

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ROLAND C. ANDERSON,)	
Claimant - Appellant,)	
)	
v.)	C.A. No: 01A-07-003 RSG
)	
GENERAL MOTORS CORP.,)	
Appellee.)	

Submitted: December 17, 2001
Decided: January 29, 2002

Upon Appeal from a Decision of the Industrial Accident Board.
Decision AFFIRMED.

ORDER

Having reviewed the parties' submissions in this appeal of a decision of the Industrial Accident Board ("Board")'s decision denying Roland C. Anderson ("Claimant")'s claim for failing to provide a causal link between his 1999 injury and his work for General Motors, the Court concludes as follows:

- 1. Claimant worked for General Motors for about six months in 1981 and 1982.**
- 2. According to the Board, Claimant complained of right shoulder pain in April 1999. While according to Claimant's Petition to Determine Compensation Due to an Injured Employee dated May 15, 2000, his date of injury was June 9, 1997.**
- 3. Claimant did not attend the hearing that was held on Claimant's petition by the Board to determine compensation due on June 4, 2001, claiming that he was at a doctor's**

appointment at that time because of severe pain. In this context, Claimant produced a note from Spine Care of Delaware stating that he had dropped off medical records at a doctor's office that day.

4. At the June 4, 2001 hearing, according to the deposition testimony of Dr. Joseph A. Arminio presented by General Motors, Claimant's condition was not related to his work at General Motors to a reasonable degree of medical certainty. The reason was that Claimant had worked at General Motors for only six months, and that was almost nineteen years ago.

5. In its June 15, 2001 decision, the Board stated that on his Petition to Determine Compensation Due, Claimant had been unable to meet the burden of proving that his right shoulder problem was caused by his work activities at GM. Also, the Board accepted Dr. Arminio's opinion that Claimant's right shoulder was normal in 1994. The Board found that Claimant had failed to show that his work activities at GM in 1981 and 1982 caused his right shoulder problems, and denied Claimant's Petition to Determine Compensation Due.

6. Claimant appeals the June 15, 2001 decision of the Board denying the Claimant's petition for temporary total disability benefits for his right shoulder on the basis that (a) General Motors expert witness was not an expert, (b) there exists evidence that proves that Claimant was not at the doctors office to simply drop off records, and (c) important medical records that would have proved Claimant's case were kept out of the June 4, 2001 hearing.

7. The Supreme Court and this Court have repeatedly emphasized the limited

appellate review of the factual findings of an administrative agency. The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It is within the exclusive purview of the Board to determine and weigh the credibility of witnesses and the Court will not disturb these findings.⁴ The Court merely determines if the evidence is legally adequate to support the agency's factual findings.⁵

8. Dr. Arminio, the General Motor's expert witness is Board certified and has been accepted as an expert witness many times before the Board. As held by the Board while reviewing Claimant's petition for requesting a continuance, Claimant was present at Dr. Arminio's deposition and had ample opportunity to cross-examine him, but did not do so. Also, he never indicated that he had evidence to rebut Dr. Arminio's testimony.

9. In a worker's compensation case, the Claimant bears the burden of proof for causation. At the hearing in front of the Board that was held on June 4, 2001, the Claimant

¹ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. dismiss.*, 515 A.2d 397 (Del. 1986).

³ *Johnson v. Chrysler*, 213 A.2d at 66.

⁴ *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975), *aff'd* 364 A.2d 651 (1976).

⁵ 29 Del. C. § 10142(d).

did not meet his burden, since he did not provide testimony or witnesses to support his claim, or even attend the hearing.

10. Claimant is essentially asking this Court to take into account evidence that was not presented to the Board, determine questions of credibility, and make its own factual findings, which is not the function of the reviewing Court.

Based on the foregoing reasons, the Board's decision denying Claimant's petition for temporary total disability benefits for his right shoulder is AFFIRMED.

IT IS SO ORDERED.

The Honorable Richard S. Gebelein

**Orig: Prothonotary
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