

**INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

Thomas Speakman,
Employee,

vs.

John E. Steele, Jr.,
Employer.

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I.A.B. No.: 1438211

ORDER

After thorough review of this matter and all parties having been heard, the Industrial Accident Board finds as follows:

1. On 2/29/16 the Employee filed an initial Petition to Determine Compensation Due against his Employer, which alleges an industrial accident of 3/12/14.
2. On 3/11/16 the Employer served its first Request for Production upon the Employee and requested, among other things, the following information: Any documentation concerning any and all accidents that occurred prior and subsequent to Claimant's alleged industrial accident...
3. The Employee responded to Employer's discovery request as follows: All accidents concerning past accidents and/or workers' compensation claims... can be obtained from the Industrial Accident Board...
4. Employer's attorney then prepared an I.A.B. Record Request form and submitted it to the Division of Industrial Affairs with a copy of the Employee's petition to authorize release of the prior I.A.B. file materials. This is standard practice; yet, in this case he received a response from the Office of Workers' Compensation denying Employer's request.
5. The information Employer seeks is discoverable and reasonably calculated to lead to admissible evidence. The I.A.B. is empowered to order the production of the information

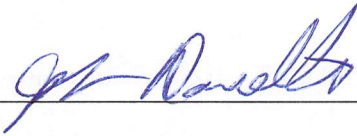
sought.¹ The I.A.B. and Superior Court have ordered the production of such information in previous cases.² They are appropriate requests, which may be germane to the allegations the Employee raises in the current petition.³

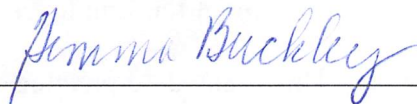
6. Once a petition is filed against an employer, that employer, as a defendant, is allowed to use the employee's petition as a release of the employee's prior I.A.B. file materials to conduct discovery into prior claims. As such, it was inappropriate for the OWC to withhold the information Employer requested. Indeed, Employer properly followed the I.A.B.'s procedure in this matter and the Employee's response to discovery further affirms that this is well known to both employees and employers.

The Industrial Accident Board ORDERS the Division of Industrial Affairs, Office of Workers' Compensation to release the requested file materials immediately to Employer. When no petition is filed, only Board decisions and Board orders may be released as they are public documents; however, once a petition is filed against an employer, then the employer becomes a defendant entitled to full discovery into prior accidents and as such, the defendant is entitled to rely upon the employee's petition against it to access the rest of the I.A.B.'s file materials.

IT IS SO ORDERED this 5th day of May, A.D. 2016.

INDUSTRIAL ACCIDENT BOARD





Joseph Andrews, Esquire for Employer
Michael Weiss, Esquire for Employee

¹ 29 Del. C. § 8511(b); 29 Del. C. § 10125(b)(5).

² *Kelly v. Shure Line*, 1389689 (Del. I.A.B. July 31, 2013); *Drummond v. FCC Environm't*, No. 1348955 (Del. I.A.B. Mar. 17, 2011); *Griffith v. Wachovia Corp.*, No. 1190802 at *5 (Del. I.A.B. Oct. 4, 2004).

³ *Del. Home & Hosp. v. Martin*, C.A. No. K11A-07-001 (Del. Super. Feb. 21, 2012); *ACI v. DiNorscia*, C.A. No. 84A-SE-17 (Del. Super. 1985).