

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

SELENE WALTON,	)	
	)	
Appellant, Employee below	)	
	)	
v.	)	C.A. No. 06A-04-002-JRS
	)	
RADIOLOGY ASSOCIATES,	)	
	)	
Appellee, Employer below.	)	

Date Submitted: February 1, 2007  
Date Decided: May 31, 2007

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

**ORDER**

This 31st day of May 2007, upon consideration of the appeal of Selene Walton from the decision of the Industrial Accident Board (“the Board”) denying her fourth Petition to Determine Additional Compensation Due,<sup>1</sup> it appears to the Court that:

1. On April 3, 2003, Selene Walton injured her left groin during the course of her employment at Radiology Associates (“Radiology” or “Appellee”) while pushing a box of papers with her left foot.

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<sup>1</sup> Docket Item (“D.I.”) 3, Industrial Accident Board Decision, at 12.

2. Ms. Walton sought treatment from Dr. Conrad King in May 2003. Dr. King diagnosed a left groin strain with possible adduction tendonitis. He saw Ms. Walton through December 2003 on a monthly basis during which time he prescribed physical therapy along with Percocet, Neurontin, and Flexoril to treat her pain. Dr. King later released Ms. Walton to return to sedentary- to-light duty work on August 26, 2003.

3. Ms. Walton filed her first petition for additional compensation on June 11, 2003. In response to her petition, Radiology asked Dr. Jerry L. Case to examine Ms. Walton on July 7, 2003. Dr. Case diagnosed Ms. Walton with a left groin strain and opined that Ms. Walton could perform full-time, sedentary-to-light duty work. Dr. Case again examined Ms. Walton on September 10, 2003, after Dr. King released her to work in a sedentary-to-light duty capacity. Dr. Case did not change his diagnosis or his disability opinion. Prior to the Board's hearing on Ms. Walton's first petition, the parties resolved the claim on December 12, 2003. Radiology accepted the claim as compensable for "pain in left side of groin"<sup>2</sup> and paid total disability benefits from May 1, 2003 through September 30, 2003.

4. As of November 23, 2003, Dr. King's medical notes "indicate[d]

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<sup>2</sup> D.I. 11, Appendix to Appellee's Answering Br., Ex. B.

residuals of left hip and groin pain with locomotion dysfunction.”<sup>3</sup> The only medications he prescribed for Ms. Walton at that time were Valium, Percocet, and Lexapro.

5. For reasons not clear in the record, Dr. Case examined Ms. Walton again on December 17, 2003. He testified at deposition that Ms. Walton’s medical records indicated that she walked with a slight limp on the left and without the assistance of a cane. Dr. Case also testified that Ms. Walton could continue her sedentary to light duty work. He further believed that she should have been weaned from narcotic medication in January 2004 because her left groin strain would have healed to a point where daily narcotic medications would no longer be required. He noted that as of the middle of December 2003, Ms. Walton had returned to work in a limited capacity, no longer reported complaints of pain in her left side, could walk without the assistance of a cane, and was still taking Percocet, a narcotic medication.

6. On January 14, 2004, nine months after her April 3, 2003 injury, Ms. Walton first informed Dr. King that she was experiencing pain on her right side. While doctors worked to discover the cause of her pain on her right side, they discovered signs of a healed fracture of the left femoral neck in her left groin area.

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<sup>3</sup> D.I. 11, Ex. L at 15.

7. On April 16, 2004, Dr. Paul Kupcha operated on Ms. Walton's right leg to correct a right femoral fracture. During the surgery, Dr. Kupcha removed an external fixator and inserted an intramedullary femoral rod into the right femur. After the surgery, Ms. Walton initially used a wheel chair, progressed to a walker and then a cane. Dr. King continued to treat Ms. Walton for both her left and right groin strain. He prescribed Percocet, Soma, a Duragesic patch, Phrenilin Forte, Ambien, Oxycontin, Neurontin, Flexeril, and Lexapro. According to Dr. King, only the Phrenilin was for the right side pain.

8. On May 19, 2004, Ms. Walton filed her second petition to determine additional compensation due for total disability benefits beginning April 16, 2004. In the petition, Ms. Walton claimed a recurrence of her total disability stemming from her April 3, 2003 injury. Specifically, she claimed that the right femoral fracture was a result of the initial work injury on April 3, 2003. In support of her second petition, Ms. Walton offered the testimony of Dr. King who examined her on March 15, 2004 and July 26, 2004. Dr. King opined that the right femoral fracture was related to the April 3, 2003 injury because as Ms. Walton favored her left leg, she put more pressure on her right leg.<sup>4</sup> He further opined that the healing process in Ms. Walton's left groin was delayed because Ms. Walton had been taking Prednisone for her

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<sup>4</sup> D.I. 11, Ex. K at 12.

asthma for one and one half years at the time of the April 3, 2003 injury.<sup>5</sup> According to Dr. King, Prednisone makes bones softer and weaker, hindering the healing process.<sup>6</sup> Finally, Dr. King believed that regardless of the right femoral fracture, Ms. Walton would have still needed medication for her left side pain. As of July 26, 2004, Dr. King diagnosed Ms. Walton with residual locomotional dysfunction. She required a cane and a walker to move about.

9. In response to her second petition, Radiology again asked Dr. Case to examine Ms. Walton in August 2004. Although he agreed that Ms. Walton was totally disabled due to her right femoral fracture, Dr. Case opined that her right sided injury was not related to the April 3, 2003 work injury. He stated that it was unlikely the Prednisone caused the right side fracture because the femur is a very sturdy bone that rarely collapses due to osteoporosis.<sup>7</sup> Dr. Case also testified that Ms. Walton's mild limp and ability to walk without a cane in December 2003 made it significantly unlikely that the April 3, 2003 injury to Ms. Walton's left groin caused her to injure her right femur as she compensated for the left side injury.<sup>8</sup>

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<sup>5</sup> *Id.*, Ex. K at 14.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, Ex. J at 17.

<sup>8</sup> *Id.*, Ex. J at 17-19.

10. On November 15, 2004, the Board denied Ms. Walton's second petition to determine additional compensation due because it found that the right femur fracture was not causally related to the initial work injury.<sup>9</sup> The Board accepted Dr. Case's opinion over Dr. King's because Ms. Walton's ability to ambulate without a cane by December 2003 detracted from Dr. King's theory that Ms. Walton's placed more pressure on her right leg to compensate for the left groin strain, thereby causing the right femoral fracture.<sup>10</sup> The record does not indicate that Ms. Walton appealed the Board's decision denying her second petition.

11. Ms. Walton filed her third petition to determine additional compensation due on September 29, 2004. Ms. Walton relied on Dr. King's testimony again to support her claim for medical expenses associated with her treatment from Dr. King. Dr. King testified that Ms. Walton's right femoral fracture "is more significant" than her left groin injury and agreed that the right femoral fracture may have slowed the recovery of her left groin.<sup>11</sup> He concluded that he "would probably [have been] able to wean her from narcotic medications sooner, had she not sustained a . . . stress

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<sup>9</sup> D.I. 11, Ex. D.

<sup>10</sup> *Id.*, Ex. D at 6.

<sup>11</sup> *Id.*, Ex. L at 34-35.

fracture of her right femur.”<sup>12</sup> The parties resolved the third petition in March 2005. Radiology agreed to pay 50% of Ms. Walton’s outstanding medical bills -- the portion the parties attributed to her left side pain.

12. On July 12, 2005, Ms. Walton filed her fourth petition to determine additional compensation due, the subject of this appeal. In this petition, Ms. Walton seeks to compel Radiology to pay the cost of her medications totaling \$19,756.76. Specifically, she has offered a statement from the Injured Worker’s Pharmacy that lists thirteen Duragesic patches at \$1589.09 each as well as prescriptions for Fentanyl, Percocet, Neurontin, Flexiril, Ambien, and Phrenilin Forte. Ms. Walton claims that these medications were to treat her compensable left side groin injury, not her uncompensable right side injury. She testified that she has little pain on her right side but still suffers from a constant sharp pain in her left leg.

13. On December 5, 2005, Dr. King testified via deposition that he stopped treating Ms. Walton’s pain in her right leg after the Board found that her right leg injury was not related to her April 3, 2003 work injury. As of July 11, 2005, Dr. King had diagnosed Ms. Walton as suffering from a chronic groin pull on her left side. At that time, Ms. Walton had been using a walker for the week prior to the visit due to a flare up of her symptoms, but had otherwise relied on a cane. Dr. King continued

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<sup>12</sup>*Id.*, Ex. L at 35.

to prescribe the Duragesic Patch and Percocet through November 30, 2005. He opined that both the Duragesic Patch and the Percocet he prescribed for Ms. Walton were necessary to treat her left pelvic pain, regardless of the right femoral fracture.

14. Dr. Case testified on behalf of Radiology on December 26, 2005 via deposition. He examined Ms. Walton on September 25, 2005, during which she complained of back, hip, and left groin pain along with occasional right groin pain. Dr. Case diagnosed a left groin strain, a possible healed stress fracture at the base of the left femoral neck, and status post rod fixation of the fractured right femur. Ms. Walton was using a cane on her right side, but was not working. He opined that Ms. Walton would not require Duragesic patches for discomfort due to left groin strain two and one half years after the work accident. He further opined that Ms. Walton did not need “any active treatment for the left groin other than limited activities, using a cane as needed, and continuing with her exercise.”<sup>13</sup>

15. On March 8, 2006, the Board denied Ms. Walton’s fourth petition to determine additional compensation due because it found that she had not demonstrated that any of the medical expenses were related to the April 3, 2003 work accident. In its decision, the Board noted that since it had previously decided that Ms. Walton’s right femur fracture was not related to the work accident, any treatment

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<sup>13</sup> D.I. 11, Ex. N at 14.



for the right side injury is not compensable. Relying upon Dr. Case's opinion, the Board then found that Ms. Walton's left side pain should have healed by December 2003, and that she did not require narcotics on a daily basis for her left side pain. The Board articulated several reasons in support of its decision to reject Dr. King's opinion that except for the Phrenilin Forte, all prescribed medications were required to treat Ms. Walton's left side pain. First, Ms. Walton received an increase in her narcotic medication, including the Duragesic patch, after her April 2004 surgery for her right-sided injury. Second, there is no evidence of treatment for her left side pain after April 2004. Third, Dr. King testified that the left side pain was ongoing but stable and that the right femur stress fracture was the more urgent problem. Finally, the Board rejected Dr. King's opinion because "[w]hile [Ms. Walton's] left sided-symptoms may have benefitted from treatment of the right symptoms, it is clear that the primary cause of treatment was the right femur fracture[.]"<sup>14</sup>

16. The Board also accepted Dr. Case's opinion that the Prednisone prescribed by Dr. King did not hinder Ms. Walton's right side healing. It is less likely, therefore, that it delayed Ms. Walton's left side recovery. The Board also noted that Dr. King testified that he would have been able to wean Ms. Walton from the narcotic medications if there had been no right femur fracture. Lastly, the Board

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<sup>14</sup> D.I. 3 at 11.

did not find Ms. Walton’s testimony that her left groin and hip pain had not improved to be credible in light of Dr. Case’s opinion that it is unlikely Ms. Walton would have such severe pain more than two years after the initial injury. Prior to the right side fracture, Ms. Walton had improved to working in a sedentary capacity and walking without a cane. The Duragesic patches and the medication that comprised the majority of the pharmacy bill all were prescribed when the right sided symptoms began. The Board concluded that Ms. Walton did not show that any of the medical expenses were related to the compensable accident.

17. On appeal to this Court, Ms. Walton has conceded “[t]here is evidence to support the finding that it [the Duragesic patch] is not related to the April 3, 2003 injury.”<sup>15</sup> She takes issue, however, with the Board’s finding that *none* of her ongoing treatment was related to the April 3, 2003 injury. Specifically, she points to Dr. Case’s testimony that her complaints of left side pain “were not inconsistent with her injury . . . and that it would not be unreasonable for that impairment to be treated with medication and ongoing pain management.”<sup>16</sup> According to Ms. Walton, this testimony from Radiology’s own witness confirms that she continues to suffer from a compensable injury. Furthermore, according to Ms. Walton, counsel for Radiology

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<sup>15</sup> D.I. 6, Ms. Walton’s Opening Br., at 8.

<sup>16</sup> *Id.*

framed the issue in his opening statement to the Board to be whether the Duragesic patches were related to the right leg problems, not whether all of the medication costs were compensable. Therefore, Ms. Walton maintains that the Board's decision denying her compensation for all pain medications goes beyond the issue presented to the Board.

18. Radiology responds that the Board did not err as a matter of law in denying Ms. Walton's petition for medical expenses and its decision is supported by substantial evidence. The Board properly decided whether Ms. Walton had demonstrated that the medications on the pharmacy bill were related to her April 3, 2003 work injury. The Board's decision is supported by substantial evidence because Ms. Walton's left groin injury had improved in December 2003, as evidenced by her reduced need for narcotic medications and her ability to ambulate without a cane. Any subsequent increase in her narcotic medication occurred after the right leg injury, which the Board already has determined is not related to her work injury. Furthermore, Dr. King testified that Ms. Walton's right leg pain was the "most clinically significant factor . . . and the left leg was stable."<sup>17</sup> Both doctors agreed that Ms. Walton could have been weaned off Percocet before she experienced her right leg pain. According to Dr. Case, the only possible medication that could be attributed

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<sup>17</sup> D.I. 10, Appellee's Answering Br., at 14.

to the left groin strain was Flexiril, a muscle relaxer. Radiology submits “that even though Dr. Case conceded that the [Ms. Walton] may have required a muscle relaxant, because the primary area of the [Ms. Walton’s] complaints were with respect to the rather significant right leg fracture, none of the medications prescribed by Dr. King *in the petition before the Board* at issue were related to the compensable left-groin strain.”<sup>18</sup>

19. This Court has repeatedly emphasized the limited extent of its appellate review of the Board’s decisions. The Court’s review is confined to ensuring that the Board made no errors of law and determining whether there is “substantial evidence” to support the Board’s factual findings.<sup>19</sup> Questions of law that arise from the Board’s decision are subject to *de novo* review which requires the Court to determine whether the Board erred in formulating or applying legal precepts.<sup>20</sup> Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>21</sup> It is “more than a scintilla but less than a preponderance of

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<sup>18</sup> *Id.* (emphasis in original).

<sup>19</sup> *Canyon Const. v. Williams*, 2003 WL 1387137, at \*1 (Del. Super. Ct. Mar. 5, 2003); *Hall v. Rollins Leasing*, 1996 WL 659476, at \*2-3 (Del. Super. Ct. Oct. 4, 1996).

<sup>20</sup> See *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998); *Hudson v. State Farm Mut. Ins. Co.*, 569 A.2d 1168, 1170 (Del. 1990).

<sup>21</sup> *Breeding v. Contractors-One, Inc.*, 549 A.2d 1102, 1104 (Del. 1998).

the evidence.”<sup>22</sup> The “substantial evidence” standard of review contemplates a significant degree of deference to the Board’s factual conclusions and its application of those conclusions to the appropriate legal standards.<sup>23</sup> In its review, “the Court will consider the record in the light most favorable to the prevailing party below.”<sup>24</sup>

20. The issue on appeal, as refined by the Appellant, is whether there is substantial evidence to support the Board’s finding that all of the medication, except the Duragesic patch, listed in the Injured Worker’s Pharmacy Statement was not related to the April 3, 2003 work accident. Ms. Walton bore the burden of proving to the Board that her medical expenses were reasonable, necessary, and related to a compensable work injury.<sup>25</sup> In deciding whether she has met her burden, the Board may accept one expert’s opinion over another’s.<sup>26</sup> An expert’s opinion based on actual medical evidence that a particular medical expense is not reasonable, necessary

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<sup>22</sup> *Id.*

<sup>23</sup> *Hall*, 1996 WL 659476, at \*2 (citing DEL. CODE ANN. tit. 29, § 10142(d)).

<sup>24</sup> *General Motors Corp. v. Guy*, 1991 WL 190491, at \*3 (Del. Super. Ct. Aug. 16, 1991).

<sup>25</sup> See 19 Del. C. § 2322(a) (“During the period of disability the employer shall furnish reasonable . . . medical . . . services . . . as and when needed”). See also *Hernandez v. Boston Market, Inc.*, 878 A.2d 461, at \*1-2 (Del. 2005) (holding that substantial evidence existed to support the Board’s finding that employee’s medical expenses were not reasonable, necessary, and related to the work injury); *Clark v. St. Paul Fire & Marine Ins. Co.*, 2006 WL 3095949, at \*1 (Del. Super. Ct. Oct. 30, 2006) (noting that injured worker’s burden before the Board was to show that his medical expenses “were reasonable, necessary, and related to the accident.”).

<sup>26</sup> *General Motors v. Veasey*, 371 A.2d 1074, 1076 (Del. 1977).

and related to a work accident constitutes substantial evidence.<sup>27</sup>

21. The Court finds no error in the Board's decision that the medications listed in the pharmacy statement were not related to the April 3, 2003 work accident. The Board properly decided the issue before it: whether Ms. Walton satisfied her burden of proving that the items listed on her pharmacy statement were reasonable, necessary, and causally related to her work accident. There is no indication that the parties narrowed the issue to whether the Duragesic patch alone was related to the April 2003 injury. The Court rejects Ms. Walton's contention that the comments of Radiology's counsel in opening statements to the Board somehow limited the issue to only the compensability of the Duragesic patches. The argument ignores the closing argument during which Radiology's counsel challenged whether any of the medications listed on the pharmacy statement were related to the compensable injury: "Any increases in problems which have developed [since December 2003] are attributable to the right leg fracture and it's the responsibility of that injury for that treatment and that would include the Duragesic and Fontanel patches."<sup>28</sup>

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<sup>27</sup>See *Wharton v. Chancellor Health Care*, 2005 WL 3416228, at \*3 (Del. Super. Ct. Oct. 31, 2005)(affirming Board's conclusion that pain management therapy was not reasonable, necessary, and causally related to employee's work accident because employer's expert opined that employee's subjective complaints of pain were not supported by his findings on physical examination).

<sup>28</sup> D.I. 3, IAB Hr'g Tr. 76:19-21, 77:1.

22. The Court is satisfied that the Board's decision is supported by substantial evidence. The Board was free to find Dr. Case's testimony more persuasive than the testimony of Dr. King. Dr. King's opinion that the Duragesic patch and the Percocet were necessary to treat Ms. Walton's left groin strain is not supported by the evidence in the record. Dr. King did not prescribe the Duragesic patch before the onset of Ms. Walton's right leg pain. His notes do not indicate any treatment for left groin pain, and he acknowledged that he would have weaned Ms. Walton from the narcotic medications but for the right femoral fracture.

23. Dr. Case's opinion constitutes additional substantial evidence that the medications listed in the pharmacy statement were not necessary, reasonable or causally related to April 3, 2003 injury. Dr. Case offered convincing testimony that Ms. Walton should not have been in as much pain as she claimed more than two years after the work accident. According to Dr. Case, while some discomfort may be expected, it should not rise to the level of requiring narcotic medications. The Board also properly relied upon Dr. Case's testimony that Ms. Walton could and should have been weaned off of narcotic medications before the onset of right side injury. Dr. Case's opinion that Prednisone did not delay healing of the right side fracture is also substantial evidence supporting the Board's finding that Prednisone likely did not delay the healing of the left side fracture.

24. There is other substantial evidence to support the Board's finding that Ms. Walton's complaints of severe pain in her left side were not credible. Her left side injury had improved before she experienced pain on her right side. She was using less narcotic medication, not using a cane, and had returned to work in a sedentary capacity. Only after the surgery on her right side did she begin to experience a recurrence of pain severe enough to prevent her from working.

25. Based on the foregoing, the Court is satisfied that the decision of the Board denying Ms. Walton's petition to determine additional compensation due is supported by substantial evidence and must be **AFFIRMED**.

**IT IS SO ORDERED.**

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Judge Joseph R. Slights, III

Original to Prothonotary

cc: Kenneth F. Carmine, Esquire  
Scott A. Simpson, Esquire