

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

**SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947**

September 29, 2005

Henry C. Davis, Esquire
HENRY CLAY DAVIS III, P.A.
303 N. Bedford Street
P.O. Box 744
Georgetown, DE 19947

Danielle K. Yearick
Timothy S. Martin
300 Delaware Avenue, Suite 110
P.O. Box 2092
Wilmington, DE 19899

RE: Gloria M. Brown v. State of Delaware
C.A. No. 05A-05-007 THG

Date Submitted: September 6, 2005

Dear Counsel:

This is the Court's decision as to Gloria M. Brown's appeal from the Industrial Accident Board denying her benefits. For the reasons stated herein the Board's decision is affirmed.

STATEMENT OF FACTS

Gloria M. Brown, the Claimant, injured her left knee in March of 1998. She was working at the Stockley Center for the State of Delaware (Stockley) at the time she injured her knee. She was a certified nursing assistant working at Stockley for twenty-seven years. The injury occurred when the Claimant slipped on some water while transporting a patient, twisting her knee.

After the injury occurred, the Claimant saw a doctor about the injury. MRI's and x-rays were taken of her knee. Following these medical examinations, Claimant was cleared to return to work. However, the knee became swollen and she could not perform her duties so she was sent home again.

The Claimant then began treating with Dr. Spieker. The Claimant received treatment for approximately two to three months from April 1998 through June 1998. The injury improved and she returned to work in the same capacity at Stockley. The Claimant did not have any surgical procedures performed for the 1998 injury. The Claimant signed an agreement and receipt for workers' compensation benefits received, which terminated the benefits in June 1998. The Claimant continued working at Stockley for several years without missing any more time as a result of her knee injury.

In 2004, the Claimant developed increased knee pain. At the onset of the pain, the Claimant went to see her doctor, Dr. Harsey. The doctor referred the Claimant to Dr. Volatile. Dr. Volatile began providing medical treatment to the Claimant on June 9, 2004. The doctor concluded that the Claimant's 2004 knee problems were causally related to the 1998 injury. The doctor gave the Claimant an injection in the knee and placed her on anti-inflammatory medication. Dr. Volatile then performed surgery on Claimant's knee on August 6, 2004. The doctor determined from examining the knee during the surgery that it was an old injury, not a new or recent one.

The Claimant returned to work approximately six weeks after her surgery. The Claimant's knee swelled, causing her family doctor to give her an injection. She was out of work for one week. The Claimant then returned to work and there are no current work restrictions pertaining to the knee. The claimant still takes pain medication and occasionally uses a cane or wears a knee brace. The Claimant filed a petition with the Board for benefits on December 8, 2004.

On April 6, 2005, the Industrial Accident Board heard the Claimant's case. On May 4, 2005, the Board denied the Claimant any award. The Board found for the State because the Claimant filed her claim outside of the five year statute of limitations period. Under 19 *Del.C.* §2361(b) the statute states:

[w]here payments of compensation have been made in any case under an agreement approved by the Board or by an award of the Board, no statute of limitations shall take effect until the expiration of 5 years from the time of the making of the last payment for which a proper receipt has been filed with the Department.

There was no dispute that the Claimant received her last payment and the receipt for her benefits in June 1998. The Claimant filed the petition discussed above more than six years after the initial petition was filed, December 2004 and June 1998 respectively. However, the Claimant, argued that the State should be estopped from asserting the statute of limitations defense because it did not provide proper written notice to her as required by the Insurance Code. 18 *Del.C.* § 3914 provides that

[a]n insurer shall be required during the pendency of any claim received pursuant to a casualty insurance policy to give prompt and timely written notice to claimant informing claimant of the applicable state statute of limitations regarding action for his or her damages.

The State argued that it provided proper notice. According to the State, written notice was given to the Claimant when she received and signed the receipt terminating her benefits. The receipt contains a paragraph stating that “[t]he claimant has the right within five years after the date of the last payment to petition the Office of Workers’ Compensation for additional benefits.” The Claimant’s signature on the receipt proves that she received it.

The Board held that the State complied with 18 *Del.C.* § 3914 , the adequate notice requirement, when it provided the Claimant with the receipt in June of 1998. Therefore, the Claimant's petition is barred by the statute of limitations provided in 19 *Del.C.* § 2361(b).

The Board also stated that an alternative basis exists for its decision. The Claimant's 2004 claim did not occur within a five year period from the date of her last payment for the 1998 injury. According to the Board, the 2004 claim was outside of the statutory period, so whether the Claimant received adequate notice is irrelevant. Further, the Board stated that the Claimant could not have brought a claim within the appropriate time limits because she did not have any problems with her knee for over five years from her last payment. However, the Board stated that it does need to reach this conclusion because the State provided adequate notice as per required by 18 *Del.C.* § 3914.

The Claimant appealed the above ruling of the Board to this Court on May 24, 2005. The Claimant asserts that the Board erred as a matter of law on the issue of the statute of limitations. The Claimant also states that the Board's decision to deny any award to the Claimant was not supported by substantial evidence and constitutes an incorrect application of the law to the uncontroverted testimony before the Board. Finally, the Claimant stated that the Board's decision was not the product of a rational thought process in light of the evidence and the matters of record before it, and is, therefore, arbitrary and capricious.

ISSUES PRESENTED

Essentially, the Claimant challenges whether substantial evidence supports the Board's decision. Specifically, the Claimant challenges the decision on the grounds that the Employer did not provide proper notice under 18 *Del.C.* § 3914. The Claimant also attacks the Board's

decision based on statements that notice may not have been required in this case because the claim was filed more than five years after the signing of the receipt in June of 1998.

DISCUSSION

A. 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 based on substantial evidence.¹ Questions of law are to be reviewed de novo.² Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁵

B. Statute of Limitations

19 *Del.C.* § 2361(b) states that “[w]here payments of compensation have been made in any case under an agreement approved by the Board or by an award of the Board, no statute of limitation shall take effect until the expiration of 5 years from the time of the making of the last payment for which a proper receipt has been filed.” Proper notice must be provided or a party

¹*Johnson v. Chrysler Corp.*, 312 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

²*In re Beattie*, 180 A.2d 741, 744 (Del. Super. 1962).

³*Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. 1986), *app. dismiss.*, 515 A.2d 397 (Del. 1986).

⁴*Johnson v. Chrysler Corp.*, 312 A.2d at 66.

⁵29 *Del. C.* § 10142(d).

may not raise the argument that a petition is barred by the statute of limitations. 18 *Del.C.* § 3914 states that “[a]n insurer shall be required during the pendency of any claim received pursuant to a casualty insurance policy to give prompt and timely written notice to claimant informing claimant of the applicable state statute of limitations regarding action for his/ her damages.” In *Fleming v. Perdue Farms, Inc.*, 2002 WL 31667335 (Del. Super.) this Court held that 19 *Del.C.* § 2361(b)’s statute of limitations is subject to 18 *Del.C.* § 3914’s notice requirement. Further, no distinction is made between insurers and self-insured entities under 18 *Del.C.* § 3914.⁶

“An insurer who fails to comply with the notification requirements of 18 *Del.C.* § 3914 is estopped from asserting the statute of limitations defense against the claimant.”⁷ After the insurer files the proper agreement and receipt, 19 *Del.C.* § 2361(b) requires the “claimants to pursue the payment of their medical bills within five years from any order or Board-approved agreement directing the employer to pay such expenses.”⁸ The statute of limitations runs from the date that the final receipt of payment is properly filed.⁹ Once a claimant executes a receipt, he acknowledges “that the carrier disclaims any further liability.”¹⁰

Whether prompt and timely notice was provided to the Claimant when she received and signed the final receipt is an issue that must be decided on this appeal. The goal of 18 *Del.C.* §

⁶*Stop and Shop Co. v. Gonzales*, 619 A.2d 896, 898 (Del. 1993).

⁷*McMillan v. State*,, 2002 WL 32054600, 3 (Del. Super.).

⁸*West v. Ponderosa Steak House*, 2002 WL 31667898, 2 (Del. Super.).

⁹*Id.*

¹⁰*Phillips v. American Cancer Society*, 1986 WL 5843, 2 (Del. Super.).

3914 is to require that the insurer inform the claimant of the statute of limitations before asserting such a defense.¹¹ The notice requirement also provides the claimant with notice so that he can file any claims before the statute of limitations expires.

The language on the receipt states: “Your signature on this receipt will terminate your rights to receive the workers’ compensation benefits specified above on the date indicated. This form is not a release of the employer’s or the insurance carrier’s workers’ compensation liability. It is merely a receipt of compensation paid. The Claimant has the right to within five years after the date of the last payment to petition the Office of Workers’ Compensation, for additional benefits.” The receipt, even though it was created by the Office of Workers’ Compensation, is filled out by the employer/insurance carrier and then given to the claimant to read and sign. 18 *Del.C.* § 3914 only requires that the notice be in writing and be delivered promptly and timely. Therefore, the receipt satisfies all the requirements under that statute. It informs the claimant that claims must be filed within five years.

The Claimant has testified that she read and understood the receipt before signing it. The receipt was received following the final payment of the Claimant’s benefits for the 1998 injury. This notice was clearly “prompt and timely” because it was provided on the date that the five year statute of limitations began to run. The receipt also was written as required by the statute. Thus, the employer has satisfied its notice requirement and can raise a statute of limitations defense. The claimant did not bring her claim within five years from the “the time of the making

¹¹*Samoluk v. Basco, Inc.*, 528 A.2d 1203, 1204 (Del. Super. 1987).

of the last payment for which proper receipt has been filed with the department”¹² which would have been June of 2003. Therefore, the Board correctly ruled for the employer and claimant’s appeal should be denied.¹³

CONCLUSION

After review of the record, the Court is satisfied that the Board’s findings and conclusion are supported by substantial evidence and are free from legal error. For the foregoing reasons, the Board’s decision is affirmed.

Very truly yours,

T. Henley Graves

THG/jfg

oc: Prothonotary

cc: Industrial Accident Board

¹²19 *Del. C.* 2361(b).

¹³The Court does not discuss the Claimant’s other arguments because the issue decided controls, and the other arguments do not need to be addressed.