

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

P.O. BOX 746.
COURTHOUSE
GEORGETOWN, DE 19947

*600 weeks
disfig for
amput both legs*

March 5, 2003

J. R. Julian, Esquire
J.R. Julian, P.A.
824 Market Street, Suite 1001
P.O. Box 2171
Wilmington, DE 19899

Henry C. Davis, Esquire
Henry Clay Davis, III, P.A.
303 North Bedford Street
P.O. Box 744
Georgetown, DE 19947

Re: Canyon Construction v. Charles Williams
C.A. No. 02A-07-003

Date Submitted: December 26, 2002

Dear Counsel:

This is my decision on the appeal by Canyon Construction ("Employer") of the Industrial Accident Board's (the "Board") decision to award Charles Williams ("Claimant") 600 weeks of disfigurement benefits for surgical scars and the amputation of his legs. I affirm the Board's decision for the reasons stated herein.

NATURE AND STAGE OF PROCEEDINGS

Claimant was injured in an industrial accident on October 29, 1993, when a board fell on one of his toes. In the most extreme chain of events, this seemingly innocuous injury led to the full amputation of both of Claimant's legs. The related surgeries left

Claimant with scars on his stumps and thighs.<ft>2</ft> Claimant's amputations and scars are noticeable and draw unwanted comment and attention from other people. The surgeries and the reactions of others have negatively impacted Claimant's mental health, limited his mobility, isolated him from family and friends, and led to his divorce.

Claimant filed a Petition to Determine Additional Compensation Due with the Board on July 19, 2001. After a hearing, the Board found that Claimant's amputation was a disfigurement related to a permanent impairment and awarded Claimant permanent impairment benefits plus 20%, or 300 weeks of compensation per leg. Employer filed a Motion to Reargue with the Board. The Board affirmed its previous decision but granted Employer a 300-week credit to reflect earlier payments made by Employer to Claimant. Employer responded by filing this appeal on July 22, 2002.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have 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, *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960), and to review questions of law de novo. *In re Beattie*, 180 A.2d 741, 744 (Del. Super. 1962). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler CM.*, 517

A.2d 295, 297 (Del.), app. dismiss., 515 A.2d 397 (Del. 1986). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *Johnson v. Chrysler Corp.*, 312 A.2d at 66. It merely determines if the evidence is legally adequate to support the agency's factual findings. 29 Del. C. § 10142(d).

DISCUSSION

Employer contends the Board erred when it awarded Claimant 600 weeks of disfigurement benefits. According to Employer, Claimant had previously received 300 weeks of compensation, 150 per leg, pursuant to two agreements between Employer and Claimant. Employer argues the Board was not entitled to hear Claimant's Petition or grant additional benefits because Claimant was compensated through the prior agreements. Furthermore, Claimant could not modify his compensation because Claimant's physical condition was fixed and permanent at the time the agreements were executed.

Claimant argues the Board's decision to award benefits was appropriate. First, Claimant endured additional surgery on his left stump after Employer's payments. Second, the agreements failed to consider the psychological and social ramifications of Claimant's physical condition. Third, the nature of Claimant's injury entitles him to an award of 300 weeks of compensation per leg for disfigurement and permanent injury.

The legislature has two approved methods by which an employer may compensate an employee injured in an industrial accident. First, after a hearing on the matter, the Board may determine the compensation due to an injured employee from his or her employer.

Second, the injured employee and the employer may agree to settle the claim. 19 Del. C. Sec. 2344(a). The resulting "voluntary agreement" is "final and binding" only after "a memorandum of such agreement signed by the parties in interest [is] filed with the Department [of Labor] and ... approved by it." 19 Del. C. § 2344(a); See also *Anderson v. Wheeler Constr.*, 267 A.2d 616, 616 (Del. Super. 1970) (no Board hearing required for a voluntary agreement); *Great Am. Ins. Co. v. Straight Line Filters, Inc.*, 254 A.2d 860, 863 (Del. Ch. 1969) (When "an employer. . . desires to follow the praiseworthy practice of paying an employee prior to receipt of benefits, or otherwise adding to what the law requires, [it] may seek Board approval under 19 Del. C. § 2344 and in this way get appropriate credit for payments made."). When an injured employee receives benefits pursuant to a Board-approved agreement, his or her compensation may be modified no more than once every six months and only when "the incapacity of the injured employee has subsequently terminated, increased, diminished or recurred." 19 Del. C. § 2347.

Unfortunately, the record in this case is undeveloped. Employer provided no proof of a Board approved voluntary agreement, as required by 19 Del. C. § 2344. Without this necessary documentation, the limitations placed on agreement modification by 19 Del. C. § 2347 are irrelevant. Employer's contention that the Board lacked the power to hear Claimant's petition is without merit.

After reviewing the evidence presented at the Hearing, the Board found Claimant's amputations and scars "visible and offensive when the body is clothed normally." 19 Del.

C. § 2326(f). The Board also deemed Claimant's amputation a disfigurement and permanent loss of use entitling him to:

the higher of either (1) the amount of compensation found to be due for disfigurement without regard to compensation for loss of or loss of use, or (2) the amount of compensation due for loss of or loss of use plus 20% thereof for disfigurement.

19 Del. C. § 2326(f). Thus, Claimant would be entitled to 150 weeks of compensation per leg under subsection one, 19 Del. C. § 2326(f), or 300 weeks of compensation per leg under subsection two, 19 Del. C. § 2326(a). Obviously, 300 weeks of compensation is greater than 150 weeks and Claimant was rightfully awarded benefits according to "the loss of use plus 20%" calculation. The Board was within its discretion to award Claimant a total of 600 weeks of compensation with 300 weeks of credit to Employer for the amount previously paid to Claimant. For the reasons stated above, the ruling of the Board is affirmed.

IT IS SO ORDERED.

Very truly yours,
E. Scott Bradley

cc: Prothonotary's Office
Industrial Accident Board

<ent>1</ent> The Board awarded Claimant 600 weeks of benefits but granted Employer a credit of 300 weeks for benefits it had already paid to Claimant.

<ent>2</ent> Claimant was awarded fourteen weeks of benefits for two scars on his abdomen. Employer does not appeal this award.

<ent>3</ent> This calculation includes 250 weeks for a lost leg plus an additional 20%.

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