Dr. Zaslavsky's and Dr. Smith's expert testimony, personally observed Claimant's and his coworkers, and concluded that both Dr. Zaslavsky's testimony and Claimant's testimony were more persuasive and credible in their respective ways. "Although the Board could have structured its decision in a [different] fashion, this Court will not overturn the decision of the Board simply because" it is not formatted as Employer wished.[40]

Furthermore, "when the Board decides not to expressly state certain findings, the courts are capable of inferring from the Board's conclusions what the underlying findings must have been.... [R]emand for further proceedings would simply be an unnecessary formality."[41] In its written decision, the Board explained in detail Dr. Zaslavsky's testimony and his findings regarding Claimant's injuries. Thus, although the Board itself may not have stated, in its own words, the specific extent of Claimant's injuries, this Court can appropriately infer the extent from Dr. Zaslavsky's medical opinions detailed in the Board's decision. Dr. Zaslavsky

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[39] *Justison v. Home Health Corp.*, 1999 WL 463702 at *4 (Del. Super. Ct. May 19, 1999).
[40] *Johnson v. E.I. Dupont de Nemours & Co.*, 2000 WL 33115805, at *4 (Del. Super. Ct. Oct. 4, 2000).
[41] *Keith v. Dover City Cab Co.*, 427 A.2d 896, 899 (Del. Super. Ct. 1981) (citing *Bd. of Pub. Educ. in Wilmington v. Rimlinger*, 232 A.2d 98, 101 (Del. 1967)).

thoroughly documented regarding the nature and extent of Claimant's injuries, and the Board adopted his opinions as the most persuasive. When read as a whole, the Board's written decision determined the nature and extent of Claimant's injuries and is sufficiently specific for further judicial review.

*B. Claimant's testimony and Dr. Zaslavsky's testimony constitute substantial evidence supporting the Board's decision.*

The Court finds that the Board's decision is supported by substantial evidence. The Board considered the testimony provided by both doctors, in addition to the testimony of Claimant and Claimant's coworkers, and the Board based its decision on such evidence. The Board, well within its discretion, chose Claimant's witnesses over Employer's. Even if this Court may have decided the case differently in the first instance, deference is owed to the Board unless the decision lacks substantial evidence that supports the Board's decision regarding findings of fact and conclusions of law or contains a legal error.[42]

Employer argues the Board should have explained in more comprehensive detail why it preferred the testimony of Dr. Zaslavsky over Dr. Smith, instead of simply stating "Dr. Zaslavsky was most persuasive." Employer relies on the Delaware Supreme Court decision in *Turbitt v. Blue Hen Lines, Inc.*, in which the Court stated "[a]lthough the Board is entitled to discount the testimony of a witness, even a medical witness, on the basis of credibility, *it must provide specific, relevant reasons for doing so.*"[43] However, the Board in *Turbitt* dealt with only "one" medical evaluation, and the Board disregarded that uncontroverted testimony.[44] The Supreme Court held that the Board, "when presented with uncontroverted expert medical opinion, may not use its administrative expertise as a basis for rejecting competent medical evidence."[45] The Board was not presented with uncontroverted medical opinion in the instant appeal. The instant appeal is a scenario in which "the Board was presented with differing medical testimony and was free to reject, in full or in part, the testimony of one physician based on its experience in gauging the testimony

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[42] *Holowka*, 2003 WL 21001026, at *3 (citing 29 *Del. C.* § 10142).

[43] *Turbitt v. Blue Hen Lines, Inc.*, 711 A.2d 1214, 1215 (Del. 1998) (citing *Lemmon v. Northwood Constr.*, 690 A.2d 912, 913–14 (Del. 1996)) (emphasis added).

[44] *Id.* Although "the Board was not required to accept [the medical expert's] evaluation of 34% disability at face value, [it] was not free to select a different figure *based simply on its general institutional experience*." *Id.* (emphasis added).

[45] *Roberts v. Capano Homes, Inc.*, 1999 WL 1222699, at *2 (Del. Super. Ct. Nov. 8, 1999) (citing *Turbitt*, 711 A.2d at 1214).

of witnesses who give conflicting testimony."[46] *Turbitt*'s holding explicitly differentiates its uncontroverted medical opinion scenario with the scenario present in the instant appeal: conflicting medical opinions.

Presented with a situation similar to the instant appeal in *DiSabatino Brothers, Inc. v. Wortman*, the Delaware Supreme Court stated:

> The question then becomes whether the clear and firm decision of the Board should be remanded for a further hearing solely because the Board *did not say why it rejected* the test supported conclusions of the claimant's psychiatrist. It would of course be a better record if the lay Board members could authoritatively state in a single statement in medical terms why they had not been persuaded by Dr. Pereira-Ogan's tests, diagnosis and conclusions. But perhaps they were not able to be that precise. The simple fact seems to be that they found the counterapproach and countertestimony of Dr. Vates to be persuasive. The Board members accepted Dr. Vates' testimony, as enhanced by the employer's other medical testimony and by their evaluation of the claimant's credibility. As the triers of fact, they were entitled to do just that. No further clarification is required.[47]

As in *DiSabatino*, "[i]t would of course be a better record if the lay Board members could authoritatively state in a single statement in medical terms why they had not been persuaded by" Dr. Smith.[48] The fact remains that the Board found Dr. Zaslavsky more persuasive. The Board, well within its discretion, accepted Dr. Zaslavsky's testimony, bolstered by an evaluation of Claimant's credibility. As the triers of fact, they were entitled to do just that. Remand for further clarification would "simply be an unnecessary formality."[49]

The issue at hand is essentially factual in nature. The Board "found Claimant credible regarding his low back complaints."[50] The Board also stated "that Dr. Zaslavsky was the most persuasive regarding the injuries that Claimant suffered to the neck and back[.]"[51] Dr. Smith's conclusions were considered by the Board and thoroughly detailed in the Board's summary of the evidence. Employer highlights numerous specific occasions where Dr. Smith's conclusions directly conflicted with Dr. Zaslavsky's conclusions.[52] In such a situation, the Board "was free to reject, in

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[46] *Id.* (citing *Simmons v. Delaware State Hosp.*, 660 A.2d 384, 388 (Del. 1995)).
[47] *DiSabatino Bros., Inc. v. Wortman*, 453 A.2d 102, 106 (Del. 1982) (emphasis added).
[48] *See DiSabatino*, 453 A.2d at 106.
[49] *Keith*, 427 A.2d at 899 (citing *Rimlinger*, 232 A.2d at 101).
[50] IAB Decision, at 23
[51] *Id.* at 22.
[52] *See* Appellant's Opening Br., at 8–9, 15, 23

full or in part, the testimony of one physician based on its experience in gauging the testimony of witnesses who give conflicting testimony."[53]

As is often the case, "the evidence was definitely in conflict, and the substantial evidence requirement [could have been] satisfied either way[.]"[54] Where substantial evidence exists to support conflicting expert opinions, the Board is free to choose one expert's testimony over that of another.[55] Despite Dr. Smith's contrary findings, the Board explained that Claimant's testimony and Dr. Zaslavsky's medical conclusions were particularly persuasive "given the fact that there was no evidence that Claimant ever had complaints or treatment for any of the body parts at issue prior to the work accident."[56]

This Court will give deference to the specialized competency of the Board. The Board's decision is supported by Dr. Zaslavsky's medical conclusions and Claimant's own subjective complaints. Such a factual foundation constitutes substantial evidence. The Board did not commit an error of law.

## VI. CONCLUSION

The decision of the Industrial Accident Board is **AFFIRMED.**

**IT IS SO ORDERED.**

Richard R. Cooch, R.J.

cc: Prothonotary
Industrial Accident Board

[53] *Turbitt*, 711 A.2d at 1215 (citing *Simmons*, 660 A.2d at 388); *see also Dupont Hosp. for Children v. Pierce*, 2001 WL 755326, at *8 (Del. Super. Ct. June 29, 2001) (citing *DiSabatino*, 453 A.2d at 106).
[54] *DiSabatino*, 453 A.2d at 106
[55] *Johnson*, 2000 WL 33115805, at *4 (citing *Boyd v. Chrysler Corp.*, 558 A.2d 291 (Del. 1989)).
[56] *Id.*