

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SANDRA VAN PELT,	§	
	§	No. 61, 2004
Claimant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
BEEBE MEDICAL CENTER,	§	C. A. No. 03A-03-001
	§	
Employer Below,	§	
Appellee.	§	

Submitted: June 1, 2004

Decided: September 20, 2004

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

**ORDER**

This 20<sup>th</sup> day of September 2004, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Sandra Van Pelt appeals from a Superior Court order upholding a decision of the Industrial Accident Board (IAB or “Board”) denying her claim for medical witness fees in connection with her Petition to Determine Additional Compensation Due. The Board denied Van Pelt’s petition for compensation and medical witness fees, but it determined that her employer, Beebe Medical Center (“Beebe”), was obligated to pay her travel expenses incurred for medical examinations by the employer’s physician. Van Pelt

appeals from the Superior Court's order affirming the IAB's denial of her medical witness fees. We find no error and, therefore, affirm.

2. Van Pelt suffered a herniated disc in her back as a result of a compensable industrial accident that occurred on October 10, 1998. She was treated by several physicians, but also sought treatment from a pain management specialist. To obtain that treatment, Van Pelt filed a Petition to Determine Additional Compensation Due, which the IAB heard on February 14, 2003. Dr. Sugarman, a neurosurgeon, testified on her behalf.

3. In connection with her claim, Van Pelt was also examined four times by her employer's physician, Dr. Edward Quinn, who testified at the IAB hearing that Van Pelt's current complaints were not related to the industrial accident. At that hearing, Van Pelt claimed that she had not been reimbursed for mileage for her travels to the employer's physician. The employer responded that Van Pelt had never made an adequate demand for the mileage, her "demand" consisting only of post-scripts on three letters from her attorney which said "[p]lease send her a check for mileage to and from the IME."<sup>1</sup>

---

<sup>1</sup> *Van Pelt v. Beebe Medical Center*, No. 03A-03-001, Letter Opinion at 2 (Del. Super. Jan. 21, 2004).

4. The Board denied Van Pelt’s petition for additional compensation and medical witness fees, but determined that she was entitled to mileage reimbursement for the four defense medical examinations (four round trips of 17.6 miles each way, totaling \$43.65).

5. Van Pelt appeals the denial of medical witness fees, claiming that she is statutorily entitled to these fees under 19 *Del. C.* § 2322(e)<sup>2</sup> because her entitlement for mileage reimbursement was an "award" within the meaning of that statute. The employer responds that Van Pelt's mileage expenses were never properly presented to it, and, accordingly, were never properly before the Board. Moreover, and in any event, the employer claims, reimbursement for mileage is not an “award” within the meaning of Section 2322(e).<sup>3</sup>

---

<sup>2</sup> Section 2322(e) states: “The fees of medical witnesses testifying at hearings before the Industrial Accident Board in behalf of an injured employee shall be taxed as a cost to the employer or the employer's insurance carrier in the event the injured employee receives *an award*.”

<sup>3</sup> The appellee also argues that the printout from “Yahoo.com,” which was the sole basis for the Board’s determination that each trip was 17.6 miles, should not have been admitted because it was not “best evidence.” The IAB is not required to adhere rigidly to the rules of evidence. *See Gehr v. State*, 765 A.2d 951 (Del. 2000) (“[T]he 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).”).

6. This Court's review of an IAB decision is limited. If the agency's decision is supported by substantial evidence and is free from legal error, this Court will affirm.<sup>4</sup> "Substantial evidence" is such relevant evidence that a reasonable mind would accept as adequate to support a conclusion.<sup>5</sup> Conclusions of law, however, are reviewed *de novo*.<sup>6</sup>

7. This appeal presents a single question of law: does an award for reimbursement of mileage constitute "an award" for the purposes of 19 *Del. C.* § 2322(e)? Section 2322 has multiple parts. Subsection (a) requires the employer to furnish medical services; subsection (b) allows the employee to procure the services for himself or herself if the employer refuses; and subsection (c) authorizes an employee to petition the board for compensation for additional services, as Van Pelt did here. Section 2322 does not contemplate a petition for travel expenses, however, and the term "compensation," as used throughout the chapter, cannot be read to encompass travel expenses.<sup>7</sup> Read in its entirety, Section 2322 makes it

---

<sup>4</sup> *General Motors Corp. v. Freeman*, 164 A. 2d 686, 688 (Del. 1960).

<sup>5</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A. 2d 892, 899 (Del. 1994).

<sup>6</sup> *In re Doughty*, 832 A.2d 724 (Del. 2003).

<sup>7</sup> *See also* the definition of compensation at 19 *Del. C.* § 2301(5): "Compensation" wherever the context requires it includes surgical, medical and hospital services, medicines and supplies and funeral benefits."

clear that the terms “award” and “compensation” refer specifically to the cost of surgical, medical, dental, optometric, chiropractic and hospital services, and of medicines, supplies and prosthetics, as listed in Section 2322(a).

8. There is, however, an independent statutory provision which requires that an employee be paid travel expenses and lost wages for attending an examination by the employer’s physician. That requirement is found in 19 *Del. C.* § 2343(a),<sup>8</sup> which is distinct from, and unrelated to, Section 2322.

9. The IAB denied Van Pelt’s petition for additional compensation. The IAB also denied her petition for medical witness fees, because she did not receive “an award” of compensation for which she had petitioned. The Board correctly found, however, that Van Pelt was independently entitled to travel expenses under Section 2343(a) and, for reasons of judicial economy, calculated the mileage rate and ordered Beebe to pay the expenses.

10. The IAB determined that Van Pelt's entitlement to an award of travel expenses was independent of her entitlement (or lack thereof) to an award of medical witness fees. The Board’s decision was based on

substantial evidence and was free from legal error. The Superior Court held, in our view correctly, that although the travel expense issue was not formally before the Board, the IAB nonetheless ruled appropriately on the travel expense issue.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

---

<sup>8</sup> In pertinent part: “For all examinations after the first, the employer shall pay the reasonable traveling expenses and loss of wages incurred by the employee in order to submit to such examination.”