WINTER 2016
DELAWARE WORKERS COMPENSATION IAB AND APPELLATE CASELAW UPDATE

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DSBA WORKERS' COMPENSATION SECTION
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CAUSATION

***Aletha Davis-Moses v. Keystone Human Services*, IAB Hearing No. 1420748 (10/2/15).** **The Board finds that a significant and pre-existing cervical myelopathy is sufficient to overcome a claim for total disability and surgery- - "This is not a case where employer's doctor finds mild age-related findings and then offers an opinion that all of the complaints are related to this pre-existing condition**. The imaging studies and past medical history show the claimant had a serious, symptomatic chronic condition in her spine including stenosis at multiple levels. She had previously seen a surgeon and was treating regularly for cervical spine complaints. Claimant was taking significant dosages of narcotic pain medication on a regular basis prior to the accident." [Lutness/Durstein]

***Taylor Hollins v. Amazon.com*, IAB Hearing No. 1418730 (7/30/15).** **The Board finds in favor of a work injury occurring on 9/1/14 but further that claimant was "back to baseline" as of 9/7/14 with Dr. Piccioni serving as the defense medical expert.** [Morrow/Ellis]

***Diana Baker-Prino v. American International Group*, IAB Hearing No. 1142411 (7/28/15).** **The Board awards a 2014 neck surgery as causally related to a 1997 work accident in reliance on Reese v. Home Budget, with Dr. Rastogi testifying on behalf of the claimant and Dr. Townsend testifying on behalf of the employer.** [Carmine/Richter]

***Albert Bierman v. Bierman Family LLC*, IAB Hearing No. 1295337 (10/9/15).** **The Board rules that a total knee replacement performed in 2014 by Dr. John Gordon is causally related to a 2006 work accident pursuant to Blake--"The evidence is clear that prior to the work injury, claimant had neither sought nor received treatment specifically for pain or problems in the right knee for more than 20 years.** Both Dr. Gordon and Dr. Gelman noted that despite claimant's prior history of right knee treatment and arthroscopic surgery, right total knee replacement had never been recommended until after claimant's 206 work injury. Claimant testified that prior to the 2006 work injury he had been exceptionally active and had even participated in triathlons. Dr. Gelman admitted that there was no medical history indicating claimant had been recommended for right knee replacement surgery prior to the work injury." [Aldrich/Durstein]

***Alexandria Norris v. Wilis Chevrolet*, IAB Hearing No. 1420341 (7/29/15).** **The claimant's knee giving out due to an unrelated condition bars a claim for benefits under the "Idiopathic Fall Doctrine". - - "Therefore, the Board concludes that on 10/29/14 claimant's right knee dislocated as she was walking down a step at work, as it was prone to do given her pre-existing condition. It was this knee dislocation that caused the right knee and ankle injuries, and did not arise out of her employment.** The Board finds the claimant's personal condition was the cause of her fall and/or slip at work on 10/29/14. As such, claimant's fall does not constitute a compensable work accident." [O'Neill/Andrews]

***Felicia Price v. Aetna*, IAB Hearing No. 1427631 (10/19/15).** **In granting the carrier's Petition for Review with regard to total disability, effective date of filing, the Board finds that the claimant has returned to her pre-injury baseline condition prior to her first defense medical evaluation conducted by Dr. Robert Smith.** [Welch/Greenberg]

Michael Sandes v. Christiana Care Health Services, IAB Hearing No. 1407922 (10/7/15). **In awarding a claimant's DACD Petition seeking payment of medical expenses including surgery, the Board rules that the claimant is not "back to baseline"- - "it is undisputed that claimant did not treat for his low back for about 2 years prior to the work accident, and last treated in January of 2012 for the back.** The condition he had treated for prior to that time consisted of both low and mid back problems. In January 2012, Dr. King recorded that the mid-back problem was "resolved" and that the low back condition was considered to be "resolving", with Dr. King further documenting that the claimant was at that time "markedly improved." [Morrow/Newill]

Danielle Barnes-Davis v. Comcast Corporation, IAB Hearing No. 1425853 (11/23/15). **The claimant is awarded workers comp benefits for a bug bite producing cellulitis under a Reese theory of causation with Dr. Caren Thompson testifying on behalf of the claimant and Dr. Alfred Bacon testifying on behalf of the employer. Of note, Dr. Thompson is a physician board-certified in general practice in pediatrics and Dr. Bacon is a physician board-certified in infectious disease.** [Tice/Frabizzio]

Malikah Burrell v. Community Interactions, IAB Hearing No. 1419524 (11/9/15). **In awarding the carrier's Petition for Review, the Board also rules that a March 2015 motor vehicle accident breaks the chain of causation regarding an October 2014 work accident- - "the Board agrees with employer that the motor vehicle accident on 3/20/15 was a significant event that worsened claimant's condition and changed the nature of her medical treatment".** [McDonald/Baker]

Carol Botwright v. University of Delaware, IAB Hearing No. 1350873 (10/22/15). **The claimant who has obesity, significant cardiac disease and thrombophilia is still entitled to a surgery proposed by Dr. Rastogi with Dr. Cucuzella testifying on behalf of the claimant, and Dr. Fedder testifying on behalf of the employer.** [Carmine/Julian]

Palmina Olivera v. Amsted Industries, IAB Hearing No. 1400768 (7/28/15). **Chronic pain does not have a medical relationship to high blood pressure and therefore the claimant's hypertension is not compensable; Dr. Errol Ger testified on behalf of the employer and Dr. Vineet Puri testified on behalf of the claimant, noting that Dr. Puri is board-certified in internal medicine and sleep.** [Schmittinger/Morgan]

Genive Henry v. Christiana Care Health Services, IAB Hearing No. 1394816 (12/7/15). **The Board finds in claimant's favor regarding a 2/16/13 work injury to the left shoulder but further rules with specificity that such left shoulder injury was resolved as of 4/19/13 and in so doing, denies a request for surgery; Dr. Kahlon testified on behalf of the claimant and Dr. Gelman testified on behalf of the employer**. [Marston/Newill]

Jacqueline Wilson v. Hanover Food, IAB Hearing No. 1417555 (12/23/15). **Where there is no evidence that the claimant's prior ongoing injury to the left shoulder resolved prior to the work accident, the claimant's DCD Petition is denied with the Board embracing the defense medical expert testimony of Dr. Andrew Gelman.** [Schmittinger/Hunt]

***Grace George v. State of Delaware*, IAB Hearing No. 781047 (12/14/15).** **A 77 year old claimant with a 1984 work injury involving the left upper extremity and cervical spine is awarded medical treatment expenses, including physical therapy, in 2015, in reliance on the testimony of Dr. Matthew Handling.** [Carmine/Menton]

***Robert Cartwright v. Mid-Atlantic Dismantlement Corp.*, IAB Hearing No. 1385689 (12/11/15).** **The claimant having sustained a work-related injury in 2011 is awarded a proposed left total knee replacement surgery based on the testimony of Dr. Evan Crain and with the commentary that "claimant was not referred for left total knee replacement surgery and had been able to continue working at a physically demanding job despite minor knee complaints prior to the 2011 work injury."** [Marston/Wilson]

***Gina Benson v. Ahold Americas Holding*, IAB Hearing No. 1424318 (12/9/15).** **In denying benefits sought pursuant to a DCD Petition alleging a work related knee injury, the Board comments that the employer need not offer an alternate theory of causation, citing Strawbridge and Clothier v. Campbell.** [Galbraith/Klusman]

***Tomeka Daniels v. State of Delaware*, IAB Hearing No. 1399863 (12/14/15).** **In denying benefits sought pursuant to a DCD alleging injury to the head and cervical spine, the Board observes that there is no burden on the employer to offer an alternate explanation for causation, in reliance on Strawbridge and Clothier v. Campbell.** [Bednash/O'Connor]

***Tomeka Daniels v. State of Delaware*, IAB Hearing No. 1399863 (12/14/15).** **"The mere placing of events on a timeline is insufficient to establish a causal link between those events", with the Board rejecting the claimant's post hoc fallacy argument which is usually translated as "after this, therefore, because of this.** The doctors testifying in this case were Dr. Christian Fras on behalf of the claimant and Dr. Jeff Myers on behalf of the employer. [Bednash/O'Connor]

***Lamont Roberts v. Allen Harim Foods*, IAB Hearing No. 1427887 (12/21/15).** **The Board awards benefits for a 2015 lumbar spine fusion as being causally related to a 2014 work injury which was only acknowledged as a muscular sprain or contusion and embraces Dr. Zaslavsky's "slow leak in a tire" theory of causation.** [Gambogi/Baker]

***Dayon Benson v. Delaware Supermarkets*, IAB Hearing No. 1420323 (12/18/15) (ORDER).** **The recent Supreme Court decision in Davis does not preclude a claimant from adding additional body part claims beyond those referenced on the initial Agreement as to Compensation.** [Galbraith/Swift]

COURSE AND SCOPE

***Keith Patas v. Quantum Control*, IAB Hearing No. 1428925 (12/2/15).** **The employer's going and coming defense fails where claimant's travel was an essential element of the employment contract.** [Ferry/Durstein]

***Ronald Jones v. Five Star Quality Care*, *IAB Hearing No. 1426272 (10/26/15).* Providing transportation to work for another employee when claimant himself is not scheduled to work is deemed outside of the course and scope of employment if the claimant is injured.** [Owen/Baker]

CREDITS/REIMBURSEMENT ISSUES

***Parent Care Solutions v. Damon Jordan*, *IAB Hearing No. 1364931 (9/17/15) (ORDER).* Where a Petition for Review is granted with a concomitant order of partial disability, the employer is allowed to reimburse the Fund all TTD paid after claimant is awarded TPD so as to create a huge TPD credit.** [Andrews/O'Neill/Cleary]

***Catherine Taylor v. Wilmington Friends School*, *IAB Hearing No. 1417179 (11/24/150 (ORDER).* There is no offset favoring the comp carrier when the claimant receives long term disability benefits which are wholly employee-funded; thus, there is no improper double recovery on claimant's behalf within the workers compensation context.** [Pruitt/Andrews]

***Andrew Sanchez v. State of Delaware*, *IAB Hearing No. 1378362 (10/23/15).* The employer is awarded a future credit for total disability benefits paid after the claimant returned to work- - "in this case, claimant admitted he continued to receive TTD after he began working at his new place of employment on 3/2/15. On 3/23/15 he notified his counsel that he had returned to work on 3/2/15 and provided pay stubs from his new employer**. On 3/27/15, claimant's counsel notified employer's counsel regarding claimant's new employment and asserted that claimant was entitled to ongoing disability benefits based upon his current wages. The negotiation process took several months during which claimant continued to receive TTD benefits despite the fact that he was only entitled to received TPD benefits. Therefore, claimant received an unjustifiable windfall of benefits at employer's expense and employer should be credited for that overpayment." The employer was awarded a credit of $4210.57 toward future benefits. [Freebery/Lukashunas]

***Lana Kim v. Carter's Inc.*, *IAB Hearing No. 1418006 (11/3/15) (ORDER).* With respect to an award of medical expenses, the employer does not get the benefit of any discount that a third party insurer may have negotiated with the medical provider.** [Lutness/Morgan]

***Lana Kim v. Carter's Inc.*, *IAB Hearing No. 1418006 (11/3/15) (ORDER).* Where medical bills are initially disputed, the claimant has the right to demand the check be made payable to him or to his attorney.** [Lutness/Morgan]

DENTAL

***Keiran Sniadowski v. Pulte Homes*, *IAB Hearing No. 1208092 (10/9/15).* The claimant is awarded benefits for dental treatment based on dry mouth which the Board agrees is causally related to the work accident and the resulting narcotic pain medication usage with Dr. Gregg Fink testifying on behalf of the claimant.** [Silverman/Brown]

Virgil Pugh v. New Castle County, IAB Hearing No. 1354747 (11/16/15). **The claimant is awarded benefits for dental treatment for decay and disease which the Board agrees is due to dry mouth resulting from pain medication usage as to pain meds prescribed for the compensable work injury.** [Freibott/Horton]

DISFIGUREMENT

Daniel Goffredo v. The Galman Group, IAB Hearing No. 1382302 (9/22/15). **The claimant is awarded 10 weeks of disfigurement for an altered gait which is described as "mild in appearance".** [Marston/Gin]

Vincent Testa v. New Castle County, IAB Hearing No. 1399552 (9/12/15). **On a claim for disfigurement, the claimant is awarded 4 weeks for his scars from a SLAP lesion repair.** [Mason/Horton]

Robert Dolga v. Emory Hill Real Estate Services, IAB Hearing No. 1356482 (9/18/15). **The claimant is awarded 25 weeks of disfigurement benefits for a "seriously disfigured" left middle finger.** [Butters/Durstein]

Brad Edwards v Georgetown Hauling, IAB Hearing No. 1366173 (10/14/15). **The claimant is awarded 10 weeks of disfigurement benefits for the aggregate of 5 scars on the right shoulder resulting from 5 surgeries.** [Evans/Ward]

Emma Prinski v. New Castle County, IAB Hearing No. 1397907 12/7/15). **In awarding the claimant 4 weeks of disfigurement benefits for a limp, the Board comments that the claimant's gait when entering the Hearing room far less significant than the "exaggerated" gait which was presented during the actual Hearing.** [O'Neill/Horton]

DISPLACED WORKER & HOEY CASES

Patricia Stove v. Aramark, IAB Hearing No. 1258714 (10/5/15). **A 67 year old claimant with a limited education is not deemed to be a displaced worker where the claimant is found to be "communicative, articulate, and responsive" with a "pleasant demeanor and in possession of certain basic customer service skills".** [Lutness/McGarry]

Mary Matharu v. Little Sisters of the Poor, IAB Hearing No. 1424369 (11/18/15). **In denying the carrier's Petition for Review, the Board rules that the claimant has proven actual displacement although physically capable of working in a sedentary capacity, in reliance on Watson.** [Wilson/McGarry]

Ashvinkumar Patel v. Gurinder Syan 7-11, IAB Hearing No. 1405377 (12/2/15). **In denying the carrier's Petition for Review, the Board rules that a 62 year old Hindi-speaking claimant is displaced primarily by virtue of the language barrier- - Jose Castro testified on behalf of the claimant and Truman Perry testified on behalf of the employer.** [Wolf/Morgan]

DME ISSUES

***Gloria Coleman v. Comcast Corporation*, IAB Hearing No. 1386188 (5/28/15) (ORDER).** **The Employer may utilize as a DME doctor a physician who also treated the claimant in the past under this set of facts.** [Hedrick/Ellis]

FINES

***Eleanor Greene-Randall v. State of Delaware*, IAB Hearing No. 1414557 (7/21/15) (ORDER).** **The carrier is fined $500 for cessation of benefits without obtaining a final receipt: "The Board imposed the fine because even accepting that the adjuster was led to believe by claimant of an intent to sign the Agreement to Terminate/Final Receipt, the fact remained that claimant never did so.** Under Title 19 of the Delaware Code, Section 2347, Employer should have waited until it had a signed Final Receipt or a Board Order before unilaterally terminating claimant's benefits. Having not yet signed the Agreement/Receipt, claimant clearly had the right to change her mind and apparently did so..." [Nitsche/Frabizzio]

THE FUND

***Jeffrey Evick v. Cutting Edge Lawn Care*, IAB Hearing No. 1386464 (7/27/150 (ORDER).** **The Fund is given a $3352.42 lien on any future recovery of the claimant due to an overpayment of TTD- -** "The Fund will not have standing to contest any negotiations involving settlement of this claim and should not have standing to enjoin or otherwise hinder the enforcement of the claim if the negotiated settlement results in payments to claimants smaller than the amount owed to the Fund. The Fund shall have recourse to civil litigation to recover any outstanding sums owed by the claimant in excess of the final settlement." [Long/Logullo/Cleary]

JURISDICTION

***Keith Patas v. Quantum Control*, IAB Hearing No. 1428925 (12/2/15).** **Delaware has jurisdiction where it is a Delaware contract of hire and the claimant's work is not principally located in any one state**. [Ferry/Durstein]

MEDICAL TREATMENT/DURABLE MEDICAL GOODS/MEDICAL MODALITIES

***Vera Brown v. SLM Corporation*, IAB Hearing No. 1394536 (9/30/15).** **On a claim for recurrence of total disability and medical treatment expenses, Dr. Bruce Grossinger as the treating physician is deemed more credible that that of the defense medical expert although in the same ruling, Dr. Grossinger is basically slammed for ineffective treatment on a number of levels.** [O'Neill/Hartnett]

***Maria Gonzalez v. Apple Cleaning Systems*, IAB Hearing No. 1394040 (9/17/15) (ORDER).** **Benefits issued under the "payment without prejudice" statute by a carrier who was ultimately not the proper carrier, can still be the subject of that carrier's subrogation**

rights against a third party recovery pursuant to 19 Del Code Section 2363. [Legum/Rimmer]

***Christina Zayas v. State of Delaware*, *IAB Hearing No. 1365817 & 1411306 (9/11/15).* A simple and temporary lapse in provider certification due to an administrative error will not disqualify bills from payment**. [Durstein/Logullo]

***Michele Jones v. Christiana Care Health Services*, *IAB Hearing No. 1396595 (9/28/15) (ORDER).* Where 22 months of payment without prejudice issues, the claim is barred where the DCD Petition is not filed within 2 years.**

***Michele Jones v. Christiana Care Health Services*, *IAB Hearing No. 1396595 (9/28/15) (ORDER).* Payment without prejudice is not nullified just because a few of the EOB's failed to state "IN DISPUTE".**

***Michele Jones v. Christiana Care Health Services*, *IAB Hearing No. 1396595 (9/28/15) (ORDER).* The lack of use of a 14 point font is not fatal to a payment without prejudice on a claim.**

***Tina Emory v. TransCare Corporation*, *IAB Hearing No. 1408795 (9/25/15) (ORDER).* The Board grants the employer's Motion to Compel an updated discogram as requested by the defense medical expert (Dr. Kalamchi) to confirm the appropriate surgical level.**

***Antonio Sullivan v. EBC Carpet Services*, *IAB Hearing No. 1423133 (9/30/15).* As to mileage claims there is no requirement that a claimant "arrange his appointments efficiently"- - "while the Board agrees the claimant could have arranged his appointments a little more efficiently, the Board has no substantial evidence to refute his testimony that he drove the round trips as he said. There is no dispute that he did have doctor appointments on the dates listed."** [Butters/Richter]

***Kieran Sniadowski v. Pulte Homes*, *IAB Hearing No. 1208092 (10/9/15).* A penile pump is awarded for loss of sex function for a claimant who lost his left testicle as a result of the work accident- - "While it is true that claimant takes a number of medication for non-work-related complaints, such as high blood pressure and hypothyroidism, which can also cause erectile dysfunction, the Board concludes based on the opinion of the treating urologist, Dr. Cozzolino, the loss of the left testicle is the primary reason for the current sexual dysfunction."** [Silverman/Brown]

***Heather Pelkey v. Prime Care Medical Transport*, *IAB Hearing No. 1372135 (10/20/15).* The Board upholds Dr. Balu's prescription for Ativan for anxiety as being reasonable, necessary and causally related to the work injury- - "Dr. Balu explained in great detail that anxiety is consistent with patients who are experiencing chronic pain...it was better to provide claimant with a small dose of short acting anti-anxiety medication instead of increasing her narcotic pain medication usage...providing claimant with small dense of Ativan prevented her from needing larger dose of her narcotic pain medication because the**

Ativan helped claimant get through the mini-withdrawal she would experience as the pain medication wears off gradually." [Schmittinger/Logullo]
Valerie Douty v. State of Delaware, IAB Hearing No. 1360261 (11/5/15). **The claimant is awarded a TOPAZ procedure for plantar fasciitis with Dr. Raymond DiPretorio testifying on behalf of the claimant and Dr. David Haley testifying on behalf of the employer.** [Long/Harrison]

PARTIAL DISABILITY

April Young v. RRW Home Instead Senior Care, IAB No. 1417001 (7/23/15). **On a Petition for Review the Board awards partial disability based on the employer's labor market survey and not on the claimant's actual part time job, noting that the labor market survey demonstrated a "low average" weekly wage of $475.62 weekly and where the claimant was currently earning $15 an hour working 25 hours per week.** [Aldrich/Richter]

Robert Larue v. Evraz Claymont Steel, IAB Hearing No. 1310899 (7/23/15). **On a DACD Petition seeking an award of partial disability/loss of earning capacity benefits, and where the claimant initially returned back to work with the same employer at no loss in pay, the Board finds that the claimant's current job is not a fair measure of his true earning capacity--"Claimant admitted that he took his present job primarily to get is "foot in the door" with state employment.** While this is an understandable tactic, it does imply he voluntarily took a lower paying job in the hopes of better job opportunities with the State in the future rather than because the job of tram operator accurately reflects what he would earn in the open labor market. As such, in this particular case, the Board does not find claimant's actual earnings to be an accurate representation of his true earning capacity." The Board awards partial disability based on the low average range of a labor market survey. [Frebery/Skolnick]

Thomas Stevenson v. Pepsi-Cola Brand Beverages, IAB Hearing No. 1409904 (10/22/15). **The claimant's Petition seeking partial disability is denied where the claimant has not looked for any work- - "Beyond claimant's lifting restriction itself, which has not been updated in over 6 months because claimant has not looked for or returned to work, there was no supporting evidence to suggest a specific loss of earning capacity in relation to the injury beyond January 29, 2015**. Because of this lack of evidence, it is equally possible that claimant could have obtained work at no loss of earning power with a sedentary lifting restriction as it is that he would have failed to do so. I am simply unable to speculate as to what jobs may or may not be available to claimant in the open labor market, or what the identified jobs would pay, given the fact that he currently still has a lifting restriction. [Freibott/Brown]

Denise Perkins v. State of Delaware, IAB Hearing No. 1412670 (12/17/15). **The claimant is denied partial disability benefits based on a finding of "voluntary retirement" which was undertaken to care for a parent with Alzheimer's disease.** [Galbraith/Frabizzio]

PERMANENT IMPAIRMENT

Xanthia Oliver v. Sabre, IAB Hearing No. 1396604 (9/29/15). **On a claim seeking to recover 11% to the cervical, 13% to the low back and 7% to the left leg based on the ratings of Dr. Cary, Dr. Gelman for the DME trumps Dr. Cary based on the AMA Guide Sixth Edition resulting in an award of 3% to the lumbar, 2% to left leg and 0% to the cervical spine.** [Galbraith/Harrison]

Brenda Gardner v. M&T Bank, IAB Hearing No. 1397537 (7/29/15). **On a claim for 25% to the low back in which the employer is seeking apportionment for prior asymptomatic degenerative disc disease, the Board rules that no apportionment is permissible under Sewell with the comment that the "Board may not apportion the compensation between asymptomatic pre-existing condition and the work related injury that aggravated the arm condition".** [O'Neill/Lockyer]

Christian Lemos v. Bank of America, IAB Hearing No. 1304071 (7/30/15). **The Board rejects Dr. Bandera's 20% upper extremity increase rating which is solely based on a diagnosis of thoracic outlet syndrome and thoracic outlet surgery without regard to the actual level of function, instead awarding a 4% increase based the testimony of defense medical expert Dr. Ger.** [Galbraith/Tatlow]

Daniel Goffredo v. The Galman Group, IAB Hearing No. 1382302 (9/22/15). **The IAB awards a separate impairment rating of 30% to a lower extremity where the primary injury is to the low back and where the claimant's residuals include a foot drop and an antalgic gait.** [Marston/Gin]

Ellen Willey v. George Krapf Jr. and Sons, IAB No. 1359787 (10/8/15). **This case presents a claim for increased impairment and some discussion of how to calculate the claimant's entitlement where there is a prior payment of permanency for a compromised amount, in this case a prior payment of 25% to the right lower extremity and where claimant is now alleging an increase due to a compensable total knee replacent and with the Board finding an additional 5%.** [Freebery/Nardo]

Veronica Allen-Anderson v. State of Delaware, IAB Hearing No. 1387544 (10/9/15). **Where claimant is seeking permanency for a 100% loss of use of the lower extremity based upon the testimony of Dr. Fink, and where the defense medical expert testifies in favor of a 37.5% permanency rating and where the diagnosis is complex regional pain syndrome, the Board awards a 49% impairment.** [Nitsche/Ellis]

Janet Jamurath v. Wal Mart, IAB Hearing No. 1377873 (11/30/15). **A vague statement that claimant may require surgery at some future junction does not bar an award of permanent impairment and in this case the claimant was awarded a 28% impairment to the lumbar spine.** [Welch/Clark]

Louis Hendricks v. New Castle County, IAB Hearing No. 1355208 (12/31/15). **In considering a claim for an additional 29% impairment to the cervical spine, the Board observes that Delaware law does not mandate any particular text in determining the degree of**

permanency with the further commentary that "rating texts are just tools used by evaluators. They are not statutory enactments. They are not binding." The Board awarded the additional 29% cervical impairment based on the opinion of Dr. Meyers using the Fifth Edition of the Guides and rejecting the opinion of Dr. Shinkle as being void of any consideration of claimant's loss of function. [Freibott/Horton]

John Sullivan v. Connectiv, IAB Hearing No. 1408950 (12/28/15). **The claimant is awarded a 30% impairment to each lung based on asbestos exposure and in reliance upon the medical testimony of Dr. Orn Eliasson and rejecting the opinion of defense medical expert Dr. Joshua Aaron.** [Crumplar/Wilson]

Roger Snider v. Amerigas Propane, IAB Hearing No. 1398511 (12/22/15). **In awarding the claimant a 16% impairment to the left upper extremity based upon the testimony of Dr. Rodgers, the Board allows that Dr. Rodgers trumps Dr. Gelman in his permanency methodology in equating an acromioplasty with an arthroplasty.** [Heesters/Avellino]

PRACTICE AND PROCEDURE

Michelle Allen v. WalMart, IAB Hearing No. 1419799 (10/7/15) (ORDER). **Medical testimony of an expert without access to all of the medical records goes to credibility and is not a basis for exclusion of that testimony.** [Schmittinger/Clark]

Nicole Beatson v. Domino's Pizza, IAB Hearing No. 1398518 (7/29/15) (ORDER). **The Board refers this case to the State Fraud Bureau based on Facebook evidence of the claimant's home-based business- - "Employer asserts than in early 2015 it obtained information leading it to believe that claimant has been self-employed in running 2 home-based businesses and receiving income from them.** As such, employer seeks an order immediately terminating claimant's receipt of total disability benefits and seeking a referral of the claimant to the State of Delaware Fraud Prevention Bureau". The claimant was awarded partial disability benefits in granting the request for a termination of total disability and in referring the matter to the Fraud Bureau. [Galbraith/Ellis]

Robert Larue v. Claymont Steel, IAB Hearing No. 1310899 (8/11/15) (ORDER). **This Order contains a discussion of Section 2320(10)(f) and the practice of taking an attorneys fee check or an attorneys fee from ongoing total disability checks and provides some insight into the Board's view of professionalism in "extremely contentious" communication between the attorneys.** [Freebery/Frabizzio]

Michael Thompson v. Dassault Falcon Jet, IAB Hearing No. 1337831 (11/6/15) (ORDER). **The Board denies employer's Motion to Consolidate the Term Petition with the claimant's DACD Petition.** [Long/Newill]

Mary Lehman v. Walgreens, IAB Hearing No. 1382097 (11/5/15) (ORDER). **The claimant's Motion for an Expedited Hearing is denied.** [Galbraith/Taylor]

Patrick Hynes v. Urgent Ambulance Service, IAB Hearing No. 1401914 (10/29/15). **Facebook evidence produced to claimant's counsel inside the "30-day" is not admissible.** [O'Neill/Sharma]

Rodney Barone v. Officemax, IAB Hearing No. 1409152 (12/14/15) (ORDER). **In ruling on the employer's Motion for Reargument, the Board states that it is not error to award benefits based on the theory of cumulative detrimental effect even though cumulative detrimental effect was not alleged on the DCD Petition or the Pre-Trial where the claimant in conjunction with his defense medical evaluation denies a specific work accident and advises the DME doctor that his onset of back pain was due to repeated lifting.** [Welch/Hunt]

PROVIDER CERTIFICATION

Christina Zayas v. State of Delaware, IAB Hearing No. 1365817 & 1411306 (Order on Motion for Reargument) (11/18/15). **The Board will not recognize a temporary lapse in provider certification stating that "the bottom line is that the Board determined that the fact that Dr. Carey may have let a certification temporary lapse was an administrative error and claimant should not be penalized by it..."** [Fredericks/Durstein/Logullo]

SECTION 2363 LIEN

Michael Payes v. Fortress Steel Services, IAB Hearing No. 1358000 (4/14/15) (ORDER). **The claimant cannot renege on an agreement to reimburse the carrier's Section 2363 comp lien from his UIM recovery where the carrier's earlier lien reimbursement from the tort feasor was deferred.** [Pro Se/Richter]

STATUTE OF LIMITATIONS

Rodel Castro v. Handy & Harmon Tube Company, IAB Hearing No. 1429638 (11/25/15) (ORDER). **The Board denies a Motion to Dismiss a DCD Petition based on statute of limitations argument with regard to an allegation of hearing loss under a theory of cumulative detrimental effect with the Board commenting that "while not conclusive, the fact that no doctor informed claimant that his hearing loss was work related until 2015 is clearly important evidence."** [Heesters/Skolnick]

TERMINATION

Rosemary Graves -Orwin v. Kent-Sussex Industries, IAB Hearing No. 1314325 (7/30/15). **The employer's Termination Petition is denied in large part based on a Functional Capacity Evaluation which indicated significant pain and deficits in all areas, combined with severely limited activity tolerance, such that a return to work in any capacity was not recommended at that time.** [Fornias/Frabizzio]

Faith Allen v. Ceramic Protection Corp of America, IAB Hearing No. 1289503 (11/19/15). **The carrier's Petition for Review is granted and a Functional Capacity Evaluation plays a huge role with the Board rejecting the opinion of Dr. Rudin and embracing the opinion of defense medical expert Dr. Jeff Meyers in tandem with Neil Taylor, the physical therapist administering the FCE.** [Marston/O'Connor]

Wayne Shelby v. Brandywine Contractors, IAB Hearing No. 1422126 (11/23/15). **In granting the carrier's Petition for Review, the Board comments that the FCE is the "gold standard" of work ability and as such, the claimant is awarded partial disability benefits; Dr. Cassell testified on behalf of the claimant and Dr. Schwartz testified on behalf of the employer.** [Schmittinger/Richter]

Rickey Bentley v. Integrity Staffing, IAB Hearing No. 1411163 (10/14/15). **The Board grants the carrier's Petition for Review based on the opinion of Dr. John Townsend who was the only medical expert who testified, observing that the claimant's treating surgeon had released claimant to return to work with a 30 pound lifting restriction which was also consistent with a recent FCE; the Board further found that the claimant was not a displaced worker and that his job search was not reasonable.** [Carmine/Gin]

Sandra Werner v. Peebles, IAB No. 1405369 (11/30/15). T**he carrier's Petition for Review is granted and there is a very interesting discussion of what constitutes an unreasonable job search- - "claimant submitted her job search log which begins on 9/3/15. She did not conduct a job search between October 2014 [when she was initially released to return to work] and September 3, 2015.** She was not feeling up to conducting a job search; **it** was not a good time for her. She decided to start a job search in September 2015 because she wanted to earn money to help out her children and grandchildren- - given them money is the reason why she works. Claimant went to Oregon because a memorial was put up for her son who passed away. She thought of moving there and looked around for a job but did not actually apply for any jobs. Between September 3 and September 29, 2015, claimant enquired about 12 jobs. She walked into businesses and asked if they were hiring...her husband and her son's girlfriend helped her conduct a job search on the internet. She has a computer at home but only uses it to do puzzles. She has a Facebook page but does not do anything with it..." [Marston/Harrison]

UTILIZATION REVIEW

Wade Hocker v. Federal Express, IAB Hearing No. 1245694 (10/8/15). **The Board affirms a Utilization Review non-certification of chiropractic treatment rendered by Dr. Zachary Patterson- - "the Board finds that Dr. Patterson is not even treating claimant as the massage therapist is actually the person treating claimant; Dr. Patterson is not performing any chiropractic manipulation...and is not even present in the office at claimant's appointments..."** [Marston/McGarry]

Antonio Sullivan v. EBC Carpet Services, IAB Hearing No. 1423133 (9/30/15). **The Board affirms a Utilization Review certification of chiropractic treatment rendered by Dr. Angermaier.** [Butters/Richter]

***Jimmie Felix v. Eastern Shore Energy*, IAB Hearing No. 1310925 (9/17/15).** **The Board reverses a Utilization Review non-certification of Vicodin and Voltaren Gel with Dr. Coveleski testifying on behalf of the claimant and Dr. Mehdi testifying on behalf of the employer- - "The doctors agree the use of a mild narcotic is reasonable and necessary to treat claimant's pain, but they disagree as to which mild narcotic to prescribe. The Board is not in the position to pick one narcotic medication over another. The Board finds that Dr. Coveleski's prescription for the mildest dosage of Vicodin is reasonable and necessary in this case..." [**Schmittinger/Andrews]

***Terrance Mullen v. DART First State*, IAB Hearing No. 1410975 (5/26/15).** **The Board reverses a Utilization Review non-certification of chiropractic treatment rendered by Dr. Patel.** [Schmittinger/Logullo]

***Javier Lopez-Vazquez v. F&S Boatworks*, IAB Hearing No. 1416276 (10/30/15).** **The Board affirms a Utilization Review non-certification of chiropractic treatment rendered by Dr. Meers, adopting as credible the opinion of defense medical expert Dr. Gelman, and rejecting the opinion of Dr. Meers that the treatment in question was reasonable and necessary because "it helped claimant while he was waiting for surgery which was performed in June of 2015, because he was awaiting the Board's decision determining compensability, which was rendered in January of 2015."** [Legum/Carmine]

***Doris Reynolds v. Kentmere Nursing Care*, IAB Hearing No. 1107226 (11/24/15) (ORDER).** **The 45 day appeal period with regard to a Utilization Review decision is enlarged under these facts where the UR decision was mailed to the wrong attorney.** [Gambogi/Durstein]

***Joyce Fram v. Securitas Security Services*, IAB Hearing No. 1333575 (10/19/15) (ORDER).** **The 45 day appeal period for a Utilization Review decision is enlarged in this case where a copy of the UR decision was mailed to the wrong attorney for the claimant.** [Welch/Hauske]

***Linda St. Pierre v. Home Depot*, IAB Hearing No. 1331388 (10/19/15).** **The Board affirms a Utilization Review non-certification of Percocet and calls out Dr. Grobman for failure to monitor non-compliance- - "It is troubling that rather than discussing with claimant the reasons underlying the drug screen test results, Dr. Grobman assumed that Percocet was not present in claimant's system because she had run out of the prescription from taking more than prescribed.** It is additionally troubling that Dr. Grobman did not enquire how claimant had access to Hydrocodone and why it was present in her system. It does not appear that Dr. Grobman inquired if claimant took Hydrocodone simultaneously with Percocet." [Bartkowski/Simpson]

***Paul Schneider v. United Parcel Service*, IAB Hearing No. 1283119 (12/1/15).** **A referral of medical bills to Utilization Review concedes causation.** [Kimmel/Lockyer]

***Antonio Sullivan v. EBC Carpet Services*, IAB Hearing No. 1423133 (9/30/15).** **The Board affirms a Utilization Review certification of chiropractic treatment rendered by Dr. Angemaier.** [Butters/Richter]

***Joseph Wilson v. Gingerich Concrete*, *IAB Hearing No. 1215102 (11/6/15)*. The Board affirms a Utilization Review certification of compound cream medication with Dr. Townsend testifying on behalf of the employer and Dr. Balu testifying on behalf of the claimant.** [Schmittinger/Baker]

***Linda Mansker v. Sherwin Williams*, *IAB Hearing No. 1081949 (12/3/15)*. The Utilization Review non-certification of a topical compound cream medication is reversed with Dr. Balu and Dr. Yalamanchili testifying on behalf of the claimant and Dr. Fedder testifying on behalf of the employer.** [Schmittinger/Morris]

***Jimmie Felix v. Eastern Shore Energy*, *IAB Hearing No. 1310925 (9/17/15)*. The Board reverses a Utilization Review non-certification of Vicodin and Voltaren gel with Dr. Covelaski testifying on behalf of the claimant and Dr. Mehdi testifying on behalf of the employer.** [Schmittinger/Andrews]

***Paul Stewart v. JR Rents Inc.*, *IAB Hearing No. 1324260 (10/30/15)*. A Utilization Review non-certification of Percocet is affirmed with a discussion of the long term use of narcotics; Dr. Townsend testified on behalf of the employer and Dr. Atkins testified on behalf of the claimant.** [Krayer/Carmine]

***Monica Dixon v. Delaware Veterans Home*, *IAB Hearing No. 1358419 (11/10/15)*. Utilization Review is not available for disputes over the Fee Schedule and/or billing practices.** [Schmittinger/Lukashunas]

***Pamela Banning v. UPS Supply Chain*, *IAB Hearing No. 1310800 (12/30/15)*. The Board reverses a Utilization Review non-certification of Gabapentin and Alprazolam for a diagnosis of systemic nickel poisoning in reliance upon the medical testimony of Dr. Seth Ivins.** [Schmittinger/Lukashunas]

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Appellate Court Decisions

Supreme Court

Christiana Care Health Services v. Davis, No. 138, 2015 (Del. Nov. 3, 2015). The Supreme Court addressed the effect of the parties' prior settlement on a subsequently filed petition for permanent impairment. In conjunction with the claimant's previously filed Petition to Determine Compensation Due alleging ongoing disability from the date of loss to the present and medical expenses, the parties reached an agreement whereby Christiana Care would acknowledge the work accident as a lumbar contusion "resolved" as well as specified and limited medical expenses. The parties entered into Agreements and Receipts noting that the nature of injury consisted of a lumbar spine contusion "resolved" and were filed with the Industrial Accident Board. The issue centered on whether the employment of the term "resolved" served to bar the claimant from presenting future claims in the absence of a commutation. The Board concluded that the Agreements and Receipts were final and constituted a valid settlement agreement concerning a transient injury. The superior court reversed concluding that there could no full settlement of the claim absent a commutation. Christiana Care appealed and the Supreme Court concluded that the settlement agreement between the parties by which the claimant agreed to the nature of his injury as being "resolved" was valid and binding. The Court held that the ability of the parties to settle compensation claims is undisputed and favored. As such, the Supreme Court enforced the settlement according to its terms and deemed that it constituted a waiver of future claims such that the Board's dismissal of the claimant's petition for permanent impairment was supported by substantial competent evidence and reinstated. (Galbraith/Newill)

Superior Court

Kelly v. Perdue Farms, C.A. No. K15A-02-001 WLW, Witham, R.J. (Del. Super. Oct. 8, 2015). At issue in this appeal was whether the employer was entitled to a credit or "offset" for short term disability payments made to the claimant when the short term disability premium was only partially employer funded. Both the employer and employee jointly paid fifty percent of the policy premium. The Superior Court concluded that since the employer paid one-half of the premium, it was entitled to an offset for one-half of the benefits paid. As such, the employer's entitlement to an offset was not an "all or nothing" proposition but rather would be pro rata in proportion to the percentage to which the employer had contributed to the short term disability policy. As such, the decision of the Board allowing an offset was affirmed. (Eliassen/Frabizzio)

Mary Anne MacFadyen v. Total Care Physicians, C.A. No. N15A-05-001 ALR, Rocanelli, J. (Del. Super. Dec. 15, 2015). The claimant filed a petition contending that she had developed complex regional pain syndrome and a recurrence of total disability as well as a 24% impairment to the left arm. The Board issued a decision agreeing that she had developed complex regional pain syndrome of the left arm and a recurrence of total disability but awarded only a 4% permanent impairment. The claimant appealed from this portion of the Board's order. As part of the appeal, the claimant contended that the Board had erred in allowing the employer to use claimant's public Facebook photographs of her holding her grandson with her injured arm and hand as impeachment evidence when the employer did not provide notice of its intent to use this evidence. The Court first rejected the assertion that the photographs were admitted into

evidence. The Court noted that the Board determined that the photographs would not be admitted into evidence but would be utilized for impeachment purposes to counter claimant's testimony that she cannot hold her grandchildren. The Court held that the Board's consideration of the photographs for this limited purpose was appropriate. The Court took note of its limited role in reviewing Board's decisions, especially on evidentiary matters, and concluded that the Board acted within its authority to allow the employer to use claimant's public Facebook photos as impeachment evidence in this context. As such, the Court affirmed the Board's decision.

Cantwell v. Bunting & Murray Construction, C.A. No. S15A-04-001 MJB, Brady, J. (Del. Super. Dec. 17, 2015). The clamant filed a Petition to Determine Compensation Due alleging that his work related injuries stemmed from a motor vehicle accident occurring on his way to a jobsite. The issue before the Board was whether the automobile accident fell within the scope and course of employment or within the "Going and Coming" rule. The Board denied the claimant's petition noting that he was not "on the clock" at the time of the accident and that he only began receiving wages once he arrived at the jobsite. He was not paid for traveling to or from work, was not reimbursed for mileage and gas cards were given to employees in lieu of a raise which could also be used for personal reasons. The Court agreed that the Going and Coming Rule would apply without any exceptions since the claimant was not compensated for his time and travel and he was not a traveling employee. The Court noted that the claimant had worked at the same jobsite from 10/12 until the motor vehicle accident of 3/14. Thus, the Court distinguished this from a case where employees would travel to different jobsites noting that the claimant's sixteen months of employment at the same jobsite meant that he had a fixed place of employment and was not a traveling employee. As such, the Board's decision was affirmed. (Dunkle/Frabizzio)

Johnson v. R.C. Fabricators, Inc., C.A. No. S15A-05-001 RFS, Stokes, J. (Del. Super. Dec. 22, 2015). The claimant filed an appeal from the Board's decision that he had forfeited worker's compensation benefits under 19 Del. C. §2353(b) due to intoxication that proximately caused the accident. While the claimant did not appear to be impaired at the construction site, the foreman observed after the incident that the claimant's pants were cut open and there was a clear plastic bag strapped to his leg. It contained an unknown liquid which was found to constitute urine that the claimant would hide in order to pass random drug tests. The claimant then admitted to smoking marijuana and using cocaine the night before the accident. The clamant stated, however, that he did not feel impaired the following morning. The tie was apparently broken by the employer's reliance on testimony by Dr. Ali Hameli that the amount of cocaine present twenty seven hours after the accident when the claimant was drug tested was a fairly moderate amount suggesting that the claimant had consumed cocaine within two to four hours of the accident. Dr. Hameli opined that this would cause deterioration of concentration and judgment as well as vertigo and impairment of motor activities. As such, Dr. Hameli expressed the expert opinion that the claimant was impairmed by cocaine and marijuana at the time of the fall and that this impairment substantially contributed to the accident. The Board found Dr. Hameli's testimony credible and concluded that the claimant forfeited his right to damages pursuant to 19 Del. C. §2353(b) in light of his intoxication. The Court concluded that there was substantial competent evidence to support the Board's finding in that regard and deemed Dr. Hameli to be a qualified medical witness to offer testimony in support of these conclusions. Therefore, the opinion of the Board was affirmed. (Gambogi/Ward)

Woodruff v. Foulk Manor North, C.A. No. 15A-06-007 RRC, Cooch, R.J., (Del. Super. Jan. 6, 2016). The claimant filed a petition with the Industrial Accident Board contending that she sustained injuries, incurred medical expenses and lost wages as a result of a work accident. The Board concluded that the claimant did not meet her burden of proof and concluded that the claimant did not sustain any compensable injury causally related to the work accident. The claimant, who is represented by counsel at the Board level, opted to appeal the decision pro se to the Superior Court. She drafted a one-paragraph Brief containing only generalized objections to the Board's determination. The claimant did not cite any appealable issues or why the Board's decision was not supported substantial competent evidence or otherwise legally erroneous. Accordingly, the employer filed a motion to dismiss the appeal. The Court requested the claimant to respond to the employer's motion. Her response was once again a vague disagreement with the Board's decision. As such, the Court concluded that dismissal of the appeal was appropriate because the claimant had failed to identify any semblance of a legal argument upon which relief could be granted to her and appeared to simply disagree with the outcome of the Board. The Court further observed that credibility determinations are not in its purview. The claimant not having cited any legal argument that the Court could consider, the Court deemed dismissal appropriate and granted the employer's motion. (Woodruff pro se/Baker)

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

IVY LEE WOODRUFF, Appellant, v. FOULK MANOR NORTH, Appellee.	C.A. No.: N15A-06-007 RRC

Submitted: October 12, 2015
Decided: January 6, 2016

On Appellee's Motion to Dismiss Appeal.
GRANTED.

ORDER

Ivy Lee Woodruff, *pro se*, Wilmington, Delaware.
H. Garrett Baker, Esquire, Elzufon, Austun, Tarlov, & Mondell, Wilmington, Delaware, Attorney for Foulk Manor North.

COOCH, R.J.

This 6th day of January, 2016, on appeal from a decision of the Industrial Accident Board, it appears to the Court that:

1. Appellant Ivy Lee Woodruff filed a petition with the Industrial Accident Board to determine compensation due to her as a result of a work accident.[1] Appellee Foulk Manor North conceded that the incident occurred, but denied that it resulted in any injury to Ms. Woodruff.[2]

2. The Board agreed with Foulk Manor North and found that Ms. Woodruff "did not sustain a compensable injury that [wa]s causally related to the work accident."[3] Following the Board's decision, Ms. Woodruff appealed the decision to this Court on July 15, 2015.[4] Ms. Woodruffs "Opening Brief' reads in its entirety:

> At the request of Superior Court, I[,] I[vy] Lee Woodruff[,] am providing you with my statement in reg[]ards [t]o an injury I

[1] R. at 1. The record the Court received of the proceeding below is not paginated. Instead, documents in the record are tabbed to differentiate them other documents. Therefore, unless a page number is specifically referred to, all citations to the record refer to the numbered tabs.
[2] Mot to Dismiss Appeal at ¶ 1.
[3] R. at 7, pg. 26.
[4] R. at 8.

> sustained on the property of Foulk Manor North[,] [w]hich at the time I was an employee[.] The injury I sustained was a head injury that rendered me unconscious[.] Two cooking pans were [mishandled] and dropped on my head[.] (M]y head was not bleeding[,] but I suffered head pain O and I[]am still suffering. The[re]'s tenderness on the area where I was hit that is definitely a discomfort and a distraction.( ]I feel I should[n't] be held accountable [for] my injury[] and[] my pain(] and suffering, and the fact that I was tak[en] out of work[.] [Since] the incident was[n't] deni[ed] by Foulk Manor North[,] [that] should be the bas[i]s o[f] my compensation.[5]. . .

3. Foulk Manor North then filed a Motion to Dismiss Appeal. In its Motion, Foulk Manor North argued that Ms. Woodruffs Opening Brief was completely deficient because there were no citations to the record, to any legal authority, and only generalized objections to the Board's determination. On October 14, 2015, Ms. Woodruff filed a Response to the Motion. Her "Response" reads in its entirety:

> With all due respect to the Superior; Court, I[,] Ivy Lee Woodruff[,] wish to have my case heard for the second time by the Industrial Accident Board. Due to the fact[] that as an employee of Foulk Manor North[,] I have a right as a United States citizen to receive worker[s'] compensation, and my case has not expired it[]s 2YR maximum limit.. I was an employee of Foulk Manor North on July 6[,] 2014[.] I was at my station when I was struck over the head by several metal cooking pans, which were being carried by a pregnant employee that was not suppose(d] to be handling that much equipment at once. She lost control of the pans and as a result I was injured sever[e]ly[.J I was removed from work by three different doctors[,] [w]hich Faulk Manor has these documents. I should not be denied compensation because my doctor has a bad reputation that was unkttm.vn to me[.] I was not aware that my lawyer had used this particular doctor several times in similar cases. I lost my case due to this misinformed information and my doctor[']s credibility[.] I wish that my case can be reheard [] and also . to get an opinion of a different doctor. I want my case to be heard without prejudice[.] [W]ith all due respect[,] please don't dismiss my case. Just because my doctor wasn't credible [] doesn't mean I wasn't injured due to the incident[,] just the wrong doctor came to my trial.[6]

4. Superior Court Civil Rule 72(i) states, "[d]ismissal [of an appeal] may be ordered ... for failure to comply with any rule, statute, or order of the Court or for any reason deemed by

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[5] Appellant's Opening Br. at 1.

[6] Appellant's Resp. to Appellee's Mot. To Dismiss Appeal at 1.

the Court to be appropriate."[7] Dismissal may be appropriate when a party fails to set forth any semblance of a legal argument upon which relief can be granted.[8] While briefing standards may be relaxed for prose litigants, the brief must assert an argument that this Court is able to review.[9]

5. The Court acknowledges that sometimes prose litigants may be held to a less exacting standard than that to which attorneys are held. However, Ms. Woodruff has failed to set forth any aspect of a legal argument that this Court can consider in both her Opening Brief and her Response to Foulk Manor North's Motion. Both submissions, taken together, fall well short of what is minimally required of a self-represented party to submit to this Court in an appeal from the Industrial Accident Board. This Court is confident based on the paucity of the Opening Brief and Response, that any further direction to Appellant to comply, even minimally, with the requirements of Superior Court Rule 72 would not be fruitful. This Court may only review an Industrial Accident Board appeal to determine if the decision is supported by substantial evidence and free of legal error.[10]10 "The Superior Court does not sit as the trier of .fact with authority to weigh the-evidence, determine questions of credibility, and make its own factual findings and conclusions."[11]

6. In both her Opening Brief and Response, Ms. Woodruff appears contend that she was actually injured and she should not be held to the decision of the Board because of an incorrect credibility determination. That responsibility is within the purview of the Board and not this Court. This Court will not disturb the decision of the Board.

Therefore, Appellee's Motion to Dismiss Appeal is GRANTED.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

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[7] Super. Ct. Civ. R. 72(i).

[8] *Joyner v. The News Journal*, 844 A.2d 991 (Del. 2003) (TABLE) (granting a motion to dismiss in an appeal with an opening brief that contained over 100 pages of transcripts, reports, and correspondences spanning a six-year period that did not set forth an argument for the Court to consider); *Goubeaud v. Cty. Envtl. Co.*, 2013 WL 3001489, at* 2 (Del. Super. Apr. 5, 2013) (granting a motion to dismiss in an appeal of a decision of the Unemployment Insurance Appeal Board for the claimant's failure to file a timely opening brief and failure to "articulate even the barest modicum of evidence or legal argument in favor of [c]laimant's position."); *Buck v. Cassidy Painting, Inc.*, 2011 WL 1226403, at* 2 (Del. Super. Mar. 11, 2011) (dismissing an appeal of a decision by the Unemployment Insurance Appeal Board, because the claimant submitted his opening brief significantly beyond the deadline in the Court's briefing schedule and did not present any issues or arguments that the Court could consider). But see *Camara v. Marine Lubricants*, 2013 WL 1088334, at* 3 (Del. Super. Feb. 25, 2013) (denying a motion to dismiss an appeal of a decision of the Unemployment Insurance Appeal Board, because the claimant was pro se; the appeal was filed on time; and the appellees were rven sufficient notice of the action, but affirming the decision on other grounds).

[9] *In re Estate of Hall*, 2005 WL 2473791, at* 1 (Del. Aug. 26, 2005) ("While this Court allows a prose litigant leeway in meeting the briefing requirements, the brief at the very least must assert an argument that is capable of review,"); *Yancey v. Nat'l Tr. Co., Ltd*., 1998 WL 309819, at* 1 (Del. Supr. May 19, 199,8) ("While this Court recognizes that some degree of leniency should be granted for pro se appeals, at a minimum, briefs must be adequate so that this Court may conduct a meaningful review of the merits of the appellant's claims.").

[10] *Glanden v. Land Prep, Inc*., 918 A.2d 1098, 1100 (Del. 2007).

[11] *Johnson v. Chrysler Corp*., 213 A2d 64, 66 (Del. 1965).

oc: Prothonotary
cc: Industrial Accident Board