BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

ANGELA RABOIN,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing Nos. 1375687 and 1372848
	)	
STATE OF DELAWARE,	)	
	)	
Employer.	)	

DECISION ON PETITIONS TO DETERMINE COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before the Industrial Accident Board on April 2, 2012, in the Hearing Room of the Board, Milford, Delaware.

PRESENT:

MARY DANTZLER

WILLIAM HARE

Julie G. Bucklin, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

Henry C. Davis, Attorney for the Employee

Paul Tatlow, Attorney for the Employer

NATURE AND STAGE OF THE PROCEEDINGS

On August 29, 2011 and November 1, 2011, Angela Raboin ("Claimant") filed Petitions to Determine Compensation Due (IAB Nos. 1372848 and 1375687, respectively) seeking workers' compensation benefits from the State of Delaware ("the State") stemming from industrial accidents that occurred on August 31, 2008 and December 16, 2010. Claimant seeks acknowledgment that the accidents occurred within the course and scope of her employment. The State argues that the statute of limitations has run on Claimant's 2008 accident and that she was injured outside of the course and scope of her employment in 2010. The State did not dispute the reasonableness or necessity of the medical treatment or disability period. On April 2, 2012, the Board conducted a hearing on Claimant's petitions and this is the Board's decision.

SUMMARY OF THE EVIDENCE

Claimant, fifty-one years old, testified about her job with the State and about her industrial accidents. Claimant was employed by the State as a corrections officer at the Vaughn Correctional Center.

On August 13, 2008, towards the end of the night, Claimant was checking her area of the facility after lockdown and noticed the lights on in the telephone room. Two inmates were in the telephone room an hour and a half after they are allowed to be in there, so she told them to leave. One inmate ran out of the room. The second inmate cursed at Claimant, would not leave, and stayed on the telephone. Claimant reached out to hang up the telephone and the inmate grabbed her arm and threw her across the room like she was a doll. When she got up, she had handcuffs in one hand and pepper spray in the other hand. She pepper sprayed the inmate and kicked the back of his knees, so he fell to the ground and she handcuffed him while calling for backup.

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Once things calmed down on the unit, she had to do paperwork on the incident and she was not taken to the infirmary, even though the inmate was taken to the infirmary immediately after the incident. There was an incident report filed regarding the actions taken, but there was no medical report filed on behalf of Claimant and there was no First Report of Injury filed. Claimant did not think that she was injured and inhaling pepper spray is just a job hazard, so she did not think of it as a medical issue. She finished her shift and went home.

Claimant had a scheduled day off the next day and she felt stiff, but did not think much of it because of the scuffle. On her second day off, she felt pain under the chest area, but she did not think that she injured her ribs during the scuffle. Three days after the incident, Claimant was working and felt pain under her ribs, so she looked at the area and saw a rash. She went to the infirmary and the nurse told her to go to the emergency room immediately. Claimant was then diagnosed with shingles. After Claimant recovered from shingles, she returned to work full-time and full-duty as a sergeant. She was paid hourly and earned overtime until December 16, 2010.

Prior to the December 2010 accident, Claimant had spent two days cooking for the staff Christmas party. There is a holiday meal prepared every year for the staff only. Each shift is given a check by the Employee Fund Committee ("the Committee"). There is a Christmas party chairperson with one or two assistants per shift to plan and prepare that shift's party. For the prior six years, Claimant worked on a different shift and was an assistant for the event. The chairperson receives the check after signing the paper indicating that he or she will follow the rules and keep track of every cent spent.

On Claimant's previous shift, Captain Rispoli asked her to help with the party. In general, there is a duty roster for the employees working, as well as an administrative payroll. On Claimant's previous shift, she was paid administratively to stay home for one or two days to

cook for the party, as well as for the day of the party. She was still paid by the State in her paycheck, but the funds were for administration rather than from the duty roster.

On the new shift in 2010, Captain Fowler asked Claimant to be the chairperson for the Christmas party and to replicate what she had done on her previous shift. She was in charge of scheduling the party, planning the menu, cooking the food, and serving the food. Sergeant Travies helped her. Prior to the party, Claimant planned the menu and made flyers for the staff. She sent copies of the flyer to Captain Fowler to approve and print and then Claimant posted the flyers around the building. The only people invited to the party are the people working on that shift on that day.

Captain Fowler did not authorize for Claimant to be paid for the days that she was cooking the food; she was only paid for the day of the party. Claimant spent her two days off cooking with friends and family at home. On the day of the party, she was paid administratively and another employee took her duty shift. Claimant was injured on the day of the party.

On December 16, 2010, Claimant loaded her truck with all of the food for the staff Christmas party that she had cooked on the previous few days. Her shift was from 8:00 a.m. until 4:00 p.m., so she was paid for the entire shift. Claimant did not want to bring the food to work at 8:00 a.m. for the party that was scheduled for later in the day, because there was no refrigeration available for that much food. She loaded her truck with all of the food for the party around 9:00 a.m.

Everything was in the truck except for one crock-pot. Claimant was getting ready to go to work to set up for the party. She was looking in the back of the truck under the door on the cap of the truck and the door fell down and struck her on the back of the head and she fell into the truck. It must have knocked her out and when she woke up, she had to tell herself to push the

cap door off of her. She felt like she had been "knocked silly" and had to sit down for a few minutes. She got herself together and went inside her home, took Tylenol, and then realized that she had to get to work with the meal, so she went to work to set up for the party.

When Claimant got to work, Captain Fowler asked where she had been and why she was wearing street clothes rather than her uniform. She said that she had been struck on the head by her truck cap, had a terrible headache, and was not going home to change into her uniform. He looked at her head, saw a goose egg bump, and agreed to let her stay in her street clothes. There were about twelve officers that helped her unload her truck and she told them where to put the food. The room had not been set up properly, so the officers helped her rearrange it and set up the food trays. She had cooked for about two hundred fifty people.

The party went fine, but when the trays were empty and needed to be replaced, Claimant could not lift the trays and had to get a male officer to help lift them; Claimant thought it was because she was still "woozy" from the truck cap striking her head. Then, she tried to slice the ham, but she could not do it and had to get someone else to slice it. Other officers helped her plate the desserts and clean up after the party while she directed everything.

After it was over, Claimant realized that she had not eaten anything and then she felt nauseated, dizzy, and almost fainted, but coworkers caught her. Claimant's arms felt numb and she could not move them. She sat down for about thirty minutes and watched the other officers clean everything while they told her not to do anything. Lieutenant Simon told Claimant to go to the Shift Commander's office and then asked her how she felt because he heard that she almost fainted. She said that she was fine except that her arm was numb and he offered to get her to the emergency room. She refused to go to Kent General Hospital, but agreed to go to the hospital if her primary care physician said that she needed to go. Lt. Simon tried to reach her doctor, but

could not reach him. Claimant said that she felt well enough to drive home and Lt. Simon made her promise to call her doctor and do what she was told to do. Claimant reached her doctor when she got home and was told to go to the emergency room because of the numbness, so she went to Beebe Medical Center ("Beebe").

While at Beebe, Claimant answered about fifty questions and then got x-rays, an MRI and a CT scan. Dr. William Pfaff examined Claimant and said that she had problems with her cervical spine and had to stay in the hospital. She was in the hospital for three days. Dr. Pfaff said that surgery was the only option because she had impingement on the spinal cord and that the only question was when to get the surgery. He said that there were old and new injuries and that there was a chance of permanent paralysis if she was injured again. He would not allow Claimant to return to work.

In January 2011, Claimant had a minor bounce and felt numbness in her legs that scared her and she went back to Dr. Pfaff. X-rays showed that her condition was worsening and he said that she needed surgery to the cervical spine at that point. She underwent surgery with Dr. Pfaff on January 27, 2011 and she underwent a second cervical spine surgery with Dr. Pfaff on June 9, 2011. Claimant has not returned to work since the 2010 Christmas party because Dr. Pfaff kept her on total disability status. She gave the total disability forms to work each time she saw Dr. Pfaff. Claimant has still not been released to return to work. She last saw Dr. Pfaff about three months ago and has another appointment scheduled with him in May 2012.

When Dr. Pfaff said that she had nerve damage, she told him about the neck pain and intermittent numbness. She also recalled having shingles three days after being thrown across the room at work in 2008 and told Dr. Pfaff about that incident and shingles. Her primary care doctor had told her that the nerve symptoms from shingles were brought on by the stress from

the attack. She had been given medication for shingles for six weeks in 2008, as well as blood pressure medication because the shingles made her blood pressure sky high. She still had pain in the back of the neck and shoulders, as well as periodic numbness in the hand and arm. Her primary care physician said that Claimant needed a different job because she was stressed and had no business working in a prison and that the emotional stress from the incident caused the onset of shingles. Dr. Pfaff explained in 2010 that the shingles was a clue that Claimant had nerve damage from being thrown at work and that the body grew new bones to support the neck after the 2008 incident. He also said that the 2008 and 2010 incidents were the direct causes of the cervical spine injury.

The Employee Fund Committee funds parties and sponsors bus trips with money earned from the vending machines that are located in the staff areas. Claimant is not on the Committee. The Committee allows the Christmas parties to occur and says how much money can be spent for the parties. Captain Fowler was given a check from the Committee and he gave it to Claimant and she signed for it to pay for the food. The check was from the State of Delaware and it was noted to be from the Committee.

William Pfaff, M.D., a board eligible orthopedic spine surgeon, testified on behalf of Claimant. Dr. Pfaff began treating Claimant at the emergency room in December 2010.

Claimant had struck her head on her truck during a work party. She presented with complaints of bilateral upper extremity numbness, tingling, pain, and weakness. Dr. Pfaff admitted Claimant to the hospital from the emergency room and thought that she had a central cord syndrome from the hyperextension injury to the neck. He gave her steroids, which seemed to help a bit, but then found out that she was allergic to steroids.

At the first outpatient appointment on January 3, 2011, Claimant reported the same complaints of bilateral upper extremity numbness and tingling. Claimant reported that she had complaints of dizziness, issues with balance, and some fine motor difficulties with regards to her coordination for at least a year dating back to an assault at work as a corrections officer. Based on that history, Dr. Pfaff thought that Claimant had been suffering from an underlying spinal cord impingement. An MRI showed cervical stenosis at C5-6 and the symptoms were brought on by the assault at work and the truck cap striking her head. Dr. Pfaff could not differentiate the findings between the two accidents, but the symptoms correlate directly to the MRI findings.

Dr. Pfaff performed cervical spine surgery on January 27, 2011, as a result of the findings and symptoms. During surgery, he took out the disc and bone spurs and put in plates and screws to create a fusion at the C5-6 level. Claimant had stenosis, so there was impingement of the spinal cord and the surgery was performed to help relieve the pressure. Since Claimant's symptoms were different after the second accident, Dr. Pfaff believes that some of the issues were related to both accidents.

Following surgery, Claimant continued to have neck pain and left arm symptoms, but the right arm symptoms resolved. Dr. Pfaff hoped that the symptoms would calm down, so he treated her with Percocet and a soft cervical collar for comfort. On February 18, 2011, Claimant reported that she had some right upper extremity symptoms, including numbness, tingling, and pain, which she said was worse than it had been preoperatively. Dr. Pfaff ordered a CT scan, which showed that the hardware was in good position and the right C5-6 foramen was widely patent, but there continued to be stenosis on the left neuroforamen at C5-6, secondary to an osteophyte. He treated Claimant conservatively with physical therapy, Lyrica, and Percocet, but

the treatment did not control her pain, so he performed a second surgery, which was a laminectomy on June 9, 2011.

Following the second surgery, Claimant continued to have pain, particularly in the left shoulder, as well as some pain in the right hand and neck. Her primary complaint was neck pain. Surgery had relieved some of the pain, particularly the numbness along the arm. The continued symptoms were consistent with having some damage to the spinal cord itself. Claimant's recovery is slow and Dr. Pfaff is trying to wean her off of the narcotics. At the appointment on December 23, 2011, Dr. Pfaff prescribed Tramadol, which is a narcotic, but it works differently than other narcotics.

Dr. Pfaff believes that Claimant's condition is as good as it can get at this point from the surgical intervention. If Tramadol does not help Claimant, Dr. Pfaff will consider referring her to pain management. Claimant has been on total disability status since Dr. Pfaff first saw her in the emergency room in December 2010. At the last appointment, he discussed with her about the possibility of getting a functional capacity evaluation ("FCE") to determine her current capabilities. She remains total disabled until she obtains the FCE. He expects to see her again in June 2012.

Following the initial MRI, when Dr. Pfaff and Claimant discussed her history with the assault, she asked if that had something to do with her symptoms. She had never had the symptoms prior to the assault and they were intensified by the 2010 incident when she was struck on the head by the truck cap. Dr. Pfaff told her that her symptoms were most likely related to both accidents and that was the first time that the assault was specifically connected to the damage to her neck. The MRI findings were consistent with an old injury and the more acute phase of hitting her head.

David Pierce, the Deputy Warden II at the Vaughn Correctional Center, testified on behalf of the State. There are about one thousand employees at the Vaughn Correctional Center. Claimant worked as a correctional sergeant before the December 2010 incident.

The employee Christmas party is not part of a "company" policy or State policy. The Employee Fund Committee consists of seven elected volunteer positions and is funded by the snack machines located in the staff areas. The machines are located on Department of Corrections property and the State determines which vending company has the contract for supplying the machines. Mr. Pierce is not sure who arranged the profit share that the employees get from the vending machines. The money is used for employee trips and parties or to send flowers to employees who lost a spouse. The funds for the Christmas party are from the Committee from the snack machines.

The Department of Corrections has no involvement in the Committee or who is on it. The Committee consists of volunteers who are employees of the correctional center and the parties are for the employees only. There is no recognition, advancement, or compensation for being on the Committee. The Department of Corrections does not provide any money or input into the Committee or its funds. The Committee keeps the warden apprised of what it is doing with the money because the warden has to give permission to use the Department of Corrections property, such as for the Christmas party. The warden does not have any say in the bus trips or fishing trips, because the employees go elsewhere and are not on duty when they go on those trips. When the Committee hosts a party, it needs permission from the warden because the employees are getting paid while attending the party, they are helping with the party rather than working, and the party is being thrown in the Department of Corrections facility. The Department of Corrections cooperates with the party plans and coordinates between the

Department of Corrections and the Committee because some managers spend some work time organizing the parties. The Department of Corrections does not ensure that the parties occur; there are some shifts that do not host parties during some years. Mr. Pierce cannot dispute Claimant's testimony about what occurred for her shift party because he was not involved in planning the party.

There is no benefit to the Department of Corrections from the party; there is no money going to the Department of Corrections from the party; and there is no benefit of the public image being impacted by the party. The only potential benefit to the Department of Corrections from the parties is improved morale of the employees.

Mr. Pierce is not aware of the employees being paid for working on the parties. The payroll roster indicates that the employees are working administratively so that the administration understands where the employee was working during the shift and why there are additional people on the schedule for that shift, but the employee is still paid on the same payroll account at her regular wage. Mr. Pierce is not aware of employees being paid while preparing food at home. Claimant is generally paid hourly for a standard forty-hour workweek plus overtime. She was permitted to help serve the food during her regular shift. The employees helping with the parties are paid for the day of the parties as part of their regular duty shift; they are paid by the State, not by the Committee. Claimant should only be paid for when she was at the Corrections Center, not for the time loading her truck at home on the day of the party. Mr. Pierce did not have the payroll records with him, so he could not say whether Claimant was paid for the whole shift or not. Mr. Pierce agreed that if Claimant had been struck in the back of the head while unloading the food from her truck at the Vaughn Correctional Center, then it would have been an accepted industrial accident.

The warden might allow Claimant to cook the food at the Corrections Center if it was requested and it was for a reasonable amount of time. Mr. Pierce is not aware of any such requests being made in the past for the Christmas parties. Money from the Committee could be used to buy prepared food, if the party chairman so chooses.

Jerry L. Case, M.D., a board-certified orthopedic surgeon, testified by deposition on behalf of the State. Dr. Case examined Claimant on January 26, 2012 and reviewed her medical records in conjunction with that examination. Dr. Case believes that Claimant's medical treatment was reasonable, necessary, and causally related to her 2010 accident.

Claimant told Dr. Case about the altercation with the inmate in August 2008 and subsequent diagnosis of shingles, as well as the accident with the truck cap striking her head in December 2010 while preparing for the office party. Dr. Case reviewed the medical records, including the operative reports from Dr. Pfaff.

In January 2012, Claimant had pain and numbness in the arms, as well as neck pain. She was taking Vicodin and Tramadol. The physical examination showed that Claimant had mild to moderate problems related to her cervical spine, in that she had reduced range of motion and some tenderness. Claimant was status post anterior cervical discectomy and fusion at C5-6 on January 27, 2011 and status post posterior laminectomy and decompression with posterior fusion of C5-6 on June 9, 2011. If the history is correct, then Dr. Case relates Claimant's cervical spine injury to the truck cap lid striking her on the head in December 2010; that event was sufficient to cause the need for surgery.

Dr. Case reviewed Claimant's medical records, including the ones related to the 2008 incident. She first presented to the emergency room at Beebe on September 5, 2008 and was diagnosed with shingles. There were no complaints noted involving the head, back, right arm, or

neck; she had a rash and complained of pain over the right breast that spread to her back. Claimant reported to Dr. Case that she had been told that she had a mini stroke, but there was no MRI of the brain performed and nothing noted about a mini stroke in the medical records. Dr. Case explained that the rash would have nothing to do with the altercation with the inmate.

In January 2012, Dr. Case thought that Claimant was capable of working full-time in a light duty capacity. She should avoid overhead lifting, frequent turning of the head, and lifting more than ten to fifteen pounds.

Dr. Case believes that the surgeries that Dr. Pfaff performed were reasonable, necessary and causally related to the accidents, assuming that Claimant's history was correct. Dr. Case is sure that Claimant will still have some limited motion and discomfort in the future; it is unlikely that she will be completely asymptomatic. Dr. Case agreed that it is not possible to determine which accident caused the abnormalities seen on the MRI. He also agreed that after the 2010 accident, Claimant had significant symptoms that were correctly attributed to her neck problem. There is no record of anyone diagnosing the neck as being the producer of her pain or symptoms after the 2008 accident, so she did not get any treatment for the neck at that point.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The State argues that the statute of limitations has run on the 2008 accident, so it is not compensable at this point. Claimant argues that the State was required to give her notice of the statute of limitations, but failed to do so after the 2008 accident even though the State was well aware of her altercation with the inmate and the use of pepper spray. Claimant also argues that she was misdiagnosed in 2008 and did not know about the relationship between the shingles diagnosis and the altercation and she is not able to counter what her doctor told her was the cause

of her shingles; Claimant finally got a proper diagnosis after she switched doctors after the 2010 accident. Since Claimant did not have knowledge of a neck injury until after the 2010 industrial accident, she argues that the statute of limitations on the 2008 accident did not begin to run until after the 2010 accident when Dr. Pfaff diagnosed her with an old and new cervical spine injury.

The Board finds that in this particular situation, the State was aware of Claimant's 2008 altercation with the inmate, but did not send her for an evaluation, even at the infirmary. The State did not give Claimant proper notice of the statute of limitations in this case either. Furthermore, Claimant was not aware of a cervical spine injury until after her 2010 accident. Therefore, the Board finds that for both reasons, the statute of limitations on the 2008 industrial accident did not begin to run until after Claimant was diagnosed with a cervical spine injury after the December 2010 accident.

Course and Scope of Employment

In order to be eligible for workers' compensation benefits for the 2010 accident, Claimant must prove that the injury she sustained on December 16, 2010 was "by accident arising out of and in the course of employment." 19 *Del. C.* § 2304. There is no question that Claimant was within the course and scope of her employment during the 2008 industrial accident, so the focus of this discussion involves the 2010 accident. For the following reasons, the Board finds that Claimant has met her burden of proof.

Since Claimant was at home when her truck cap door struck her on the back of the head, the State argues that Claimant's injury is not compensable, because she was not in the course and scope of her employment. There is a well-defined rule regarding "going and coming" to work. The "going and coming" rule precludes "workers' compensation benefits to employees who sustain injuries while traveling to and from work since those employees encounter the same risks

during their daily commute as does the general public. Those hazards are the same risks which confront employees on personal excursions." *Bedwell v. Brandywine Carpet Cleaners*, 684 A.2d 302, 304 (Del. Super. 1996) (*citing Devine v. Advanced Power Control*, 663 A.2d 1205, 1210 (Del. Super. 1995)); *see also Stevens v. State of Delaware*, Del. Super., C.A. No. 01A-11-003, Cooch, J. (May 23, 2002).

In the case at hand, Claimant was doing work at home when she was injured, as she was loading the food for the staff Christmas party into her truck. The State argues that Claimant was outside the course and scope of her employment at the time of her accident because she was at home when it occurred. Mr. Pierce agreed that if Claimant had been struck in the back of the head while unloading her truck at the Vaughn Correctional Center, then it would have been an accepted industrial accident.

The Board finds that Claimant was within the course and scope of employment at the time of her accident. Claimant was performing her job duties for the day, although they were not her normal job duties as a correctional officer, and she was injured during regular business hours during her regular shift for which she was paid. The fact that Claimant was in her driveway at the time of the accident does not take this accident outside of the course and scope of employment in this particular case because she was authorized to be outside of the Corrections Center that morning to get ready for the staff party. Claimant was being paid for her shift that day, from 8:00 a.m. until 4:00 p.m. and the accident occurred around 9:00 a.m. while she was performing her job duties for the day. She was still under the control of the State at the time of her accident and was within the course and scope of her employment at the time of the accident. Furthermore, the warden authorized the staff Christmas party, even though it was not funded by the State. Claimant was paid for her time that day to bring in and serve the meal and other

employees were paid for their time to set up the room, unload Claimant's truck, serve the meal, and clean up.

Based on the foregoing, the Board finds that Claimant was acting within the course and scope of her employment when she was injured on December 16, 2010, even though she was still at home when she was injured. The Board finds that Claimant was working from home that morning pursuant to the instructions of her supervisor in order to bring in all of the food that she had prepared for the staff Christmas party.

Neither of the doctors was able to separate out the injuries to assign a separate injury to each industrial accident. Claimant was able to work in a full-duty capacity until the December 2010 accident, despite the assault in 2008. Even Dr. Case agreed that all of Claimant's treatment has been reasonable, necessary and causally related to the 2010 industrial accident; therefore, the Board finds that Claimant's cervical spine injury is compensable and causally related to the 2010 industrial accident.

Attorney's Fee and Medical Witness Fee

Having received an award, Claimant is entitled to a reasonable attorney's fee assessed as costs against the State in an amount not to exceed thirty percent of the award or ten times the average weekly wage, whichever is smaller. *Del. Code Ann.* tit. 19, § 2320. Claimant's counsel submitted an affidavit attesting to 16.25 hours of preparation for this four-hour hearing. This case was not novel or difficult, nor did it require exceptional legal skills to try properly. It was not argued that acceptance of this case precluded other employment by Claimant's counsel. The Board considered the fees customarily charged in this locality for similar legal services, the amounts involved and the results obtained. The Board also considered the argument that this case posed time limitations upon Claimant's counsel, the date of initial contact on May 5, 2011,

and the relative experience, reputation, and ability of Claimant's counsel. It was argued that the fee was contingent, that Claimant's counsel does not expect to receive compensation from any other source, and that the employer is able to pay an award. *General Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973).

The Board must consider the ten factors enumerated in *Cox* when considering an attorney's fee award or else it would be an abuse of discretion. *Thomason v. Temp Control*, Del. Super. Ct., C.A. No. 01A-07-009, Witham, J., slip.op. at 5-7 (May 30, 2002). Claimant bears the burden of establishing entitlement to an attorney's fee award and must address the *Cox* factors in the application for an attorney's fee. Failure to address the *Cox* factors deprives the Board of the facts needed to properly assess the claim. The *Cox* factors were addressed in the Affidavit Regarding Attorney's Fees.

In the case at hand, based on the results obtained, information presented and the State's failure to argue that an attorney's fee award is not appropriate, the Board finds that one attorney's fee in the amount of $6,675.00 is reasonable. *Del. Code Ann.* tit. 19, § 2320. This award is reasonable given Claimant's counsel's level of experience and the nature of the legal task. In accordance with § 2320(10)a, the attorney's fee awarded shall act as an offset against fees that would otherwise be charged by counsel to Claimant under their fee agreement.

As there is an award, medical witness fees are taxed as costs against the State. *Del. Code Ann.* tit. 19, § 2322(e).

STATEMENT OF THE DETERMINATION

Based on the foregoing, the Board GRANTS Claimant's Petition to Determine Compensation Due. Claimant is entitled to payment of medical expenses and total disability

benefits accordingly. As there is an award, Claimant is also entitled to payment of medical witness fees and an attorney's fee in the amount of $6,675.00.

IT IS SO ORDERED THIS 11th DAY OF APRIL 2012.

INDUSTRIAL ACCIDENT BOARD

/s/ Mary Dantzler

/s/ William Hare

I hereby certify that the above is a true and correct decision of the Industrial Accident Board.

Julie G. Bucklin
Workers' Compensation Hearing Officer

Mailed Date 4-13-12

OWC Staff