

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

RHONDA TOOMEY, )  
 )  
 Appellant/ )  
 Claimant-Below, )  
 )  
 v. )  
 )  
 )  
 FAMILY DOLLAR STORES, )  
 )  
 Appellee/ )  
 Employer-Below. )

C.A. No. S26A-02-001 NEP

Submitted: February 12, 2026

Decided: April 21, 2026

**MEMORANDUM OPINION AND ORDER**

*Upon Appeal from the Decision of the Industrial Accident Board*

**AFFIRMED**

Walt F. Schmittinger, Esquire, Schmittinger and Rodriguez, Dover, Delaware,  
*Attorney for Appellant.*

Cassandra F. Roberts, Esquire, Elzufon Austin & Mondell, Wilmington, Delaware,  
*Attorney for Appellee.*

**Primos, J.**

Before this Court is the appeal of Rhonda Toomey (“Toomey”) from the June 9, 2025, decision of the Industrial Accident Board (the “Board”) denying her Petition to Determine Additional Compensation Due. In her petition, which was opposed by her former employer, Family Dollar Stores (“Family Dollar”), Toomey sought authorization and payment for medical marijuana as treatment for conditions stemming from a work injury suffered in 2004. After a hearing, the Board, through a Hearing Officer (the “Hearing Officer”),<sup>1</sup> concluded that Toomey had failed to prove, by a preponderance of the evidence, that medical marijuana constituted reasonable and necessary medical treatment under Delaware’s Workers’ Compensation Act.

In reaching that conclusion, the Hearing Officer credited the testimony of Family Dollar’s three experts—each a board-certified physician or psychologist—over the testimony of Toomey’s sole witness, Dr. Valerie Harrison, D.N.P. The Hearing Officer further found that Toomey’s asserted benefits from marijuana use were largely based on self-reporting and were undermined by concerns over her credibility and comorbidities.

For the reasons that follow, the Court finds that the Hearing Officer’s decision is supported by substantial evidence and free from legal error and is therefore **AFFIRMED**.

## **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

### **I. The 2004 Work Accident**

On March 13, 2004, Toomey sustained a compensable work injury while employed by Family Dollar when she was the victim of a violent robbery at her

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<sup>1</sup> The parties stipulated to have this matter heard and decided by a Hearing Officer in lieu of a panel of the Industrial Accident Board. *See* Hr’g Tr. 3:11–19 (Tab 2).

<sup>2</sup> Citations in the form of “Tab \_\_\_” refer to items in the paper record, and citations in the form of “D.I. \_\_\_” refer to docket items.

workplace.<sup>3</sup> During the incident, Toomey was restrained with duct tape, threatened, and pistol-whipped.<sup>4</sup>

Toomey has not returned to gainful employment since the accident.<sup>5</sup> She receives benefits for a 37% permanent impairment to the brain and continues to receive total disability benefits related to the psychiatric effects of the 2004 incident.<sup>6</sup> Over the years, Toomey has treated with numerous healthcare providers for conditions stemming from the 2004 incident.<sup>7</sup>

## **II. Petition Seeking Authorization for Medical Marijuana**

On April 29, 2024, Toomey filed a Petition to Determine Additional Compensation Due seeking authorization and payment for medical marijuana in connection with the 2004 incident.<sup>8</sup> The Hearing Officer heard the matter on May 27, 2025, and issued a written decision on June 9, 2025, denying Toomey’s petition.<sup>9</sup>

## **III. Toomey’s Evidence**

Toomey relied primarily on the deposition testimony of Dr. Valerie Harrison, D.N.P. (“Dr. Harrison”), who began treating Toomey in November 2023 after her previous psychiatric provider, Dr. Anis Ahmed, closed his practice.<sup>10</sup> Dr. Harrison is a family nurse practitioner with an advanced degree in psychiatric mental health

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<sup>3</sup> See Hr’g Tr. 3:8–9, 4:2–4 (Tab 2); Stipulated Statement of Facts ¶ 1 (Tab 7).

<sup>4</sup> Hr’g Tr. 4:2–6 (Tab 2); Statement of Facts ¶ 1 (Tab 7).

<sup>5</sup> Hr’g Tr. 4:8 (Tab 2); *see* Statement of Facts ¶ 2 (Tab 7).

<sup>6</sup> Hr’g Tr. 4:6–12 (Tab 2); Statement of Facts ¶ 2 (Tab 7).

<sup>7</sup> Hr’g Tr. 4:12–13 (Tab 2); Statement of Facts ¶ 2 (Tab 7).

<sup>8</sup> Claimant’s Pet. to Determine Additional Comp. Due (Tab 1).

<sup>9</sup> Decision on Pet. to Determine Additional Comp. Due (Tab 8).

<sup>10</sup> Harrison Dep. 6:19–7:15 (Tab 3).

and a doctorate in nursing, and has been licensed as a nurse practitioner in the State of Delaware for approximately 15 years.<sup>11</sup>

Dr. Harrison diagnosed Toomey with mood disorder, anxiety, and a mild episode of recurrent major depressive disorder,<sup>12</sup> as well as PTSD stemming from the 2004 incident.<sup>13</sup> Based on Toomey's report that prior medications had not provided adequate relief, Dr. Harrison agreed to certify Toomey for medical marijuana.<sup>14</sup> Dr. Harrison acknowledged that marijuana is not effective for every patient<sup>15</sup> and that she had no control over the formulation, dosage, or frequency of marijuana dispensed by Delaware dispensaries.<sup>16</sup>

Dr. Harrison testified that Toomey reported significant improvement after initiating marijuana use.<sup>17</sup> Dr. Harrison conceded that Toomey remained on multiple psychiatric medications and that no meaningful reduction in those medications had occurred.<sup>18</sup> Dr. Harrison further acknowledged that she was not fully aware of Toomey's method of marijuana use and believed Toomey primarily used gummies,<sup>19</sup> while Toomey later testified that she predominantly smoked marijuana.<sup>20</sup> Dr. Harrison also testified that she was uncertain what specific adverse effects she should monitor in patients using marijuana.<sup>21</sup>

At the time Dr. Harrison first evaluated Toomey, she had not fully reviewed Toomey's prior medical records and did not obtain collateral information from

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<sup>11</sup> *Id.* at 4:21–5:3.

<sup>12</sup> *Id.* at 8:24–9:5.

<sup>13</sup> *See id.* at 9:23–10:6.

<sup>14</sup> *See id.* at 11:17–14:19.

<sup>15</sup> *Id.* at 11:20–21.

<sup>16</sup> Harrison Dep. 18:20–19:16 (Tab 3).

<sup>17</sup> *Id.* at 21:5–6.

<sup>18</sup> *Id.* at 17:7–24.

<sup>19</sup> *See id.* at 19:7–8.

<sup>20</sup> Hr'g Tr. 31:20–21, 47:1–2 (Tab 2).

<sup>21</sup> Harrison Dep. 15:19–17:6 (Tab 3).

treating counselors, family members, or other providers.<sup>22</sup> Dr. Harrison's assessment and subsequent certification for medical marijuana were therefore substantially based on Toomey's own account of her symptoms, history, and perceived response to prior treatment.<sup>23</sup>

During her testimony, Toomey first described her ongoing process of receiving psychiatric and psychological treatment stemming from the 2004 incident.<sup>24</sup> She explained that she had taken a number of different medications over the previous twenty years.<sup>25</sup> She described smoking marijuana nightly and sometimes during the day depending on her symptoms.<sup>26</sup> She asserted that marijuana helped calm her, reduced the frequency and intensity of her reported alternate personalities, and enabled her to perform tasks such as cleaning her home, shopping, and going to the park.<sup>27</sup> She testified that she experienced no adverse side effects<sup>28</sup> and paid for the treatment out of pocket.<sup>29</sup>

#### **IV. Family Dollar's Evidence**

Family Dollar presented deposition testimony from three medical experts: Dr. John Townsend, M.D.; Dr. James Langan, Psy.D.; and Dr. Jason Brokaw, M.D.

Dr. Townsend, a board-certified neurologist, examined Toomey on November 5, 2024.<sup>30</sup> In assessing Toomey, he surveyed twenty years of Toomey's medical records.<sup>31</sup> He expressed concern regarding Toomey's psychiatric history, history

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<sup>22</sup> *Id.* at 24:22–27:1.

<sup>23</sup> *See id.* at 25:2–8.

<sup>24</sup> Hr'g Tr. 21:7–22:1 (Tab 2).

<sup>25</sup> *Id.* at 22:2–7.

<sup>26</sup> *Id.* at 27:6–9, 28:18–24.

<sup>27</sup> *Id.* at 24:13–25:4.

<sup>28</sup> *Id.* at 27:21–23.

<sup>29</sup> *Id.* at 28:6–11.

<sup>30</sup> Townsend Dep. 4:16–23, 5:15–18 (Tab 4).

<sup>31</sup> *Id.* at 6:21–7:1.

with seizures, substance abuse, and inconsistent reporting.<sup>32</sup> Dr. Townsend testified that, from a neurological standpoint, medical marijuana was not reasonable or necessary.<sup>33</sup> He explained that THC-containing marijuana may exacerbate anxiety, agitation, or psychosis in patients with pre-existing psychiatric conditions.<sup>34</sup> Although he acknowledged anecdotal reports of marijuana use for seizures, Dr. Townsend testified that the types of medical marijuana used most frequently to treat seizures are CBD-based and come in the form of a pill rather than an edible or smokeable form.<sup>35</sup>

Dr. Langan, a board-certified neuropsychologist, conducted a neuropsychological evaluation of Toomey on August 26, 2024.<sup>36</sup> According to Dr. Langan, Toomey produced unreliable results on multiple testing instruments including the Medical Symptom Validity Test and MMPI-3, endorsing incorrect answers and exaggerating symptoms beyond credible ranges.<sup>37</sup> He noted that Toomey scored zero percent accuracy on portions of the Medical Symptom Validity Test—results significantly worse than those typically observed in patients with advanced Alzheimer’s disease.<sup>38</sup> He testified that the neuropsychological testing administered was specifically designed to assess response validity and detect exaggeration or feigned impairment, and explained that Toomey’s performance

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<sup>32</sup> See *id.* at 15:7–20 (psychiatric history), 9:18–14:16 (seizures), 14:17–15:6 (substance abuse), 16:2–17:5 (inconsistent reporting).

<sup>33</sup> See *id.* at 20:9–20.

<sup>34</sup> *Id.* at 21:20–22:19.

<sup>35</sup> *Id.* at 24:17–25:10.

<sup>36</sup> Langan Dep. 4:19–5:14 (Tab 5).

<sup>37</sup> *Id.* at 20:4–29:10.

<sup>38</sup> *Id.* at 24:7–26:16. According to Dr. Langan, patients with Alzheimer’s disease score between 80–85% accuracy on the Medical Symptom Validity Test; Toomey scored well below 50%, despite patients having “a 50-50 probability of getting the correct answer.” *Id.* at 25:5–26:5.

patterns were not consistent with genuine cognitive impairment and instead reflected intentionally incorrect responses.<sup>39</sup>

Dr. Langan further testified that prior evaluators identified similar concerns regarding Toomey's presentation and reporting. He noted that Dr. David Raskin administered the MMPI-2 and obtained an invalid profile indicative of inconsistent responding or symptom exaggeration;<sup>40</sup> that Dr. Stephen Mechanick later identified material inconsistencies in Toomey's history, rejected a dissociative identity disorder diagnosis, and instead diagnosed PTSD and major depressive disorder with a conversion disorder;<sup>41</sup> and that neurologists Dr. Robert Varipapa and Dr. Bruce Doppler documented a remote seizure history and concluded that Toomey's post-incident seizures were not neurological in origin, leading to discontinuation of anticonvulsant treatment.<sup>42</sup>

Dr. Langan concluded that Toomey's presentation was not credible and that he could not endorse marijuana as a therapeutic intervention.<sup>43</sup> He further opined that marijuana could worsen dissociative or psychotic symptoms and that there is little reliable scientific evidence supporting marijuana as an effective treatment for patients with the type of psychiatric conditions Toomey reported.<sup>44</sup>

Dr. Brokaw is a board-certified physician in physical medicine, rehabilitation, and pain management, as well as a certified medical marijuana provider who routinely evaluates patients for marijuana candidacy as part of his clinical practice.<sup>45</sup> Dr. Brokaw conducted his evaluation of Toomey on October 9, 2024.<sup>46</sup> He testified

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<sup>39</sup> *Id.* at 20:14–22:6, 23:15–27:24.

<sup>40</sup> *Id.* at 15:16–16:20.

<sup>41</sup> Langan Dep. 16:21–18:7 (Tab 5).

<sup>42</sup> *Id.* at 18:15–19:3.

<sup>43</sup> *Id.* at 29:11–31:19.

<sup>44</sup> *Id.* at 30:20–31:19, 36:9–37:5.

<sup>45</sup> Brokaw Dep. 7:7–8:8 (Tab 6).

<sup>46</sup> *Id.* at 5:16–21.

that, in evaluating medical marijuana candidacy, a provider must assess and discuss the risks and benefits of treatment, including relevant physical and psychiatric considerations, and opined that Dr. Harrison's records reflected insufficient discussion of those risks and failed to address key factors bearing on Toomey's suitability for such treatment.<sup>47</sup>

Dr. Brokaw concluded that medical marijuana was neither reasonable nor necessary.<sup>48</sup> Further, he contended that medical marijuana is "not a safe, reasonable, or necessary treatment for [Toomey] in particular."<sup>49</sup> In reaching this conclusion, Dr. Brokaw assessed Toomey's psychiatric history, physical pain, and overall medical comorbidities, including obesity, chronic obstructive pulmonary disease, tobacco abuse, and seizure disorders.<sup>50</sup> He also determined that Toomey's dishonesty regarding her medical history and symptom exaggeration from her testing indicated that Toomey was pursuing medical marijuana outside of appropriate medical standards, thus increasing risk.<sup>51</sup> He testified that the potential for psychosis in particular was a reason to avoid marijuana, as it increases the risk of psychotic breaks, which would be very high in Toomey's case.<sup>52</sup>

## **V. The Hearing Officer's Decision**

After weighing the evidence, the Hearing Officer denied Toomey's petition.<sup>53</sup> The Hearing Officer concluded that Toomey had not met her burden of proving by a preponderance of the evidence that her use of medical marijuana was reasonable or necessary, and, in resolving conflicting medical testimony, credited the opinions

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<sup>47</sup> *Id.* at 15:9–19:9.

<sup>48</sup> *Id.* at 24:18–25:6.

<sup>49</sup> *Id.* at 26:10–12.

<sup>50</sup> *Id.* at 22:23–24:5.

<sup>51</sup> Brokaw Dep. 27:21–28:4 (Tab 6).

<sup>52</sup> *Id.* at 27:7–20.

<sup>53</sup> Decision on Pet. to Determine Additional Comp. Due 1 (Tab 8).

of Drs. Townsend, Langan, and Brokaw over those of Dr. Harrison.<sup>54</sup> The Hearing Officer further identified inconsistencies in Toomey’s testimony and presentation, and found persuasive the medical evidence demonstrating both concerns regarding the reliability of Toomey’s reported symptoms and the potential risks of marijuana use given her psychiatric history and medical comorbidities.<sup>55</sup>

Toomey timely filed a Notice of Appeal,<sup>56</sup> and briefing followed. On January 5, 2026, the Court held an office conference with counsel for both parties in which it *sua sponte* raised a potential jurisdictional issue, i.e., that although the appeal had been filed in the Superior Court for Kent County, it appeared from certain documents in the record that the work injury may have occurred in Sussex County.<sup>57</sup> After Toomey’s counsel confirmed that the work injury had occurred in Sussex County, the parties agreed that the Superior Court for Kent County lacked jurisdiction, and that the matter should be heard by the Superior Court for Sussex County. Accordingly, the Court denied jurisdiction and allowed Toomey 60 days to file a written election of transfer pursuant to 10 *Del. C.* § 1902.<sup>58</sup> Toomey timely filed the election of transfer,<sup>59</sup> and on January 30, 2026, the appeal was transferred to the Superior Court for Sussex County.<sup>60</sup> On February 12, 2026, the appeal was

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<sup>54</sup> *Id.* at 26–27, 31.

<sup>55</sup> *Id.* at 27–31.

<sup>56</sup> Notice of Appeal (Tab 9).

<sup>57</sup> *See* D.I. 16; *see also* 19 *Del. C.* § 2349 (providing that appeals must be filed in “the Superior Court for the county in which the injury occurred”).

<sup>58</sup> Letter Order (D.I. 17); *see, e.g., Hudson v. Beebe Medical Center*, 2024 WL 36063, at \*5 (Del. Super. Jan. 3, 2024); *Cooper v. Capitol Nursing*, 2010 WL 3447705, at \*1 (Del. Super. Aug. 31, 2010) (transferring an Industrial Accident Board appeal from New Castle County to Sussex County pursuant to 10 *Del. C.* § 1902); *Fam. Ct. of Del. v. Giles*, 384 A.2d 623, 624–25 (Del. 1978) (holding that an appeal from the Equal Employment Review Board filed in the Superior Court in the wrong county should have been transferred to the correct county pursuant to 10 *Del. C.* § 1902 rather than dismissed).

<sup>59</sup> Election of Transfer (D.I. 18).

<sup>60</sup> Order (D.I. 19). The Kent County civil action number was K25A-07-001; once it was transferred to Sussex County, the civil action number became S26A-02-001. The D.I. citations to

reassigned by the President Judge to the same judicial officer to whom it had been assigned while in Kent County.<sup>61</sup>

### STANDARD OF REVIEW

On an appeal from the Board, the Court’s inquiry is limited to whether the Board’s conclusions are supported by substantial evidence and free from legal error.<sup>62</sup> Questions of law are reviewed *de novo*.<sup>63</sup> Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>64</sup> In making this determination, the Court does not reweigh the evidence, reassess witness credibility, or make its own factual findings or conclusions.<sup>65</sup> Rather, the Court must “search the entire record to determine whether, on the basis of all of the testimony and exhibits before the [Board], it could fairly and reasonably reach the conclusion that it did.”<sup>66</sup> “If the Board’s decision is free from legal error and supported by substantial evidence, this Court must sustain the Board’s decision even if this Court might have decided the case differently if it had come before it in the first instance.”<sup>67</sup> This Court must give “considerable deference” to the Board’s decision,<sup>68</sup> taking due account of the Board’s “experience and specialized competence” and considering the purposes of the basic law under which the Board acts.<sup>69</sup>

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this point have referred to the Kent County civil action number. All subsequent docket item references relate to the Sussex County civil action number.

<sup>61</sup> Mem. from President Judge Eric M. Davis (D.I. 6).

<sup>62</sup> *Glanden v. Land Prep, Inc.*, 918 A.2d 1098, 1100 (Del. 2007).

<sup>63</sup> *Id.* at 1101.

<sup>64</sup> *Oceanport Indus., Inc. v. Wilm. Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

<sup>65</sup> *Christiana Care Health Servs. v. Davis*, 127 A.3d 391, 394 (Del. 2015).

<sup>66</sup> *Nat’l Cash Register v. Riner*, 424 A.2d 669, 674–75 (Del. Super. 1980).

<sup>67</sup> *Gutierrez v. Jamestown Painting*, 2019 WL 972161, at \*3 (Del. Super. Feb. 26, 2019).

<sup>68</sup> *Christiana*, 127 A.3d at 394.

<sup>69</sup> *Histed v. E.I. Du Pont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

## DISCUSSION

### I. The Hearing Officer's decision is free from legal error.

The Court first addresses whether the Hearing Officer committed legal error in concluding that medical marijuana was not a reasonable and necessary form of treatment for Toomey's conditions stemming from the 2004 incident. On appeal, Toomey frames the Hearing Officer's decision as impermissibly resting on speculative medical testimony and improperly disregarding evidence of two years of "successful" use of medical marijuana, constituting legal error.<sup>70</sup> The record does not support either contention.

#### a. The Hearing Officer applied the correct legal standard governing reasonable and necessary medical treatment.

The Hearing Officer applied the correct legal framework. A claimant seeking authorization for additional medical treatment bears the burden of proving, by a preponderance of the evidence, that the requested treatment is reasonable, necessary, and causally related to the work injury.<sup>71</sup> The Delaware Medical Marijuana Act ("DMMA"),<sup>72</sup> which legalized the medical use of marijuana, does not displace that burden, nor does it mandate coverage merely because marijuana may be lawfully certified under state law.<sup>73</sup> The Hearing Officer properly recognized and applied this standard, focusing on whether Toomey met her evidentiary burden under the Workers' Compensation Act.

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<sup>70</sup> Appellant Opening Br. 16–20 (D.I. 3).

<sup>71</sup> *Elzufon, Austin, Tarlov & Mondell, P.A. v. Lewis*, 2023 WL 152235, at \*5 (Del. Super. Jan. 10, 2023), *aff'd*, 309 A.3d 424 (Del. 2023).

<sup>72</sup> 16 *Del. C.* § 4901A *et seq.*

<sup>73</sup> *See* 19 *Del. C.* § 2322; *see also Nobles-Roark v. Burner*, 2020 WL 4344551, at \*2 (Del. Super. July 28, 2020), *aff'd*, 247 A.3d 259 (Del. 2021) ("[T]he General Assembly's finding that medical marijuana can effectively treat some patients does not amount to a finding that medical marijuana is 'reasonable and necessary' to treat *all* patients.").

While it is immaterial to the Court’s analysis, the Court notes that Toomey is not prohibited from purchasing medical marijuana; the only question in the instant appeal is whether she is entitled to compensation for its purchase.

**b. The Hearing Officer did not commit legal error by relying on expert medical opinions addressing prospective risk.**

Toomey’s argument that the opinions of Family Dollar’s expert witnesses consist of impermissible speculation is misplaced. While pure speculation cannot constitute substantial evidence,<sup>74</sup> expert testimony addressing prospective medical risk based on a claimant’s documented history does not amount to impermissible conjecture.

Toomey relies on *Hinckle v. Shorts Enterprises, Inc.* for the proposition that speculative expert testimony cannot constitute substantial evidence, particularly where it disregards undisputed factual evidence in the record.<sup>75</sup> *Hinckle*, however, is distinguishable from the instant appeal. There, the hearing officer relied on a single employer expert whose opinion “defie[d] common sense,” as it was untethered to the objective medical record, failed to account for undisputed surgical findings, and hypothesized alternative causes unsupported by any evidence.<sup>76</sup> This prompted the *Hinckle* court to hold that such conjecture could not constitute substantial evidence for purposes of appellate review.<sup>77</sup>

The instant appeal bears little resemblance to *Hinckle*. Here, the Hearing Officer did not credit a lone, unsupported opinion, nor did she disregard objective or

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<sup>74</sup> See *Briscoe v. Gen. Motors Corp.*, 1989 WL 112011, at \*4 (Del. Super. Sept. 8, 1989) (“When the only evidence upon which the Board bases its decision is that of a physician whose testimony is based upon speculation and possibilities, the Court should reverse the finding of the Board on the ground that there is no competent evidence to support it.”).

<sup>75</sup> Appellant Opening Br. 18–20 (D.I. 3); *Hinckle v. Shorts Enterprises, Inc.*, 2004 WL 1731142 (Del. Super. July 28, 2004).

<sup>76</sup> *Id.* at \*2–4.

<sup>77</sup> *Id.* at \*3.

undisputed evidence. Instead, the Hearing Officer relied on the consistent testimony of multiple board-certified physicians whose opinions were grounded in review of Toomey's medical records, clinical examinations of Toomey herself, and professional experience. Those experts assessed prospective risk by reference to Toomey's extensive psychiatric history, documented comorbidities, neuropsychological testing, and the known pharmacological effects of THC on patients with similar profiles.

That the experts here articulated risks in probabilistic terms does not render their testimony impermissibly speculative as a matter of law; instead, it reflects the ordinary exercise of medical judgment applied to a claimant whose asserted benefits rest largely on self-reporting that the Hearing Officer found unreliable. Accordingly, the Hearing Officer did not commit legal error by relying on expert medical opinions addressing prospective risk.

**c. The Hearing Officer did not commit legal error by concluding that the absence of adverse effects was not dispositive.**

The Hearing Officer did not err in considering Toomey's history of marijuana use without reported adverse effects and determining that this evidence, standing alone, did not establish that the treatment was reasonable or necessary. While Toomey emphasized her own reports of improved function and the absence of adverse effects over a two-year period,<sup>78</sup> the Hearing Officer found those assertions insufficient when compared to the testimony of Drs. Townsend, Langan, and Brokaw; the inconsistencies found in Toomey's testimony, medical history, and medical testing; and concerns over the risks of marijuana use in light of Toomey's psychological and physical conditions.<sup>79</sup> Disagreement with the Hearing Officer's weighing of evidence does not convert a factual determination into legal error.

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<sup>78</sup> See, e.g., Hr'g Tr. 25:2–3, 25:24–26:1, 29:4–25 (Tab 2).

<sup>79</sup> Decision on Pet. to Determine Additional Comp. Due 26–31 (Tab 8).

There is also a practical component: just because an event has not occurred within a certain amount of time does not mean that the event will never occur or that one can infer a positive from the lack of a negative. Applied here, this means that Toomey's reported absence of adverse effects over a limited period of marijuana use does not establish that the treatment is safe, effective, or medically necessary, nor does it undermine the Hearing Officer's reliance on expert testimony identifying risks that may not manifest through short-term observation or self-reporting.

Accordingly, the Court finds that the Hearing Officer's decision is free from legal error.

## **II. The Hearing Officer's conclusion is supported by substantial evidence.**

The Court next considers whether substantial evidence supports the Hearing Officer's determination that medical marijuana was not a reasonable and necessary treatment for Toomey. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>80</sup> Viewed in the light most favorable to Family Dollar, the prevailing party below, the record meets that standard.

In cases brought pursuant to the Workers' Compensation Act,<sup>81</sup> the claimant bears the burden of proving, by a preponderance of the evidence, that the requested treatment is reasonable and necessary.<sup>82</sup> The Court finds that substantial evidence supports the Hearing Officer's conclusion that Toomey failed to meet that burden. In rendering her decision, the Hearing Officer credited the testimony of Family Dollar's three expert witnesses and their conclusion that medical marijuana was neither reasonable nor medically necessary given Toomey's psychiatric history,

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<sup>80</sup> *Sullivan v. Mayor of Town of Elsmere*, 23 A.3d 128, 133 (Del. 2011).

<sup>81</sup> 19 *Del. C.* § 2301 *et seq.*

<sup>82</sup> *Amazon.com, Svcs., LLC v. Rook*, 2024 WL 1787117, at \*9 (Del. Super. Apr. 25, 2024).

comorbidities, and risk profile.<sup>83</sup> The Hearing Officer was entitled to accept those opinions over the testimony of Toomey’s sole expert. “[T]he IAB 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>84</sup>

Here, central to the Hearing Officer’s decision was the assessment of competing medical opinions. The credited experts identified legitimate medical concerns supporting their conclusions. Dr. Townsend addressed neurological concerns, including Toomey’s history of seizures and the potential for THC to exacerbate psychiatric and neurological symptoms.<sup>85</sup> Dr. Langan performed neuropsychological testing and identified significant concerns over Toomey’s credibility, namely, testing indicating exaggeration of symptoms.<sup>86</sup> Dr. Brokaw, who evaluates patients for medical marijuana candidacy as part of his clinical practice, determined that marijuana was inappropriate in Toomey’s case given her psychiatric history, comorbidities, and dishonesty regarding her medical history.<sup>87</sup>

By contrast, the Hearing Officer found Dr. Harrison’s opinion less persuasive. Dr. Harrison had limited access to historical medical records,<sup>88</sup> did not consult collateral sources,<sup>89</sup> and did not monitor the type and quantity of marijuana Toomey was using.<sup>90</sup> The Hearing Officer was entitled to consider those limitations in weighing the probative value of her testimony.

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<sup>83</sup> See Decision on Pet. to Determine Additional Comp. Due 26–27 (Tab 8).

<sup>84</sup> *Person-Gaines v. Pepco Hldgs., Inc.*, 981 A.2d 1159, 1161 (Del. 2009); see also *Chrysler Motors Corp. v. Taylor*, 1992 WL 354212, at \*4 (Del. Super. Nov. 2, 1992) (“The IAB is free to accept one expert’s opinion over another.”).

<sup>85</sup> Townsend Dep. 9:18–14:16, 21:20–22:19 (Tab 4).

<sup>86</sup> See Langan Dep. 20:4–29:10 (Tab 5).

<sup>87</sup> See Brokaw Dep. 22:23–24:5, 26:10–12, 27:21–28:4 (Tab 6).

<sup>88</sup> Harrison Dep. 24:22–27:1 (Tab 3).

<sup>89</sup> *Id.*

<sup>90</sup> See *id.* at 18:20–19:16.

That conclusion is further supported by the relative foundation and qualifications of the expert testimony presented. Family Dollar presented testimony from two board-certified physicians and a board-certified neuropsychologist, each of whom reviewed decades of medical records and evaluated Toomey within their respective areas of expertise. By contrast, Toomey relied on a single witness, who, unlike Family Dollar’s experts, is not board-certified and whose evaluation was based largely on Toomey’s self-reporting, limited review of records,<sup>91</sup> and comparatively less objective clinical methods. Those distinctions further support the Hearing Officer’s determination that Dr. Harrison’s testimony was entitled to less weight than the testimony of Family Dollar’s experts.

Moreover, even setting aside the Hearing Officer’s concerns regarding Toomey’s credibility and accepting Toomey’s assertions regarding her own experience as true, Toomey produced no evidence that approximately two years of marijuana use is a medically reasonable threshold by which to determine whether adverse effects associated with medical marijuana will manifest.

On appeal, the Court’s role is limited. This Court may only review the Board’s decision to determine whether substantial evidence exists to support the Board’s findings of fact and conclusions of law.<sup>92</sup> Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>93</sup> Here, the Board articulated a rational basis, grounded in the record, for rejecting Toomey’s evidence as insufficient to establish reasonableness or necessity. As such, the Board’s determination that medical marijuana was not reasonable or necessary is supported by substantial evidence and free of legal error.

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<sup>91</sup> *Id.* at 24:22–27:1.

<sup>92</sup> *Person-Gaines*, 981 A.2d at 1161.

<sup>93</sup> *Id.* (quoting *Consolo v. Federal Mar. Comm’n*, 383 U.S. 607, 620 (1966)).

### **III. The Hearing Officer was not required to accept Toomey's self-reported benefits.**

As part of her appeal, Toomey argues that the Hearing Officer was required to credit her testimony that she experienced significant benefit from medical marijuana and no adverse effects during approximately two years of use.<sup>94</sup> Delaware law does not compel that result.

The Hearing Officer, as factfinder, is not required to accept a claimant's self-reported symptoms or perceived improvement, particularly where credibility is at issue and objective evidence undermines the reliability of those reports.<sup>95</sup> The Hearing Officer, acting as the Board, is the sole judge of witness credibility and may discount testimony he or she finds unreliable or inconsistent with other evidence.<sup>96</sup>

Here, the Hearing Officer expressly found that Toomey's asserted benefits from marijuana use were based on self-reporting and undermined by concerns over her credibility.<sup>97</sup> That finding is supported by substantial evidence. The absence of reported adverse effects over a limited period does not, standing alone, establish medical necessity—particularly where expert testimony establishes that certain risks may manifest over time or are not readily observable through self-reporting alone.

The Hearing Officer did not ignore Toomey's testimony. Rather, she considered that testimony and found it insufficient to overcome the weight of contrary medical evidence. That determination falls squarely within the Hearing Officer's discretion and does not constitute legal error.

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<sup>94</sup> Appellant Opening Br. 16–20 (D.I. 3).

<sup>95</sup> See *Trader v. Caulk*, 1992 WL 148094, at \*2 n. 1 (Del. Super. June 10, 1992) (citations omitted) (“It is legally permissible for the Board to reject a[n] opinion based on the claimant’s subjective complaints once the Board finds from the evidence presented *at the hearing* that claimant’s subjective complaints are not credible.”).

<sup>96</sup> See *Roshon v. Appoquinimink Sch. Dist.*, 5 A.3d 631 (TABLE), 2010 WL 3855179, at \*2 (Del. 2010) (internal citations omitted).

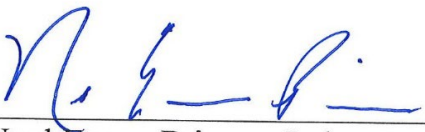
<sup>97</sup> Decision on Pet. to Determine Additional Comp. Due 26–31 (Tab 8).

The Hearing Officer was not required to accept Toomey's self-reported benefits as proof that medical marijuana was reasonable or necessary, and this Court will not reweigh the evidence or substitute its judgment for that of hers.

### **CONCLUSION**

For the foregoing reasons, the Hearing Officer's conclusion that Toomey failed to meet her burden of proving that the use of medical marijuana to treat her PTSD is reasonable or necessary is free from legal error and supported by substantial evidence. Accordingly, the Hearing Officer's denial of Toomey's Petition is **AFFIRMED**.

**IT IS SO ORDERED.**



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Noel Eason Primos, Judge

NEP:tls

*Via File & ServeXpress*

oc: Prothonotary

cc: Counsel of Record