IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

D & B TRANSPORTATION,)		
)	C.A. No.	13A-06-002 JTV
	Employer-Below,)		
	Appellant,)		
)		
V.)		
)		
HOWARD VANVLIET,,)		
)		
	Employee-Below,)		
	Appellee.)		
Submitted: January 14, 2014				
Decided: April 30, 2014				

Cheryl Ann Ward, Esq., Franklin & Prokopik, Wilmington, Delaware. Attorney for Appellant.

Walt F. Schmittinger, Esq., and Kristi N. Vitola, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorneys for Appellee.

Upon Consideration of Appellant's
Appeal From Decision of the
Industrial Accident Board
REVERSED IN PART
AFFIRMED IN PART

VAUGHN, President Judge

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OPINION

This is an appeal from a decision of the Industrial Accident Board granting the claimant's petition to Determine Additional Compensation relating to a 2010 spinal surgery and subsequent pain management treatment. For the reasons which follow, I conclude that the medical expenses relating to the claimant's spinal surgery are not recoverable under 19 *Del. C.* § 2322.¹ I also conclude that the Board's decision that the claimant's pain management treatment was preformed by a certified medical provider, was reasonable and necessary, and was related to the claimant's work-related accident is support by substantial evidence and is free from legal error.

FACTS

In February 2001, the claimant suffered a work-related neck injury. As a result of the work-related injury, the claimant underwent spinal surgery in 2001 and received disability benefits. On August 11, 2010, Dr. Sonti, a Maryland surgeon,

¹ Two sections of Section 2322 apply to the compensation of medical expenses administered by a medical professional. 19 *Del. C.* § 2322D(a)(1) states:

Certification shall be required for a health care provider to provide treatment to an employee pursuant to this chapter, without the requirement that the health care provider first preauthorize each health care procedure, office visit or heath care service to be provided to the employee with the employer or insurance carrier.

¹⁹ *Del. C.* § 2322C(6) states:

Services rendered by any health care provider certified to provide treatment services for employees shall be presumed in the absence of contrary evidence, to be reasonable and necessary if such services conform to the most current version of the Delaware health care practices guidelines. Services provided by heath care providers that are not certified shall not be presumed reasonable and necessary unless such services are preauthorized by the employer or insurance carrier, subject to the exceptions set forth in § 2322D(b) of this title.

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preformed a second spinal surgery on the claimant, allegedly relating to the claimant's 2001 work accident. Although other doctors in Dr. Sonti's medical practice firm were certified, Dr. Sonti was not certified under 19 *Del. C.* § 2322D(a)(1) at the time he performed the claimant's surgery.

On August 23, 2010, the claimant filed two petitions for Determination of Additional Compensation. The first petition sought retroactive preauthorization for the cervical spine surgery preformed by Dr. Sonti almost two weeks earlier. The second petition demanded total disability benefits and compensation for medical expenses relating to the claimant's 2010 spinal surgery. The two petitions were consolidated. On November 12, 2010, the employer moved to dismiss the claimant's petition because Dr. Sonti was not certified under the Delaware Workers' Compensation Act and lacked preauthorization to preform the spinal surgery. The Board held a hearing on December 22, 2010 to evaluate the merits of the employer's motion to dismiss.

At the hearing, the employer argued that Dr. Sonti was not certified nor had preauthorization to preform the surgery and, thus, the claimant's claims for Dr. Sonti's medical expenses should be dismissed. The claimant argued that a treating doctor did not need to be certified or preauthorized to preform the medical treatment so long as the treatment was "reasonable, necessary, and related to the work injury." Additionally, the claimant argued that the preauthorization should relate back to before the surgery because delaying surgery for preauthorization would promote "unreasonable form over substance."

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On December 21, 2010, the Board dismissed the claimant's claim for Dr. Sonti's medical expenses because, as the Board determined, the statute requires that if the claimant resides in Delaware and/or uses a Delaware provider, the provider must be certified or receive preauthorization to be reimbursed for expenses under the Delaware Worker's Compensation Act. The Board also concluded that retroactive preauthorization was insufficient under the circumstances. On September 15, 2011, the claimant appealed the Board's decision to this Court.

On November 28, 2012, this Court held that 19 *Del. C.* § 2322C(6) did not operate as a complete bar to compensation recovery when medical services were preformed by an uncertified medical provider.² This Court found that the statute was ambiguous and that where the medical provider is not certified nor has obtained preauthorization, that the presumption of "reasonable and necessary" falls away and a claimant must show that the medical expenses were reasonable and necessary to treat the work-related injury.³ This Court remanded the case to the Board to determine whether the claimant's 2010 spinal surgery was reasonable and necessary.⁴

On September 11, 2012, the claimant filed a petition to Determine Additional Compensation demanding compensation for the medical expenses associated with his ongoing pain management. Following the claimant's 2010 spinal surgery, Dr. Sonti referred the claimant to Dr. Dickinson for pain management treatment. Dr. Dickinson

² Vanvliet v. D & B Transp., 2012 WL 5964392 (Del. Super. Nov. 28, 2012).

³ *Id.* at *4.

⁴ *Id.* at *5.

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began treating the claimant on May 19, 2011 for his persistent and chronic back pain. Dr. Dickinson is certified under the Delaware Workers' Compensation Act.

On May 2, 2013, the Board heard the remand and evaluated the claimant's September 2012 petition for ongoing pain management. The Board accepted numerous medical providers' opinions regarding the reasonableness and necessity of the claimant's 2010 spinal surgery and pain management administered by Dr. Dickinson. Ultimately, the Board concluded that the surgery and the following pain management treatment was reasonable, necessary and related to the claimant's work-related accident and, therefore, compensable.

On June 11, 2013, the employer filed an appeal with this Court, appealing the Board's May 2013 decision and asking that this Court revisit its November 2012 remand decision.

PARTIES' CONTENTIONS

The employer contends that the Board erred in awarding compensability of the claimant's spinal surgery, pain medical treatment, and attorneys' and medical witness' fees. The employer contends that 19 *Del. C.* § 2322D bars compensation for medical expenses when the medical provider is not certified and has not received preauthorization for the medical treatment, thus barring compensation for the claimant's 2010 spinal surgery; that the claimant experienced new injury, unrelated to the work-related incident, which caused his symptomology necessitating pain management; and that the Board's decision to accept one physician's opinion over another was against the great weight of the evidence. Furthermore, the employer contends that this Court erred in reversing and remanding the Board's December

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2010 decision because 19 *Del. C.* § 2322D allows compensation only when the medical treatment is administered by a certified medical provider or a provider who has preauthorization for the medical treatment.

The claimant contends that the Board's decision granting compensation for his 2010 spinal surgery and continued pain management is free from legal error and is based on substantial evidence from multiple credible medical providers. The claimant also argues that this Court does not have jurisdiction to hear an appeal of its own decision, and thus cannot evaluate the merits of this Court's November 2012 decision regarding 19 *Del. C.* § 2322D.

STANDARD OF REVIEW

This Court has appellate jurisdiction over final agency decisions pursuant to 29 *Del. C.* § 10142. On appeal from a decision of an administrative board, this Court must determine whether the board's decision is supported by substantial evidence to support the board's findings of facts and conclusions of law and free from legal error.⁵ Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." On appeal, this Court reviews legal issues *de novo*.⁷

DISCUSSION

⁵ Olney v. Cooch, 425 A.2d 610, 613 (Del. 1981).

⁶ *Id.* at 614.

⁷ Person-Gaines v. Pepco Holdings, Inc., 981 A.2d 1159, 1161 (Del. 2009).

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In November 2013, the Delaware Supreme Court held that 19 *Del. C.* § 2322D unambiguously "requires that providers either be certified or preauthorized and that the treatments provided are reasonable and necessary to treat a work-related injury," and that when "the provider is neither certified nor preauthorized, compensation for medical treatment is generally not available." In *Wyatt*, a worker, who was experiencing lower back pain and severe lower extremity numbness at work, went to see Dr. Venkataramana, a doctor she knew did not handle workers' compensation cases and withheld that her injuries were work-related. Following a hearing, the Board determined that the claimant could not be compensated for her medical expenses associated with Dr. Venkataramana because the treating provider was an instate provider who was not certified and did not obtain preauthorization for the claimant's treatment. The Superior Court held that the Board erred in concluding that there was any compensable work-related injury, but did not rule on any other grounds. On appeal from the Superior Court, the Delaware Supreme Court

⁸ Wyatt v. Rescare Home Care, 81 A.3d 1253, 1263 (Del. 2013). There are two narrow statutory exception to allow compensation for non-certified nor preauthorized medical treatment. Section 2322D(b) specifically allows compensation for the first visit to an uncertified, non-preauthorized provider only when services are reasonable and necessary and the provider has a good faith belief that the injury was work-related and for care provided in a hospital or pre-hospital's emergency unit.

⁹ *Id.* at 1256 - 57.

¹⁰ *Id.* at 1258. The Board concluded that the claimant's other medical expenses would be compensable pending the submission of "clean claims." *Id.*

¹¹ *Id*.

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concluded, as a matter of statutory interpretation, that medical treatment administered by an uncertified provider who has not been granted preauthorization is not compensable, unless it meets a statutory exception. Ultimately, the Supreme Court held that the employer was exempted by statute from having to pay for medical treatment provided by Dr. Venataramana, with the exception of one treatment that fell within a statutory exception.

In the instant case, the Board found that Dr. Sonti was not certified under Delaware's Workers' Compensation Act nor obtained preauthorization for the spinal surgery. I now follow the Supreme Court's holding in *Wyatt*, and find that the claimant cannot recover his medical expenses from his 2010 spinal surgery because Dr. Sonti was not certified nor preauthorized to perform the treatment as required by 19 *Del. C.* § 2322D(a)(1).¹³

The claimant also filed a petition for reimbursement of medical expenses relating to pain management treatment with Dr. Dickinson. The Board found that Dr. Dickinson is certified under the Delaware Workers' Compensation Act and that the treatment was reasonable, necessary and related to the claimant's work-related injury. I find that the Board's decision is supported by substantial evidence and is free from legal error. At the Board's hearing all of the doctors that testified agreed that Dr. Dickinson was certified and the pain management treatment was reasonable and

¹² *Id.* at 1263.

The claimant has not asserted to this Court or to the Board that Dr. Sonti's medical treatment qualified under any statutory exception.

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necessary. While one doctor opined that the treatment was related to a new incident,

the Board heard evidence from several other doctors who testified that the treatment

was connected to the original work-related incident. "When the Board adopts one

medical opinion over another, the opinion by the Board constitutes substantial

evidence for purposes of appellate review."14 I conclude that there is substantial

record evidence to support the Board's decision regarding compensability of the pain

management treatment.

Therefore, the Board's decision on remand awarding compensation for the

services performed by Dr. Sonti is *reversed* and the Board's determination that Dr.

Dickinson was certified and the treatment was reasonable and necessary is *affirmed*.

Accordingly, only the expenses related to the claimant's pain management

administered by Dr. Dickinson are compensable pursuant to 19 Del. C. § 2322D.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

cc: Proth

Prothonotary
Order Distribution

File

¹⁴ Munyan v. Daimler Chrysler Corp., 909 A.2d 133, 136 (Del. 2006).

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