

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

SARAH GOODCHILD,)
)
 Appellant,)
)
 v.)
)
STATE OF DELAWARE,)
)
 Appellee.)

C. A. No. 03A-08-006 JEB

Submitted: February 19, 2004
Decided: May 14, 2004

*Appeal from a Decision of the Industrial Accident Board.
Decision Affirmed.*

OPINION

Appearances:

A. Dale Bowers, Esquire, and Joseph J. Rhoades, Esquire, Wilmington, Delaware. Attorneys for Sarah Goodchild.

David G. Culley, Esquire, Wilmington, Delaware.
Attorney for the State of Delaware.

JOHN E. BABIARZ, JR., JUDGE

This is the Court's decision on Claimant Sarah Goodchild's appeal of a decision of the Industrial Accident Board (Board) terminating her total disability benefits. For the reasons explained below, the Board's decision is affirmed.

FACTS

On January 22, 2002, Claimant Goodchild shattered her right kneecap in the course of her duties as a staff assistant at the University of Delaware (Employer). The injury was acknowledged as compensable and total disability benefit were paid. In March 2003, Employer filed a petition to terminate benefits, alleging that Claimant was able to return to work. Claimant asserted that she remained totally disabled. The Board held a hearing in July 2003.

Robert Stackhouse, a vocational director for Proto Works, testified on behalf of Employer. Mr. Stackhouse was familiar with the results of a functional capacity evaluation (FCE), which had been ordered by one of Claimant's physicians to help assess her capacity to work. The FCE indicated that claimant was not able to work as of October 2, 2002. Mr. Stackhouse prepared a labor market survey of jobs available for a person like Claimant with restrictions as to lifting, squatting, climbing and kneeling, as well as time limits on standing, walking and sitting. Mr. Stackhouse found jobs available for Claimant that would pay an average of \$455.20 per week compared to her pre-injury wage of \$634.88.

Dr. Michael Shear, who is board certified in physical medicine and

rehabilitation, testified by deposition on Employer's behalf. Having examined Claimant in January 2003, he concluded that Claimant could return to work in a sedentary capacity. Based on the records he had reviewed, Dr. Shear testified that Dr. Randeep Kahlon operated on Claimant's knee, and that in April 2002 the only restriction Dr. Kahlon placed on Claimant was to refrain from any lifting. As of May 2002, Dr. Kahlon indicated that Claimant could stand and walk for one to three hours in an eight-hour day and again recommended that she do no lifting or carrying. Claimant saw Dr. Smith in July 2002 to help her manage her ongoing pain. In August 2002, Dr. Smith indicated that Claimant could work in a sedentary capacity.

Claimant took several narcotic medications and had two courses of physical therapy. Despite ongoing pain, she refused to have a nerve block. Dr. Shear noted that Claimant had certain symptoms of two related conditions, early reflex sympathetic dystrophy (RSD) or complex regional pain syndrome (CRPS). However, he concluded that Claimant did not have either condition.

Although Dr. Shear reviewed the FCE Claimant underwent in October 2002, he did not consider it especially helpful because the only validity tests that were performed were for upper extremity grip strength and heart rate. Furthermore, Claimant did not complete the evaluation.

Claimant testified on her own behalf. She stated that during her 15 years at the University of Delaware, she had done budget work, inventory control, credit card

reconciliation and other similar tasks. After injuring her knee in January 2002, Claimant underwent surgery and extensive rehabilitative therapy. Her leg continued to be swollen, discolored and weak. She felt a burning sensation in her muscles. At Dr. Kahlon's recommendation, she returned to work in April 2002, but quit in July 2002 because of pain. She uses a cane and takes narcotic medications. She has trouble driving, walking, and concentrating. She does not believe that she can do any of the jobs listed on the market survey.

Dr. Frank J. E. Falco, a specialist in physical medicine and rehabilitation, testified by deposition on behalf of Claimant. Although he never examined Claimant, Dr. Falco concluded that Claimant remains totally disabled. Dr. Falco believed that a diagnosis of CPRS is possible, but the symptoms collectively associated with CPRS are more complex than Claimant's symptoms. Based on the results of the FCE, Dr. Falco concluded that Claimant was unable to work.

The Board granted Employer's petition to terminate Claimant's total disability benefits. The Board found that the jobs listed in Employer's labor market survey matched Claimant's education, training and medical restrictions. Finally, the Board calculated Claimant's average weekly wage loss and awarded her weekly benefits of \$119.79 per week. Claimant filed a timely appeal to this Court. Briefing is complete and the issues are ripe for decision.

STANDARD OF REVIEW

The function of this Court on appeal of a decision of the Board is to determine whether there is substantial evidence in the record to support the Board's findings of fact and conclusions of law.¹ Substantial evidence is such evidence that a reasonable person might accept as adequate to support a conclusion.² This Court does not sit as a trier of fact with authority to weigh the evidence, determine credibility or make its own factual findings.³ When the parties present testimony from expert witnesses, the Board is free to choose between conflicting expert opinions, and either opinion will constitute substantial evidence for purposes of an appeal.⁴

DISCUSSION

Before addressing Claimant's arguments on appeal, the Court finds it necessary to review the Board's findings because of the amplitude of the evidence. The Board recognized that the real issue was whether Claimant was able to work on a regular basis, not whether she was reluctant to have a nerve block. The Board correctly observed that the issue came down to a battle of the medical experts. For a variety of reasons, the Board found Dr. Shear's opinion that Claimant could work part-time

¹*Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).

²*Oceanport Industries v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

³*Johnson v. Chrysler Corp.* at 66.

⁴*Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992).

was more credible than Dr. Falco's opinion that Claimant remained totally disabled. First, Dr. Shear noted that the only validity tests that were conducted during the functional capacity evaluation (FCE) were grip strength and heart rate, which had little relation to leg pain. Furthermore, the fact that Claimant completed approximately half of the test devalued its use for determining Claimant's current work capacity. Dr. Falco based his opinion that Claimant was totally disabled on the FCE. He never examined her.

After discussing the medical evidence and finding Dr. Shear to be the more credible of the two expert witnesses, the Board stated its own impression that Claimant was not in serious pain during the hearing and was not cognitively impaired. These findings were consistent with Dr. Shear's testimony. Thus, the Board concluded that Claimant could perform sedentary work and terminated her total disability benefits. In light of the labor market survey and Claimant's physical limitations, the Board awarded her weekly partial disability compensation of \$119.79.

Claimant argues first that the Board erred in not determining whether Claimant suffers from RSD/CRPS. The Board reviewed both doctors' opinions on this question and correctly observed that their testimony was not dramatically disparate. Based on the opinion of both doctors, the Board concluded that Claimant showed some signs of RSD/CRPS but not enough to diagnose her with either condition. The Court concludes that the Board considered this question and that substantial evidence

exists in the record to support its decision that Claimant does not have RSD/CRPS.

Claimant also argues that the Board lacked substantial evidence to reject Dr. Falco's opinion, which was based on the FCE. Claimant argues that Dr. Falco also relied on her records as support for his conclusion that she is totally disabled. Claimant asserts that if the Board found the test to be dubious, it should also have rejected Dr. Shear's opinion, which relied in part on the FCE. Here Claimant has simply missed the mark. The appellate standard is whether there is substantial evidence to support the Board's findings, not whether there was not substantial evidence to reject an expert's opinion. The Board's rejection of Dr. Falco's opinion was based on numerous factors, which taken together rendered his testimony less credible than Dr. Shear's. The Board correctly noted that Dr. Falco's opinion was based on the FCE test, supplemented only by his review of her other medical records. At no time did Dr. Falco examine Claimant. In contrast, Dr. Shear examined Claimant on January 10, 2003, three months after the FCE at a time more relevant to Claimant's current ability to work. Dr. Shear also reviewed the medical records and noted that as of April 2002 (four months after the injury), Dr. Kahlon, who had performed the knee surgery, stated that Claimant's only restriction was to do no lifting. Dr. Shear acknowledged Claimant's limitations and found that the jobs listed on the labor market survey were within those limitations. The Court finds no error or abuse of discretion in the Board's acceptance of Dr. Shear's opinion over that of

Dr. Falco.

Finally, Claimant argues that the Board permitted its personal observations of Claimant to supplant the medical evidence. The Court finds no merit in this argument. The Board thoroughly reviewed the testimony of both doctors and explained why it found Dr. Shear's opinion to be more persuasive. Only after discussing all the medical evidence did the Board address its concerns about Claimant's demeanor. The Board noted that although Claimant was in discomfort during the hearing, she did participate. Nor did her medication impair her ability to communicate. In making these observations, the Board noted that they were consistent with the expert testimony of Dr. Shear. The Court finds no error or abuse of discretion in the Board's comments regarding Claimant's demeanor.

CONCLUSION

For all these reasons, the Board's decision terminating Claimant Goodchild's total disability benefits and awarding her partial disability benefits is ***Granted***.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

JEB,jr./rmp/bjw
Original to Prothonotary