

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD SOMMERS,	§	No. 105, 2013
	§	
Appellant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
	§	C.A. No. N12A-03-011
NEW CASTLE COUNTY,	§	
	§	
Appellee Below,	§	
Appellee.	§	

Submitted: July 3, 2013

Decided: July 9, 2013

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 9th day of July 2013, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Edward Sommers (“Sommers”), appeals from a Superior Court order affirming an Industrial Accident Board (“IAB”) decision denying his petition for compensation arising from an alleged work-related injury. The IAB and the Superior Court both found that Sommers’s cardiac injuries were caused by his preexisting severe coronary artery disease, and not by the burglary investigation he had conducted in the scope of his employment as a police officer. As a result, Sommers is not entitled to workers’ compensation benefits. We therefore affirm.

2. On June 23, 2009, Sommers, a New Castle County (“NCC”) police officer, was conducting a routine patrol in his police car when he received a burglary-in-progress call. After Sommers sped to the location of the burglary and investigated the surroundings, he began experiencing chest pains. His pains subsided later that day.

3. Sommers rested at home for three days, until June 26, 2009. On that date, he was lifting a laundry basket at home when he experienced similar pain. His primary care doctor conducted several medical tests, and on July 2, 2009, Sommers underwent cardiac bypass surgery on seven arteries and arterial branches near his heart. He did not return to work until August 31, 2010.

4. On June 20, 2011, Sommers filed a petition for compensation with the IAB, seeking total disability benefits from June 23, 2009 through August 31, 2010. The only issue at the hearing was whether Sommers’s cardiac injuries were caused by work-related activity. Dr. Alan Micklin, a cardiologist testifying for Sommers, opined that Sommers’s symptoms would not have occurred “but for” the stressful burglary investigation that preceded the symptoms.¹ Dr. Micklin conceded, however, that Sommers had several cardiovascular risk factors.² Another cardiologist, Dr. Joseph C. Pennington, III, who testified for the NCC Police,

¹ See *Sommers v. New Castle Cnty.*, Hearing No. 1369952, slip op. at 5 (IAB Mar. 12, 2011).

² See *id.*

agreed with Dr. Micklin that Sommers had cardiovascular risk factors.³ Dr. Pennington opined, however, that although the burglary investigation “brought to surface” the need for the cardiac bypass surgery, it was not probable that the burglary investigation was a “substantial factor” in causing Sommers’s coronary artery disease.⁴

5. The IAB did not choose between the “but for” and “substantial factor” legal causation tests in determining the cause of Sommers’s cardiac injuries. In its March 12, 2011 decision, the IAB found “that using *either* legal standard the circumstances of this case do not support Dr. Micklin’s theory of causation and as a result the [IAB] does not find his testimony persuasive and [Sommers’s] petition [for compensation] is denied.”⁵ The IAB reasoned:

By all accounts the plaque in [Sommers’s] arteries was not caused by the work incident [*i.e.*, the burglary investigation]. Both experts agree that prior to the work incident [Sommers] had cardiovascular risk factors and severe coronary artery disease. . . .

[Sommers] is essentially arguing that the work incident did not cause his coronary artery disease, but rather his symptoms which caused the need for surgery. However, the reason he needed surgery is the coronary artery disease and not the symptoms which were a warning that occurred first at work after responding to the burglary. Even if these symptoms were caused by his response to the burglary, they resolved by the time he went to the doctor three days later with a new

³ *See id.* at 7.

⁴ *See id.* at 7-8.

⁵ *Id.* at 14 (italics added).

onset of symptoms occurring while carrying a laundry basket up the stairs. . . . [Sommers] maintains that this was one long continuous event because after work [he] rested at home. However, it is clear that his symptoms subsided until three days later. Thus, his flare-up resolved and the [IAB] finds that [Sommers] did not sustain a work injury.⁶

6. By opinion and order dated February 14, 2013, the Superior Court affirmed the IAB’s decision.⁷ The court held that the IAB had not erred by failing to choose between the “but for” and “substantial factor” tests of causation, because the IAB found that under either theory no causation had been established.⁸ The court further held that because Sommers’s June 23rd chest pains subsided and were therefore separate and distinct from his June 26th symptoms, his June 26th symptoms (and his following year-long recovery) were not compensable work-related injuries. This appeal followed.

7. This Court reviews a Superior Court ruling that, in turn, has reviewed a ruling of an administrative agency, by examining directly the decision of the agency.⁹ We review the Board’s decision to determine if the decision is supported by substantial evidence and free from legal error.¹⁰ Substantial evidence is such

⁶ *Id.* at 15, 17-18.

⁷ *Sommers v. New Castle Cnty.*, C.A. No. N12A-03-011, slip. op. (Del. Super. Feb. 14, 2013).

⁸ *Id.* at 16.

⁹ *Pub. Water Supply Co. v. DiPasquale*, 735 A.2d 378, 380-81 (Del. 1999).

¹⁰ *Olney v. Cooch*, 425 A.2d 610, 613 (Del. 1981); *UIAB v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975).

relevant evidence as a reasonable mind might accept as adequate to support a conclusion.¹¹ On appeal, this Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.¹² We review questions of law *de novo*.¹³ Absent an error of law, the standard of review of a Board decision is abuse of discretion.¹⁴ The Board will be found to have abused its discretion only where its decision exceeds the bounds of reason in view of the circumstances.¹⁵

8. On appeal, Sommers advances two claims. First, he argues that the IAB committed legal error by failing to choose between the “but for” and “substantial factor” tests of causation. Second, he contends that the IAB’s factual finding that his June 23rd symptoms subsided was not supported by substantial evidence. Neither claim has merit.

9. The evidence supports the IAB’s finding that Sommers’s cardiac symptoms were caused by his severe preexisting coronary artery disease, and not by his burglary investigation. Therefore, even if the IAB erred by not choosing which test—the “but for” *or* the “substantial factor” test—was applicable, the error

¹¹ *Olney*, 425 A.2d at 614.

¹² *Person-Gaines v. Pepco Hldgs., Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (quotation omitted).

was harmless, because under *either* test the IAB found that Sommers had not established causation for his cardiac injuries.

10. The record also reflects that Sommers's June 23rd chest pains that occurred at work subsided for three days before reemerging on June 26th, when Sommers was at home. The IAB's factual findings—that Sommers's June 23rd symptoms terminated, and that his June 26th symptoms (that led to his year-long recovery after his cardiac surgery) were not caused by a work-related incident—were also supported by substantial evidence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice