

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

JULIA PANTOJA,)
)
 Employee-Appellant,)
)
 v.) C.A. No. 03A-01-001-JRS
)
 J.C. PENNEY COMPANY, INC.)
)
 Employer-Appellee,)

ORDER

On Appellee's Motion for Reargument. DENIED.

Date Submitted: February 17, 2004

Date Decided: April 19, 2004

This 19th day of April, 2004, upon consideration of Appellees' Motion for Reargument of the Court's decision dated January 29, 2004, and Appellants' Responses, it appears to the Court that:

1. Julia Pantoja appealed from a decision of the Industrial Accident Board ("the Board") denying her workers' compensation benefits for a work-related injury that she alleged occurred on December 11, 2001. The Court reversed and remanded the Board's decision, finding that substantial evidence supported the Board's conclusion that Ms. Pantoja did not suffer an injury on December 11, 2001, but did not support the conclusion that her back pain was unrelated to any work injury.

2. J.C. Penney Company (“J.C. Penney”), through its insurer Liberty Mutual Insurance Company (“Liberty Mutual”)(collectively, “Appellees”), argues that the Court improperly made a finding of fact with respect to Ms. Pantoja’s back pain, namely, that her pain resulted from a work-related incident in 1996 and/or 1999. Liberty Mutual also seeks clarification of the Court’s instructions to the Board on remand. Finally, Liberty Mutual also takes issue with the Court’s interpretation of certain testimony presented to the Board. Specifically, Liberty Mutual questions the Court’s characterization of medical testimony utilized by the Court to support its findings that: (1) “at no point did any of the testifying witnesses indicate that Ms. Pantoja’s problems resolved before July, 2001”; and, (2) “Dr. Ger agreed that the present symptoms reflect aggravations of [Ms. Pantoja’s] preexisting injuries.”

3. Ms. Pantoja and AIG Insurance Company (collectively, “Appellants”) respond that Appellees have not set forth with specificity the precise clarification being sought. And they take issue with the Appellees’ characterization of the medical testimony. According to Appellants, the only issue for determination by the Board is the extent of Liberty Mutual’s liability to pay benefits.

4. “A motion for reargument will usually be denied unless the Court has overlooked a decision or principle of law that would have a controlling effect or the Court has misapprehended the law or the facts so that the outcome of the decision

would be affected.”¹ A party may not “rehash arguments already decided by the [C]ourt.”² Nor may a motion for reargument be used to make a new argument that could have been raised prior to the Court’s decision.³

5. The Court will first consider Liberty Mutual’s contention that the Court made an improper finding of fact about the cause of Ms. Pantoja’s back pain. In its decision of January 29, 2004, the Court stated:

After acknowledging that Ms. Pantoja “undeniably” injured her neck and spine in the 1999 accidents, the Board stated that “[c]laimant and her physicians testified, however, that this problem completely resolved before July of 2001.” This statement, which presumably led the Board to its ultimate conclusion, is inaccurate. At no point did any of the testifying witnesses indicate that Ms. Pantoja’s problems resolved before July 2001. In fact, to the contrary, the testimony clearly indicates that her problems persisted during this time and related back to her 1996 and 1999 work accidents.⁴

It is well established that, when appropriate, this court may examine the underlying facts on which the Board based its decision when those facts can be

¹*Cave v. New Castle County Council*, 2003 WL 21804106, at *1 (Del. Super. Ct.)(citations omitted).

²*McElroy v. Shell Petroleum, Inc.*, 1992 WL 397468, at *1 (Del. Supr.).

³*Plummer v. Sherman*, 2004 WL 63414, at *2 (Del. Super. Ct.)(citations omitted).

⁴*Pantoja v. J.C. Penney*, 2004 WL 304338, at *4 (Del. Super. Ct.)(Court’s decision dated January 29, 2004).

determined, by implication, from the Board's ultimate conclusion.⁵ The Board's responsibility is to resolve conflicts in the evidence and to articulate that resolution in its decision.⁶ "Although a decision supported by substantial evidence cannot be disturbed, this Court should reverse a finding of the Board where there was no competent evidence to support it."⁷ The reviewing court may overturn a factual finding of the Board when the record contains no proof to support the conclusion.⁸

6. On review, the Court analyzed the Board's conclusion that Ms. Pantoja's back pain was unrelated to any work accident and determined that substantial evidence did not support it. In doing so, the Court did not review any evidence that was not already in the record. In fact, to the contrary, it was the absence of supporting record evidence that caused the Court to conclude that the Board's decision was in error. The

⁵*Chrysler Corp. v. Alston*, 1997 WL 597120 (Del. Supr.)(citing *Haveg Industries, Inc. v. Humphrey*, 456 A.2d 1220, 1222 (Del. 1983)).

⁶*Venture Milling Co. v. Bennett*, 1995 WL 156225, at *3 (Del. Super. Ct.), *aff'd*, 690 A.2d 467 (Del. 1996)("[W]hen there is conflict in undisputed evidence, the fact finder has the responsibility to specifically address inconsistencies and explain how it resolved them.")(citations omitted).

⁷*Ware v. Baker Driveway, Inc.*, 295 A.2d 734, 737 (Del. Super. Ct. 1972), *aff'd*, 303 A.2d 358 (Del. 1973), *overruled on other grounds*, *Beam v. Chrysler Corp.*, 332 A.2d 143 (Del. 1975)(citing *Shannon v. General Motors Corp.*, 161 A.2d 433 (Del. 1960)).

⁸*Johnson v. Chrysler Corp.*, 213 A.2d 64, 67 (Del. 1965)("Only when there is no satisfactory proof in support of a factual finding of the Board may the Superior Court, or this Court for that matter, overturn it.")(citing *Children's Bureau of Delaware v. Nissen*, 29 A.2d 603 (Del. Super. Ct. 1942)).

Court did not improperly weigh evidence or make credibility determinations; it simply recognized that the uncontested facts, as presented in the record, do not support the Board's ultimate conclusion.⁹

7. Liberty Mutual's arguments regarding the Court's interpretation of the medical testimony are not properly raised on reargument. Specifically, Liberty Mutual takes issue with the Court's interpretation of Dr. Ger's testimony regarding preexisting injuries. As previously stated, a party may not "rehash arguments already decided by the [C]ourt."¹⁰ Yet Appellees have done just that. The Court considered the testimony of record and the parties' respective interpretations of that testimony before reaching its first decision. These matters will not be revisited here.

8. On remand, the only issue remaining for the Board is to determine the amount of compensation owed. Based on the foregoing, Appellees' motion for reargument is **DENIED**.

IT IS SO ORDERED.

⁹See, e.g., *Diamond Fuel Oil v. O'Neal*, 734 A.2d 1060 (Del. 1999)(holding that substantial evidence did not support Board's determination that claimant did not meet his burden of proof at the hearing); *Ware*, 295 A.2d at 737-38 (reversing the Board's finding that claimant sustained five percent disability because substantial evidence did not support that conclusion, and "find[ing] as a fact that claimant was one hundred percent . . . disabled . . .").

¹⁰*McElroy*, 1992 WL 397468, at *1.

Judge Joseph R. Slights, III

Original to the Prothonotary.

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