IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNY HOFFECKER,	§	
	§	No. 523, 2011
Claimant Below-Appellant,	§	
	§	Court Below: Superior Court of the State of Delaware in and for New Castle County
v.	§	
	§	
LEXUS OF WILMINGTON,	§	C.A. No. N10A-08-010
	§	
Employer Below-Appellee.	§	
	§	

Submitted: December 30, 2011
Decided: February 1, 2012

Before **HOLLAND**, **BERGER**, and **RIDGELY**, Justices.

O R D E R

This 1st day of February 2012, it appears to the Court that:

(1) Claimant-Below/Appellant Kenny Hoffecker appeals from a Superior Court order affirming a decision of the Industrial Accident Board (the "Board") in favor of Employer Lexus of Wilmington ("Lexus"). Hoffecker raises two arguments on appeal. First, Hoffecker contends that the Board erred by using an incorrect rule of causation and relying on facts outside of the record. Second, Hoffecker contends that, on appeal below, the Superior Court erred by following the Board's incorrect rule of causation and finding substantial evidence to support the Board's decision. We find no merit to Hoffecker's appeal and affirm.

(2) Hoffecker worked as a mechanic at Lexus for sixteen years before his termination in July 2009. Prior to his work at Lexus, Hoffecker worked for Newark Toyota as a mechanic for eleven years. Hoffecker first noticed lower back pain in 2003. In 2004, an orthopedic surgeon treated Hoffecker for lower back pain. Hoffecker did not seek treatment again until 2009.

(3) Hoffecker first missed work from his back pain in April 27, 2009. At that time, he did not report any injury to Lexus. One month later, Hoffecker underwent an MRI that revealed several abnormalities in his spine. He also sought treatment from Dr. Downing, a pain management specialist. Hoffecker did not tell Downing that his pain was work-related, and Downing did not perform the evaluation under the workers' compensation guidelines. Downing completed a short-term disability form for Hoffecker, and indicated that the injury was not "work-related." Hoffecker was placed on short-term disability. Soon after he returned to work, his employment was terminated by Lexus.

(4) Hoffecker testified that he previously reported a back injury to Lexus, but there was no documentary evidence indicating such a report. Hoffecker's supervisor also testified that he did not recall Hoffecker associating his back pain with work before this petition.

(5) Four months after the termination of his employment, Hoffecker filed a Petition to Determine Compensation Due in which he alleged a work-related

injury from his employment at Lexus. Lexus contended that his injury was not causally-related to his work. After a hearing, the Board denied Hoffecker's petition, finding the testimony of Downing and Hoffecker unpersuasive. On appeal, the Superior Court affirmed. This appeal followed.

(6) We review a decision of the Board for errors of law and determine whether substantial evidence exists to support the Board's findings of fact and conclusions of law.[1] "Substantial evidence equates to 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"[2] We will not weigh the evidence, determine questions of credibility, or make our own factual findings.[3] We review errors of law *de novo*.[4] Absent an 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]

(7) Hoffecker first contends that the Board and the Superior Court erred by using an incorrect rule of causation and relying on facts outside of the record. In *State v. Sheen*, this Court explained the rules of causation in compensability cases as follows:

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[1] *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009) (citing *Stanley v. Kraft Foods, Inc.*, 2008 WL 2410212, at *2 (Del. Super. Mar. 24, 2008)).
[2] *Id.* (quoting *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).
[3] *Id.* (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).
[4] *Id.*
[5] *Id.* (citing *Stanley*, 2008 WL 2410212, at *2).
[6] *Id.* (quoting *Stanley*, 2008 WL 2410212, at *2).

> When there is an identifiable industrial accident, the compensability of any resultant injury must be determined exclusively by an application of the 'but for' standard of proximate cause. In cases where a claimant is injured by the aggravation of a pre-existing condition *and* there is no identifiable industrial accident, however, causation is governed by the usual exertion rule. The usual exertion rule provides that the injury is compensable, notwithstanding the previous condition, if the ordinary stress and strain of employment is a "substantial factor" in causing the injury.[7]

(8) Hoffecker is correct that the Board and the Superior Court erred by citing the "but for" standard for causation, as set forth in *Reese v. Home Budget Center*,[8] and not the "usual exertion rule," as set forth in *Sheen* and *Duvall v. Charles Connell Roofing*.[9] Hoffecker did not identify any particular incident that caused his back injury or exacerbated an existing injury. Rather, he claimed that the continued strain of his work as a Lexus mechanic was a substantial factor in causing his low back injury. Thus, the "substantial factor" standard should have been used.

(9) In this context, however, *Reese* provides a more permissive standard than *Duvall*'s "substantial cause" or "substantial factor" requirement. Rather than require that the work-related incident be the "sole cause" or "substantial cause" of injury, *Reese* stated that causation may be satisfied "[i]f the accident provides the

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[7] *State v. Sheen*, 719 A.2d 930, 932 (Del. 1998) (citing *Duvall v. Charles Connell Roofing*, 564 A.2d 1132, 1136 (Del. 1989)).
[8] 619 A.2d 907, 910 (Del. 1992).
[9] *Sheen*, 719 A.2d at 932; *Duvall*, 564 A.2d at 1136.

'setting' or 'trigger.'"[10] *Reese* explained that *Duvall* used the substantial cause requirement "because of the difficulty of identifying a specific link between regular job-related duties and the aggravation of preexisting ailments."[11] Where the link is clear, it is "unnecessary to quantify causation."[12] Here, both the Board and the Superior Court found that Hoffecker failed to establish causation under *Reese*'s heightened "setting" or "trigger" standard.

(10) Moreover, any error is harmless because the Superior Court and the Board found that Hoffecker did not meet his burden in showing any causal relationship between his work and his back injury. The Board's recitation of the facts notes that "Dr. Grossinger opined that Claimant's lumbar spine condition is not causally related to a cumulative detrimental effect of Claimant's employment."[13] The Board's findings also state that "Downing acknowledged that one could argue causal relationship either way" and that Downing conceded the injury could be chronic and not work-related.[14] The Board concluded that Hoffecker failed to meet his burden of proof.[15] The Superior Court agreed.

(11) The findings below are sufficiently supported by the record. Grossinger testified that "to link a condition to accumulative work activities," he

[10] 619 A.2d at 910.
[11] *Id*. at 911.
[12] *Id*.
[13] *Hoffecker v. Lexus of Wilmington*, No. 1344938, at 6 (Del. I.A.B. July 23, 2010).
[14] *Id*. at 9.
[15] *Id*. at 10.

believed "there should be some notation by the treating doctors suggesting that the work itself that the patient is mentioning the work and the doctor is recognizing and connecting the work as being causal." Downing testified that while Hoffecker's treatment was reasonable and necessary, "[t]he causation I would agree is I think debatable because there was not a specific event." Downing then stated that he had eventually formed an opinion that Hoffecker's work "does by history suggest that that was the cause of his lumbar pain." But, Downing only expressed that opinion for the first time at his deposition. Finally, Downing never testified that Hoffecker's work was a "substantial factor" in causing his back injury. Hoffecker also testified that he worked on his and others' cars in his spare time. The Board acted within its discretion in finding Hoffecker and Downing less credible on causation.

(12) Hoffecker, as the claimant, bears the ultimate burden of proof to establish his injury is work-related.[16] This Court has held that an employer can successfully defend a petition for disability benefits by merely rebutting the claimant's allegation that the injury is work-related.[17] The employer need not establish an alternative theory of causation for the injury.[18]

[16] *Strawbridge & Clothier v. Campbell*, 492 A.2d 853, 854 (Del. 1985).
[17] *Id*.
[18] *Id.*

(13) Under either causation test, the Board found that Hoffecker failed to meet his burden of proof. The Superior Court affirmed the Board's finding of no causation and appropriately determined that the Board's findings were supported by substantial evidence. While other reasonable inferences could be drawn from the evidence, this Court will not reweigh the evidence on appeal. Because the errors by the Board and the Superior Court were harmless, the judgment of the Superior Court must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice