IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JAROSLAW MUZIOL,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 01A-07-002-JRJ
	)	
DAIMLERCHRYSLER CORP.,	)	
	)	
Appellee.	)	

Date Submitted: January 10, 2002
Date Decided: April 30, 2002

M E M O R A N D U M O P I N I O N

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

Jessica L. Julian, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, 1220 North Market Street, Suite 202, P.O. Box 130, Wilmington, Delaware, 19899, for Appellant.

Robert P. LoBue, Esquire, 803 Shipley Street, Wilmington, Delaware, 19801, for Appellee.

JURDEN, J.

This is an appeal from a decision of the Industrial Accident Board ("IAB") granting Claimant's petition for worker's compensation for a psychological stress claim. Having reviewed the record below, as well as the parties' written submissions, the Court concludes that the IAB's decision must be **AFFIRMED.**

POSTURE

On January 30, 2001, Jaroslaw Muziol ("Claimant") filed a Petition to Determine Compensation Due seeking benefits arising out a psychological injury he sustained on February 24, 2000 while working for DaimlerChrysler ("Employer"). On May 31, 2001, Claimant submitted a letter to the IAB seeking to amend the petition to change the date of accident to November 5, 1999, rather than February 24, 2000. On June 1, 2001, the IAB held a hearing on Claimant's Petition to Determine Compensation Due. The IAB permitted Claimant to amend his pre-trial petition to reflect November 5, 1999 as the date of accident. The IAB decided in favor of Claimant on June 15, 2001. The IAB awarded him temporary total disability at the rate of $434.68 beginning November 5, 1999 and continuing. The IAB also awarded Claimant medical witness fees pursuant to Del. Code ANN. tit. 19, § 2320(e), and attorney's fees pursuant to Del. Code ANN. tit. 19 § 2320(j)(1).

On July 23, 2001, the IAB amended its decision to reflect total disability for the period of November 5, 1999 through November 22, 1999, and from February 24, 2002 forward. The Employer filed a timely appeal of the IAB's decision.

FACTS

The Claimant is a Polish immigrant who settled in the United States in 1988. In May 1994 he was hired by the DaimlerChrysler Corporation and served Employer with

distinction. To wit, Claimant was awarded a Certificate of Distinction for his work and a Certificate of Recognition for Dedicated Commitment to Shared Values and Beliefs. Claimant started out in the "chassis" department, and later moved to the "paint" department where he was promoted to the position of foreman. He worked in that department until 1998 without incident. In 1998 Claimant was transferred to the "trim" department where he worked until November 5, 1999. The trim department was divided into teams. Although the record is unclear regarding the exact dates of certain key events that followed his transfer, the evidence establishes the following chronology.

Mark Games ("Games") was elected as the team coordinator for the trim department soon after Claimant began working in that department. Games approached Claimant and spoke in general terms about the business benefits of selling illegal drugs. Claimant listened to Games's remarks but remained silent and continued to perform his work. Sometime after this incident, Games asked Claimant if he was interested in joining Games on a trip to Atlantic City. Claimant declined the offer. On a third occasion, Games strongly urged Claimant to join him in a drug enterprise primarily involving the sale of marijuana with the promise of doubling his money. Once again, Claimant informed Games that he was not interested. Subsequently, Claimant witnessed a co-worker, "Vinnie," smoke and sell marijuana during work hours. Vinnie worked directly next to Claimant, thus providing him with a unique vantagepoint from which he observed numerous exchanges of bags of marijuana for money between Vinnie and other employees. Claimant testified that Vinnie stored the marijuana in a box under his tools. Claimant did not provide specific dates for the drug activity he witnessed but testified that it began in 1998. Claimant testified that he did not say anything to Vinnie or anyone

else about what he witnessed until the alleged physical harassment began. According to Claimant, he "played blind."

Claimant testified that after he refused Games' invitation to join in the criminal enterprise, Games' attitude toward him changed. Games openly accused Claimant of creating problems and being a "troublemaker." On a daily basis Claimant was subjected to physical and mental harassment from co-workers including assaults, obscene gestures and public ridicule. According to Claimant, on some occasions, Games provoked his coworkers' behavior. Claimant was forced to forgo bringing his lunch pail to work and kept his personal effects in his pockets because his belongings began to disappear when he left them unguarded. Perhaps the most frightening incident of all occurred when Claimant overheard a co-worker threaten that he was going to "kill the son of a bitch." Although Claimant did not hear his name mentioned, he was convinced that, given the circumstances, the comment referred to him.

Everyday, Claimant reported these incidents to his shop steward, Tom Smith, ("Smith"). Notwithstanding, relief was not forthcoming. Smith prevented Claimant from reporting the events to Mr. Wolfgang Vincent, ("Vincent") who was employed at that time in the Labor Relations department. According to Claimant, when he voiced his desire to Smith to report the offensive incidents to Vincent, Smith prohibited him, arguing that Claimant "was not going to talk about the union brothers to management."

The harassment continued. Claimant described that he was afraid to go to work or talk to people. He became crippled with fear and anxiety, worried that someone was going to hit or push him. Claimant's daily reports to Smith fell on deaf ears. Finally, sometime in early November 1999 Claimant, independently, went to see Steve Heitzman

("Heitzman"), the individual in charge of labor relations at the plant. Claimant told Heitzman about the above incidents and gave the names of four individuals involved in the drug dealing and harassment of Claimant. According to Claimant, Heitzman refused to intervene on his behalf, stating he "could do nothing about this situation … and that life is tough and you have to deal with the problem on your own." Feeling helpless and fearful for his life, Claimant walked out of work on November 5, 1999. On November 7, 1999 Claimant was admitted to Meadowood Hospital for treatment of an overdose of Buspirone, a psychotherapeutic anti-anxiety agent prescribed for Claimant by his family physician to help him cope with the distressing circumstances he was experiencing at work. During the course of his hospitalization, Claimant discovered that there was a drug raid at the DaimlerChrysler Corporation plant. Many employees were arrested, including Games and Smith. Ten of the people arrested worked in Claimant's department.

Claimant returned to work on November 22, 1999. Claimant noticed that two of the individuals that he reported to Heitzman for drug dealing, Kevin White and Vinnie, were not arrested and continued to work at the plant. Claimant worked during the second shift and saw White on a daily basis. A female employee who did not work in Claimant's department but whose husband and brother were both arrested during the drug raid visited Claimant everyday, silently staring and smiling at him. One day, while waiting to see Heitzman, Claimant observed other individuals in Heitzman's waiting room pacing back and forth, complaining that Claimant was not loyal to the shop steward and union brothers and that he was a snitch. His anxiety level continued to climb to the point that, although he applied for and was granted a transfer to another department, he needed increasing dosages of his medication to function. Finally, in February 2000, Claimant

started missing work and had trouble completing his assigned tasks. At this point, notwithstanding the fact that he was taking his medication hourly, he could no longer function. By the end of February, Claimant began to treat with Dr. Mujib, Dr. Obeidy, a psychiatrist, and Ms. Gail Topin, a licensed social worker. After evaluating Claimant, Dr. Obeidy attributed Claimant's condition to the circumstances of his work environment. Dr. Obeidy diagnosed Claimant with major depressive disorder with recurrent psychotic features and prescribed anti-depressant and anti-psychotic medications. Dr. Obeidy found Claimant's paranoia was associated with the depression and not distinct from it. According to Dr. Obeidy, if the paranoia disorder were separate from the depression, it would have manifested itself much earlier. Since February 2000, Claimant has been has been seen on a monthly basis by Dr. Obeidy and is also undergoing psychotherapy with Ms. Topin. Dr. Obeidy issued a "no work" slip to Claimant and he has not returned to work since that time. Dr. Obeidy opined to a reasonable degree of medical probability that Claimant's work environment precipitated his depression and paranoia. Dr. Obeidy evaluated other potential stressors, including a familial history of depression, credit card debt and alcohol consumption, that could have triggered Claimant's mental illness, but ruled them out. Dr. Obeidy found that Claimant was incapable of working at the time of the hearing and planned to reevaluate him in June 2001.

Dr. David Raskin testified on behalf of the Employer. Dr. Raskin examined Claimant on April 16, 2001 and diagnosed him with major depression and paranoia but did not offer a definite opinion as to whether the disorders were related. Dr. Raskin testified that:

> [t]here are three issues of the causality and I looked over the records and spoke to the man. Issue number one is that there is a substantial threat to him at work, which cause him to have the psychiatric impairment. Possibly number two, that there was the fact nothing happened to him at work and he did also assume that the work environment was threatening to him. Possibly number three, in which I think that maybe I would have the most confidence in. Something happened at work which he was asked to participate in selling drugs and after his refusing to do that he began to experience perhaps some intimidation but tremendously exaggerated and to the point where he felt he was being plotted against and followed. And that piece of it is really unrealistic and goes beyond the stressors in the work environment.
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> Q. So, those are the three possibilities and the third one you just described and stated you have the most confidence in?
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> A. Well, it's kind of a compromise . . . .

On cross-examination, Dr. Raskin agreed that Claimant did not have any problems until he moved into the trim department. He did not believe that the drug dealing triggered Claimant's depression because the depression began about two years prior to November 1999. Dr. Raskin admitted that he might not be correct on his chronology. According to Dr. Raskin, if Claimant did not become depressed until after being approached to sell drugs, which was soon after being transferred to the trim department, and his transfer occurred in late 1997, early 1998, by November 1999 he would have been depressed for about two years. Under those circumstances, it would have been possible that the drug-dealing situation triggered his depression. Dr. Raskin was unable to determine if the paranoia preceded or followed the depression.

ISSUES

The Employer raises two issues for review on appeal. First, the Employer argues that the IAB erred as a matter of law in amending the Claimant's petition within thirty days of the scheduled hearing. Second, the Employer argues that the IAB's decision granting the Claimant's petition is not supported by substantial evidence.

STANDARD OF REVIEW

The Court's limited role when reviewing a decision of the IAB is to determine whether the decision is free from legal error and supported by substantial evidence.[1] Substantial evidence is such relevant evidence that a reasonable person might accept as adequate to support a conclusion.[2] It is not the function of this Court to weigh evidence, determine questions of credibility, or make its own factual findings.[3] When a particular issue revolves around factual determinations, the court will "take due account of the experience and specialized competence of the agency."[4] Consequently, the Court "will not substitute its judgment for that of an administrative body where there is substantial evidence to support the decision and subordinate findings of the agency."[5]

DISCUSSION

A. Did the IAB Err by Amending the Claimant's Petition within Thirty Days of the Hearing?

Pursuant to Industrial Accident Board Rule 9(E), either party may modify a pretrial memorandum prior to thirty days before the hearing. However, it is within the

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[1] *General Motors Corp. v Freeman*, 164 A.2d 686, 688 (Del. 1960).
[2] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).
[3] *Johnson v. Chrysler Corp*., 213 A.2d 64, 66 (Del. 1965).
[4] Del. Code. ANN. Tit. 29 § 10142(d) (2000).
[5] *Olney v. Cooch*, 425 A.2d 610, 613 (Del. 1981).

IAB's discretion to waive the thirty-day requirement upon written application.[6] In exercising its discretion, the IAB "considers the prejudicial effect of the delay."[7] A decision to waive the thirty-day requirement will only be reversed if it was an abuse of discretion to do so.[8]

It was not an abuse of discretion for the IAB to allow for the amendment of the petition. The IAB received a letter from the Claimant one day prior to the hearing requesting amendment of the petition to change the accident date from February 24, 2000 to November 5, 1999, and to include in the pretrial memorandum a period of total disability from November 5, 1999 to November 22, 1999, in addition to a period of ongoing disability from February 24, 2000. The IAB allowed for the amendment based on a determination that the evidence was consistent with a November 5, 1999 accident.

The Employer argues that allowing the pretrial memorandum to reflect an additional period of total disability is unfairly prejudicial because it would not otherwise be liable for that time period. The Court disagrees. The Employer knew that Petitioner suddenly walked out of work on November 5, 1999 and did not return until November 22, 1999. Given the Claimant's complaints to Smith and Heitzmann, the Employer had reason to know that this absence may have been related to the circumstances surrounding Claimant's removal from work less than three months later for a psychiatric disability. Furthermore, the additional liability of merely seventeen days on top of approximately two years of already existing liability minimally changes the amount of total liability and does not unfairly prejudice the Employer. Because these facts do not constitute unfair

[6] Industrial Accident Board Rule 9(E).
[7] *Feralloy Industries v. Wilson*, 1998 WL 442937 (Del. Super.).
[8] *McIntosh v. Chrysler Corporation*, 1995 WL 339078 (Del. Super.).

prejudice to the Employer, it was not an abuse of discretion for the IAB to allow for the amendment of the Petition.

B. Is There Substantial Evidence to Support the IAB's Decision?

The Appellant's second claim is that the IAB's decision is not supported by substantial evidence. The Court disagrees. The Claimant's burden required him to "establish by objective proof that his … working conditions were stressful and were a substantial cause of the disabling injury."[9] The stress need not be unusual or extraordinary. Rather, it must be reality-based and proven by objective evidence.[10] The Claimant must show "objectively proven stressful work conditions, rather than conditions which only the petitioner found stressful".[11] "[T]he test focuses on the objectively provable impact of actual stress on the *particular* claimant, regardless of whether the claimant is more or less susceptible to mental disorders than the reasonable or average person."[12]

There is substantial evidence in the record to support the IAB's finding that the Claimant's working conditions were objectively stressful and were a substantial cause of his psychological injury. There is indisputable evidence that illicit drug activities did in fact exist at the Claimant's place of employment and that several members of the Claimant's team were actively participating in the sale and use of illicit drugs only a few feet away from the Claimant's work station. The evidence also establishes that the Claimant's team coordinator, Games, and shop steward, Smith, were involved in drug activity and arrested in the drug raid at the Employer's plant where Claimant worked.

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[9] *State v. Cephas*, 637 A.2d 20, 21 (Del. 1994).
[10] *Id*. at 27-28.
[11] *Id*. at 27 (citing *Goyden v. State*, 607 A.2d 651, 655 (N.J. Super. Ct. App. Div. 1991)).
[12] *Id.* at 28, n.43.

Of the sixteen people who were arrested, ten of those people worked in the Claimant's area. The Claimant testified that the harassment began after he refused to participate in the drug ring. There is ample evidence in the record to establish that the Claimant's work conditions were stressful because of the extensive drug activity. An inordinate number of Claimant's coworkers, and two of his superiors, engaged in the illicit enterprise and continually badgered him when he refused their solicitations to join them. Claimant testified that he and his wife feared for their personal safety. Dr. Obeidy's testimony supports a finding that Claimant's stress from his working conditions is a substantial cause of his depression and paranoia. Therefore, there is sufficient evidence in the record to support the IAB's findings.

The pivotal issue that Employer challenges is whether the Claimant was actually harassed in the manner he describes and to the degree that he alleges. This is clearly an issue of credibility, and the IAB found the Claimant to be credible and believed his fears were justified. It is not within the purview of this Court's power to resolve issues of credibility and assign weight to evidence presented.[13] Only when insufficient facts in the record exist to support a factual finding will the Court overturn it.[14]

The IAB also heard testimony from experts retained by both parties. When presented with competing expert testimony, the IAB, as the finder of fact, must make a credibility assessment to determine which expert's opinion to believe.[15] As long as there is substantial evidence to support the testimony of the expert, the IAB may accept the testimony of one expert over another.[16]

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[13] *Johnson*, 213 A.2d at 67.
[14] *Id.*
[15] *Witt v. Georgia-Pacific*, 1994 WL 89027 (Del. Super.).
[16] *Standard Distributing Co. v. Nally*, 630 A.2d 640, 646 (Del. 1996).

The Claimant's treating psychiatrist, Dr. Obeidy, testified unequivocally that Claimant suffers from depression that began in 1999 as a result of incidents at work. Dr. Obeidy evaluated other potential stress inducing factors in the Claimant's life and determined that none of them could be the source of the Claimant's current episode of depression. Dr. Obeidy's clearly stated opinion is that the situation at work was a severe stressor and the Claimant is currently totally disabled. The IAB noted that Dr. Obeidy is the Claimant's treating physician and he is in the best position to assess the Claimant's ability to return to work.

The IAB did not find the testimony of Employer's expert Dr. Raskin as convincing. In fact, the IAB found Dr. Raskin's testimony to be equivocal and therefore unpersuasive. He testified that "maybe" he has more confidence in one of the scenarios over the other two. Then he testified that even that scenario is a compromise. He never clearly stated what he believes is the cause of Claimant's depression. Furthermore, during cross-examination, when presented with an accurate description of the chronology of events leading up to Claimant's hospitalization in November 1999, he agreed that Claimant's depression could have been triggered by his work.

The evidence shows that when the Claimant declined to participate in the drug activity, he was subjected to daily verbal harassment and physical assaults from his coworkers and superiors. Claimant's fear for his personal safety was well documented, as were his numerous but futile attempts to enlist the aid of his superiors to halt the drug activity and harassment. The evidence, including Dr. Obeidy's testimony, adequately supports a finding that Claimant's stress from his work conditions was a substantial cause of his psychiatric injury. Accordingly, the decision of the IAB is affirmed.

CONCLUSION

For the foregoing reasons, the Court concludes that it was not an abuse of discretion for the IAB to permit the Claimant to amend his petition. The Court also concludes that there is sufficient evidence in support of the IAB's decision to grant the Claimant his Petition to Determine Compensation Due. Accordingly, the decision of the IAB is **AFFIRMED.**

Jan R. Jurden, Judge