## IN THE SUPREME COURT OF THE STATE OF DELAWARE

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§	No. 440, 2012
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§	Court Below: Superior Court of
§	the State of Delaware, in and for
§	Kent County
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§	C.A. No. 11A-06-005
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Submitted: November 19, 2012 Decided: December 5, 2012

Before HOLLAND, JACOBS and RIDGELY, Justices.

## ORDER

This 5<sup>th</sup> day of December 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Patricia Halsey, the claimant-below ("Halsey"), appeals from a Superior Court order affirming an Industrial Accident Board ("Board") order denying her Petition to Determine Additional Compensation Due against her employer, Generations Home Health Care ("Employer"). On appeal, Halsey claims that the Board erred factually by determining that her fourth surgery was unrelated to her work-related injury, and that the Superior Court erred legally by affirming the Board order. We find no merit to Halsey's appeal and AFFIRM.

- 2. In December 2000, Halsey injured her back while at work.<sup>1</sup> That injury was deemed work-related and compensable, and Halsey underwent two surgeries on her L4-L5 disc to repair that injury. After the second surgery, an MRI revealed foraminal stenosis, a condition causally related to Halsey's degenerative spine disease. She later underwent a third compensable surgery on her L4-L5 disc.
- 3. About ten years later, in October 2010, Halsey met with an orthopedic surgeon, Dr. Stephen Malone, to address her ongoing back pain. Dr. Malone documented degenerative changes in Halsey's spine, including an L4-L5 disc herniation and L3-L4 stenosis, and performed surgery to address the stenosis (the "fourth surgery"). Halsey then petitioned the Board for an order awarding additional compensation for her medical bills stemming from the fourth surgery.
- 4. At the Board hearing, Dr. Robert Varipapa testified, on behalf of Employer, that based on his prior medical examinations of Halsey and review of her medical records, Halsey's fourth surgery was unrelated to her work-related injury. Dr. Varipapa opined that Halsey's stenosis was a congenital degenerative disc disease that was exacerbated by obesity and aging. Dr. Malone, who testified on Halsey's behalf, opined that her stenosis was related to her compensable injury. Dr. Malone acknowledged, however, that he was unable to draw a correlation

<sup>&</sup>lt;sup>1</sup> All facts, unless otherwise indicated, are taken from the Superior Court opinion. *Halsey v. Generations Home Health Care*, C.A. No. 11A-06-005, at 2 (Del. Super. July 12, 2012).

between the stenosis and the injury. Dr. Malone based his opinion on Halsey's self-reported medical history, and upon his review of only one of her earlier x-rays and MRIs. The Board denied Halsey's petition, and the Superior Court affirmed.<sup>2</sup> This appeal followed.

- 5. The issue presented is whether substantial evidence supports the Board's finding that Halsey's fourth surgery in 2010 was unrelated to her work-related injury in 2000. We review a Board decision for legal error and for whether substantial evidence supports the Board's findings of fact.<sup>3</sup> Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>4</sup> The Board "may adopt the opinion testimony of one expert over another; and that opinion, if adopted, will constitute substantial evidence for purposes of appellate review."<sup>5</sup> The Board also "may accept or reject an expert's testimony in whole or in part."<sup>6</sup>
- 6. On appeal, Halsey claims that the Board accorded insufficient weight to Dr. Malone's testimony which, the Board found, was not sufficiently credible,

<sup>&</sup>lt;sup>2</sup> Halsey v. Generations Home Health Care, C.A. No. 11A-06-005 (Del. Super. July 12, 2012).

<sup>&</sup>lt;sup>3</sup> Person-Gaines v. Pepco Hldgs., Inc., 981 A.2d 1159, 1161 (Del. 2009).

<sup>&</sup>lt;sup>4</sup> *Id.* (quoting *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

 $<sup>^5</sup>$  Id. (citing Bolden v. Kraft Foods, 889 A.2d 283, 2005 WL 3526324, at \*4 (Del. Dec. 21, 2005) (TABLE)).

<sup>&</sup>lt;sup>6</sup> *Id.* (citation omitted).

because Dr. Malone did not thoroughly review Halsey's medical history. In giving greater weight to Dr. Varipapa's testimony, the Board found that Dr. Varipapa's opinion was supported by a comprehensive review of Halsey's medical history and studies, and by his repeated medical examinations of Halsey over the years. The Board did not err in considering and weighing the testimony of the two medical experts.

7. Unlike *Blake v. State*,<sup>7</sup> where a pre-existing medical condition that was aggravated by a work-related injury was found compensable,<sup>8</sup> here Dr. Malone was unable to draw a correlation between Halsey's work-related injury and her fourth surgery. Therefore, Halsey's attempt to liken her case to *Blake*—by arguing that her work-related injury aggravated her medical condition that resulted in her fourth surgery—fails. Halsey also claims that her fourth surgery was required, in part, to correct errors that resulted from her first three surgeries, but because no medical expert gave testimony to support that claim, Halsey's argument again fails.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

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<sup>&</sup>lt;sup>7</sup> 792 A.2d 188, 2002 WL 432026 (Del. Mar. 12, 2002) (TABLE).

<sup>&</sup>lt;sup>8</sup> *Id.*, at \*1 (citation omitted).