

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

BARBARA MALLOY	)	
	)	
Claimant Below/	)	
Appellant,	)	
	)	C.A. No. 06A-03-003 MJB
v.	)	
	)	
DAIMLER-CHRYSLER CORP.	)	
	)	
Employer Below/	)	
Appellee.	)	

Submitted: August 29, 2006  
Decided: November 2, 2006

On appeal From the Industrial  
Accident Board. **AFFIRMED.**

**OPINION AND ORDER**

Barbara Malloy, *Pro Se*

Linda L. Wilson, Esquire, Marshall, Dennehey, Warner, Coleman and  
Goggin, Attorney for Appellee Daimler-Chrysler Corp.

BRADY, J.

## **Procedural History**

This is an appeal from a decision of the Industrial Accident Board (“Board”). The appeal was filed timely by Jessica Welch, Esquire, who represented Barbara Malloy (“Claimant”) at a hearing before the Industrial Accident Board (IAB). Prior to March 21, 2006, when Ms. Welch filed a Motion to Withdraw as Counsel, Ms. Welch had informed Claimant of her intent, and suggested Claimant seek new counsel. On April 13, 2006, the date for which the Motion to Withdraw had been noticed to be heard, Claimant did not appear. Counsel could not provide proof the Claimant received actual notice of the date.

In order to assure proper opportunity for a fair resolution of the merits of a claim, the Court is very reluctant to permit an attorney to withdraw if a party will be left without counsel. Therefore, the Court required counsel to re-notice the Motion to Withdraw, and to assure Claimant received actual notice. On May 19, 2006, Claimant failed to appear at the second hearing on the Motion to Withdraw. Having been assured the Claimant was notified of the date and time of the hearing, the Court signed the order permitting Ms. Welch to withdraw.

Subsequently, the Court sent a letter to Claimant, advising her that the Motion to Withdraw had been granted. A briefing schedule attached to the letter reflected that the date on which Claimant must file an Opening Brief was June 19, 2006. Claimant filed the Opening Brief, *pro se*, on June 21, 2006.

The Employer, Appellee, filed a Motion to Dismiss for failure to file an Opening Brief, which was to be heard on July 27, 2006. Both parties appeared on that date, at which time the Court strongly suggested to Claimant that there may be deficiencies in her submission, which was filed after the deadline, and granted her a final opportunity to seek counsel and submit an amended or substitute brief.

On August 28, 2006, the final date on which Claimant's submission was due, the Court received correspondence from the Claimant requesting advice regarding obtaining an attorney to represent her in this matter. The Court had previously advised the Claimant that it was not authorized to give legal advice. Equally, providing suggestions of attorneys with whom Claimant could or should consult are not within the responsibility, and certainly not the obligation, of the Court.

Employer has recently requested that, because no further submissions have been received, the Court decide the Motion to Dismiss. Because the

grounds in the Motion are that no opening brief has been filed, and because the Court intends to treat the June 21, 2006 submission as Claimant's Opening Brief, the Motion to Dismiss will be DENIED. The Court will, therefore, decide the matter on the merits.

The issue before the Board was whether Claimant is entitled to compensation due to injuries she allegedly sustained on December 6, 2002. A hearing on the merits before the Board was bifurcated, and occurred on June 9, 2005 and November 11, 2005. The Board deliberated until December 5, 2005, and a decision was rendered by the Board on February 1, 2006, denying compensation.

Claimant has raised three issues in her submission: first, that she was not properly represented by her attorney at the Board hearing; second, that the Board rushed the decision because it was backed up with cases; and, third, she disputes the facts as presented at the hearing and apparently concluded by the Board, claiming that she did fall, that the incident was not staged, that a witness who testified did so falsely and was not actually present at the scene, and that she had no motive to fabricate the matter.

### **Standard of Review**

The Court has a limited role when reviewing a decision by the Industrial Accident Board. If the decision is supported by substantial

evidence and free from legal error,<sup>1</sup> the decision will be affirmed.<sup>2</sup> Substantial evidence is evidence that a reasonable person might find adequate to support a conclusion.<sup>3</sup> The Board determines credibility, weighs evidence and makes factual findings.<sup>4</sup> This Court does not sit as the trier of fact, nor should the Court substitute its judgment for that rendered by the Board.<sup>5</sup> The Court must affirm the decision of the Board even if the Court might have, in the first instance, reached an opposite conclusion.<sup>6</sup> Only when there is no satisfactory proof in support of a factual finding of the Board may this Court overturn it.<sup>7</sup> The Board's legal interpretations are subject to plenary review. "In reviewing the record for substantial evidence, the Court will consider the record in the light most favorable to the party prevailing below."<sup>8</sup>

## **Facts**

On December 6, 2002, Claimant was working at Daimler-Chrysler.<sup>9</sup> At a break, Claimant claims she left her position, walked around a pole, slipped on some debris on the floor, and fell, injuring her back and neck, and

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<sup>1</sup> *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

<sup>2</sup> *Sirkin and Levine v. Timmons*, 652 A.2d 1079 (Del. Super. Ct. 1994).

<sup>3</sup> *Oceanport Indus. Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).

<sup>4</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).

<sup>5</sup> *Id.* at 66.

<sup>6</sup> *Brogan v. Value City Furniture*, 2002 WL 499721, \*2 (Del. Super.).

<sup>7</sup> *Id.* at 67.

<sup>8</sup> *General Motors Corp. v. Parker*, 1999 WL 1240820 (Del. Super.).

<sup>9</sup> Tr. Molloy, IAB Hearing No. 1225443, at 91.

hitting her head.<sup>10</sup> A supervisor, who was approximately 15 feet away, testified that he saw Claimant lean over, and place herself on the floor.<sup>11</sup> He testified he heard no sound of alarm from Claimant, nor any noise of debris moving across the floor as he believes he would have heard if Claimant had slipped as she claims.<sup>12</sup> He further testified that Claimant was sitting on the floor, not laying down, that he saw no opportunity for her to hit her head, and that she did not require assistance in getting up.<sup>13</sup>

Claimant testified that she experienced immediate pain in her back and head, and that she believes she was knocked unconscious by the fall.<sup>14</sup> She disputed the accounts of the incident as supposedly recorded from her at the time, in the records of the Emergency Room at Union Hospital, at the Infirmary at Daimler-Chrysler, and to a physician.<sup>15</sup> Claimant testified that there was no one around her when she fell, and she did not think anyone observed the incident<sup>16</sup>. Claimant had significant previous medical history, involving each of the areas in which she claimed injury in this incident.<sup>17</sup> She claimed, however, she was released from doctors' care prior to the date

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<sup>10</sup> *Id.* at 97.

<sup>11</sup> Tr. Ward, IAB Hearing No. 1225443, at 199-200.

<sup>12</sup> *Id.* at 201.

<sup>13</sup> *Id.* at 202.

<sup>14</sup> Tr. Molloy, IAB Hearing No. 1225443, at 104-106.

<sup>15</sup> *Id.* at 134-137.

<sup>16</sup> *Id.* at 103.

<sup>17</sup> *Id.* at 93-95, 100-101.

of the alleged fall on all previous medical conditions.<sup>18</sup> Finally, although Claimant testified she had been employed at Daimler-Chrysler since 1980, it became clear that there was a period of more than a decade in total, in the intervening years, during which she did not actually work.<sup>19</sup>

The Board denied compensation finding that Claimant was not credible, that the testimony opposing her averments was credible, and, further, that the testimony regarding possible motive – to continue to accrue time toward retirement benefits – was persuasive.<sup>20</sup>

### **Analysis**

The Court first addresses Claimant's position that the hearing was flawed because the person who witnessed her fall was not called to testify.<sup>21</sup> In fact, at the hearing, Claimant testified she did not know if anyone saw or heard her fall, and that no one was standing in close proximity.<sup>22</sup> Claimant does not identify the individual she now claims would provide relevant testimony and does not state why she did not call the witness herself. On appeal, this Court's determinations are limited to the record.<sup>23</sup> The Court finds this claim has no merit as the time for presentation of evidence is at the hearing, not on appeal.

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<sup>18</sup> *Id.* at 100.

<sup>19</sup> *Id.* at 123-127.

<sup>20</sup> *Malloy v. Chrysler Corp.*, IAB Hearing No. 1225443 (Feb. 1, 2006).

<sup>21</sup> Appellant's Opening Brief, at 1.

<sup>22</sup> Tr. Molloy, IAB Hearing No. 1225443, at 103.

<sup>23</sup> *Standard Distributing Inc. v. Hall*, 897 A.2d 155, 157 (Del. 2006).

Claimant next claims that she was not properly represented at the hearing.<sup>24</sup> The Court has read the entire transcript, in which Ms. Welch showed a solid grasp of the facts to be presented by the Claimant, as well as a command of the medical and factual evidence of the Employer. As stated above, this Court's appellate function is to determine whether the Board's decision is supported by substantial evidence. The Court's limited appellate jurisdiction does not include whether counsel's representation was appropriate.<sup>25</sup> Furthermore, this is not a criminal case in which there is a constitutional right to effective assistance of counsel.<sup>26</sup> Therefore, a claim for ineffective counsel is not an appealable issue at this stage of the litigation. Even so, the record provides no support for Claimant's protests regarding the quality of her representation.

Finally, Claimant disputes the factual findings of the Board, their conclusion regarding her credibility, and essentially presents her case again in this Court.<sup>27</sup> As the fact finder, the Board has sole responsibility to determine credibility, weigh the evidence and make factual findings.<sup>28</sup> The Court may not reverse the Board even if it might have reached a different

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<sup>24</sup> Appellant's Opening Brief, at 1.

<sup>25</sup> *Stockwell v. Chrysler Corp.*, 1999 WL 33217936 (Del. Super.).

<sup>26</sup> *Brainard v. Chrysler Corp.*, 1995 WL 339032 (Del. Super.).

<sup>27</sup> Appellant's Opening Brief, at 1.

<sup>28</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).



conclusion if presented with the same evidence in the first instance.<sup>29</sup>  
In this case, the Board heard all the evidence and found some witnesses more credible than others. The Court finds that there was substantial evidence to support the Board's conclusions as to credibility and the evidence.

**Conclusion**

For the reasons set forth herein the decision of the Industrial Accident Board is **AFFIRMED**.

**IT IS SO ORDERED.**

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/s/  
M. Jane Brady  
Superior Court Judge

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<sup>29</sup> *Allied Container v. Legg*, 2006 WL 2578908 (Del. Super.).