

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARGARET GEHR,	§	No. 81, 2000
	§	
Defendant Below,	§	Court Below: Superior Court
Appellant,	§	of the State of Delaware in and
	§	for Sussex County
v.	§	
	§	C.A. No. 99A-06-001
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 12, 2000

Decided: December 27, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

ORDER

This 27th day of December 2000, upon consideration of the briefs of the parties and their contentions in oral argument, it appears to the Court that:

(1) Margaret Gehr was employed as a direct care facilitator by the State of Delaware at the Stockley Center for the mentally disabled. Gehr alleges that she injured her left arm on October 6, 1998 while she was assisting a patient in the bathroom. Gehr filed a Petition to Determine Compensation Due with the Industrial Accident Board, but the Board denied her petition.¹ The Superior Court

¹ See *Gehr v. State*, I.A.B., Hearing No. 1137110, William F. O'Brien, H.O. (June 4, 1999).

affirmed because it found that the Board's decision had sufficient support in the record.²

(2) On appeal, we review *de novo* the legal findings of the Board.³ Recognizing the Board's "specialized competence," we review the Board's factual findings to determine whether they are supported by substantial evidence.⁴ This Court has defined "substantial evidence" to mean "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁵

(3) Gehr first argues that the Superior Court erred by admitting a hearsay statement from her family doctor's medical records. We disagree. The doctor's statement was not hearsay because State did not offer the statement to prove the truth of the matter asserted. Rather, the State offered the statement for the purpose of impeaching witness testimony. As the Superior Court observed, the Board referred to the contested statement in its decision only to highlight the inconsistencies it found in Gehr's testimony.⁶

(4) Even if the contested statement were inadmissible hearsay, the Superior Court's error in admitting the statement was harmless. The Board may

² See *Gehr v. State*, Del. Super., No. 99A-06-001, Stokes, J. (January 31, 2000) (Mem. Op.).

³ See *Diamond Fuel Oil v. O'Neal*, Del. Supr., 734 A.2d 1060, 1062 (1999) ("[T]his Court must determine 'whether the agency ruling is . . . free from legal error.'" (quoting *Stoltz Management Co., Inc. v. Consumer Affairs Bd.*, Del. Supr., 616 A.2d 1205, 1208 (1992))).

⁴ See *State v. Cephas*, Del. Supr., 637 A.2d 20, 23 (1994); 29 Del. C. § 10142(d).

⁵ *Id.* (quoting *Consolo v. Fed. Maritime Comm'n*, 383 U.S. 607, 620 (1966)).

consider evidence that would be inadmissible in the Superior Court so long as (a) the Board does not base its decision solely on the inadmissible evidence and (b) the Board does not undermine the procedural protections necessary to a fair hearing.⁷

(5) In the present case, the Board reached its conclusion based on (a) its evaluation of the credibility of Gehr's testimony, (b) inconsistencies between Gehr's testimony and that of her coworker, (c) the absence of evidence corroborating Gehr's alleged injury, and (d) Gehr's failure to report her injury immediately after the incident.⁸ Because the Board had sufficient nonhearsay evidence on which to base its decision, the Board's reliance on the statements did not undermine the fairness of the hearing.

(6) Gehr next contends that the Board did not have sufficient evidence to conclude that her injury was not related to the incident at the Stockley Center. We find that the evidence described above is sufficient to justify the Board's decision

⁶ See *Gehr*, Mem. Op. at 16.

⁷ See *Geegan v. Unemployment Compensation Comm'n*, Del. Supr., 76 A.2d 116, 117 (1950) (holding in a similar situation that "the findings of the [Unemployment] Commission could not be based upon hearsay evidence alone"); *Torres v. Allen Family Foods*, Del. Supr. 672 A.2d 26, 31 (1995) (holding that the Board must respect rules "designed to ensure the fairness of the procedure"). Accordingly, the Board's procedural rules provide that the "rules of evidence . . . shall be followed insofar as practicable; however . . . evidence will be considered by the Board which, in its opinion, possesses any probative value commonly accepted by reasonably prudent men" Indus. Accident Bd. R. 14(B).

⁸ See *Gehr*, Bd. Dec. at 7-8.

as the trier of fact to discount the credibility of Gehr's testimony and to deny her compensation claim.⁹

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁹ *Cf. Johnson v. Chrysler Corp.*, Del. Supr. 213 A.2d 64, 66 (1965) (holding that reviewing courts may not resolve questions of credibility or make their own findings of fact).