

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

MICHAEL J. DANKANYIN, :
 : C.A. No. K11A-01-005 WLW
Claimant-Below, Appellant, :
 :
v. :
 :
J.W. WALKER & SONS, INC., :
 :
Employer-Below, Appellee. :

Submitted: June 29, 2011
Decided: September 16, 2011

ORDER

Upon an Appeal of the Decision of the
Industrial Accident Board.

Affirmed

Michael J. Dankanyin, *pro se*

Robert H. Richter, Esquire and Nathan V. Gin, Esquire of Elzufon Austin Reardon
Tarlov & Mondell, P.A., Wilmington, Delaware; attorneys for the Appellee.

WITHAM, R.J.

Facts

This is an appeal from an Order of Dismissal without prejudice from the Industrial Accident Board (hereinafter IAB) dated December 20, 2010. The Appellant, Michael John Dankanyin, filed Petitions to Determine Additional Compensation Due on April 23, 2010 and August 19, 2010 seeking payment for medical treatment performed by a non-certified provider and approval for treatment by a non-certified treatment provider that he alleged was causally related to a previous work accident from March 24, 2008. The Appellant previously stipulated with his employer to a settlement of Partial Disability, pursuant to 19 Del. C. § 2325, that did not preclude later application for medical expenses.¹

The IAB consolidated the Appellant's claims, and a hearing was conducted on December 20, 2010. The Appellee, J.W. Walker & Sons, Inc., opposed the petition. The Appellant presented no medical testimony as to his need for medical treatment. On the same day, the IAB issued an Order dismissing the Claimant's Petitions to Determine Additional Compensation Due without prejudice. The Claimant appealed this decision on January 26, 2011. The Claimant filed an Opening Brief on March 21, 2011. On May 9, 2011, the Appellee requested an Order Extending the Brief Schedule, which was granted for an answer no later than June 9, 2011. The Appellee filed its Answer on June 8, 2011.

Standard of Review

The function of Superior Court in evaluating an appeal from the Industrial

¹Order at ¶ 2.

Michael J. Dankanyin v. J.W. Walker & Sons, Inc.

C.A. No. K11A-01-005 WLW

September 16, 2011

Accident Board is to determine whether there exists substantial evidence free from legal error to support the finding of the Board.² Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a particular conclusion.³ In reviewing the record for substantial evidence, the Court will consider the record in the light most favorable to the party prevailing below.⁴ Only when no satisfactory proof in support of a factual finding of the Board exists, may Superior Court overturn a decision of the Board.⁵ Superior Court does not hold responsibility as a trier of fact with authority to weigh evidence, determine credibility, or to make findings of fact and conclusions.⁶

Medical testimony is necessary to establish the injury and the causal connection between act done by the claimant and the injury.⁷ An employer is obligated to pay the necessary and reasonable medical expenses related to an employee's work injury.⁸

Discussion

_____The Appellant advances three grounds for appeal. First, the Appellant states,

²*General Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super. 1985).

³*Parks v. Wal-Mart*, 2004 WL 1427016 (Del. Super. 2004).

⁴*Benson v. Phoenix Steel*, 1992 WL 354033 (Del. Super. 1992).

⁵*Johnson v. Chrysler Corp.*, 213 A.2d 64, 67 (Del. 1965).

⁶*Id.* at 66.

⁷*McCormack Transp. Co. v. Barone*, 89 A.2d 160, 162-63 (Del. Super. 1952).

⁸19 Del. C. § 2322(a) (2011); *e.g. Waples v. State*, 2004 WL 2828279 (Del. Super. 2004).

Michael J. Dankanyin v. J.W. Walker & Sons, Inc.

C.A. No. K11A-01-005 WLW

September 16, 2011

“My witness listed on the pretrial memorandum was not sworn in nor allowed to speak.” Second, the Appellant states, “Did not address approval for John [sic] Hopkins neurosugery [sic].” Third, the Appellant states, “Settlement agreement medical/milage was paid, and reimbursed until agreement was signed.” Each ground is addressed in turn.

The Appellant complains that his “witness” was not allowed to swear in and was not allowed to speak. It appears from the record that the Appellant is referring to his wife.⁹ Given that the Hearing Officer repeatedly asked the Appellant whether he had any medical witnesses to give testimony as to the necessity of his past treatment and certification for his future treatment in relation to his 2008 work-related accident, it is safe to assume that the Appellant’s wife has no medical qualifications. Thus, as the Appellant’s wife has no medical qualifications and was not a party to the action, it was within the IAB’s discretion to prevent her testimony as it would have been irrelevant or hearsay as to the statements of her husband’s medical providers.

The Appellant’s second complaint was that the IAB did not address approval of medical treatment by a neurosurgeon. The Appellant bears the burden of proof in proving the necessity of medical treatment by a non-certified medical provider.¹⁰ Medical testimony is required to establish the injury and the causal connection

⁹See Hearing at 7.

¹⁰See 19 Del. C. 2322D (2011).

between the act done by the claimant and the injury.¹¹ Although the Appellant may have had documentation from his non-certified medical provider, he offered no testimony demonstrating the necessity of his medical treatment or the necessity of his treatment by a non-certified provider. The Appellant did not sustain his burden of proof. Thus, there is substantial evidence free from legal error that the IAB properly dismissed the claim of the Appellant.

The Appellant's third complaint appears to be that his medical reimbursement and milage was cut off after his partial disability agreement was approved. This appears to be as a result of the employer's challenge as to "the reasonableness, necessity and relatedness [of] that treatment."¹² Although the timing of the employer's dispute as to the Appellant's medical treatment is certainly suspicious, and the Court questions the good faith of the dispute, the Superior Court does not hold responsibility as a trier of fact with authority to weigh evidence, determine credibility, or to make findings of fact and conclusions.¹³ Because the Appellant presented no adequate medical testimony and thus did not sustain his burden, the IAB had substantial evidence free from legal error to dismiss the claim.

Conclusion

_____The Appellant presented no adequate medical testimony and thus did not

¹¹*McCormack Transp. Co. v. Barone*, 89 A.2d 160, 162-63 (Del. Super. 1952).

¹²Def. Answer at 9.

¹³*Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

Michael J. Dankanyin v. J.W. Walker & Sons, Inc.

C.A. No. K11A-01-005 WLW

September 16, 2011

sustain his burden. The Industrial Accident Board had substantial evidence free from legal error to dismiss the Appellant's claim. The appeal is hereby denied and the decision of the Industrial Accident Board is *affirmed*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Mr. Michael Dankanyin
Robert H. Richter, Esquire
Nathan V. Gin, Esquire
File