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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
v.	)	
KENNETH S. DAVIS,	)	
Appellant Below, Appellee.	)	

APPELLEE BELOW-APPELLANT'S REPLY BRIEF

MARIA PARIS NEWILL, ESQUIRE
Attorney I.D. 2929
GREGORY P. SKOLNIK, ESQUIRE
Attorney I.D. 5661
Heckler & Frabizzio, P.A.
The Corporate Plaza
800 Delaware Avenue, Suite 200
P.O. Box 128
Wilmington, Delaware 19899-0128
Attorneys for Appellee Below-Appellant,
CHRISTIANA CARE HEALTH SERVICES

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TABLE OF CONTENTS

Table of Citations iii

Argument 1

I. The Industrial Accident Board correctly dismissed the Claimant's permanent impairment claim because the objective evidence establishes that the parties entered a binding settlement agreement stating that any lumbar "contusion" injury attributable to the 8/21/12 work event had "resolved", meaning that there can be no permanent impairment 1

A. Question Presented 1

B. Standard and Scope of Review 1-3

C. Merits 3-11

Conclusion 12

TABLE OF CITATIONS

Cases:

Anchor Motor Freight v. Ciabattoni, 716 A.2d 154 (Del. 1998).....10

Besk Oil, Inc. v. Brown & Bigelow, Inc., 1988 Del. Super. LEXIS 464 (Dec. 16, 1988) 2, 7

Bundy v. Corrado Bros., 1998 LEXIS 184 (Del.) 1

Chavez v. David's Bridal, 979 A.2d 1129, (Del. 2007) 1

Craig v. Synvar Corp., 233 A.2d 161 (Del. Super. 1967) 5

Dallachesia v. General Motors Corp., 140 A.2d 173 (Del. Super. 1958).....6

General Motors Corp. v. Freeman, 164 A.2d 686 (Del. Super. 1960) 6

General Motors Corp. v. Guy, 1991 Del. Super. LEXIS 247 (Aug. 16, 1991).....2, 8

Histed v. E.I. DuPont de Nemours & Co., 621 A.2d 340 (Del. 1993) 1

Hunter v. Wright Transfer & Supply Co., 69 A.2d 269 (Del. Super. 1949) 6

Johnson v. Chrysler Corp., 21 A.2d 64 (Del. 1965) 2, 3, 9

Kiefer v. Nanticoke Health Servs., 979 A.2d 1111 (Del. 2009).....2

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

Seaford Feed Co. v. Moore, 1987 Del. Super. LEXIS 1193 (July 2, 1987).....7

Spring Constr. Co. v. Mendez, 1992 Del. Super. LEXIS 412 (Del. Super. Ct. Sept. 15, 1992) 3, 11

Wittington v. Dragon Group LLC 2013 Del. Ch. LEXIS 112 (May 1, 2013) 10

Statutes:

19 Del. C. § 2361 11

ARGUMENT

I. THE INDUSTRIAL ACCIDENT BOARD CORRECTLY DISMISSED THE CLAIMANT'S PERMANENT IMPAIRMENT CLAIM BECAUSE THE OBJECTIVE EVIDENCE ESTABLISHES THAT THE PARTIES ENTERED A BINDING SETTLEMENT AGREEMENT STATING THAT ANY LUMBAR "CONTUSION" INJURY ATTRIBUTABLE TO THE 8/21/12 WORK EVENT HAD "RESOLVED" MEANING THAT THERE CAN BE NO PERMANENT IMPAIRMENT

A. Question Presented

Whether the Superior Court erred as a matter of law in reversing the IAB's 5/15/14 Order dismissing the claimant's Petition for permanent impairment as inconsistent with the prior settlement agreement between the parties. This Question was preserved before the IAB, at Tr. at A-6-20, and the Superior Court, in Employer/Appellee Below-Appellant's 10/10/14 Answering Brief, Argument I.

B. Standard and Scope of Review

The scope of review for an appeal from an Industrial Accident Board decision is limited to examining the record for errors of law and determining whether substantial evidence supports the Board's factual findings. Histed v. E.I. DuPont de Nemours & Co., 621 A.2d 340, 342 (Del. 1993).

The standard of review of a legal determination of the Board is *de novo*. Bundy v. Corrado Bros., 1998 LEXIS 184, at *2 (Del.). The interpretation of terms of a settlement agreement is reviewed for errors of law. Chavez v. David's Bridal, 979 A.2d 1129, 1133 (Del. 2008).

"Substantial evidence" is defined as such relevant evidence as a reasonable mind *might accept as adequate* to support a conclusion. Id. (emphasis added). "Substantial evidence" has also been described as "more than a mere scintilla but *less than a preponderance*." Kiefer v. Nanticoke Health Servs., 979 A.2d 1111 (Del. 2009)(emphasis added).

On appeal from the Industrial Accident Board, *the reviewing court must consider the record in a light most favorable to the party prevailing below*. General Motors Corp v. Guy, 1991 Del. Super. LEXIS 247 (Aug. 16, 1991). It is not the court's province to "weigh the evidence, determine questions of credibility, or make its own factual findings." Olney v. Cooch, 425 A.2d 610, 614 (Del. 1981). Findings of fact that are supported by the record should be accepted *even if the reviewing court, acting independently, would have reached a contrary conclusion*. Besk Oil, Inc. v. Brown & Bigelow, Inc., 1988 Del. Super. LEXIS 464 (Dec. 16, 1988)(emphasis added). Only where there is *no satisfactory proof* in support of a factual finding may it be overturned. Johnson v. Chrysler Corp., 213 A.2d 64 (Del. 1965)(emphasis added).

In reviewing Industrial Accident Board decisions for errors of law and "substantial evidence" purposes, the court must also give "due account of the experience and specialized competence of the Board." Id. "Since one of the most compelling reasons for creating administrative agencies is to allow the judicial

system to make use of the knowledge and experience of specialists, this [c]ourt would be wasting this resource if it lightly dismissed the fruits of such expertise." Spring Constr. Co. v. Mendez, 1992 Del. Super. LEXIS 412 (Sept. 15, 1992).

C. Merits

Claimant Below-Appellee's 7/6/15 Answering Brief simply rehashes all arguments made by Claimant Below-Appellee in the Superior Court briefing, and by the Superior Court in its 2/27/15 Opinion. These arguments were addressed at length in Employer Below-Appellant's Opening Brief that was filed with this Court, and will not be restated, *seriatim*, in this Reply Brief.

Without waiving any arguments made in the Employer's Opening Brief, the Employer asks that prior to deliberations, the Court step back and look at this case from a global perspective, focusing on the standard of review on appeal. From that vantage point, it is clear that the Superior Court overstepped the bounds of permissible appellate review, by replacing the Industrial Accident Board's well-reasoned and supported factual findings with its' own factual findings that are directly contrary to the record evidence.

This point is perhaps best illustrated the following side-by-side comparison of the Board's factual findings with those of the Superior Court:

1. The Board found that the “nature” or type of injury agreed upon was a “contusion”, or bruise, because this word was listed next to the “nature” of injury phrase in the signed settlement documents. The Superior Court agreed;

2. The Board held that the term “resolved” further applied to describe the “nature” or extent of the “contusion” injury, because it was also written in the “nature” of injury portion of the signed settlement documents. The Superior Court found that “resolved” spoke generally to the fact that a settlement had occurred, and did not modify the “nature” of injury agreed upon;

3. The Board concluded that the parties agreed that the “resolved” “contusion” injury fully healed with “limited” medical treatment. The Superior Court believed that there was not a full recovery, but rather, only an agreement to pay for medical treatment up to the date of the defense medical examination;

4. The Board further found that when a “contusion” injury resolves with limited treatment, there can factually be no ongoing or permanent injury. The Superior Court held that there can factually be a permanent injury under these circumstances;

5. The Board found that the parties agreed to accept the defense medical examination findings that there was no ongoing injury. The Superior Court believed that any such agreement was a factual impossibility because the claimant had not yet been seen for a permanent impairment evaluation;

6. The Board found that the correspondence and language utilized by both parties on the Department of Labor form Agreements and Final Receipts, evidenced a clear intent to accept limited medical treatment only and waive benefits concerning any allegations of ongoing injury. The Superior Court believed that there was no clear understanding between the parties because "medical only" Agreement forms were used to confirm the settlement; and

7. The Board found that while claims for ongoing injury, including permanency, were barred by the terms of the settlement, however, the Board did not find that all additional claims were barred. The Superior Court noted that if effective, the settlement would bar all future claims of any kind or nature, acting as a commutation of benefits.

The above Superior Court factual conclusions are erroneous and contrary to the appropriate standard of review on appeal.

While the Superior Court is empowered to review findings of the Board on the record, the scope of such review is narrow, since the Court does not sit as a trier of fact with authority to weigh evidence, determine credibility, and make factual findings and conclusions. Craig v. Synvar Corp., 233 A.2d 161 (Del. Super. 1967); Johnson v. Chrysler Corp., 213 A.2d 64 (Del. 1965). The Superior Court did not follow this standard when it essentially conducted a trial *de novo* on the record on appeal, making numerous factual conclusions different from the Board.

When the Superior Court found that the word "resolved" referred to settlement generally, did not factually bar allegations of permanent injury, and was the functional equivalent of a commutation of benefits, it reached factual conclusions and specifically overturned the Board's conclusions that the term "resolved" described the nature of injury, that future claims were factually barred (but not claims during the agreed upon limited period of benefit entitlement), and that the settlement was not a commutation of benefits, as claims for medical through the date of defense evaluation were still open. These actions by the Superior Court were without legal authority.

Further, where the evidence is sufficient to support the Board's conclusions, its decision will not be disturbed absent an error of law. Dallachesia v. General Motors Corp., 140 A.2d 173 (Del. Super. 1958); General Motors Corp. v. Freeman, 164 A.2d 686 (Del. Super. 1960); Hunter v. Wright Transfer & Supply Co., 69 A.2d 269 (Del. Super. 1949). The Superior Court disregarded this standard in replacing the Board's factual findings that were well supported by numerous correspondence and signed settlement documents between the parties, and where there was no error of law made by the Board. The supported findings that were improperly rejected include the Board's findings that: the term "resolved" and "limited" applied to describe the nature of injury, that there could factually be no permanent injury for such an agreed upon nature of injury, that the manner in

which the IAB Agreements were completed showed a clear intent to waive future benefits, and that the settlement was not a commutation of future benefits, but an agreement that there was no ongoing injury or entitlement to any more benefits after the defense medical examination.

More specifically, findings made by the trier of fact which are supported by the record should be accepted on appeal, even if, the reviewing Court, acting independently, would reach a contrary conclusion. Besk Oil, Inc. v. Brown & Bigelow, Inc., 1988 Del. Super. LEXIS 464 (Del. 16, 1988). The Superior Court violated this standard of review when it conducted a wholesale reinterpretation of all settlement correspondence, the Agreements and Final Receipts, and found that there was an ongoing injury.

Additionally, discretionary rulings of the Board cannot be disturbed on appeal unless the rulings are based on clearly unreasonable or capricious grounds. Seaford Feed Co. v. Moore, 1987 Del. Super. LEXIS 1193 (July 2, 1987). There is no allegation that the Board ruling was based on such grounds. Rather, the Board interpreted numerous settlement correspondences, the Agreements and Final Receipts that it is tasked with reviewing daily as a matter of course, and found that the parties clearly agreed that there was no ongoing injury but rather a limited, resolved, contusion. The Superior Court rejected these Board findings merely because it would have interpreted the same evidence differently, even when

numerous of its factual conclusions required unusual and imaginative re-interpretations - - i.e. the court accorded more weight to the use of "medical only" agreements and even expanded the clear meaning of "medical only" than the weight the Superior Court gave to the specific, agreed upon notation on the form that the "nature" of injury was a "contusion" that "resolved", and the settlement letters that confirmed that only "limited" treatment would be paid. All of these documents were consistent with and supported by the defense medical examination report. There was no basis by the Superior Court to overturn such supported Board findings.

In reviewing the record for substantial evidence, the Superior Court must consider the record in a light most favorable to the party prevailing below. General Motors Corp. v. Guy, 1991 Del. Super. LEXIS 247 (Aug. 16, 1991). The Employer prevailed below. The Superior Court interpreted every piece of evidence overwhelmingly in the claimant's favor, giving boilerplate form language in "medical only" form Agreements more weight than the use of the words "contusion" and "resolved" in the blank space specifically delineated by the parties to describe the "nature" of injury. This conclusion ignores another reasonable interpretation - - that "medical only" Agreements were used because all parties knew that only limited medical benefits were to be accepted with all other benefits denied. The Superior Court found that the agreement was the equivalent of a

commutation, despite clear evidence that future claims could be permitted within five years of the date of last benefit payment – i.e. a claim for additional medical treatment expenses incurred during the closed period of treatment which was accepted as compensable.

Furthermore, this Court has noted that only where there is no satisfactory proof in support of the factual finding of the Board may the Superior or Supreme Court overturn it. Johnson v. Chrysler Corp., 213 A.2d 64 (Del. 1965). This is not a case where the Board has taken unsupported liberties with the record to support its conclusions. Rather, it found that the terms "contusion" and "resolved" operate to describe the nature of injury, because these words are used next to the words "nature" of injury on the Agreements signed by the claimant. It found that the word "limited" was included, because it was used on the settlement offer and confirming letters without objection. It noted that there can, factually, be no permanent injury for a medical issue that is described as a contusion or bruise that "resolved". By rejecting such strongly supported factual findings, the Superior Court acted directly contrary to the standard of review.

As the Industrial Accident Board correctly identified, this is a case where the parties clearly agreed that an injury had concluded, when it benefitted the claimant to do so. The claimant's medical bills were paid and he received some limited acceptance of the claim which was better than no acceptance with the claimant

having to proceed to trial, respond to the Employer's defenses to the claims, and risk the Board denying the claim. After accepting those benefits and lulling the Employer into giving up viable factual and medical defenses, the claimant had second thoughts and filed this claim.

There is a strong public policy in Delaware favoring the voluntary settlement of contested suits and holding parties to their negotiated and enforceable agreements. Wittington v. Dragon Group LLC 2013 Del. Ch. LEXIS 112 (May 1, 2013). This policy has been reiterated by this Court in Anchor Motor Freight v. Ciabattoni, 716 A.2d 154 (Del. 1998), which was interestingly cited by the claimant in his Answering brief. In Ciabattoni, this Court declined to allow a claimant to avoid an agreement after the fact, where the formal settlement documents had not even been signed by the claimant. Id. Allowing the claimant to void the settlement agreement in this case would be directly contrary to this policy goal and would set a dangerous precedent for past and future workers' compensation settlements.

If the Superior Court decision is upheld, the Employer will lose the opportunity to attempt to challenge the claim on its' merits. The Employer will be stuck with an accepted, open claim, which is not what was negotiated for and not the clear understanding of the parties. Voiding the settlement agreement would also place the Employer in a severely prejudicial position that was in no way

contemplated at the time of settlement. The Employer would be forced to resurrect its defenses to the merits of the claim over three years after the happening of the alleged incident, when material witnesses may no longer be available or their memories faded and well beyond the two year statute of limitations on initial claims. 19 Del. C. § 2361. The only reasonable and fair outcome is to enforce the agreement that was negotiated by legally represented parties, clearly understood, memorialized in signed settlement documents reviewed by both parties and their attorneys, acted upon in keeping with the terms of the settlement, and approved by the Board in accordance with the usual and customary practices of workers' compensation law. Mendez, 1992 Del. Super. LEXIS 412 (Sept. 15, 1992).

CONCLUSION

For the reasons outlined in the Employer's Opening Brief filed with this Court, and the above, the 2/27/15 Decision of the Superior Court should be reversed and the Industrial Accident Board's 5/15/14 Decision should be reinstated and affirmed.

Respectfully submitted,

/s/ Maria Paris Newill, Esquire
/s/ Gregory P. Skolnik, Esquire
MARIA PARIS NEWILL, ESQUIRE
Attorney I.D. 2929
GREGORY P. SKOLNIK, ESQUIRE
Attorney I.D. 5661
Heckler & Frabizzio, P.A.
The Corporate Plaza
800 Delaware Avenue, Suite 200
P.O. Box 128
Wilmington, Delaware 19899-0128
Attorneys for Appellee Below-Appellant,
CHRISTIANA CARE HEALTH SERVICES

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