

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MARIBEL RIVERA,)
)
 Claimant-below,)
 Appellant,)
)
 v.) C.A. No. 08A-02-005 WCC
)
 ARTHUR JACKSON CO., INC.)
)
 Employer-below/)
 Appellee.)

Submitted: October 2, 2008

Decided: January 30, 2009

MEMORANDUM OPINION

Appeal from Unemployment Insurance Appeal Board. AFFIRMED.

Edward J. Fornias, III, Esquire; Roeberg, Moore & Friedman, P.A., 910 Gilpin Avenue, Wilmington, DE 19806. Attorney for Claimant-below/Appellant.

Christopher T. Logullo, Esquire; Chrissinger & Baumberger, Three Mill Road, Suite 301, Wilmington, DE 19806. Attorney for Employer-Below/Appellee.

CARPENTER, J.

Introduction

Before this Court is Maribel Rivera's (the "Appellant") appeal of the Industrial Accident Board's ("IAB" or the "Board") decision, which denied Ms. Rivera's Petition to Determine Compensation Due. Upon review of the record in this matter, the Court finds substantial evidence to support the Board's decision and therefore, the Board's decision is AFFIRMED.

Facts¹

The Appellant was an employee of Arthur Jackson Company, Inc. (the "Employer") and claims to have suffered a work-related back injury while acting in the scope of her employment as a janitor. On December 20, 2006, the Appellant felt pain in her neck, back, and shoulder when she picked up a box containing thirty-six rolls of toilet paper to load onto her cleaning cart. She reported the injury to her manager, who instructed her to go home. The Appellant left work and went to the emergency room at Christiana Hospital. MRI scans performed in January of 2007 showed a small central disc herniation, as well as a tear of the superior and inferior labrum supraspinatus tendon of the shoulder. At that time, the Appellant's physician, Dr. Evan Crain, placed her on total disability. An MRI performed in February of 2007 also showed a central disc herniation. In April of 2007, Dr. Alan Fink, the Employer's expert witness, examined the Appellant's MRI results, and opined that the disc herniation was more likely due to degeneration and not trauma.

¹The facts recited herein are drawn from the IAB's Opinion of February 8, 2008.

The Appellant filed a Petition to Determine Compensation Due with the IAB on January 11, 2007 seeking workers' compensation for total disability from the date of the accident, medical expenses, attorney's fees, and medical witness fees. In contrast, the Employer argued at the hearing that this alleged work-related accident never occurred and that even if the Board found that the accident did occur, the Appellant only sustained strain and sprain type injuries. The Board denied the Appellant's Petition, finding that the Appellant was not credible and that no work-related accident had been established. The Appellant now appeals the Board's decision.

Standard of Review

This Court's role in reviewing an appeal from an administrative agency is limited.² The Court will only evaluate the record, in the light most favorable to the prevailing party below, to determine if substantial evidence existed to reasonably support the Board's conclusion and to ensure that it is free from legal error.³ "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁴ Thus, the Court does not address issues of

²*Zicarelli v. Boscov's Dep't Store, LLC*, 2008 WL 3486207, at *2 (Del. Super. June 5, 2008).

³*Id.*

⁴*Del. Alcoholic Beverage Control Comm'n v. Newsome*, 690 A.2d 906, 910 (Del. 1996) (citing *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994)).

credibility, nor does it independently weigh the evidence presented to the Board.⁵ If the record supports the Board's findings, the Court must accept those findings even if the Court might have reached a different conclusion based on the facts presented.⁶

Discussion

The question before the Court is whether the Board had substantial evidence to find that no work-related accident occurred. In its decision, the Board focused largely on the Appellant's testimony. Under Delaware's Workers' Compensation Act, employees are entitled to compensation for injuries sustained when acting within the scope of their employment.⁷ The Board noted that because there were no witnesses to the alleged accident in this case, the Appellant's testimony and credibility were of particular importance.⁸

Ultimately, the Board did not find the Appellant to be credible due to certain inconsistencies in her testimony. First, the Appellant initially testified that she first felt pain in her back and neck when placing the box of toilet paper rolls down onto her

⁵*Michael A. Sinclair, Inc. v. Riley*, 2004 WL 1731140, at *2 (Del. Super. July 30, 2004) (citing *Unemploy. Ins. App. Bd. v. Div. of Unemploy. Ins.*, 803 A.2d 937 (Del. 2002)).

⁶*Anderson v. Comfort Suites*, 2004 WL 304359, at * 2 (Del. Super. Feb. 12, 2004) (explaining that “[a]bsent an abuse of discretion, this Court must uphold the Board’s decision.”) (citing *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994)).

⁷*See* 19 Del. C. § 2304 (2009).

⁸IAB Op. at 7-8.

cart, but later said that she first felt pain when she picked up the box. Second, the medical records from the emergency room indicate that the Appellant reported feeling back pain when cleaning the floor, not when lifting a box as she stated in her testimony. Finally, the Board did not find the Appellant to be sufficiently forthcoming about her prior medical history. She testified that prior hospital visits occurring in December of 2004 and 2005 were due to pain she experienced from the removal of her kidney and from a drop in her blood sugar. However, the medical records from those visits reflect that she complained of neck and back pain. She also claimed not to recall having been involved in a car accident in 2004.

The Appellant contends that she testified consistently and objects to the Board's use of her medical records in reaching its decision as they were never introduced into evidence. She asserts that the Board improperly "gleaned the 'contents' of the medical records from the Employer's Attorney's questions"⁹ and that "the questions of an attorney are not substantial competent evidence upon which the Board may reach a decision."¹⁰ As a result, the Appellant claims the Board should not have considered information contained in her medical records.¹¹

⁹Opening Br. at 9.

¹⁰*Id.*

¹¹*Id.*

This argument is unpersuasive for two reasons. First, the rules of evidence are not strictly applied to hearings before the IAB.¹² Furthermore, the Board has adopted a rule outlining the applicability of the rules of evidence to its hearings:

The rules of evidence applicable to the Superior Court of the State of Delaware shall be followed insofar as practicable; however, that evidence will be considered by the Board which, in its opinion, possesses any probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Board may, in its discretion, disregard any customary rules of evidence and legal procedures so long as such a disregard does not amount to an abuse of discretion.¹³

The Court finds the Board's use of the medical information referenced by counsel was not an abuse of discretion. First, it clearly was proper for opposing counsel to question the Appellant regarding prior accidents and hospitalizations during which similar injuries were claimed. The Board's assessment of the Appellant's candor in response to those questions are clearly appropriate in its determination of her credibility. Secondly, while arguing that the Board's use of the "records" was improper, there was no objection by counsel at the hearing to the questions in this area, nor is there any argument that the Employer's counsel in some way mischaracterized what was contained in them. Third, if the records supported the

¹²*Glanden v. Land Prep, Inc.*, 918 A.2d 1098, 1102 (Del. 2007) (stating that "In hearings before the IAB, the rules of evidence are relaxed because of the nature of the IAB proceedings and in order to comply with the spirit of the worker's compensation statute.").

¹³IAB R. 14(B).

Appellant's responses to those questions, the Appellant's counsel could have also introduced the documents to clarify any mischaracterization. Finally, it does appear that the testifying doctors reviewed those documents in developing their opinions, and Dr. Fink referenced them in his deposition.

While clearly the better practice would have been for counsel to introduce the records he was referring to in his cross-examination of the Appellant so the Board would have the benefit of a complete record, based upon the above, the Court is unable to find that the Board's reliance upon statements of counsel as to the contents of those records is legal error mandating reversal. The Appellant's responses to questions about her prior medical treatment were appropriately considered in determining the Appellant's credibility. These credibility findings are within the sole province of the Board to make and will not be second guessed by the Court unless clearly unsupportable by the record. Unfortunately for the Appellant, the Court finds adequate support in the record for the Board's decision.

Conclusion

For the foregoing reasons, the decision of the Board is AFFIRMED.

IT IS SO ORDERED

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.