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

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| ANGELA NEELEY, | : | |
| | : | C.A. No: 07A-01-002 |
| Appellant, | : | |
| | : | |
| v. | : | |
| | : | |
| STATE OF DELAWARE, | : | |
| | : | |
| Appellees. | : | |

Submitted: May 14, 2007
Decided: August 15, 2007

Craig T. Eliassen, Esq., Schmittinger & Rodriguez, P.A., Dover, Delaware for Appellant.

Kimberly Ann Harrison, Esq., Marshall, Dennehy, Warner, Coleman & Goggin, Wilmington, Delaware for the Appellees.

***Upon Consideration of Appellant's Appeal***
***from the Decision of the Industrial Accident Board***
**REMANDED**

Young, J.

The Claimant below, Angela Neeley ("Claimant"), is the Appellant in this action. The Claimant appeals the December 11, 2006 decision of the Industrial Accident Board ("IAB" or "Board"),[1] which granted the Claimant's Petition to Determine Additional Compensation Due. On appeal, the Claimant contends that the Board erred in failing to award total disability benefits beyond August 5, 2006.

**FACTS**

On March 19, 2004, the Claimant sustained an industrial accident while an employee of the Delaware Hospital for the Chronically Ill ("Hospital" or "Employer"). As a result of her accident, the Claimant underwent two surgeries to her lower back. The first surgery was performed on July 2, 2004 and the second, a spinal fusion, on November 9, 2004.

The Claimant was unable to return to her employment at the Hospital following her back injury. On April 24, 2006, the Claimant re-entered the work force on a part-time basis. In an effort to place the Claimant in a position that was physically less demanding than the one she held at the Hospital, a temporary agency placed the Claimant in a clerical position at an eye doctor's office. The Claimant's employment at the office was short lived, ending on May 15, 2006. On that date, the Claimant, citing extreme pain caused by work related activities, was examined by her surgeon, Dr. B. S. Venkataramana ("Dr. Venkataramana") who diagnosed her with "failed back syndrome." Consequently, Dr. Venkataramana placed the Claimant on a no-duty status for a period of one year.

On June 26, 2006, the Claimant filed a Petition to Determine Additional

[1] *Neeley v. State of Delaware,* IAB Hearing No. 1260061 (December 11, 2006).

Compensation Due with the IAB seeking recurrence of total disability benefits associated with her March, 2004 work injury. The hearing on the matter was scheduled for November 1, 2006.

On August 5, 2006, prior to the scheduled hearing, the Claimant was involved in a motor vehicle accident. The Claimant was rear-ended by another vehicle while stopped at a traffic light. The accident occurred after the Claimant had picked up a cell phone in Newark, Delaware, and was driving home. It is undisputed that the Claimant's pain level increased following the accident.

On November 1, 2006, the Board held the hearing on the Claimant's Petition. After considering the evidence presented at the hearing, the Board rendered its decision on December 11, 2006. In that decision, the Board granted the Claimant's Petition to Determine Additional Compensation Due. Specifically, the Board awarded the Claimant total disability benefits from May 15, 2006 to August 5, 2006. By date of the period of compensation, and by default of any comment thereon, the Board, evidently, found that since August 5, 2006, the Claimant's disability was causally related to the her motor vehicle accident and not her industrial accident. Therefore, the Board awarded additional disability benefits only through August 5, 2006.

Thereafter, the Claimant filed a timely appeal to this Court. On appeal, the Claimant contends that the Board erred in failing to award total disability benefits beyond August 5, 2006.

## STANDARD OF REVIEW

The scope of review for an appeal of an IAB decision is limited to examining the record for errors of law and determining whether substantial evidence is present on the record to support the Board's findings of fact and conclusions of law.[2] "Substantial Evidence" is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[3] On appeal, the court does not "weigh the evidence, determine questions of credibility, or make its own factual findings."[4] The court is simply reviewing the case to determine if the evidence is legally sufficient to support the agency's factual findings.[5] When the issue raised on appeal from the IAB is exclusively a question of the proper application of the law, review by this Court is *de novo*.[6]

## DISCUSSION

In its decision on the Claimant's Petition to Determine Additional Compensation Due, the IAB made the following findings of fact and conclusions of law:

> "Where there is a conflict in the medical testimony, the Board must decide which physician is more credible. As long as there is substantial evidence to support the decision, the Board may accept the

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[2] *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *Johnson v. Chrysler Corp.,* 213 A.2d 64, 66 (Del. 1965).

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

[4] *Johnson,* 213 A.2d at 66.

[5] *ILC of Dover, Inc. v. Kelley,* 1999 Del. Super. LEXIS 573 at *3.

[6] *Porter v. Insignia Mgmt. Group*, 2003 Del. Super. LEXIS 360 at *8.

> testimony of one physician over another. In the case at hand, the Board finds that Dr. Venkataramana' s opinion is more persuasive than the opinion of Dr. Meyers. Dr. Venkataramana is Claimant's treating physician, who has seen her numerous times over the years and is very familiar with Claimant and her condition.
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> After Claimant attempted to work, her symptoms worsened and the Board finds that it was reasonable for Dr. Venkataramana to place her on total disability status as of May 15, 2006, with her increased symptoms. Even Dr. Meyers thought that there were no signs of symptom magnification during his examinations and he agreed that Claimant had failed back syndrome and will have pain for the rest of her life. The Board finds, however, that the August 5, 2006 motor vehicle accident worsened Claimant's condition, based on the testimony of Claimant and both doctors. Therefore, since August 5, 2006, Claimant's total disability has been causally related to the motor vehicle accident rather than the industrial accident.
>
> Based on the foregoing, the Board finds that Claimant has met her burden of proof. Claimant is entitled to total disability benefits from May 15, 2006 until August 5, 2006 causally related to her industrial accident."[7]

This appeal concerns the determination by the Board that the Claimant is not entitled to total disability benefits after August 5, 2006. The crux of the Claimant's argument on appeal is that the Board erred when it failed to consider "the direct and natural results" causation test when determining the Claimant's total disability period. More specifically, that a work-related injury remains compensable when aggravated by a subsequent, non-work related accident that is not attributable to the employee's

[7]*Neeley v. State of Delaware,* IAB Hearing No. 1260061 at *7-8 (December 11, 2006).

own negligence or fault.

The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[8] The rule of causation where an employee's work-related injury is aggravated by a subsequent, non-work related accident is set fort in a line of cases beginning with *Hudson v. E. I. DuPont de Nemours & Co., Inc.*[9] In *Hudson,* this Court held that "a subsequent injury is compensable only if it follows as a direct and natural result of the primary compensable injury."[10] The Court also observed that if the subsequent injury is attributable to the employee's own negligence or fault, the chain of causation is broken and the subsequent injury is not compensable.[11]

In *Barkley v. Johnson Controls*,[12] the Court discussed the concept of "direct and natural results" as to compensable injuries, and how the chain of causation may be broken by an employee's own negligent behavior.[13] The Court went on to state

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[8]1 Arthur Larson, *Larson's Workers' Compensation Law* § 10.01.

[9]245 A.2d 805 (Del. Super. 1968).

[10]*Id.* at 810; 1 Arthur Larson, *Larson's Workers' Compensation Law* § 10.01.

[11]*Hudson* at 810; 1 Arthur Larson, *Larson's Workers' Compensation Law* § 10.01; *Amoco Chemical Corp. v. Hill*, 318 A.2d 614 (Del. Super. 1974) (The Claimant disregarded warnings and restrictions placed upon him by his attendant doctors and aggravated a back injury he sustained at work while playing basketball. The Court held that the Claimant's subsequent injury, the aggravation of the back injury, was not compensable because the chain of causation had been broken due to the Claimant's own negligence, an intervening cause.)

[12]2003 Del. Super. LEXIS 21.

[13]*Id.* at *10.

that, "under this rule, absent such negligence, a weakened condition stemming from a compensable injury may be deemed the cause of an aggravation of the injury which occurs in a subsequent non-work related accident."[14]

Clearly, "an employer is not relieved of responsibility for an employee's work-related injuries that are aggravated by a subsequent, non-work related event that was not caused by the employee."[15]

The Employer proffers a different interpretation of the "direct and natural results" test.[16] Although the Employer's interpretation may very well fit within the

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[14]*Id.* quoting *Groce v. Johnson's Used Cars,* 1997 Del. Super. LEXIS 240 at *8-9; 1 Arthur Larson, *Larson's Workers' Compensation Law* § 10.06[2]. *See, e.g., Delhaize America, Inc., a/k/a Food Lion v. Ling*, 2005 Del. Super. LEXIS 146 (The Claimant's work-related back injury was aggravated when she was rear-ended by a drunk driver. The Court affirmed the IAB's decision, which held that the Claimant's condition was compensable. The IAB reasoned that the Claimant's primary injury was caused by her industrial accident and that that accident left her back in a weakened condition. The subsequent non-work related motor vehicle accident simply aggravated the Claimant's primary compensable injury.); *Stratton v. Bayhealth Medical Center*, 2005 Del. Super. LEXIS 367 (The Claimant slip-and-fell on ice and tore her rotator cuff. The Claimant argued that her torn rotator cuff was caused by a prior work-related accident and shoulder injury. The Court affirmed the IAB's decision, which held that the injury was not compensable, because it was not caused by the prior work injury. After hearing conflicting testimony, the IAB reasoned that the primary injury occurred at the time of the slip-and-fall and thus, was not related to the prior work accident.)

[15]*Delhaize America, Inc.,* 2005 Del. Super. LEXIS 146 at * 5-6; *Stratton*, 2005 Del. Super. LEXIS 367 at * 7-8; 1 Arthur Larson, *Larson's Workers' Compensation Law* §§ 10.02, 10.06[2].

[16]The Employer contends that the test was not intended to extend to subsequent, non-related work accidents that did not result from the Claimant's disabled condition. Rather, injuries sustained from a non-related work accident are only compensable if the Claimant's disabled condition from a work-related injury caused the non-work related accident.

confines of the "direct and natural results" causation test,[17] it is overly narrow.[18] Moreover, it is inapplicable to the circumstances presented by the facts of this case.[19]

The IAB clearly determined that the Claimant had satisfactorily demonstrated that she had suffered a recurrence of her industrial injury between May 15, 2006 and August 5, 2006. The Board's decision to award total disability during that time is free from legal error, supported by substantial evidence and, more importantly, has not been appealed by the Employer.

The problem, however, lies in the Board's use of the August 5, 2006 cut-off date. The Board seems to have concluded that, because the Claimant's back injury was worsened by the August, 2006 motor vehicle accident, the Claimant's total disability subsequent to the motor vehicle accident was the result of that accident, rather than her industrial accident. Such a finding would indicate that the back injury sustained in the automobile accident was not a direct and natural result of the work-related injury, and was a superceding event bringing about any post August 5 disability. The December 11, 2006 analysis and decision of the Board does not address that, unfortunately.

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[17]Certainly, there are situations where a non-related work accident occurs due to an employee's compensable, work-related injury. Depending on the circumstances, injuries sustained from that non-related work accident can be deemed compensable. *See* 1 Arthur Larson, *Larson's Workers' Compensation Law* §§ 10.04, 10.06[1].

[18]*See generally* 1 Arthur Larson, *Larson's Workers' Compensation Law* 10.01-10.12 (Larson's chapter on the "Range of Compensable Consequences.")

[19]There is no evidence in the record that the Claimant's compensable back injury caused her non-work related automobile accident, *i.e.* the Claimant was simply rear-ended while stopped at a traffic light.

Here, the Board concluded that the Claimant's back injury and resulting total disability was caused by a recurrence of her industrial accident from May 15, 2006 to August 5, 2006, but caused by her motor vehicle accident thereafter. Thus, according to the Board, the Claimant's back injury and total disability were the result of her industrial accident one day, but the result of her automobile accident the very next. The Board's only observable reasoning behind this finding was that the Claimant's condition worsened following the motor vehicle accident. The fact that the Claimant's work-related injury was exacerbated by the motor vehicle accident does not, in-and-of itself, relieve the Employer of responsibility for the primary compensable work injury.

Thus,, the Board erred in failing to consider the causation rule of "direct and natural results" when rendering its decision. Accordingly, this case will be remanded to the IAB so that it may make additional findings and conclusions applying this rule of causation. Specifically, the Board should determine from evidence whether, absent the motor vehicle accident, the Claimant would nevertheless have been totally disabled.

For the foregoing reasons, the Board's decision is ***REMANDED*** for further proceedings consistent with this decision.

**SO ORDERED**.

/s/ Robert B. Young
J.

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