IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ROBERT A. FRIEBEL, Employee-Below/Appellant,	)	
	)	
v.	)	C.A. 03A-07-013-PLA
	)	
NATIONAL GLASS & METAL, Employer-Below/Appellee.	)	IAB No. 1224441
	)	

Submitted: January 23, 2004
Decided: April 30, 2004

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

ORDER

Paul A. Wernle, Jr., Esquire, New Castle, Delaware, Attorney for Employee-Below/Appellant.

David G. Culley, Esquire, M. Jean Boyle, Esquire, Tybout, Redfearn & Pell, Wilmington, Delaware, Attorneys for Employer-Below/Appellee.

ABLEMAN, JUDGE

Claimant, Robert A. Friebel ("Appellant"), has appealed from the June 27, 2003 decision of the Industrial Accident Board of the State of Delaware ("IAB" or "Board") denying Appellant's Oral Motion for Payment of Medical Expenses and Attorney's Fees. This is the Court's decision on appeal.

Facts

Appellant is a forty-seven year old male. His claim arises out of a compensable industrial accident, which he sustained while employed as an iron worker for National Glass and Metal ("Appellee") on August 1, 2001. Appellant was injured while lifting a seven hundred fifty pound tube with three other co-workers. Following his injury, Appellant complained of muscle strain and a herniated disk. According to the Statement of Facts Upon Failure to Reach an Agreement, *see infra*, he ceased working after December 16, 2001. Prior to this work accident, while in the employ of Guardian Environmental Services, Appellant sustained a work-related back injury on August 21, 1990.

On January 5, 2003, with respect to the injury sustained while employed with Guardian Environmental Services, Appellant filed a Petition to Determine Additional Compensation Due to Injured Employee, wherein he sought compensation based on "recurrence of total disability benefits pursuant to 19 *Del. C.* § 2324" (compensation for total disability) for the period commencing on "December 16, 2001 and continuing." In the same petition, Appellant sought

reimbursement for medical expenses and bills, allegedly causally related to his December 16, 2001 work accident. On this same date, with respect to the injury sustained while employed by the Appellee, Appellant filed a Petition to Determine Additional Compensation Due to Injured Employee. In this petition, Appellant represented that Appellant and Appellee had failed to reach an agreement in regard to compensation due and requested a hearing before the Board for determination of Appellant's claim. Also, accompanying the petition, Appellant filed a Statement of Facts Upon Failure to Reach an Agreement, wherein he alleged, among other things, that he had not recovered from his injuries suffered on August 1, 2001, that he had not resumed work, and that he would not be able to return to his occupation as an iron worker. Upon submission of both petitions, counsel for Appellant requested that the Board combine both work-related incidents and to consider them together at a future hearing date to be assigned.

On March 10, 2003, the parties filed a joint pre-trial memorandum with the Board. Appellant sought a determination of compensation due, medical expenses, transportation expenses, medical witness fees, and attorney's fees from the period beginning December 16, 2001. With regard to Appellant's August 1, 2001 injury claim, Appellee did not admit compensability, contending that Appellant was not involved in an industrial accident. Appellee claimed, as defenses, that: 1) Appellant failed to give notice to the employer of the injury within ninety days

after the accident; 2) Appellant had a pre-existing condition; 3) the claim was barred by the statute of limitations; 4) the Displaced Worker Doctrine did not apply; and 5) the compensation rate is disputed. The parties stipulated to the authenticity of the medical bills and records and Appellant agreed to "exchange medicals" prior to the hearing date.

In accordance with the parties' intent, Appellee submitted its Employer's Request for Production to the Appellant, which sought, in part, "copies of any and all medical bills, pharmacy receipts, reimbursement statements, which the Claimant contends are related to the industrial accident which have not been paid." On March 23, 2003, in response to Employer's Request for Production, counsel for Appellant produced a number of documents, including *inter alia*, copies of requested medical bills, in the amount of $3,541.42.

By letter, dated May 9, 2003, counsel for Appellant advised the Board and Appellee's counsel that Appellant wished to amend and supplement the pre-trial memorandum, by seeking payment for additional medical expenses in the amount of $9,910.15. In response, Appellee's counsel notified the Board and Appellant's counsel in a letter, dated May 12, 2003, that these "medical expenses had never been presented to the carrier or to my office for payment,[.] I would respectfully request that the Board amend the pretrial memorandum to reflect Rule 4 as an additional defenses on its behalf." Appellee objected to payment of these medical

expenses under Rule 4 of the *Rules of the Industrial Accident Board*, insofar as the Appellant had never presented the bills for payment prior to the letter of May 9, 2003. Finally, in a letter dated June 5, 2003, Appellee extended an offer to settle Appellant's pending petition before the Board, noting, among other things, that the medical bills Appellant's counsel had forwarded (as enumerated in the May 9, 2003 letter) "have been placed in line for payment and will be (if they have not already been) paid pursuant to Rule 4."

Days before the scheduled June 10, 2003 hearing to consider Appellant's petition before the Board, the parties settled all claims, with the exception of the issue of attorney's fees attributable to the medical expenses denoted in the May 9, 2003 letter. Appellee agreed to pay the total disability for two months, the attorney's fees associated with that disability, the medical witness fees, the court reporter's fee, and any other associated costs, in exchange for Appellant withdrawing the partial disability claim. As such, Appellee consented to pay thirty percent of the total disability claim agreed upon as an attorney fee, with the proviso that the parties submit to a legal hearing before the Board on the issue of whether the additional May 9, 2003 medical fees and expenses should be considered, and determinative of an award for attorney's fee, in view of Appellee's alleged Rule 4 defense.

Procedural History

At the June 10, 2003 legal hearing before the Board, the only issue presented to the Board for determination was Appellant's aforementioned attorney's fee claim and Appellee's proffered Rule 4 defense.[1] During the course of the hearing, Appellant's counsel argued that he had provided notice to the employer for the claim of the additional medical bills within the context of Appellant's Response to Request for Production, the amended pre-trial memorandum, and pursuant to the 30 day rule letter.[2] Appellant contended that, "[s]ince the Employer has agreed today to pay these bills[,] that the Claimant is entitled to a fee, attorney's fee for those bills."[3] Interestingly, and somewhat inexplicably, counsel for Appellant testified during the hearing that he had reduced the amount of the medical bills and expenses in question, upon which his claim for attorney's fees is predicated, from $9,910.15 documented in the May 9, 2003 letter, to $3,541.42, the amount of medical expenses associated with the March 23, 2003 Response to Request for Production.

On the other hand, Appellee adopted the position that Appellant was not entitled to attorney's fees based on these bills. In support of its position, Appellee

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[1] As to Appellant's other petition against Guardian Environmental Services concerning his August 20, 1990 injury, upon examination of the Appellant by three physicians, it was determined that his current injury and related symptoms were solely attributable to his August 1, 2001 work accident. Accordingly, Appellant withdrew his petition, and upon agreement between the parties involved, the Board issued its Dismissal Order, dated June 11, 2003, dismissing Appellant's petition against Guardian Environmental Services.
[2] Board Hearing Transcript, dated June 10, 2003, at 2-5 (hereinafter "Bd. Hr'g Tr. at ___.").
[3] Bd. Hr'g Tr. at 3.

testified that the bills were "[p]rovided in response to our Request for Production, however[,] they were not submitted for payment and Defense's basic Rule 4, Subsection B, 'all medical expenses shall be paid by the Carrier within thirty days after bills or said expenses are sent to the Carrier for payment.'"[4] At the conclusion of the hearing, the parties stipulated that, if the Rule 4 defense failed with respect to the claim of additional medical expenses, Appellee would agree to pay to the Appellant an amount of 30% of the aforesaid medical expenses.[5]

In its June 27, 2003 Order, the Board denied Appellant's Oral Motion for Payment of Medical Expenses and Attorney's Fees. After considering the evidence presented at the hearing, the Board found that:

> Although Claimant produced copies of the bills to National Glass & Metal pursuant to a Request for Discovery in March 2003, the Board cannot conclude that such a production satisfied the time requirements under Rule 4. Pursuant to said rule, Claimant must send the bills to the carrier "for payment." Implicit in this request is the requirement [that] the Claimant makes clear the intention for the presentment and that the carrier have [sic] the opportunity to make payment within the time limit proscribed by the rule. In other words, Claimant must place the employer on actual notice that the time imposed by the rule has begun to toll. On review of the instant matter, the Board concludes that National Glass & Metal did not have the actual notice of a request for payment until May 9, 2003. Accordingly, given the time period when this exchange occurred, National Glass & Metal did not have the required thirty (30) days to either pay the bills or dispute payment thereof.[6]

[4] Bd. Hr'g Tr. at 4.
[5] Bd. Hr'g Tr. at 9-10.
[6] Industrial Accident Board Decision, dated June 27, 2003, at 1-2 (hereinafter "Bd. Dec. at ___.").

Appellant filed a timely notice of appeal of the Board's decision to this Court on July 30, 2003. As grounds for the appeal, Appellant contends that the Board erred as a matter of fact and law, that the Board acted in an arbitrary and capricious manner, and that the decision of the Board is unsupported by, and against the weight of, the evidence.

Parties' Contentions

In the briefs submitted by the parties, Appellant contends that the Board committed legal error by interpreting Rule 4 to preclude the award of attorney's fees or medical expenses unless the claimant demands payment for the same at least thirty days prior to the employers/carrier's decision to accept the claim. Appellant asserts that Rule 4 does not apply to the instant case because its purpose is to provide protection to claimants in the various forms set forth therein. There are no existing obligations on the part of a claimant, according to Appellant, and all subsections of Rule 4 contain obligations on the part of employers. It is Appellant's belief that Subsection (B) merely imposes a time constraint upon which a carrier must pay or contest a bill. Second, Appellant argues that, even presuming against all reason, that Rule 4 may act to preclude an award of attorney's fees, the stipulated record reflected actual notice of claimant's claim for medical expenses months before the hearing date. Further, Appellant believes that production of the medical bills more than thirty days prior to the hearing, is

sufficient to place an employer on notice of the particular expenses, such that the Appellant would have been entitled to an award of attorney's fees where the employer accepted compensability of the accident and/or medical expenses less than thirty days prior to the hearing.

In contrast, Appellee submits that the Board did nor err as a matter of law in ruling that Appellant was not entitled to an award of attorney's fees. Appellee reasons that, in light of Rule 4 (B), considered in conjunction with 19 *Del. C.* § 2127,[7] Appellant failed to submit the medical expenses and bills in a timely manner. Appellee's receipt of the medical bills on May 9, 2003 triggered the thirty-day tolling period according to Rule 4(B). Appellee investigated the bills upon receipt and on June 5, 2003 agreed to pay the medical bills and expenses. Appellee argues that because the bills were not accepted as compensable, thirty days prior to the Board hearing, the associated attorney's fees are not permitted. Second, according to Appellee, the Board did not abuse its discretion when it determined that the Appellant's Response to Request for Production did not place employer on actual notice that the time imposed by Rule 4(B) had begun to toll.

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[7] DEL. CODE ANN. tit. 19, § 2127 was repealed by 71 Del. Laws, c. 84, § 1, eff. Dec. 24, 1997. Former § 2127 (a) provided that, "[a] reasonable attorney's fee in an amount not to exceed 30% of the award or $2,250, whichever is smaller, shall be allowed by the Board to an employee awarded compensation under this chapter and Chapter 23 of this title and taxed at costs against a party." Section 2127(a) was replaced by § 2320 (10)(a.), which provides that, "[a] reasonable attorney's fee in an amount not to exceed 30 percent of the award or 10 times the average weekly wage in Delaware as announced by the Secretary of Labor at the time of the award, whichever is smaller, shall be allowed by the Board to an employee awarded compensation under Part II of this title and taxed at costs against a party." DEL. CODE ANN. tit. 19, § 2320 (10)(a.) (1995 & Supp. 2002). 73 Del. Laws, c.121 (2001), substituted "10 times the average weekly wage in Delaware as announced by the Secretary of Labor at the time of the award," for "$2,250" in (10)a.

Appellee purports that a "response" to a request for production does not equal a "demand for payment" pursuant to Rule 4(B). In support of this line of reasoning, Appellee notes that the Appellant has offered no proof that he submitted itemized medical expenses for payment prior to May 9, 2003. In fact, Appellant concedes this fact, which the Board later substantiated in its holding.

Discussion

The Delaware Supreme Court and this Court repeatedly have emphasized the limited appellate review of factual findings of an administrative agency.[8] The function of the reviewing Court is limited to determining whether substantial evidence supports the Board's decision regarding findings of fact and conclusions of law and is free from legal error.[9] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[10] Moreover, substantial evidence is that evidence from which an agency fairly and reasonably could reach the conclusion it did.[11] It is more than a scintilla but less

[8] *Industrial Rentals, Inc. v. New Castle County Bd. of Adjustment*, 2000 WL 710087, at *3 (Del. Super. Ct.), *rev'd on other grounds*, 776 A.2d 528 (Del. 2001); *Pub. Water Supply Co. v. DiPasquale*, 735 A.2d 378, 382 (Del. 1999).
[9] DEL. CODE ANN. tit. 29, § 10142(d) (1997 & Supp. 2002); s*ee also Soltz Management Co. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992); *Mellow v. Bd. of Adjustment of New Castle County*, 565 A.2d 947, 954 (Del. Super. Ct. 1988), *aff'd*, 567 A.2d 422 (Del. 1989); *Janaman v. New Castle County Bd. of Adjustment*, 364 A.2d 1241 (Del. Super. Ct. 1976), *aff'd*, 379 A.2d 1118 (Del. 1977); *M. A. Harnett, Inc. v. Coleman*, 226 A.2d 910 (Del. 1967); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965); *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960).
[10] *Streett v. State*, 669 A.2d 9, 11 (Del. 1995); *accord Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986), *app. dism.*, 515 A.2d 397 (Del. 1986); *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).
[11] *Mellow*, 565 A.2d at 954 (citing *Nat'l Cash Register v. Riner*, 424 A.2d 669, 674-75 (Del. Super. Ct. 1980)).

than a preponderance.[12] When reviewing a decision on appeal from an agency, the Superior Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[13] It is well established that it is the role of the Board, not this Court, to resolve conflicts in testimony and issues of credibility.[14] Whenever the factual issues are fairly debatable, it is the duty of the Board to formulate decisions about the weight and credibility of various evidence or testimony presented to the Board.[15] The Court's responsibility is merely to determine if the evidence is legally adequate to support the agency's factual findings.[16] If the agency or Board's decision is supported by *substantial evidence*, the Court must sustain the decision of the Board, even though it would have decided otherwise had it come before it in the first instance.[17]

In essence, the Court does not sit as trier of fact, nor should the Court replace its judgment for that of the Board.[18] Specifically, when considering questions of fact, due deference shall be given to the experience and specialized competence of the Board.[19] When the issue raised on appeal is exclusively a

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[12] *Id*. at 954 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)); *Downes v. State*, 1993 WL 102547, at *2 (Del.) (quoting *Breeding v. Contractors-One-Inc*., 549 A.2d 1102, 1104 (Del. 1988)).
[13] *Johnson*, 213 A.2d at 66.
[14] *See Mooney v. Benson Mgmt. Co*., 451 A.2d 839, 841 (Del. Super. Ct. 1982), *rev'd on other grounds*, 466 A.2d 1209 (Del. 1983).
[15] *Mettler v. New Castle County Bd. of Adjustment*, 1991 WL 190488, at *2 (Del. Super. Ct.).
[16] DEL. CODE ANN. tit. 29, § 10142(d) (1997 & Supp. 2002).
[17] *Mellow*, 565 A.2d at 954 (citing *Kreshtool v. Delmarva Power & Light Co*., 310 A.2d 649, 653 (Del. Super. Ct. 1973)); *Searles v. Darling*, 83 A.2d 96, 99 (Del. 1951) (emphasis added to original).
[18] *Johnson*, 213 A.2d at 66.
[19] DEL. CODE ANN. tit. 29, § 10142(d) (1997 & Supp. 2002); *Histed v. E.I. duPont de Nemours & Co*., 621 A.2d 340, 342 (Del. 1993).

question of the proper application of the law, the review by this Court is *de novo*.[20] Absent an error of law, the standard of review on appeal is abuse of discretion.[21] The Court will not find that the Board abused or usurped its discretion, unless its decision has 'exceeded the bounds of reason in view of the circumstances.'[22]

Specifically applicable to the case at bar, the standard of review for a determination of the amount to award in attorney's fees, based on those issues on which the claimant is successful, is abuse of discretion.[23] That is to say, for purposes of determining attorney's fees, the Board is empowered with the discretion to decide the number of issues it will treat separately.[24] Pursuant to 19 *Del. C.* § 2320(10), a claimant who receives a compensation award has a statutory right to an award of reasonable attorney fees.[25] The objective of the statute is to assure that an employee pursuing a meritorious claim for worker's compensation not be required to pay counsel fees from the proceeds of the award.[26] As such, the Board has discretion in determining the amount of the attorney's fees it awards, provided it acts in a manner consistent with the purpose of the Worker's

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[20] *Canyon Constr. v. Williams*, 2003 WL 1387137, at *1(Del. Super. Ct.); *Bracy v. City of Wilmington*, 2002 WL 31845919, at *3 (Del. Super. Ct.).
[21] *Digiacomo v. Bd. of Pub. Educ*., 507 A.2d 542, 546 (Del. 1986).
[22] *Floudiotis v. State*, 726 A.2d 1196, 1202 (Del. 1999); *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994); *Porter v. Insignia Mgmt. Group,* 2003 WL 22455316, at *3 (Del. Super. Ct.) (quoting *Willis v. Plastic Materials, Co*., 2003 WL 164292, at *1 (Del. Super. Ct.)).
[23] *Porter*, 2003 WL 22455316, at *3 (citing *Darnell v. BOC Group, Inc*., 2001 WL 879911, at *8 (Del. Super. Ct.), *aff'd*, 792 A.2d 188 (Del. 2002)).
[24] *Simmons v. Del. State Hosp*., 660 A.2d 384, 391(Del. 1995); *Darnell*, 2001 WL 879911, at *8.
[25] *See supra* note 7.
[26] *Digiacomo*, 507 A.2d at 547.

Compensation Act.[27] In *General Motors Corp. v. Cox*, the Delaware Supreme Court established a list of ten factors that the Board must consider in determining what amount of attorney's fees is reasonable.[28] It is essential that all of the factors be considered to facilitate the appropriate determination of attorney's fees and to provide the Court with sufficient information on appeal to formulate an informed decision. In the event the Board neglects to consider all the factors, or bases a decision on improper or inadequate grounds, it has committed an abuse of discretion.[29] Moreover, although an award of attorney's fees must be reasonable in relation to the benefit to the client, the fee is not dependent on the amount of the award.[30]

In the case at bar, the circumstances preceding the Board hearing presented a unique situation with respect to the Board's ruling on the availability of attorney's fees. First, because the parties reached a settlement before the scheduled hearing, the only issue before the Board dealt with the medical expenses. Although there is no evidence in the record of a memorandum of such settlement agreement between the employer and the injured employee pursuant to 19 *Del. C.* § 2344, the testimony at the hearing, and the parties' briefs, indicate that a settlement was reached. Thus, the Board was relieved of the duty of actually determining the

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[27] *Porter*, 2003 WL 22455316, at *5; *Willis*, 2003 WL 164292, at *1.
[28] *See General Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973).
[29] *Porter*, 2003 WL 22455316, at *5 (citing *Willis*, 2003 WL 164292, at *2).
[30] *Id*. (citing *Vaughn v. Genesis*, 2000 WL 1211221, at *2 (Del. Super. Ct.)).

amount of compensation due. Without this backdrop requirement, the parties left the Board to consider the stipulated issue put before it. Second, since the parties stipulated that, if the Board found that Rule 4 was inapplicable, and did not preclude attorney's fees with respect to the medical bills, the Appellant would be entitled to a thirty percent recovery of attorney's fees in relation to the medical bills. Thus, the Board was not required to perform a substantive consideration of the determinative ten-factor *Cox* test for a determination of reasonable attorney's fees.

All this leads the Court to find that the Board was exercising its plenary, discretionary, power in deciding the separate issue of the additional medical expenses presented in the May 9, 2003 letter, as amended by Appellant's counsel, for purposes of attorney's fees.[31] The Board promulgated, pursuant to its rule-making authority, Rule 4(B), which provides, in pertinent part, "[a]ll medical expenses shall be paid by the carrier within thirty days after bills for said expenses are sent to the carrier for payment, unless the carrier notifies claimant or his/her attorney in writing that said expenses are contested or that further verification is required." The Board's finding that the Appellant did not present the medical bills for payment pursuant to Rule 4 until May 9, 2003, is a factual finding that this

[31] *See supra* note 24.

Court will not disturb. In addition, the Court is not empowered to further make its own factual findings.[32]

The Board found that Appellant's tardy production of medical documentation to the carrier/employer for payment did not satisfy the time requirements imposed by Rule 4(B), which would have implicitly forewarned the carrier/employer of Appellant's intent to present said bills for payment, thereby placing the employer on actual notice that the thirty-day time period has begun to toll. This prejudiced the Appellee, in that it did not have the requisite thirty days either to pay the bills or dispute payment thereof. In its decision, the Board differentiated between the terms "production" for purposes of requested documents, and "presentment for payment." As interpreted and conceived by the Board, Rule 4 elicits a two-step process, whereby documentation of medical expenses and bills must first be "presented for payment" to the carrier/employer, before this intrinsic amount can even be considered in a determination for compensation of attorney's fees. Mere "production" equates with faulty notice. Appellant errs in declaring that "Rule 4 has no application whatsoever to attorney fees."[33] The very essence of Rule 4 requires presentment of medical bills for payment in a timely fashion, as any subsequent attorney's fees to be awarded are

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[32] *See supra* note 13.
[33] Brief of Appellant/Employee Robert A. Friebel, dated December 3, 2003, at 8 (hereinafter, "Br. of Appellant at ___.")

predicated on the exact amounts of these bills. The two are directly related. Timely presentment for payment is a prerequisite to receiving any fortuitous award of attorney's fees down the road.

In this instance, in the truest sense of its meaning, the statutory requirement inherent in 19 *Del. C.* § 2320(10), that an award of attorney's fees is mandatory when the claimant has been successful before the Board, does not apply. The Appellant obtained a settlement days before the hearing, so that his petition was never presented to the Board. Also, the parties stipulated to abide by the Board's findings at the legal hearing on the issue of the applicability of Rule 4 and attorney's fees. What is more, during the hearing, and without much explanation, Appellant's counsel minimized the amount of the medical bills upon which his request for fees was predicated from the May 9, 2003 amount of $9,910.15 to the $3,541.42 amount derived from documentation produced on March 23, 2003, much to the befuddlement of the Board. When asked to explain, counsel replied, "[w]e were trying to [give?] Dave Culley a break."[34] Counsel's explanation, rather than serving an altruistic motive, appears to countermand his claim and debilitate the core of his argument. The entire issue, for which the parties submitted the matter to the Board for deliberation, was predicated on the amount of $9,910.15 and the associated controversy over when it was presented/produced to the

[34] Bd. Hr'g Tr. at 9.

employer/carrier. To retreat, and lessen the amount, belies counsel's claim for appropriately matched fees.

Applying the relevant legal standard, the Court finds that the Board did not abuse its discretion in its decision. The Board exercised its discretion appropriately in determining that no amount of attorney's fees should be awarded due to noncompliance with Rule 4, and it acted in a manner consistent with the purpose of the Worker's Compensation Act. Mindful of its own rules promulgated in furtherance of this Act, the Board determined factual findings and, in the absence of an error of law, its decision did not "exceed the bounds of reason in view of the circumstances." Absent an abuse of discretion, a reviewing court may not disturb the Board's decision.[35] Since the record does not reflect that the Board abused its discretion, this Court, concomitantly, finds no error of law in the Board's decision to deny Appellant's Petition.

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[35] *Simmons v. Del. State Hosp.*, 660 A.2d 384, 388 (Del. 1995); *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1106 (Del. Super. Ct. 1988).

Conclusion

For the foregoing reasons, the decision of the Industrial Accident Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

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Peggy L. Ableman, Judge

cc: Paul A. Wernle, Jr. Esquire
David G. Culley, Esquire
M. Jean Boyle, Esquire
Industrial Accident Board
Prothonotary