

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, Delaware 19801-3733  
(302) 255-0664

J. R. Julian, Esquire  
J. R. Julian, P.A.  
824 Market Street, Suite 1001  
Wilmington, Delaware 19899  
Attorney for Employer-Below/Appellant

Matthew M. Bartkowski, Esquire  
Kimmel, Carter, Roman & Peltz, P.A.  
200 Biddle Avenue, Suite 101  
Bear, Delaware 19701  
Attorney for Employee-Below/Appellee

Re: **Standard Distributing, Inc. v. Charles J. Hall, Jr.**  
**C.A. No. 05A-08-005 RRC**

Submitted: July 28, 2006  
Decided: September 20, 2006

On Appeal from a Decision of the Industrial Accident Board.  
**AFFIRMED.**

Dear Counsel:

Currently before this Court is the appeal of Standard Distributing, Inc. (“Standard”) from a decision of the Industrial Accident Board (“Board”) dated June 28, 2005. The Board granted Charles J. Hall, Jr.’s (“Hall’s”) petition for reimbursement for expenses related to a lumbar spine surgery performed in November 2004 and denied Standard’s petition to terminate total disability benefits. The issue is whether the Board’s decision was supported by substantial evidence and otherwise free from legal error. For the reasons set forth below, this Court finds that it was. Thus, the decision of the Board is **AFFIRMED**.

## I. FACTS AND PROCEDURAL HISTORY

Hall injured his back on May 22, 1990 while working for Standard.<sup>1</sup> His shoelaces caught on the clutch of a delivery truck, causing him to fall approximately five feet to the ground.<sup>2</sup> Since the accident, Hall has had four surgeries.<sup>3</sup> The first two surgeries occurred in 1991.<sup>4</sup> He was able to return to work afterwards, wearing a brace, but the pain worsened.<sup>5</sup> Dr. Ali Kalamchi, an orthopedic surgeon, performed his third surgery in August 1999.<sup>6</sup> He continued to have pain in his back so Dr. Kalamchi referred him to a pain management specialist who treated him with medication and injections.<sup>7</sup> Although the pain medication was helping, the pain began to get worse.<sup>8</sup>

In June 2004, Hall fell on the stairs at his house.<sup>9</sup> He explained that he had trouble placing his foot on the step, his foot went a little past the step, and he fell.<sup>10</sup> At the time of the fall, he was wearing house slippers on worn carpeted steps.<sup>11</sup> Hall also testified that he had fallen a few times previously when he was unable to lift his legs properly.<sup>12</sup>

After the June 2004 fall, Hall began getting spasms in his back.<sup>13</sup> He sought treatment from Dr. Kalamchi again, who recommended therapy and medication and ordered several tests.<sup>14</sup> After receiving the results of the tests, Dr. Kalamchi performed Hall's fourth surgery in November of 2004.<sup>15</sup> Post-surgery, Hall still has spasms and pain.<sup>16</sup>

At the Board hearing, two medical experts presented conflicting evidence as to the cause of Hall's November 2004 surgery. Dr. Kalamchi

---

<sup>1</sup> Tr. Hall, IAB Hearing No. 908223, at 7.

<sup>2</sup> Tr. MacEwen, at 70.

<sup>3</sup> Tr. Hall, at 8.

<sup>4</sup> *Id.*

<sup>5</sup> Tr. Hall, at 9.

<sup>6</sup> *Id.*

<sup>7</sup> Tr. Hall, at 10.

<sup>8</sup> *Id.*

<sup>9</sup> Tr. Hall, at 11.

<sup>10</sup> Tr. Hall, at 12.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Tr. Hall, at 13.

<sup>14</sup> Tr. Hall, at 14.

<sup>15</sup> *Id.*

<sup>16</sup> Tr. Hall, at 15.

stated in his deposition that the surgery was the result of a natural progression of degeneration.<sup>17</sup> Dr. Kalamchi has treated Hall approximately thirty times since 1991.<sup>18</sup> He performed Hall's second surgery in 1991, which included a spinal fusion at L4 to S1.<sup>19</sup> Dr. Kalamchi testified that when he saw Hall again in 1999, Hall presented with a broad disc protrusion with bilateral disc herniation at the L3/4 level (one level above the 1991 fusion) with soft-tissue neuroforaminal encroachment on both sides.<sup>20</sup> A CT scan also showed some degeneration at the L2/3 level.<sup>21</sup> Dr. Kalamchi explained in his deposition that it was not unusual for a patient to develop degenerative changes about a previously fused level.<sup>22</sup> After receiving the test results, he performed Hall's third surgery in August 1999, extending the fusion to the L3/4 level.<sup>23</sup>

Hall continued to follow up with Dr. Kalamchi after the 1999 surgery.<sup>24</sup> Dr. Kalamchi performed Hall's fourth surgery in November 2004 where he partially removed a herniated disc and extended the fusion to the L2/3 level.<sup>25</sup> His opinion was that the November 2004 surgery was the result of the natural progression of degeneration due to Hall's previous spinal fusions.<sup>26</sup> Dr. Kalamchi also stated that Hall remains totally disabled from work.<sup>27</sup>

In contrast, Dr. George Dean MacEwen, also an orthopedic surgeon, testified on behalf of Standard that the 2004 surgery was a result of Hall's fall on the stairs.<sup>28</sup> Dr. MacEwen examined Hall in June 2004, March 2005, and reviewed his medical records.<sup>29</sup> He testified that he did not note any L2/3 symptoms in his June 2004 examination and therefore opined that the November 2004 surgery was related to Hall's fall at home and not the work accident.<sup>30</sup> In addition, he testified that the ruptured disc at L2/3 indicated

---

<sup>17</sup> Kalamchi Dep., at 21.

<sup>18</sup> Kalamchi Dep., at 5.

<sup>19</sup> Kalamchi Dep., at 4.

<sup>20</sup> Kalamchi Dep., at 10.

<sup>21</sup> *Id.*

<sup>22</sup> Kalamchi Dep., at 8-9.

<sup>23</sup> Tr. MacEwen, at 72.

<sup>24</sup> Kalamchi Dep., at 12.

<sup>25</sup> Kalamchi Dep., at 18.

<sup>26</sup> Kalamchi Dep., at 21.

<sup>27</sup> Kalamchi Dep., at 24.

<sup>28</sup> Tr. MacEwen, at 86.

<sup>29</sup> Tr. MacEwen, at 69, 86.

<sup>30</sup> Tr. MacEwen, at 86.

an acute cause rather than a degenerative cause.<sup>31</sup> Dr. MacEwen agreed with Dr. Kalamchi that Hall is totally disabled; however, he maintained that the disability is not related to the 1990 work accident.<sup>32</sup>

In support of Dr. MacEwen's theory that the fall caused a new injury, Standard presented videotape surveillance of Hall that private investigators had taken in February, March, and April 2004.<sup>33</sup> The tape from February 27 showed Hall getting his mail and walking across a parking lot into a few stores.<sup>34</sup> On March 3, the video showed Hall walking into a 7-11 and then getting into his car where he sat and read the paper.<sup>35</sup> On April 10, the tape showed Hall digging a plant out of the ground in a neighbor's yard.<sup>36</sup> Hall pulled on the plant with his hands, and then used a spade before he finally uprooted the plant.<sup>37</sup> The neighbor then seemed to hand something to Hall.<sup>38</sup> The tape from April 10 also showed Hall picking up some trash bags and moving them in a wheelbarrow.<sup>39</sup>

## II. FINDINGS OF THE BOARD

The Board, in its June 28, 2005, decision, found that the expenses from the November 2004 surgery were causally related to the May 1990 work accident and therefore should be reimbursed by Standard.<sup>40</sup> Specifically, the Board stated:

The Board relies on the testimony of Dr. Kalamchi for its conclusion that the L2/3 disc herniation resulted primarily from "adjacent level" stress created by the earlier spinal fusions performed in 1991 and 1999. The Board acknowledges that the June 2004 slip and fall may have increased [Hall's] symptoms for a period of time. However, it accepts Dr. Kalamchi's opinion that while the fall could have made [Hall's] symptoms

---

<sup>31</sup> Tr. MacEwen, at 111.

<sup>32</sup> Tr. MacEwen, at 89.

<sup>33</sup> Tr. Daniello, at 58.

<sup>34</sup> Employer's Ex. 1.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Standard contends that the neighbor was giving Hall money for the work done, but this cannot be determined due to the quality of the tape. The Court notes, however, that even assuming a payment of cash was made, such fact would not alter this Court's decision.

<sup>39</sup> *Id.*

<sup>40</sup> *Hall v. Standard Distributing, Inc.*, IAB Hearing No. 908223, at 16 (June 28, 2005).

worse, the underlying cause of the L2/3 herniation and resultant surgery was the natural degeneration brought on by the previous fusions.<sup>41</sup>

The Board found Dr. Kalamchi's opinion more persuasive than Dr. MacEwen's because it was more consistent with the diagnostic tests and medical history of Hall.<sup>42</sup> The Board relied on a CT scan from 1999 that showed evidence of degeneration at the L2/3 level and Dr. Kalamchi's explanation that this level, being adjacent to the level fused in the 1999 surgery, would bear the stress between the fused portion and the mobile portion of the spine. For example, after Hall's first fusion in 1991, it was the degeneration of the then adjacent level (L3/4) that required the 1999 surgery. Furthermore, the Board found that Dr. MacEwen never satisfactorily rebutted Dr. Kalamchi's opinion.<sup>43</sup>

The Board also found no evidence of negligence or intentional misconduct on Hall's part that would break the chain of causation.<sup>44</sup> It rejected Standard's suggestion that the fall on the stairs was a result of wearing slippers on a worn surface. Rather, the Board found Hall to be a credible witness and accepted Hall's testimony describing the incident. It therefore concluded that it was Hall's difficulty placing his foot on the step that caused him to fall.<sup>45</sup>

In addition, the Board denied Standard's petition to terminate Hall's benefits.<sup>46</sup> Both parties agreed that Hall is totally disabled from work after the November 2004 surgery. Because the Board found the surgery to be work-related, it also found the subsequent disability to be work-related, and therefore denied Standard's petition to terminate.<sup>47</sup>

### III. CONTENTIONS OF THE PARTIES

Standard contends that the Board's decision was not supported by substantial evidence and therefore that the Board erred in granting Hall's petition for reimbursement and denying Standard's petition to terminate. Specifically, Standard claims the November 2004 surgery was not a direct and natural cause of the May 1990 work accident. It argues that the fall on

---

<sup>41</sup> *Id.* at 13.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 15.

<sup>44</sup> *Id.* at 16.

<sup>45</sup> *Id.* at 17.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

the steps in June 2004 caused a subsequent injury attributable to Hall's own negligence or fault. Standard asserts that the combination of wearing slippers on worn carpet stairs caused the fall and injury.

Standard refutes the finding of Dr. Kalamchi and the Board that the injury was the result of a natural progression of degeneration. Standard strongly urges that the surveillance videotape shows that Hall was not totally disabled prior to the June 2004 fall. It contends that the tape proves that Hall was a "fully active man" before the fall. Consequently, it believes the fall alone was responsible for Hall's injury and subsequent surgery in November 2004.

Standard relies on Dr. MacEwen's testimony that the problems Hall presented with after his fall were new symptoms and therefore had to be caused by the fall. Standard suggests that Dr. Kalamchi's testimony is unreliable because he had not treated Hall for over one year prior to the June 2004 fall. Standard urges this Court to overturn the Board's decision because the decision was "illogical" and not supported by substantial evidence.

Furthermore, Standard contends that the Board erred in denying Standard's petition to terminate. It argues that the surveillance videotape and Dr. MacEwen's testimony demonstrate that Hall was not totally disabled before his June 2004 fall. Thus, because the surgery was unrelated to the work injury, Hall's benefits should be terminated.

In response, Hall contends that the Board's decision was based on substantial evidence. Specifically, the Board's finding that the fall on the stairs was a natural indirect result of the work accident was supported by Hall's description of the fall, the fact that Hall had been having problems with tripping since the accident, as well as Dr. Kalamchi's testimony that Hall's condition would make the placement of his foot more difficult. Furthermore, the Board's finding that the 2004 surgery was the result of a progressive degeneration was supported by Dr. Kalamchi's testimony.

Finally, Hall asserts that because the Board believed that the surgery was compensable and because the parties agreed that Hall was totally disabled, the Board appropriately denied the petition to terminate.

#### **IV. STANDARD OF REVIEW**

The Supreme Court and this Court have repeatedly emphasized the limited appellate review of the factual findings of an administrative agency. The function of the reviewing Court is to determine whether the agency's

decision is supported by substantial evidence.<sup>48</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>49</sup> The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>50</sup> The reviewing Court must view the facts in a light most favorable to the party prevailing below; therefore, it merely determines if the evidence is legally adequate to support the agency's factual findings.<sup>51</sup> When factual determinations are at issue, the reviewing Court should defer to the experience and specialized competence of the Board.<sup>52</sup> If the decision is supported by substantial evidence, the Court must affirm the decision of an agency even if the Court might have, in the first instance, reached an opposite conclusion.<sup>53</sup>

## V. DISCUSSION

For medical expenses to be compensable, they must be reasonable, necessary, and causally related to the work accident.<sup>54</sup> Both parties agree that Hall's surgery in November 2004 was reasonable and necessary. Therefore, the only disputed issue is whether that surgery was causally related to his June 1990 work accident.

The relevant standard for determining causation, which the Board applied, is that a "subsequent injury is compensable only if it follows as a direct and natural result of the primary compensable injury. If the subsequent injury is attributable to the claimant's own negligence or fault, the chain of causation is broken and the subsequent injury is not compensable."<sup>55</sup>

The limited role of this Court is to determine whether substantial evidence supports the Board's decision. It is solely the Board's function to

---

<sup>48</sup> *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. Super. Ct. 1965).

<sup>49</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

<sup>50</sup> *Johnson*, 213 A.2d at 66.

<sup>51</sup> *Chudnofsky v. Edwards*, 208 A.2d 516, 518 (Del. 1965).

<sup>52</sup> 29 Del. C. § 10142(d).

<sup>53</sup> *Brogan v. Value City Furniture*, 2002 WL 499721, at \*2 (Del. Super.).

<sup>54</sup> See *Turnbull v. Perdue Farms*, 1998 WL 281201, at \*2 (Del. Super.), *aff'd*, 723 A.2d 398 (1998).

<sup>55</sup> *Hudson v. E.I. duPont de Nemours and Company*, 245 A.2d 805, 810 (Del. Super. Ct. 1968).

resolve conflicts in the evidence and weigh witness credibility.<sup>56</sup> Moreover, the Board may accept the testimony of one expert over another.<sup>57</sup>

Here, there was sufficient evidence from which the Board could have determined that the surgery was causally related to the work accident. In particular, it relied on the opinion of one of the medical experts, Dr. Kalamchi, who had treated Hall many times over a period of fifteen years. Dr. Kalamchi concluded that the November 2004 surgery was due to a natural progression of degeneration from Hall's previous work-related surgeries. He explained that it was not unusual for a patient to have degeneration at a level adjacent to a fused level. In fact, this exact phenomenon previously occurred to Hall, resulting in his 1999 surgery. Moreover, there was a CT scan taken in 1999 that showed degeneration at the L2/3 level. This evidence, combined with Hall's medical history of ongoing and increasing pain convinced the Board that Hall's 2004 surgery was direct and natural result of the original work accident.<sup>58</sup>

In addition, the Board found no evidence of negligence that would break the chain of causation. While Standard claims that his fall was due to Hall's own negligence of wearing slippers on a slippery surface, the Board relied on Hall's testimony that he had trouble placing his foot on the step. The Board stated "[t]he Board finds [Hall's] description of the incident to be credible."<sup>59</sup> In addition, Dr. Kalamchi explained that someone in Hall's medical condition would likely have trouble with tripping or falling.

Standard argues that the Board should have relied on Dr. MacEwen's opinion that the June 2004 fall caused new injuries, unrelated to his original work injury, which required surgery. Standard contends that his opinion is supported by the video surveillance of Hall before the fall. According to Standard, the video illustrates that Hall was not totally disabled prior to his surgery in November 2004. Thus, Standard claims that surgery was not related to the original work accident.

---

<sup>56</sup> *Playtex Products, Inc., v. Leonard*, 2004 WL 2419141, at \* 7 (Del. Super.). See also *Clements v. Diamond State Port Corp.*, 831 A.2d 870, 877 (Del. 2003) ("This Court has consistently held that it is the Board's function to resolve conflicts in medical testimony.")

<sup>57</sup> *Standard Distributing Co. v. Nally*, 630 A.2d 640, 646 (Del. 1996) (finding that Board's decision was based on substantial evidence where it gave more weight to one expert even though another expert testified to the contrary).

<sup>58</sup> Standard also argues that Hall was in the habit of exaggerating his pain level in order to obtain pain medication and to perpetuate his disability payments. However, this allegation is not supported by the record.

<sup>59</sup> *Hall v. Standard Distributing, Inc.*, IAB Hearing No. 908223, at 16 (June 28, 2005).

However, it was the Board's job to weigh the evidence and determine the credibility of the experts. After hearing both sides, the Board found "Dr. Kalamchi's opinion persuasive over that of Dr. MacEwen because it is most consistent with the diagnostic tests and medical history of [Hall]." <sup>60</sup> Moreover, it stated that "Dr. MacEwen never satisfactorily rebutted Dr. Kalamchi's conclusion that progressive degeneration was the primary reason for [Hall's] ongoing symptoms and eventual need for surgery." <sup>61</sup>

Although the Board noted the contents of the video in its summary of the evidence, it did not give any weight to the tape in the discussion section of its decision. Standard contends that "the videotape is very telling and devastates [Hall's] arguments regarding whether he was performing physical work and accepted cash for that work," <sup>62</sup> but after viewing the tape, this Court finds it unconvincing. Apparently the Board could not make any definite conclusions about Hall's medical condition from the watching the tape, nor can this Court. It was well within the Board's discretion to give little weight to the tape and instead rely on the expert testimony of Dr. Kalamchi.

This Court will not re-determine questions of credibility or make its own factual findings. <sup>63</sup> Therefore, after reviewing the evidence, including the videotape, in the light most favorable to the prevailing party below, this Court finds that there was sufficient evidence to support the Board's decision.

It follows that because there was substantial evidence for the Board to conclude that Hall's 2004 surgery was causally related to the 1990 work accident, it was appropriate for the Board to deny Standard's petition to terminate.

---

<sup>60</sup> *Id.* at 13.

<sup>61</sup> *Id.* at 15.

<sup>62</sup> Letter from Standard's counsel requesting oral argument (May 18, 2006).

<sup>63</sup> *Johnson*, 213 A.2d at 66.

## **VI. CONCLUSION**

The decision below was supported by substantial evidence and the Board committed no error of law. For the foregoing reasons, the decision of the Industrial Accident Board is **AFFIRMED**.

**IT IS SO ORDERED.**

Very truly yours,

oc: Prothonotary  
cc: Industrial Accident Board