IN THE SUPREME COURT OF THE STATE OF DELAWARE

PINNACLE FOODS,	§	
	§	No. 175, 2011
Employer-Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	Sussex County
	§	
MARIAN A. CHANDLER,	§	Case Nos. S10A-09-001
	§	S09A-07-002
Claimant-Below,	§	
Appellee.	§	

Submitted: July 20, 2011
Decided: August 16, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 16th day of August 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Employer-below appellant, Pinnacle Foods ("Pinnacle"), appeals from a Superior Court judgment reversing a decision of the Industrial Accident Board ("IAB") denying disability benefits to the claimant-below appellee, Marian A. Chandler ("Chandler"). Initially, the IAB concluded that the applicable two-year statute of limitations[1] barred Chandler's Petition to Determine Compensation Due ("Petition"), because despite being aware of her back-injury symptoms in 2005,

[1] 19 *Del. C.* § 2361(a) (establishing two-year statute of limitations for claims for cumulative detrimental effect).

Chandler did not file her Petition with the IAB until July 30, 2008.[2] The Superior Court reversed and remanded, holding that the IAB's decision was not supported by substantial evidence.[3] On appeal, Pinnacle claims that the Superior Court reversibly erred because there was substantial evidence to support the IAB's finding that Chandler was aware of the probable compensatory nature of her back injury in 2005, and therefore could have filed a timely petition. We find no merit to Pinnacle's appeal and affirm.

2. In 1976, Chandler began working for Pinnacle in a pickle processing plant.[4] Her job duties were to sort and pack pickles into jars and five gallon pails. During the next 33 years, Chandler's job involved leaning over a line of moving pickles, looking for and removing rotten and broken pickles and foreign objects. To dispose of these items, Chandler would have to twist and turn her body. She also devoted part of her workday to lifting heavy bags of seeds and loading those bags into a machine.

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[2] IAB Decision on Petition to Determine Compensation Due at 25, Hearing No. 1323867 (June 25, 2009) (hereinafter "*IAB Decision I*").

[3] *Chandler v. Pinnacle Foods*, 2010 WL 1138869, at *3 (Del. Super. Ct. Mar. 22, 2010) (hereinafter "*Chandler I*"). On remand, the IAB granted Chandler's Petition and awarded her disability benefits, which the Superior Court affirmed. *See Pinnacle Foods v. Chandler*, 2010 WL 6419563 (Del. Super. Ct. Mar. 28, 2011) (hereinafter "*Chandler II*").

[4] After working part-time for about 7 years, Chandler became a full-time employee in 1983, and was employed as such for the last 26 years until February 19, 2009.

3. In 2005, Chandler began experiencing pain in her lower back, which she managed by using over-the-counter medications, sports creams, heat, massages, and a hot tub. Despite her back pain, Chandler did not miss any work at Pinnacle and was still able to perform her job duties. By January 2008, however, Chandler's back pain increased such that it began interfering with her work duties. Towards the end of January 2008, Chandler informed her supervising crew leader, Stephanie Parker, about her back pain. Ms. Parker instructed Chandler to talk to Cindy Dickerson, Pinnacle's Human Resources and Safety Manager.

4. In her initial meeting with Ms. Dickerson, Chandler told her that she felt severe back pain when getting out of her car and that she could barely move. Chandler did not indicate that her back pain was caused by her work at Pinnacle, however. A week later, Chandler followed up with Ms. Dickerson and informed her that she thought her back pain was work-related. Ms. Dickerson advised Chandler to see her family doctor.

5. On February 18, 2008, Chandler was temporarily laid off due to lack of work.[5] The following day (February 19, 2008), Chandler's back pain was so severe that she went to the emergency room at Nanticoke Memorial Hospital. The emergency room physician treated Chandler for a back strain that was possibly

[5] Due to the nature of Pinnacle's business, it was common for the company to lay off employees during slow periods, and then invite those employees back when work picked up. In Chandler's case, she was "laid off" on February 19, 2008, but was then called back to work on March 17, 2008. Chandler had also been "laid off" between October 2007 and January 9, 2008.

caused by, or related to, her job functions at Pinnacle. The physician then gave Chandler an injection of Vicodin and some pills, and instructed her to see her primary care physician within a week.

6. On February 26, 2008, Chandler went to see Dr. Harry Anthony, her primary care physician. A March 4, 2008 MRI scan showed that Chandler had a disc injury in her lower back at her lumbosacral joint,[6] and an annular tear at the L3-4 level. Dr. Anthony then placed Chandler on light duty work restrictions, and referred her to Dr. Kennedy Yalamanchili, a neurologist.

7. Chandler first met with Dr. Yalamanchili on April 7, 2008. Dr. Yalamanchili prescribed physical and aqua therapy, but neither treatment helped. At a follow-up visit on May 5, 2008, Dr. Yalamanchili recommended that Chandler undergo surgery. That surgery, initially scheduled for June 24, 2008, was cancelled on June 23, 2008, because Chandler's health insurance carrier deemed her injury to be work-related and, therefore, declined to cover the cost of the procedure.

8. After her health insurance claim was denied, Chandler filed her Petition with the IAB on July 30, 2008, seeking total disability benefits from February 18, 2008 to April 22, 2008, partial disability benefits from April 22, 2008 until her

[6] The lumbar spine meets the sacrum at the lumbosacral joint, or L5-S1 (*i.e.*, lumbar segment 5 and sacral segment 1).

surgery, and the costs of the surgery. Chandler claimed that the date of her injury was January 1, 2008. On February 19, 2009, while her Petition was still pending, Chandler's position with Pinnacle was terminated, because she had not returned to work within one year.[7]

9. An IAB hearing was held on February 25, 2009, at which Chandler, her fiancée, Stephanie Parker, Ms. Dickerson, and a labor market expert testified. The IAB also heard the deposition testimony of two doctors, Drs. Richard DuShuttle and Jerry Case. Based on his review of Chandler's medical records and his physical examination, Dr. DuShuttle opined that Chandler suffered from a preexisting lower back condition that was aggravated by her work duties at Pinnacle. Dr. DuShuttle also opined that Chandler's job, which required frequent bending and twisting, was the cause of her disc injury to her lumbosacral joint. Dr. Case, who also had examined Chandler and reviewed her medical records, agreed that Chandler's job duties at Pinnacle may have aggravated her back pain. Dr. Case, however, believed that Chandler's back problems had started in 2005, not in January 2008 as she claimed, and also that her back problems were not caused by her work at Pinnacle.

[7] Although Dr. Anthony had cleared Chandler to return to work on light duty on March 13, 2008, Pinnacle did not have any positions open for her because of her work restrictions. As a result, Chandler could not return to work when she was called back on March 17, 2008. It was not until February 16, 2009, nearly a year after the emergency room visit, did Dr. Anthony release Chandler to return to work without any restrictions, at Chandler's request. But, by that point, Chandler had been absent from work for a year, and in accordance with company policy, Pinnacle terminated her position on February 19, 2009.

10. The IAB concluded that Chandler's Petition was barred by the statute of limitations, which required her to file the Petition within two years from her date of injury. The IAB determined that for cumulative detrimental effect claims such as Chandler's, the "date of injury" is the time at which "a worker, as a reasonable person, should recognize the nature, seriousness, and probable compensable character of the injury."[8] That date, the IAB found, was "in or about 2005"[9]— the date that Chandler had told her doctors when her low back symptoms began.[10] Accordingly, the IAB concluded that the two-year statute of limitations, 19 *Del. C.* § 2361(a), barred the Petition, because Chandler "knew or should have known that her low back symptoms could have been related to work for three years before filing her [P]etition for benefits."[11]

11. On appeal to the Superior Court, that court reversed the IAB's decision on the basis that there was insufficient evidence to support the finding that Chandler "should have realized the nature, seriousness and probable compensable

[8] *IAB Decision I* at 23 (quoting *Visiting Nurses Assn. v. Caldwell*, 2000 WL 1611063, at *2 (Del. Super. Ct. Aug. 24, 2000)).

[9] *Id.* at 25.

[10] *Id.* ("[T]he doctors actually agree that [Chandler] reported to all of the doctors that her low back symptoms began three years earlier.").

[11] *Id.* at 24.

character of her back pain before July [30], 2006."[12] The Superior Court concluded that "Chandler's back pain [had] increased over time" and that "[n]o doctor [had] told Chandler about the nature of her back pain at all until February 19, 2008."[13] Therefore, there was "not substantial evidence in the record about the [nature or] seriousness of Chandler's back pain before July [30], 2006."[14] The court then remanded the case back to the IAB to consider the merits of Chandler's Petition.

12. Pinnacle filed an interlocutory appeal from the Superior Court's decision, which this Court refused.[15] On remand, the IAB credited the testimony of Dr. DuShuttle and Chandler, and awarded Chandler total and partial disability benefits and payment of medical expenses.[16] The Superior Court affirmed the IAB's award,[17] from which Pinnacle now appeals.

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[12] *Chandler I*, 2010 WL 1138869, at *3 (Del. Super. Ct. Mar. 22, 2010). Although the Superior Court dated Chandler's Petition as being filed on July 28, 2008, the record reflects that that Petition was actually filed on July 30, 2008.

[13] *Id.*

[14] *Id.*

[15] *Pinnacle Foods v. Chandler*, 992 A.2d 1237 (Table), 2010 WL 1565302 (Del. 2010) (refusing Pinnacle's interlocutory appeal).

[16] Order Following Remand at 5, Hearing No. 1323867 (June 25, 2010) (hereinafter "*IAB Decision II*").

[17] *Chandler II*, 2010 WL 6419563, at *3, *6 (Del. Super. Ct. Mar. 28, 2011) (finding that substantial record evidence supported the IAB's decision to award disability benefits).

13. The sole issue on appeal is whether there is substantial record evidence to support the IAB's initial determination that Chandler's Petition was barred by the applicable two-year statute of limitations.[18] Pinnacle claims that the Superior Court erroneously reversed the IAB's initial determination, because Chandler testified that she had suffered from back pain for three years before she sought medical treatment beginning in February 2008. That testimony, Pinnacle insists, constituted "substantial competent evidence" that supports the IAB's finding that Chandler should have recognized the nature, seriousness, and probable compensable nature of her injuries in 2005.

14. This Court's review of an IAB decision mirrors that of the Superior Court.[19] We examine the record to determine whether the IAB's decision is supported by substantial evidence and is free from legal error.[20] "Substantial evidence equates to such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[21] "Questions of law are reviewed *de novo*."[22]

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[18] *See* 19 *Del. C.* § 2361(a).

[19] *Stoltz Mgmt. Co., Inc. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992).

[20] *Vincent v. Eastern Shore Markets*, 970 A.2d 160, 163 (Del. 2009).

[21] *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009) (internal quotation marks omitted).

[22] *Munyan v. Daimler Chrysler Corp.*, 909 A.2d 133, 136 (Del. 2006).

Absent an error of law, we review for an abuse of discretion.[23] We "will not weigh the evidence, determine questions of credibility, or make [our] own factual findings."[24]

15. "Whether a [workers' compensation benefits] claim is barred by a statute of limitations is a mixed question of law and fact that requires the Court to determine: (1) whether the IAB applied the correct legal standard and if so, (2) whether the factual findings of the IAB were supported by substantial evidence."[25] Pinnacle agrees that the legal standard for determining the date that the limitations period for filing a workers' compensation claim begins to run is when "the claimant, as a reasonable person, should [have] recognize[d] the nature, seriousness *and* probable compensable nature of the injury or disease."[26] Importantly, however, "[t]he statute of limitations 'clock' is not triggered until a claimant recognizes all three components."[27] Thus, the question becomes whether there was substantial evidence to support the IAB's initial factual finding that

[23] *Person-Gaines*, 981 A.2d at 1161.

[24] *Id.*

[25] *Smolka v. DaimlerChrysler Corp.*, 2004 WL 3958064, at *2 (Del. Super. Ct. July 13, 2004) (citing *Geroski v. Playtex Family Prods.*, 676 A.2d 903 (Table), 1996 WL 69770, at *1 (Del. 1996)).

[26] *Geroski*, 1996 WL 69770, at *1 (emphasis added).

[27] *Wright v. United Med. & Home Health, Inc.*, 2002 WL 499889, at *2 (Del. Super. Ct. Mar. 21, 2002).

Chandler should have been aware of the nature, seriousness, and compensability of her back injury in 2005.

16. The Superior Court correctly determined that the record evidence did not support that finding. Although Chandler testified that she had suffered from minor back pain for several years, she was able to manage that pain with self-treatment and did not miss any work. Thus, at that stage Chandler had not yet recognized the "seriousness" or the "probable compensable nature" of her injury, because her back pain did not interfere with her work and she was able to perform her job duties properly.[28] Not until January 2008 did Chandler's back pain intensify and begin to interfere with her job duties, requiring her to notify Ms. Parker and Ms. Dickerson.

17. Nor was Chandler aware that her back pain was work related until February 2008, when she went to the emergency room for treatment. Although Chandler had suspected that her job duties had aggravated her back pain, that suspicion, without more, was insufficient to make her condition compensable.[29]

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[28] *Munyan v. Daimler Chrysler Corp.*, 909 A.2d 133, 136-37 (Del. 2006) (noting that "evidence of pain without loss of use is not a compensable permanent impairment."); s*ee also Wright*, 2002 WL 499889, at *3 (recognizing that at an "early stage [of a progressive condition], the condition may not be so severe as to require compensation," because a reasonable person "would not necessarily recognize the compensable nature of the condition.").

[29] *Smith v. Chrysler Corp.*, 1987 WL 17184, at *2 (Del. Super. Ct. Sept. 16, 1987) ("It is a fair inference from the evidence that [claimant] was aware that his symptoms were exacerbated by his work activities. Of course, this would not be sufficient to make the condition compensable.")

For a work-related injury to be compensable, that injury must "aris[e] out of and in the course of [a claimant's] employment."[30] Until diagnosed by the emergency room physician, Chandler was unaware that her job was the *cause* of her back pain. That diagnosis was confirmed by Dr. DuShuttle, one of the testifying medical experts.[31] On these facts, the Superior Court correctly concluded that the IAB's initial finding—that Chandler was aware of the nature, seriousness, and probable compensable nature of her back injury in 2005—was not 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

[30] 19 *Del. C.* § 2304.

[31] The Superior Court found it significant that Dr. Case disagreed with Dr. DuShuttle's diagnosis that Chandler's job duties at Pinnacle caused her back problems. Specifically, the court stated that:

> It is interesting to note that Drs. Du[S]huttle and Case, with the benefit of their medical training, years of experience, and access to advanced diagnostic testing, disagree as to whether Chandler's job caused her back pain, yet the [IAB] found that three years before she felt unable to work or saw a doctor for treatment or was diagnosed that she should have known the probable compensable character of her back pain.

Chandler I, 2010 WL 1138869, at *3 (Del. Super. Ct. Mar. 22, 2010).