

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

PAMELA R. LECOMPTE,)	
)	
Petitioner,)	
)	
v.)	
)	C. A. No. 02A-01-010 JEB
CHRISTIANA CARE HEALTH)	
SYSTEMS,)	
)	
Respondent.)	

Submitted: July 9, 2002
Decided: October 2, 2002

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

OPINION

Appearances:

Jessica Lewis Welch, Esquire, Attorney for Pamela R. LeCompte

Maria Paris Newell, Esquire, Attorney for Christiana Care Health Systems

JOHN E. BABIARZ, JR., JUDGE

This is the Court's decision on Petitioner Pamela R. LeCompte's appeal from a decision of the Industrial Accident Board (Board), finding that Petitioner's lumbar (left hip) problems occurring after an April 16, 2001 automobile accident are unrelated to a June 23, 1999 work accident. Petitioner's work accident injuries occurred while she was employed by Christiana Care Health Systems (Employer) as a patient escort. For the reasons explained below, the Board's decision is *Affirmed*.

FACTS

Petitioner Pamela LeCompte began working for Christiana Care as a patient escort in March 1999. A special requirement for the job was a back evaluation exam, which Petitioner passed.¹ She worked as a patient escort for approximately four months without incident.

On June 23, 1999, while helping to transport a bedridden patient, Petitioner injured her right shoulder on a wall. She was further injured while pushing the bed off an elevator and around a corner. The bed jolted against a wall, and Ms. LeCompte was twisted into an awkward position. She felt immediate pain in her left rib area, along with difficulty in breathing, and she went to the Employee Health office.

¹Transcript of Board Hearing No. 1147964 at 125. Subsequent references to the transcript appear as “Tr. at page no.”

As a result of the work accident, Petitioner and Respondent entered an Agreement as to Compensation, which awarded Petitioner medical expenses and partial disability benefits for her right shoulder injury.

Ms. LeCompte also had pain in her back, neck, hip, and left shoulder, and consulted her family physician, Dr. Mark Glassner, from whom she received treatment and physical therapy. Because of continuing back and hip pain, in September 1999, Dr. Glassner referred Petitioner to Dr. Tony Cucuzella, who specializes in physical medicine and rehabilitation. Petitioner stated that she had continuous pain in her back and hip, as well as her groin. Dr. Cucuzella's initial treatments included various injections and an MRI.

Because the MRI results were within normal ranges, Dr. Cucuzella recommended a discogram to determine the cause of the low back pain. Dr. Cucuzella related Ms. LeCompte's injuries to the work accident, although he had "never been sure" that her hip injury was the result of the work accident.² Petitioner had also had four car accidents prior to the work accident.

On April 16, 2001, Ms. LeCompte was in a fifth car accident. Dr. Cucuzella,

²*Id.* at 151.

among others, treated her for injuries to the left shoulder and cervical spine. Surgery for the left shoulder was recommended as a result of the car accident.³ Petitioner also complained of increased left hip pain. She sought compensation for these injuries through insurance coverage.

On June 4, 2001, Ms. LeCompte filed a Petition to Determine Additional Compensation Due for medical expenses stemming from the work accident. The parties agreed to a termination of Petitioner's partial disability benefits. The Board held a hearing on the medical expenses on December 19, 2001. Witnesses included Petitioner; two medical experts, Dr. Tony Cucuzella for the Petitioner, and Dr. John Townsend for Employer; as well as staff members from Christiana Care Health Systems.

Petitioner testified that since the work accident she had had continuous neck, back and shoulder problems. She described having been in four car accidents between the ages of 16 and 30, the last of which was six years prior to the work accident. She acknowledged having residual problems from those accidents, but stated that the pain in her neck, back, left shoulder and left hip were much worse after

³*Id.* at 149.

the work accident. She also testified that as result of the 2001 car accident she had surgery on her left shoulder and may also need to have neck surgery.

Dr. Cucuzella testified that in September 1999 he treated Petitioner for thoracic, cervical and lumbar pain, radiating into the left hip. He stated that the twisting injury that involved being struck by a hospital bed could cause injury to a lumbar, cervical or thoracic disc.⁴ He believed her hip pain was related to the back problems and had therefore recommended a discogram to determine the source of the problem.⁵ For insurance reasons, Petitioner did not have the discogram. Despite a series of injections, Petitioner experienced no relief in her left buttock and hip.

Dr. Cucuzella stated that at each appointment with Petitioner he looked for evidence that she was magnifying her symptoms. He found none. Dr. Cucuzella believed that but for the June 23, 1999 event, Ms. LeCompte would not have required any treatment from him⁶ or the disco gram.⁷

Dr. Townsend, Respondent's expert, examined Petitioner twice and estimated that 40 percent of her present lumbar spine complaints were related to the work

⁴*Id.* at 128.

⁵*Id.* at 131.

⁶*Id.* at 140.

⁷*Id.* at 141.

accident,⁸ with the balance attributed to pre-existing injuries. Dr. Townsend found that a discogram was an appropriate test based on the June 1999 work accident.

In its decision, the Board granted medical expenses for the shoulder and cervical spine that accrued between the June 1999 work accident and the April 2001 car accident. The Board denied any medical expenses for the thoracic spine because of Petitioner's failure to prove causation. In regard to the lumbar spine, which is the subject of this appeal, the Board accepted Dr. Cucuzella's opinion that the work accident exacerbated Petitioner's prior lumbar problems. For this reason, the Board found that the discogram, which Dr. Cucuzella recommended in October 2000 but was never conducted, was a reasonable and necessary procedure related to the work accident. The Board also found that Petitioner failed to prove that any lumbar problems after April 16, 2001 car accident were related to the work accident. Petitioner was awarded one attorney's fee and an expert witness fee.

Petitioner filed a timely appeal to this Court of the Board's denial of her petition for medical expenses for her lumbar spine. Briefing is complete, and the issues are ripe for decision.

⁸*Id.* at 88, 89.

STANDARD OF REVIEW

On appeal from the Industrial Accident Board, the Superior Court is limited to correcting errors of law and determining whether substantial evidence exists in the record to support the Board's factual findings.⁹ Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹⁰ On appeal, this Court does not sit as trier of fact with authority to weigh the evidence, determine questions of credibility, or make its own factual findings.¹¹ It merely determines if the evidence is legally adequate to support the Board's findings.¹²

DISCUSSION

Petitioner raises three issues, all of which are related to the lumbar spine/left hip. First, Petitioner argues that there is not substantial evidence in the record to support the Board's finding that any lumbar or left hip problems after the car accident on April 16, 2001 are unrelated to the work injury. Second, Petitioner argues the

⁹*Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del.1993); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del.1965).

¹⁰*Olney v. Cooch*, 425 A.2d 610, 614 (Del.1981).

¹¹*ILC of Dover, Inc. v. Kelley*, 1999 WL 1427805, at *1 (Del.Super.1999).

¹²*Del.Code Ann.* tit. 29, § 10142(d) (1997).

Board abused its discretion in finding that the April 2001 car accident was the cause of Petitioner's current problems because that issue was not before the Board. Third, Petitioner argues that the Board properly granted payment for the lumbar discogram, but erred in denying payment for any medical expenses that might be incurred as a result of the testing.

Where there is an identifiable work-related accident, the compensability of a resulting injury must be determined by the "but-for" standard of proximate cause.¹³ Under the but-for test, a pre-existing disease or infirmity, whether overt or latent, does not disqualify a claim for worker's compensation if the employment aggravated, accelerated, or in combination with the infirmity produced the disability.¹⁴

Petitioner argues first that there is not sufficient evidence to support the Board's finding that any lumbar/left hip problems are not related to the work accident. However, the Board reached no such conclusion, but found that Petitioner had *failed to prove* that any post April 16, 2001 lumbar/left hip problems are related to the work injury, which is a different proposition altogether. Because Petitioner has

¹³*Sewell v Delaware River and Bay Authority*, 796 A.2d 655, 600 (Del.Super.2000) (citing *Reese v. Home Budget Ctr.*, 619 A.2d 907 (Del.1992)).

¹⁴*Id.* at 661 (citing *Reese* at 910).

no outstanding lumbar/left hip medical bills and is not undergoing any such treatment, there are no medical expenses for the Board to rule upon at this time. The Court concludes that the record evidence supports the Board's finding that Petitioner has not proved that any post April 16, 2001 lumbar/left hip injuries are related to the work accident in June 1999.

Petitioner also argues that the Board abused its discretion in ruling on an issue that was not raised by the parties, that is, whether the April 2001 car accident was related to any of Petitioner's current health problems. The record shows that this issue was argued by both attorneys during opening statements, was addressed by Petitioner and both doctors, and was reargued during closings. The Court concludes that the Board did not abuse its discretion in considering the evidence of the April 2001 car accident.

Third, Petitioner asserts that the Board "held that any treatment to the back and to the left hip following the April 16, 2001 motor vehicle accident is not related back to the June 23, 1999 work accident."¹⁵ This argument again misstates the Board's ruling. As stated earlier in this Opinion, the Board ruled that Petitioner *failed to*

¹⁵Opening Brief at 14.

prove that her left hip problems are related to the work accident. Because Petitioner is not currently undergoing treatment for her lumbar back/left hip, the Board had no decision to make as far as payments. The discogram is a diagnostic tool which the Board found to be "reasonable, necessary and related to the work accident" and thus compensable, based on the testimony of both Dr. Cucuzella and Dr. Townsend. No other treatment is recommended by either doctor at this time, and no further rulings were required by the Board. As Petitioner asserts in her opening brief, the discogram could result in a number of different outcomes,¹⁶ and the Board cannot rule on mere possibilities. The Court concludes that the Board did not err in its ruling on the lumbar/left hip expenses.

CONCLUSION

For all these reasons, the Board's decision is *Affirmed*.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

¹⁶*Id.* at 14-15.

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Original to Prothonotary