

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

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May 11, 2004

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RE: Waples v. State, C.A. No. 03A-11-02 THG

Date Submitted: April 1, 2004

Dear Counsel:

This is the Court's decision on Princilla Waples' ("Claimant") appeal of the Industrial Accident Board's ("Board") decision denying additional benefits. The Board's decision is affirmed for the reasons set forth herein.

STATEMENT OF THE FACTS

On October 29, 1993, Claimant was employed as an attendant at the Stockley Center ("Employer"). While Claimant was moving a patient, she sustained injury to her neck, back and right leg. Claimant was thereafter paid worker's compensation benefits by Employer for (1) total disability, (2) permanent impairment of 10% of Claimant's low back; and (3) temporary partial disability. Employer paid out in gross in 1999, for a total of \$3,000.

Since 1999, Claimant has experienced ongoing pain in her neck, back and right leg. Claimant filed a petition for additional benefits on May 9, 2003, seeking recovery for medical expenses, prescription expenses and transportation expenses from 1999 onward. Claimant stated that these expenses were reasonable, necessary and causally related to her 1993 work accident.

Claimant sought treatment from Dr. Edward Quinn (“Dr. Quinn”) starting in 1999. When Dr. Quinn, who testified through deposition, first examined Claimant in May of 1999, she was experiencing back pain with radiation of that pain to her right leg. During the examination, Claimant exhibited tenderness of the sacroiliac region, but her exam was otherwise normal. Dr. Quinn then diagnosed Claimant with discogenic low back pain and right lower extremity sciatica.

Dr. Quinn saw Claimant once again in June of 1999. A discogram indicated degenerative change at level L5-S1 and no disc bulging was noted. Claimant was diagnosed with internal disc derangement in the lumbosacral region, which Dr. Quinn said was the cause of Claimant’s continued low back and right leg symptoms. Dr. Quinn concluded that the 1993 accident must be the cause of Claimant’s continued problems. Dr. Quinn later ordered a bone scan to rule out lower back discitis or a tumor as the source of Claimant’s ongoing pain. Claimant’s bone scan revealed an increased uptake in her right hip which was consistent with Paget’s disease, a finding unrelated to Claimant’s work accident. In October of 2000, Claimant was still experiencing pain and was sent to Dr. Hari Kuncha, a psychiatrist, for pain management therapy, which did not totally resolve Claimant’s pain.

Dr. Quinn was again seen by Claimant in March 2002 as Claimant was still experiencing intermittent sharp pain in her lower back with right leg radiation. Claimant was treated with pain medication and underwent an MRI. Dr. Quinn believed that all the treatments rendered to Claimant were reasonable, necessary and causally related to Claimant’s 1993 work accident.

On cross examination, Dr. Quinn admitted he did not completely know Claimant's prior medical history. Claimant was previously involved in a motor vehicle collision in 1985, where she injured her back. Claimant was also involved in an automobile accident in 1998 but stated she was not injured though she did go to the hospital following the accident. Dr. Quinn admitted that had he been aware of Claimant's prior medical history, it would have been an important factor in his consideration of Claimant's clinical picture. Dr. Quinn also admitted that according to medical records, Claimant had an abnormal lower back disc as far back as 1992. Dr. Quinn thus stated that it was possible Claimant may have been suffering from internal disc derangement prior to the 1993 work accident. Dr. Quinn further stated that Claimant's June 1999 lumbar discogram was determined to be normal. He also stated that the CT examination of Claimant's lumbar spine done in June 1999 was normal. Additionally, Dr. Quinn stated that Claimant's March 2002 MRI was normal.

On April 19, 1996, Claimant was seen by Dr. Alan Fink ("Dr. Fink"). Dr. Fink, a neurologist, also examined Claimant in 1998 and 2003 and testified through deposition. Dr. Fink reviewed all of Claimant's medical treatment records and was told by Claimant that after her 1985 car accident she suffered from low back pain. Claimant stated that this pain was asymptomatic from shortly after the accident until her 1993 work accident. Claimant complained of headache, right low back pain, and right leg pain during her 1996 examination by Dr. Fink. Dr. Fink found that Claimant has full range of motion of her back and non-anatomic sensory loss in her right leg. Claimant's right leg strength measured at nine out of ten, though she did have tremulousness in the right foot. Dr. Fink believed that Claimant's systems could be related to a clonus or lesion in the spinal cord, which would be unrelated to the 1993 accident. Otherwise, Claimant's neurological exam was normal. Dr. Fink believed that Claimant's 1996 back pain complaints were overstated and

not related to her 1993 work accident. Dr. Fink was of the opinion that Claimant should have recovered from her 1993 work accident by the 1996 exam and did not believe that any medical treatment after 1996 was necessary or related to the 1993 work accident. Employer then denied the compensability of any further claims by Claimant.

In 1998, Dr. Fink once again examined Claimant. Claimant presented with a normal neurological exam though she still complained of low back and right leg pain. All radiographic tests performed since her last test with Dr. Fink came back normal. Although Claimant still exhibited some sensory loss in her right leg, Dr. Fink believed that this was unrelated to Claimant's work accident. Dr. Fink continued to believe that Claimant exaggerated her symptoms and that all medical care received post-1996 was unnecessary and unrelated to Claimant's work accident.

Dr. Fink once again examined Claimant in August 2003. The results of the physical exam were normal. Dr. Fink reviewed radiographic tests done between 1998 and 2003 and found their results to be normal. Dr. Fink continued to believe that Claimant required no medical treatment after 1996 for injuries due to the 1993 accident.

On cross-examination, Dr. Fink stated that a soft tissue injury would not necessarily be expected to manifest on a diagnostic study. In other words, Claimant could have symptoms that radiographs would not pick up. Despite that fact, Dr. Fink persisted in his belief that medical care provided to Claimant after 1996 was unnecessary and unrelated to Claimant's work accident.

The Hearing Officer, in his decision on behalf of the Industrial Accident Board ("the Board's decision" or "the Board"), found that the medical costs incurred by Claimant from 1999 forward were not compensable as they were not necessary or causally related to Claimant's 1993 work accident. Additionally, the Board did not find Claimant to be a credible witness, citing her failure to reveal to her own treating physician significant past medical history involving her lower

back. Claimant was also found to be less than forthcoming during her testimony, as she only on cross-examination revealed pertinent facts regarding an earlier back injury due to the 1985 car accident, in particular the subsequent litigation and medical treatment related to that accident. Further, Claimant did not reveal until cross-examined that she sought emergency room treatment following a 1998 car accident. In sum, the Board found Claimant failed to present evidence to justify the multiple medical tests she underwent since 1999.

In addition, the Board did not find Dr. Quinn to be persuasive due to Dr. Quinn's not having a complete medical history for Claimant. Instead, the Board found Dr. Fink to be persuasive. The Board noted that Dr. Fink knew of and considered Claimant's past medical history when making his diagnosis. Dr. Fink's testimony, according to the Board, was supported by his review of records and his clinical exam findings.

Claimant appeals this decision stating that the Board committed an error of law in determining that payment of medical bills and transportation expenses incurred after 1999 were not compensable.

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), and to review questions of law de novo, *In re Beattie*, 180 A.2d 741, 744 (Del. Super. Ct. 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); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.), app. disp., 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 Corp.*, 312 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).

Under 19 *Del. C.* § 2322(a), an employer is obligated to pay the necessary and reasonable medical expenses related to an employee's work injury. 19 *Del. C.* § 2322 states in part:

- (a) During the period of disability the employer shall furnish reasonable surgical, medical, dental, optometric, chiropractic and hospital services, medicine and supplies... as and when needed, unless the employee refuses to allow them to be furnished by the employer.
- (b) If the employer, upon application made to the employer, refuses to furnish the services, medicines and supplies mentioned in subsection (a) of this section, the employee may procure the same and shall receive from the employer the reasonable cost thereof within the above limitations.

Disputes over the reasonableness of medical expenses are factual questions for the Board to decide. *Santiago v. Radisson Hotel*, Del. Super. Ct., C.A. No. 94A-08-5, Herlihy, J. (Feb. 28, 1995) (citing *Keil's Wholesale Tire v. Marion*, Del. Supr., No. 175, 1986, Moore, J. (Oct. 27, 1986) (ORDER)).

“Weighing evidence, determining the credibility of witnesses, and resolving any conflicts in testimony are functions reserved exclusively for the IAB.” *Klenk v. Med. Ctr. of Delaware*, 702 A.2d 926 (Del. 1997). “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.” *Carla Tingle v. E.I. DuPont DeNemours & Co.*, Del. Super., C.A. No. 02A-07-002, Graves, R.J., (Feb. 11, 2003) (Mem. Op. at 4); see *DuPont Hosp. for Children v. Pierce*, Del. Super., C.A. No. 01A-01-008, Goldstein, J. (June 29, 2001). To resolve conflicts over the reasonableness of medical expenses, the Board must weigh the credibility of medical testimony and as such the Board may believe the medical testimony of one doctor over that of another. *Scott v. First USA Bank*, Del. Super. Ct., C.A. No. 01A-10-003, Alford, J. (April 30, 2002)

(Mem.Op.), *Playtex Products, Inc. v. Harris*, Del. Super. Ct., C.A. No. 02A-02002 HDR, Ridgely, P.J., (Sept. 30, 2002). The opinion of a medical expert will constitute substantial evidence for purposes of an appeal. *Johnson v. Industrial Accident Board*, Del. Super. Ct., C.A. No. 93A-11-001, Lee, J. (June 3, 1994.)

DISCUSSION

The burden is on the Claimant to show that the medical expenses she incurred were reasonable, necessary and causally related to her 1993 work accident. *See Turnbull v. Perdue Farms*, 1998 WL 281201 (De. Super. Ct. 1998), *aff'd* 723 A.2d 398 (Del. 1998); *Adams Shore Disposal, Inc.*, Del. Super. Ct., C.A. No. 96A-10-001, Lee, J. (July 29, 1997) (Mem Op.). In their decision, the Board states that Claimant has not met this burden. The record provides substantial evidence to support this finding. The Board found that Claimant did not do so based on Claimant's lack of candor with Dr. Quinn and before the Board and found Dr. Fink's testimony to be more persuasive than that from Dr. Quinn.

The determination that Claimant was not a credible witness is supported by substantial evidence. Claimant failed to provide her treating physician with her complete medical history and medical records, leaving him unaware of her 1985 car accident and previous low back treatment until the time of his deposition. In addition, Claimant only revealed on her own cross-examination that her pain in the hips, legs and neck from the 1985 accident did not resolve in 1986 but rather 1998. Claimant also divulged, once again upon cross-examination, that she had received treatment for back and lower extremity problems intermittently over the seven years following the 1985 accident and that she had filed a lawsuit for lower back injuries due to that accident. Furthermore, Claimant failed to identify the lawsuit or several of her treating physicians from that injury when requested to do so by the State. Finally, Claimant testified regarding a 1998 car accident and stated

she suffered no injuries, however her medical records revealed she sought emergency room treatment following the accident.

The determination that Dr. Fink was more persuasive than Dr. Quinn is similarly supported by substantial evidence. Dr. Quinn was of the opinion that all medical treatment administered to Claimant after 1999 was reasonable, necessary and causally related to Claimant's 1993 work accident. However, Dr. Quinn admittedly did not have Claimant's pre-1993 medical history. Additionally, Dr. Quinn did not know of Claimant's 1985 automobile accident, and on cross-examination stated that this information would be important in making a determination as to the cause of Claimant's medical complaints. Dr. Quinn stated that if Claimant's medical records were as the State described them it would establish Claimant had an abnormal lower back as early as 1992 and that she may have been suffering from internal disc derangement prior to her work accident.

Dr. Fink, on the other hand, based his opinions on a review of Claimant's complete medical records, from both before and after her 1993 accident, and three physical examinations. In addition, Dr. Fink knew of Claimant's previous treatment for low back pain due to a review of her medical records. Dr. Fink stated that, based on these records and exams, all medical treatment rendered to the claimant after 1996 was not necessary or causally related to the 1993 work accident.

As this Court is barred from making credibility determinations, the Court must affirm the Board's decisions regarding the credibility of the witnesses. Here, the decision was properly based upon Dr. Fink's opinion that medical expenses were not necessary or reasonably related to Claimant's 1993 work accident. Dr. Fink's opinion is sufficient to constitute substantial evidence supporting the Board's finding. The Board's decision to deny Claimant's demand of medical expenses was proper.

Based upon the foregoing reasons, Claimant's appeal is denied and the Board's decision is affirmed.

Very truly yours,

T. Henley Graves

jfg
oc: Prothonotary
cc: Industrial Accident Board