

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

MARY LOU FIENI,)	
)	
Appellant/Claimant,)	
)	C.A. No: 13A-07-005 FSS
v.)	
)	APPEAL
CATHOLIC HEALTH EAST,)	
)	
Appellee/Employer.)	

Submitted: January 15, 2014
Decided: April 29, 2014

ORDER

Upon Appeal from the Industrial Accident Board – AFFIRMED

Despite how this appeal appears superficially, it boils-down to the relatively common case where the Board has accepted one medical expert’s testimony over another’s.¹ Basically, the Industrial Accident Board denied additional benefits because it accepted Employer’s medical expert’s opinion about Complex Regional Pain Syndrome.

I.

The parties have always agreed that Ms. Fieni was a dedicated employee who suffered a work injury in April 2007, when she slipped and fell on a waxed floor,

¹ *Fieni v. Catholic E. Health*, 2012 WL 6914031 (Del. Super. Nov. 7, 2012).

injuring her right leg, her lower back, and other body parts. Although Employer knew that Ms. Fieni had prior-existing injuries, Employer did not contest eligibility, and it paid for Ms. Fieni's treatment and other benefits.

In March 2011, Ms. Fieni was seen by Steven D. Grossinger, D.O., a pain management doctor, who diagnosed her with CRPS, which he attributed to her 2007 slip-and-fall. Based on that, through counsel, Ms. Fieni filed a Petition to Determine Additional Compensation Due.

A hearing officer and two Board members held an administrative hearing on April 5, 2013. Again, at that point Ms. Fieni was represented by counsel. The Board issued its decision denying additional compensation on June 14, 2013. Ms. Fieni, now *pro se*, filed a timely appeal.

II.

In his opening statement, Ms. Fieni's counsel began:

Ms. Fieni was injured back in 2007. She slipped and fell on a waxed floor and injured her right leg, lower back and some other body parts. We're, essentially, fighting about a condition called Complex Regional Pain Syndrome and its causation to this work accident.

Employer's counsel summarized Employer's position:

[T]here's insufficient evidence to show that this treatment rendered by Dr. Grossinger and the physical therapy of one month in 2009 is causally related to the 4/10/2007 work accident.

Counsel's opening statements were succinct and accurate preludes to the hearing.

First, Ms. Fieni's counsel read-in portions of Dr. Grossinger's deposition testimony, and Employer's counsel then introduced the relevant cross-examination. Dr. Grossinger offered the reasons why he diagnosed Ms. Fieni with CRPS, and he detailed the ways he disagreed with the opposing expert's opinions. In summary, if accepted, Dr. Grossinger's testimony could have supported a finding in Ms. Fieni's favor.

In light of the arguments presented here, it bears mention that Dr. Grossinger did not opine that a 2008 dog bite injury² to Ms. Fieni's left hand was related to his CRPS diagnosis. Dr. Grossinger's "guess" was that the "only connection" between the 2007 work injury and the 2008 dog bite injury was that having CRPS in the right leg "would be a predisposing factor to developing [CRPS]" in the left hand after the dog bite. Moreover, Dr. Grossinger described that phenomenon as "a very unusual response to an injury[I]t's lightning striking twice to some extent"

² *Id.*

Second, Ms. Fieni testified live, and was cross-examined. She testified how she was injured in 2007, including bruising to her leg “from the knee all the way down to the ankle and around the calf of the leg.” She testified about the extensive treatment she had received, while mentioning previous injuries, including torn meniscus from 2002. She further testified that she had continual problems with her leg after 2007, for which she sought medical attention from various doctors, including a vascular care specialist.

Eventually, Ms. Fieni, who is a nurse, read about CRPS on the internet, which is where she also found Dr. Grossinger. Ms. Fieni’s testimony focused on problems she was having with her legs and the treatment Dr. Grossinger and an anesthesiologist, Dr. Brazier, provided. She also mentioned having seen a Dr. Mandel in Philadelphia and her family doctor, Dr. Cushner. In summary, Dr. Grossinger and Ms. Fieni’s testimony focused on her claim to additional compensation for her work-related leg injury, based on her developing CRPS.

During Ms. Fieni’s cross examination, Employer’s counsel asked questions about injuries pre-dating the 2007 slip-and-fall. This background cross-examination has now become enormously significant to Ms. Fieni. During that initial cross-examination, Ms. Fieni testified about injuries to her shoulder, her right arm, right knee, and so on. All of that, however, was largely beside the point. Mostly, it

merely set the stage for Employer's expert's opinions about the core dispute over CRPS.

After calling Dr. Grossinger and Ms. Fieni, her counsel rested. Then, Employer called its medical expert by reading-in relevant portions of his deposition, followed by cross examination. Employer's medical expert, Dr. John B. Townsend, III, M.D., provided several reasons why he rejected Dr. Grossinger's opinions about CRPS and causation. He discussed Ms. Fieni's symptoms individually and collectively. Whether Ms. Fieni now agrees with everything or anything Dr. Townsend said, he offered many things that undermined Dr. Grossinger. And, as with any witness, taking all the evidence into account, the Board was entitled to rely on none, some or all of the expert's opinions.

III.

In its June 2013 decision, the Board elaborately recounted the Petition's procedural history and the hearing testimony. The Board carefully considered not only the doctors' and Ms. Fieni's testimony, it also considered Ms. Fieni's appearance and bearing. Taking it all into account, the Board decided that Dr. Townsend's opinions were more believable than Dr. Grossinger's. Hence, the decision in Employer's favor. As mentioned at the outset, the hearing centered-on the dispute

about CRPS and causation. The outcome turned on which expert was more believable, bearing in mind that Ms. Fieni had the burden of proof.³

Review of the Board's decision is limited to whether the Board's findings were supported by substantial evidence and whether the decision is free from legal error.⁴ The court will not weigh evidence, determine questions of credibility, or make its own factual findings and conclusions.⁵ The law is well-settled that the Board, not the court, is responsible for deciding which medical expert is more believable.⁶ The court may overturn the Board's decision about expert witness credibility, but only if the court finds that the Board's credibility determination is not supported by some evidence.

The standard of review indirectly favors the Board's decision even more when the expert's opinions are based on subjective symptoms described to the expert by a petitioner. That is because the court is unable to assess a petitioner's credibility remotely. Again, however, the court may not parse the experts' testimony in order to reach its own decision about which expert is more convincing.⁷

Viewed in the proper light, even if Ms. Fieni could point to discrepancies or small misstatements in Dr. Townsend's testimony, that would not justify rejecting

³ *Mobil Oil Corp. v. Bd. of Adjustment of Town of Newport*, 283 A.2d 837, 839 (Del. Super. 1971).

⁴ *Thompson v. Christina Care Health Sys.*, 25 A.3d 778, 781-82 (Del.2011).

⁵ *Id.* at 782.

⁶ *Coleman v. Dep't of Labor*, 288 A.2d 285, 287 (Del. Super. 1972).

⁷ *Clements v. Diamond State Port Corp.*, 831 A.2d 870, 878 (Del. 2003).

the Board's credibility determination. Here, Dr. Townsend provided several reasons that, individually and collectively, seriously undermine Dr. Grossinger's CRPS diagnosis and his opinion about causation.

IV.

In concluding that the Board's decision is supported by substantial evidence and lawful, the court is mindful of Ms. Fieni's several arguments. For example, Ms. Fieni questions the Board's competence because its fact-finders are not doctors. First, the law that creates the Board does not require that its members have medical training,⁸ which is not surprising considering that our legal system relies on laypeople for highly sophisticated fact-finding. For example, juries in medical negligence cases are composed of laypeople. The Board, like a jury, listens to the experts and simply decides which one make the most sense.

Similarly, the court appreciates Ms. Fieni's point that an expert retained by Employer, such as Dr. Townsend, could be seen as partial. That coin, however, has two sides. That accusation can just as easily be leveled against both Ms. Fieni and Dr. Grossinger. As with Dr. Townsend, Ms. Fieni and Dr. Grossinger have self-interests. In any event, witness bias is something laypeople easily understand, and that is especially true for experienced, administrative hearing personnel. As to

⁸ See 19 Del.C. § 3101(a).

witness bias, the court is in no better position than the Board, and the Board, not the court, is tasked with responsibility for assessing witness bias.

In closing, the court does not question Ms. Fieni's sincerity. Everyone agreed that Ms. Fieni was a good worker, that she was injured on the job in 2007, and she was entitled to benefits. By the same token, there is no reason to question that Ms. Fieni sincerely believes that the 2007 incident caused CRPS and, perhaps, other injury.

Nevertheless, after weighing the conflicting evidence presented to it, the Board decided that Ms. Fieni did not prove it was more likely than not that she suffers from CRPS. And, if she does, the Board was not persuaded it was probably caused by the 2007 incident. The court may not re-weigh the evidence, reach its own conclusions about those things, and then reverse the Board based on the court's own fact-finding.

For the foregoing reasons, the Industrial Accident Board's June 14, 2013 decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Civil)
Andrew J. Carmine, Esquire
Mary Lou Fieni, Appellant/Claimant