

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

CONAGRA/PILGRIM'S PRIDE, :
 : C.A. No. 05A-06-002 WLW
Employer-Appellant, :
 :
v. :
 :
CHRISTINA GREEN, :
 :
Employee-Appellee. :

Submitted: July 21, 2006
Decided: October 31, 2006

ORDER

Upon Appellee's Motion to Dismiss
Appellant's Citation of Appeal. Granted.

J. R. Julian, Esquire of J. R. Julian, P.A., Wilmington, Delaware; attorneys for the
Employer-Appellant.

Walt F. Schmittinger, Esquire and Magnolia Solano, Esquire of Schmittinger &
Rodriguez, P.A., Dover, Delaware; attorneys for the Employee-Appellee.

WITHAM, R.J.

Appellee-Employee, Christina Green (“Mrs. Green”), has moved the Court to dismiss Appellant-Employer’s, ConAgra/Pilgrim’s Pride (“ConAgra”), appeal from an order of the Industrial Accident Board (“IAB”) denying ConAgra’s Motion to Dismiss. In it’s Opening Brief on Appeal, ConAgra requests that this Court dismiss Mrs. Green’s Petition to Determine Additional Compensation on the merits. In summary, Conagra argues that Dr. Tonwe’s testimony is legally insufficient to support Mrs. Green’s Petition and that Mrs. Green’s Petition should therefore be dismissed with prejudice.

Appellee- Employee, Mrs. Green, maintains that the withdrawal of her Petition was effective at the time of the IAB hearing, therefore, the IAB’s decision and subsequent appeal by ConAgra to this Court are moot. Therefore, Mrs. Green has moved the Court to Dismiss Appellant’s Appeal from the IAB decision.

The salient facts are as follows: On July 15, 2004, Mrs. Green filed a Petition to Determine Additional Compensation Due (hereinafter “Petition”) seeking payment of medical expenses and total disability allegedly related to a work injury Mrs. Green sustained on March 22, 1994. On May 3, 2005, ConAgra filed a Motion to Dismiss Mrs. Green’s IAB Petition. ConAgra predicated it’s May 3, 2005 Motion to Dismiss on it’s view that the deposition of Mrs. Green’s medical witness, Tutsu Tonwe, M.D., would be insufficient to support Mrs. Green’s Petition. On May 5, 2005, Mrs. Green voluntarily withdrew her Petition “without prejudice.” Despite Mrs. Green’s withdrawal of her Petition, ConAgra insisted on an IAB hearing on it’s Motion to Dismiss and on May 11, 2005, the Board held a hearing on the Motion. Although it

seems counterintuitive for ConAgra to pursue the issue after Mrs. Green's withdrawal, ConAgra's motive was to obtain a dismissal of Mrs. Green's Petition with prejudice.

The Board denied ConAgra's Motion to Dismiss following the May 11, 2005 hearing and allowed Mrs. Green's voluntary dismissal to stand. The Board declined to dismiss the case with prejudice as ConAgra requested because they felt that it was inappropriate to have a definitive end to the case without an opportunity to hear the relevant facts and decide the case on its merits. While cognizant that allowing Mrs. Green to withdraw and perhaps get another doctor's opinion may prolong the case, the Board found that ConAgra would in no way be prejudiced by Mrs. Green's voluntary dismissal. The Board noted that if a subsequent Petition was later filed, the Employer would again have the opportunity to file a Motion to Dismiss.

Standard of Review

The Court's function on appeal is to determine whether the Board's decision is supported by substantial evidence and free from legal error.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² On appeal, the court does not "weigh the evidence, determine questions of credibility, or make its own factual findings."³

¹*General Motors v. Freeman*, 164 A.2d 686, 688 (Del. Super. 1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).

²*Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. 1999)

³*Johnson*, 213 A.2d at 66.

Discussion

The Court finds it unnecessary to determine whether the IAB hearing conducted on May 11, 2005 was moot due to Mrs. Green's voluntary withdrawal of her Petition on May 5, 2005, because the Board decided that the withdrawal was proper at the May 11, 2005 hearing. At the May 11, 2005 hearing, the Board decided that Mrs. Green's voluntary withdrawal was proper and it declined to dismiss the case with prejudice despite ConAgra's attempt to persuade the Board that allowing the withdrawal would be unjust and an abuse of the judicial process.⁴ The Board felt that it was inappropriate to have a definitive end to the case without an opportunity to hear the relevant facts and decide the claim on its merits. While cognizant that allowing Mrs. Green to withdraw and perhaps get another doctor's opinion may prolong the case, the Board found that ConAgra would in no way be prejudiced by Mrs. Green's voluntary dismissal. The Board did not decide ConAgra's Motion to Dismiss Mrs. Green's Petition on the merits, but simply decided that Mrs. Green's voluntary withdrawal was proper.

On an appeal from an IAB decision, this Court will not decide an issue not adjudicated on the merits by the IAB. This Court's function on appeal is to determine whether the Board's decision is supported by substantial evidence and free from legal

⁴ConAgra claims that Green's voluntary withdrawal of her Petition prior to the hearing was a tactical maneuver to avoid a judicial determination on her Petition. Further, ConAgra argues that Green withdrew her Petition so that she could "doctor-shop" a better case.

error.⁵ The only decision made by the Board was that Mrs. Green's voluntary withdrawal of her Petition was proper and that ConAgra would not be prejudiced by it. The Board did not decide ConAgra's Motion to Dismiss on the merits and neither will this Court. Asking the Court to decide the Motion on its merits would be asking it to weigh the evidence, determine questions of credibility, and make factual findings. These functions are reserved for the Board, not the Court.⁶

Furthermore, the Court finds that the Board acted within their discretion to allow Mrs. Green's voluntary withdrawal of her Petition. There is no provision in the IAB rules governing voluntary dismissals and ConAgra did not cite any legal authority to dispute Mrs. Green's right to withdraw her Petition. The Board acknowledged ConAgra's argument that withdrawal of the Petition could prolong the matter, but did not see any prejudice to ConAgra in allowing the voluntary dismissal. The evidence indicates that Dr. Tonwe, the doctor whose deposition ConAgra relied on in making their Motion to Dismiss Mrs. Green's Petition, is Mrs. Green's family doctor. Mrs. Green's Petition is based on a knee injury allegedly sustained while employed at ConAgra. Dr. Tonwe is not a specialist in that area and one must question his capability of making a competent evaluation of Mrs. Green's alleged injuries. In fact, when Mrs. Green mentioned seeing an orthopedic physician to reevaluate her knee, Dr. Tonwe felt that that was appropriate and urged her to do so.

⁵*General Motors*, 164 A.2d at 688; *Johnson*, 213 A.2d at 66-67.

⁶*Johnson*, 213 A.2d at 66.

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Under the circumstances, the Board felt that it was inappropriate to have a definitive end to the case without an opportunity to hear the relevant facts and decide the claim on it's merits.

Despite ConAgra's determination to resolve this matter, the Court finds that the Board did not abuse it's discretion in deciding that Mrs. Green's voluntary withdrawal was proper.

Accordingly, Mrs. Green's Motion to Dismiss ConAgra's Citation of Appeal is *granted*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution