

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

DWIGHT W. ABRAHAMS,)
)
 Claimant-Appellant,)
)
 v.)
)
CHRYSLER GROUP, LLC,)
)
 Employer-Appellee.)

C.A. No. 10A-10-016 MMJ

Submitted: June 17, 2011
Decided: September 14, 2011

On Appeal from a Decision of the Industrial Accident Board

AFFIRMED

MEMORANDUM OPINION

David J. Lyons, Esquire, The Lyons Law Firm, Wilmington, Delaware,
Attorney for Claimant-Appellant

Christine P. O'Connor, Esquire, Natalie L. Palladino, Esquire, Tybout,
Redfearn & Pell, Wilmington, Delaware, Attorneys for Employer-Appellee

JOHNSTON, J.

Dwight Abrahams (“Claimant”) was employed by Chrysler Group, LLC. On June 1, 2002, Claimant suffered an injury from exposure to isocyanate fumes. Claimant has received workers’ compensation benefits for twenty-five percent impairment to his lungs. On December 4, 2008, Claimant filed a Petition to Determine Additional Compensation Due with the Industrial Accident Board (“Board”), seeking benefits for: an 8% permanent impairment to his lumbar spine; a 14% permanent impairment to his cervical spine; a 20% permanent impairment to each upper extremity; a 10% permanent impairment to each lower extremity; and an 8% permanent impairment to his abdomen. On August 31, 2010, the Board denied Claimant’s petition. Claimant appeals that decision, along with the Board’s denial of his motion *in limine*.

Claimant contends that: the Board erred by admitting medical testimony that Chrysler’s attorney untimely produced; the Board erred by admitting medical testimony tainted by spoliation; the Board’s decision was not supported by substantial evidence because it contained “illogical and internally inconsistent conclusions of fact and impermissibly referenced prior proceedings”; the Board erred by excluding photographs of Claimant prior to his injury; and the Board violated the Delaware Administrative Procedures Act and Claimant’s due process rights by (1) failing to

adequately state the grounds upon which it based its decision, (2) including “illogical and internally inconsistent conclusions of fact and impermissibly referenced prior proceedings” in its decision, and (3) considering “unsworn evidence outside the Record which was not subject to cross-examination.”

For the following reasons, the Board’s decision is affirmed in its entirety.

FACTUAL AND PROCEDURAL CONTEXT

Claimant’s Motion in Limine and the September 30, 2009 Hearing

The Board scheduled a hearing on Claimant’s Petition to Determine Additional Compensation for August 18, 2009. However, Chrysler filed for bankruptcy on April 30, 2009. As a result, this case, along with more than 200 others, was transferred to Chrysler’s counsel on or about June 25, 2009. Chrysler requested a continuance, which the Board granted, deciding that the hearing would take place no later than September 30, 2009.

Chrysler scheduled Dr. Jeffrey Meyers to perform a defense medical examination on July 14, 2009. Industrial Accident Board Rule 9(E) requires that an expert medical report be produced no later than thirty days before a hearing. Because Dr. Meyers’ dictation was lost by a third-party, Chrysler produced the report on September 18, 2009.

The parties deposed Dr. Meyers on September 20, 2009. Dr. Meyers revealed that he had destroyed certain notes he had taken and a medical questionnaire Claimant had completed prior to the July 14, 2009 examination.

On September 23, 2009, Claimant filed a motion *in limine* to exclude Dr. Meyers' testimony, arguing that: Chrysler produced the report twelve days before the September 30, 2009 hearing in violation of Rule 9(E); and Dr. Meyers' destruction of certain notes and Claimant's questionnaire amounted to spoliation of evidence. On September 24, 2009, the Board heard argument, reserving judgment until the September 30, 2009 hearing. Ultimately, the Board allowed Chrysler to introduce Dr. Meyers' testimony, finding that Claimant was not prejudiced by Chrysler's untimely production of Dr. Meyers' report and that the circumstances were beyond Chrysler's control. The Board also found that Claimant was not prejudiced as a result of Dr. Meyers' destruction of certain notes and Claimant's questionnaire.

Also at the September 30, 2009 hearing, Claimant attempted to admit a jar of sputum into evidence. Claimant "coughed up" sputum before the hearing. The Board instructed Claimant to remove the sputum sample, explaining that it was unnecessary evidence and a biohazard.

After the September 30, 2009 hearing, the Board was unable to reach a decision on Claimant's Petition to Determine Additional Compensation Due. As a result, a second hearing was scheduled for March 26, 2010.

The March 26, 2010 Hearing

Chrysler presented evidence from Melissa Coffield, a private investigator. Between April 9, 2007 and July 10, 2009, Coffield obtained roughly sixteen hours of video surveillance on Claimant. Additionally, Coffield produced written reports on her observations. Coffield testified that Claimant was "very active" over the two-year period. Coffield explained that Claimant left his home on a daily basis to perform errands such as going to the grocery store, the pharmacy, or the bank, or going out to eat at restaurants. Claimant generally drove himself. Coffield also produced video surveillance of Claimant landscaping his yard, including: mowing the grass, using a "weed-whacker," using an electric trimmer on shrubbery, watering his lawn, pulling weeds, and caring for his flowers. On one occasion, Coffield saw Claimant with an icepack on his lower back while doing yard work. Coffield also witnessed Claimant cleaning the interior windows and dashboard of his vehicle. Coffield did not observe Claimant coughing.

Claimant testified that he experiences numbness and tingling “everywhere” and experiences pain and spasms in his neck, back, rib cage, arms, hands, and feet. Claimant testified that because of his coughing fits, it was necessary that he have a hernia surgically repaired. Claimant’s abdomen is soft and tender. Claimant takes multiple medications, including Oxycodone for pain relief. Claimant explained that he uses a brace to secure ice packs to his ribs and back to relieve pain, especially when working in his yard.

Claimant testified that he gained approximately 65 pounds since his injury. In an effort to prove this, Claimant offered photographs of himself before his injury. Chrysler objected to the introduction of these photographs as irrelevant to whether Claimant has suffered permanent impairment. The Board sustained Chrysler’s objection, finding that the probative value of the photographs was substantially outweighed by the considerations of undue delay and the needless presentation of cumulative evidence. However, the Board allowed Claimant to testify regarding his weight gain. The Board noted that Claimant failed to provide medical testimony that Claimant’s weight did not fluctuate but for the June 1, 2002 work injury.

Claimant explained that he has difficulty sleeping because he often experiences coughing fits through which he discharges sputum. Claimant

again sought to introduce a sputum sample. The Board refused to accept the sputum sample and instructed Claimant to remove it from the hearing room because it was “unhealthy.”

Carol Norris, Claimant’s girlfriend, testified that Claimant sleeps in a chair. Norris explained that Claimant often coughs and discharges sputum, especially in the mornings and evenings. Norris testified that it is difficult for Claimant to attend social events because he cannot sit for a long period of time due to pain.

Dr. Peter Bandera, a physical medicine and rehabilitation specialist, testified by deposition on behalf of Claimant. Using the 5th Edition of the American Medical Association Guides (“AMA Guides”), Dr. Bandera ascertained that Claimant suffers from: an 8% permanent impairment to his lumbar spine due to muscle guarding/spasm and asymmetric loss of range of motion; a 14% permanent impairment to his cervical spine due to muscle guarding/spasm and asymmetric loss of range of motion; a 20% permanent impairment to each of his upper extremities due to decreased motor strength and sensation; a 10% permanent impairment to each lower extremity due to decreased motor strength and sensory deficits; and an 8% permanent impairment to his abdomen due to a protrusion that varies with abdominal pressure and ongoing abdominal discomfort. Dr. Bandera opined that all of

these permanent impairments are causally related to Claimant's June 1, 2002 injury because they are comorbidities of his lung condition.

During cross-examination, Dr. Bandera testified that Claimant's medical history did not contribute to Claimant's alleged permanent impairments. Claimant suffered sports injuries in the 1980s and 1990s. Dr. Bandera explained that he did not take specific measurements regarding Claimant's loss of range in motion. Instead, Dr. Bandera used a manual or "hands on" method to determine Claimant's loss of range in motion. Dr. Bandera measured Claimant's functional limitations based on Claimant's sensation and pain complaints.

Dr. Jeffrey Meyers, a physical medicine and rehabilitation specialist, testified by deposition on behalf of Chrysler. Dr. Meyers first examined Claimant in May 2008. Dr. Meyers testified that Claimant complained of diffuse, aching pain in the torso and extremities and that Claimant experienced muscle tenderness around his spine and extremities. However, Dr. Meyers explained that all of the provocative maneuvers he performed to Claimant's cervical spine, lumbar spine, pelvis, shoulders, and upper and lower extremities were normal. Further, all neurological examinations that tested strength, reflexes, and sensation were normal. Dr. Meyers ran diagnostic studies of Claimant's chest and brachial plexis, and the results

were normal. Dr. Meyers acknowledged an EMG that suggested Claimant suffered from neuropathy in his extremities. However, Dr. Meyers found that Claimant did not suffer from neuropathy to the extent that it would affect his functionality. As of Dr. Meyers' May 2008 examination, he found no impairment to Claimant's neck, back, extremities, or abdomen.

Dr. Meyers also examined Claimant in December 2008. Claimant complained of musculoskeletal pain, numbness and tingling in his hands and feet, knots in his muscles, and reported that he generally suffered from pain when doing any activity. Dr. Meyers studied a June 2005 MRI and a September 2005 EMG and found that the etiology of Claimant's neuropathy was not clear. Dr. Meyers testified that Claimant suffers from gout, which primarily causes foot pain, but also can cause pain in other areas. Claimant still experienced muscle tenderness around his spine and extremities. Dr. Meyers explained that all provocative maneuvers he performed to Claimant were normal and all of Claimant's neurological responses were normal. Dr. Meyers testified that Claimant suffers from chronic myofascial pain, entirely based from Claimant's subjective complaints. Dr. Meyers believes that Claimant exaggerates his symptoms.

Finally, Dr. Meyers examined Claimant in July 2009. Claimant reported that his condition had not changed. Dr. Meyers testified that again

all provocative maneuvers he performed to Claimant were normal and all of Claimant's neurological responses were normal. Dr. Meyers explained that he still believed Claimant was suffering from chronic myofascial pain.

Dr. Meyers reviewed Coffield's surveillance footage of Claimant. After observing what Dr. Meyers characterized as the ease with which Claimant performed daily activities, Dr. Meyers testified that Claimant's alleged symptoms were not the result of his June 1, 2002 work injury. Dr. Meyers opined that Claimant does not have any ratable permanent impairment as a result of the injury.

Dr. Meyers concluded that Claimant suffers from a degenerative condition, caused in part by sports injuries Claimant suffered in the 1980s and 1990s. Dr. Meyers opined that it is unlikely that Claimant's June 1, 2002 injury aggravated his degenerative condition. Dr. Meyers explained that exposure to isocyanates typically does not cause neuropathy unless exposure was high—substantially higher than Claimant's exposure.

During closing arguments, Chrysler's counsel asserted that Dr. Bandera misapplied the AMA Guides. Claimant objected, arguing that the Board is not permitted to reference the AMA Guides other than any portions that the parties introduced through medical testimony. The Board overruled Claimant's objection. The Board held that because Dr. Bandera referenced

the AMA Guides to conclude that Claimant is permanently impaired, Chrysler could argue that Dr. Bandera improperly applied the AMA Guides and further, the Board could consider them to reach its decision.

The Board's Opinion

The Board found Dr. Meyers more credible than Dr. Bandera, concluding that Claimant has no permanent impairment to his cervical spine, lumbar spine, upper extremities, lower extremities, or abdomen as a result of his June 1, 2002 work injury. Consistent with Dr. Meyers' testimony, the Board concluded that Claimant suffers from normal, age-related degenerative changes of the spine, typical of an active and athletic individual.

The Board found that the cervical and lumbar spine permanent impairment Claimant contends he suffers from is "too inflated with respect to how it would relate if at all to the work injury." The Board was persuaded by Dr. Meyers' testimony that Claimant has not lost any range of motion and does not suffer from neurological deficits to his upper or lower extremities. The Board also concluded that Claimant's alleged abdomen condition is not related to his June 1, 2002 injury.

The Board entirely rejected Dr. Bandera's testimony that Claimant suffers from permanent impairment to his cervical spine, lumbar spine,

upper extremities, lower extremities, and abdomen. The Board found that Dr. Bandera misapplied the AMA Guides by not performing a range of motion test on Claimant. The Board simply concluded that “Dr. Bandera is not credible.” The Board also determined that Claimant was not credible, finding that he exaggerated his symptoms.

Regarding Claimant’s sputum sample that he attempted to offer into evidence, the Board included the following footnote in its decision:

This matter was previously heard by a different Board. After the hearing, the Board was unable to reach a decision so this matter was scheduled for a second time before the present Board. At the previous hearing, Claimant’s counsel brought a jar containing sputum that Claimant had coughed up and spit into the jar prior to the hearing. The Board in no uncertain terms instructed Claimant to remove the jar from the building as the contents are a biohazard and admittance into evidence is not only unnecessary but its value is far outweighed by the hazards it presents. Claimant’s counsel was specifically instructed not to bring in a sample of the sputum at the next hearing. Prior to the commencement of this hearing, the hearing officer on behalf of the Board instructed Claimant’s counsel that he is not permitted to bring in a sample of the sputum into the hearing room. Claimant’s counsel ignored the instruction and brought a sputum sample into the hearing room. Claimant’s counsel insisted that the sputum sample be admitted into evidence despite the Board’s repeated instruction not to bring a sputum sample to the hearing. The Board would like to note that Claimant’s counsel’s defiant behavior will not be tolerated. Had this been a judicial hearing as opposed to an administrative hearing, Claimant’s counsel’s behavior could merit a contempt of court ruling.

Finally, the Board wrote that its decision was not influenced by Coffield's surveillance videos.

STANDARD OF REVIEW

On appeal from the Industrial Accident Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record.¹ "Substantial evidence" is less than a preponderance of the evidence but is more than a "mere scintilla."² It is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³ The Court must review the record to determine if the evidence is legally adequate to support the Board's factual findings. The Court does not "weigh evidence, determine questions of credibility or make its own factual findings."⁴ If the record lacks satisfactory proof in support of the Board's finding or decision, the Court may overturn the Board's decision. On appeal, the Superior Court reviews legal issues *de novo*.⁵

DISCUSSION

The Board properly allowed Dr. Meyers' medical testimony.

Claimant argues that the Board should have excluded Dr. Meyers' medical testimony because Claimant produced it in violation of Rule 9(E),

¹ *Histed v. E.I. DuPont deNemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

² *Richardson v. Perales*, 402 U.S. 389, 401 (1971).

³ *Histed*, 621 A.2d at 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

⁴ *Olney*, 425 A.2d at 614.

⁵ *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

only two days prior to Dr. Meyers' scheduled deposition. Claimant also contends that the Board should have excluded Dr. Meyers' testimony because Dr. Meyers destroyed certain notes and Claimant's medical questionnaire, which amounted to spoliation of evidence.

Chrysler responds that Claimant failed to show how he was prejudiced by Chrysler's late production of Dr. Meyers' testimony. Chrysler asserts that because Claimant did not adequately address the spoliation issue at the March 26, 2010 hearing, he waived the argument on appeal.

The Court finds that the Board did not commit legal error by allowing Dr. Meyers' testimony. "An administrative board abuses its discretion in admitting or excluding evidence where its decision exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice."⁶ Therefore, the Board has the discretion to consider evidence filed in violation of Rule 9(E) so long that its decision is reasonable under the circumstances. Claimant has failed to establish that he suffered prejudice from Chrysler's untimely production of Dr. Meyers' medical report. The record shows that the late production of Dr. Meyers' report was neither Claimant's fault nor Dr. Meyers' fault. The Board's decision to allow Dr. Meyers' testimony was not an abuse of discretion.

⁶ *Bolden v. Kraft Foods*, 2005 WL 3526324, at *3 (Del.).

The Court finds that Claimant did not waive his spoliation argument because he raised the argument at the September 23, 2009 hearing and reserved the argument at the March 26, 2010 hearing. However, Dr. Meyers' destruction of certain notes and Claimant's medical questionnaire does not preclude the introduction of Dr. Meyers' medical testimony. Spoliation allows the fact-finder to infer that the evidence destroyed adversely affected the party at fault.⁷ Here, the alleged "spoliation" of Dr. Meyers' notes and Claimant's medical questionnaire has no bearing on Dr. Meyers' testimony. Thus, any adverse inference would not affect the outcome of the Board's decision.

The Board's decision was supported by substantial evidence.

Claimant argues that the Board included "illogical and internally inconsistent conclusions of fact and impermissibly referenced prior proceedings" in its August 31, 2010 decision. Claimant contends that the Board never instructed Claimant at the September 30, 2009 hearing not to bring the sputum sample to the March 26, 2010 hearing. Further, Claimant argues the September 30, 2009 hearing should not have been referenced in the Board's August 31, 2010 decision. Claimant argues that this "casts doubt on the logic and deductive nature of the Board's decision as a whole,"

⁷ *Sears, Roebuck and Co. v. Midcap*, 893 A.2d 542, 546-50 (Del. 2006).

and that the Board's August 31, 2010 decision was not based on substantial evidence.

Chrysler responds that the Board's decision is not tainted. Chrysler argues that the Board considered Claimant's testimony regarding the sputum sample, even though the Board did not consider the sputum sample itself. Chrysler contends that the Board's decision was supported by substantial evidence.

"An administrative board abuses its discretion in admitting or excluding evidence where its decision exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice."⁸ The Court finds that, under the circumstances, it was reasonable to exclude Claimant's sputum sample, and the Board did not abuse its discretion. Further, the record reflects that the Board allowed Claimant to testify about his coughing fits and resulting sputum.

Even assuming, *arguendo*, that the Board's comments regarding Claimant's sputum sample were "illogical and internally inconsistent conclusions of fact," and acknowledging that the Board referenced the September 30, 2009 hearing, Claimant still has not established that the Board's decision was "tainted" or unsupported by substantial evidence. The

⁸ *Bolden*, 2005 WL 3526324, at *3.

Court finds that the remainder of the Board’s decision is not “illogical or internally inconsistent.”

The record reflects that the Board’s decision was based on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁹ The Court defers to the Board’s “experience and specialized competence” in its findings of fact.¹⁰ Further, the Board is free to accept one opinion, while rejecting another.¹¹ Here, the Board considered conflicting medical expert testimony, and found Dr. Meyers more credible than Dr. Bandera. The record reflects that the Board carefully considered Dr. Bandera’s testimony, but found it unpersuasive. Therefore, the Court finds that the Board’s decision was supported by substantial evidence.

The Board did not commit legal error by excluding photographs of Claimant prior to his injury.

Claimant argues that the photographs of Claimant prior to his injury were not cumulative evidence and allowing them into evidence would not have resulted in an undue delay. Claimant contends that because the Board found that much of Claimant’s condition was caused by degeneration, the

⁹ *Histed*, 621 A.2d at 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

¹⁰ 29 *Del. C.* § 10142(d) (2009) (“The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court’s review, in the absence of actual fraud, shall be limited to a determination of whether the agency’s decision was supported by substantial evidence on the record before the agency.”)

¹¹ *Standard Distrib. v. Hall*, 897 A.2d 155, 158 (Del. 2006).

photographs would have established that Claimant's condition was, in fact, not caused by degeneration.

Chrysler responds that Claimant had the opportunity to testify about his weight gain, and therefore it was unnecessary that the Board review the photographs.

“An administrative board abuses its discretion in admitting or excluding evidence where its decision exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice.”¹² The Board allowed Claimant to testify that his June 1, 2002 injury caused him to gain 65 pounds. The Board considered it the needless presentation of cumulative evidence and undue delay to allow Claimant to introduce the photographs. The Court agrees and finds that the Board's decision to exclude Claimant's photographs taken prior to his injury was reasonable, and not an abuse of discretion.

The Board did not violate the Delaware Administrative Procedures Act or Claimant's due process rights.

Claimant argues that the Board violated the Delaware Administrative Procedures Act and Claimant's due process rights by: failing to adequately state the grounds upon which it based its decision; including “illogical and internally inconsistent conclusions of fact and impermissibly referenced

¹² *Bolden*, 2005 WL 3526324, at *3.

prior proceedings” in its decision; and considering “unsworn evidence outside the Record which was not subject to cross-examination.” Claimant contends that the Board improperly “condensed” its decision, only highlighting the “most significant factors and conclusions within the testimony, the evidence and the analysis.” Claimant asserts that this has not allowed him to meaningfully review the Board’s decision for legal and factual error. Claimant argues that the Board’s reference to Claimant’s sputum sample and the September 30, 2009 hearing evidences the Board’s “unwillingness to conduct [sic] a meaningful review of its fact-finding obligation” and thereby “taints the entire decision . . .” Finally, Claimant contends that the Board improperly allowed Chrysler to reference the AMA guides during its closing argument.

Chrysler responds that Claimant has not identified any information or evidence that was overlooked or omitted from the Board’s decision. Chrysler asserts that the Board’s decision is in compliance with 19 *Del. C.* § 2345. The decision “state[s] its conclusions of fact and rulings of law.” Chrysler argues that Claimant has not established that he was prejudiced or that the Board’s entire decision is tainted due to its reference to Claimant’s sputum sample and the September 30, 2009 hearing. Chrysler contends that it did not offer the AMA Guides as evidence during its closing argument.

Rather, Chrysler asserts that it referenced the AMA Guides to support its argument that Dr. Bandera misapplied the AMA Guides.

The Court finds that the Board adequately stated its conclusions of fact and ruling of law in accordance with section 2345. The Board outlined testimony from Coffield, Claimant, Norris, Dr. Bandera, and Dr. Meyers. The Board focused on the medical testimony provided by Dr. Bandera and Dr. Meyers, and explained why it found Dr. Meyers more credible. This is sufficient. Claimant certainly had a meaningful opportunity to review the decision for error. Therefore, the Board did not violate the Delaware Administrative Procedures Act and Claimant's due process rights by issuing a "condensed" decision.

The Court already has concluded that Claimant's argument -- that the Board's entire decision was tainted by its reference to Claimant's sputum sample -- lacks merit. Independent of Claimant's assertions, the Court finds no prejudice or taint in the Board's decision. Therefore, the Board did not violate the Delaware Administrative Procedures Act or Claimant's due process rights by referencing Claimant's sputum sample and the September 30, 2009 hearing. Further, the Board did not violate the Delaware Administrative Procedures Act and Claimant's due process rights by

considering the AMA Guides that Chrysler referenced during its closing argument.

CONCLUSION

The Board did not abuse its discretion by considering Dr. Meyers' medical testimony as evidence. The Board's decision to consider Dr. Meyers' testimony was reasonable under the circumstances. Dr. Meyers' medical report should not be excluded due to spoliation on the grounds that certain of Dr. Meyers' notes and Claimant's medical questionnaire were destroyed. Claimant has not shown that he was prejudiced by Chrysler's untimely production or by the destruction of certain notes and the questionnaire.

The Board's decision was supported by substantial evidence. The Board's reference to Claimant's sputum sample and the September 30, 2009 does not "cast[] doubt on the logic and deductive nature of the Board's decision as a whole." The record reflects that the Board carefully considered conflicting medical testimony, and found Dr. Meyers more credible than Dr. Bandera.

The Board did not abuse its discretion by excluding photographs of Claimant prior to his injury. The record reflects that Claimant had the opportunity to testify about his weight gain.

The Board did not violate the Delaware Administrative Procedures Act or Claimant's due process rights. The Board adequately stated its conclusions of fact and ruling of law in accordance with 19 *Del. C.* § 2345. The Board did not prejudice Claimant or taint its decision by referencing Claimant's sputum sample and the September 30, 2009 hearing. The Board did not abuse its discretion by allowing Chrysler to reference the AMA Guides during its closing argument. Dr. Bandera testified that he relied on the AMA Guides, and therefore, it was reasonable that Chrysler refer to the AMA Guides to argue that Dr. Bandera misapplied them.

THEREFORE, the Court hereby **AFFIRMS** the Industrial Accident Board's Decision in its entirety.

IT IS SO ORDERED.

The Honorable Mary M. Johnston