CaseLaw Update & Appellate Outcomes

Delaware Industrial Accident Board, Superior Court & Supreme Court Decisions

Fall 2016

Cassandra Roberts, Esq.

&

John Ellis, Esq.

October 19, 2016

ATTORNEYS FEES

Milourde Decembre v. Purdue Foods, IAB No. 1405844 (4/25/16) (ORDER). **There is not attorney retaining lien on medical bills if the bills are undisputed and have already been paid.** This matter came to the Board on the claimant's motion to award attorneys fees and require employer to pay the related medical bills directly to the claimant as opposed to the providers. Claimant acknowledge that the employer/carrier had agreed to acknowledge all expenses and lost wages within 60 days of the initial Hearing and the claimant received a letter indicating the employer/carrier had paid a portion of the bills directly to the provider and some directly to claimant's counsel. In ruling against the claimant, the Board observed that when, as in this case, there is no dispute as to compensability of the medical service provided, the provider of that service is the proper entity to receive payment directly, and not claimant. [No attorney names appeared on pleading]

Karl Allen v. Debro Inc., IAB No. 1098467 (3/29/16) (ORDER). **On the employer's/ carrier's Motion for Re-argument and Clarification, the Board reduces a $9900.00 attorneys fee where the medical treatment awarded was only $3071.00.** [Schmittinger/Menton]

Brian Dobson v. Siemens Health Care, IAB No. 1393011 (4/12/16) (ORDER). **The Board awards an attorneys fee of $3500 for a pre-Hearing resolution on a Petition for Review.** [Long/Chrissinger-Cobb]

Brian Dobson v. Siemens Health Care, IAB No. 1393011 (4/12/16) (ORDER). **As an officer of the court, the claimant's counsel should be taken at her word regarding the time invested relative to an attorney's fee application.** [Long/Chrissinger-Cobb]

AVERAGE WEEKLY WAGE

Waylon Mabrey v. State of Delaware, IAB No. 1433808 (5/9/16). **A paid part-time employee of a volunteer fire company/ambulance company is entitled to an average weekly wage based on his regular full time job pursuant to 19 Del. Code Section 2312.** The Board finds that in reading the plain language of Section 2312, this is clear. Had the General Assembly not included Section 2312(d) and had "volunteer fire company" and "volunteer firefighters" not been specifically defined to include others such as "paid employees of volunteer fire companies" and "paid employees of volunteer ambulance companies", this might not have been as clear. However, it is explicit within Section 2312(d) that paid employees of such companies, such as claimant, are to be included under Section 2312. [Schmittinger/Rimmer]

Tameka Shuler v. Providence Service Corp., IAB Nos. 1419271 & 1422122 (6/8/16) (ORDER). **This case contains a discussion of how to calculate the average weekly wage pursuant to 19 Del Code Section 2302(b)(2) where the claimant was only employed for 8 weeks at the time of the work accident.** [Houser/Richter/Cleary]

CAUSATION

Anthony Cicione, Jr., v. FMC Corporation, IAB No. 1373594 (5/3/16). **On a Petition to Determine Additional Compensation Due seeking a finding that a L3-4 lumbar laminectomy surgery was causally related to a 6/17/11 work accident, the Board rules in favor of the employer, finding that "adjacent segment disease does not skip a level" and embracing the opinion of Dr. John Townsend over that of Dr. Bruce Rudin.** [Freibott/G. Baker]

Joanne Lapinid v. Christiana Care Health Services, IAB Nos. 1321233 & 1429728 (3/31/16). **In denying a DCD and DACD Petition regarding the allegation of a left shoulder injury under a theory of cumulative detrimental effect/repetitive use, the Board comments that the burden of proof requires a showing that the work substantially caused the condition, not simply contributed to it.** Dr. Kim testified on behalf of the claimant and Dr. Gelman testified on behalf of the employer. [Long/Newill]

Kathy Old v. Wal Mart, IAB Hearing Nos. 1397857 & 1430804 (4/25/16). **A left knee surgery is awarded pursuant to Blake, with Dr. Dellose testifying on behalf of the claimant and Dr. Piccioni testifying on behalf of the employer and with the left knee symptoms not manifesting until roughly 11 weeks post-injury.** [Boswell/Elgart]

George Tunnell v. Connections CSP, IAB No. 1388506 (4/8/16). **Under Barkley, a subsequent and unrelated motor vehicle accident does not break the chain of causation as it relates to a 4/27/12 work accident and as such the Board awards a cervical spine surgery performed on 7/1/15 and a related period of total disability.** [Schmittinger/Logullo]

Deyaniri Torres v. Bravo Group Services, IAB No. 1424900 (3/30/16). **Where there is a 6/12/14 work accident and a 7/2/14 motor vehicle accident, the Board still pins the medical treatment expenses and total disability on the carrier for the 6/12/14 work accident** based on the testimony of Dr. Zaslavsky and where the claimant treated for the work injury prior to the motor vehicle accident including undergoing a CT scan and with the further observation that the claimant's referral to an orthopedic surgeon most likely occurred prior to the subsequent unrelated motor vehicle accident. [Legum/Rimmer]

Richard Lucarini v. Acme Markets, IAB Nos. 1357254 & 1392588 (3/31/16). **The Board in relying on the Barkley decision rules that chiropractic treatment rendered in the 2014-2015 is causally related to work accidents occurring in 2010 and 2011 as the "direct and natural consequence".** [Peltz/Klusman]

Sergio Jimenez-Gallegos v. Coastal Lawn and Landscape, IAB No. 1433016 (7/19/16). **This case contains a lengthy summary of the law as to the burden of proof on causation, specific accident v. cumulative detrimental effect.** [Dunkle/Ellis]

Linda Malry v. Amazon.com, IAB No. 1424169 (6/23/16). **A cumulative detrimental effect claim for the cervical spine is denied where the claimant's hobby is kickboxing- -** "specifically, the AmCare record from 1/27/15, the date the claimant first reported her neck symptoms, indicated the claimant initially started feeling pain in her shoulder while she was doing kickboxing and also documented the claimant was an avid-goer and did a lot of kickboxing. The Board agrees with Dr. Schwartz that the AmCare record is inconsistent with claimant's later claim to Dr. Schwartz and to the Board that she had not engaged in these activities for several years before working at Amazon." [Wilson/McGarry]

Rosemary Clay v. Timothy J. Clay, DMD & Rosemary Clay, DMD, IAB No. 1427487 (6/17/16). **A dentist claim of cervical disc herniation while treating an autistic patient is denied, with Dr. Robert Weiss, a general internal medicine specialist licensed in Pennsylvania testifying on behalf of the claimant and Dr. William Summers, a local neurologist, testifying on behalf of the employer.** [Weiss/Nardo]

COMMUTATION AND SETTLEMENT ISSUES

James Leming v. Benjamin Stafford Stables, IAB No. 1309270 (4/29/16) (ORDER). **The commutation of a death case is deemed *not* enforceable where no one knew the claimant was on Medicare- - neither attorney was aware or had any suspicion that Claimant had been issued a Medicare card and simply assumed that Claimant did not have Medicare based on his age, but they did not inquire about before or during their negotiations.** The attorneys still do not know whether or not there are any Medicare bills to be paid. Given the fact that the attorneys did not know the Medicare card would be an issue, and they still do not know whether there are any outstanding bills through Medicare, the Board finds that the parties did not reach a meeting of minds on the settlement. As soon as the Claimant's representative was given a copy of the documents and reviewed them, she informed her attorney she could not sign them as written due to the paragraphs regarding Medicare. Claimant's estate should not be bound by an agreement made based on unfounded assumptions of the attorneys. [Crumplar/Wilson]

Leroy Legates v. AMH Enterprises, IAB No. 1429852 (5/31/16) (ORDER). **A carrier's Motion to Set Aside a Settlement Agreement based on a false representation of a material fact is granted where the employer had no reason to suspect that such a surgery had been recommended prior to the industrial accident even with the knowledge that claimant had rheumatoid arthritis and underwent a rotator cuff repair surgery in 2009, as those conditions do not necessarily lead to a shoulder replacement.** Given claimant's lack of candor to the doctor and his attorney, the Board finds there was a false misrepresentation of a material fact and the settlement agreement should be set aside. [Dunkle/Ward]

CONTINUANCES

Jorge Torres v. Mid-Atlantic Realty, IAB No. 1409700 (7/13/16). **The Board grants an opposed continuance where a dismissal of the Petition would otherwise blow the Statute of Limitations but with the Hearing Officer's observation that should the employer incur a**

cancellation fee from its medical expert, consideration would be given for a credit against such cost should the claimant receive any benefits in future litigation. [Warren/Cobb]

COURSE AND SCOPE

Luis Coreas Polio v. Allen Harim Foods, IAB No. 1434270 (5/25/16). **A workplace assault by a coworker is held *not* to be in course and scope of employment where fueled by personal antagonism- -** the claimant testified that on the day of the assault, the coworker approached him and insulted him specifically about his sexuality and his wife, not about any work-related issue. The history of antagonism between the two men was strictly personal in nature and in no way work-related. [Morrow/Baker]

Wanda Cressman v. State of Delaware, IAB No. 1431732 (3/31/16). **The claimant school bus driver is held to be in course and scope of employment when injured prepping her bus a few days prior to the first day of school.** [Donovan/Morris-Johnston]

William Weller v. Morris James, IAB No. 1429339 (4/18/16). **An injury to a paralegal playing in the lawyers summer softball league on behalf of his law firm is ruled in course and scope for purposes of an ankle injury.** [Nitsche/Greenberg]

DEFENSE MEDICAL EVALUATION

Harry Macklin v. Wooters Excavation, IAB No. 1344520 (7/22/16) (ORDER). **In considering cross-motions concerning the attendance of the claimant at two scheduled medical examinations with Dr. Jason Brokaw in Baltimore, MD, and Dr. Wolfram Rieger in Philadelphia, the Board refuses to quash the DME's** that involve a driving distance where the employer has offered to provide transportation, denying the claimant's request for an order to have DME's performed closer to his home in Frederica, DE. [Shrenk/Cobb]

DISCOVERY/EVIDENCE

Thomas Speakman v. John Steele, Jr., IAB No. 1438211 (5/5/16) (ORDER). **Defense counsel is entitled to the entire Department of Labor file regarding prior and subsequent work accidents.** [Saville/Andrews]

Alejandro Flores v. Shive Inc., IAB No. 1428844 (4/5/16). **The Board refuses to draw an adverse inference against the employer based on a charge of spoliation where the business owner either recklessly failed to preserve surveillance footage that he knew or should have known would be relevant to the claimant's workers compensation claim or deliberately altered and/or deleted portions of the footage.** Employer denied that any alteration or deletion of the video footage occurred, instead proffering that the surveillance system often has small gaps in the footage due to the "loop" system of recording, especially during times when the footage is being downloaded to a file. In terms of the request for an adverse inference based on spoliation of evidence, the Board explained that there must be a finding of conduct by a party

that is intentional and reckless and that mere negligence does not meet the standard. [Heesters/Klusman]

Anissa Brookins-Widman v. State of Delaware, IAB No. 1410373 (7/21/16). **Curiously, Dr. Eskander has his patient's complete questionnaires which he considers but then destroys.** [Wilson/Rimmer]

Anissa Brookins-Widman v. State of Delaware, IAB No. 1410373 (7/21/16). **This case contains a discussion of the "adverse inference" instruction which the Board declined to apply in this case.** [Wilson/Rimmer]

William Stone, Jr. v. Murray Trucking, IAB No. 1430119 (4/26/16). **The Employer's First Report of Injury cannot be used as evidence against the employer, not even for impeachment.** [Krayer/Andrews]

Joan Waad v. Christiana Care Health Services, IAB No. 1434823 (7/14/16). **The claimant was awarded benefits with regard to a DCD Petition seeking a closed period of both partial and total disability and related medical expenses with the Board squarely rejecting surveillance video as "depicting few activities of little consequence."** [Long/Newill]

Karen Coffman v. Ollie's Bargain Outlet, IAB No. 1397174 (7/5/16) (ORDER). **The defense medical expert report is NOT subject to the "30-day" rule.** [Fredricks/Baker]

DISFIGUREMENT

Heather Taylor v. General Motors, IAB No. 1200319 (4/18/16). **On a claim for disfigurement benefits, a 1 and ¾ inch scar in the front of the neck from an interior cervical surgery is awarded 3 weeks.** [Carmine/Nichols]

Gerald Fay v. Donald Deaven, IAB No. 1432671 (4/25/16). **In this case the claimant quadriplegic is awarded 300 weeks of disfigurement for each lower extremity, utilizing the "permanency plus 20%" disfigurement standard, and with the Board further commenting that "the inability to walk is the ultimate gait derangement."** [Silverman/Morgan]

Kieran Sniadowski v. Pulte Homes, IAB No. 1208092 (2/24/16). **The claimant is awarded 20 weeks of disfigurement benefits for a "moderate" altered gait.** [Silverman/Harrison]

Edwin Jochen v. State of Delaware, IAB No. 1370076 (6/9/16). **On a Petition for Disfigurement, the Board awards 3.5 weeks of benefits for an abdominal wall scar which is 3.5 inches long and a quarter inch wide.** [Mason/Sensor]

Edwin Jochen v. State of Delaware, IAB No. 1370076 (6/9/16). **The Board awards 2.5 weeks of disfigurement benefits for a lumbar surgical scar which is 2.5 inches long above the beltline.** [Mason/Sensor]

Todd Greene v. Central Transport, IAB No. 1290704 (6/9/16). **The claimant is awarded 4 weeks of benefits for disfigurement involving a 3 inch lumbar surgical scar.** [Long/Panico]

Christopher Ned v. Acadia Health Care at Meadowwood Behavioral Health, IAB No. 1401980 (8/3/16). **The Board awards one week of disfigurement benefits for a "very mild" altered gait.** [Stewart/Lockyer]

DISPLACED WORKER

Sheila Snyder v. Johnson Controls, IAB No. 1298806 (5/31/16). **A union worker is held to be a Hoey "displaced worker" with some rare commentary on the interplay between the traditional case law and the union contract- -** "in addition, the Board infers from the testimony that claimant was a long-term union employee of Johnson Controls. As such, she would have been afforded the protection of the union contract. No testimony was elicited from the witnesses about the specifics of the contract, but the courts have made it clear that protection of a union can be considered when weighing whether a particular claimant has a reasonable expectation of continued employment..." [Freebery/Nardo]

Debra Picerno v. Walgreens, IAB No. 1435876 (8/5/16). **The claimant is ruled to be a Hoey displaced worker where she is still on the payroll and where her job is technically being held for one year, even though she has been told that light duty is not available.** [Freibott/Baker]

EMPLOYEE V. INDEPENDENT CONTRACTOR

Carlos Velez v. J&D Carpets, IAB No. 1434479 (4/25/16). **The claimant, a carpet and hardwood floor installer, is held to be an employee based on factors outlined in Falconi and the Restatement (2nd) of Agency, stating that the claimant used tools provided by the employer, was engaged in the regular business of the employer, and was paid for days worked as opposed to "by the job".** [Heesters/Tice]

Russell Cacciabillano v. Oceanport Industries, IAB No. 1439525 (7/14/6). **The claimant who was working security at the port is deemed a "employee"** even though he was paid with a Form 1099 taking into account that the job in question did not require any specific training or

skill, with all training provided by the employer, where the claimant did not have a business license, did not work for any business other than this employer, did not have business cards or hold himself out as running his own business and where the decision was deemed "a close call because of factors weighing on both sides." [Wolf/Morgan]

FRAUD

Joneisha Bailey v. Xpress Nurses, IAB No. 1425856 (4/13/16) (ORDER). **Where the claimant continued to cash total disability benefit checks after an admitted return to gainful employment, the Board refers this matter to the State's Fraud Prevention Bureau.** [Andrews/Cleary]

FUNCTIONAL CAPACITY EVALUATION

Ronald Breitigan v. New Castle County, IAB No. 1437975 (5/12/16) (ORDER). **A request for a Functional Capacity Evaluation by the employer is denied where the treating surgeon has written and specifically stated that "undergoing an FCE may worsen his condition."** This, combined with the uncertainty regarding a new or separate pain generator in Claimant's cervical spine informs the Board's decision to deny this request. [Freebery/Tickle]

THE FUND

Tameka Shuler v. Providence Service Corp., IAB Nos. 1419271 & 1422122 (6/8/16) (ORDER). **The Fund is ordered to make-up at TTD shortfall because the average weekly wage error was mutual and not a unilateral error on the part of the employer/carrier.** [Houser/Richter/Cleary]

MEDICAL TREATMENT ISSUES

Danielle Streater v. JC Penney, IAB No. 1407824 (5/3/16). **Candidacy for surgery is a precursor to a discogram and the use of a discogram for any other purpose is clearly outside of the Health Care Practice Guidelines,** noting that in this particular situation the Board awarded the discogram based on Dr. Rastogi's testimony that he wanted to confirm the pain generator given that claimant was young, did not have much arthritis or any other overt reason for axial low back pain, and had returned to him after a variety of failed conservative measures still with considerable pain. [Krayer/Gin]

Pamela Banning v. UPS, IAB No. 1310800 (4/28/16) (ORDER). **Where there are problems with obtaining medications from the carrier's preferred medication vendor, in that instance the claimant is entitled to use Injured Workers Pharmacy with the Board commenting--"**on the other hand, if prescriptions are not filled by the employer's preferred provider, claimant cannot be faulted for procuring same for herself. In such situations, if the prescriptions are reasonable, necessary and causally related to the work injury, then claimant is to be reimbursed the reasonable cost thereof." [Schmittinger/Klusman]

Nancy Bogart v. Christiana Care Health Systems, IAB No. 1300413 (4/5/16). **On a DACD Petition seeking an award of a fourth lumbar spine surgery performed by Dr. Bruce Rudin, the Board rules in the claimant's favor but with the Board "reminding Dr. Rudin and his colleagues that a discogram is an expensive and invasive test which should be used with discretion. This case is an example of a very close call, which likely would not have passed muster under Utilization Review."** [Welch/Newill]

Rocio Espinoza v. Elite Cleaning, IAB No. 1423083 (6/8/16) (ORDER). **This case contains an interesting discussion on the topic of "clean claim" documents with the observation of the Board that it is not the claimant's counsel's duty to provide a clean claim- -** "While claimant does have a duty to provide medical records and bills in its possession in response to a Rule 11 discovery request, this should not be confused with the requirements placed on a medical provider submitting bills for payment to the insurance carrier...Claimant's medical providers should be submitting bills to the carrier, who in turn takes one of three actions; pays them, denies them, or requests additional "clean claim documentation". If the carrier does not have the documents required by Section 2322 F, it is not required to pay or deny the bill until the provider submits a "clean claim". [Heesters/Andrews]

Mark Yackobovitz v. Two Roads Professional Resources, IAB No. 1421189 (7/29/16). **The Board will not deny entitlement to payment for multiple EMG's as being unreasonable/unnecessary where those (negative) EMG's were instructive on the issue of permanency.** [Houser/Morris-Johnston]

Mark Yackobovitz v. Two Roads Professional Resources, IAB No. 1421189 (7/29/16). **A carrier is expected to reply to the submission of medical bills, not just sit quietly and do nothing about them on technical grounds.** [Houser/Morris-Johnston]

Donna Gandy v. Gaudenzia, IAB No. 1419957 (7/27/16). **While not outcome determinative to the claimant's Petition, which was ultimately denied, the Board observes that Dr. Xing's billing practices are "disturbing" where there are multiple or successive injuries with the following comment:** "An even more disturbing example of the doctor's billing practice occurred in December 2014 when she saw claimant for the low back on both December 9 and December 11, billing one visit to the 2013 accident and the other to the 2014 work event, with no medical explanation as to why claimant needed to be seen twice in such close proximity." [Wilson/Baker]

Greg Lisckiewicz v. State of Delaware, IAB No. 1368751 (7/25/16). **The claimant is awarded a health club membership and related mileage based upon the testimony of Dr. Mack with the defense medical expert even conceding that such membership would be reasonable.** [Morrow/Menton]

PARTIAL DISABILITY

Erick Clayville v. Gen's Trucking, IAB No. 1429500 (7/20/16). **On a DCD Petition seeking an award of total disability, or in the alternative, partial disability ongoing, the Board awards partial disability at the total disability benefit rate because the claimant is unable to work full duty and the employer did not produce a labor market survey.** [Boyle/Swift]

PERMANENT IMPAIRMENT

Gwendolyn Deatley v. Mainstay Delaware, IAB No. 1396345 (3/28/16). **The Board embraces medical testimony that endorses a rule of using the DRE model for a 1-level fusion and the Range of Motion model for a multi-level fusion.** In this case the claimant was seeking benefits for a 22% permanent impairment to the cervical spine based on a 12/5/12 work injury. The claimant also sought payment of medical expenses for a 4/1/13 cervical spine surgery which the employer argued was unrelated to the work accident, as was the permanency. Of note, the claimant had a prior workers comp claim stemming from a neck injury and had previously been compensated for a 10.75% impairment to the cervical spine. Dr. Bandera testified on behalf of the claimant and Dr. Townsend testified on behalf of the employer. The Board awarded benefits based on the opinion of Dr. Bandera and adopted his preference for use of the DRE over the ROM model for rating impairment. [Lutness/Gin]

James Marvel v. Delhaize America, IAB No. 1384826 (4/7/16). **The Board awards a 50% impairment for a total knee replacement with only a "fair" result, noting that Dr. Stephen Rodgers testified on behalf of the claimant and Dr. Lawrence Piccioni testified on behalf on behalf of the employer.** [Brockstedt/Hunt]

Carrie Biggers v. State of Delaware, IAB No. 1306692 (3/16/16). **On a DACD Petition seeking an award of 35% impairment to the left upper extremity, the Board rejects the CRPS/RSD diagnosis and awards a 10% impairment, with Dr. Gelman as the defense medical expert.** [Nitsche/Nardo]

Tomeka Hill v. Legacy Supply Chain Services, IAB No. 1421075 (5/23/16). **In rejecting a claim for a 17% impairment to the lumbar spine as rated by Dr. Bandera, the Board specifically comments that "Dr. Bandera's rating lacks credibility."** [Pratcher/Ellis]

Tomeka Hill v. Legacy Supply Chain Services, IAB No. 1421075 (5/23/16). **In rejecting a claim for permanent impairment at 17% to the lumbar spine, and denying any award of permanent impairment based on the defense medical expert testimony of Dr. Gelman, the Board comments that Dr. Bandera's rating suggests "blatant overreaching."** [Pratcher/Ellis]

Howard McKean v. State of Delaware, IAB No. 1311717 (4/21/16). **If the extremity is affected, it does not matter that the source of injury is the spine for purposes of an award of permanent impairment.** [Nitsche/Menton]

Howard McKean v. State of Delaware, IAB No. 1311717 (4/21/16). **A permanency rating is appropriate for an affected body part even if the actual bodily impact occurred elsewhere.** [Nitsche/Menton]

Leon Temple v. New Castle County, IAB No. 1425404 (7/21/16). **Claimant filed a Petition seeking to recover a 13% impairment to the right upper extremity to which the employer replied in favor of a 0% impairment rating- - in awarding the claimant the 13% permanency based upon the opinion of Dr. Rodgers, the Board further observed that "to deny claimant an impairment rating because he returned to work in a physical job would be harsh and not equitable."** [O'Neill/Tickle]

Oyetola Adeleke v. Fresenius Medical Care, IAB No. 1435948 (8/1/16). **On a claim for permanent impairment seeking 10% to the central nervous system/brain, Dr. Grossinger's opinion failed for lack of neuropsychological testing- -** "I agree with Dr. Townsend that in this situation claimant should have undergone neuropsychological testing. Had claimant undergone neuropsychological testing with results supporting her contention, my decision might be different." [Kimmel/Harrison]

Lawrence Bendistis v. Donald Devan, Inc., IAB No. 1389731 (8/1/16). **This case involves an award of multiple permanencies, specifically 23% to the brain, 22% to the thoracic, 20% to the lumbar, 13% abdominal wall, 2% liver and 20% pelvis, with regard to multiple bodily injuries sustained as the result of a traumatic fall from scaffolding while working as an iron worker.** [Ippoliti/Morgan]

Marcella Nichols v. State of Delaware, IAB No. 1354728 (7/27/16). **You cannot argue "resolved" or "back to baseline" with regard to additional future benefits if the employer has paid a permanent impairment.** [Lengkeek/Ellis]

Jammie McCann v. Aetna, IAB No. 1435944 (6/23/16). **The claimant is awarded a 20% impairment to the right upper extremity with the Board rejecting the defense medical expert 5% permanency rating "as insufficient where claimant had a fairly extensive shoulder surgery and still has certain deficits."** [Warren/Cooksey]

Theresa Patille v. Delmarva Temporary Staffing, IAB No. 1416890 (6/30/16). **Dr. Rodgers' 30% impairment rating for the right upper extremity is rejected in favor of Dr. Smith's 0% rating- -** "Dr. Smith concluded the claimant had no impairment, or 0%, because there was

no demonstrable pathology in her right upper extremity when he examined her, she had no clinical signs of any condition, and there were no diagnostic test results that were ratable. The Board finds Dr. Smith's conclusions to be more appropriate based on claimant's lack of objective clinical findings, questionable credibility of her subjective complaints and medical history." [Ji/Andrews]

Juan Pablo Betanzo Cordova v. Chesapeake Plumbing, IAB No. 1412810 (6/17/16). **Delaware law does not mandate the use of any particular text in rating permanent impairment- -** "setting the degree of permanent impairment is a question of fact for the Board, not a question of law. Rating texts are just tools used by the evaluators. They are not statutory enactments. They are not binding. They are tools. What is important is the evaluation and how well it reflects the degree of loss of use sustained by the claimant as reflected by the evidence presented." [Green/Richter]

Juan Pablo Betanzo Cordova v. Chesapeake Plumbing, IAB No. 1412810 (6/17/16). **The Board rules in favor of use of the lumbar conversion factor for a thoracic permanent impairment- - therefore, by using the thoracic conversion factor, Dr. Rodgers produced too high a rating for this portion of the impairment, beyond what could reasonably be said to accurately describe the claimant's actual loss of use of the body part."** The Board rejects the Petition seeking a 33% impairment to the thoracic spine, in favor of an award of 23% impairment to the thoracic spine. [Green/Richter]

Thomas Ryan v. State of Delaware, IAB No. 1421859 (8/5/16). **On a claim seeking 11% impairment to the cervical spine, 13% to the right upper extremity, and 5% to hearing, the Board rules in favor of the claimant with a discussion of the importance of inclinometers and goniometers in assessing range of motion under the AMA Guides.** [Freibott/Panico]

PRACTICE AND PROCEDURE

Sylvester Blanford v. Amazon.com, IAB No. 1430207 (5/11/16). **Where a premises video tape is erased in the normal course of business, the employer's motion to call witnesses who viewed the tape is denied.** Employer contends that while it intended to preserve the video tape, the tape was inadvertently erased in the normal course of business. Claimant objected to the admission of such testimony under the "best evidence rule", noting that neither claimant nor his attorney had observed the video tape, thereby limiting the ability to cross examine witnesses. Claimant alternatively sought spoliation charge, with an inference that the video tape would have favorably benefitted Claimant. The Board did not find sufficient evidence that the destruction of the video tape was done in bad. A spoliation charge would infer that the video tape did in fact depict the work accident as claimant contends and could essentially be case dispositive and highly beneficial to employer. Thus, to avoid unduly prejudicing either side, the Board denied the admissibility of any testimony pertaining to the content of the video tape. [Long/Ellis]

Richard Chase v. Mid-Atlantic System, IAB No. 1434806 (4/18/16) (ORDER). **Where no Petition is pending, the IAB will not grant a Motion to Compel,** with the Board commenting that this issue is governed by Rules of the Industrial Accident Board 11(D) which allows that the litigation mechanism is started when there is a claimant "seeking workers compensation benefits". The Board further commented that it would be unduly burdensome not to mention a needless expense to allow discovery merely in anticipation that there might be a claim at some time. [Lewis/Menton]

David Ward v. Letica Corporation, IAB No. 1393135 (3/31/16) (ORDER). **"As a quasi-judicial body, the Board has the inherent power to manager its own calendar."** [Nitsche/Cobb]

Virgil Pugh v. New Castle County, IAB No. 1354747 (4/25/16) (ORDER). **Where there is an implied Agreement for total disability but with salary being paid in lieu of Section 2324 workers compensation, the employer must still file a Petition for Review to stop payment.** [Freibott/Tickle]

Edward Colman v. Conit Electric, IAB No. 1276764 (5/11/16). **The filing of a Motion for Summary Judgment is not procedurally permitted at the Board, noting that a Motion for a Directed Verdict during a Hearing on the merits may be appropriate under certain circumstances.** [Gambogi/Sharma]

Kathy Melvin v. Playtex Apparel, IAB No. 772541 (5/4/16) (ORDER). **An attorneys fee request is not required to include detailed and itemized billing records.** [Schmittinger/Julian]

Kathy Melvin v. Playtex Apparel, IAB No. 772541 (5/4/16) (ORDER. **There is no IAB rule limiting medical depositions to one hour.** [Schmittinger/Julian]

Kathy Melvin v. Playtex Apparel, IAB No. 772541 (5/4/16) (ORDER). **The IAB can rule on a Motion for Directed Verdict.**[Schmittinger/Julian]

Kathy Melvin v. Playtex Apparel, IAB No. 772541 (5/4/16) (ORDER. **The "ten day rule" to reply to a Motion for Reargument does *not* include weekends and holidays.** [Schmittinger/Julian]

Rodel Castro v. Handy and Harmon Tube, IAB No. 1429638 (4/26/16). **An audiologist is *not* qualified to testify as to hearing loss causation.** [Heesters/Skolnik]

Debra Benmalek v. Leonard's Transportation, IAB No. 1420176 (8/3/16) (ORDER). **On a Motion filed by the employer seeking dismissal of a DACD Petition filed for approval of a cervical spine surgery, the Board will not throw out a DACD for surgery short of a prior ruling that the injury has "resolved".** [Pratcher/McGarry]

Marcella Nichols v. State of Delaware, IAB No. 1354728 (7/27/16). **Yes, the employer can file a Petition for Review even if the claimant is not on total disability or partial disability- -** "The Board notes that while employer's purpose in having the case reviewed is not as common as when there is receipt of total or partial disability benefits, under Title 19 of the Delaware Code Section 2347, it is still valid for employer to request that the Board review a case to determine whether a compensable condition is resolved in relation to a work accident. This is especially appropriate where causation of ongoing medical treatment and/or medication expenses is at issue." [Lengkeek/Ellis]

Brenda Spoerl v. State of Delaware, IAB No. 1435463 (6/2/16) (ORDER). **A full duty release from the treating physician still does not entitle the carrier to unilaterally cease issuing total disability benefits.** [Evans/Rimmer]

RECURRENCE V. NEW INJURY

Otis Cephas v. State of Delaware, IAB No. 1425677 (4/25/16). **In a case where claimant commuted all of his benefits relative to a 1/23/13 work injury and was alleging a 3/6/15 work injury against the State of Delaware for which the State's defense was that this was a recurrence as opposed to a new injury under Nally, the Board finds in favor of a new injury, finding in favor of both an untoward event and a worsening of his condition as the result of the second work accident.** Dr. Lieberman testified on behalf of the claimant and Dr. Kates testified on behalf of the employer. [Donovan/Julian]

SECTION 2311 CONTRACTOR STATUTE

Guillermo Zermano v. Durango Drywall, IAB No 1405291 (5/3/16). **This is a case dealing with Section 2311 in which the Board concluded that Pedro Vallez, who had since disappeared to Mexico, was acting as a subcontractor of Durango Drywall and not an employee at the time of the claimant's work accident.** As such, Durango Drywall had an obligation as the contracting entity to obtain a certificate of insurance and/or a notice of exemption from Pedro Vallez in regard to the work being performed at the time the claimant was injured. There is no evidence that Durango Drywall met this requirement and as such, they are deemed to insure the workers' compensation claim arising out of claimant's injury. [Welch/Panico]

Julio Garcia-Trujillo v. Atlantic Building Associates and v. Santos Construction, IAB Nos. 1419959 & 1419958 (NO DATES GIVEN). **Section 2311 only requires that the certificate of insurance be "facially" valid and it is not fatal in this instance that the otherwise-legitimate certificate of insurance excluded Delaware coverage** with a representative of Atlantic

Building Associates testifying that in her experience the COIs usually do not indicate which states are included or excluded for purposes of coverage and that often, particularly with Liberty Mutual policies, the subcontractors tend to have "Allstate's" policies, especially given the fact that contracting work in the area often overlaps between states. In support of this fact, ABA submitted 27 COIs that ABA had obtained in the time frame between March 2013 and March 2015 and the Board noted that not one mentioned inclusions or exclusions in terms of state coverage. Under these facts, and lacking any further direction from the statute, the Board felt that ABA acted in good faith and satisfied any due diligence requirement under the statute. [Bustard/Carmine]

Jeffrey Blake v. Ingerman Group, IAB No. 1438543 (6/21/16) (ORDER). **In this Section 2311 case, the Board rules that the contractor must verify that the Certificate of Insurance is valid in Delaware- -** "Ingerman argues that this is an unfortunate loophole in the statute that was unforeseen by the Legislature. The Board disagress- - if this were the case, the Legislature would have left a loophole big enough to drive a Mack truck through and ripe for exploitation by out of state contractors. Fortunately, the language in the statute clearly mandates that the coverage must be valid in Delaware. Consequently, the Board finds that Ingerman failed to obtain a COI valid for workers compensation coverage in Delaware and is required to provide insurance coverage for claimant in accordance with Section 2311(a)(5)." [Boyle/Fredricks/Wilson]

SECTION 2353FORFEITURE

Chester Stallings v. Arrow Leasing, IAB No. 1431665 (4/25/16). **A legal charge of inattentive driving does not rise to the level of Section 2353(b) forfeiture which requires "the employee's deliberate and reckless indifference to danger."** [Ament/Swift]

Carlos Velez v. J&D Carpets, IAB No. 1434479 (6/27/16) (ORDER). **The Board declines to rule in favor of a Section 2353(b) forfeiture for failure to use a safety device with regard to an injury sustained during the use of a table saw and with regard to the claimant's alleged failure to a use a "fence" to protect his fingers from getting too close to the blade.**

SECTION 2353(d), INCARCERATION

John Hart v. ILC Dover, IAB No. 1402811 (4/29/16) (ORDER). **Where temporary partial disability benefits are interrupted by the claimant's incarceration pursuant to 19 Del Code Section 2353(d), the claimant is entitled to immediate reinstatement of benefits upon release.** [Lutness/Skolnik]

SECTION 2363 ISSUES

Kenneth Ayers v. Industrial Mechanical, IAB No. 1407616 (5/25/16) (ORDER). **A future Section 2363 credit in favor of the carrier against the claimant's net third party recovery is *not* deemed waived- -** "A carrier is certainly free to waive its rights to to this credit and the

parties can bargain for that result. The problematic part of this equation for claimant is that the carrier must expressly state that it is waiving its right to the credit against future benefits." [Friedman/Nardo]

STATUTE OF LIMITATIONS

Wanda Johnson-Lister v. Christiana Care Health Services, IAB No. 1266151 (5/12/16) (ORDER). **The five-year statute of limitations of 19 Del Code Section 2361(b) runs from the date a payment is made, not the prospective date the benefit intends to cover.** This case dealt with receipt of partial disability benefits limited by statute to 300 weeks. A payment registered from the employer's insurance carrier indicates that the last payment was made on January 11, 2011 covering a period of partial disability which ended on January 19, 2011. In this case, finding that the last payment was "made" at the time of issuance of the last payment check is not unduly harsh. Claimant had, by statute, a generous five years to bring any additional claims. [Welch/Skolnik]

Gertrude Willey v. Energizer Personal, IAB No. 1440534 (8/5/16) (ORDER). **Notice of a tort claim in another state to a different carrier is not "notice" to the employer for workers compensation purposes sufficient to trigger its Statute of Limitations notice obligation;** claimant's Petition is deemed barred by the Statue of Limitations.

Valerie Douty v. State of Delaware, IAB Nos. 1258843 & 1360261 (6/27/16). **The Industrial Accident Board has the power to rule that a medical bill paid on a 2010 claim should have been paid on a 2004 claim, thereby tolling the Statute of Limitations.** [Long/Morris-Johnston]

TERMINATION

Bridget Gilmer v. E.I. DuPont de Nemours, IAB No. 1397345 (5/13/16). **The IAB denies a Petition to Terminate in the absence of a Functional Capacity Evaluation.** [Morrow/Ralston]

Bridget Gilmer v. E.I. DuPont de Nemours, IAB No. 1397345 (5/13/16). **A Petition for Review is denied, at least in part, because the defense medical evaluation is seven months old.** [Morrow/Ralston]

Anissa Brookins-Widman v. State of Delaware, IAB No. 1410373 (7/21/16). **The carrier's Petition to Terminate is denied where surgery for a non-union is imminent** with Dr. Eskander testifying on behalf of the claimant and Dr. Meyers testifying on behalf of the employer and with the Board commenting that the defense medical expert is less credible based on his assertion that the claimant's first cervical fusion surgery was not causally related, noting that such surgery was accepted as compensable by the employer. [Wilson/Rimmer]

Sonya Kindler-Chandler-Snowden v. Bayhealth Medical Center, IAB No. 1312514 (8/10/16). **The Carrier's Petition to Terminate total disability is granted where a Functional Capacity Evaluation would allow the claimant to engage in full time light duty work activity.** [Schmittinger/Nichols]

UTILIZATION REVIEW

Joseph Wilson v. Gingrich Concrete, IAB No. 1215102 (5/19/16). **The Board reverses a Utilization Review non-certification of caudal epidural injections, administered by Dr. Balu.** [Schmittinger/G. Baker]

April Tiller v. Foulk Manor North, IAB No. 1407809 (5/9/16). **The Board reverses a Utilization Review non-certification of Dynamic Physical Therapy, noting that 9 additional physical therapy visits were at issue.** [Weik/G. Baker]

Christopher Baker v. Chesapeake Plumbing and Heating, IAB No. 1350484 (3/23/16) (ORDER). **The Board cannot order an interim payment by the carrier for pain medications during the time frame between a Utilization Review non-certification of medications and a Utilization Review appeal Hearing.** [Yearick]

Shannon Tolbert-Callahan-Barnett v. Christiana Care, IAB No. 1316903 (5/13/16). **A Utilization Review non-certification of a discogram and CT scan is affirmed.** [Bartkowski/Newill]

Shannon Tolbert-Callahan-Barnett v. Christiana Care, IAB No. 1316903 (5/13/16). **The Board rules that a discogram is only appropriate for surgical candidates.** [Bartkowski/Newill]

Sherima Grant v. Providence Service, IAB No. 1422280 (4/5/16). **The Board affirms a Utilization Review non-certification of a discogram, commenting that a discogram is only to be done in consideration of surgery.** [Schmittinger/Richter]

Tonya Brown v. State of Delaware, IAB No. 1428984 (7/20/16). **The Board affirms a Utilization Review non-certification of treatment with Dr. Ufberg** with the observation that such treatment "appears to have provided minimal benefits at best..." and noting that Dr. Tadduni served as the defense medical expert. [Long/Sensor]

William Artwell v. WalMart, IAB No. 1377909 (7/24/16) (ORDER). **If medical bills are denied based on causation, there is no need to refer the bills to Utilization Review with the further observation that a referral to UR would concede causation.** The claimant's Motion on a Rule to Show Cause is denied; Dr. Fras was the prescribing doctor with regard to the treatment which involved a prescription for a Sequential Muscle Stimulation Unit. [Amalfitano/Gafford]

Nickeya Harris v. Food Liner, IAB No. 1414551 (7/21/16). **The Board reverses a Utilization Review non-certification of a shoulder surgery proposed by Dr. Craig Morgan,** rejecting the primary argument that surgery was unreasonable because the claimant never attended physical therapy or exhausted conservative measures and with the further observation that Dr. Morgan testified that he does not prescribe formal physical therapy but prefers the house of an in-house instructor to teach patients home exercises. [Silverman/Hunt]

Donna Sheridan-Simpson v. New Albertson's Inc., IAB No. 1398455 (7/21/16) (ORDER). **The claimant's Utilization Review appeal is thrown out by the Board for late filing, commenting that the appeal was not filed until over 75 days from the receipt of the UR determination.** [Silverman/Cooksey]

Raul Rivera v. EBC Carpet Services, IAB No. 1338590 (5/27/16). **The Board affirms a prior Utilization Review certification of pain management treatment with Dr. Xing noting that even the defense medical expert agreed that claimant had failed back syndrome and it was reasonable for him to be treated as a chronic pain patient.** [Ciconte/Panico].

Greg Lisckiewicz v. State of Delaware, IAB No. 1368751 (7/25/16). **The Board affirms a UR non-certification of acupuncture treatment** with the Board taking guidance from the Practice Guidelines which speak to the issue of proper duration of acupuncture treatment, noting that Dr. Schreiber continued offering the claimant treatment well beyond yet a third course of 14 acupuncture treatments with no definitive end in sight. [Morrow/Menton]

Eric Shepeard v. Signature Systems Services, IAB No. 1420180 (7/28/16). **The Board affirms a Utilization Review non-certification of treatment with Dr. Stephen Ficci including 75 PNT treatments and 50 trigger point injections,** noting that Dr. Eric Schwartz was the defense medical expert. [Amalfitano/Richter]

Florence Huffman v. Kent County SPCA, IAB No. 1369003 (7/28/16). **The Board reverses the Utilization Review non-certification of pain meds including Oxycodone, Lyrica, and Cyclobenzaprine based on the testimony of Dr. Manonmani Antony.** [Marston/Morgan]

Victoria Carney v. Happy Harry's, IAB No. 1258082 (6/28/16). **The Board rules that TOPICAL COMPOUND CREAM is no longer reasonable and necessary, noting that Dr. Jason Brokaw testified on behalf of the employer and Dr. Balu testified on behalf of the claimant.** [Schmittinger/Logullo]

Victoria Carney v. Happy Harry's, IAB No. 1258082 (6/28/16). **The Board reverses a Utilization Review non-certification on the use of Percocet.** [Schmittinger/Logullo]

Janelle Aboseh v. Nemours, IAB No. 1391662 (6/16/16). **The Board reverses a Utilization Review non-certification of physical therapy- -** "While at first blush, the number of visits would appear excessive, based on the evidence incorporated herein, the Board finds that the PT treatments at issue are reasonable and necessary. Claimant described the physical challenges her job presents and that the physical therapy was helping her strengthen to maintain proper posture while decreasing her muscle spasms and stiffness to enable her to perform her job duties...as of October 2015, claimant experienced 60% improvement. As of January 2016, claimant reported a 70% global improvement since the surgery. On February 24, 2016, claimant reported a 75% global improvement since the surgery...the Board accepts that the physical therapy has enabled claimant to continue working while enabling claimant to significantly improve." [Long/Ralston]

Maryann Taylor v. Vitas Healthcare, IAB No. 1410159 (5/31/16). **The Board affirms a prior Utilization Review non-certification of chiropractic treatment rendered by Dr. Faith Kim** with the Board observing that despite 43 chiropractic visits, there was no overall decrease in trend in claimant's symptoms nor were there documented ongoing quantifiable, objective and functional improvements. Dr. Gelman served as the defense medical expert. [Long/Swift]

Christopher Baker v. Chesapeake Plumbing and Heating, IAB No. 1350484 (8/18/16). **The Board reverses a Utilization Review non-certification of urinalysis and scripts for OxyContin, Oxycodone and Lunesta** with Dr. Eva Dickinson testifying on behalf of the claimant and Dr. Jeff Meyers testifying on behalf of the employer. [Gualap/Durstein]

VOLUNTARY REMOVAL FROM THE LABOR MARKET

Kim Goodwin v. Ace Insurance, IAB No. 1330121 (6/16/16). **The Board finds that the claimant has voluntarily removed herself from the workforce** with an overview of the factors involved in its analysis with the Board commenting that one factor would be claimant's efforts at finding other employment, another factor being the claimant's age and yet another factor being the duration of claimant's period of inactivity. [Long/O'Connor]

Darren Archangelo v. State of Delaware, IAB No. 1389452 (5/27/16). **One may withdraw from the competitive labor market without having formally retired;** a 45 year-old claimant with a college who does not look for work for 16 months is deemed NOT a voluntary withdrawal from the workforce under these facts- - " claimant in this case has chosen to concentrate instead on improving his physical condition to allow him to return to his chose career. Should he be

successful, his earning capacity would increase and employer's exposure for partial disability would decrease, if not totally disappear. Thus, employer may get the benefit of claimant's focus on getting better. Claimant is reasonably young, and much younger than the average person who decides to leave the workforce." [Lutness/Durstein]

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please contact Cassandra F. Roberts at
302-571-6622 (tel)
croberts@ycst.com

Cassandra's law blog, The Delaware Detour and Frolic, can be accessed at:
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APPELLATE OUTCOMES

English v Reed Trucking, C.A. No. N15A-05-007 PRW (7/6/16). After retracting an opinion of 4/25/16, the Court issued an updated Opinion and Order after oral argument concerning a claimant's appeal and employer cross-appeal. The Board decision awarding permanency benefits was affirmed. Substantial evidence existed to support accepting the defense expert's opinion and reliance on the 6th edition AMA Guides over the claimant's expert and his use of the 5th edition. The Court also rejected the employer's cross-appeal challenging the Board's award of medical witness fees. The employer argued that since it stipulated pre-hearing to the permanency amount that ended up being awarded by the Board, there was no "favorable result" that constituted an award. However, the Court interpreted the term "award" to not just mean the hearing result, but the result of the entire petition. Therefore, even with the pre-trial stipulation, there was a Board award and the statute required an award of deposition costs. [Nitsche&Pratcher/Andrews].

Fountain v McDonalds, C.A. No. S15A-07-005 MJB (6/30/16). The claimant appealed the Board's decision denying a DACD petition seeking compensation for a 2014 low back surgery. The claimant had a 2001 low back injury and in 2006, the Board found the injury and treatment at that time compensable. Relying on the defense expert in the present case, the Board held there was evidence that claimant's current back condition was more similar to her pre-work injury condition per the records. On appeal, claimant argued that the Board erroneously relied on facts from the 2006 Decision. The Court held there was no violation of the doctrine of *res judicata*. The issues presented were different in 2015 from 2005. The current Decision did not reverse the 2006 causation determination, but simply held that the 2014 surgery was related entirely to a pre-existing scoliosis condition. The Court also affirmed the Board's interpretation of Rule 9 to reject a motion to strike medical testimony when there was late production of the DME report and pretrial memorandum as there was no unfair surprise at time of hearing. [Green/Hartnett].

Nanticoke Health Services v Washington, C.A. No. S15A-07-004 ESB (6/28/16). In a "successive carrier liability" case, the Board found that the carrier for a 2010 low back injury was responsible for payment of recent medical bills and the carrier for a 2011 low back injury was not. Although the 2011 injury was more recent in time, the 2010 injury resulted in an ongoing lumbar radiculopathy condition. The 2011 injury did not injure or aggravate that problem. The 2010 carrier appealed that decision, and argued that under Nally, there was an untoward event and new low back injury so liability for that body part should shift. The Court affirmed the Board decision. It was noted that the 2010 carrier paid for treatment through 2014 before attempting to shift liability to the 2011 carrier. The 2010 injury causing radiculopathy was a different diagnosis and in a different location from the 2011 lumbar strain. Just because both were injuries to the low back in general did not allow the 2010 carrier to automatically shift liability under the Nally standard. **[**Dunkle/Logullo/O'Connor]

Davis-Moses v Keystone Human Services, C.A. No. N15A-10-013 AML (6/24/16). The sole issue in this claimant's appeal was whether the Board erred procedurally at hearing when it declined to exclude evidence as to the extent of damage to a vehicle involved in the car accident. The claimant relied on the Supreme Court case of Davis v Maute, which held generally that a party in a personal injury case may not directly argue that the severity of injuries from a car accident correlate to the extent of damage to the cars without competent supporting expert testimony on the issue. The Board's decision was recommended to be affirmed by Commissioner Manning. Board proceedings are not bound by traditional rules of evidence per the spirit of worker's compensation statute and also Board Rule 14. The Commissioner cast doubt on the applicability of Davis v Maute to Board hearings. Even if it did apply, the claimant's medical expert opened the door to such arguments by relying on the force of impact to support his causation opinion. [Lutness/Yearick]

Kirkland v Terminix, C.A. No. N15A-08-003 AML (6/17/16). The employer filed a Petition for Review, seeking a determination that the claimant could return to work, and also that the work injuries had resolved fully. Right before the hearing on the merits, the claimant conceded that he was not totally or partially disabled and asked that the hearing not go forward. The employer however proceeded forward to seek a determination on whether the injuries had fully healed. The claimant objected to the hearing and argued that since the employer did not write on the petition that it was seeking a determination that the work injuries resolved, it was required to file a second petition alleging same under Board Rule 26. The Board overruled the objection, finding proper notice was provided, but also continued the hearing to allow claimant additional time to obtain deposition testimony. At the next hearing date, only the employer presented medical expert testimony. The claimant testified on her own behalf and once again objected procedurally to the hearing taking place. In the Decision, the Board determined that the work injuries fully resolved. On appeal, claimant's again argued that the "injury resolved" issue was not properly before the Board. The Court affirmed the Board's decision. Deference was given to the Board's interpretation of its own rules. Even if the Board had erred, the continuance the Board had granted at the first hearing remedied any prejudice. **Matter pending before the Supreme Court.** [Weik/Ellis]

Bayhealth Medical Center v Loper, C.A. No. K15A-09-007 WLW (6/22/16). The Board in this case denied the employer's petition for review to terminate total disability benefits. The employer appealed, arguing first that the Board erred by concluding the claimant was medically totally disabled when even the claimant's expert said she could do at least sedentary duty work. The Court found no error in the Board's determination, as the claimant expert's opinions on release to work were "generalities and were made without the benefit of an examination subsequent to his order not to work." The employer next challenged the Board's finding that the claimant was an actual displaced worker. A remand was sought in part due to the brevity of the Board's analysis on this issue. The Court found substantial evidence from the Board's Summary of Evidence section to affirm and stated that such determinations do not always require a "verbose analysis." [Dunkle/Morris-Johnston]