

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

SANDRA HACKWORTH, :
 : C.A. No. 06A-12-002 WLW
 Claimant Below, :
 Appellant, :
 :
 v. :
 :
 WAL-MART STORES, INC., :
 :
 Employer Below, :
 Appellee. :

Submitted: June 20, 2007
Decided: October 9, 2007

ORDER

Upon Appeal from a Decision of the
Industrial Accident Board. Affirmed.

Walt F. Schmittinger, Esquire, Schmittinger & Rodriguez, P.A., Dover, Delaware;
attorneys for Appellant.

Michael R. Ippoliti, Esquire, Wilmington, Delaware; attorney for Appellee.

WITHAM, R.J.

Sandra Hackworth v. Wal-Mart Stores, Inc.
C.A. No. 06A-12-002 WLW
October 9, 2007

Sandra Hackworth, the Claimant-Below (Appellant), filed an appeal from the November 22, 2006 decision of the Industrial Accident Board (IAB or Board) regarding her Petition to Determine Additional Compensation Due. Appellant's appeal is limited to the Board's alleged failure to address Appellant's liability to third-party defendants, and its alleged failure to address which of Dr. Ameer's bills were compensable. Wal-Mart Stores, Inc. (Appellee) submitted a response and subsequently, Appellant submitted a reply.

Decision of the IAB

On December 15, 2001, Appellant, a manager at Wal-Mart in the Customer Services Department, tripped over an L-cart and fell face-first into the ground with her legs draped across the cart. She was taken to Milford Memorial by ambulance and reported that she could not feel anything from her neck to her toes. Suspecting that she may have a neck fracture, she was then taken by air to Christiana Hospital (Christiana). The doctors' examinations did not reveal any fractures in Appellant's neck. Appellant claims that she suffered lower back, leg, knee and neck pain during her stay at Christiana, but the medical records do not reflect knee pain until nearly six months later. While at Christiana, Appellant could bend her knees.

Since that time Appellant underwent treatment with several physicians. In addition to neck, back and shoulder pain, Appellant's family physician, Dr. Tutse Tonwe, testified by deposition that at her May 28, 2002 examination Appellant complained of knee pain. She had not mentioned this problem before. Dr. Tonwe described the problem as a contusion to the knee. On August 6, 2003 Appellant

Sandra Hackworth v. Wal-Mart Stores, Inc.
C.A. No. 06A-12-002 WLW
October 9, 2007

starting seeing Dr. Nazim Ameer, a pain management specialist, to address Appellant's continuing pain in her knee, neck, arm, shoulder and both lower extremities.

Appellant injured her low back in a 1985 accident and underwent surgery in 1988. She injured her neck in a 1993 car accident and had a spinal fusion performed. She was asymptomatic for years prior to the December 2001 work accident. The Board found that Appellant's current neck and back problems were unrelated to this previous accident. Appellant was in another car accident in 2004 in which she suffered bruises, muscle strain and aggravated her back and neck, but she denied any injury to her knee.

Appellant petitioned the IAB seeking workers' compensation benefits for permanent impairment of the cervical and lumbar spines and medical expenses causally related to the injury.¹ Pursuant to 19 *Del. C.* §2346, Appellant, as claimant-below, joined as third-party defendants Dr. Nazim Ameer and RS Medical. After the evidentiary hearing conducted on April 4, 2006 and October 17, 2006, the Board awarded Appellant payment for five-percent impairment to the cervical spine; the portion of Dr. Ameer's bills relating to treatment for Appellant's neck condition; Dr. Balu's medical bills; Dr. Bose's bills; reimbursement for prescriptions relating to

¹"19 *Del.C.* § 2322 requires an employer to pay for medical expenses reasonably and necessarily related to an employee's work injury." *Turnbull v. Perdue Farms*, 1998 WL 281201, *2 (Del.Super.,1998), *aff'd*, *Turnbull v. Perdue Farms, Inc.*, 723 A.2d 398 (Del.,1998). "Whether medical services are necessary and reasonable or whether the expenses are incurred to treat a condition causally related to an industrial accident are purely factual issue within the purview of the Board." *Bullock v. K-Mart Corp.*, 1995 WL 339025, *3 (Del.Super.,1995).

Sandra Hackworth v. Wal-Mart Stores, Inc.
C.A. No. 06A-12-002 WLW
October 9, 2007

Appellant's neck and back; mileage; and reasonable attorney's fees. Appellant does not appeal these findings.

Additionally, the Board found insufficient evidence presented by Appellant to meet her burden to prove a causal relationship between her knee symptoms and the December 2001 work accident and therefore denied her medical expenses incurred from Dr. Ameer's medical treatment on her knees. Furthermore, the Board found that Appellant did not provide any evidence to show that the RS Medical equipment bill should be reimbursed by the Appellee and therefore the Board denied expenses relating to that equipment. Appellant does not appeal these findings. However, Appellant appeals to this Court the Board's failure to determine *her* liability to the third-party defendants. She also appeals the Board's failure to determine with particularity which of Dr. Ameer's bills are compensable.

Standard of Review

The review of an Industrial Accident Board's decision is limited to an examination of the record for errors of law and a determination of whether substantial evidence exists to support the Board's finding of fact and conclusions of law.² Substantial evidence equates to "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³ On appeal, this Court will not weigh

²*Histed v. E.I. Dupont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

³*Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Federal Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

Sandra Hackworth v. Wal-Mart Stores, Inc.
C.A. No. 06A-12-002 WLW
October 9, 2007

the evidence, determine questions of credibility, or make its own factual findings.⁴ Errors of law are reviewed *de novo*. Absent error of law, the standard of review for a Board's decision is abuse of discretion.⁵ The Board has abused its discretion only when its decision has "exceeded the bounds of reason in view of the circumstances."⁶

Discussion

The first issue is whether the board erred in failing to resolve claimant's liability to third-party defendants pursuant to 19 *del. C.* §2346. The Board found that Appellee is not liable for expenses relating to the portion of third party Dr. Ameer's treatment for Appellant's knee pain or the third party RS Medical's muscle stimulator. These two findings are not appealed. Appellant's appeal is based on the argument that 19 *Del. C.* §2346 requires the Board to assign liability for payment of medical services with regard to any parties to the proceeding so long as they are within the jurisdiction of the Board.⁷

This Court disagrees. The relevant clause is as follows:

If any person charged with the payment of medical and other services and the provider to whom said payment is due fail to reach an agreement in regard to such charges, any interested party may notify the Department of the facts. . . . The Board shall hear and determine the

⁴*Collins v. Giant Food, Inc.*, 1999 Del. Super. LEXIS 590 (quoting *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

⁵*Digiacomo v. Bd. of Pub. Educ.*, 507 A.2d 542, 546 (Del. 1986).

⁶*Willis v. Plastic Materials*, 2003 Del. Super. LEXIS 9 at *2-3.

⁷19 *Del.C.* § 2346.

matter. No party to the proceedings shall have any liability for the payment of charges in excess of the amount deemed reasonable and necessary; provided, that the provider is subject to the jurisdiction of the Board and made a party to the proceedings⁸

Interpreting the clause using its plain language,⁹ this Court finds that statute does not provide the Board with the authority to determine the disposition of every party joined in a workers' compensation action via §2346. Instead, once the Board finds that the injury falls outside the realm of workers' compensation, the Board is without jurisdiction to entertain claims related to that injury.

Specifically as to Dr. Ameer's medical services to Appellant's knee, the Board found that there was no causal link between these treatments and the compensable accident. After carefully reviewing the record, this Court finds the Board's conclusion to be based on substantial evidence.¹⁰ As such, medical treatment to the knee falls outside the jurisdiction of the Board, and therefore Appellant's appeal is

⁸19 *Del.C.* § 2346.

⁹*Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1245 (Del.,1985).

¹⁰The Board found that the record lacked knee-related medical records in the months immediately following the accident; Appellant's family and regularly-treating physician, Dr. Tonwe, testified at the hearing that the nature of the knee pain suggested an injury contemporary to the May 28, 2002 examination date on which Appellant first complained to him about that pain, and therefore not a result of the December 15, 2001 accident; and another year passed before Appellant sought Dr. Ameer to treat her knee. Given these facts, the Board could not find the knee injury causally related to the accident.

without merit.¹¹

Appellant argues that per 19 *Del. C.* §2346, she does not have liability to pay her medical bills because by joining Dr. Ameer she has protected herself. *Martinez v. Hilton* addresses §2346 in a footnote, stating that “if the medical expenses were approved, [the employer] would have to pay, but, if the expenses were disallowed, Claimant would *not* have to pay.”¹² This oversimplifies the consequence of the Board’s finding. In determining that the knee injury is unrelated to the work accident, the Board contemporaneously loses its jurisdiction to order a party to pay the medical bill.

In the case *sub judice*, the Board determined that the knee injury was unrelated to the work accident, and therefore the Board need not determine whether the treatment was reasonable and necessary—the Board has no jurisdiction over the knee injury and cannot assign liability for its medical treatment. The Board’s decision regarding Dr. Ameer’s medical treatments to the knee is *affirmed*.

¹¹19 *Del. C.* § 2301A(i) gives the Board jurisdiction over all disputes regarding the compensation owed to employees injured in industrial accidents. *State v. Brown*, 2000 WL 33225298, 3 (Del.Super., 2000). “The Board shall have jurisdiction over cases arising under Part II of this title and shall hear disputes as to compensation to be paid under Part II of this title.” 19 *Del.C.* § 2301A(i). Title 19, Part II covers “Workers Compensation” where

Every employer and employee, adult and minor, except as expressly excluded in this chapter, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.

19 *Del.C.* § 2304.

¹²1999 WL 462409 at *2, footnote 10 (Del.Super.,1999) (Emphasis in original.)

Sandra Hackworth v. Wal-Mart Stores, Inc.
C.A. No. 06A-12-002 WLW
October 9, 2007

Regarding third party RS Medical's muscle stimulator, the Board found that Appellant failed to meet her burden of proving that the medical expenses from RS Medical were reasonable, necessary and causally related to the December 2001 accident. This Court has carefully reviewed the Record and finds the Board's conclusion to be based on substantial evidence.¹³

The muscle stimulator was prescribed to treat the work accident injury, but the Board found it to be neither necessary, reasonable nor causally related to the accident. Therefore the muscle stimulator is beyond the Board's jurisdiction and Appellant's appeal is again without merit. The decision of the Board should be *affirmed*.

The final issue is whether the board erred when it failed to determine which of Dr. Ameer's bills are compensable. In a footnote in its Decision, the Board stated that

The Board cannot determine from the bill presented how much of Dr. Ameer's bill can be attributed to treatment for the neck and assumes the parties will be able to reach an agreement on how much of the bill should be paid by the Employer in accordance with this decision.¹⁴

Appellant argues that the Board must determine compensability with particularity.¹⁵

¹³RS Medical's muscle stimulator is barely addressed in the Record. RS Medical failed to appear or to submit case-related documents. However, the Record does reflect that RS Medical provided a muscle stimulator to Appellant as prescribed by Dr. Ameer. Dr. Bruce Grossinger, hired by the Appellee, examined Appellant, testified at the evidentiary hearing that he thought it was odd that Dr. Ameer would prescribe such a thing. Appellant never provided any evidence about the need for or use of the equipment. In fact, Appellant admitted to never using it.

¹⁴*Hackworth v. Wal-Mart Stores, Inc.*, IAB Hearing No. 1206428 (Nov. 22, 2006).

¹⁵Appellant incorrectly cites *Redmile v. Pathmark Stores, Inc.*, 1999 WL 743527, at 3 (Del. Super. 1999) which discusses the need for the Board to particularize its findings of facts and conclusions

Sandra Hackworth v. Wal-Mart Stores, Inc.
C.A. No. 06A-12-002 WLW
October 9, 2007

This Court disagrees. Neither a plain reading of the statute nor case law reveal such a responsibility. Even so, the Board was specific in determining that Appellee was responsible for Dr. Ameer's bills except for that portion dealing with the knee. The Board's Decision is *affirmed*.

Conclusion

Based on the foregoing, the Decision of the Industrial Accident Board is *affirmed*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution

of law with regard to §2326. This provision addresses disfigurements that are compensable *per se*. That case was remanded because the Board failed to consider all four factors used to determine disfigurement awards.