

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

CANDAS E. CAMP,)	
)	
Employee/Appellant,)	
)	
v.)	C.A. No. 05A-03-006 MMJ
)	
DADE-BEHRING, INC.,)	
)	
Employer/Appellee.)	

Submitted: April 20, 2005
Decided: June 28, 2005

Upon Appeal from a Decision of The Industrial Accident Board
AFFIRMED

MEMORANDUM OPINION

Roy S. Shiels, Esquire, Brown, Shiels, Beauregard & Chasnov, Attorneys for Appellant

Robert W. Ralston, Esquire, Wilmington, Delaware, Attorney for Appellee

JOHNSTON, Judge

Candas E. Camp (“Claimant”) has appealed the Industrial Accident Board (“Board”)’s June 29, 2004 decision denying Claimant’s Petition to Determine Compensation Due. Claimant asserts that the stress at her place of employment, the plant of Dade-Behring, Inc. (“Employer” or “Dade”), caused her to be totally disabled beginning in approximately November 2002. The Board, after hearing testimony from the parties and their witnesses on May 17, 2004, and May 26, 2004 (“Hearings”), denied Claimant benefits. The Board held that Claimant had not established the nexus between actual stress at work and her disability. Claimant asserts that the Board’s decision is not supported by substantial evidence and is an error of law, and should be reversed in favor of Claimant.

Employer, on the other hand, contends that Board’s decision denying Claimant’s petition is free from legal error and supported by substantial evidence. Thus, the Order denying the Petition to Determine Compensation Due must be affirmed.

FACTS AND PROCEDURAL CONTEXT

Claimant was employed by Employer as a stability testing specialist. Claimant had held that job for a number of years with Employer and its predecessor, E.I. DuPont De Nemours & Company at its Glasgow, Delaware facility. In early 2001, Employer gave Claimant additional job responsibilities involving ordering and performing inventory. In October 2001, Employer conducted a “Kaison” event in Claimant’s work area. A Kaison event is a process designed to improve productivity in certain areas throughout the plant. As a result of that event, Claimant’s job changed and new inventory procedures were instituted. Early in 2002, as a result of another Kaison event, Claimant was told that her old job might be eliminated. However, Claimant was told that there was another temporary job that had been made available to her. Claimant was also told that Employer would continue to work with Claimant to find the next assignment. According to the testimony of Ms. Gannett, the human resources executive, this was consistent with Employer’s policy.

In September 2002, Claimant was given a special assignment expected to last three months. Claimant was given assistance and extra resources to accomplish the special assignment. Mr. Victor Carrio, Claimant’s supervisor, assigned someone else to take over Claimant’s duties so she could focus on the special assignment. Despite the additional help, Claimant stopped working at Dade in November 2002, because,

according to her testimony, she felt overwhelmed by her work. Claimant also claimed that she sustained a mental injury as a result of her work duties at Dade.

At the Hearings, Claimant conceded that she had had psychological problems well before the 2001 and 2002 time frame when she claims her work activities caused such serious mental stress that she became disabled. Claimant was sexually abused as a child. In 1980 Claimant was hospitalized for psychiatric care on at least two occasions. In 1986 Claimant saw a psychiatric nurse to help cope with the death of one of her pet animals. During the 1990s, and even up to the time Claimant alleges that her problems began at Dade, Claimant took medications known as Prozac and BuSpar. Claimant has lived through two divorces and a bankruptcy. In late 2001 and early 2002, Claimant started to see Dr. Oscar E. Galvis (“Dr. Galvis”), a psychiatrist, and Dr. Rhonda Rolfes (“Dr. Rolfes”), a psychologist, for the stress that she felt she was experiencing.

Claimant stopped working for Dade during the Fall of 2002 pursuant to Dr. Galvis’ orders. Dr. Galvis testified in his deposition that Claimant is totally disabled due to depression, and that her psychological problems have been exacerbated by her job duties. Dr. Rolfes, however, testified in her deposition that even though she agrees that Claimant suffers from depression, Claimant’s job situation did not cause her condition because Claimant had a prior psychological diagnosis and a

predisposition toward developing bipolar depression. Based upon what she learned from Claimant, Dr. Rolfes believes that Claimant's work activities at Dade's made the pre-existing psychological problems worse.

Dade had Claimant evaluated by Dr. Wolfram Rieger ("Dr. Rieger") on April 29, 2004. Dade's position is that Claimant's mental difficulties are not work-related, but are, instead, related to long standing non-work related stressors. Dr. Rieger testified in his deposition that he disagreed with Dr. Galvis and Dr. Rolfes. Dr. Rieger did not feel that Claimant's pre-existing depression is in any way related to any objective manifestation of stress on the job. According to Dr. Rieger, when Claimant's mental condition began to deteriorate, Claimant looked around for something to blame, i.e., her work. Dr. Rieger concluded that any psychological problems that disabled Claimant are related to her long-standing psychiatric issues and not to her employment. Dr. Rieger testified that there were no objective manifestations of stressors at work and that Claimant had subjectively misperceived her work activities as stressful.

As of the time of the Board Hearings in May 2004, Claimant was still out of work and had shown no improvement. Claimant testified that she still felt depressed and that she was essentially unable to care for herself.

The Board denied Claimant's petition, concluding that Claimant had failed to sustain her burden of proof regarding an objective nexus between her work activities and her mental disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE IAB

The following were some of the findings and conclusions of the IAB in its June 29, 2004 decision:

- There is no dispute that Claimant is unable to work. Drs. Galvis, Rolfes and Reiger agree that Claimant's depression is so severe as to render her dysfunctional. The issue is whether that depression is causally connected to Claimant's work.
- The seminal case on this issue is *Cephas*.¹ In *Cephas*, the Delaware Supreme Court held that a "mental injury" was compensable even when it was the result of gradual stimuli rather than a sudden occurrence, and even when the job-related stress was not unusual.² However, a claimant must establish by objective proof that his or her working conditions were actually stressful and were a substantial cause of the mental disorder.³

¹*State v. Cephas*, 637 A.2d 20 (Del. 1994).

²*Cephas*, 637 A.2d at 21.

³*Id.* at 27.

- The *Cephas* Court clarified that this “objective causal nexus” test did not require that a “reasonable or average person” would be affected by the stress. “Instead, the test focuses on the objectively provable impact of actual stress on the particular claimant, regardless of whether the claimant is more or less susceptible to mental disorders than the reasonable or average person.”⁴
- Claimant failed to meet the objective causal nexus test. There is no objective evidence at all for factors complained of by Claimant. For example: Claimant’s complaints about Carrio inciting gossip at work have no objective support; Claimant’s employment was never in danger; and no objective evidence supports Claimant’s belief that Carrio had personal animus towards her.
- Concerning other factors complained of by Claimant, while there is some objective evidence, these factors cannot be said to be actually stressful. For example, objectively, Claimant had job duties removed and added on due to various changes at Dade. The evidence presented demonstrated that out of over fifty restructuring events, no one has ever lost their job at Dade due to restructuring. If anything, the evidence suggests that Dade was attempting to ensure that Claimant would have continued employment with Dade.

⁴*Id.* at 28 n. 43.

- While Claimant subjectively perceived her interaction with Carrio as a source of stress because she felt he did not approve of her age, there is no objective proof that Carrio singled Claimant out for discipline or otherwise mistreated her. Claimant’s assertions that Carrio had “many others out on mental leave,” were wholly unsupported by the evidence.
- Claimant argued that under *Cephas*, one does not consider whether a *reasonable person* would find something stressful, but whether *Claimant* suffered from stress. While the Board found that although the determination must be made “regardless of whether the claimant is more or less susceptible to mental disorders than the reasonable or average person,”⁵ this does not vitiate the requirement that Claimant must provide objective evidence of actual stress.⁶
- Rearrangement of Claimant’s job duties and elimination of her position but not her employment, are not objectively stressful. Claimant’s performance at quality control duties relative to other co-workers is not objectively stressful.
- Claimant was given additional work which might be considered stressful. In this case however, while such a workload may be considered as objective

⁵*Id.* at 28 n. 43.

⁶*See Saleh v. Wilmington Trust Co.*, Del. Super., C.A. No. 97 A-06-004, Toliver, J., 1998 WL 733195, at *5(August 21, 1998)(compensation not paid for disability proximately caused by conditions found stressful only in claimant’s mind).

evidence of actual stress, Claimant failed to establish that it was a substantial cause of her mental injury.⁷ Although Drs. Galvis and Rolfes identified increased work itself as potential source of Claimant's depression and Claimant reported that the additional work was stressful, Claimant was offered assistance when asked and given additional assistance when she encountered difficulties. It cannot be considered stressful when one's employer complies with requests for assistance.

- In *Cephas*, the Court specifically noted that the employee's symptoms subsided when he was away from the work environment, which provided evidence that the overwork that was the cause of the symptoms.⁸ No similar evidence was presented here. After Claimant stopped working in 2002, her symptoms persisted even though she was far removed from the source of her alleged stress. All experts considered her still unable to work as of the hearing. Absent some objective manifestation linking the increased or adjusted work duties to the depression, Claimant fails to establish a causal connection.⁹

⁷See *Cephas*, 637 A.2d at 27.

⁸See *Cephas*, 637 A.2d at 29.

⁹See *Saleh*, *supra*, at **5.

- To have a successful *Cephas* claim, the workplace stress must be “real and proved by objective evidence.”¹⁰ Even considered in the aggregate, the factors perceived by Claimant as stressful do not reach this level. A misperceived interpersonal conflict between Claimant and Carrio; Claimant’s unsupported belief that Carrio did not approve of her age; requests that Claimant undertake additional duties with assistance; and notification that her position was to be eliminated with job placement in Dade all but guaranteed, do not establish actually stressful working conditions. The only objective stress for which there was evidence was that Claimant had to perform additional work and for a few months was aware that her position would be eliminated but not her employment. The evidence fails to establish any causal link between these objective stressors and Claimant’s mental injury.
- The Board was not obligated to provide an alternative causal explanation for Claimant’s mental injury.¹¹ The Board accepted Dr. Rieger’s explanation. Claimant clearly had numerous stressful factors in her personal life. Dr. Rieger’s suggestion that psychological deterioration from these events eventually distorted Claimant’s perceptions of other events provides a

¹⁰*Cephas*, 637 A.2d at 27-28.

¹¹*See Alfree v. Johnson Controls, Inc.*, Del. Super., C.A. No. 97A-04-005, Goldstein, J., 1997 WL 718669, at *7 (September 12, 1997).

reasonable explanation why Claimant subjectively perceived stressful conditions at work in the absence of objective evidence.

STANDARD OF REVIEW

In reviewing the decisions of the IAB, this Court must determine whether the findings and conclusions of the Board are free from legal error and supported by substantial evidence in the record.¹² The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence.¹³ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.¹⁴ Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.¹⁵ The appellate court merely determines if the evidence is legally adequate to support the agency's factual findings.¹⁶ It also determines if the Board made any errors of law.

¹²*General Motors Corp. v. Jarrell*, 493 A.2d 978 (Del. Super. 1985); *Talmo v. New Castle County*, 444 A.2d 298 (Del. Super. 1982), *aff'd*, 454 A.2d 758 (Del. 1982).

¹³*General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corporation*, 213 A.2d 64, 66-67 (Del. 1965).

¹⁴*Oceanport Ind. V. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

¹⁵*Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

¹⁶29 Del. C. § 10142(d).

On appeal “[t]he Superior Court does not sit as a trier of fact with authority to weigh the evidence, determine questions of credibility, and make its own factual findings and conclusions.”¹⁷ The Superior Court may not overturn a factual finding of the Industrial Accident Board unless there is “no satisfactory proof” supporting the Board’s finding.¹⁸ It is also well established that “[t]he credibility of the witnesses, the weight of their testimony, and the reasonable inferences to be drawn therefrom are for the Board to determine.”¹⁹

DISCUSSION

CLAIMANT’S CONTENTIONS

Claimant asserts that this Court should reverse the Board’s decision on Petition to Determine Compensation because of errors of law. Claimant argues that the Board erred as a matter of law by holding that Employer’s history showed that past efficiency events had not led to direct terminations. The testimony of Ms. Gannett, a Human Resource Manager for Dade, does not support the Board’s conclusion that no one has ever lost their job at Dade due to restructuring. The Board assumed, without any factual basis: (1) that Claimant knew that no employee at Dade directly lost a job due

¹⁷*Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

¹⁸*Id.* at 67.

¹⁹*Coleman v. Department of Labor*, 288 A.2d 285, 287 (Del. 1972).

to the efficiency evaluations; and (2) that therefore there could not have been any stress caused Claimant by indication to her by Employer that her position was eliminated and the only position then available to her was temporary. Claimant asserts that she did not have the level of knowledge about the results of other efficiency evaluations on continued employment that Ms. Gannett did. There is no evidence in the record that the knowledge of Ms. Gannett was relayed to Claimant by Ms. Gannett or anyone else. When the position Claimant had occupied for many years was eliminated, Claimant was given a temporary position, in which she was given three months to catch up on eight months of work. Claimant's co-workers thought this was too much work for Claimant, and Claimant's supervisor agreed, but did not do anything to alleviate the stress. Claimant asserts that she felt stressed because she thought that she would be terminated from the temporary situation. Unlike the Board, Claimant did not conclude that the loss of employment was extremely unlikely.

Claimant contends that the Board erred as a matter of law in finding there was no actual stress at work because untrained assistance was provided. There was uncontroverted testimony that the untrained assistance created more work and stress for Claimant. Claimant believes the analysis in *Adsitt v. Clairmont Water District*²⁰ is more appropriate than the Board's preclusion of the existence of stress because of

²⁰717 P.2d 1231, (Or. App. 1986).

good intentions. In *Adsitt*, the court noted that the behavior of the employer was the kind that could cause stress and did produce a worsening of the claimant's mental condition.²¹ Claimant asserts that supplying untrained assistance might show good intent, but common sense suggests that the result is an additional stress, not a preclusion of stress. No testimony contradicts Claimant's testimony on the ability and training of the assigned assistance.

Claimant asserts that the situation in the case at bar is similar to that in *Zgnilec*.²² The *Zgnilec* court, applying an objective causal nexus test, held that there was no question that the claimant was disabled. The only question was whether his mental disability was work related. It was immaterial whether, because of his personality disorder, Claimant had misinterpreted various events at work.²³

In the present case, the Board found that Claimant's job was never in danger. Claimant is a person whose past led her to be particularly vulnerable to this type of stress. Claimant asserts that the Board applied the wrong legal standard, and committed error. Instead of focusing on justification, and whether a reasonable man might perceive things as Claimant did, the Board should have determined whether the

²¹*Id.* at 1233.

²²*Zgnilec v. General Motors Corporation*, 568 N.W.2d 690 (Mich. App. 1997).

²³*Id.* at 692

work increases, changes in nature, assigning of inadequately trained co-workers, and threat of termination were events (1) that actually occurred and (2) significantly affected Claimant's mental state.

Finally, Claimant asserts that because there was no live testimony from the experts, in order to properly perform its review function, this Court should require the Board to indicate the basis of its credibility determination. In the absence of an ability to observe the demeanor of the experts, the Board should explain the reason for its determination that Rieger's testimony about causation was more credible than the testimony of Rolfes and Galvin.²⁴

EMPLOYER'S CONTENTIONS

Employer asserts that this Court must affirm the Board's award because the award is supported by substantial evidence and there is no error of law. The Board applied the proper legal standard governing the case as set forth in *Cephas*.²⁵ The *Cephas* Court held that while a mental injury can be compensable, a claimant who is seeking workers' compensation benefits for a purely mental injury must establish through objective proof that his or her working conditions were actually stressful and

²⁴See *Daniels v. W.C.A.B. (Tristate Transport)*, 832 A.2d 1043 (Pa. 2003); *O'Donnell v. W.C.A.B. (United Parcel Service)*, 831 A.2d 784 (Pa. Commw. 2003);

²⁵637 A.2d 20 (Del. 1994).

were a substantial cause of the mental disorder.²⁶ Where a claimant merely imagines or subjectively concludes that his or her work conditions have caused a psychological illness, there is no basis for holding the employer responsible since the connection between work and injury is perceived only by the impaired worker.²⁷

Employer argues that after hearing all the witnesses and evaluating all the facts, the Board held that Claimant did not prove that her working conditions were objectively stressful. Claimant did not prove that those conditions were a substantial cause of her mental illness. The Board concluded that Claimant had subjectively misperceived her work conditions as stressful due to her pre-existing non-work related psychological stressors. The factual conclusions that led to the denial of Claimant's petition for benefits are supported by substantial evidence in the form of the testimony presented by Employer's witnesses.

By alleging that an error of law has been made by the Board, Claimant misconstrues this Court's function on appeal. Claimant has asked this Court to review and re-evaluate factual evidence concerning her working conditions. This Court cannot relitigate Claimant's case and reach its own conclusions on factual matters.

²⁶*Id.* at 27.

²⁷*Id.* at 27-28.

Dade asserts that Claimant's claim that she was unaware of Employer's policy to place all affected employees in other positions within the company is not supported by the record. The record demonstrates that Claimant met with a human resources representative who told her that if her job was eliminated, Dade "will continue to work with you to find the next assignment." The Board found that Claimant's subjective fear that she could lose her job as a result of the Kaison events is not the objective type of evidence that she must present under the *Cephas* analysis to prove an objective causal nexus between her working conditions and her mental illness.

Claimant's argument that the Board misconstrued evidence of the job assistance provided to Claimant is an attempt to persuade the Court to review and re-evaluate a factual issue regarding Claimant's working conditions. Claimant claimed that the job assistance was not adequate. Employer claimed that it was. The Board evaluated the evidence and found Employer's evidence more persuasive. In its decision, the Board acknowledged that while an increased workload may be considered evidence of workplace stress, Dade offered Claimant assistance whenever she requested it or whenever she encountered difficulties. The Board found that Claimant's subjective anxiety from her special assignment was not the type of objective evidence required by *Cephas* to prove that her working conditions were objectively stressful and were a substantial cause of her mental illness.

The fact that the Board accepted evidence contrary to Claimant's position is not a basis for appeal. Additionally it is the Board's function to judge the credibility of witnesses. In cases of alleged mental injury, witness credibility factors heavily in determining whether there has been a work related injury. The Board had the opportunity to see and hear Claimant's testimony and to evaluate her credibility as she sat on the witness stand and testified. The Board did not accept that workplace stress caused Claimant's mental problems.

The Superior Court must not substitute its judgment on appeal for the judgment of the Board on credibility matters.²⁸ The fact that Claimant alleged that she was just as depressed after not working as she was when she was working is a factor that needs to be considered when deciding if there is an objective nexus between the work duties and the mental depression.

Dade asserts that the law on the issue of conflicting medical testimony is clear. When medical testimony is in conflict, the Board, in its role as trier of fact, must resolve the conflict.²⁹ Claimant's objection on appeal is simply that the conflict between the expert witnesses was not resolved in her favor. There is more than

²⁸*See Air Mod Corp. v. Newton*, 215 A.2d 434 (Del. 1965).

²⁹*General Motors Corp. v. McNemar*, 202 A.2d 803 (Del. 1964).

enough evidence, throughout the record of the two Hearings, to support the Board's conclusions.

ANALYSIS

Under established Delaware law, a claimant must establish by objective proof that his or her working conditions were actually stressful and were a substantial cause of the mental disorder.³⁰ “[T]he employer cannot be held responsible if the claimant imagines or subjectively concludes that work conditions have caused a mental injury.”³¹ The Board agreed with the experts, Dr. Rieger, Dr. Rolfes, and Dr. Galvin, that Claimant's depression is so severe as to render her dysfunctional. The Board concluded, however, that even though Claimant suffered a mental injury, she did not meet her burden of proof for causation, that more likely than not, the injury was caused by the stressful events at work.

In determining whether Claimant meets the causal nexus test, the Board examined each one of Claimant's work-related stressors to determine if they were “real and proved by objective evidence.”³² While the Board conceded that some factors, such as additional work, might be considered objective evidence of actual stress, it

³⁰*State v. Cephas*, 637 A.2d 20, 27 (Del. 1994).

³¹*Saleh*, 1998 WL 733195, at *4.

³²*See Cephas*, 637 A.2d at 27-28.

concluded that Claimant failed to establish that work-related factors were a substantial cause of her injury, even when considered in the aggregate.

The Court agrees with the Board's assessment. Claimant's history reflects that there are long-standing, non work-related stressors in her life. These stressors, over a period of time, appear to have distorted Claimant's perceptions of work-related events such as Kaison events, and other changes in her job situation. Mental illness can be compensable, but a claimant "must offer evidence demonstrating objectively that his or her work conditions were actually stressful and that such conditions were a substantial cause of claimant's mental disorder."³³ Contrary to the situation in *Cephas*, Claimant's symptoms persisted for at least two years after she stopped working in 2002, and was removed from the source of her alleged stress.³⁴

The Board correctly applied the standard set forth by the Delaware Supreme Court in *State v. Cephas*,³⁵ rather than the standard reflected in the two cases from other jurisdictions cited by Claimant: *Adsitt v. Clairmont Water District*,³⁶ and *Zgnilec v. General Motors Corporation*.³⁷ The Board did not err when it gave greater weight

³³*Cephas*, 637 A.2d at 27.

³⁴*See Cephas*, 637 A.2d at 29.

³⁵637 A.2d 20, 28 (Del. 1994).

³⁶717 P.2d 1231 (Or. App. 1986).

³⁷568 N.W.2d 690 (Mich. App. 1997).

to Employer's expert's opinion rather than to the Claimant's experts' opinions concerning causation.³⁸

The Board is not required to explain the reason for its determination that Dr. Rieger's testimony about causation is more credible than that of Dr. Roldes and Dr. Galvin. As triers of fact, the Board members were entitled to accept the testimony of the employer's expert without any further clarification.³⁹

The Court agrees with the Board's assessment that there is a lack of a causal connection between job-related events and Claimant's depression. The Board found that Claimant "merely imagines or subjectively concludes" that the work events are the source of her problems.⁴⁰ Therefore, Claimant failed to prove the required *Cephas* standard of causation for workers' compensation benefits.⁴¹

CONCLUSION

Claimant has failed to establish by objective proof a causal nexus between her working conditions and mental injury.

³⁸*State v. Cephas*, 637 A.2d 20, 28 (Del. 1994); *Downes v. State*, 623 A.2d 1142, 1142 (Del. 1993).

³⁹*DiSabatino Bros., Inc. v. Wortman*, 453 A.2d 102, 106 (Del. 1982).

⁴⁰*See Cephas*, 637 A.2d at 28.

⁴¹*See Saleh v. Wilmington Trust Co.*, Del. Super., C.A. No. 97A-06-004, Toliver, J., 1998 WL 733195 at *5 (August 21, 1998)(compensation not paid for disability proximately caused by conditions found stressful only in claimant's mind).

THEREFORE, having determined that the findings and conclusions of the Industrial Accident Board are free from legal error and supported by substantial evidence in the record, the decision of the Industrial Accident Board denying Claimant's Petition to Determine Compensation Due is hereby **AFFIRMED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston