

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

PAUL A. VARGA,	)	
	)	
Appellant,	)	C.A. No.: 09A-05-010 RRC
Claimant Below	)	
	)	
v.	)	
	)	
GENERAL MOTORS CORPORATION,	)	
	)	
Appellee,	)	
Employer Below.	)	

Submitted: November 2, 2009  
Decided: January 20, 2010

On Appeal from a Decision of the Industrial Accident Board.  
**AFFIRMED.**

**ORDER**

Paul A. Varga, Mantua, New Jersey, *Pro Se*

Paul V. Tatlow, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin,  
Wilmington, Delaware, Attorney for Appellee General Motors Corporation

COOCH, J.

This 20th day of January, 2010, upon consideration of Appellant’s  
appeal from a decision of the Industrial Accident Board (“the Board”), it  
appears to the Court that:

1. Paul Varga worked on an assembly line at General Motors Corporation (“GM”) for approximately twenty-nine years.<sup>1</sup> His work required him to bend down and “wipe sealer off the inside of the car frames as they passed along the line.”<sup>2</sup> Mr. Varga developed pain in his hips, and, in 2007, there was an incident where he bent over to perform his duties and had difficulty standing up due to his hip pain extending towards his left knee.<sup>3</sup> Mr. Varga continued to have problems with his range of motion and sought evaluation of his pain after his retirement.<sup>4</sup>

2. On October 28, 2008, Mr. Varga filed a Petition to Determine Compensation Due with the Board seeking to relate his hip injury to his employment at GM. A hearing was held before the Board on February 25, 2009, and Mr. Varga, who was represented by counsel at the hearing, presented evidence including his own testimony, the factual testimony of co-worker, Michelle Johnson, and the medical testimony of Steven D. Grossinger, D.O. (by deposition). Jerry L. Case, M.D., testified (by deposition) on behalf of GM.

Although both Mr. Varga and Ms. Johnson testified about Mr. Varga’s work conditions, Dr. Grossinger provided the medical testimony

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<sup>1</sup> Decision of the Industrial Accident Board at 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

potentially necessary to establish that Mr. Varga's injury was related to his work. Dr. Grossinger, who was board certified in neurology and pain management, testified that he examined Mr. Varga on February 9, 2009.<sup>5</sup> Dr. Grossinger testified that Mr. Varga had a tear "involving the labrum of the left hip, as well as a paralabral cyst."<sup>6</sup> Dr. Grossinger's diagnosis was that Mr. Varga's symptoms were attributable to his work activities while at GM and testified that Mr. Varga's "description of having to bend to reach underneath the cars on a repetitive basis is consistent with developing this type of injury."<sup>7</sup>

In contrast, Dr. Case (a board certified orthopedic surgeon) testified that it was unlikely that Mr. Varga's injury was work related. Dr. Case testified that the cause of Mr. Varga's condition "was that he had internal derangement of the left hip which in layman's terms means that he has an abnormality within the hip that could either be from degenerative arthritis or aseptic necrosis."<sup>8</sup>

After hearing all the testimony in the case, the Board denied Mr. Varga's petition. The Board noted that even though a pre-existing condition will not disqualify a claim for workers' compensation if a claimant can

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.*

<sup>8</sup> Ans. Br. at 5.

demonstrate that his employment aggravated or accelerated the condition, Mr. Varga failed to present credible testimony that his working conditions contributed to his condition.<sup>9</sup> The Board accepted the testimony of Dr. Case over that of Dr. Grossinger and found no casual link between Mr. Varga's hip condition and his working conditions.

3. On September 28, 2009, Mr. Varga filed an appeal with this Court. Despite being represented by counsel at the Board Hearing, Mr. Varga has filed his appeal *pro se*.<sup>10</sup> Before Mr. Varga filed his initial brief, he requested that this Court allow him to listen to audio recordings of the Board Hearing because he advised the Court that he believed that the transcript contained numerous "inaccuracies." The Court granted Mr. Varga's request,<sup>11</sup> but it appears from Mr. Varga's opening brief that he has since withdrawn any claims that the transcript of the Board Hearing contains "inaccuracies."

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<sup>9</sup> Decision of the Industrial Accident Board at 12.

<sup>10</sup> Mr. Varga also has previously filed complaints against one of the hearing officers with the Governor's office and the Office of the late State Senator Thurman Adams, Jr. Op. Br. at 30.

<sup>11</sup> Mr. Varga wrote to this Court and to Prothonotary, Sharon Agnew, on June 17, 2009 alleging that "my review of the written transcript, the [sic] hearing reveals that many of [certain] questions, my responses and [IAB Board member's] comments have been omitted and/or altered." Docket Entry 8. This Court subsequently ordered two tapes for both Mr. Varga and Mr. Tatlow. This Court also ordered Mr. Varga to inform the Court by July 22, 2009 whether he thought the IAB transcript is in fact a "true and correct copy of the record." Mr. Varga failed to file any certification, but his opening brief no longer contains any allegation that the transcript is incorrect.

Mr. Varga's opening brief appears to argue that the Board's decision must be overturned because it is not supported by substantial evidence.<sup>12</sup> In support, Mr. Varga claims that the Board did not adequately consider his testimony concerning his injury, did not use the appropriate dates in evaluating the time of his injury, and did not properly consider his job duties.<sup>13</sup>

Additionally, Mr. Varga argues that the testimony of Dr. Grossinger was "much more creditable [sic] than Dr. Case in this instance [.]"<sup>14</sup> Mr. Varga asserts that Dr. Case "[h]ad no records and made the wrong diagnose's [sic]"<sup>15</sup> and asserts that the Court must overturn the Board's ruling because it is against the manifest weight of the evidence. Thus, Mr. Varga argues that the Board's decision is in error and "that [his] job was the final straw in [his] cumulative injury which happened over years of line-work of twisting and turning."<sup>16</sup>

In response, GM argues that the Board had substantial evidence to support its decision. GM correctly asserts that it is the Board's role to assess the credibility of witnesses, and observes that the Board ultimately found

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<sup>12</sup> In his initial brief, Mr. Varga includes numerous exhibits that were not presented at the Board Hearing. Op. Br. at 21.

<sup>13</sup> Op. Br. at 34-36.

<sup>14</sup> *Id.* at 36.

<sup>15</sup> *Id.* at 37.

<sup>16</sup> *Id.* at 45.

inconsistencies in Mr. Varga's evidence.<sup>17</sup> GM notes that Mr. Varga had represented to Dr. Case that there was no specific injury to his left hip, but informed Dr. Grossinger of a specific incident that occurred while he was cleaning the bottom of a car.<sup>18</sup> Additionally, the Board found Dr. Case more credible than Dr. Grossinger regarding causation.

4. While the Superior Court is empowered to review findings of the Industrial Accident Board, the scope of review is narrow.<sup>19</sup> "The function of the reviewing Court is limited to determining whether substantial evidence supports the Board's decision regarding findings of fact and conclusions of law and is free from legal error."<sup>20</sup> Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion.<sup>21</sup>

"When reviewing a decision on appeal from an agency, the Superior Court does not weigh the evidence, determine questions of credibility, or make its own factual findings."<sup>22</sup> The Board is entitled to "resolve conflicts in testimony and issues of credibility."<sup>23</sup>

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<sup>17</sup> Ans. Br. at 9.

<sup>18</sup> *Id.*

<sup>19</sup> *Craig v. Synvar Corp.*, 233 A.2d 161 (Del. Super. Ct. 1967).

<sup>20</sup> *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, at \*3 (Del. Super.).

<sup>21</sup> *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del.1994).

<sup>22</sup> *Holowka*, 2003 WL 21001026, at \*3.

<sup>23</sup> *Id.*

In reviewing a decision of the Board, this Court must look at the record in a light most favorable to the prevailing party.<sup>24</sup> Although this Court might have reached a different conclusion than the Board in the first instance, a decision of the Board must be affirmed if it is supported by substantial evidence.<sup>25</sup> “An administrative board abuses its discretion in admitting or excluding evidence where its decision exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice.”<sup>26</sup>

5. Here, there is substantial evidence in the record to affirm the Board’s decision. “An appeal of a Board decision ‘shall be determined by the Court from the record.’”<sup>27</sup> Stated differently, this Court can only review the record as it existed before the Board.<sup>28</sup> Thus, the Court cannot consider Mr. Varga’s additional exhibits in reviewing this case.

Additionally, the Board acts as the trier of fact and has the authority to weigh the credibility of witnesses. Here, the Board found the testimony of Mr. Varga unreliable and noted the numerous inconsistencies in Mr. Varga’s testimony. Thus, the Board relied, as it was entitled to do, on the testimony

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<sup>24</sup> *E.I. DuPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1046-47 (Del. Super. Ct. 2004).

<sup>25</sup> *Brogan v. Value City Furniture*, 2002 WL 499721, at \*2 (Del. Super. Ct. 2002).

<sup>26</sup> *Bolden v. Kraft Foods*, 2005 WL 3526324, at \*3 (Del. Supr.).

<sup>27</sup> *Oakes v. Chrysler Corp.*, 1999 WL 167778, at \*1 (Del.Super.) (citing 19 *Del. C.* § 2350(b)).

<sup>28</sup> *Id.*

of Dr. Case regarding causation. This Court cannot disturb that determination.

Under the standard of review that this Court must apply, this Court cannot substitute its own opinion on credibility for that of the Board. The Board ultimately found Dr. Case more reliable and found Mr. Varga's testimony inconsistent on several key points. Although this Court is sympathetic to Mr. Varga's situation, this Court is bound by the conclusions drawn by the Board regarding credibility.

Dr. Case stated the Mr. Varga's hip injury was not related to his working conditions, and the Board was entitled to accept that testimony. Dr. Case's testimony provides substantial evidence for the Board to issue its decision in favor of GM. Therefore, the decision of the Industrial Accident Board is **AFFIRMED**.

**IT IS SO ORDERED**

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Richard R. Cooch, J

oc: Prothonotary  
cc: Industrial Accident Board