

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

PATRICIA PARKS)
)
 Claimant - Appellant)
)
 v.) C.A. No. 03A-03-001 HDR
)
 WAL- MART)
)
 Employer - Appellee)
)
 AND INDUSTRIAL ACCIDENT)
 BOARD)

Submitted: March 25, 2004
Decided: June 24, 2004

Walt F. Schmittinger, Esq., Schmittinger & Rodriguez, P.A., for Patricia Parks

Michael R. Ippoliti, Esq., Michael Ippoliti, P.A., for Wal-Mart

OPINION

Upon Appeal from the Industrial Accident Board

AFFIRMED

RIDGELY, President Judge

Appellant Patricia Parks has appealed a decision of the Industrial Accident Board (“IAB” or “Board”) which denied her compensation for part of her medical expenses. The Board found these expenses to be unrelated to the industrial accident. Because the Board’s findings are supported by substantial evidence and are free from legal error, the decision must be affirmed.

I.

Parks was employed by Wal-Mart as a pharmacy technician when she suffered injuries to her lower back, neck, and thumb from a February 22, 2002, fall at her place of employment. Thereafter, Parks filed a claim for disability benefits, which Wal-Mart paid for a period a several months in early 2002. Parks was not compensated, however, for charges incurred for ambulance, emergency room, and medical services. On June 5, Parks filed a Petition to Determine Additional Compensation Due, seeking reimbursement for the cost of this supplemental treatment.

Hearing officer Julie G. Bucklin, representing the Board, held a hearing the following February, and in an opinion dated March 10, 2003, granted in part and denied in part Parks’s request for additional compensation.¹ In its decision, the Board found that Parks was diagnosed with fibromyalgia and rheumatoid arthritis in 1991-92. Also during this period, Parks suffered a back and neck injury after being “beaten up” while working as a prison guard. On February 11, 2002, nearly two weeks before her injury at work, Parks fell at home and injured her lower back.²

¹ *Parks v. Wal-Mart Stores, Inc.*, IAB Hearing No. 1212513 (Mar. 10, 2003).

² *See id.* at 2-3.

The Board also received testimony from several medical experts. In addition to that of Parks's past doctors, the Board heard testimony from her present physician, Ganesh Balu, and Wal-Mart's expert, neurologist Alan J. Fink. In addition to prescribing a variety of narcotics and other medications to Parks, Dr. Balu testified that he diagnosed Parks as suffering from "chronic facet syndrome," a condition related to Parks's neck and back pain. He administered a variety of remedial injections designed to alleviate Parks's pain. On cross-examination, Dr. Balu admitted that Parks's lower back pain, rheumatoid arthritis, and fibromyalgia are chronic conditions predating her February 2002 industrial accident.

Dr. Fink disagreed with Dr. Balu's diagnosis, opining that Parks's present condition is unrelated to her accident at work and that the injections were not necessary. Instead, Parks had a long-standing history of ailments, which his opinion did not warrant the injection schedule ordered by Dr. Balu. After considering the testimony of both experts, the Board found that Parks's medical expenses related to ambulance services, emergency room treatment, and an MRI were compensable. The Board thus awarded her \$800.³ The Board rejected Parks's request for reimbursement of the cost of Dr. Balu's treatment. The Board accepted the testimony of Dr. Fink and noted that Dr. Balu was unaware of Parks's prior fall and preexisting medical condition.⁴ This appeal followed.

³ *Id.* at 9.

⁴ *Id.* at 10.

II.

The Court's role in reviewing a decision of the IAB is to determine whether the Board's findings are supported by substantial evidence and are free from legal error.⁵ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a particular conclusion.⁶ When supported by this requisite evidentiary standard, the IAB's findings are conclusive, with judicial review limited only to questions of law.⁷ It is within the discretion of the Board, not the Court, to weigh the credibility of witnesses and resolve conflicting testimony.⁸ Thus, while sitting in review, "in no case will the [trial] court unravel the matter in dispute, retry the case, [or] go into an examination of the merits of the award."⁹

During the "period of disability," an employer must furnish under the workers' compensation laws "reasonable surgical, medical, . . . and hospital services, medicine[,] and supplies" to the injured employee.¹⁰ The Board may also

⁵ 29 Del. C. § 10142(d); *Ridings v. Unemployment Ins. Appeal Bd. and Dept. Natural Resources and Envtl. Control*, 407 A.2d 238, 239 (Del. Super. Ct. 1979); *Romine v. Conectiv Communs., Inc.*, 2003 Del. Super. LEXIS 162.

⁶ *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); see also *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (describing "substantial evidence" as more than a scintilla, but less than a preponderance of evidence).

⁷ 19 Del. C. § 3323(a).

⁸ *Starkey v. Unemployment Ins. Appeal Board*, 340 A.2d 165, 166 (Del. Super. Ct. 1975), *aff'd*, 364 A.2d 651 (Del. 1976).

⁹ 1 VICTOR B. WOOLLEY, PRACTICE IN CIVIL ACTIONS § 720 (1906).

¹⁰ 19 Del. C. § 2322(a).

require in its sole discretion an employer to supply additional medical services.¹¹ To ensure employee access to adequate medical treatment and prevent fraudulent charges to the employer, the workers' compensation scheme allows employees to choose their physicians,¹² and, if the Board finds the injury is compensable, places the cost on the employer.¹³

III.

Parks argues that she has established prima facie evidence that the medical expenses incurred with Dr. Balu are reasonable and thus compensable under Delaware's workers' compensation laws.¹⁴ Parks then argues that Wal-Mart has "failed in its efforts to provide competent evidence to overcome this proof of prima facie reasonableness"¹⁵ Parks also takes issue with the testimony of Dr. Fink, who she argues was unwilling to state that Dr. Balu's treatment was inappropriate. This dearth of information, according to Parks, points to a lack of substantial evidence. Parks thus claims that the Board "should give the testimony of Ms. Parks' treating physician, Dr. Balu, more credibility and substantial weight in evaluating

¹¹ *Id.* § 2322 (c) ("[T]he Board shall at all times have jurisdiction to determine and shall determine the character of [additional] services and supplies to be furnished.")

¹² *Id.* § 2323; *see also McCormick Transp. Co. v. Barone*, 89 A.2d 160 (Del. 1952), *aff'd*, 135 A.2d 140 (Del. 1957); *GMC v. Socorso*, 105 A.2d 641 (Del. 1953).

¹³ 19 *Del. C.* § 2323.

¹⁴ *See id.* §§ 2322 and 2323.

¹⁵ Appellant Br. at __ (no page numbers in original).

[her] treatment.”¹⁶

The Board is charged with the responsibility of weighing the credibility of the witnesses that come before it. Although the Board must conduct its hearings in compliance with the law, this Court will not reassess issues of fact that are properly reserved to the administrative tribunal.¹⁷ Section 2323 expressly allocates to the Board the power to order additional medical treatment and to determine whether such services are “compensable.” The record indicates there was differing expert medical testimony regarding Parks’s injuries and their origins. The Board considered this testimony and, after weighing the credibility of the witnesses, credited that of Dr. Fink.¹⁸

IV.

The decision of the IAB granting in part and denying in part Appellant Patricia Parks’s Petition to Determine Additional Compensation is supported by substantial evidence and is free from legal error. Accordingly, the decision is affirmed.

¹⁶ *Id.*

¹⁷ *Confer St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 84 (1936) (Brandeis, J., concurring) (“[S]upremacy of law does not demand that the correctness of every finding of fact to which the rule of law is to be applied shall be subject to review by a court. If it did, the power of courts to set aside findings of fact by an administrative tribunal would be broader than their power to set aside a jury’s verdict.”).

¹⁸ *See Parks*, IAB Hearing No. 1212513, at 9 (“Claimant’s lack of relief with the injections supports Dr. Fink’s opinion that the injections were not necessary. There is nothing objective [sic] to explain why Claimant reported to be in so much pain. Other doctors might differ from Dr. Fink and perform the injections; apparently Dr. Balu is one of them.”).

Parks v. Wal-Mart Stores, Inc. and the IAB
03A-03-001 HDR
June 24, 2004

IT IS SO ORDERED.

/s/ Henry duPont Ridgely
President Judge

oc: Prothonotary
xc: Order Distribution