

February 11, 2003

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Date Submitted: November 7, 2002

RE: Carla Tingle v. E.I. DuPont DeNemours & Co.
C.A. No. 02A-07-002

Dear Counsel:

Pending before the Court is an appeal from an Industrial Accident Board (the “Board”) decision, which denied Carla Tingle’s (“Claimant”) Petition to Determine Additional Compensation Due. For the reasons set forth below, the Court affirms the Board’s decision.

I. Statement of Facts

Claimant began working for E.I. DuPont DeNemours & Co. (“Employer”) in October of 1988. In 1991, she became a spinning machine operator, a position which required repetitive overhead work and the use of heavy equipment. In October of 1999, Claimant was diagnosed with carpal tunnel syndrome in both of her wrists. Michael Mattern, M.D., performed carpal tunnel releases on Claimant’s wrists and subsequently referred Claimant to Ganesh Balu, M.D., for pain management. When Claimant returned to work in May of 2000, she continued to receive treatment for both carpal tunnel

symptoms in her wrists and epicondylitis of her elbow. Claimant's occupational therapist taught Claimant alternative ways to perform her job duties so as not to aggravate her carpal tunnel symptoms. In May or June of 2000, Claimant began to experience neck and shoulder pain. Claimant last worked as a spinning machine operator on July 28, 2000.

On November 16, 2001, Claimant filed a Petition to Determine Additional Compensation Due alleging that she suffered from cervical spine and shoulder injuries that were work-related.¹ Both parties presented expert witness testimony at a hearing before the Board on May 2, 2002. Dr. Balu testified on behalf of Claimant. Employer presented testimony from Errol Ger, M.D., by way of deposition.

The Board made the following findings of fact and conclusions of law:

When there is a conflict in the medical testimony, the Board must decide which physician is more credible. The Board accepts Dr. Ger's testimony over Dr. Balu's testimony. Dr. Balu determined that Claimant's cervical facet syndrome is related to her carpal tunnel syndrome, based on a cumulative trauma disorder stemming from November of 1999. However, Dr. Ger is of the opinion that Claimant's neck and shoulder problems are unrelated to her carpal tunnel syndrome, because carpal tunnel syndrome cannot cause neck and shoulder injuries.

Furthermore, Claimant did not complain about neck or shoulder symptoms until July 2000, which was more than eight months after she was diagnosed with carpal tunnel syndrome. There is no evidence that Claimant's neck and shoulder problems are related to her November 1999 injury. Dr. Ger's physical examination in January 2002, revealed that Claimant had full range of motion in both shoulders, elbows and wrists, as well as full range of motion of her cervical spine in all directions. She had no signs of shoulder impingement. The MRI, which was performed in March 2002, reveals degenerative changes in Claimant's cervical spine, not a traumatic incident. The MRI supports Dr. Ger's conclusion that Claimant's headaches and cervical spine complaints are not work-related. The other objective diagnostic tests of Claimant's cervical spine were normal. Despite Claimant's arguments, there is no nexus between Claimant's carpal tunnel syndrome from November 1999 and her neck and shoulder problems from July 2000.

Claimant appeals the Board's subsequent denial of benefits and asks the Court to remand the matter to the Board for a determination on the issue of injury causation.

¹ Employer accepted Claimant's carpal tunnel syndrome and tennis elbow as compensable injuries.

II. Issue Presented

Claimant argues that the Board erred as a matter of law and fact when it concluded that her injuries were not work-related.

III. Discussion

A. *Standard of Review*

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence. *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960). Questions of law are reviewed *de novo*. *In re Beattie*, 180 A.2d 741, 744 (Del. Super. 1962). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super.), *appeal dismissed*, 515 A.2d 397 (Del. 1986). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *Johnson v. Chrysler*, 213 A.2d at 66. It merely determines if the evidence is legally adequate to support the agency's factual findings. 29 Del. C. § 10142(d).

B. *Work-Related Injury vs. Natural Deterioration*

1. *Substantial Evidence to Support the Board's Decision*

Claimant first argues that the Board's decision is not supported by the record below. As the Board relied upon Dr. Ger's testimony, Claimant posits that Dr. Ger's testimony did not rise to the level of substantial evidence. This argument is unsubstantiated.

The Board made a credibility determination and concluded that Dr. Ger's testimony was more tenable than that of Dr. Balu. To weigh the credibility of testifying witnesses is within the purview of

the Board. *See Johnson v. Chrysler*, 213 A.2d at 66. While the Board's discretion to make credibility determinations is lessened where expert testimony is presented by way of deposition, the Board is still free to find the expert testifying via deposition more credible than the expert testifying live, provided the Board supplies a basis for that finding. *DuPont Hosp. for Children v. Pierce*, Del. Super., C.A. No. 01A-01-008, Goldstein, J. (June 29, 2001).

Dr. Ger saw Claimant on two occasions. The first visit was in March of 2000, several months after Claimant underwent bilateral carpal tunnel release surgery. During this visit, Claimant complained of continued pain in her hands but did not mention any neck pain. Claimant's testimony before the Board was consistent with Dr. Ger's recollection. Dr. Ger testified that his examination revealed full range of motion in Claimant's shoulders, elbows, and wrists. He concluded that Claimant was on her way to full recovery and was suffering from typical pain associated with recuperation from bilateral carpal tunnel release surgery.

Dr. Ger also examined Claimant in January of 2002. During this visit, Claimant complained of headaches and neck pain. Claimant also noted some continuing pain in her hands as well as her left elbow. Dr. Ger's examination of the cervical spine revealed full range of movement in all directions. Dr. Ger also preformed the Spurling's test, which tests for signs of radiculopathy, and the test produced negative results.

Dr. Ger testified that he reviewed the records from Claimant's two MRIs. The MRI of Claimant's cervical spine taken October 25, 2000, was reported as negative. However, Claimant's March 29, 2002, MRI revealed mild spondylitic changes. Dr. Ger explained that such changes are arthritic degenerative changes and, by definition, are not changes brought on by any specific injury. To the contrary, the degenerative changes represented a natural weakening of the cervical area. Dr. Ger testified, "It appears from review of the notes that her hand symptoms were related to her work. It is

probable that her elbow symptoms were related to her work. . . . I don't believe that her neck symptoms or headaches were related to her work." Ger Dep. at 23.

On cross-examination, Claimant inquired as to whether her injuries could have been caused by over-compensation for existing carpal tunnel syndrome injuries. Dr. Ger testified:

Some people, after carpal tunnel surgery or without carpal tunnel surgery, have weakness of the hand or hands. She does not display weakness of the hands. But if she were weak in the hands, she would compensate for it by using her elbows more. And I see no reason why she should need to do that.

With the residua of carpal tunnel syndrome, patients do not necessarily get back the sensation to their fingers. But there's no way she could compensate for that. So, no, she could not compensate for the residua of her carpal tunnels with her shoulders or her neck.

Ger. Dep. at 40-41. Further, Dr. Ger noted that while repetitive use of the shoulder might produce symptoms of impingement, neither of his examinations revealed any sign of impingement. Ger. Dep. at 44.

With respect to Claimant's neck injury and pain, Dr. Balu testified that "it was my understanding" that they were part of a work-related injury. Bd. Tr. at 16. Dr. Balu also opined, "I would probably say the return to work caused her the neck pain." Bd. Tr. at 39. Finally, upon direct questioning by the Board as to how the neck and shoulder symptoms were related to the Claimant's work, Dr. Balu testified, "[This was a continuum of dynamic things that was happening while she was working modified duty, or full duty, that led to her neck pain by July." Bd. Tr. at 46.

In light of the doctors' opinions and the bases they provided for reaching them, the Court concludes Dr. Ger's opinion, as relied upon by the Board, is substantial evidence. Dr. Ger addressed whether Claimant's neck pain was either directly related to her work-related injury or indirectly related by way of Claimant's compensation for her carpal tunnel symptoms. The Board reasonably rejected Dr. Balu's tentative testimony regarding the issue of causation as less credible than that of Dr. Ger. As required, the Board provided a legally sufficient basis for its credibility determination. Dr. Ger

considered and rejected both theories advanced by Claimant and his conclusions withstand scrutiny on appeal.

2. *Board's Consideration of Claimant's Argument Below*

Claimant also argues the Board did not address the issue of whether her neck and shoulder injuries were work-related. Claimant is wrong. Before the Board, Claimant's position was that her neck and shoulder injuries were part and parcel of the same work-related injury that produced the carpal tunnel syndrome. While the Board may not have articulated its decision as clearly as possible, that is likely due to the fact that Dr. Balu opined, somewhat confusingly, that Claimant's neck pain was a product of cumulative trauma disorder originating with her carpal tunnel syndrome and ending with a diagnosis of facet syndrome. Facet syndrome means pain arising from the facet joint. Dr. Balu acknowledged the March 2002 MRI showed evidence of osteoarthritic changes, meaning degeneration, but he didn't believe this was the cause of her problems and pain. When asked if this was a new injury, Dr. Balu was not sure and gave the impression it was a continuous injury with carpal tunnel as a source. Dr. Balu failed to provide a persuasive rationale for how Claimant's injuries current injuries were related to her compensable injuries.

The bottom line is that the Board was liberal in allowing Claimant to develop her theories but nevertheless the Board found Dr. Ger's opinion that Claimant's problems were not work-related more credible. Basically, they determined the problem was degenerative.

The filing of a Petition for Additional Compensation Due necessarily relates back to the original compensated injury. *See George & Lynch v. Donaway*, Del. Super., C.A. No. 00A-05-003, Silverman, J. (Apr. 30, 2001) ("It is [the claimant's] burden to show that [her] medical expenses, [sic] were reasonable, necessary and causally related to the original injury.'). When a claimant seeks to recover for an injury that was due to gradual and ordinary job-related stress, the Court applies the

“substantial factor” standard to determine proximate cause. *Woodward v. U E & C Catalytic*, Del. Super., C.A. No. 01A-01-001, Goldstein, J. (Aug. 14, 2001). That is, Claimant had the burden of proving to the Board that her compensable work-related injury was a substantial factor in her subsequent neck and shoulder pains. The Board considered this argument and concluded that although Claimant had failed to demonstrate such a connection between her original injury and her current complaints, Dr. Ger had provided a solid rationale for considering the injuries as separate and distinct. The Board’s decision was supported by substantial evidence in the record and will be upheld.

IV. Conclusion

After a review of the record, the Court is satisfied that the Board’s findings and conclusion are supported by substantial evidence and are free from legal error. I am satisfied that, regardless of the packaging of Claimant’s argument, the Board addressed the issues before it and found Claimant failed to establish her current problem was work-related. For the foregoing reasons, the Board’s decision to deny Claimant’s Petition for Additional Compensation Due is affirmed.

IT IS SO ORDERED.

Very Truly Yours,

T. Henley Graves

oc: Prothonotary’s Office
cc: Industrial Accident Board