

BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

VAUGUEL PIERRE,)
)
 Claimant,)
)
 v.)
)
 PERDUE FARMS,)
)
 Employer.)

Hearing No. 1486398

**DECISION ON PETITION TO DETERMINE COMPENSATION DUE
(FORFEITURE DEFENSE)**

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated causes came before the Industrial Accident Board, on October 20, 2020, via video conference pursuant to the Industrial Accident Board COVID-19 Emergency Order, dated May 11, 2020.

PRESENT:

MARY DANTZLER

GREGORY FULLER

Heather Williams, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

James Donovan, Esq., Attorney for the Claimant

Francis Nardo, Esq., Attorney for the Employer

NATURE AND STAGE OF THE PROCEEDINGS

On March 16, 2020 (“Claimant”) filed a Petition to Determine Compensation Due, alleging that he was injured on May 23, 2019, while he was working for Perdue Farms (Employer”). Employer disputes the compensability of these injuries and raises a forfeiture defense, pursuant to 19 *Del. C.* § 2353(b). On September 15, 2020, the parties filed a Stipulation, in which they agreed to bifurcate the proceedings involving the compensability of the injury and the medical issues.

A hearing on the merits of the compensability of Claimant’s alleged injury was held on October 20, 2020. This is the Board’s decision on the merits.

SUMMARY OF THE EVIDENCE

When called by Employer, Claimant testified¹ that he has been in the United States for thirteen years and began working for Employer in 2010. He testified that he knows a “little bit” of English, but understands Spanish better. Claimant confirmed that he understands what the word “stop” means. He understands what the phrases “don’t run” and “slow down” mean.

Claimant agreed that he had attended safety meetings while working for Employer. He recalled that he had been disciplined for running through the plant at work on December 12, 2012, but he could not recall if he signed the discipline report.

Claimant confirmed that he knows that it is a safety violation to run through the plant. He denied that he was running through the plant on May 23, 2019. He testified that, on May 23, 2019, he was working and the line leader “told me to take a look at what was coming empty” on the poultry line. Claimant reported that the line leader directed him to watch the boxes. He testified that “I was not running. I was walking fast.” Claimant reported that he “...didn’t fall. I hit myself

¹ To assist in his testimony, Claimant used an interpreter, Ms. Catalini.

and then fell.” He reported that when he pushed his hands through, he hit his head because there was a pole behind the poultry. Claimant testified “I ran into something behind the chicken.”

Claimant testified that the information in his emergency department records is “a lie” and denied that there was anyone present at the time of his work accident or that he passed a co-worker before the accident. He testified that he “didn’t see the pole” and denied that the plant floor was wet. He agreed that there were feathers on the floor and that there were chickens hanging in the area where the incident occurred. Claimant confirmed that he hit his face on a pole and reported that “the pole has a point and that hit me in the eye and the pole hit my forehead.”

Claimant denied that he was running at the time of the accident or that Elaine Akins was present at the time of the incident. He reported “when I hit myself that’s when I saw my supervisor (Ms. Akins).” Claimant testified that his injury was from hitting the pole, which is approximately three feet high from the ground. Claimant confirmed that he was suspended from work for three days following the incident.

When called by his own counsel, Claimant reported that the speed he was walking at the time of the incident was his normal walking speed. He continues to work for Employer.

Elaine Akins testified for Employer. Ms. Akins has worked for Employer for twenty-one years and has been a team leader for fourteen years. She has been Claimant’s leader for nine years.

Ms. Akins testified that she is responsible for safety meetings and “safety first” is a priority. She explained that employees are trained to report safety issues immediately and one of the safety topics is “slips, trips, and falls.” She described the area where Claimant slipped as a “wet area” where poultry is hanging, which is cleaned with a high pressure water hose.

On December 12, 2012, Ms. Akins wrote up Claimant because he was running in the plant near a pallet jack operator. She explained that safety is critical in the plant and running violates

Employer's safety policy. Ms. Akins confirmed that Claimant was been told many times that running in the plant is a safety hazard.

On May 23, 2019, Ms. Akins saw Claimant come "running out" of the gible room before he slipped and hit his face on a hanging bar. She reported that Claimant hit the floor and got up immediately with blood on his face. Ms. Akins testified that Claimant was about three feet in front of her when she saw him running and was about eight to ten feet away from her when he slipped and fell. She reported that "[Claimant] was running and I saw his foot go out from under him." She disagreed with Claimant's claim that he was not running at the time of the incident, and described Claimant's speed as a "sprint." She testified that the impact of the fall "busted [Claimant's] eye wide open..." and was "...a hard hit." Ms. Akins reported that Claimant's foot went out from under him and his face hit the pole.

Ms. Akins testified that she has spoken to Claimant in English before and noted that "...we talk every day at the job" in English. Ms. Akins confirmed that the discipline report contains information on what she witnessed and she confirmed that she directed Claimant to stop running. She confirmed that Claimant was suspended for three days after he returned to work following the incident. Claimant was out of work for approximately one month following the incident.

On cross examination, Ms. Akins testified that she is unsure if there are cameras in the area where the incident occurred. She confirmed that she cautions against running at safety meetings. She reported that Claimant's 2012 discipline report includes a safety violation for Claimant pushing a pallet jack operator.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Compensability

Claimant seeks to establish the compensability of an injury alleged to have occurred on May 23, 2019. The Delaware Workers' Compensation Act provides that employees are entitled to compensation "for personal injury or death by accident arising out of and in the course of employment." 19 *Del. C.* § 2304. Employer disputes the compensability of these injuries and raises a forfeiture defense, pursuant to 19 *Del. C.* § 2353(b). In workers' compensation actions, the negligence of an employee is not a defense. 19 *Del. C.* § 2314. However, an employee can forfeit the right to compensation for an injury if the injury was the result of the employee's own deliberate and reckless indifference to danger. 19 *Del. C.* § 2353(b). Because Employer has asserted the defense of forfeiture, it has the burden of proof.

In this case, Employer has proven that Claimant has forfeited his workers' compensation benefits due to his own deliberate and reckless indifference to danger. The testimony and evidence was consistent and supports a finding that, on May 23, 2019, Claimant sustained an injury, due to his own deliberate and reckless indifference to danger. First, Claimant admitted that he knows that running in the plant is a safety violation. Ms. Akins confirmed that she has informed Claimant before that running is a safety violation. Second, Claimant has worked for Employer for years and admitted that he has participated in safety meetings, during which Ms. Akins reported safety violations/precautions are reiterated. Third, Claimant admitted that he understands the phrases "stop," "slow down," and "don't run" and Ms. Akins confirmed that she and Claimant engage in conversation in English every day at work. Fourth, Claimant admitted that he had been disciplined for a similar offense, involving running, in 2012. Ms. Akins confirmed that she had disciplined Claimant for a similar violation before. Thus, not only was Claimant aware that running is a safety violation from the safety meetings, he was specifically and individually aware of the severity of the offense based on his own prior discipline report.

Fifth, while Claimant denied that he was running during the 2019 incident or that anyone witnessed the incident, Ms. Akins testified credibly that she witnessed the incident and described Claimant's speed as a "sprint," which the Board finds persuasive. Furthermore, Ms. Akins pointed out that Claimant sustained a "hard hit" because of his speed at the time of his fall and striking the pole, which was confirmed by Claimant being out of work for several weeks following the incident. The Board finds Ms. Akins testimony that Claimant was running at the time of the accident to be consistent with the extent/nature of Claimant's injuries.

Based on all of the above, the Board concludes that Claimant has forfeited his right to receive benefits due to his reckless and deliberate indifference to the danger of running in the workplace.

STATEMENT OF THE DETERMINATION

For the reasons set forth above, the Board concludes that Claimant has forfeited his right to workers' compensation benefits due to his deliberate and reckless indifference to danger, pursuant to 19 *Del C.* §2353(b).

IT IS SO ORDERED THIS 2nd DAY OF NOVEMBER, 2020.

INDUSTRIAL ACCIDENT BOARD

/s/Mary Dantzler
MARY DANTZLER

/s/Gregory Fuller
GREGORY FULLER

I, Heather Williams, Hearing Officer, hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.


HEATHER WILLIAMS, ESQ.

Mailed Date: 11-5-20



OWC Staff