

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

FELIPE MARRERO,)	
)	
Appellant,)	
)	
v.)	C.A. No. 01A-08-004 CG
)	
WILMINGTON PIECE DYE)	
COMPANY,.)	
)	
)	
Appellee.)	

Date Submitted: January 17, 2002
Date Decided: February 20, 2002

On Appeal from the Industrial Accident Board. **AFFIRMED.**

ORDER

Matthew M. Bartkowski, Kimmel, Carter, Roman & Peltz, Wilmington, Delaware, Attorney for Appellant.

Robert W. Ralston, Wilmington, Delaware, Attorney for Appellee.

GOLDSTEIN, J.

This 20th day of February, 2002, upon review of the papers filed by the parties in this case and the record of the proceedings below, it appears that:

(1) On May 7, 1999, Appellant, Felipe Marrero, was injured in an industrial accident while working for Appellee, Wilmington Piece Dye Company. As a result of the accident, Marrero lost the tip of his right little finger. On May 3, 2001, Marrero filed a petition to receive disfigurement benefits for the partial amputation of his finger. On July 12, 2001, the Board held a hearing to consider Marrero's petition. On July 24, 2001, the Board issued its decision awarding Marrero six weeks compensation for the disfigurement and the payment of reasonable attorney's fees. Marrero has now appealed the Board's award to this Court.

(2) Marrero was the sole witness at the hearing. Marrero, through an interpreter, testified that on the day of the accident he was loading a truck using a lifter. Marrero's little finger got caught between the truck and a steel rod. As a result, the tip of the finger was severed. Marrero testified that he went to the emergency room and later saw a plastic surgeon.

(3) Marrero testified that the scar resulting from the accident sometimes hurt and was sometimes numb and that the scar peeled a lot. Marrero stated that people noticed the disfigurement to his hand and that it caused him embarrassment when he shook hands with someone. Marrero also testified that he used to play games such as dominoes and that he can no longer do so because he "can't hold things the way he used to." The Board

viewed the disfigurement to Marrero's little finger and compared the finger with the uninjured finger on Marrero's other hand.

(4) On July 12, 2001, the Board issued its written decision. The Board awarded Marrero six weeks of compensation for his disfigurement at the rate of \$274.67 per week and attorney's fees in the amount of \$400.

(5) In its summary of the evidence, the Board described Marrero's disfigurement:

His little finger is amputated to the point of the distal phalange. Thus, the portion containing the fingernail is completely gone. Comparing Claimant's right hand to his uninjured left hand, the Board estimates that about half an inch is missing from the right little finger. The end of the finger is thick and blunt. On the underside of the finger there is a slight scar. The finger is not discolored.

In support of its award of six weeks of compensation for the disfigurement to Marrero's finger, the Board stated:

The Board fully described the size, shape and location of the disfigurement in the Summary of Evidence, and incorporates that description here. The finger is blunt-ended. It does not taper to a nail, as an uninjured finger does. The Board accepts Claimant's testimony that the loss of a portion of his little finger is noticeable and that it causes him embarrassment. The finger's coloration is normal, so attention is not drawn to it for that reason. The partial amputation would become apparent, however, when the hand is in use, such as when shaking hands or holding objects. The small scar is very slight and not particularly noticeable. While the loss of a body part is generally a more severe disfigurement than a simple scar, the small portion amputated from Claimant's finger is a far less

severe disfigurement than, for example, the loss of a whole finger or a hand or a limb.

(6) The role of this Court, in reviewing a decision of the Board, is to determine whether the Board's factual findings are supported by substantial evidence.¹ "Substantial evidence" has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² A finding that the Board's award under 19 *Del. C.* § 2326(f) is not proper and equitable compensation is equivalent to a finding that there is not substantial evidence to support the award.³

(7) Marrero argues on appeal that the Board's decision awarding him six weeks of disfigurement benefits for the partial amputation of his right little finger is not supported by substantial evidence in the record. Marrero points out that the Board found that the loss of a body part is generally more severe than a simple scar. Marrero argues that the Board's award of six weeks of disfigurement benefits is too low and is in "direct odds with its prior finding that [Marrero] has a noticeable scar that causes him embarrassment and is more severe than a simple scar." Marrero contends that the Board's award is not supported, given its own findings.

(8) The Board is authorized to award "proper and equitable compensation for serious and permanent disfigurement to any part of the human body up to 150 weeks,

¹ *Histed v. E. I. duPont de Nemours*, 621 A.2d 340, 342 (Del. 1993).

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

³ *Bagley v. Phoenix Steel Corp.*, 369 A.2d 1081, 1083 (Del. 1977).

provided that such disfigurement is visible and offensive when the body is clothed normally... .”⁴ The Board is required to particularize its findings of fact in determining an appropriate award.⁵ The Board should take into account the size, shape and particular location of the disfigurement, the social and psychological impacts suffered by the claimant as a result of the disfigurement, the comparative severity of the claimant’s disfigurement, and any other matters the Board believes to be relevant.⁶

(9) As quoted above, the Board set forth with sufficient particularity its findings using the *Colonial Chevrolet* factors. The Board gave a detailed description of the disfigurement and found that the amputation was noticeable and that it caused Marrero embarrassment. As Marrero points out, the Board acknowledged that the loss of a body part generally is a more severe disfigurement than a simple scar. However, the Board found that “the small portion amputated from Claimant’s finger is a far less severe disfigurement than, for example, the loss of a whole finger or a hand or a limb.”

(10) The Court cannot find, upon review of the record and the Board’s findings of fact, that the Board’s award of six weeks benefits for disfigurement is, as Marrero

⁴ Del. Code Ann. tit. 19, § 2326(f) (1995).

⁵ *Farley v. Sears, Roebuck & Co.*, 258 A.2d 293, 294 (Del. Super. Ct. 1969).

⁶ *Colonial Chevrolet, Inc. v. Conway*, Del. Super., C.A. No. 79A-FE-13, Longobardi, J. (Apr. 28, 1980), Order at 2 . See also *Murtha v. Continental Opticians, Inc.*, Del. Supr., No. 395, 1997, Walsh, J. (Jan. 16, 1998), Order at 1. (“We adopt the Colonial Chevrolet formulation as an accurate and appropriate interpretation of the statutory mandate.”)

contends, inconsistent with its findings or insufficiently supported by those findings. The Court finds that substantial evidence in the record supports the Board's award.

Therefore, for the foregoing reasons, the Board's decision is hereby

AFFIRMED.

IT IS SO ORDERED.

Carl Goldstein, Judge

oc: Prothonotary