

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

RYAN TIBBITS,)
)
 Employee/Appellant,)
)
 v.) C.A. No. N12A-03-006 WCC
)
 UNITED PARCEL SERVICE,)
)
 Employer/Appellee.)

Submitted: May 1, 2013
Decided: July 31, 2013

On Employer/Appellee's Motion for Reargument - DENIED

ORDER

Leroy A. Tice, Esquire. Leroy A. Tice, Esquire, P.A., 702 N. King Street, Suite 600, P.O. Box 1675, Wilmington, DE 19899. Attorney for Employee/Appellant.

Nancy Chrissinger Cobb, Esquire. Chrissinger & Baumberger, 3 Mill Road, Suite 301, Wilmington, DE 19806. Attorney for Employer/Appellee.

CARPENTER, J.

After consideration of United Parcel Service's ("UPS") Motion for Reargument, the following findings and decision are made:

1. This Court issued its Opinion, reversing the decision of the Industrial Accident Board ("IAB") on March 28, 2013.

2. UPS subsequently filed a timely Motion for Reargument, and the Court took the unusual step of having oral argument on May 1, 2013 on the procedural issue raised in UPS's Motion. Essentially, UPS contends that the only theory asserted by Ryan Tibbits ("Tibbits") in his IAB filing, which includes pretrial papers not part of the official appeal record, was that an acute event caused his injury. As such, in fairness, UPS asserts that the matter should be remanded—and not reversed—so that UPS can properly attempt to defend the "substantial factor" finding by the Court.

3. The Court, however, is required to consider the decision and record of the IAB in making its decision and not the posture in which the parties believe the matter was being litigated. What is clear from the IAB decision is that, regardless of how the initial petition may have been drafted, the IAB believed and understood that Tibbits' compensation could be awarded if there was an identifiable specific work event or if Tibbits' work activities were a substantial cause of his condition. There is nothing in the IAB's opinion that would reflect that the only theory being

presented to the IAB for its decision was one involving an acute work event. Since the IAB's opinion addressed both theories, it is difficult for the Court to now believe that there was some fundamental unfairness in the IAB proceedings that would require this Court to remand the case and allow an expansion of the record by UPS.

4. There is no assertion that the Court has overlooked a controlling precedent or legal principle or misapprehended the law or facts such as would have changed the outcome of the underlying decision. While the possible confusion of how this matter was being presented to the IAB is unfortunate, the Court cannot say that it has tainted the IAB proceedings to the extent a remand is now required.

5. Based upon the above, the Motion for Reargument is hereby denied.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.