

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

FRANK OATRIDGE,)	
)	
Claimant-Appellant,)	
)	CIVIL ACTION NUMBER
v.)	
)	00A-06-009-JOH
ALLIED SYSTEMS, LTD.,)	
)	
Employer-Appellee.)	

Submitted: November 1, 2000

Decided: January 25, 2001

MEMORANDUM OPINION

*Upon Appeal from a Decision of the
Industrial Accident Board - AFFIRMED*

Mr. Frank Oatridge, Jr., of Shavertown, Pennsylvania, claimant-appellant, *pro se*

Dennis J. Menton, Esq. of Tybout, Redfearn & Pell, attorney for employer-appellee

HERLIHY, Judge

Frank Oatridge appeals the decision of the Industrial Accident Board denying him partial disability benefits and granting his employer's petition to terminate them. He was working as a truck driver for Allied Systems, Ltd. when he injured his back on the job in May 1999.

A doctor who treated Oatridge told the Board that Oatridge had suffered a disk herniation as a result of that incident and could perform only sedentary work. Physicians testifying for Allied said, however, that Oatridge had not suffered a disk herniation. Also, they could find no objective signs of injury or other condition which was consistent with Oatridge's ongoing complaints of pain at a rather higher level.

The Board found Oatridge's pain complaints not credible, rejected his doctor's opinion founded on those complaints and chose to accept the medical testimony of Allied's doctors. Since the Board decision is supported by substantial evidence, it is AFFIRMED.

FACTUAL BACKGROUND

Oatridge's job with Allied was to drive a car hauler truck. He was also responsible for loading and unloading cars on these trucks. While performing that work on May 12, 1999, Oatridge was pulling and pushing on a curtain on the truck while straddling a ladder and felt pain in his back. He saw a series of doctors and in June 1999, underwent a MRI and then an EMG. The radiologist performing the MRI mentioned the presence of a mild disk herniation. The EMG was negative, however.

Eventually, Oatridge came under the care of Dr. Emmanuel Jacob, a physiatrist, who testified for Oatridge. Ultimately, his conclusion was that Oatridge

sustained a herniated lumbar disk with lumbosacral radiculopathy. Dr. Jacob treated him about forty times, using different modalities. During the various office visits, Oatridge's pain complaints were six or seven on a scale of ten. They never deviated regardless of the treatment. Apparently, the strongest medicine Oatridge took, however, was over-the-counter Tylenol.

In December 1999, Allied offered to rehire Oatridge as a car hauler, his original job. Since, at that time, Dr. Jacob said he could not return to work at all, Oatridge declined. Allied, however, was acting on the strength of physicians' opinions indicating he could return to his regular full-time job. Ultimately, in his testimony to the Board, Dr. Jacob said Oatridge could do sedentary work. This change from his earlier opinion was not accompanied, however, by any change in Oatridge's physical condition.

Allied's doctors were Dr. John Port, an orthopaedic surgeon, and Dr. John Townsend, a neurologist. Both examined the actual MRI films. Dr. Jacob had examined only the report. He did, however, allude to another doctor, a neurosurgeon, who examined the MRI. That doctor did not testify nor was it clear he had read the MRI film or reviewed the radiologist's report. That neurosurgeon apparently told Dr. Jacob that Oatridge suffered a mild disk herniation.

Drs. Port and Townsend had reviewed Oatridge's medical history, including the treatment, MRI and EMG results. They each performed their own examinations. Neither saw any objective evidence of disk herniation or nerve root impingement/ radiculopathy. They found nothing in the records, tests or during their

examinations which substantiated Oatridge's pain complaints, particularly a constant six or seven. Both opined that Oatridge, as of December 1999, was capable of returning to his former car hauler job on a full-time basis.

When Oatridge testified before the Board, he mentioned his pain. After driving two and one-half hours to get to the hearing, he said it was six on the scale. Allied played a surveillance film to the Board which showed Oatridge standing, walking and getting in and out of his car without apparent difficulty.

In the end, the Board found Oatridge not to be credible. His pain complaints had remained constant over a period of a year. The level was the same whether he was or was not undergoing treatment and regardless of the type of treatment he was receiving. The Board noted he underwent forty sessions of therapy without relief or change in his pain level. It remained at six on the day of the Board's hearing.

In addition to its doubts about Oatridge's credibility, the Board accepted the testimony of Drs. Port and Townsend over that of Dr. Jacob. First, he never explained why earlier he said Oatridge could not work at all but, before the Board, he changed that to being able to do sedentary work. Second, since, Dr. Jacob's opinions rested, in part, upon Oatridge's subjective complaints, it found a basis further rejecting his opinion. The other doctors, in viewing films, performing physical examinations and reviewing the records, could not find a herniated disk, a basis for radiculopathy or any other reason to explain Oatridge's ongoing complaints. The Board terminated Oatridge's benefits.

STANDARD OF REVIEW

On an appeal from the Industrial Accident Board, the function of this Court is to determine whether the Board's decision is supported by substantial evidence and is free from legal error.¹ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The Board sits as the trier of fact, determines credibility and weighs the evidence, not the Court.³

DISCUSSION

In reaching its decision to terminate Oatridge's benefits and not award him partial benefits, the Board found him not credible, rejected his doctor's opinions and accepted the opinions of Drs. Port and Townsend. The Board had trouble accepting Oatridge's pain complaints. He always rated it as six or seven. This was regardless of whether he was being treated or not and even the kind of treatment. He underwent over forty therapy sessions and, yet, the level of pain remained the same, six or seven. It was six on the day of the Board hearing after he drove alone for two and

¹*State v. Cephas*, Del.Supr., 637 A.2d 20, 23 (1994).

²*Streett v. State*, Del.Supr., 669 A.2d 9, 11 (1995).

³*Boulevard Electric Sales v. Webb*, Del.Supr., 428 A.2d 11, 13 (1981).

one-half hours. The Board, therefore, was acting within its powers to reject part of his testimony.⁴

⁴*Delaware Tire Center v. Fox*, Del.Super, 401 A.2d 97, 100 (1979).

Once it found Oatridge's subjective pain complaints to be suspect, it could reject the opinion of the doctor founded on those complaints.⁵ Dr. Jacob's opinions were, in part, based on Oatridge's pain complaints and, to the extent they were, the Board was free to object them.

In addition to Oatridge's pain complaints, Dr. Jacob rested his opinion on his reading of a MRI study indicating a mild disk herniation. But, he never read the film. He alluded to another doctor, to whom he had referred Oatridge for consultation, and that doctor's opinion was also a mild disk herniation. The Board noted, however, that this second doctor had not testified and that it was unclear if he had only read the report or had read the film. The Board did not give much weight to this second doctor.

The Board contrasted this testimony with that of Drs. Port and Townsend. Both said no disk herniation was present. The negative EMG was consistent with their findings of an absence of radiculopathy. They referred to other doctors who had likewise found no herniation or radiculopathy. In short, they found there was no objective sign of a disk herniation or of radiculopathy or any explanation for Oatridge's on-going complaints.

⁵*Breeding v. Contractors-One-Inc.*, Del.Supr., 549 A.2d 1102, 1104 (1988).

In rejecting the testimony of Dr. Jacob and accepting the testimony of Drs. Port and Townsend, the Board was acting within its province as fact finder.⁶ It explained its reasons for rejecting the one and accepting the others.⁷ The testimony of Drs. Port and Townsend provides substantial evidence for the Board's decision. Both opined Oatridge could return to his former job and was no longer disabled. He had suffered a muscle sprain injury to his back, they said, but it had resolved. Their testimony provides substantial evidence for the Board's decision, which means it must be affirmed.⁸

CONCLUSION

For the reasons stated herein, the decision of the Industrial Accident Board is **AFFIRMED**.

IT IS SO ORDERED.

J.

⁶*Reese v. Home Budget Center*, Del.Supr., 619 A.2d 907, 910 (1992).

⁷*Turbitt v. Blue Hen Lines, Inc.*, Del.Supr., 711 A.2d 1214, 1215 (1998).

⁸*M.A. Hartnett, Inc. v. Coleman*, Del.Supr., 226 A.2d 910 (1967).