SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY
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GEORGETOWN, DE 19947

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RE: ***Richard I. Patchett v. New Process Fibre Co. Inc.,***
C.A. No. 05A-05-008-RFS

Date Submitted: October 31, 2005
Date Decided: January 26, 2006

Dear Counsel:

This is my decision regarding Richard I. Patchett's appeal of the Industrial Accident Board ("the Board") decision dated March 14, 2005 regarding Employee's Petition to Determine Disfigurement. For the reasons set forth herein, the Board's decision is affirmed.

STATEMENT OF THE CASE

Richard I. Patchett ("Claimant") was injured on the job in a compensable accident while working at New Process Fibre Company, Inc. ("Employer"), on August 25, 2000. The injury was sustained from an auger, and resulted in the fracture of his index and little finger, and the amputation of his middle and ring fingers.

In separate agreements between the parties, all compensation for permanent impairment was agreed to for all of Claimant's injuries. The only issue before the Board for decision was the disfigurement petition.

Evidence was introduced at the hearing to show that on July 5, 2002, Claimant signed an Agreement as to Compensation for disfigurement as the result of his amputated middle and ring finger, receiving thirty (30) weeks of compensation for each finger. Claimant sought to have this agreement voided. The Board found no reason to reopen the disfigurement agreement. Claimant appeals from this decision.

Claimant appeals the Board's decision on three grounds. First, that the Board erred as a matter of law in holding the agreement barred it from considering the disfigurement as a whole. Second, the Board erred as a matter of law and fact in finding the agreement constituted an accord and satisfaction as to part of the disfigurement claim. Finally, that the Board erred as a matter of law and fact in not finding the agreement for disfigurement was an open one subject to review because no receipt was signed or filed with the Board.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have 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. *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960), and to review questions of law de novo, *In re Beattie*, 180 A.2d 741, 744 (Del. Super. Ct. 1962). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A .2d 295, 297 (Del.), *app. dism.*, 515 A.2d 397 (Del. 1986). Substantial evidence is "more than a scintilla, but less than a preponderance." *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Supr. 1981). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *Johnson v.*

Chrysler Corp., 312 A.2d at 66. It merely determines if the evidence is legally adequate to support the agency's factual findings. 29 *Del. C.* § 10142(d).

DISCUSSION

A. Did the Board err as a matter of law in holding that the agreements barred it from considering the disfigurement as a whole?

The Board ruled that normally, "when a matter has previously been resolved by an agreement approved by the Board, the issue cannot be revisited absent a situation under section 2347 where the employee is seeking to increase or renew benefits or the employer is seeking to reduce or terminate benefits."[1]

The Board also explained that there are certain instances in which it has the power to reform an agreement. The first of these is on the basis of mutual mistake. However, "there is insufficient evidence to establish that a mutual mistake exists here."[2] Additionally, the Board noted that it may provide relief for a unilateral mistake or "excusable negligence" in certain circumstances, such as the neglect that may have been the act of a reasonably prudent person under the circumstances, or fraudulent conduct on the part of the employer or the carrier.

In a well reasoned opinion, the Board discussed each of the merits of each of the above possible scenarios in order to void the agreement. It is clear that the Board never ruled, as Claimant asserts, that it was "barred" from considering the disfigurement as a whole. On the contrary, the Board discussed the issue and ruled that Claimant had given no legal basis upon which to re-open or alter the disfigurement agreement pertaining to the missing fingers, and then awarded additional compensation for the disfigurement of the

[1] IAB decision dated March 14, 2005, p.5
[2] Id. at 6

rest of the hand. As such, the Board award to Claimant includes an award for the disfigurement as a whole.

The Board clearly noted that the "all that remains for the Board to decide is the disfigurement petition."[3] The Board then clearly considered the disfigurement as a whole. After a thorough discussion of the injury to the entire hand, the Board dissected the injury into its compensable parts, noting the entire injury, including the missing fingers. The Board wrote:

> "on the right wrist there is a scar that is four inches long and about a quarter-inch wide. It is light pink in color. The two middle fingers are gone. There are two white scars along the palm at the site where the fingers used to be. One scar is about an inch long while the other is two inches long. On the outside of his little finger, there is a two-inch scar. On the inside of the finger there is another one and half inch scar. These scars are very light. The little finger is noticeably crooked and distorted. On the index finger, there is another very light scar that is about an inch and a quarter long. The index finger is stiff, as Claimant described in his testimony. Also on this finger is a three inch scar. The scar is raised and white and goes down onto the palm of the hand. This is where the rod was inserted."[4]

Further, when discussing disfigurement benefits, the Board clearly states that "there still remains the task of awarding benefits for the remaining disfigurements to the Claimant's hand."[5] The Board then noted that, "while the missing fingers are the most distinctive disfigurement, they also serve to draw attention to the entire hand, making all the disfigurements more obvious. Thus, Claimant's disfigurement awards will be higher than they would be if the disfigurements were less apparent."[6]

The Board then awarded benefits for the disfigurement of the hand separate and distinct from the missing fingers. The Board awarded four weeks of benefits for the wrist scar, five weeks of benefits for the scars and distortion of the little finger, eight weeks of

[3] Id. at 2
[4] Id. at 5
[5] Id. at 8
[6] Id. at 9

benefits for the two scars and rigidity of the index finger and three weeks of benefits for "the two white scars where his missing fingers used to be. The Board treats these scars as separate from the disfigurement from the missing fingers themselves."[7]

The Board then ruled that "in total for the disfigurements to Claimant's hand apart from the two missing fingers, the Board awards an additional twenty weeks of benefits."[8] It is clear that the Board did consider the disfigurement to the hand as a whole, adding the additional twenty weeks of benefits for the disfigurement to the rest of the hand to the sixty weeks of disfigurement benefits already received by the Claimant for the missing fingers to arrive at a total amount of benefits for the disfigurement as a whole. Thus, this Court finds no merit in Claimant's assertion that the Board held that it was barred by the prior agreement from considering the disfigurement as a whole. As a result, the decision of the Board must stand.

B. Did the Board err as a matter of law and fact in finding the agreement constituted an accord and satisfaction as to part of the disfigurement claim?

The Board looked into the agreement between the Claimant and the carrier in great detail, reviewing the circumstances surrounding the agreement as well as the amount of the agreement in relation to other Board awards for similar disfigurements. The Board, having heard all the evidence presented, and discussing the pertinent facts in detail ruled that they were "not persuaded that Claimant committed excusable negligence to justify reopening of the agreement…[and] there is no good evidence of any fraud or misconduct on the part of the employer or insurance carrier."[9] In this appeal, Claimant has offered no reasons why the Board decision should be overturned as a matter of law or fact. It is clear from the

[7] Id.
[8] Id.
[9] Id. at 8

Board's decision, that the evidence relied upon is legally adequate to support the agency's factual findings, and as such, will not be disturbed on appeal.

The Board noted that the agreement was clear and valid on its face, and "plainly indicates that it is for disfigurement benefits."[10] The Board also noted that "Claimant is educated, having received a degree in architecture from Delaware Tech."[11] Accordingly, Claimant has the burden of proof to show why the agreement should be voided.

Claimant argues the agreement should be voided because "the carrier and employer were mistaken about what the proper claim for disfigurement was and what the effect of the agreements would be and Claimant relied upon their superior knowledge, or the employer made false representations to the Claimant and the carrier filed agreements when it knew or should have known that no meeting of the minds had been established."[12] The Board dealt with each of these assertions in its well reasoned opinion. First, it noted that there is "insufficient evidence to establish that a mutual mistake exists here. Indeed, New Process notes that the offer it made of thirty weeks of benefits was consistent with prior Board awards for such disfigurements.… Thus, can hardly be called a mistake to have reached a settlement in that amount. In any event, at the very least New Process clearly intended to settle for that sum. There was no mistake on its part and, hence, no mutual mistake."[13] Second, the Board clearly found that "there is no credible evidence of any misrepresentation on the part of the employer. Claimant admits that he did not speak with any representative of the carrier about the offer, so clearly the carrier made no misrepresentation."[14]

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[10] Id. at 7
[11] Id.
[12] Claimant's Brief at 15
[13] IAB decision dated March 14, 2005, p.6
[14] Id.

Lastly, Claimant testified that he was told by a representative of the Employer when presented with the agreement that "if he wanted more money, he would have to go to an attorney."[15] Claimant, having been offered a settlement that was valid and clear on its face, and being informed of his options made the decision not to contact an attorney and freely signed the agreement. Although Claimant now appears to be confused concerning the difference between a permanent impairment award and a disfigurement award, he has provided no evidence to conclude that the carrier should have known that a meeting of the minds was not established.

Claimant also argues in the alternative that "the carrier tried to pay less than it reasonably believed was owed for disfigurement in violation of the Unfair Claims Practices in Insurance Act. Delaware Code annotated Title 18 Section 23302(16)"[16] The Board specifically addressed this issue in its opinion as well, saying that "New Process notes that the offer it made of thirty weeks of benefits was consistent with prior Board awards for such disfigurement. While the Board is, of course, not bound by those prior awards and each disfigurement is judged on its own merits, New Process' point is well taken. The offer they made to Claimant is "in the ballpark" of what the Board awards for such disfigurements."[17] A chart introduced at the hearing of previous awards supported this conclusion. In light of this finding of fact by the Board, Claimant has supplied no evidence to support his assertion that carrier tried to pay less than it reasonably believed it was owed. Accordingly, the Board's decision on this issue should also not be disturbed.

C. Did the Board err as a matter of law and fact in not finding the agreement for disfigurement was an open one subject to review because no receipt was signed or filed with the Board.

[15] Id. at 7
[16] Claimant's Brief at 15
[17] IAB decision dated March 14, 2005, p.6

According to Claimant's argument, the agreement between the parties was not valid, in spite of being signed by both parties, and in spite of the fact that one side performed fully. Under Claimant's theory, after signing an agreement and receiving ongoing monetary benefits over a period of time, an employee can then unilaterally void the agreement by refusing to sign a receipt of payment after the employer has performed.

The Court notes that this argument was not addressed in front of the Board, and hence, this argument is waived on appeal. Further, Claimant has cited no law in support of his position. Claimant claims that Employer should have filed a petition to review in order to cease payments lawfully. Nonetheless, the remedy to Employer's alleged oversight is not to void the agreement for which payments have already been made and accepted.

The Board looked at all the facts in this case and from them concluded that the agreement between the parties should not be disturbed. Claimant waived this argument on appeal and has presented no case law in his brief as to why this Court should overturn the well reasoned decision of the Board.

CONCLUSION

Considering the decision of the Board is supported by substantial evidence and is free of legal error, it is affirmed.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary