

**SUPERIOR COURT  
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0669

Submitted: May 5, 2006  
Decided: August 29, 2006

MATRIX SERVICES,	)	
	)	
Employer-Below,	)	
Appellant,	)	
	)	
v.	)	C.A. NO. 05A-11-004-FSS
	)	
VAUDIE PUCKETT, III,	)	
	)	
Claimant-Below,	)	
Appellee.	)	

**ORDER**

**Upon Appeal From the Industrial Accident Board – *AFFIRMED***

This is an employer’s appeal from an Industrial Accident Board award of total disability benefits to an employee. Specifically, the Board found that Appellee, Vaudie Puckett, III, a boiler-maker for Appellant, Matrix Services, hurt himself while working in a confined tank. Puckett exacerbated a congenital spinal condition by repeatedly hitting his head. Matrix contends

that the Board's findings are not supported by substantial evidence. This is another appeal from the Board where the court appreciates, but does not accept, Appellant's position.<sup>1</sup>

## I.

The court has compared the record with the Board's extensive "Summary of the Evidence." The record supports the Board's detailed fact-finding.

In summary, on December 24, 2002, Puckett fell ill at work. He had been cleaning a tank from the inside. Puckett and some of his co-workers thought it was zinc poisoning from fumes. On December 30, 2002, Puckett reported his problem to Matrix. The next day, he saw a doctor. Almost immediately, the doctor diagnosed Puckett with a traumatic injury, rather than poisoning.

Based on objective findings, the parties agree that Puckett has a rare, abnormal spine condition. The experts' opinions vary on whether the abnormality is congenital, traumatic, or acquired. Puckett's medical experts, however, testified that the condition was worsened because Puckett was stooping, extending his neck and repeatedly hitting his head while cleaning

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<sup>1</sup> See *MBNA America Bank, N.A. v. Brooks*, Del. Super., C.A. No. 04A-12-005, Silverman, J. (Aug. 25, 2005)(ORDER).

the tank.

Matrix highlights several ways that Puckett's claim seems fishy. First, Puckett claimed that he was poisoned. Second, Puckett initially denied or discounted physical trauma on December 24, 2002. Third, Puckett's timing is suspicious: his ailments came to the fore just after he was laid off on December 28, 2002. Fourth, Matrix conducted twelve hours of video surveillance that produced a few minutes of tape allegedly showing Puckett doing things inconsistent with his alleged injuries. Finally, as an *ad hominem*, Matrix repeatedly emphasizes that Puckett may have lost another job due to drug use. Matrix couples those things with the fact that Puckett's medical experts are unable to say when Puckett's spinal condition began, at birth or later.

Nevertheless, the Board heard Puckett and his co-workers testify. The Board found that on December 24, 2002, Puckett unavoidably and repeatedly hit his head while working inside the tank. According to Puckett and his primary medical expert, Dr. Coveleski, Puckett presented with symptoms that Dr. Coveleski saw as consistent with someone who had exacerbated a pre-existing spine like Puckett's. The Board considered and believed Dr. Coveleski's detailed testimony, along with other medical experts

supporting Puckett.<sup>2</sup> On the other hand, the Board flatly rejected Matrix's medical expert.<sup>3</sup> It is settled beyond the need for citation that in an administrative appeal, the reviewing court must affirm all factual findings supported by substantial evidence, meaning evidence not based on speculation. It is evidence with substance.

## II.

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<sup>2</sup> *Vaudie Puckett, III v. Matrix Services*, IAB Hearing No. 1230651, (Sept. 16, 2005) at 28 (The Board's decision on Petition to Determine Compensation Due, "discounts [Matrix's] arguments to the contrary and finds [Puckett's] account of his activities on December 24, 2002, including repeatedly hitting his head on the floater ceiling and repetitively lifting and dragging heavy pipes of approximately 100 pounds in a stooped position, to be entirely credible and bolstered by other witnesses' testimony.").

<sup>3</sup> *Id.* at 30 ("Doctor Fink's opinion, in contrast, lacks credibility. The Board finds Dr. Fink's attempts to separate [Puckett's] ongoing symptoms into separate diagnoses, one attributable to the work activities on December 24 and one not, to be wholly unconvincing.").

Here, the record amply supports the Board's fact-finding.<sup>4</sup> Matrix's presentation of the record and of the Board's decision inappropriately reflects Matrix's viewpoint. For example, the fact that Puckett initially assumed that he had been poisoned by toxic fumes and his initial denial that he had hit his head or hurt his shoulder do not establish, as Matrix implies, that his injuries were caused by something other than hitting his head and hurting his shoulder. As presented above, Puckett and other witnesses testified believably that he "caught his head," "jerked his head back" and "bumped his hard hat" while working in and around the confined space. By the same token, the fact that Puckett had performed similar work without claiming injury sooner does not, as Matrix illogically argues, refute Puckett's claim that he was injured on December 24, 2002. The facts and inconsistencies on which Matrix relies could have supported a finding in Matrix's favor, but they do not require it.

Also by example, Appellant's claim that "the Board failed to address" the surveillance evidence is simply incorrect.<sup>5</sup> Again, each of

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<sup>4</sup> *See State v. Donahue*, Del. Super., C.A. No. 05A-02-007, Silverman, J. (Feb. 27, 2006)(ORDER).

<sup>5</sup> *Puckett*, IAB Hearing No. 1230651, at 33 ("[I]n the Board's judgment the two days of video surveillance offered by [Matrix], which shows [Puckett] using his left arm for everyday activities such as opening,

Matrix's claims is addressed in the Board's detailed decision, and in Puckett's brief on appeal.

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closing the car door and carrying items at a store, do not show anything to contradict the finding of total disability due to pain.”); *See Donahue*, Del. Super., C.A. No. 05A-02-007, at 4 (benefits granted by Board despite video allegedly showing injured worker moving without pain); Compare *Regis v. DaimlerChrysler Corp.*, 869 A.2d 328 (Del. 2005) (benefits denied by Board where video tape reveals claimant repeatedly using an allegedly paralyzed hand).

In summary, Matrix presented ample evidence from which the Board could have ruled for Matrix. Puckett, however, presented credible evidence, supported by reasonable medical experts.<sup>6</sup> Whether the court agrees with the Board's fact-finding and its conclusions, they are well-supported by the record and by logic. **III.**

For the foregoing reasons, the Industrial Accident Board's Decision on Petition to Determine Compensation Due, dated September 16, 2005, is **AFFIRMED**. **IT IS SO ORDERED.**

/s/ Fred S. Silverman

Judge

oc: Prothonotary  
pc: John J. Klusman, Jr., Esquire  
David R. Scerba, Esquire

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<sup>6</sup> See *Donahue*, Del. Super., C.A. No. 05A-02-007, at 3.