

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DUPONT HOSPITAL FOR CHILDREN,)	
)	
)	
Employer Below/ Appellant,)	
)	
)	
v.)	C.A. No. 01A-01-009 JEB
)	
)	
VIVIENNE HASKINS,)	APPEAL FROM DECISION OF THE INDUSTRIAL ACCIDENT BOARD
)	
Claimant Below/ Appellee,)	IAB NO.: 1158586
)	

Submitted: May 3, 2001
Decided: October 2, 2001

Upon Appeal from the Industrial Accident Board.

Affirmed.

OPINION

Appearances:

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Attorney for Employer Below - Appellant

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Attorney for Claimant Below - Appellee.

JOHN E. BABIARZ, JR., JUDGE.

Employee-Appellant Dupont Hospital for Children (“DuPont”) appeals a decision of the Industrial Accident Board (“the Board”) relating to the Board’s denial of DuPont’s petition to terminate partial disability benefits for the Appellee-Claimaint, Ms. Vivenne Haskins. Because it is manifest on the face of the Appellant’s brief that there is substantial evidence to support the Board’s findings, and the Board’s findings are free from errors of law, the Motion is **DENIED**.

I. FACTS

On October 27, 1999, Ms. Haskins was employed by DuPont as a radiological technician. On that day, she injured her lower back when she tripped over a wheelchair. She fell on her left hip and sustained injuries to her back and hip. Dr. Bruce Rudin treated her injuries.

Ms. Haskins received total disability benefits from DuPont until February 2000. On February 7, 2000, Dr. Rudin released Ms. Haskins to work part-time in a light duty position. At the time Ms. Haskins returned to light duty work she received partial disability benefits from DuPont.

On June 10, 2000, Ms. Haskins was a customer at a Lowe’s store when a shelf fell towards her. Before the shelf impacted her, Ms. Haskins was tackled to the ground by her grandson and pushed out of harm’s way. Ms. Haskins fell on her left hip again, worsening her previous injuries to her back, leg, and hip. She also sustained injuries to her head and neck. Dr. Rudin placed her on total disability status.

On June 21, 2000, DuPont filed a Petition to Terminate Partial Disability, alleging

that the June 10, 2000 injury was a superseding accident that rendered Ms. Haskins totally disabled, and therefore relieving DuPont of responsibility for partial Disability benefits to Ms. Haskins.

In October 2000, Ms. Haskins underwent hip replacement surgery. At the time of the Board hearing, she was recovering and had not returned to work.

On December 8, 2000, the Board conducted a hearing. Dr. Frank Falco testified on behalf of Ms. Haskins. He treated her on May 11, May 31, and July 19, 2000. Dr. Falco opined that the fall at Lowe's aggravated Ms. Haskin's previous injuries, and that even if she had not been involved in the subsequent event, she would have been partially disabled indefinitely as a result of the first work injury. Dr. Falco agreed with Dr. Rudin that Ms. Haskins was totally disabled. Dr. Falco testified that Ms. Haskins has a long-standing, severely osteoarthritic left hip, a degenerative condition not uncommon in a person who is sixty-two years old, as Ms. Haskins was at the time of the hearing.

DuPont argued that Ms. Haskins cannot be both totally and partially disabled at the same time; that the June 10, 2000 accident was an intervening, superseding event that worsened Ms. Haskins condition from partial to total disability, and that Lowe's was now responsible for Ms. Haskins total disability, to the exclusion of DuPont's duty to pay any partial disability benefits. Ms. Haskins argued that had she not suffered the June 10, 2000 accident, she would have been partially disabled indefinitely as a result of her October 27, 1999 accident; that the June 10, 2000 fall worsened prior injuries; and that the new injuries alone would have removed her from working.

On December 21, 2000, the Board denied DuPont's Petition to Terminate, holding that Ms. Haskins was still entitled to partial disability benefits. The Board also awarded witness and attorney's fees.

II. STANDARD OF REVIEW

On appeal from the decision of the Board, the function of a reviewing court is to determine whether the Board's decision is supported by substantial evidence.¹ "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² Substantial evidence is more than a scintilla and less than a preponderance.³ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ The Court's review of alleged errors of law by the Board is plenary.⁵

Once a claim is compensable, and total or partial disability benefits are being paid, an employer must file a petition to terminate benefits or get a claimant to sign a final receipt

¹ 29 Del. C. § 10142(d); General Motors Corp. v. Freeman, Del. Supr., 164 A.2d 686, 688 (1960); Johnson v. Chrysler Corp., Del. Supr., 213 A.2d 64, 66 (1965).

² Oceanport Indus., Inc. v. Wilmington Stevedores, Inc., Del. Supr., 636 A.2d 892, 899 (1994) (quoting Olney v. Cooch, Del. Supr., 425 A.2d 610, 614 (1981)).

³ Olney at 614.

⁴ Johnson, 213 A.2d at 66.

⁵ Brooks v. Johnson, Del. Supr., 506 A.2d 1001, 1002 (1989) (citing Nardo v. Nardo, Del. Supr., 209 A.2d 905 (1965)).

agreeing that the claimant is no longer entitled to such benefits.⁶ The burden of proof is on the petitioner to show that entitlement to benefits has been terminated or diminished.⁷

III. DISCUSSION

DuPont argues that the Board erred as a matter of law and abused its discretion (1) in finding that Ms. Haskins was entitled to partial disability benefits from DuPont after she became totally disabled as a result of an intervening, superseding non-work related accident; and (2) that the Board erred in stating that her total disability status was related to her work injury since the total disability was not the natural and probably result of her work injury.

In response, Ms. Haskins argues that (1) the Board did not err as a matter of law in denying DuPont's petition to terminate partial disability benefits; and (2) that the Board correctly ruled that the subsequent non-work related accident did not terminate DuPont's obligation to continue paying temporary partial disability benefits.

The Board found that DuPont did not meet its burden that Ms. Haskin's entitlement to benefits has been terminated.

The issue before the Board was whether DuPont remained liable to pay Ms. Haskins partial disability benefits after she was involved in a separate non-work related accident that rendered her totally disabled. This question is one of first impression in Delaware.

⁶ 19 Del. C. § 2347.

⁷ Id.

The Board relied on the cases of Bush Coal Co. v. Workmen's Compensation Appeal Board, Pa.Cmwlth. Ct., 499 A.2d 730 (1985) and Mathieu v. Bath Iron Works, Me. Supr., 667 A.2d 862 (1995) as persuasive authority in forming its decision.

In Bush Coal, the wife of the decedent filed a “fatal petition claim”. Her husband suffered a myocardial infarction during his employment that rendered him totally disabled and entitled to workmen’s compensation benefits. Her husband later died after fighting with another man in a non-work related dispute. While the fight precipitated the decedent’s death, his cause of death was ruled to be his underlying severe heart disease, and was found by the compensation referee to be “the proximate, natural, and probable result of the prior work-related myocardial infarction”.⁸

The petitioner argued the referee’s finding was erroneous, but the court disagreed and held:

Injuries unrelated to one's employment are compensable if they are the proximate result of prior work-related injuries. Where there is an intervening nonwork injury, the claimant must prove that the resultant death or disability was so immediately and directly connected with the prior work-related injury that it would naturally and probably result therefrom; that is to say, that the first accident was the proximate predisposing cause of the resultant disability.⁹

The Bush Coal Court also cited the case of Topps Chewing Gum, Inc. v. Workmen's Compensation Appeal Board, Pa. Cmwlth. Ct., 485 A.2d 1237 (1985) for the proposition that

⁸ 499 A.2d at 732.

⁹ Id. (citing GTE Sylvania v. Workmen's Compensation Appeal Board, Pa.Cmwlth. Ct., 458 A.2d 1050, 1051 (1983)).

a claimant could recover when a non-work sneeze precipitated a herniated disc where the evidence showed that the claimant's disc was damaged in previous work-related lifting injuries and thus susceptible to herniation. Further, Topps Chewing Gum held that since the herniated disc would not have resulted from the sneeze absent the claimant's prior work-related injuries, the compensation board properly found that the claimant's disability was caused by his original work-related lifting injury.

In Bath Iron Works, the claimant suffered a work-related back injury while employed as a heavy equipment and fork-lift operator. He was awarded 31% partial incapacity benefits and returned to work as a clerk at reduced pay. He later injured his ankle in a non-work related car accident and did not return to light-duty work for five months, during which time he received partial incapacity benefits (such benefits also continued after he returned to work). Claimant filed a petition for restoration of total incapacity benefits during his five month absence, arguing that the car accident injury aggravated or combined with his prior back injury. The commission denied restoration of claimant's benefits and found that his total disability was a result of the motor vehicle accident, which acted as an independent intervening cause. The Bath Iron Works court affirmed the commission, holding that:

Our decisions make clear that the presence of an intervening independent cause of incapacity will not remove the employer's liability for workers' compensation as long as the prior injury remains a "cause" of the employee's ongoing condition.¹⁰

The Court further stated that the claimant would have prevailed if he had shown “that his short-term total incapacity was caused, at least in part, by a work-related injury”.¹¹

The Board, in this case, considered the law of the Bath Iron Works, Bush Coal, and Topps Chewing Gum cases to hold that DuPont’s liability for partial disability was not terminated by the intervening, independent accident at Lowe’s. The Board found that Ms. Haskins’ total disability status is so directly connected with the prior work injury that it naturally and probably resulted, in part at the least, from the prior work injury. The Board was convinced that the original work injury to her hip made Ms. Haskins more susceptible to further hip injury.

The Board considered the evidence presented by Ms. Haskins and Dr. Falco and concluded that the non-work fall at Lowe’s worsened her pre-existing work-related injuries. The Board considered her degenerative condition that affected her hip, her two falls on her hip, and her hip replacement surgery, and concluded that “the evidence reveals that Claimant’s current incapacity is due, at least in part, to the work-related hip injury.”¹²

The Board rejected DuPont’s argument that because Ms. Haskins’ fall at Lowe’s aggravated her prior work injury, the fall at Lowe’s was a superseding event, finding that

10 Mathieu v. Bath Iron Works, Me. Supr., 667 A.2d at 864.

11 Id.

“the evidence on that issue is not convincing.”¹³ The Board noted that although Dr. Falco at one point testified that the second fall was a superseded the work accident, he ultimately rejected the use of the term “aggravation” and testified that the second fall was a “worsening” of her work injury. The Board found that DuPont’s position that the second fall at Lowe’s was an “aggravation” constituting entirely new injury was fallacious, as such a position “requires a determination of the degree of injury in each accident and speculation regarding apportionment, if any, of the total injury”, and “[t]he evidence is insufficient to resolve that question.”¹⁴ Finally, the Board rejected DuPont’s argument that Ms. Haskins cannot be both totally and partially disabled, holding that such a question is premature. The Board noted that Ms. Haskins is not receiving compensation under either theory; that she has not sought restoration of total disability benefits; and that it may not base its decision on her disability status merely because Ms. Haskins may institute a future tort action.

DuPont argues that under the Bush Coal case standard, Ms. Haskins failed to prove that her second injury was so directly connected with the work injury, that her total disability naturally and probably resulted from the original injury. This position is erroneous, because in Ms. Haskins has no burden of proof under DuPont’s petition to terminate her benefits. Further, Ms. Haskins has not sought total disability status. The Bush Coal and Topps Chewing Gum cases were persuasive law to this Board on the concept

¹² Industrial Accident Board’s Decision on Petition to Terminate Benefits at 7.

¹³ Id.

of a work-related injury rendering a claimant susceptible to a future non-work injury. Further, contrary to DuPont's assertion that "Ms Haskins injuries cannot be said to be the 'proximate result' of her prior injury" (citing Bush Coal), the Board found, in line with Bush Coal, that "[c]laimant's total disability status is so directly connected with the prior work injury that it naturally and probably resulted, at least in part, from the prior work injury."¹⁵

DuPont argues that the Bath Iron Works case is not relevant to this case. However, the court's holding there that an intervening independent cause of incapacity will not remove the employer's liability for benefits as long as the prior injury remains a "cause" of the claimants ongoing condition is instructive in this case.

The balance of DuPont's argument is devoted to an insistence that the facts show that Ms. Haskins' second injury was a completely superseding, new injury that was unrelated to and not the natural and probable consequences of the original work injury. The Board analyzed the testimony of Dr. Falco and Ms. Haskins and concluded otherwise. Such testimony constituted substantial, relevant, and credible evidence that the Board used to make its determination.

IV. CONCLUSION

For the reasons stated above, the Court finds that the decision of the Board issued on

¹⁴ Id. at 8.

¹⁵ DuPont's Op. Br. on Appeal at 17; Board's Decision at 7.

February 15, 2001, is supported by substantial evidence in the record and is free from legal error. Therefore, The decision of the board is *Affirmed*.

IT IS SO ORDERED.

Judge John E. Babiarz, Jr.

JEB,jr/SR/BJW
Original to Prothonotary