CATHERINE TAYLOR, Claimant,
v.
WILMINGTON FRIENDS SCHOOL,
Employer.

INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE

Hearing No. 1417179

December 8, 2014

ORDER

This matter came before the Board on November 20, 2014. A Petition to Determine Compensation Due was filed by Catherine Taylor ("Claimant") on October 16, 2014, alleging that she was injured while working for Wilmington Friends School ("Employer") on August 10, 2014. More specifically, Claimant alleges that she is a maintenance employee for Employer and had a slip-and-fall event during a restroom break.

Employer moved for an "Evidentiary Hearing" on a Motion to Dismiss alleging that the claimed injury did not arise out of and in the course of employment with Employer. Claimant objected to such a hearing, arguing that issues of course and scope are factual issues that should properly be handled during the hearing on the merits, currently scheduled for February 17, 2015. Accordingly, this motion hearing was held on the issue of whether the requested "Evidentiary Hearing" should be scheduled.

Employer argues that the Board has jurisdiction to decide the issue. Claimant has had sufficient time to investigate whether her claim meets the "course and scope" requirement of the law. If Claimant cannot establish this during the "Evidentiary Hearing," then there would be no need for medical testimony and the petition could be dismissed before the parties incurred the expense of defense medical examinations, depositions of medical experts and medical record reviews. Thus, an "Evidentiary Hearing" would satisfy the aim of the Workers' Compensation Act to have prompt adjudication and reduced litigation expenses.

Claimant argues that the petition is her petition. To be successful on the petition, part of her burden of proof is to show that she sustained an injury in the course and scope of employment. In this case, part of the issue will be the application of the "personal comfort doctrine" to workers' compensation claims (i.e., that reasonable acts of personal convenience or comfort that take place on the employer's premises are considered incident to employment, *see Tickles v. PNC Bank,* 703 A.2d 633, 637 (Del. 1997)). As such, Claimant asserts it should be presented at a full hearing on the merits. To be forced to an early "Evidentiary Hearing" would abbreviate the discovery process and force Claimant's petition to be heard in an abbreviated style, without a full and complete record. Claimant agrees that a legal hearing would be appropriate if the issue was solely over whether, as a legal matter, the personal comfort doctrine applied in Delaware, with no dispute over the underlying facts.

The term "Evidentiary Hearing" has been used and it is important to understand what that means. All hearings on the merits are "evidentiary" hearings because evidence is presented. The term is only used to distinguish between hearings that are purely legal disputes ("legal motions") and hearings at which evidence is presented to the Board. However, this distinction can have much overlap in cases where the parties stipulate to the pertinent facts. So, for example, if the parties agree to the underlying facts, a "legal" hearing could be held to determine whether a claimant's petition is barred by the statute of limitations under those facts. Because evidence (albeit agreed-upon evidence) is presented, that "legal" hearing may be classified an "evidentiary" hearing because evidence is being presented, but the Board might still choose to hear it separately from the full hearing on the merits.

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Getting beyond the use of this inexact terminology, however, the Board looks at the underlying purpose of a hearing. In this case, what Employer is seeking is not a true "motion to dismiss" in the sense of a motion based solely on the pleadings. There are no formal pleadings in workers' compensation cases. *See Rules of the Industrial Accident Board,* Rule 6. Rather, the parties would be submitting testimony and evidence. This makes Employer's motion more analogous to a "motion for summary judgment." However, normally the Board does not allow such motions because workers' compensation cases do not provide for full formal discover such as is available in other forms of litigation. There is limited discovery available (primarily requests for production of documents) and other fact finding (such as questioning witnesses) is reserved for the hearing on the merits. There are no "discovery depositions" in actions before the Industrial Accident Board. The only depositions are those taken in lieu of live testimony before the Board and presented at the hearing on the merits of a petition.

In short, what Employer is seeking is a "hearing on the merits" of Claimant's petition, but it wants to unilaterally limit the evidence to the issue Employer wishes to focus on. Stated bluntly, Employer seeks piecemeal litigation of Claimant's petition—a bifurcation of the hearing on the merits with the second part of the hearing contingent on the ruling on the first part. However, Superior Court has cautioned the Board in the past that bifurcation of a hearing and piecemeal litigation is to be *avoided* rather than sought. *See Ryan Tibbits v. UPS,* Del. Super., C.A. No. N12A-03-006 WCC (October 31, 2012)(ORDER)(expressing concerns over the fairness of bifurcating a Board hearing).

The Board understands Employer's argument that, if the defense is successful, then the parties "save" the expense of arranging for medical witnesses. However, the flip-side of this argument is also true: If the defense is *not* successful, then this procedure results in *increased*

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costs and inefficiency. The result would be that, to rule on a single petition, the Board would have to convene twice and write two decisions, while the attorneys and parties would need to appear at two hearings instead of one. Thus, holding a separate "Evidentiary Hearing" such as Employer seeks is no guaranty of monetary savings to the parties and may instead result in increased cost.

It is true that, in the past, the Board on occasion has permitted such bifurcated hearings when the parties are in agreement that that is how they wish to proceed. This is particularly true, as indicated above, when there is little or no factual dispute and the matter is more a question of the applicable law on agreed-upon facts. However, the Board cannot recall an occasion when such a procedure has been done over the objection of one of the parties, particularly when the party objecting is the petitioner who wants her petition heard in a single hearing.

In short, the Board has scheduled a hearing to hear evidence on this case and that hearing date is February 17, 2015. In light of Claimant' objection and the Board's general reluctance to try matters in piecemeal fashion, the Board declines to bifurcate this hearing and declines to hold an earlier hearing just on the course and scope issue. Rather, a full hearing on the merits of Claimant's petition shall be held on the scheduled date.

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IT IS SO ORDERED this 8th day of December, 2014.

INDUSTRIAL ACCIDENT BOARD

/s/_____
JOHN D. DANIELLO

/s/_____
MARILYN J. DOTO

Mailed Date:

/s/_____
OWC Staff

Christopher F. Baum, Hearing Officer for the Board

Cynthia H. Pruitt, Esquire, for Claimant
Joseph Andrews, Esquire, for Employer