

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUIS MARTINEZ,	§	
	§	No. 514, 2006
Claimant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
GENERAL METALCRAFT, INC.,	§	C. A. No. 06A-01-003
	§	
Employer Below,	§	
Appellee.	§	

Submitted: January 24, 2007
Decided: February 21, 2007

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

ORDER

This 21st day of February 2007, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Luis Martinez (“Martinez”), the claimant-below appellant, appeals from a decision of the Superior Court affirming the Industrial Accident Board’s (“IAB”) denial of his petition for additional disfigurement compensation. Martinez contends that (i) the IAB erred in its application of 19 *Del. C.* § 2326 by awarding only ten weeks of disfigurement benefits; and (ii) the IAB erred by failing to sufficiently particularize its findings under *Colonial Chevrolet v. Conway*.¹ We conclude that the IAB’s decision is supported by the record, is free from legal

¹ 1980 Del. Super. LEXIS 145 (Del. Super. Apr. 28, 1980).

error, and the Superior Court properly upheld the IAB's decision, and, therefore, affirm.

2. The material facts are not in dispute. Martinez worked for General Metalcraft, Inc. ("Metalcraft") as a welder and developed varicose veins in his left leg as a result of his employment. Metalcraft agreed to compensate Martinez for his condition, and paid him total disability compensation from March 25, 1997 to May 15, 1997. Martinez was also compensated for a ten percent permanent impairment of his left leg as a result of the varicose veins. Although Martinez underwent surgery in March 2000, the varicose veins later reappeared.

3. The IAB held a hearing to determine the disfigurement to Martinez's left leg. At the hearing, Martinez showed the IAB his disfigurement and submitted photographs of his condition into evidence. As Martinez's counsel represented, the photographs showed that:

[t]he varicose veins on [Martinez's] left leg equal approximately twenty-seven inches in length; they are located on the inside of his left thigh, in front of the knee, and around the ankle; there are dark, coin-shaped spots on Mr. Martinez's knee, ankle and thigh; the varicose veins are popped out and look like vitamin capsules.²

4. Martinez testified that the varicose veins embarrassed him. The IAB accepted his testimony and found that "Martinez's disfigurements are visible and

² *Martinez v. General Metalcraft, Inc.*, 2006 Del. Super. LEXIS 376, at *2 (Del. Super. Aug. 22, 2006).

offensive when normally clothed.”³ The Board also determined that Martinez’s disfigurements were noticeable, although less noticeable than if he had scars on his hands or face. Applying 19 *Del. C.* § 2326(f)⁴ and assessing the factors delineated in *Conway*,⁵ the IAB awarded Martinez ten weeks of compensation for the disfigurement of his left leg.

5. The Superior Court affirmed the IAB’s decision. On this further appeal, Martinez presents two issues: (i) did the IAB err in its application of 19 *Del. C.* § 2326(f) by awarding only ten weeks of disfigurement benefits, and (ii) did the IAB err by failing to particularize its finding under *Conway*? We address those issues.

6. On appeal from a decision of an administrative agency, the reviewing court must determine whether the agency ruling is supported by substantial evidence and is free from legal error.⁶ Substantial evidence means such relevant

³ *Martinez v. Steel Works/General Metal*, IAB Hearing No. 1102826 (Dec. 29, 2005), at *3.

⁴ 19 *Del. C.* § 2326(f) provides, in relevant part: “[t]he Board shall award proper and equitable compensation for serious and permanent disfigurement to any part of the human body up to 150 weeks, provided that such disfigurement is visible and offensive when the body is clothed normally. . . .” 19 *Del. C.* § 2326(f) (2005).

⁵ 1980 Del. Super. LEXIS 145 (Del. Super. Apr. 28, 1980).

⁶ *State Dep’t of Lab. v. Med. Placement Serv., Inc.*, 457 A.2d 382, 383 (Del. 1982).

evidence as a reasonable mind might accept as adequate to support a conclusion.⁷ It is more than a scintilla but less than a preponderance of the evidence.⁸ The appellate inquiry, however, is limited.⁹ Weighing the evidence and determining questions of credibility that are implicit in factual findings are functions reserved exclusively for the IAB.¹⁰ The appellate court's review of questions of law is *de novo*.¹¹

7. Martinez first contends that the IAB failed to award him proper and equitable disfigurement benefits under 19 *Del. C.* § 2326(f). That statute relevantly provides that “the Board shall award proper and equitable compensation for serious and permanent disfigurement to any part of the human body up to 150 weeks, provided that such disfigurement is visible and offensive when the body is clothed normally”¹² *Colonial Chevrolet v. Conway*¹³ holds that when deciding what amount of compensation to award in disfigurement cases the IAB

⁷*Downes v. State*, 1993 Del. LEXIS 144, at *1 (Del. Mar. 30, 1993). See *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104-05 (Del. 1998), *Std. Distrib. v. Hall*, 897 A.2d 155, 157-58 (Del. 2006), and *Wenke v. GAICO*, 2006 Del. LEXIS 265, at *6-8 (Del. May 23, 2006).

⁸ *Downes v. State*, 1993 Del. LEXIS 144, at *1 (Del. Mar. 30, 1993).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Betts v. Townsends, Inc.*, 765 A.2d 531, 533 (Del. 2000).

¹² 19 *Del. C.* § 2326(f) (2005).

¹³ 1980 Del. Super. LEXIS 145 (Del. Super. Apr. 28, 1980).

must specify the following factors to determine the number of weeks of compensation to award: “1) the size, shape and particular location of disfigurement; 2) the social and psychological impact resulting from the disfigurement; 3) the comparative severity of the disfigurement; and 4) any other matters relevant to the Board’s determination on the amount of the award.”¹⁴ This Court has adopted the *Conway* formulation as an “accurate and appropriate interpretation of the statutory mandate.”¹⁵

8. Martinez argues that an award of ten weeks compensation was paltry, was “out of proportion to the serious and severity of [his] permanent disfigurement,” and was “not the product of an exercise of judgment directed by conscience and reason.” Martinez cites three cases as supporting his argument. The first, *Bagley v. Phoenix Steel Corp.*,¹⁶ was decided before *Conway*. In *Bagley*, there was no testimony regarding the employee’s disfigurement, the only evidence on the issue being photographs showing a scar.¹⁷ After examining the photographs, the Court held that the IAB had not set forth its reasons for arriving at its award and that the award fell significantly short of proper and equitable

¹⁴ *Id.* at *3-4.

¹⁵ *Murtha v. Cont’l Opticians, Inc.*, 1998 Del. LEXIS 24, at *3 (Del. Jan. 16, 1998).

¹⁶ 369 A.2d 1081 (Del. 1977).

¹⁷ *Id.* at 1083.

compensation.¹⁸ Therefore, this Court set aside an award of 15 weeks compensation for disfigurement of a leg.¹⁹

9. *Bagley* is distinguishable, because here the IAB reviewed the extensive evidence and considered the *Conway* factors, and its decision is supported by substantial evidence. After viewing Martinez's disfigurement in person, hearing Martinez describe his disfigurement condition, and reviewing photographs showing the disfigurement,²⁰ the IAB accepted Martinez's counsel's description of the disfigurement and addressed the *Conway* factors thusly:

The Board finds that the varicose veins on [Martinez's] left leg are noticeable. The varicose veins are located on the inside of the left thigh, in front of the knee, and around the ankle. There are also dark, coin-shaped spots on [Martinez's] left knee, ankle and thigh. The varicose veins are popped out from the skin and look like vitamin capsules.

The Board accepts [Martinez's] testimony that the varicose veins embarrass him. Located on the leg, the disfigurements are

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The IAB also found that: “[Martinez] displayed the varicose veins on his leg for the Board. The varicose veins are located on the inside of the left thigh, in front of the knee, and around the ankle. There are dark, coin-shaped spots on [Martinez's] knee, ankle and thigh. The varicose veins are popped out from the skin and look like vitamin capsules. Prior to the hearing, [Martinez] measured all of the varicose veins and they totaled twenty-seven inches. There are also discolorations on the right leg and varicose veins on the right calf, for which [Martinez] is not seeking compensation and [Metalcraft] has not accepted compensability for [Martinez's] right leg. [Martinez] believes that people notice the varicose veins and they are embarrassing to him.” *Martinez v. Steel Works/General Metal*, IAB Hearing No. 1102826 (Dec. 29, 2005), at *2.

noticeable, although less noticeable than scars would be on the face or hands.²¹

10. Based on these factual findings, the IAB concluded that: “[c]onsidering all the factors delineated in *Conway*, [Martinez] is awarded ten weeks of compensation for the disfigurement to his left leg.”²² Nothing in *Bagley* compels a conclusion that the award of ten weeks’ compensation in this case was “significantly short of proper and equitable compensation under the Statute,”²³ as was the case in *Bagley*.

11. Martinez also relies on *Taylor v. Hatzel & Buehler*,²⁴ although he concedes there are “differences between the facts in *Taylor* and in the instant case.” In *Taylor*, the employee was awarded 85 weeks of disfigurement benefits for severe electrical burns to *both of his hands*.²⁵ Here in contrast, Martinez “only suffered compensable disfigurement on one leg.”²⁶ As the Superior Court observed, “if Mr. Martinez’s injuries were on his face or hands, they would have

²¹ *Id.*, at *3.

²² *Id.*

²³ *Bagley v. Phoenix Steel Corp.*, 369 A.2d 1081, 1082 (Del. 1977).

²⁴ 258 A.2d 905 (Del. 1969).

²⁵ *Id.*

²⁶ *Martinez v. General Metalcraft, Inc.*, 2006 Del. Super. LEXIS 376, at *6 (Del. Super. Aug. 22, 2006).

been more noticeable, and presumably [he] would have received a larger award.”²⁷ *Taylor* is distinguishable. Moreover, Martinez failed to demonstrate how or why the IAB abused its discretion under *Taylor*.²⁸

12. Finally, Martinez points to *Lanham v. Garrison Lake Golf Course*,²⁹ which is also distinguishable. There, the IAB awarded ten weeks of disfigurement benefits to a claimant who had a scar one and one-half inches across, and one inch high, on his forehead.³⁰ Martinez argues that the IAB erred in awarding him a “mere ten weeks of compensation,” because (in contrast to *Lanham*) “he has many scars covering his left leg which are highly offensive.” But *Lanham* involved a forehead scar, which was more visible, noticeable and offensive than the leg scars Martinez sustained. In summary, Martinez has failed to show that the IAB erred in its application of 19 *Del. C.* § 2326.

13. Martinez next contends that the IAB failed to particularize its findings as to the *Conway* factors, and that therefore, the IAB’s decision is not supported by substantial evidence. We disagree. The IAB is “required to explicitly state the

²⁷ *Id.*

²⁸ Martinez is therefore deemed to have abandoned the argument in his brief. *Stevens v. State*, 1996 Del. LEXIS 68, at *5 (Del. Jan. 24, 1996).

²⁹ IAB Hearing No. 1240658 (Mar. 2, 2005).

³⁰ *Id.*

facts upon which its decisions are based.”³¹ “Despite the subjective nature of the board’s decision in a disfigurement case, it is nonetheless required to particularize its findings of fact so that the court can conduct its appellate review.”³² Nonetheless, in cases where the “employee [is] the only witness before the [IAB] and there [are] no disputes of fact,”³³ a “somewhat less particularized findings may be acceptable to an appellate court.”³⁴

14. Here, the IAB made efforts to identify the factors it considered in determining Martinez’s disfigurement compensation, specifically Section 2326(f) and under *Conway*. The IAB made findings of fact relating to these factors, all of which are supported by substantial evidence in the record. Regarding “the size, shape and particular location of disfigurement,”³⁵ the IAB found that the varicose veins on Martinez’s left leg were noticeable, and that varicose veins were located on the inside of the left thigh, in front of the knee and around the ankle.³⁶ The IAB

³¹ *Pollard v. Placers, Inc.*, 1996 Del. Super. LEXIS 371, at *12 (Del. Super. May 20, 1996); *See Branch v. Chrysler Motors Corp.*, 1996 Del. Super. LEXIS 372, at *9 (Del. Super. May 20, 1996); *Bordley v. Mid-Del Employment*, 1995 Del. Super. LEXIS 90 at *6, (Del. Super. Feb. 13 1995).

³² *Pollard v. Placers, Inc.*, 1996 Del. Super. LEXIS 371, at *13-14 (Del. Super. May 20, 1996).

³³ *Id.* at *15.

³⁴ *Id.*

³⁵ *Conway*, *supra* note 13, at 4.

³⁶ *Martinez v. Steel Works/General Metal*, IAB Hearing No. 1102826 (Dec. 29, 2005), at *3.

also noted the dark, coin-shaped spots on Martinez's left knee, ankle and thigh.³⁷ The IAB further found that the varicose veins protruded from the skin and looked like vitamin capsules.³⁸ The IAB adequately addressed the first *Conway* factor.

15. Regarding the second factor, "the social and psychological impact resulting from the disfigurement,"³⁹ the IAB accepted Martinez's testimony that the varicose veins embarrass him,⁴⁰ and found that the varicose veins were noticeable, although less noticeable than they would be if located on his face or hands.⁴¹ Therefore, the IAB took into account the social and psychological impact of the disfigurement suffered by Martinez.

16. The third *Conway* factor concerns the comparative severity of the disfigurement.⁴² Having reviewed the record, we find the IAB compared the disfigurement on Martinez's left leg (which was compensable) to the disfigurement

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Conway, supra* note 13, at 4.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

on his right leg (which was not).⁴³ The IAB further noted the discolorations on Martinez's right leg and the varicose veins on his right calf.⁴⁴

17. Because this case involved no disputes of fact and Martinez was the only witness, the IAB was given latitude to make somewhat less particularized findings than would otherwise be required. After carefully considering the evidence of record, including Martinez's brief testimony, the photographs depicting Martinez's disfigurement and the IAB's recollection of Martinez's varicose veins, we conclude that the IAB made particularized findings sufficient to enable this Court to review the IAB's disfigurement compensation decision. Because substantial evidence supports that decision, this claim is without merit as well.

⁴³ The transcript containing the relevant dialogue between counsel and the IAB's hearing officer reads as follows:

[Martinez's counsel]: Would you [Martinez] please step forward and show the Board your leg.

[Metalcraft's counsel]: Members of the Board my only request is that you see both legs so you can compare one to the other. Only the left leg is compensable.

[IAB member]: Okay. Would you [Martinez] show us you're [sic] other leg as well? Alright and where exactly is the surgery site.

Martinez v. Steel Works/General Metal, IAB Hearing No. 1102826 (Dec. 29, 2005), at *2.

⁴⁴ *Id.*

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice