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

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| **ALAN J. WILLIAMS,** | ) | |
| | ) | |
| **Claimant-Appellant,** | ) | |
| | ) | |
| | ) | |
| **v.** | ) | **C.A. N13A-04-010 PRW** |
| | ) | |
| **AUTO ZONE,** | ) | |
| | ) | |
| **Employer-Appellee.** | ) | |
| | ) | |

Submitted: October 28, 2013
Decided: December 16, 2013

*Upon Appeal from the Decision of the Industrial Accident Board.*
**AFFIRMED.**

**<u>OPINION AND ORDER</u>**

Alan J. Williams, *pro se*.

Nathan V. Gin, Esquire, Elzufon Austin Tarlov & Mondell, P.A., Wilmington, Delaware, Attorney for Employer-Appellee Auto Zone.

**WALLACE, J.**

## I. INTRODUCTION

Alan J. Williams[1] has appealed the March 27, 2013 decision of the Industrial Accident Board (the "Board").[2] The Board denied Mr. Williams' Petition to Determine Compensation Due (the "Petition") through which he sought compensation for a knee injury that he allegedly sustained in February 2012 during the course and in the scope of his employment with Auto Zone. The Board found that Mr. Williams had failed to meet his burden of proving that he sustained a work injury in February 2012.[3] Williams contends that the Board's decision was not supported by substantial evidence.

Because the Board relied on adequate evidence, committed no legal error, and did not abuse its discretion, its decision to deny Mr. Williams' petition for compensation is hereby **AFFIRMED**.

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[1] After two different attorneys withdrew from representing Mr. Williams during the pendency of his application before the Industrial Accident Board, he was self-represented at his Board hearing and has filed this appeal *pro se*.

[2] *Williams v. Auto Zone*, Industrial Accident Board Hearing No. 1386467 (March 27, 2013).

[3] *Id.* at 12.

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. Mr. Williams' Auto Zone Employment

Mr. Williams began his employment with Auto Zone[4] in April 2009. For the next three years, he held several positions in several different Auto Zone stores: part-time sales manager, parts sales manager and store manager. Mr. Williams was store manager of the Market Street-Wilmington Auto Zone when he allegedly injured his knee in February 2012.

Mr. Williams never reported the claimed injury to any Auto Zone representative until the day he was fired. That was April 20, 2012 when, after a months-long, loss-prevention investigation,[5] Mr. Williams was terminated with an immediate effective date. Auto Zone District Manager Wayne Epps met with Mr. Williams that day, notified Mr. Williams that he was terminated, and was then told by Mr. Williams that he had injured his left knee at work. Mr. Epps referred Mr. Williams to the company's Human

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[4] AutoZone is nationwide retailer of aftermarket automotive parts and accessories with numerous stores in the Tri-state area.

[5] While that investigation was ongoing, Mr. Williams requested and was assigned a new position as a Parts Sales Manager at the Market Street-Wilmington store. That job had fewer responsibilities than store manager. He also requested a transfer to another store and to a position requiring fewer work hours. That request had not yet been acted upon when Mr. Williams was terminated.

Resources Department regarding his termination and took no action regarding Mr. Williams' newly reported work accident claim.

**B. <u>Mr. Williams' Post-termination Accident Claim</u>**

Mr. Williams testified that he spoke to an Auto Zone Human Resources representative three days after his termination. That Auto Zone representative filed a claim with the company's workers' compensation carrier in June 2012.[6] Mr. Williams filed his initial Petition to Determine Compensation Due with the Board on August 15, 2012. He sought compensation for a left knee injury that he said he sustained in February 2012 while working at the Market Street-Wilmington Auto Zone store. Through the Petition and subsequent filings, Mr. Williams sought acknowledgment of work-related left and right[7] knee injuries, payment of related medical expenses, and payment of total disability benefits.

**C. <u>Mr. Williams' Post-termination Medical Treatment</u>[8]**

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[6] Mr. Williams claims that Auto Zone did not file the claim until someone in Risk Management ordered Human Resources to do so. He further averred that on August 22, 2012, he received notice that the carrier denied his claim.

[7] While the Petition was pending, Mr. Williams added the allegation that he also aggravated his right knee as a result of overcompensating for his work-injured left knee.

[8] *See generally* Tab 1 to Auto Zone's Ans. Brf. App. at 22-23, 38 (Testimony of Alan J. Williams, Mar. 6, 2013); Tab 2 to Auto Zone's Ans. Brf. App. (Deposition of Douglas Palma, M.D., Feb. 26, 2013); Tab 3 to Auto Zone's Ans. Brf. App. (Deposition of Elliot H. Leitman, M.D., Mar. 1, 2013).

The injury to his left knee occurred sometime in February 2012, Mr. Williams claims, when he was pulling a hand pallet loaded with motor oil from the back of his assigned store to the front. According to Mr. Williams, he felt something pop in his knee so he stopped pulling the pallet and walked off the pain. He continued to work that day and sought no subsequent medical treatment for what he said was a nagging injury that he figured he would just endure until it healed on its own.

On June 5, 2012 – approximately four months after the alleged injury, and a month and a half after his termination – Mr. Williams visited board certified orthopedic surgeon Dr. Douglas Palma complaining of left knee pain. After a subsequent visit and a magnetic resonance imaging (MRI) study, Dr. Palma diagnosed Mr. Williams with a medial meniscal tear in his left knee. Dr. Palma recommended surgery to repair the tear and performed that arthroscopic procedure in September 2012.

A month later, Mr. Williams complained of right knee pain. After another MRI, Dr. Palma determined that Mr. Williams had the same sort of tear in the meniscus of his right knee. The doctor attributed this to overcompensation after the left knee surgery. The right knee also required a surgical repair, and that was done in late November 2012. Thereafter, Mr. Williams attended one month of physical therapy. He was released by Dr.

Palma from medical care in January 2013. Dr. Palma instructed Mr. Williams that he could return to work and that he had no restrictions on his work activity.

Neither party questions whether Mr. Williams had the meniscal tears described above or whether his surgical procedures and physical therapy were appropriate treatment for such. The question before the Board was whether those injuries were compensable work injuries.

**D. <u>The Board Hearing</u>**

The evidence presented to the Board consisted of the testimony of Mr. Williams, the testimony of Auto Zone District Manager Epps and the deposition testimony of two orthopedic surgeons, Dr. Palma, Mr. Williams' treating physician, and Dr. Elliot H. Leitman, who testified for Auto Zone.

**i. Mr. Williams' Testimony**

Mr. Williams acknowledged that in 1980, well prior to his employment with Auto Zone, he did suffer a left knee injury that required surgical repair. He testified that one day in February 2012[9] he was pulling a pallet jack loaded with a pallet of motor oil through the Market Street-Wilmington store. The pallet, he said, stood taller than him and weighed

[9] Mr. Williams could not give a specific date at the IAB hearing but claimed he could likely do so if he could review Auto Zone's product delivery invoices.

about four thousand pounds. Mr. Williams stated that as he pulled this pallet he felt a pop in his left knee. This pain, he said, was far different than any previous knee pain he had ever experienced. Mr. Williams said he stopped for a moment, walked off the initial pain, and then pulled the pallet to its final destination. He completed his work day. In the ensuing weeks and months, according to Mr. Williams, he continued to experience left knee pain but figured with self-treatment and decreased work hours, it would eventually subside itself.

Notably, Mr. Williams never reported this alleged occurrence or its purported aftereffects to any Auto Zone representative[10] but was "on the verge of reporting it" when he was terminated. Mr. Williams also acknowledged that he sought no medical treatment for the claimed knee injury until after he was terminated.

**ii. Dr. Palma's Testimony Regarding Work Relatedness**

Dr. Palma testified that he first started treating Mr. Williams for his left knee pain on June 5, 2012. Mr. Williams informed his doctor of his 1980 knee surgery. When it came to explaining his present complaint, however, Mr. Williams said only that "he potentially hurt it [his left knee] at

[10] Mr. Williams claims that he did discuss his injury with a former Auto Zone employee who visited him as a customer in April 2012 and that he had mentioned it to another Auto Zone employee in early March 2012. Neither testified at the IAB hearing.

work in February."[11] But he could provide no mechanism of injury to his left knee.[12] Nor could he recall for Dr. Palma any obvious trauma to the knee.[13] And in June 2012, Mr. Williams had no complaints about his right knee.

**iii. Dr. Leitman's Testimony**

Dr. Leitman, an orthopedic surgeon, testified on Auto Zone's behalf. Dr. Leitman reviewed the pertinent medical records and he examined Mr. Williams on October 26, 2012. Mr. Williams told Dr. Leitman "I believe it was injured pulling a pallet jack. I think it popped."[14] When Dr. Leitman asked Mr. Williams specifically whether there was any particular work accident, Mr. Williams could not recall one.[15]

Dr. Leitman's opinion was that Mr. Williams' left knee problem was not an injury causally related to his work, but was degenerative arthritis

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[11] Tab 2 to Auto Zone's Ans. Brf. App. at 4 (Deposition of Douglas Palma, M.D., Feb. 26, 2013).

[12] *Id.* at 4; 12.

[13] *Id.* at 13.

[14] Tab 3 to Auto Zone's Ans. Brf. App. at 8 (Deposition of Elliot H. Leitman, M.D., Mar. 1, 2013).

[15] *Id.*

secondary to his 1980 knee surgery.[16] As for the tear to the meniscus, Dr. Leitman did allow that such a tear "can occur for many reasons. It could be from injury. It could be from every day wear and tear. It could be from degeneration from aging."[17] But as Dr. Leitman further explained here "[t]he tear of the meniscus, horizontal tear, is typically a degenerative-type tear"[18] and that "virtually every individual who has a degenerative arthritic knee is going to have some degree of meniscal tearing."[19] Dr. Leitman found the same to be true for the right knee pain of which Mr. Williams' later complained.[20]

### E. <u>The Board's Decision</u>

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[16] *Id.* at 16; 18-19 ("I reviewed the MRI of the left knee and it is consistent with preexisting osteoarthritis. . . . But I have no doubt that the MRI findings have nothing to do with work but more determined by his previous knee surgery and the subsequent arthritis that's present.")

[17] *Id.* at 30-31.

[18] *Id.* at 14.

[19] *Id.* at 18 ("Virtually every knee that has arthritis, if we get an MRI of the knee, is going to show degenrative meniscal tear. So, in my opinion, the MRI findings have nothing to do with work.").

[20] *Id.* at 36-37 ("We know on the MRI that there's evidence of preexisting arthritis on the right knee, also degenerative meniscal tearing. . . . initially the right knee didn't become symptomatic until sometime after his termination. . . . And it's just as likely, if not more likely, that the cause of the right knee pain is idiopathic or just secondary to the arthritis.").

By its decision dated March 27, 2013, the Board denied Mr. Williams' Petition, finding he was not entitled to receive disability benefits.[21] In doing so, the Board explicitly accepted Dr. Leitman's opinion that Mr. Williams' left knee pain was due to arthritis and the meniscal tear was the result of his degenerative arthritic condition.[22] The Board further found: (1) any opinion by Dr. Palma regarding work causation unreliable; and (2) Mr. Williams' assertion that he hurt his left knee during the course and scope of his employment on an unidentified date in February not credible.[23] And so, based on the evidence presented, "the Board f[ound] that [Mr. Williams] failed to meet his burden of proof that he sustained a work injury to his left knee in February[] 2012." [24]

## III. STANDARD OF REVIEW

Upon its limited appellate review, this Court must determine, "whether substantial evidence supports the [Board's] findings below."[25]

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[21] *Williams v. Auto Zone*, Industrial Accident Board Hearing No. 1386467, at 14 (Mar. 27, 2013).

[22] *Id*.

[23] *Id*.

[24] *Id*. at 12.

[25] *Bermudez v. PTFE Compounds, Inc.*, 2006 WL 2382793, at *3 (Del. Super. Ct. Aug. 16, 2006); *see Histed v. E.I. du Pont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

"Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[26] In making its determination, the Court reviews the record below in the light most favorable to the prevailing party, here Auto Zone.[27] The Court does not "weigh the evidence, determine questions of credibility or make [its] own factual findings."[28] Rather, the Court must show deference toward the Board's fact-finding and its application of those facts to the appropriate legal standards.[29] The Court may only overturn the Board's decision where, "there is no satisfactory proof in support of a factual finding."[30]

When an appellant alleges that Board made errors of law, those are reviewed *de novo*.[31] If the Court finds no error of law, the Board's decision is reviewed for an abuse of discretion.[32] "The Board has abused its

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[26] *Histed*, 621 A.2d at 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

[27] *Bermudez*, 2006 WL 2382793, at *3.

[28] *Delaware Bd. of Nursing v. Gillespie*, 41 A.3d 423, 425 (Del. 2012).

[29] *Bermudez*, 2006 WL 2382793, at *3 (citing DEL. CODE ANN. tit. 29 § 1142(d)).

[30] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 67 (Del. 1965).

[31] *Gillespie*, 41 A.3d at 425 (citing *Person-Gaines v. Pepco Holding, Inc.*, 981 A.2d 1159, 1161 (Del. 2009)).

[32] *Id*.

discretion only when its decision has exceeded the bounds of reason in view of the circumstances."[33]

## IV. THE APPELLANT'S CONTENTIONS

On appeal, Mr. Williams argues that the Board "used the wrong standard of evidence" and erroneously accepted Dr. Leitman's testimony when it found that his knee condition did not constitute a work-related and, therefore compensable injury. He also alleges that he was deprived of the right to call witnesses at his hearing.

In response, Auto Zone contends that the Board's decision is supported by "substantial evidence" and free of legal error.

## V. DISCUSSION

To be compensable, an injury must arise out of or be in the course of employment.[34] In this workmen's compensation action, Mr. Williams, as claimant, had the burden of establishing a work-related injury.[35] He had to prove that the injury happened at a fixed time and place and was attributable

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[33] *Person-Gaines*, 981 A.2d at 1161 (internal quotation marks excluded).

[34] DEL. CODE ANN. tit. 9, § 2304 (2012) (compensation is remedy for "personal injury . . . by accident arising out of and in the course of employment"); *id.* at § 2301(18) (defining scope of "Personal injury sustained by accident arising out of and in the course of the employment").

[35] *Gray's Hatchery & Poultry Farms v. Stephens*, 81 A.2d 322, 324 (Del. 1950); *Cabrera v. JDH Constr.*, 2010 WL 2677301, at *3 (Del. Super. Ct. June 30, 2010); *Leonard v. Rose's Dept. Store*, 1993 WL 544008, at *2 (Del. Super. Ct. Nov. 24, 1993); *McCormick Transp. Co. v. Barone*, 89 A.2d 160, 162 (Del. Super. Ct. 1952).

to a clearly traceable incident of employment.[36] And he had to do so by a preponderance of the evidence.[37] The Board found he did not.

The Court, in its "limited role" upon review of the Board's decision, "is to determine whether the decision is free from legal error and supported by substantial evidence."[38] Absent an abuse of discretion, the Court will not substitute its own judgment for the judgment of the Board.[39] Where, as here, the parties present conflicting evidence to the Board, "[i]t is exclusively the board's role to resolve conflicts in the testimony and to weigh the credibility of each witness."[40]

The Board heard from Dr. Leitman and Dr. Palma via deposition testimony. The Board accepted Dr. Leitman's opinion that the medical evidence "revealed arthritis and that the meniscal tear was the result of [Mr. Williams'] degenerative/arthritic condition."[41] In its opinion, the Board clearly stated it found Dr. Palma's opinions "regarding causal relation are

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36 *Gray's Hatchery*, 81 A.2d at 324; *Leonard*, 1993 WL 544008, at *4.

37 *Goicuria v. Kauffman's Furniture*, 1998 WL 67720, at *1 (Del. Feb. 5, 1998).

38 *Christiana Care Health Sys., VNA v. Taggart*, 2004 WL 692640, at *10 (Del. Super. Ct. Mar. 18, 2004).

39 *See Playtex Products v. Leonard*, 2002 WL 31814637, at *7 (Del. Super. Ct. Aug. 22, 2002); *Christiana Care*, 2004 WL 692640, at *10.

40 *Playtex Products*, 2002 WL 31814637, at *7.

41 *Williams v. Auto Zone*, Industrial Accident Board Hearing No. 1386467, at 14 (Mar. 27, 2013).

not reliable in light of the [ ] ambiguities" in Mr. Williams' accounts of his knee symptoms.[42] The Board is "entitled to accept the testimony of one medical expert over the views of another."[43] Although Mr. Williams would urge otherwise, on appeal this Court "'is not the trier of fact and does not have authority to weigh the evidence, determine the credibility of witnesses, or make independent factual findings. Determinations of credibility are reserved exclusively to the Board.'"[44] "Only when there is no satisfactory proof in support of a factual finding of the Board may the Superior Court . . . overturn it."[45] Here Dr. Leitman's medical testimony is sufficient competent evidence to support the Board's finding.[46]

Lastly, given the liberal standard for construing *pro se* pleadings,[47] the Court interprets Mr. Williams' complaint that the Board conducted his

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[42] *Id*. at 13-14.

[43] *Standard Distrib. Co. v. Nally*, 630 A.2d 640, 646 (Del. 1993); *Sunrise Assisted Living, Inc. v. Milewski*, 2004 WL 2419141, at *4 (Del. Super. Ct. July 16, 2004).

[44] *Rhinehardt-Meredith v. State*, 2008 WL 5308388, at *4 (Del. Dec. 22, 2008) (quoting *Wenke v. GAICO*, 2006 WL 1476057, at *2 (Del. May 23, 2006)).

[45] *Id.* (quoting *Johnson v. Chrysler Corp.*, 213 A.2d 64, 67 (Del. 1965)).

[46] *See General Motors Corp. v. Veasey*, 371 A.2d 1074, 1077 (Del. 1977).

[47] *See Browne v. Saunders*, 2001 WL 138497, at *1 (Del. Feb. 14, 2001) ("As a general rule, we interpret pleading requirements liberally where the plaintiff appears *pro se*."); *see also In re Estate of Hall*, 2005 WL 2473791, at *1 (Del. Aug. 26, 2005) (courts "allow[] a pro se litigant leeway in meeting the briefing requirements," however "the brief at the very least must assert an argument that is capable of review"); *Vick v. Haller*, 1987 WL 36716, at *1 (Del. Mar. 2, 1987) ("A *pro se* complaint, however inartfully

hearing even after he suggested that his necessary witnesses were not present as a claim that the Board abused its discretion. The record supports no such claim.

By the time of Dr. Leitman's deposition, two different attorneys had withdrawn from representing Mr. Williams. At the deposition, Mr. Williams was unequivocal in his desire to move forward and to proceed *pro se.*[48] This resolve did not wane at the hearing when Mr. Williams was offered numerous opportunities to continue the matter to obtain new counsel, to better prepare his own presentation, and to again attempt to summon his witnesses.[49] "An abuse of discretion arises only where the Board's decision has exceeded the bounds of reason in view of the circumstances."[50] In view

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pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers. . . ."); *Buck v. Cassidy Painting, Inc.*, 2011 WL 1226403, at *2 (Del. Super. Ct. Mar. 28, 2011) ("When appropriate, this Court will provide *pro se* litigants some degree of latitude in preparing and presenting their cases.").

[48] Tab 3 to Auto Zone's Ans. Brf. App. at 4-5 (Deposition of Elliot H. Leitman, M.D., Mar. 1, 2013) (" . . . I'll be proceeding pro se. I don't need representation from [second attorney's] office for the purposes of this deposition or the IAB hearing March 6th.")

[49] *See generally* Tab 1 to Auto Zone's Ans. Brf. App. at 6-15 (Board colloquy with Alan J. Williams, Mar. 6, 2013) (Mr. Williams noted he is a paralegal, was prepared, and wanted to move forward); *id.* at 13-15 ("So, you know, if you're asking for a yes or no answer [regarding a continuance to seek counsel, to prepare, or to summon witnesses], the answer let's go forward with the hearing because I'm tired of fooling with this. . . . I'm prepared. . . . Well thank you for that. Let's proceed. . . . Like I said, you know, I think I'm ready to proceed.").

[50] *Willis v. Plastic Materials, Co.*, 2003 WL 164292, at *1 (Del. Super. Ct. Jan. 13, 2003) (internal quotations and citations omitted).

of the circumstances presented in the record below, the Board's decision to conduct the hearing after fully apprising Mr. Williams of the risk to him of doing so, and after offering multiple opportunities to continue the matter, was no abuse of discretion.

## VI. CONCLUSION

For the forgoing reasons, the decision of the Industrial Accident Board denying Alan J. Williams' Petition to Determine Compensation Due is hereby **AFFIRMED**.

**IT IS SO ORDERED.**

***/s/ Paul R. Wallace***
Paul R. Wallace, Judge

Original to Prothonotary
cc: Alan J. Williams, via U.S. Mail
All counsel via File & Serve