

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DIANA L. SIERRA-WALKER, §
§
Claimant-Appellant, §
§
v. § C.A. No. 05A-02-002 (CHT)
§
CIRILLO BROTHERS, INC., §
§
Employer-Appellee. §

OPINION AND ORDER

On Claimant's Appeal of the
Industrial Accident Board Decision

Submitted: January 10, 2006

Decided: April 13, 2006

Kenneth F. Carmine, Esquire, POTTER CARMINE & AARONSON,
P.A., 850 N. Union Street, P.O. Box 514, Wilmington, DE
19899, **Attorney for Claimant-Appellant**

Linda L. Wilson, Esquire, MARSHALL DENNEHEY WARNER COLEMAN
& COGGIN, 1220 N. Market Street, 5th Floor, P.O. Box 8888,
Wilmington, DE 19899-8888, **Attorney for Employer-Appellee**

TOLIVER, JUDGE

Before the Court is an appeal by the Claimant-Appellant, Diana Sierra-Walker, of a decision by the Industrial Accident Board in favor of the Employer-Appellee, Cirillo Brothers Inc. That decision was rendered on January 18, 2005.

STATEMENT OF FACTS AND NATURE OF PROCEEDINGS

The instant appeal involves the denial of Ms. Sierra-Walker's Petition to Determine Compensation Due, filed against Cirillo Brothers, on July 26, 2004. Her petition sought permanent impairment benefits pursuant to 19 Del. C. § 2326, for an alleged loss of use to her reproductive organs. She contends that the alleged losses are directly related to a November 22, 1999 injury which occurred during the course of her employment with Cirillo Brothers. The matter came before the Board on December 22, 2004.

Testifying before the Board on behalf of Ms. Sierra-Walker were the claimant herself, Dr. Elva Delport¹ and

¹ Dr. Delport testified by deposition.

Dr. Jose Picazo. Dr. Nancy Petit appeared on behalf of Cirillo Brothers. Records pertaining to Ms. Sierra-Walker's medical history were introduced as well.

Ms. Sierra-Walker was treated conservatively following the injury in question. However, because of continued complaints of lower back pain, she was referred by Dr. Matthew Eppley, a neurosurgeon, to Dr. Delpont, a board certified physician in physical medicine and rehabilitation. Dr. Delpont first saw her on January 7, 2000. Following an examination of Ms. Sierra-Walker as well as a review of her medical history, including a description of how the accident took place, Dr. Delpont concluded that Ms. Sierra-Walker suffered from impairments of the sacroiliac joint and the lumbar spine.² On that basis, the doctor performed a right sacroiliac arthrogram³ and intra-articular corticosteroid injection⁴

² The sacroiliac joint is the joint between the sacrum, at the base of the spine, and the ilium of the pelvis, which are joined by ligaments. Inflammation of this joint is known as sacroiliitis, one cause of disabling low back pain. The global lumbar spine problem was due to lumbar disc derangement according to Dr. Delpont.

³ An arthrogram is an x-ray of a joint after the injection of a contrast medium.

⁴ This means that the steroid is injected directly into the joint so as to minimize toxicity, thereby preventing systemic effects.

on January 19, 2000. The procedure was followed by a caudal epidural injection⁵ on February 9, 2000, to address the lumbar spine problem.

It appears that Ms. Sierra-Walker first complained of menstrual abnormalities on April 25, 2000, when she informed Dr. Delpont that she experienced "virtually constant bleeding" since the administration of the corticosteroid injections. She did not mention those problems during the course of her February 22 and March 16, 2000 visits to Dr. Delpont. Nor did she inform Dr. Delpont that she was treated on February 21 and April 9, 2000 at the Christiana Medical Center for complaints of abdominal pain and intermittent vaginal bleeding. Notwithstanding the fact that he had not been informed about Ms. Sierra-Walker's menstrual complaints, the doctor confirmed that corticosteroid injections could cause irregular menstrual bleeding which, in her opinion, generally recurs for approximately eight to ten weeks.

Dr. Delpont opined that the complaints of excessive

⁵ A caudal epidural just describes where the needle thru which the medication is injected is placed. The epidural space runs from the neck down to the tailbone. Caudal refers to the area around and/or near the last vertebrae, or the tailbone.

bleeding are consistent with the side effects of the injections. She rejected the possibility that either a subsequent automobile accident in February 2002 or an earlier back injury in 1999 were the cause of the excessive bleeding problems. Dr. Delpont admitted however that she does not possess board certification or otherwise specialize in obstetrics and gynecology.⁶

Dr. Picazo, who specializes and is certified in obstetrics and gynecology, initially saw Ms. Sierra-Walker on April 18, 2000, complaining of menomenorrhagia.⁷ Ms. Sierra-Walker provided Dr. Picazo with a medical history which included missed menses during the preceding two years, a tubal ligation, cortisone injections, severe endometriosis⁸ resulting in two corrective surgical procedures, the removal of her appendix followed by an infection and the November 1999 work related injury.

⁶ Physicians are certified in this area by the American Board of Obstetrics and Gynecology upon graduating from an approved medical school, completing certain residency requirements and achieving a passing score on the certifying examination.

⁷ Menomenorrhagia is defined as irregular and excessive bleeding.

⁸ Endometriosis is a common medical condition where the tissue lining the uterus (the endometrium, from *endo*, "inside", and *metra*, "womb") is found outside of the uterus, typically affecting other organs in the pelvis.

Because Ms. Sierra-Walker's complaints did not subside, she returned to Dr. Picazo on April 24, 2000. At that point, she elected to undergo a hysterectomy, among several options presented, notwithstanding the fact that an ultrasound taken at that time showed no abnormalities. The procedure was performed on May 4, 2000, and according to Dr. Picazo, was medically reasonable and necessary.

Dr. Picazo testified that the surgery was primarily prompted by pelvic pain as opposed to irregular or excessive bleeding. He further testified that his examinations of Ms. Sierra-Walker did not reveal any evidence of excessive uterine bleeding or a basis for the complaints made by her in that regard. When asked directly about the etiology of the excessive bleeding, Dr. Picazo opined that the causal conditions preexisted Ms. Walker's November 1999 work injury. Dr. Petit, also a board-certified physician in obstetrics and gynecology, examined Ms. Sierra-Walker on May 28, 2004, after reviewing records purportedly detailing her medical history. That review revealed complaints by Ms. Sierra-

Walker relating to menstrual irregularities which became more pronounced approximately nine months prior to the work accident. Dr. Petit found that information consistent with other records which revealed that she suffered from endometriosis in 1988.⁹

Lastly, based upon his review of the ultrasound performed on April 9, 2000, and the pathology report which followed Ms. Walker's hysterectomy, Dr. Petit concluded that Ms. Sierra-Walker suffered from a condition consistent with polycystic ovarian syndrome ("POS"). She further opined that bleeding following corticosteroid injections diminishes in a short period of time and that Ms. Sierra-Walker's irregular menstrual history, which predated the November 22, 1999 accident and injuries, would be consistent with POS.

Based on the foregoing testimony, the Board denied Ms. Sierra-Walker's petition in an opinion issued on January 19, 2005. Essentially, the Board concluded that no compensation was warranted because she failed to

⁹ The record reflects some confusion as to the year of this finding i.e., 1988 or 1998. Ultimately, it was confirmed that the report was from 1988 and the Court will consider that fact settled.

establish that her injuries arose out of the industrial accident she suffered on November 22, 1999. The instant appeal was filed on February 2, 2005. The matter having been briefed, that which follows is the Court's resolution of the issues so presented.

DISCUSSION

Board findings which are supported by substantial evidence are binding upon this Court absent abuse of discretion or error of law.¹⁰ "Substantial evidence" in this context is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹¹ As a reference, it "is more than a scintilla and less than a preponderance" of the evidence.¹² This Court shall not weigh the evidence, determine questions of credibility or make its own

¹⁰ *Ohrt v. Kentmere Home*, 1996 WL 527213, at *3 (Del. Super.).

¹¹ *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998); *Streett v. State*, 669 A.2d 9, 11 (Del. 1995).

¹² *City of Wilmington v. Clark*, 1991 WL 53441, at *2. (Del. Super.).

findings of fact.¹³ Indeed, its role is to determine if the evidence is legally adequate to support the factual findings below.¹⁴ Plenary review of alleged errors of law is authorized however.¹⁵ It is in light of this authority that the Board's decision must be examined.

The central focus of the instant appeal is whether the injury suffered by Ms. Sierra-Walker on November 22, 1999, necessitated treatment which led to the excessive bleeding which in turn resulted in the hysterectomy she underwent on May 4, 2000. If the answer is in the affirmative, the Board's decision is without substantial evidence in the record and must be rejected. However, it is Ms. Sierra-Walker's burden to prove that the injuries about which she complains proximately resulted from the work related injury in question.¹⁶

Ms. Sierra-Walker argues that the injections caused the bleeding which, in the first instance, made her seek

¹³ *Johnson v. Chrysler*, 213 A.2d 64, 66 (Del. 1965).

¹⁴ 29 Del. C. §10142(d).

¹⁵ *Brooks v. Johnson*, 560 A.2d 1001 (Del. 1989).

¹⁶ *Strawbridge & Clothier v. Campbell*, 492 A.2d 853 (Del. 1985) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64 (Del. 1965)).

obstetric/gynecological consult, and in the second instance, compelled here to decide on a course of treatment which included a hysterectomy. It is her testimony that she had two normal vaginal deliveries in the early 1990's and had been menstruating since the 1980's without medical complaint. It was not until 2000, when she was injected by Dr. Delpont that she confronted menstrual defects. It is therefore necessary to consider the medical testimony directly touching upon that issue.

First, it should be noted that of those physicians who appeared before the Board, only two were qualified by virtue of their training, education and/or experience in the area of medical practice known as obstetrics and gynecology, Dr. Picazo and Dr. Petit. Both of them attributed Ms. Sierra-Walker's gynecological problems to her irregular menstrual cycle and a related condition, POS, which predated the work related injury in 1999 and the treatment which followed. The third physician, Dr. Delpont, was not board certified and did not otherwise practice in that medical specialty. Only she felt that the treatment following the 1999 accident and injury

proximately caused Ms. Sierra-Walker's problems.¹⁷

Second, while Dr. Picazo and Dr. Petit agree with Dr. Delpont that in general the corticosteroidal injections which Ms. Sierra-Walker received can cause uterine bleeding, that agreement goes no further. After that, there is the extreme divergence of opinion referenced above. The Board chose to accept the view proffered by Drs. Picazo and Petit, which the Board was free to do. Stated differently, the Board is free to accept or reject the testimony of one or more experts in favor of another expert or experts.¹⁸ It is readily apparent that this is what happened here, i.e., the Board found the testimony of the aforementioned doctors more persuasive than that proffered by Dr. Delpont.

When the Court takes all of the foregoing into account, the only viable conclusion is that the Board's decision was supported by substantial evidence in the

¹⁷ It was Ms. Sierra-Walker's witness, Dr. Picazo who concluded, with the assistance of the pathologist who examined the specimens taken during the course of her hysterectomy, that the injections were not the cause of her uterine bleeding.

¹⁸ *Lewis v. Formosa Plastics Corp.*, 1999 Del. Super. LEXIS 39, at *8.

record. The Court also finds that the Board did not err in its application of the appropriate law to that evidence, or otherwise abuse its discretion. That Board decision must be upheld as a result, and it is unnecessary to address the remainder of the issues raised in this appeal.¹⁹

¹⁹ In this regard, the Board appears to have had some questions regarding Ms. Sierra-Walker's credibility which do not now need to be resolved.

CONCLUSION

Based upon the foregoing, the decision of the Industrial Accident Board is supported by substantial evidence in the record and is free from legal error. It must be, and hereby is, **affirmed**.

IT IS SO ORDERED.

CHARLES H. TOLIVER, IV