

BEFORE THE INDUSTRIAL ACCIDENT BOARD  
OF THE STATE OF DELAWARE

ROBERT DOBIE,	)	
	)	
Claimant,	)	
	)	
v.	)	Hearing No. 1513845
	)	
W K SMITH & SONS, LLC,	)	
	)	
Employer.	)	

**ORDER**

By stipulation of the parties, this matter came before a Hearing Officer on a request for a “virtual” hearing.

On July 23, 2021, W K Smith & Sons, LLC (“Employer”) filed a Petition for Review seeking to terminate the receipt of total disability benefits by Robert Dobie (“Claimant”). On December 10, 2021, Claimant filed a Petition to Determine Additional Compensation Due seeking approval of recommended lumbar surgery. Both petitions were consolidated to be heard on January 27, 2022.

During the winter, there has been a surge in COVID-19 infections and hospitalizations, fueled by the Delta and Omicron variants. On January 3, 2022, Governor John Carney reinstated a State of Emergency Declaration for Delaware. On January 10, 2022, the Governor signed a Universal Indoor Mask Mandate for Delaware.

On or about January 11, 2022, the parties to the present case filed a motion requesting that the January 27, 2022 hearing be conducted virtually by video conferencing rather than in person. In support of this, it is represented that Claimant is unvaccinated against COVID-19 and there is some evidence suggesting that he may also have an underlying health condition. In addition, Employer’s counsel’s office was dealing with a virus outbreak such that a number of employees

of the office have tested positive. In addition, Employer's counsel resides with an emergency responder who has tested positive, although counsel herself has twice tested negative since her close contact's exposure. Claimant's counsel resides with and is sole caretaker for his elderly Grandmother and so also wishes to avoid any possibility of exposure.

On January 13, 2022, I suggested to counsel that we wait a week to see what further developments might occur.

On January 21, 2022, Delaware's Division of Public Health reported that there has been a decrease in new positive cases and hospitalizations over the last week. However, it also noted that both cases and hospitalizations remain elevated statewide. As such, the Division urged that Delawareans take steps to keep themselves and others safe to maintain the positive new data trends. For the week of January 10 to January 16, there were 18,910 total cases; 432 hospitalized cases; and 35 deaths.

The Board is currently doing in-person hearings and its preference is to have merit hearings done in-person whenever possible.<sup>1</sup> The Board's current policy is to allow "virtual" hearings only when the parties agree to a solo Hearing Officer to decide the case. In the present case, there is no agreement to agree to a solo Hearing Officer (and understandably so because witness credibility and demeanor are more likely to be factors in the case). As such, the request for a video hearing must be denied.

However, the Board is sympathetic to the parties' various concerns over COVID-19 and safety. Claimant himself is in the high-risk category and Claimant's counsel is sole caretaker to another high-risk person. In addition, as Employer's counsel pointed out, with her current situation

---

<sup>1</sup> The Board does contemplate doing legal motions virtually starting in February, but those would not normally involve witnesses like a merit hearing does.

she may not even be able to pass the COVID-19 screening that the Department of Labor requires to allow entry into the building.

Under the circumstances, I believe the wiser course at this point is to continue the scheduled January 27<sup>th</sup> hearing for a period of about 30 days. In light of the Division of Public Health's recent announcement, there is a reasonable hope that the winter surge may ease by that time and the active situation in Employer's counsel's office may resolve such that the hearing can be conducted safely for all concerned.<sup>2</sup>

IT IS SO ORDERED this 24<sup>th</sup> day of January, 2022.

**INDUSTRIAL ACCIDENT BOARD**



CHRISTOPHER F. BAUM  
Workers' Compensation Hearing Officer

Mailed Date:

\_\_\_\_\_  
OWC Staff

Tiffany Quell Friedman, Esquire & Edward Wilson, Esquire, for Claimant  
Elissa A. Greenberg, Esquire, for Employer  
Lynn A. Kelly, Esquire, for the Workers' Compensation Fund

<sup>2</sup> On a side note, late last week Claimant's counsel noted that, unusually, she has recently been unable to reach her client through either phone or e-mail and so Claimant's current status is unknown. The 30-day continuance will also give time for her to re-establish contact.

