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Case Number 138,2015

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIANA CARE HEALTH SERVICES,	)	
	)	No. 138,2015
Appellee Below, Appellant,	)	Court Below: Superior Court of the State of Delaware in and for New Castle County C.A. No. N14A-05-012 VLM
v.	)	
KENNETH S. DAVIS,	)	
Appellant Below, Appellee.	)	

APPELLEE'S ANSWERING BRIEF

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Dated: July 6, 2015

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NATURE OF PROCEEDINGS

The Appellant Below, Appellee, Kenneth Davis ("Claimant"), injured his low back on August 21, 2012 while working in the course and scope of his employment with the Appellee Below, Appellant, Christiana Care Health Services ("Employer"). Claimant filed an initial Petition to Determine Compensation Due on December 11, 2012 seeking an acknowledgment that the injury was compensable and payment of related medical expenses. A hearing on the merits was scheduled for May 29, 2013. On March 18, 2013, Employer made a written 30-day settlement offer "to acknowledge the 8/21/12 work accident and a lumbar spine contusion – resolved;" and related medical treatment through the date of the February 27, 2013 defense medical examination ("DME"). (B19 – B20) Claimant did not agree to Employer's proposal limiting the accepted injury to a lumbar contusion, nor did he agree that the injury resolved. Instead, on May 13, 2013, Claimant's counsel emailed Employer's counsel to confirm an agreement to acknowledge a low back injury, and wrote: "I have authority to accept the employer's settlement offer to acknowledge the 8/21/12 work related injury to the low back and to acknowledge the medical treatment up through Dr. Crain's 2/27/13 DME." (B21) Employer affirmed its acceptance of the settlement agreement, without alteration, in its concise email response confirming the cancellation of its experts' depositions. (B22)

On May 16, 2013, Employer's counsel wrote a separate confirmation letter

that described the acknowledged injury as a "lumbar spine contusion – resolved." (B23 – B24) Employer subsequently tendered a "medical only" Agreement as to Compensation for Claimant's signature that also speciously identified the injury as "lumbar spine contusion, resolved." (B25 – B26) On February 17, 2014, Claimant filed a Petition to Determine Additional Compensation Due ("petition") seeking compensation for an eight percent permanent impairment to his low back pursuant to 19 *Del. C.* § 2326. (B27 – B31) On April 16, 2014, Employer moved to dismiss the petition on the basis that it is contrary to the prior settlement agreement that Claimant's low back injury resolved and that no further treatment was warranted. (B32) The parties attended a legal hearing on May 15, 2014 on Employer's motion to dismiss. (B4 – B18) Following argument, the Board granted Employer's motion and dismissed Claimant's petition with prejudice. (Exhibit B) On May 28, 2014, Claimant filed a Notice of Appeal from the Board's Order with the Superior Court. Claimant filed his Opening Brief with the Superior Court on September 16, 2014. (B33 – B53) Employer filed its Answering Brief with the Superior Court on October 20, 2014. (B54 – B80)

On February 27, 2015, the Superior Court issued its Opinion and concluded that the Board's decision to dismiss Claimant's permanency petition must be reversed and remanded this matter for further proceedings concerning the merits of Claimant's permanency petition. (Exhibit A)

SUMMARY OF ARGUMENT

I. Denied. The Industrial Accident Board erred in dismissing Claimant's permanency petition because there was no agreement that the injury had resolved.

STATEMENT OF FACTS

On August 21, 2012, Claimant injured his low back while working for Employer. At the time of the incident, Claimant was employed as a Service Assistant in Christiana Care's Food and Nutrition Services department and was washing pots when he slipped on water and fell backwards to the floor, landing on his back. Claimant filed an initial petition on December 11, 2012 seeking an acknowledgment that the injury was compensable and payment of related medical expenses. A hearing was originally scheduled to occur on April 17, 2013 but a continuance was granted and the hearing was rescheduled for May 29, 2013. On March 18, 2013, Employer made a written 30-day settlement offer "to acknowledge the 8/21/12 work accident and a lumbar spine contusion – resolved;" and related medical treatment through the date of the February 27, 2013 DME with Dr. Leitman, most of which bills Employer had already paid without prejudice in accordance with 19 *Del. C.* § 2322(h). (B19 – B20) Claimant did not agree to Employer's narrow proposal limiting the accepted injury to a lumbar contusion, nor did he agree that the injury resolved. Instead, on May 13, 2013, Claimant's counsel emailed Employer's counsel to confirm an agreement to acknowledge a low back injury, and wrote: "I have authority to accept the employer's settlement offer to acknowledge the 8/21/12 work related injury to the low back and to acknowledge the medical treatment up through Dr. Crain's 2/27/13 DME." (B21) The email also confirmed that Dr. Bose,

Claimant's expert medical witness, would not be charging a cancellation fee for his deposition that was scheduled for later that evening and requested Employer's counsel confirm that she would likewise cancel the depositions of Employer's expert witnesses. (B21) Employer's counsel replied via email twelve minutes later, confirming its agreement with Claimant's settlement proposal, stating "Yes- I will cancel my depos." (B22) Employer affirmed its acceptance of the settlement agreement, without alteration, in its concise email response confirming the cancellation of its experts' depositions. Employer did not assert that it was only agreeing to accept a resolved lumbar contusion injury.

In spite of this, on May 16, 2013 Employer's counsel wrote a separate confirmation letter that described the acknowledged injury as a "lumbar spine contusion – resolved." (B23 – B24)[1] Employer subsequently tendered a "medical only" Agreement as to Compensation (B25 – B26) for Claimant's signature that also speciously identified the injury as "lumbar spine contusion, resolved," which is contrary to the actual terms of the settlement as confirmed in the contemporaneous emails and is inconsistent with the parties' agreement.

Subsequently, on February 17, 2014, Claimant filed a permanency petition seeking compensation for an eight percent permanent impairment to his low back.

[1] The May 16 letter was addressed to the managing partner in Claimant's counsel's office who was not involved in the settlement agreement reached with the undersigned counsel three days earlier and the undersigned counsel did not see the letter at that time.

(B27 – B31) On April 16, 2014, Employer moved to dismiss the petition on the basis that it is contrary to the prior settlement agreement that Claimant's low back injury resolved and that no further treatment was warranted. (B32) At the May 15, 2014 legal hearing, Employer argued that the settlement agreement was limited to acknowledging a lumbar spine contusion that was resolved and payment of a limited course of treatment through the date of the DME and that there can be no claim for a permanent impairment for a resolved injury. (B7 – B8) Employer argued that the parties entered into an enforceable contract because there was a meeting of the minds when Claimant accepted Employer's settlement offer. (B9)

Claimant argued that the express language of the May 13, 2013 email confirms that there was no agreement that the injury was limited to a resolved lumbar spine contusion because it plainly states that the acknowledged injury was to the low back. (B10 – B14; B16) Therefore, as the contemporaneous email confirms, the parties either had a meeting of the minds that Claimant sustained a low back injury or, alternatively, that there was no meeting of the minds as to the exact nature of the injury such that the parties need to continue negotiating to reach an agreement. (B10 – B14; B16) Claimant further argued that the agreement only encompassed those issue presently before the Board concerning Claimant's initial petition and it did not include a permanency claim because that issue was not pending before the Board at that time. (B10 – B14; B16) Following argument, the Board decided to grant the

motion to dismiss and explained that while the word "resolved" was not used in the email, the settlement offer and the actual agreement as to compensation that was filed with the Board indicate that the injury resolved, and as such, there can be no permanent impairment for a resolved injury. (B17 – B18) The Board then signed Employer's proposed form of Order, granting Employer's motion and dismissing Claimant's petition with prejudice. (Exhibit B)

ARGUMENT

I. THE INDUSTRIAL ACCIDENT BOARD ERRED IN DISMISSING CLAIMANT'S PERMANENCY PETITION BECAUSE THERE WAS NO AGREEMENT THAT THE INJURY HAD RESOLVED

A. QUESTIONS PRESENTED

Whether the Superior Court properly determined that the Industrial Accident Board erred in dismissing Claimant's petition for permanency benefits. This question was preserved below in Claimant's Opening Brief (B33 – B53) and Employer's Answering Brief (B54 – B80); and before the Board in oral argument during the legal hearing on Employer's motion to dismiss (B4 – B18).

B. SCOPE OF REVIEW

In order to effectuate the provisions of the Delaware Workers' Compensation Act, this Court must liberally interpret the provisions of the Act in order to fulfill its intended compensation goals. *Histed v. E.I. Du Pont de Nemours & Co.*, 621 A.2d 340 (Del. 1993). The Act provides the exclusive remedies available to employees injured in the course of their employment. 19 *Del. C.* § 2304. Because the Act is intended to benefit injured workers, Delaware courts construe it liberally, and "resolve any reasonable doubts in favor of the worker." *Hirneisen v. Champlain Cable Corp.*, 892 A.2d 1056, 1059 (Del. 2006). The Act "is grounded in a public policy strongly in favor of employers making restitution to employees who are injured while working." *Barnard v. State*, 642 A.2d 808, 819-20 (Del. Super. 1992), *aff'd,* 637 A.2d 829 (Del. 1994).

In an appeal from the Board, the Supreme Court examines the record for any errors of law and determines whether substantial evidence exists to the support the Board's findings of fact and conclusions of law. *Histed v. E.I. Du Pont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993). "Substantial evidence equates to 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009) *quoting Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981). Questions of law are reviewed *de novo*. *Id.* Absent errors of law, the Board's decision is reviewed for abuse of discretion. *Glanden v. Land Prep, Inc.* 918 A.2d 1098, 1100 (Del. 2007). Abuse of discretion occurs when a tribunal has "exceeded the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice." *Harper v. State*, 970 A.2d 199, 201 (Del. 2009).

Statutory interpretation is a question of law and the Supreme Court does not defer to an administrative agency's or the Superior Court's interpretation of the statute in question. *Del. Dep't of Natural Res. & Envtl. Control v. Sussex Cnty.*, 34 A.3d 1087 (Del. 2011). Where the issue is one of statutory construction and the application of the law to undisputed facts, the court's review is plenary; it is not bound by the agency's conclusion. *Stoltz Management Co., Inc. v. Consumer Affairs Bd.*, 616 A.2d 1205 (Del. 1992). A reviewing court may accord due weight, but not defer, to an agency interpretation of a statute administered by it. *Public Water Supply*

Co. v. DiPasquale, 735 A.2d 378, 382 (Del. 1998). A reviewing court will not defer to the interpretation of an agency simply because it is rational or not clearly erroneous. *Id.* at 383.

"Where the language of the statute is unambiguous, no interpretation is required and the plain meaning of the words controls." *Ingram v. Thorpe*, 747 A.2d 545, 547 (Del. 2000). However, if the statute is ambiguous, it "must be construed as a whole in a manner that avoids absurd results." *Id.* A statute is ambiguous if it "is reasonably susceptible of different conclusions or interpretations." *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985). "The interpretation of the terms of a settlement agreement is matter of law, not a question of fact." *Chavez v. David's Bridal*, 979 A.2d 1129, 1134 (Del. Super. 2008), *aff'd,* 950 A.2d 658 (Del. 2008).

C. MERITS OF ARGUMENT

The Superior Court correctly determined that the Board committed reversible error in dismissing Claimant's permanency petition because the initial settlement agreement acknowledged a low back injury and payment of related medical expenses, but it did not include an agreement that the injury "resolved" or that Claimant was foreclosed from bringing any future claims for additional workers' compensation benefits. The Superior Court summarized the issue presented as "the reasonable interpretation of the term 'resolved' in the context of the parties'

agreement, and whether that term equates to Claimant being barred from pursuing a future workers' compensation claim for that injury." (Exhibit A at 6-7) Following its review of the record, the Superior Court properly concluded that "the Board's interpretation of the parties' agreement as evidenced by its May 15, 2014 Order is unsupported by the evidence presented at the Legal Hearing." *Id.* at 7. The Superior Court also properly determined that "the Board's legal conclusion that there can be no permanent impairment, without more, was erroneous." *Id.* at 9. Employer maintains that Claimant's petition for permanent impairment benefits should be dismissed/barred because it is inconsistent with the settlement agreement and based on the doctrine of *res judicata*.

Litigants routinely resolve their differences prior to hearings so as to avoid the uncertainty of a decision before the Board. Simple settlement letters like the one at issue cannot and should not be construed to relinquish future rights unless those future rights are clearly set forth and understood by both parties. That did not occur in the instant case as evidenced by a plain reading of the May 13, 2013 settlement confirmation emails (B21-B22) and the May 16, 2013 letter (B23-B24). The Board's decision to dismiss Claimant's permanency petition as being precluded by the executed workers' compensation Agreement was not supported by substantial evidence or free from legal error.

The Agreement as to Compensation failed to reflect the intention of the

parties, and therefore the agreement is subject to modification or rescission. Resolution of this issue, then, centers on whether the parties reached a meeting of the minds on all material terms of the settlement agreement. Delaware law provides a mechanism for parties engaged in workers' compensation litigation to reach an agreement as to compensation prior to and in lieu of an award given by the Board. *Nationwide Ins. Co. v. Wolos*, 2006 WL 2458466 (Del. Super.), *aff'd*, 922 A.2d 415 (Del. 2007). 19 *Del. C.* § 2344(a) provides that "[i]f the employer and the injured employee … reach an agreement in regard to compensation …, a memorandum of such agreement signed by the parties in interest shall be filed with the Department and, if approved by it, shall be final and binding unless modified as provided in § 2347 of this title." If the parties reach a meeting of the minds on a settlement, the Board can enforce the settlement even if a party later has second thoughts. *See Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998).

It is true that, normally, when a matter has previously been resolved by an agreement approved by the Board, that issue cannot be revisited absent a situation under 19 *Del. C.* § 2347 where the employee is seeking to increase or renew benefits or the employer is seeking to reduce or terminate benefits. *See Elliott v. Salisbury Coca-Cola*, 1996 WL 453340 at *4 (Del. Super.). However, it has long been recognized and is established case law that the Board has the inherent power to modify or set aside an award or agreement for the same reasons that would justify

modification or rescission of a contract. *Greenly v. Kent Const. Co.*, 520 A.2d 1044 (Del. 1986); *C.F.S. Air Cargo v. Holsey*, 1992 WL 151360 (Del.); *Donovan v. Glasgow Thriftway*, 1990 WL 105625 (Del. Super.); *Barber v. F.W. Woolworth's Co.*, 1996 WL 769221 (Del. Super.); *Burgess v. Med. Ctr. of Del.*, 1997 WL 718653 (Del. Super.), *aff'd*, 1998 WL 138939 (Del.). Subsequent attempts to reopen a voluntary agreement are treated as if they were consent judgments, which "means that the Court should not allow a party to free himself from the judgment unless there is some theory in operation which would free him from a contract." *Barber*, 1996 WL 769221 at *3 (citing *Keystone Fuel Oil Co. v. Del-Way Petroleum, Inc.*, 364 A.2d 826, 829 (Del. Super. 1976)). The applicable standard when considering such attempts to reopen a voluntary agreement is derived from Superior Court Civil Rule 60(b), which may relieve a party from a final judgment under certain enumerated circumstances. *Barber*, 1996 WL 769221 at *5. A party may be relieved from a final judgment order, or proceeding for the following reasons:

> (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence…; (3) fraud…, misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged …; or (6) any other reason justifying relief from the operation of the judgment.

Super. Ct. Civ. R. 60(b). The standard for a motion under Rule 60(b)(6) is the "extraordinary circumstances" test. *Jewell v. Div. of Soc. Servs.*, 401 A.2d 88, 90 (Del. 1979). Delaware courts favor Rule 60(b) motions, as they promote Delaware's

strong public policy of deciding cases on the merits and giving parties to litigation their day in court. *Dishmon v. Fucci*, 32 A.3d 338 (Del. 2011); *Schrader-VanNewkirk v. Daube*, 2012 WL 1952297 (Del.); *Keener v. Isken*, 58 A.3d 407 (Del. 2013); *Verizon Delaware, Inc. v. Baldwin Line Const. Co., Inc.*, 2004 WL 838610 (Del. Super.); *Keystone*, 364 A.2d at 828.

"The formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration." *Wood v. State*, 2003 WL 168455 (Del.). In determining whether parties have formed a binding contract, the court looks to their overt manifestations of assent rather than their subjective intent. *Indus. America, Inc. v. Fulton Indus., Inc.*, 285 A.2d 412, 415 (Del. 1971). Delaware, which has adopted the mirror-image rule, requires that acceptance be identical to the offer. *See Friel v. Jones*, 206 A.2d 232, 233-34 (Del. Ch. 1964) ("It is an elementary principle of contract law that an acceptance of an offer, in order to be effectual, must be identical with the offer and unconditional."), *aff'd*, 212 A.2d 609 (Del. 1965); *PAMI-LEMB I Inc. v. EMB-NHC, L.L.C.*, 857 A.2d 998, 1015 (Del. Ch. 2004) ("In order to constitute an 'acceptance,' a response to an offer must be on identical terms as the offer and must be unconditional."). "Compliance by the offeree with the terms of the offer generally constitutes acceptance, and to be effectual it must be identical to the offer (the 'mirror image' rule)." *Murphy v. State Farm Ins. Co.*, 1997 WL 528160 at *3 (Del. Super.). Contracts must be construed

as a whole, to give effect to the intentions of the parties. *E.I. duPont de Nemours & Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985). Where the contract language is clear and unambiguous, the parties' intent is ascertained by giving the language its ordinary and usual meaning. *Rhone-Poulenc Basic Chem. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992).

A review of the terms of Employer's March 18, 2013 offer letter (B19-B20) and the Claimant's May 13, 2013 email (B21) confirms that the parties did not have a meeting of the minds on all material terms of the settlement agreement because the acceptance was not on identical terms to the offer. Employer offered to "acknowledge the 8/21/12 work accident and a lumbar spine contusion – resolved;" whereas Claimant's acceptance plainly states that the acceptance was "to acknowledge the 8/21/12 work related injury to the low back." Since the mirror-image rule requires that acceptance be identical to the offer, it cannot be said that a binding agreement was reached because Claimant's acceptance was not conditioned on the injury being resolved as Employer submits. Concomitantly, Claimant's settlement email constituted a counteroffer proposing to acknowledge a low back injury, the terms of which Employer's counsel accepted through her May 13, 2013 email response and her compliance with the terms of the agreement by subsequently cancelling Employer's experts' depositions. (B22) However, both of the foregoing scenarios lead to the same result – Claimant did not agree that the injury had resolved

thereby precluding him from making any further claims for additional workers' compensation benefits in connection with the August 21, 2012 work accident. As such, the compensation agreement filed with the Board failed to reflect the intention of the parties, and therefore the agreement is subject to modification or rescission and the Board erred in dismissing Claimant's petition.

Furthermore, the Board erred in dismissing the petition because the doctrines of *res judicata* and collateral estoppel are inapplicable. "Under the doctrine of *res judicata,* a party is foreclosed from bringing a second suit based on the same cause of action after a judgment has been entered in a prior suit involving the same parties." *Betts v. Townsends, Inc.*, 765 A.2d 531, 534 (Del. 2000). "Similarly, where a court or administrative agency has decided an issue of fact necessary to its decision, the doctrine of collateral estoppel precludes relitigation of that issue in a subsequent suit or hearing concerning a different claim or cause of action involving a party to the first case." *Id.* "Essentially, *res judicata* bars a court or administrative agency from reconsidering conclusions of law previously adjudicated while collateral estoppel bars relitigation of issues of fact previously adjudicated." *Id.* To determine whether collateral estoppel applies to bar consideration of an issue, a court must determine whether:

> (1) The issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the

> party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

Betts, 765 A.2d at 535 (citing *State v. Machin*, 642 A.2d 1235, 1239 (Del. 1993)). All the factors of collateral estoppel must be met in order to satisfy the doctrine. *Atkinson v. Del. Curative Workshop*, 1999 WL 743447 at *3 (Del. Super.).

However, the preclusive effect of a compensation agreement bars a future attack on the correctness of the prior agreement as to compensation, unless the agreement is in some other way void. *Id.* (citing *Taylor v. Hatzel & Buehler*, 258 A.2d 905, 908 (Del. 1969) ("[A]wards of compensation boards are generally held to be *res judicata* and, thus, immune from collateral attack, except where the award for some reason is void.")). "The doctrine of *res judicata* can apply to that part of a Board-approved settlement agreement where the parties stipulate that an employer is freed from responsibility for an injury." *Chavez*, 979 A.2d at 1135. The instant matter is distinguishable from *Chavez* because, as noted *supra*, there was no agreement between the parties that the injury had resolved since there was no meeting of the minds as to that material term. As a result, the Board-approved agreement did not reflect the true terms of the agreement and dismissal of the permanency petition was unjustified. The Superior Court correctly determined that *Chavez* is inapposite because Claimant did not expressly waive further claims based on his injury. (Exhibit A at 11-12)

Additionally, *res judicata* is inapplicable to the facts of this case because the

Board was presented with different claims with each petition: an initial claim for the compensability of the low back injury and payment of medical expenses; and thereafter a claim for permanency benefits under 19 *Del. C.* § 2326. A claimant is entitled to compensation for permanent injuries sustained as the result of a work-related accident resulting in the loss or loss of use of any member or part of the body. 19 *Del. C.* § 2326. "Loss of use should be determined based upon the ability of the employee to use the member or part, and conversely, the loss of use represents that degree of normal use which is beyond the ability or capability of the employee." *Wilmington Fibre Specialty Co. v. Rynders*, 316 A.2d 229, 231 (Del. Super. 1974), *aff'd* 336 A.2d 580 (Del. 1975). Because the Board was confronted with different claims it was not barred by the doctrine of *res judicata* from hearing evidence and making a determination as it pertained to Claimant's permanency petition. As the Superior Court noted, "[t]he Board should have heard evidence on this issue, rather than concluding as a matter of law the 'there can be no permanent impairment for a resolved injury.'" (Exhibit A at 11) Similarly, collateral estoppel is inapplicable here because the permanency petition involves distinct issues. *See Betts*, 765 A.2d 531 (holding that collateral estoppel did not apply because the issue before the Board was not identical to the issue adjudicated previously).

The Superior Court correctly determined that reversal was appropriate because the Board's interpretation of the "resolved" language was inconsistent with

the agreement of the parties and the letter and spirit of Delaware's Workers' Compensation Act. (Exhibit A at 9-10). Under the Act, a claimant and an employer may reach a final resolution of a workers' compensation case through a commutation of benefits. 19 *Del. C.* § 2358. However, a commutation requires Board approval, which is granted only if the Board determines that it is in the claimant's best interest. *Id.* It is undisputed that the parties did not reach a commutation agreement, nor did they seek approval of a commutation of compensation before the Board.

Based on the foregoing, it is clear that Claimant did not agree that the injury had "resolved," nor did he agree to relieve Employer of its responsibility for the injury. Therefore, dismissal was inappropriate and contrary to Delaware's strong public policy of having cases determined on their merits.

CONCLUSION

WHEREFORE, the Appellant Below, Appellee respectfully requests that this Court affirm the February 27, 2015 decision of the Superior Court, reversing and remanding the Industrial Accident Board's May 15, 2014 order of dismissal, since the Superior Court's decision is supported by substantial evidence and free from legal error.

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