

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

VICTORIA FLOWERS,)
)
Appellant/Employee,)
)
v.) C.A. No. 04A-12-003 MMJ
)
DAIMLER CHRYSLER)
CORPORATION,)
)
Appellee/Employer.)

Submitted: June 17, 2005
Decided: September 20, 2005

Upon Appeal from a Decision of The Industrial Accident Board
AFFIRMED

MEMORANDUM OPINION

Brian E. Lutness, Esquire, Silverman, McDonald & Friedman, Wilmington,
Delaware, Attorneys for Appellant

Linda Lasocha Wilson, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin,
Attorneys for Appellee

JOHNSTON, J.

Victoria Flowers (“Claimant”) has appealed the Industrial Accident Board (“Board”)’s November 19, 2004 decision denying Claimant’s Petition to Determine Compensation Due. Claimant asserts that she was injured on March 17, 2004, while she was an employee of Daimler Chrysler (“Employer” or “Chrysler”). The Board held a hearing regarding Claimant’s Petition to Determine Compensation Due on November 8, 2004 (“Hearing”). The Hearing Officer concluded that Claimant had failed to satisfy her evidentiary burden in the matter, and denied Claimant workers’ compensation benefits. On December 14, 2004, Claimant filed a Notice of Appeal with this Court. 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. Chrysler requests that the Court affirm the Board’s decision, since it is sufficiently supported in fact, and free of legal error.

FACTS AND PROCEDURAL CONTEXT

In March of 2004, Claimant was working at Chrysler installing engine harnesses in Durango vehicles. Half of this job involves retrieving harnesses/wires, weighing approximately thirteen pounds, from large tubs. The other half of this job involves actually installing the harnesses into vehicles as they travel down the assembly line. At the Hearing, Claimant testified that on March 18, 2004, she lost her

balance, which caused her to hit her left chest on one of the large tubs. Claimant denied having any prior left chest wall or rib problems. After reporting to plant medical for evaluation, Claimant went home for the day. Claimant then saw her personal physician, who took her out of work through early April of 2004.

On April 30, 2004, Claimant was back at work and requested to leave work early due to personal issues with her son. When Chrysler refused to excuse her due to manpower issues, she asked for a pass to the medical department, complaining of left chest wall pain. X-rays taken in June 2004 evidenced healing rib fractures. Claimant's expert could not pinpoint the date the fractures occurred. Claimant continued to treat for rib fractures from June 2004 until September 2004, when she returned to work on an unrestricted full duty status.

Dr. Peter Bandera testified, via deposition, that he examined Claimant on July 26, 2004. Dr. Bandera understood Claimant experienced left-sided pain after repeatedly pulling wires out of a bin at Chrysler. A radiography study in June 2004 evidenced healing fractures of the left fourth and fifth ribs. Claimant exhibited residual left rib pain on examination. Dr. Bandera opined that Claimant's rib fractures were related to her March 2004 work incident and associated with a strain/sprain type injury pattern. Dr. Bandera also opined that Claimant's medical

treatment and disability periods were reasonable and related to her work accident. Dr. Bandera diagnosed a thoracic sprain from the rib injury.

Dr. John Parkerson testified, via deposition, on behalf of Chrysler. He examined Claimant in August 2004. Claimant reported to Dr. Parkerson that she injured her chest leaning over a bin to retrieve an engine harness. When Dr. Parkerson saw Claimant in August 2004, she continued to have complaints. However, the x-rays indicated that she was healing in June and should have been healed by the time he saw her.

There was no testimony that Claimant injured herself anywhere but on the job. In its Order, the Board held that Claimant was not credible and did not meet her evidentiary burden.

FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE BOARD

The following are some of the findings and conclusions of the Board in its November 19, 2004 decision:

- Claimant and her medical expert failed to demonstrate that Claimant's rib fracture was related to her work at Chrysler. Claimant continued to report pain well after June 2004 x-rays evidenced that her fractures had healed.

- Claimant was inconsistent in her reporting of the injury. Claimant reported two different mechanisms of injury. In one instance, Claimant allegedly injured herself while bending over a storage bin. In another version, Claimant purportedly injured herself when she struck her left chest wall against the same storage bin. Apart from these inconsistencies, in April 2004, Claimant asked to leave for a family issue but was refused personal time off. She then reported chest wall pain to the medical department.
- Dr. Bandera's testimony was found to be unpersuasive. He noted that Claimant's rib fractures resulted in her disability. The doctor based his opinion on Claimant's recitation of events surrounding her injury. Since Claimant's testimony was not found to be credible, Dr. Bandera's causal opinion is critically undermined by Claimant's lack of credibility.
- The Board found Dr. Parkerson's testimony persuasive. The doctor explained that, while Claimant may have sustained a rib fracture in her work activities, he could not accept that Claimant's injury would have resulted in the disability periods that Dr. Bandera supported, nor could he accept the differing versions of Claimant's alleged injury causation.

STANDARD OF REVIEW

In reviewing the decisions of an administrative board, 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.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.²

On appeal, the “Superior Court does not sit as a trier of fact with authority to weigh evidence, determine questions of credibility, and make its own factual findings and conclusions.”³ 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.⁴ 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.”⁵

¹See *Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1256 (Del. 1981); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Ponchvatilla v. United States Postal Service*, Del. Super., C.A. No. 96A-06-019, Cooch, J. (June 9, 1997), Mem. Op. at 2.

²*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).

³*Johnson v. Chrysler Corp.*, 213 A.2d at 66.

⁴*Id.* at 67.

⁵*Coleman v. Department of Labor*, 288 A.2d 285, 287 (Del. 1972).

CLAIMANT'S GROUNDS FOR APPEAL

Claimant asserts that the Board's finding that Claimant's rib injury was unrelated to her work accident, was not supported by substantial evidence and should be reversed. The Hearing Officer based his decision on his finding that Claimant lacked credibility, and disregarded both medical experts' opinions.

Claimant asserts that Claimant's expert, Dr. Bandera, testified that Claimant developed acute rib pain while pulling wires out of a container at work. Dr. Bandera diagnosed a fracture of the fourth and fifth left rib with associated sprains of the thoracic spine. These fractures were confirmed by x-ray. Dr. Bandera confirmed that the three alleged periods of disability were related to the work incident.

Claimant claims that Chrysler did not offer any evidence that the injury in question did not happen at work. Dr. Parkerson testified for Chrysler that Claimant suffered a work-related injury to her left ribs related to either a fracture on March 18, 2004, or when she returned to work on April 30, 2004. Dr. Parkerson specifically agreed that reaching into those hard plastic bins and striking your chest wall could cause a rib fracture. Dr. Parkerson confirmed that the x-rays showed that the fracture of the rib could have occurred on March 18, 2004. Chrysler presented no evidence of any other way Claimant could have injured her ribs.

Claimant alleges that the finding of the Board is not the equivalent of a jury finding and it is not conclusive if merely supported by the evidence.⁶ The evidence must be substantial and it is the Court's duty to weigh and evaluate the evidence. Claimant submits that a review by this Court will demonstrate that little or no evidence exists to support the Board's findings.

Claimant contends that it is well-settled Delaware law that a workers' compensation award can not be based on mere speculation and conjecture. An award by the Board must be based on competent and relevant testimony. Without such testimony, the threshold requirement of substantial evidence will not be accomplished.⁷

The Hearing Officer's findings have no support, let alone the substantial evidence required. Instead of relying on the evidence that Claimant was injured at work, which was supported by both doctors and x-rays, the Hearing Officer rejected both doctors' testimony and found Claimant not credible. The Board stated that Dr. Parkerson was persuasive, but rejected his opinion that the accident was related to industrial accident. The Hearing Officer determined that Dr. Parkerson "could not have accepted that the injury resulted in the disability periods that Dr. Bandera

⁶*M. A. Hartnett v. Coleman*, 226 A.2d 910 (Del. 1967).

⁷*Strikeleather v. Zapacosta*, 293 A.2d 572 (Del. 1972).

supported nor could he have accepted the differing versions of Claimant's alleged injury."

However, this was not Dr. Parkerson's testimony. He instead testified that he did not agree with Dr. Bandera's mechanism of injury. Dr. Parkerson had seen no document that she had suffered injury on some other occasion. Dr. Parkerson confirmed that he had seen no medical records where Claimant injured her ribs elsewhere. Dr. Parkerson's testimony was consistent with Claimant's description of the accident at the hearing.

Claimant asserts that this is not a case about two experts with differing opinions.⁸ Both experts agreed that Claimant suffered a rib injury at work. There is no substantial evidence to support the Hearing Officer's decision when the medical testimony only supports the conclusion that the injury occurred at work.⁹ Regardless of which doctor the Hearing Officer chose to believe, the only conclusion supported by any evidence is that Claimant suffered an injury at work.

EMPLOYER'S RESPONSE

Chrysler asserts that the decision of the Board that Claimant failed to prove that her rib fractures were work related is free from legal error and supported by

⁸See *DiSabatino Bros. Inc., v. Wortman*, 453 A.2d 102, 106 (Del. Super. 1982).

⁹*Diamond Fuel Oil v. Oneal*, 734 A.2d 1060, 1065 (Del. 1999).

substantial evidence. The Board is permitted to disregard the opinions of medical experts as to whether an injury is causally related to a claimant's work, if the medical experts base their opinions on the history provided by claimant and the Board finds that claimant is not credible.¹⁰ The record contains substantial evidence to support the Board's finding that Claimant is not credible. For example, Claimant presented differing versions of her alleged work-related incident. Therefore, the Board correctly held that Claimant failed to meet her burden of proof and denied Claimant's petition. The credibility of a witness is left solely to the discretion of the Board.¹¹

Chrysler asserts that both doctors pointed to a potential cause of the fracture to Claimant's ribs, but they were not able to determine if an actual work-related incident took place.¹² The Board rejected the medical opinions causally relating Claimant's rib fractures to her work because they were based on Claimant's history. The Board had already determined that Claimant was not a credible witness and therefore found it necessary to reject opinions of the doctors who relied on the history that she provided for their assessments. Also, the Board had additional evidence to

¹⁰*See Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

¹¹*Coleman v. Dept. of Labor*, 288 A.2d 285, 287 (Del. Super. 1972).

¹²*See Proffitt v. State*, 1998 WL 960760, at *4 (Del. Super.).

support its finding. Specifically, the Board noted that Claimant continued to report pain well after the June 2004 x-rays evidenced that the fractures had healed.

ANALYSIS

The Board's decision to deny Claimant's Petition for Compensation Due turns on Claimant's credibility. At first glance, the evidence appears to favor Claimant. The medical experts of both the Claimant and the Employer seem to agree. The experts were not able to determine if an actual work-related incident took place, even though they both considered the work place to be a potential cause of Claimant's fractured ribs. The opinions of the medical experts, however, were based in large part upon Claimant's input. Claimant's credibility, therefore, played a crucial role in the Board's decision. Claimant's credibility was irreparably damaged by the fact that Claimant had three different versions of how her injuries came about: (1) in Claimant's petition, the injury was due to throwing wire; (2) in her testimony, Claimant was injured when she lost her balance and struck a tub; and (3) in her consultation with Dr. Bandera, her injury was due to repetitive movement.

The Board may reject one medical expert's opinion when the Board finds that the opinion is based in large part on what the Claimant has told the doctor and the

Board finds the underlying facts to be different.¹³ Here the Hearing Officer and the Board rejected both doctors' opinions pertaining to causality since both were based upon Claimant's input. Dr. Bandera understood that Claimant experienced left-sided pain after repeatedly pulling wires out of a bin at Chrysler, while Dr. Parkerson understood that Claimant injured her chest leaning over a bin to retrieve an engine harness.

It is the exclusive function of the Board to address the credibility of witnesses.¹⁴ This reviewing Court cannot overturn the Board's ruling as to credibility.¹⁵ The Board did not find the testimony of Claimant to be credible, and gave reasons for this finding. The reasons were: Claimant's inconsistent reporting of the cause of her injury, and reporting chest wall pain when she was refused personal time off in April 2004.

The Board found Dr. Bandera's testimony to be unpersuasive. The Board found Dr. Parkerson's testimony to be persuasive, except as it pertained to causality, since that part was based upon Claimant's input. In case of competing medical testimony, as here, the Board is free to accept or reject, in whole or in part, expert

¹³*Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

¹⁴*Johnson v. Chrysler Corp.*, 213 A.2d 64, 64 (Del.1965).

¹⁵*Id.*

testimony and the Board is free to accept one expert's opinion over another, as long as substantial evidence supports that opinion.¹⁶ The Board's decision was supported by substantial evidence, and clearly stated the reasons why Dr. Parkerson's testimony was determined to be more persuasive than that of Dr. Bandera.

CONCLUSION

The Board found Claimant not credible and discounted her testimony, as it was entitled to do. It is the exclusive function of the Board to address the credibility of witnesses. Since the Board rejected Claimant's testimony because of inconsistencies, the Board was free to reject both medical experts' opinions, which relied upon the Claimant's differing versions of how the injury came about. The Board also had objective evidence for doubting Claimant's credibility. The Board noted that Claimant continued to report pain well after the June 2004 x-rays evidenced that the fractures had healed.

Claimant had the burden of proving that an accident occurred and that she is entitled to the claimed disability and medical benefits. Claimant was not able to meet this burden to the satisfaction of the Board. This Court will not substitute its judgment for that of an administrative body where there is substantial evidence to

¹⁶*DiSabatino Bros. Inc. v. Wortman*, 453 A.2d 102, 106 (Del. 1982).

support the decision.”¹⁷ The Hearing Officer based his opinion upon the Claimant’s credibility, history, and objective medical records such as x-rays. This Court must take “due account of the experience and specialized competence” of the Board and of the purposes of the Workers’ Compensation Act.¹⁸

Therefore, the decision of the Industrial Accident Board is hereby
AFFIRMED.

IT IS SO ORDERED.

The Honorable Mary M. Johnston

¹⁷*Olney v. Cooch*, 425 A.2d 610, 613 (Del. 1981).

¹⁸29 *Del. C.* § 10142(d).