IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROLAND C. ANDERSON,	§	
	§	
Claimant Below-Appellant,	§	No. 491, 1999
	§	
	§	
v.	§	Court Below— Superior Court
	§	of the State of Delaware,
GENERAL MOTORS CORPORATION,	§	in and for New Castle County
	§	C.A. No. 99A-02-008
	§	
Employer Below-Appellee.	§	
	§	

Submitted: December 9, 1999
Decided: February 29, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices

O R D E R

This 29th day of February 2000, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The employee/claimant-appellant, Roland C. Anderson, claims error in the Superior Court's affirmance of the decision of the Industrial Accident Board (the "Board") dismissing his petition for workers' compensation benefits as untimely. The employer/carrier-appellee, General Motors Corporation, has moved to affirm the judgment of the Superior Court on the

ground that it is manifest on the face of Anderson's opening brief that the appeal is without merit.[1] We agree and AFFIRM.

(2) On December 15, 1998, following an October 1, 1998 hearing on remand, the Board denied Anderson's Petition to Determine Compensation Due (the "petition").[2] The petition, which was filed on September 30, 1997, claimed that Anderson sustained a left shoulder injury while working at General Motors in 1982. The Board determined Anderson's claim was barred by the statute of limitations.[3] Anderson moved for reargument of the Board's decision based upon additional medical evidence that had not been considered by the Board. The Board denied the motion for reargument. On appeal, the Superior Court affirmed the decision of the Board, concluding there was substantial evidence to support the Board's findings and there was no legal

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[1]Supr. Ct. R. 25(a).

[2]The Board had previously dismissed Anderson's claim as untimely. Anderson appealed and the Superior Court remanded the case to the Board for a determination of the date on which Anderson knew or should have known he had sustained a compensable injury.

[3]There is a 2-year statute of limitations for workers' compensation claims. 19 Del. C. §2361(a). The limitations period does not begin to run until the claimant, as a reasonable person, should recognize the nature of the injury. *Geroski v. Playtex Family Products*, Del. Supr., No. 414, 1995, Walsh, J., 1996 WL 69770 (Jan. 24, 1996) (ORDER).

error. The Superior Court also denied Anderson's subsequent motion for reargument.

(3) In this appeal, Anderson claims the Board improperly relied upon the June 1997 office notes of Eric T. Johnson, M.D., one of his treating physicians, because they were placed into evidence by General Motors in violation of the Board Rules. Anderson also claims the Board erred in refusing to open the record to permit the consideration of additional medical documentation and live testimony from Dr. Johnson. This additional evidence, Anderson alleges, would have proven he was not aware of his left shoulder condition until he experienced pain in June 1997, thus bringing his claim within the statute of limitations.

(4) At the hearing, the Board confirmed that Anderson did not intend to call Dr. Johnson to testify and that all of Anderson's documents, including doctor's reports, records and letters, with the exception of a recent opinion on total disability from Dr. Hershey, would be included in the record for its consideration. Anderson testified that: he went to Wilmington Hospital in June 1997 with a complaint of left shoulder pain; he was referred to Dr. Johnson, an orthopedic specialist, for that complaint; Dr. Johnson

diagnosed him with an impingement and arthritis; he told Dr. Johnson he worked on the line at General Motors in 1982 grinding the brass on cars and that this was difficult and repetitive overhead work; Dr. Johnson was currently treating him with physical therapy, anti-inflammatory medication and home exercise; and he worked at General Motors for 6 months, with at least one layoff during that period.

(5) During cross examination by General Motors' counsel, Anderson was asked about apparent inconsistencies in the dates of his employment with General Motors. He was also asked about Dr. Johnson's June 1997 office notes which stated he had "a long-standing history of intermittent left shoulder pain" and "had experienced occasional pain on and off at his job at GM." Anderson testified he did not recall making any such statements. When asked what evidence established a connection between his employment with General Motors and his current left shoulder problem, he pointed to the Board questionnaire filled out by Dr. Johnson which indicated a response of "yes" to the question, "In your opinion, is the patient's disability caused by work for General Motors or any other employer?" The questionnaire also stated: "Patient's arm positioning over time has caused impingement in shoulder."

In its decision denying Anderson's petition the Board found Dr. Johnson's June 1997 office notes to be the most credible evidence concerning when Anderson began to feel pain in his left shoulder.

(6) On December 28, 1998, Anderson moved for reargument before the Board. Anderson requested that the record be opened so the Board could consider the following additional evidence: a) a 1994 medical record from Dr. Ehrenthal, a physician whom Anderson had seen for back pain, stating that he had full range of motion in "his shoulder," b) a December 23, 1998 letter from Dr. Johnson stating that in June 1997 Anderson had denied a previous history of trauma and c) live testimony from Dr. Johnson. The Board denied the motion, stating that Anderson could have presented live testimony from Dr. Johnson at the hearing, but chose not to, and that consideration of the 1994 medical record, which was incomplete and unclear, and Dr. Johnson's 1998 letter, which was written for purposes of litigation, would not cause it to change its decision in any case.

(7) Whether Anderson's claim is barred by the statute of limitations is a mixed question of law and fact that requires this Court to determine whether the Board applied the correct legal standard and the Superior Court

was correct in concluding that the factual findings of the Board were supported by substantial evidence.[4] If such evidence exists and the Board's decision is free from legal error, the Superior Court's decision must be affirmed.[5] "'Substantial evidence'" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[6] A reviewing court is not free to substitute its own judgment for that of the Board, even if it would reach a different conclusion based upon the facts presented.[7] Moreover, it is the exclusive function of the Board to evaluate the credibility of witnesses.[8]

(8) We conclude the Board based its decision denying the petition on substantial evidence, and there was no error of law. While Anderson claims error in the Board's consideration of Dr. Johnson's June 1997 office notes, the Board was within its discretion and legally correct in considering all

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[4]*Id.*

[5]*Id.* (citing *Duvall v. Charles Connell Roofing*, Del. Supr., 564 A.2d 1132 (1989)).

[6]*Turbitt v. Blue Hen Lines, Inc.*, Del. Supr., 711 A.2d 1214, 1215 (1998) (quoting *Olney v. Cooch*, Del. Supr., 425 A.2d 610, 614 (1981)).

[7]*Johnson v. Chrysler Corp.*, Del. Supr., 213 A.2d 64, 66-67 (1965).

[8]*Vasquez v. Abex Corp.*, Del. Supr., No. 49, 1992, Horsey, J., 1992 WL 397454 (Nov. 5, 1992) (ORDER).

documentation presented at the hearing relevant to Anderson's claim, no matter which side presented it. The exclusion of relevant, material and competent evidence by an administrative agency will be grounds for reversal if that refusal is prejudicial.[9]

(9) Anderson suggests he was surprised by the submission of Dr. Johnson's June 1997 office notes at the hearing and did not have an opportunity to prepare a response. He was aware, however, that the sole purpose for the hearing on remand was a determination of when he first had knowledge of a work-related injury. It should have been apparent to him that Dr. Johnson's treatment records were relevant to that issue. Moreover, all such records would have been readily available to him for review.[10]

(10) There is substantial evidence supporting the Board's decision. Dr. Johnson's June 1997 office notes reflect Anderson's awareness of a left shoulder problem during his 1982 employment with General Motors. The Board found this evidence to be more credible than Anderson's testimony

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[9]*Torres v. Allen Family Foods*, Del. Supr., 672 A.2d 26, 32 (1995).

[10]General Motors takes the position that Anderson himself submitted the June 1997 office notes by attaching a copy to his petition. A review of the hearing transcript indicates that Anderson was familiar with the document and had at least some awareness that it had been attached to his petition.

concerning when he first experienced left shoulder pain. There was no abuse of discretion and no error of law on the part of the Board in weighing the evidence as it did.

(11) There was, finally, no abuse of discretion on the part of the Board in denying Anderson's motion for reargument so that further evidence could be presented. The record indicates it was Anderson's choice to rely solely on documentary evidence, rather than live testimony, at the hearing. Moreover, in its decision denying Anderson's motion for reargument, the Board stated it had reviewed the 1994 medical record from Dr. Ehrenthal and the 1998 letter from Dr. Johnson and found them to be less credible than Dr. Johnson's June 1997 office notes.

(12) It is manifest on the face of Anderson's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), General Motors' motion to affirm is GRANTED. The judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice