IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

QUAKER CITY MOTOR PARTS,	)	
	)	
Employer-Appellant,	)	
	)	
v.	)	C.A. No. 00A-08-002 RRC
	)	
MARK SHELDON,	)	
	)	
Employee-Appellee.	)	

Submitted: January 17, 2001
Decided: March 16, 2001

MEMORANDUM OPINION

UPON APPEAL FROM A DECISION OF THE INDUSTRIAL ACCIDENT BOARD. AFFIRMED.

Raymond W. Cobb, Esquire, Raymond W. Cobb, LLC, Wilmington, Delaware, Attorney for Employer-below, Appellant.

Richard T. Wilson, Esquire, Law Offices of Peter G. Angelos, Wilmington, Delaware, Attorney for Employer-below, Appellee.

COOCH, J.

INTRODUCTION

Mark Sheldon ("Claimant") was allegedly injured in a work-related accident on November 11, 1997, while employed by Quaker City Motor Parts ("Employer"). On June 21, 1999 Claimant filed a Petition to Determine Compensation Due with the Industrial Accident Board ("Board") seeking recognition of a compensable work-related injury, total disability from January 14, 1999 to April 1, 1999 and medical expenses.[1] The Board held a hearing on June 23, 2000. At that hearing, the Board granted Claimant's Petition to Determine Compensation Due finding a compensable work-related injury, granted total disability from January 18, 1999 to April 1, 1999, and awarded medical expenses, medical witness and attorney's fees. Employer appeals the Board's decision granting total disability to Claimant.

FACTS AND PROCEDURAL HISTORY

All of the following facts were brought out at the June 23, 2000 hearing before the Board.

[1] *Sheldon v. Quaker City Motor Parts*, IAB No. 1140854 (June 23, 2000) (hereinafter "IAB Order at _").

On November 11, 1997 at approximately 10:30 am, Claimant along with his supervisor, engaged in moving a two-hundred pound table. After moving the table, Claimant felt a pull in his back. Despite feeling uncomfortable, Claimant continued to work as he resumed his daily work activities. At the end of that day, Claimant reported the pain he felt in his back to his supervisor, Mr. Luhrman.[2] Claimant did not report to work for the remainder of the week but he did return to work the following Monday and resumed his normal work activities.[3]

[2] No documentation of this incident was made the day of the incident, however on January 9, 1999 Mr. Luhrman, had completed a hand-written statement which noted, "On the 11th of November, 1997 Mark Sheldon and myself moved a piece of diagnostic equipment. In doing so this aggravated his back. He took a couple days to rest, then back to work as usual." After requesting a change in position, as Claimant could no longer perform his normal work activities, Claimant was terminated by Employer. Employer apparently did not have other available job positions at that time to accommodate Claimant.

[3] IAB Order at 2.

Claimant delayed seeking treatment for this back injury, as he believed he could "work [his back problem] out."[4] The pain in Claimant's back apparently did not improve and it progressively worsened. By April 27, 1998, Claimant's back problems were more severe. Claimant first sought treatment from Dr. Roger Stevenson at the Limestone Medical Center ("LMC") for increased right low back symptoms.[5] Claimant had discomfort and pain radiating down his leg into his heel. Claimant reported to the nurse at LMC that he had injured his back at work.[6] Dr. Stevenson ordered diagnostic studies and prescribed Ultram and Naprosyn, which apparently helped Claimant.

On September 15, 1998, Claimant saw his family physician, Dr. Darrin Campo, for the first time, for leg and other health concerns.[7] On October 12, 1998 Claimant was treated by Dr. Campo again for lower back and leg problems.[8] Claimant saw Dr. Campo a third time on January 12, 1999 as Claimant's low back

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[4] *Id.*

[5] IAB Order at 3.

[6] At the Board hearing Claimant disputed the nurse's report that his pain was intermittent for three or four years. IAB Order at 3.

[7] Claimant's medical records did not mention back pain at this point. Employer notes that Claimant sought medical treatment at this time but never mentioned any back pain to the physician that day.

[8] IAB Order at 3.

pain had intensified to the point he could not sit in his car without pain. Dr. Campo referred Claimant at this point to Dr. Bikash Bose, a neurosurgeon.

Dr. Bose had previously performed Claimant's cervical fusion operation as a result of a prior automobile accident.[9] On January 18, 1999 when Dr. Bose saw Claimant for his lower back injuries, Dr. Bose reviewed x-rays and other diagnostic studies. A CT[10] scan of the lumbar spine and an MRI[11] performed on Claimant revealed a right lateralized disc herniation at L5-S1. The MRI showed a

[9] Dr. Bose testified by deposition on behalf of Claimant. Dr. Bose first saw Claimant in 1987 for cervical disc problems, and continued to treat Claimant until 1989. Claimant apparently did not see Dr. Bose again until January 18, 1999 when Dr. Campbell referred Claimant to Dr. Bose for right low back pain radiating down into his legs.

[10] CT is an abbreviation for *computed tomography*. PDR MEDICAL DICTIONARY (1st ed. 1995).

[11] MRI is an abbreviation for *magnetic resonance imaging*. PDR MEDICAL DICTIONARY 1133 (1st ed. 1995).

disc protrusion at L5-S1 which touched on the right S1 nerve root. Dr. Bose diagnosed L5-S1 radiculopathy[12] and issued disability certification from January 18, 1999 through February 1, 1999.[13] Dr. Bose believed the table lifting incident of November 11, 1997 caused the protrusion mentioned above.[14]

[12] Radiculopathy is a disorder of the spinal nerve roots. PDR MEDICAL DICTIONARY 1484 (1st ed. 1995).

[13] IAB Order at 5.

[14] *Id.*

Dr. Bose followed Claimant's treatment until March 12, 1999 when Claimant had begun to seek treatment from Dr. Pramhod Yadhati at Saint Francis Hospital ("SFH").[15] Dr. Yadhati certified Claimant's disability for one month, beginning March 31, 1999 while he administered a series of three Decadron steroid blocks.[16] The steroid blocks improved Claimant's condition.[17] Nonetheless, Claimant continued to have some symptoms as he still could not sit for long periods of time nor could he lift heavy objects.

As a result, Dr. Yadhati referred Claimant to Dr. Ann Mack, a rehabilitation specialist. Dr. Yadhati did not state an opinion regarding Claimant's current disability.

Dr. Alan J. Fink, a neurologist, testified by deposition on behalf of Employer. Dr. Fink first saw Claimant on May 24, 1997 as part of an independent medical examination. Dr. Fink stated that within one to two months, Claimant's symptoms had progressed to the right buttock and down the leg. Claimant disclosed to Dr. Fink that he had been in good health but also told Dr. Fink about

[15] Dr. Yadhati is an anaesthesiologist and a pain management specialist, who testified by deposition on behalf of Claimant. IAB Order at 5.

[16] IAB Order at 5.

[17] Claimant indicated he received greater than 60% of relief and was able to do many more activities than he previously was capable of. IAB Order at 5.

the 1988 motor vehicle accident, which caused neck, leg and arm pain. Dr. Fink diagnosed lumbar strain with symptoms of S1 radiculopathy, based upon Claimant' complaints.

Dr. Fink did not believe that Claimant's low back and right leg pain related to the November 11, 1997 incident. Instead, Dr. Fink related Claimant's conditions to a "disc bulge, a pre-existing condition of degenerative disease."[18] He believed Claimant was capable of working a light duty position with restrictions of no lifting or carrying more than twenty pounds. Dr. Fink's opinion is based upon his clinical finding of normal range of motion and normal orthopedic and neurological examinations coupled with Claimant's subjective complaints.

[18] IAB Order at 6.

According to Dr. Fink there was no objective finding of low back pain or lumbar radiculopathy. The May 1, 1998 lumbar spine CT scan showed a small disc herniation at the right L5-S1, which apparently did not show right S1 nerve root compression. Evidently, the February 1, 1999 MRI scan confirmed these findings. Dr. Fink further noted that the nerve root compression would have been compatible with Claimant's right leg complaints. Based upon the medical records, Dr. Fink found it impossible to relate Claimant's complaints of right low back and leg pain to a specific incident occurring in November 1997 as there were no complaints or treatment contemporaneous with a November 1997 incident. Dr. Fink further believed that Claimant's records did not support a conclusion that a work injury occurred in November 1997 because Dr. Fink believed that a patient with a disc herniation would normally seek medical attention in three to four days, not approximately six months after an alleged work incident. It was Dr. Fink's ultimate belief that there were too many events to relate Claimant's condition to a specific incident.[19] Notably, Dr. Fink believed Claimant had adequate medical treatment through May 1999 and that the nerve blocks administered to Claimant were reasonable and necessary.[20]

[19] IAB Order at 7.

[20] IAB Order at 8.

The Board found Claimant was entitled to medical expenses based upon the fact that Claimant testified he improved with treatment and that Dr. Fink, the Employer's medical expert, believed Claimant's treatment's were reasonable and necessary. After deciding that Claimant was entitled to receive a closed period of total disability, the Board found Claimant entitled to compensation for medical witness fees for testimony on his behalf. Claimant was awarded compensation for reasonable attorney's fees taxed against Employer in the amount of thirty three percent of the award for total disability or $2500, whichever is less.

The Parties' Contentions

Employer asserts that "the Board offered no specific reasons in its Decision why it rejected the testimony and opinions of Dr. Fink" and that the Board's decision "does not refer to testimony of any physician or facts in the record to support the medical conclusions it reached."[21] Employer also contends that the Board, when confronted with indisputable facts, "merely discounts them or states that it is an issue of credibility."[22] Employer lastly asserts that the Board's Decision is "flawed" because it "reached medical conclusions that were based upon [the Board's] experience" as opposed to being based upon the testimony of one of

[21] Appellant's Opening Brief at 10.

[22] *Id.*

the medical experts.[23]

Claimant asserts that the Board's decision was supported by substantial evidence. Claimant maintains that the Board's decision "sets out in detail the pertinent testimony of Dr. Bose, Dr. Yadhati and Dr. Fink."[24] Claimant also states that the Board "concisely stated that Dr. Bose related Mr. Sheldon's back problems to the lifting incident and that Dr. Fink did not.[25] Claimant summarizes his position by contending that

> [w]hile the Board may not have specifically stated in the 'Findings of Fact and Conclusions of Law' in bold, simple terms why they rejected Dr. Fink's opinion, it is clear the Board understood the import of Dr. Fink's testimony. Further, a review of the Summary of the Evidence does indicate why the Board discounted Dr. Fink's opinion, though the Board is not required to indicate such.[26]

STANDARD OF REVIEW

[23] Appellant's Opening Brief at 9.

[24] Appellee'sAnswering Brief at 13.

[25] *Id*.

[26] Appellee's Answering Brief at 14.

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of factual findings of an administrative agency. The function of the reviewing Court is to determine whether substantial evidence supports the agency's decision.[27] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[28] This Court on appeal, does not weigh the evidence, determine questions of credibility, or make its own factual findings.[29] This Court's duty is limited to determining whether substantial evidence supports the Board's findings of fact and whether errors of law exist.[30] As the Court performs this duty, it views the facts in a light most favorable to the prevailing party below.[31] Only where there is no satisfactory proof in support of the factual findings of the Board may Superior Court overturn it.[32] Furthermore, this Court will give deference to the expertise of administrative agencies and must affirm the decision of an agency even if the Court might have,

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[27] *Johnson v. Chrysler Corp.,* Del. Supr., 213 A.2d 64, 66-67 (1965); *General Motors v. Freeman*, Del. Supr., 164 A.2d 686, 688 (1960).

[28] *Oceanport Ind. v. Wilmington Stevedores*, Del. Supr., 636 A.2d 892, 899 (1994); *Battista v. Chrysler Corp*., Del. Super., 517 A.2d 295, 297 (1986), *appeal dismissed*, Del. Supr., 515 A.2d 397 91986).

[29] *Johnson* at 66.

[30] 19 *Del. C.* §3323(a).

[31] *See Chundnofsky v. Edwards*, Del. Supr., 208 A.2d 516, 518 (1965).

in the first instance, reached an opposite conclusion.[33]

DISCUSSION

The Board is free to accept or reject in whole or in part testimony offered before it and to fix its verdict upon testimony accepted.[34] Weighing of evidence, determining credibility of witnesses, and resolving any conflicts in testimony are functions reserved exclusively for the Board.[35] This Court has upheld Board decisions of accepting one physician's testimony over another because one physician's testimony more fully comports to the Board's understanding of an impairment based on its experience with individuals with similar symptoms.[36]

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[32] *Johnson* at 66.

[33] *See* 29 *Del. C.* §10142(d); *Petty v. University of Delaware*, Del. Supr., 450 A.2d 392, 396 (1982); *Levitt v. Bouvier*, Del. Supr., 287 A.2d 671 (1972).

[34] *Debernard v. Reed*, Del. Super., 277 A.2d 684 (1971).

[35] *Downs v. State*, Del. Super., No. 25, 1993, Holland, J. (Mar. 30, 1993) (ORDER).

[36] *Barczak v. State*, Del. Super., C.A. No. 97A-06-011, Alford, J. (Dec.24, 1997) (Mem. Op.).

In this case, Claimant and Employer relied upon competing medical expert opinions. As long as there is substantial evidence in the record below to support such a finding, the Board may choose the medical opinion of one physician (Dr. Bose) over the opinion of another physician (Dr. Fink).[37]

A recent Supreme Court decision held that the Board may not simply decide a case based upon "cryptic findings and conclusions of law."[38] When the Board chooses to accept the opinion of one physician over another "the Board should identify the difference between the opinions of [the physicians] and explain fully why [the Board] opted to accept the opinion of one expert over the other."[39] The Board should also state its factual findings and apply those findings to any legal conclusions it makes.[40] In applying this standard to Claimant's case, this Court

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[37] *DiSabatino Brothers, Inc. v. Wortman*, Del. Supr., 452 A.2d 102, 106 (1982).

[38] *Mullens v. Worthy Construction Co.,* No. 150, 2000, Walsh, J. (Oct. 23, 2000) (ORDER).

[39] *Id.*

[40] *Id.*

finds that the Board did articulate substantial evidence in its Decision to support its July 7, 2000 Decision to have granted Claimant's Petition to Determine Compensation Due.

The Board's Decision found that Claimant had met his burden of proof "in establishing that his injury happened at a fixed time and place and was attributable to a clearly traceable incident of this employment."[41] As support for this finding, the Board found that Mr. Luhrman's recorded statement addressing the November 11, 1997 incident indicated that some event did happen that day, despite the fact the statement was not documented for one year. The Board specifically found that Mr. Luhrman's documentation of the incident a year later did not diminish what was effectively an admission by Employer's agent that a work incident had occurred.

The Board agreed with Dr. Bose that the mechanism of injury, lifting a two-hundred pound table, was consistent with Claimant's lower back injury.[42] The Board rejected Employer's argument that Claimant's condition was the result of a prior automobile accident. Instead, the Board stated that it accepted Claimant's testimony that his back complaints at that time of the prior accident were left sided.

[41] IAB Order at 8.

[42] IAB Order at 9.

Since Claimant's current symptoms are right sided, the Board reasoned that Dr. Bose's opinion was more acceptable as Claimant's lower back problems could not be the result of the previous automobile accident.[43]

The Board also noted that Claimant's medical records did not document ongoing back treatment from 1996.[44]

[43] *Id.*

[44] *Id*.

This Court has held that "[w]hen [the Industrial Accident] 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."[45] Furthermore, this Court will give deference to the expertise of administrative agencies and must affirm the decision of an agency even if the Court might have, in the first instance, reached an opposite conclusion.[46] Thus, the Board was free to utilize its own experience and expertise in deciding which medical expert to believe.

The Board found that the CT scan and the MRI performed on Claimant, revealed a disc herniation. The Board indicated that although Employer argued that the small herniation arose from degenerative disease, "the diagnostic studies did not specifically indicate changes that are clearly degenerative in nature."[47]

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[45] *Keith v. Dover City Cab Co.,* Del. Super., 427 A.2d 896, 899 (1981).

[46] *Petty v. University of Delaware*, Del. Super., 450 A.2d 392, 396 (1982); *Levitt v. Bouvier*, Del. Supr., 287 A.2d 671 (1972).

[47] IAB Order at 9.

In accepting the medical opinion of Dr. Bose over the opinion of Dr. Fink, the Board found that the CT scan and the MRI had revealed a disc herniation, which was not necessarily caused by degeneration. The Board believed the November 1997 incident either caused the herniation or made an asymptomatic condition symptomatic.[48] Furthermore, the Board noted, in response to the fact Claimant waited approximately six months to seek treatment, that it was not unusual for an injured worker to try to "work out" an injury before seeking treatment. The Board did not believe that Claimant's failure to mention his back complaints until April of 1998 was fatal to his claim of injury.[49] The Board found Claimant credible and found that his back condition had worsened and progressed to the point of requiring medical treatment.

The Board found that Claimant's injuries were work related and that Claimant was totally disabled from January 18, 1999 to April 1, 1999. The Board found that although Dr. Fink believed Claimant was capable of working light duty with restrictions, the Board found his opinion to be less persuasive due to the fact Dr. Fink did not examine Claimant until May 24, 1999.

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[48] *Id.*

[49] IAB Order at 10.

CONCLUSION

This Court finds that although the explanation of the Board as to why the Board chose to accept the opinion of Dr. Bose over that of Dr. Fink is somewhat sparse, its explanation is nonetheless sufficiently supported by substantial evidence. Therefore, the Board did not commit legal error for granting Claimant's Petition to Determine Compensation Due. The Board's decision to accept the opinion of Dr. Bose was supported by substantial evidence. The Board did not otherwise commit any other errors of law. The decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

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