**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

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| MATTHEW TAYLOR, | ) | |
| | ) | |
| Employee, | ) | |
| | ) | |
| v. | ) | C.A. No. 07A-05-013 JRS |
| | ) | |
| WILLIAM HOUCK, INC., | ) | |
| | ) | |
| Employer. | ) | |

Date Submitted: October 15, 2007
Date Decided: January 15, 2008

*Upon Appeal from the Industrial Accident Board.*
**Affirmed.**

This 15th day of January 2008, upon consideration of the appeal of Matthew Taylor ("Mr. Taylor"), from the decision of the Industrial Accident Board (the "Board") denying Mr. Taylor's Petition to Determine Compensation, it appears to the Court that:

1. On April 21, 2006, Mr. Taylor sustained injuries as a result of a motor vehicle accident while working as a painter for William Houck, Inc. ("Houck"). Mr. Taylor explained that normally he reported for work either at the Houck shop, located on Robinson Lane, off Maryland Avenue in Wilmington, Delaware or directly at his

assigned job location. His normal work day would begin shortly before 7:00 a.m. and end at 3:30 p.m.

2. On April 20, 2006, the day before the accident, Mr. Taylor was assigned to paint the outside stairways and walkways at The Court at Delaware Avenue Apartments (the "Apartments"). At 3:30 p.m. that same day, Mr. Taylor packed up his painting supplies and equipment, placed them in his truck, and drove straight home.

3. According to Mr. Taylor's testimony at the hearing, on the morning of the accident, he was traveling to the Houck shop on Robinson Lane when he remembered that he had more work still to complete at the Apartments. Mr. Taylor then moved from the left into the right lane in order to turn around and begin heading back toward the Apartments. In the process, his car was struck by a garbage truck. He was approximately two miles away from the shop when the accident occurred.

4. On December 15, 2006, Mr. Taylor filed a Petition to Determine Compensation Due, alleging that he sustained injuries in the April 21, 2006 accident during the course and scope of his employment with Houck.[1] Houck challenged Mr. Taylor's petition and argued that Mr. Taylor was injured while he was commuting to

[1] 19 *Del. C.* § 2301(18).

work and, therefore, was excluded from collecting workman's compensation.[2] A hearing was held on April 20, 2007. The parties agreed to limit the issue at the hearing to whether the accident occurred within the course and scope of Mr. Taylor's employment.[3]

5. Mr. Taylor argued to the Board that he was injured in the course and scope of his employment and was therefore entitled to workman's compensation. He also argued that the "coming and going" exception did not apply to him because he was injured while en route to a specific job site rather than on his way to the office. Mr. Taylor admitted in his testimony that he was on his way to the Houck office the morning of the accident, but had already committed to returning to the work site when the accident occurred. He stated that he would have been in the left, not right lane, when the accident occurred if he had intended to go to the Houck office. When asked why he had packed up all his supplies and equipment at the Apartments if the job was not complete, Mr. Taylor testified that he placed his equipment in his car because there was no secure place to leave the equipment at the work site. Mr. Taylor also was asked why he wrote on his PIP application that he was in an accident "on his way to work." Mr. Taylor responded that he meant to write that he was on his way to a

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[2] *Devine v. Advanced Power Control, Inc.*, 663 A.2d 1205, 1210 (Del. 1995).

[3] D.I. 7, Appellant's transcript at 2.

"work site."

6. Daniel Houck ("Mr. Houck") testified at the hearing on behalf of Houck. He stated that he assigns job requests to Houck's painters for completion. Mr. Houck testified that the painters were required to report to the office at approximately 7:00 a.m. on days when they started a new job. Otherwise, the painters would report directly to the location of the incomplete job. When asked about the job that Mr. Taylor was performing on April 20, 2006, he explained that this job was estimated to take eight hours to complete, one full work-day, and should not have carried over into a second day of work. Mr. Houck also testified that he knows Mr. Taylor completed this job because Mr. Taylor told him it was complete, no other painter was sent to finish the job, and the client never expressed dissatisfaction with the job. He also explained that he was aware of an outside location at the Apartments where Mr. Taylor could have stored his materials over night if the job was not completed. He did admit, however, that he had no documentation proving that Mr. Taylor had completed the paint job at the Apartments.

7. The Board issued its decision on May 1, 2007, and found that Mr. Taylor was not injured in the course and scope of his employment. The Board based its decision on the language of the Worker's Compensation Act ("Act") that allows recovery for "personal injury or death by accident arising out of and in the course of

employment."[4] The Board found that the Act does not extend to injuries that arise while an employee is engaged in his regular travel to and from the workplace.[5] The Act does apply, however, to employees who report directly to the location of a temporary job rather than a fixed location.[6] Determining whether an employee was injured during the course and scope of his employment is a question of fact.[7]

8. According to the Board, Mr. Taylor failed to prove that the accident occurred while he was reporting to a temporary job site. Although Mr. Taylor explained that he was in the process of returning to the Apartments to complete the job when the accident occurred, the Board did not find his testimony credible. The Board, instead, accepted Mr. Houck's account of the events the morning of the accident. Specifically, the Board relied upon Mr. Houck's testimony that he believed the job at the Apartments was complete because Mr. Taylor told him it was complete, no painter was sent to finish the job and the client never complained that the job was not complete. The Board also believed Mr. Houck's explanation that Mr. Taylor's packing up of all his paint supplies and equipment was an indication that the job at

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[4] 19 *Del. C.* § 2304.

[5] *Devine*, 663 A.2d at 1210.

[6] *Id.*, at 1213.

[7] *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 345 (Del. 1993).

the Apartments was finished. Based on this testimony, the Board found in favor of Houck.

9. On appeal to this Court, Mr. Taylor challenges the sufficiency of the evidence supporting the Board's decision denying benefits. Specifically, Mr. Taylor argues that his testimony at the hearing was credible and provided a basis for the Board to determine that he was injured in the course and scope of his employment. Additionally, Mr. Taylor argues that the Board improperly relied upon the testimony of Mr. Houck. Finally, Mr. Taylor argues that the Board erred as a matter of law in its interpretation of *Devine v. Advanced Power Control, Inc.* Houck responds that the Board's decision is supported by substantial factual evidence and is grounded in sound legal analysis.

10. This Court has repeatedly emphasized the limited extent of its appellate review of administrative determinations. The Court's review is confined to ensuring that the Board made no errors of law and determining whether "substantial evidence" supports the hearing officer's factual findings.[8] Questions of law that arise from the hearing officer's decision are subject to *de novo* review, pursuant to Superior Court Civil Rule 3(c), which requires that the Court must determine whether the Board

[8] *Canyon Const. v. Williams*, 2003 WL 1387137, at *1 (Del. Super. Ct. Mar. 5, 2003); *Hall v. Rollins Leasing*, 1996 WL 659476, at *2-3 (Del. Super. Ct. Oct. 4, 1996).

erred in formulating or applying legal precepts.[9] Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[10] It is "more than a scintilla but less than a preponderance of the evidence."[11] The "substantial evidence" standard of review contemplates a significant degree of deference to the Board's factual conclusions and its application of those conclusions to the appropriate legal standards.[12] In its review, the Court will consider the record in the light most favorable to the prevailing party below.[13]

**A. The Board's Decision was Supported by Substantial Evidence**

11. The factual record primarily consists of testimony from Mr. Taylor and Mr. Houck. Testimonial evidence necessarily implicates an inquiry by the fact finder into the credibility of the witnesses testifying before him. The Board is in the best position to make that inquiry. Credibility determinations made by the Board will not be disturbed on appeal unless the Court determines that the hearing officer abused his

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[9] *See Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998); *Hudson v. State Farm Mut. Ins. Co.*, 569 A.2d 1168, 1170 (Del. 1990).

[10] *Breeding v. Contractors-One, Inc.*, 549 A.2d 1102, 1104 (Del. 1998).

[11] *Id.*

[12] *Hall*, 1996 WL 659476, at *2 (citing DEL. CODE ANN. tit. 29, § 10142(d)).

[13] *General Motors Corp. v. Guy*, 1991 WL 190491, at *3 (Del.Super.Ct. Aug. 16, 1991).

discretion.[14] On appeal, the Court will not independently "weigh the evidence, determine questions of credibility, and make its own factual findings and conclusions."[15]

12. Mr. Houck's testimony provided the Board with substantial evidence upon which to conclude that Mr. Taylor was not injured in the course and scope of his employment. The Board made a credibility determination based on the testimony presented at the hearing. Mr. Taylor admitted that he had been en route to and was within two miles of the Houck office when the accident occurred. While he claimed that he intended to turn around at the last minute because he remembered that he had not completed the job at the Apartments, the Board did not find this to be a credible account of the event. The Board chose to believe Mr. Houck's testimony regarding Mr. Taylor's admissions on the morning of the accident, the fact that the job at the Apartments was completed, and the customary clean-up procedures of the painters. It was within the Board's discretion to make this credibility determination and the Court does not find that the Board abused its discretion in doing so.

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[14] *Simmons v. Delaware State Hosp.*, 660 A.2d 384, 388 (Del. 1994).

[15] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del.Super.1965).

### B. The Board's Decision Denying Mr. Taylor Benefits was Free From Legal Error.

13. The Board's decision was free from legal error because it properly applied the law as articulated in *Devine v. Advanced Power Control, Inc.*[16] According to Mr. Taylor, *Devine* holds that all employees who do not report directly to a regular work site are exempt from the rule denying benefits to employees injured while traveling to and from the workplace. Mr. Taylor's reading of *Devine* is incorrect because the opinion clearly states that when an employee must report to the employer's office before arriving at a temporary job site, there exists "an identifiable point in time and space where [] employment began."[17] The opinion goes on to state that "the first leg of [the] journey, from home to the reporting site, would have been considered outside the scope of employment had the accident occurred then."[18] Based on its previous factual determination that the accident occurred while Mr. Taylor was reporting to his employer's office and not to a temporary job site, the Board correctly concluded that *Devine* barred Mr. Taylor's claim for workman's compensation benefits.

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[16] 663 A.2d 1205.

[17] *Id.*, at 1212.

[18] *Id.*, at 1212

14. Based on the foregoing, the Board's decision to deny Mr. Taylor's Petition to Determine Compensation is **AFFIRMED.**

**IT IS SO ORDERED.**

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Judge Joseph R. Slights, III

Original to Prothonotary

cc: Jonathan B. O'Neill, Esquire
Colin M. Shalk, Esquire