EFiled: Aug 19 2013 01:03PM EDT
Transaction ID 53790857
Case No. N12A-08-010 ALR

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

UNITED DOMINION INDUSTRIES,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N12A-08-010 ALR
	)	
JOSEPH UNIATOWSKI,	)	
	)	
Appellee.	)	

Submitted: June 24, 2013
Decided: August 19, 2013

On Appeal from Decision of the
Industrial Accident Board
AFFIRMED

MEMORANDUM OPINION

H. Garrett Baker, Esquire, Nathan V. Gin, Esquire, Elzufon, Auston, Tarlov & Mondell, P.A., Wilmington, Delaware, Attorneys for Appellant

Michael L. Sensor, Esquire, Perry & Sensor, Wilmington, Delaware, Attorneys for Appellee

ROCANELLI, J.

This is an appeal by United Dominion Industries ("Employer") of the July 23, 2012 decision ("Decision") of the Industrial Accident Board ("Board"). Joseph Uniatowski's ("Claimant's") filed with the Board a Petition to Determine Additional Compensation Due ("Petition"). In its Decision, the Board awarded to Claimant the medical costs at issue in the Petition as well as attorneys' fees. The Board concluded that Claimant's Petition was not barred by the five-year statute of limitations. Employer maintains that the Board erred as a matter of law when the Board concluded that the medical costs sought in Claimant's Petition were not barred by the statute of limitations.

FACTUAL AND PROCEDURAL CONTEXT

Claimant was working for Employer on August 1, 1999 when his lungs and respiratory system were injured in a compensable work accident ("August 1999 Work Accident"). Claimant received medical treatment and those medical bills were paid by worker's compensation insurance from November 1999 through April 2002. The last payment made for medical expenses during this period was on April 26, 2002. From February 22, 2000 until March 6, 2001, Claimant also received total disability benefits.

On March 7, 2001, Employer's insurance carrier sent Claimant's counsel an "Agreement and Receipt for Compensation Paid." The Receipt stated: "[C]laimant has the right within five years after the date of the last payment to petition the

Industrial Accident Board for additional compensation." Eventually, in 2002, Claimant and Employer agreed to commute all Workers' Compensation benefits, except for medical treatment, which was left open.

More than seven years passed before Claimant sought payment for additional medical expenses which he claimed were treatment for injuries related to the August 1999 Work Accident. From August 13, 2009 to February 12, 2011, medical expenses were paid by the insurer without objection. (These payments were compensation for treatment received between August 2009 and April 2010.) However, the insurer denied coverage for medical care submitted by a bill dated October 18, 2011, and refused to pay additional medical expenses. Shortly thereafter, Claimant filed the Petition at issue in this appeal.

Employer argued to the Board that the statute of limitations expired five (5) years after April 26, 2002, the last payment of medical bills before the seven-year gap in a claim received. Employer further argued that medical expenses reimbursed from August 2009 through February 2011 were reimbursed in error and did not operate to revive the statute of limitations. According to Employer, medical expenses reimbursed from August 2009 through February 2011 were the result of error and any additional payments were barred by the statute of limitations.

Employer's contentions were rejected by the Board which concluded that Claimant's medical expenses should be paid because they were not time-barred. Specifically, the Board concluded that the payments made from August 2009 through February 2011were made under a feeling of compulsion which tolled the statute of limitations.[1] The Board rejected the testimony of the insurance adjuster who testified that the later payments were made by mistake, finding that the testimony was not credible under the circumstances presented.

STANDARD OF REVIEW

On appeal from the Industrial Accident Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record.[2] "Substantial evidence" is less than a preponderance of the evidence but is more than a mere scintilla.[3] It is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[4] The Court must review the record to determine if the evidence is legally adequate to support the Board's factual findings. The Court does not "weigh evidence, determine questions of

[1] The Board also addressed the question of whether Claimant had notice of the statute of limitations. However, because the Board found that the statute of limitations was tolled by the renewed payments from August 2009 through February 2011, it is not necessary for the Court to address whether Claimant had address notice of the statute of limitations in 2002.
[2] *Histed v. E.I. DuPont deNemours & Co.*, 621 A.2d 340, 342 (Del. 1993).
[3] *Richardson v. Perales*, 402 U.S. 389, 401 (1971).
[4] *Histed*, 621 A.2d at 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

credibility or make its own factual findings."[5] On appeal, the Superior Court reviews law issues *de novo*.[6]

DISCUSSION

The payments made from November 1999 through April 2002 are not in dispute. The question presented to the Board was whether Claimant had any claim to be reimbursed for medical expenses seven years later. Between August 13, 2009 and February 12, 2011, $12,702.87 was paid for Claimant's medical expenses without objection.[7] It is the insurer's refusal thereafter that is disputed. It is Claimant's contention that his medical expenses should be paid because they are work-related. Employer argues that the statute of limitations expired five (5) years after the April 2002 payment and the more than $12,000 paid from August 2009 through mid-February 2011 was a mistake.

The Board heard sworn testimony, the transcript of which has been provided to the Court. Two witnesses testified, Claimant and the insurance adjuster who was responsible for the Claimant's file ("Insurance Adjuster") who testified regarding Claimant's file as well as her extensive experience in the field and with

[5] *Olney,* 425 A.2d at 614.
[6] *Person-Gaines v. Pepco Holdings,* Inc, 981 A.2d 1159, 1161 (Del. 2009).
[7] Board Decision at 8.

the insurance company. The Insurance Adjuster testified that she had worked for the insurance company from at least the time of the August 1999 Work Accident.

The Board recited Claimant's undisputed testimony that, in 2009, he contacted the Insurance Adjuster directly to discuss his medical expenses. According to the Board, "[o]n December 7, 2009, [the Insurance Adjuster] transferred Claimant's file to Tampa, Florida, for 'lifetime handling and medical management."[8] In 2011, Claimant was told by the Insurance Adjuster that "there was no problem with his recent treatment."[9] According to the Board, the statute of limitations was never raised with Claimant. Furthermore, the Board noted that the Insurance Adjuster testified that she had not reviewed the file for any statute of limitations issue during the period August 2009 through February 2011.

In consideration of the undisputed testimony regarding communications between Claimant and the Insurance Adjuster as well as payments of over $12,000.00 without objection between August 2009 and February 2011, the Board stated: "Given the length of the payment period and the amount reimbursed, it is difficult for the Board to accept the employer's position that the resumption of the payment of medical expenses in August 2009 for the previously acknowledged work injury, despite the seven-year gap, constitutes simple error on behalf of

[8] *Id.* at 5.
[9] *Id.* at 3.

Travelers, which should be disregarded and deemed a gratuitous gift."[10] The Court finds that this conclusion is supported by substantial evidence. Moreover, the Board's credibility findings are entitled to deference by this Court.

In reaching its legal conclusion, the Board relied upon well-settled decisional law. The Board concluded that the Employer did not make the payments between August 2009 and February 2011 in simple error. Rather, according to the Board, the payments were made "under a feeling of compulsion."[11] As such, these payments "tolled" the statute of limitations.[12] The Board cited *McCarnan v. New Castle County*[13] and *Starun v. All American Engineering Co.*[14] as precedent for finding an implied agreement.[15] "An agreement is implied when the employer, or its carrier, makes payments "under a feeling of compulsion," meaning the payments were not made gratuitously but pursuant to the Workers' Compensation Act.[16] The Board properly concluded that, because the payments between August 2009 and February 2011 were made under a feeling of compulsion, the statute of limitations defense raised by Employer must be rejected.

---

[10] *Id.*at 8.
[11] Board Decision at 7-8.
[12] *Id.* at 7.
[13] 521 A.2d 611 (Del. 1987).
[14] 350 A.2d 765 (Del. 1975).
[15] Board Decision at 7.
[16] *New Castle Cnty. v. Goodman*, 461 A.2d 1012, 1013 (Del. 1983).

CONCLUSION

Substantial evidence supports the Board's determination that the insurer paid Claimant's medical expenses under a feeling of compulsion. Thus, there was an implied agreement to make payments. The Board correctly determined that the Employer is liable for Claimant's medical expenses. Because the Court resolves the appeal on other grounds, the Court need not address the question of whether there was notice of the statute of limitations in 2002. The Court also does not address the Board's award of attorneys' fees as it was not challenged in this appeal.

THEREFORE, the Decision of the Industrial Accident Board dated July 23, 2012 is hereby AFFIRMED.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli