

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

PeopLease/PLC Services LLC,
Steel Transport, and East West
Leasing Corporation,

Appellants-Defendants,

v.

Marshall Snuffer,
Appellee-Plaintiff.

May 4, 2023

Court of Appeals Case No.
22A-EX-2607

Appeal from the Full Worker's
Compensation Board of Indiana

The Honorable Linda Peterson
Hamilton, Chairman

Application No.
C-249811

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

- [1] PeopLease/PLC Services LLC (“PeopLease”), Steel Transport, and East West Leasing Corporation (“East West”) (collectively, the “Trucking Companies”) appeal the order of the full Indiana Worker’s Compensation Board (“the Board”) affirming the Hearing Member’s determination that Marshall Snuffer had sustained work-related injuries and that the Trucking Companies were liable for his medical expenses. We affirm.

Issues

- [2] The Trucking Companies raise three issues for our review, which we revise and restate as follows:
1. Whether the Hearing Member erred when it prohibited the Trucking Companies from submitting certain evidence to the independent medical examiner.
 2. Whether the Board erred when it ordered all three Trucking Companies to contribute to Snuffer’s medical expenses.
 3. Whether the Board’s findings are contrary to the evidence.

Facts and Procedural History

[3] Snuffer was a truck driver jointly employed by the Trucking Companies.¹ On the morning of Friday, March 13, 2020, Snuffer woke up, went to his kitchen, and asked his wife Flora to make him some coffee and toast. Flora observed that Snuffer was “walking fine” and that he did not have any bruising on his legs. Appellants’ App. Vol. 3 at 55. Snuffer did not complain of any pain or injury.

[4] Later that morning, Snuffer reported to work at Steel Transport’s yard. He worked in the yard for two and one-half to three hours before he left in a truck to make a delivery. Shortly before he reached his destination, Snuffer stopped at a gas station to refuel. While he was refueling, the pump stopped working. Snuffer then began walking toward the gas station to speak with the attendant. As he did, Snuffer was “startled” by a truck that passed closely in front of him. *Id.* at 63. Snuffer then turned around and “slipped” in diesel fuel. *Id.* The fall “pole vaulted” or “flipped” Snuffer toward the building. *Id.* Snuffer then got up, walked toward the building, and used the handrails to help himself up the steps. He proceeded to enter the building’s restroom, and he stayed in there for approximately twenty minutes before he “hobbled” back to his truck. *Id.* at 64. The gas station had a security camera that captured footage during the relevant time that Snuffer was there.

¹ While the Trucking Companies do not concede this fact, they also do not dispute it. *See* Appellants’ Br. at 26 (declining to dispute the issue and, instead, “assuming that joint employment existed[.]”).

[5] After he left the truck stop, Snuffer completed his delivery and picked up a second load. Snuffer had to pay someone to help him with the second load because he was hurt. Snuffer ultimately returned to Steel Transport's yard that evening. Once he returned, other drivers helped him out of the truck. Josh Guerrero, another truck driver, observed that Snuffer "was limping." *Id.* at 99. When questioned, Snuffer reported to Guerrero that he had "slipped" while refueling his truck and that he had "landed on his leg." *Id.* at 100. Guerrero then carried Snuffer's belongings from the truck to Snuffer's personal vehicle. With Guerrero's assistance, Snuffer entered his personal vehicle and drove himself home.

[6] On his way home, Snuffer called Flora and said: "When I get home, you might have to help me out of the truck." *Id.* at 56. When Snuffer arrived home, he called Flora from the driveway. Flora approached Snuffer and observed that he "was in a lot of pain." *Id.* at 57. She helped Snuffer from his car into the house. Snuffer was "screaming" that it "hurts." *Id.* When Flora got Snuffer into the house, she got him into bed and undressed him. She was able to see that he was "black and blue from his waist to his feet." *Id.*

[7] Snuffer ultimately reported the incident to Steel Transport on Monday, March 16, and he went to the emergency department for an evaluation. The hospital staff examined Snuffer and discovered "swelling and tenderness over the posterior aspect of the right thigh." *Id.* at 108. The hospital diagnosed Snuffer with a muscle strain and hematoma and discharged him with pain medication. On March 18, Snuffer reported to an occupational health center, where a

clinician observed a “severe contusion” to his right hip, thigh, knee, and lower leg. *Id.* at 130. The clinician noted that it was a “[w]ork-[r]elated [i]njury,” and recommended that Snuffer rest and take pain medication. *Id.* at 132. Snuffer returned to the occupational health center on March 25, and he was ordered to complete physical therapy.

[8] Snuffer went to his first physical therapy appointment on April 1. The physical therapist observed that Snuffer had a “slow right antalgic gait pattern,” that his “[r]ight ischial tuberosity is very tender” and that he had “generalized tenderness” in his right hamstring and quadricep. *Id.* at 146. Thereafter, Snuffer continued with physical therapy multiple times per week.

[9] On April 7 and 16, Snuffer returned to the occupational health center with complaints of continued pain in his right leg, but he was discharged on both occasions with instructions to continue physical therapy. On April 23, Snuffer submitted to an MRI of his right hip and leg. Following the MRI, Dr. Thomas Hoess determined that Snuffer had suffered from a “[c]omplete avulsion of the hamstring tendons with edema and hemorrhage.” *Id.* at 168. Dr. Hoess directed Snuffer to immediately cease physical therapy, and Snuffer was referred to Dr. Scott Andrews, a physician with an orthopedic and spinal center.

[10] On April 27, Dr. Andrews examined Snuffer. Dr. Andrews diagnosed Snuffer with “an avulsion of his hamstrings off his ischium.” *Id.* at 187. Dr. Andrews then ordered Snuffer to return to physical therapy but noted that a “surgical

repair” may be necessary. *Id.* at 188. He also ordered a repeat MRI. The repeat MRI showed a “complete rupture of the hamstring muscles off of the ischium with displacement of 4 centimeters.” *Id.* at 202. Dr. Andrews opined that Snuffer’s injury was “clearly a workers compensation injury[.]” *Id.* at 202. And because Snuffer’s injuries “continued to bother him greatly,” Dr. Andrews believed that Snuffer would benefit from a surgical repair. *Id.*

[11] Snuffer sought benefits from the Trucking Companies to pay for his medical expenses, but PeopLease denied Snuffer’s claim on May 5 on the ground that there was “no causal relationship.” Ex. Vol. 9 at 10. Thereafter, Snuffer filed an amended Application for Adjustment of Claim with the Board.² Dr. Andrews continued to treat Snuffer for pain related to a “[p]roximal hamstring rupture” while he “wait[ed] for workmen’s compensation to see if they will take care of this or not.” Appellants’ App. Vol. 3 at 217-18. On December 7, Snuffer reported to Dr. Donald Kucharzyk, who examined Snuffer and determined that Snuffer had “exacerbated” a low back condition and that he had a “hamstring injury which is having a grave impact on his back.” Ex. Vol. 9 at 145. Dr. Anthony Levenda then examined Snuffer on December 17. Dr. Levenda stated that the MRI “reveal[ed] complete chronic disruption of the proximal right common hamstring tendon with at least 5 cm of distal retraction.” Appellants’ App. Vol. 3 at 222. Dr. Levenda noted that the

² Snuffer filed his original application on May 13, 2020, and he amended it on April 27, 2021.

“description of the injury at work correlates with his exam and MRI findings.”

Id.

[12] The Trucking Companies then engaged Dr. Lawrence Lieber to conduct a medical examination of Snuffer. On March 3, 2021, Dr. Lieber issued his initial report. Dr. Lieber reported that Snuffer had an “avulsion of the right hamstring,” which was “causally related to the” March 13, 2020, accident. Appellants’ App. Vol. 4 at 9. Dr. Lieber further reported that “all treatment reviewed appears to have been reasonable, necessary, and appropriate.” *Id.* at 10.

[13] Thereafter, Dr. Lieber “review[ed]” his March 3, 2021, evaluation as well as the video footage from the truck stop. *Id.* at 16. Following that review, Dr. Lieber issued a supplemental report and stated that, based on the video, “there is no evidence of any injury that Mr. Snuffer sustained.” *Id.* Dr. Lieber further stated that the video “indicated inconsistenc[ies] in Mr. Snuffer’s history of the injury[.]” *Id.*

[14] On September 1, 2021, a Hearing Member ordered Snuffer to submit to an examination by an independent medical examiner, and Dr. John Divers was appointed to serve as that examiner. Following a dispute over what evidence the parties could provide to Dr. Divers, the Hearing Member entered an order in which it allowed the Trucking Companies to submit Dr. Lieber’s initial report to Dr. Divers but precluded them from submitting Dr. Lieber’s supplemental report. In addition, the Hearing Member ordered that the

Trucking Companies “shall not submit any video, picture or other item to Dr. Divers of the site of the incident.” Appellants’ App. Vol. 2 at 27.

- [15] On September 15, Dr. Howard Freedberg examined Snuffer. Based on his examination of Snuffer, Dr. Freedberg opined that Snuffer had sustained a lumbar sprain with “significant” spinal stenosis and a right “proximal hamstring tear with retraction.” Ex. Vol. 9 at 232. Dr. Freeburg then referred Snuffer to Dr. Dalip Pelinkovic, a spinal surgeon. Dr. Pelinkovic examined Snuffer on October 1. Dr. Pelinkovic found that Snuffer suffered from a “complete disruption of the proximal common hamstring tendon with 4 cm of distal retraction.” *Id.* at 227. And he concluded that, “[t]o a reasonable degree of medical and surgical certainty, it is more likely than not that the patient’s current condition is causally related to the injury of 03/13/2020.” *Id.* at 228.
- [16] Dr. Divers then examined Snuffer and, on November 22, submitted his report. According to the report, on the date of the examination, Snuffer presented with “a significant antalgic gait, significant pain to palpation of the hamstring musculature, and a palpable defect there as well.” Appellants’ App. Vol. 2 at 98. Based on his examination of Snuffer and his review of Snuffer’s prior medical records, Dr. Divers diagnosed Snuffer with “complete hamstring avulsion of the proximal hamstrings of the right side with sciatic neuropraxia secondary to this.” *Id.* at 99. And Dr. Divers concluded that Snuffer’s “symptoms are related to the on-the-job injury[.]” *Id.*

[17] The parties then submitted the matter to the Hearing Member for a “determination on compensability[.]” *Id.* at 204. After having reviewed the evidence, the Hearing Member entered findings and conclusions on June 17. In particular, the Hearing Member found that, while Snuffer was fueling his truck, he “reacted quickly” to move out of the way of a vehicle, which caused “him to slip on a substance in the fueling bay and fall to the ground injuring himself.” *Id.* at 208. The Hearing Member also found that there “is a causal relationship between the injury sustained and the work performed” by Snuffer and that Snuffer’s claim “involves a clear and well established work-related injury[.]” *Id.* at 220. And the Hearing Member found that Snuffer’s “injury is compensable under the Workmen’s Compensation Act.” *Id.* at 219. Accordingly, the Hearing Member determined that Snuffer’s medical expenses were “reimbursable” by the Trucking Companies. *Id.* at 224.

[18] The Trucking Companies then filed an application for review by the Board. The Trucking Companies argued that the Hearing Member was “without legal basis” to exclude the security footage and Dr. Lieber’s supplemental report from the evidence presented to Dr. Divers, that the Hearing Member had “ignored compelling objective video evidence that disproves that a work injury occurred,” and that the Hearing Member had erred when it failed “to acknowledge [the Trucking Companies’] arrangement among themselves for payment of benefits[.]” Appellants’ App. Vol. 3 at 4.

[19] On October 3, the Board adopted the Hearing Member’s findings. Based on those findings, the Board concluded that Snuffer “has shown sufficient evidence

that the injuries sustained by him are work related.” Appellants’ App. Vol. 2 at 23. The Board further ordered the Trucking Companies to “reimburse[]” Snuffer for his medical expenses. *Id.* at 24. Accordingly, the Board affirmed the Hearing Member’s decision. This appeal ensued.

Discussion and Decision

[20] The Trucking Companies appeal the Board’s determination that Snuffer had obtained a work-related injury and that he was entitled to workmen’s compensation. As this Court has stated:

The Worker’s Compensation Board, as the trier of fact, has a duty to issue findings of fact that reveal its analysis of the evidence and that are specific enough to permit intelligent review of its decision. . . . “In reviewing a worker’s compensation decision, an appellate court is bound by the factual determinations of the Board and may not disturb them unless the evidence is undisputed and leads inescapably to a contrary conclusion.” . . . We examine the record only to determine whether there is substantial evidence and reasonable inferences that can be drawn therefrom to support the Worker’s Compensation Board’s findings and conclusion. We will not reweigh the evidence or reassess witness credibility.

Wright Tree Serv. v. Hernandez, 907 N.E.2d 183, 186 (Ind. Ct. App. 2009) (citations omitted). “As to the Board’s interpretation of the law, an appellate court employs a deferential standard of review of the interpretation of a statute by an administrative agency charged with its enforcement in light of its expertise in the given area.” *Id.* (quoting *Christopher R. Brown, D.D.S., Inc. v.*

Decatur County Memorial Hosp., 892 N.E.2d 642, 646 (Ind. 2008)). The Board will only be reversed if it incorrectly interpreted the Act. *Id.*

Issue One: Evidence Presented to Dr. Divers

[21] On appeal, the Trucking Companies first assert that the Hearing Member erred when it prevented them from presenting Dr. Lieber’s supplemental report and video footage from the truck stop to Dr. Divers. In particular, the Trucking Companies contend that the “decision to exclude the crucial [security footage] and Dr. Lieber’s supplemental report removed any reasonable expectation of fairness and neutrality of the Board examiner’s review.” Appellants’ Br. at 24. The Trucking Companies contend that the “video in particular would have given direct information bearing on the alleged mechanism of injury as well as a contemporaneous view of the severity of the alleged injury[.]” *Id.* They further assert that, had Dr. Divers reviewed Dr. Lieber’s supplemental report and the video footage, “he may well have come to a different conclusion.” *Id.* at 25. They therefore maintain that, had Dr. Divers reviewed the excluded material, he might have changed his opinion and concluded that Snuffer did not suffer a work-related injury, which, in turn, might have caused the Hearing Member and then the Board to also change their opinions.

[22] However, we need not address whether the Hearing Member erred when it limited the evidence that Dr. Divers could review because any error would be harmless. The Trucking Companies’ argument rests primarily on their assertion that the video footage showed “no accident.” *Id.* at 20. But contrary to the Trucking Companies’ claims, the video does not show an absence of an

accident. Rather, the video shows Snuffer walking back and forth around the front of his truck for less than two minutes before he begins walking toward the building. Ex. 8 at 12:16-13:57. Then the video shows Snuffer get startled by a truck that passes very closely in front of him. *Id.* at 13:57. At that point, the truck obstructs the camera's view of Snuffer for eleven seconds. *Id.* at 13:57-14:08. The video then shows Snuffer walking for a few seconds before he disappears off screen. When Snuffer reappears on screen, the video shows him walking up the stairs using both handrails and appearing hunched over and uncomfortable. *Id.* at 14:33-14:43. Snuffer then disappears off camera for approximately twenty-five minutes before he exits the building, again using the handrails as he climbed down the stairs. *Id.* at 39:16.

[23] There is nothing in the video to indicate one way or another what had occurred during the eleven seconds that Snuffer was obstructed from view by the truck, which is when he claims he fell. We therefore see nothing in the video to refute Snuffer's claim that he fell, nor do we see anything that likely would have caused Dr. Divers to change his opinion. Rather, the video at least partially corroborates Snuffer's story. Again, after the truck passes in front of Snuffer, the video shows him using both railings to climb the stairs and appearing to be in pain.

[24] In any event, the Hearing Member and the Board relied on much more than Dr. Divers' report when they concluded that Snuffer had suffered a work-related injury. They relied on the testimony of Snuffer, Flora, and Guerrero, which taken together show that Snuffer was well on the morning of March 13, 2020,

that he had fallen while fueling up his truck, that he was limping when he returned to the fuel yard, and that he was bruised and in pain when he returned home that evening.

[25] Additionally, the Hearing Member and Board relied on Snuffer's extensive medical records, which showed that Snuffer was bruised three days after his fall and that he had torn his right hamstring. The medical records also showed that Snuffer underwent examinations by several clinicians, doctors, and physical therapists. Among those examinations, Dr. Andrews specifically opined that Snuffer's injury was "clearly a workers compensation injury[.]" Appellants' App. Vol. 3 at 202. In addition, Dr. Levenda noted that the "description of the injury at work correlates with his exam and MRI findings." *Id.* at 222. And Dr. Pelinkovic stated that, "[t]o a reasonable degree of medical and surgical certainty, it is more likely than not that the patient's current condition is causally related to the injury of 03/13/2020." Ex. Vol. 9 at 228. And the Hearing Member and then the Board both found Dr. Andrews, Dr. Levenda, Dr. Kucharzyk, Dr. Freedberg, and Dr. Pelinkovic to be more credible than Dr. Lieber.

[26] In addition, the Hearing Member and the Board were able to review the video, and both found that Snuffer can be seen "grimacing" or "wincing in pain" as he walked up the step. Appellant's App. Vol. 2 at 9, 209. The Board also found that the "video footage was obstructed and did not capture [Snuffer's] entire visit." *Id.* at 9. As such, both the Hearing Member and the Board found that the video to some degree corroborated, or at a minimum did not dispute,

Snuffer’s account that he had fallen while fueling his truck. And the Hearing Member and the Board also reviewed Dr. Lieber’s supplemental report based on the video and clearly determined that Dr. Lieber’s supplemental report was not credible.

[27] In light of all of the evidence before the Hearing Member and the Board—including the video footage and Dr. Lieber’s supplemental report—we can say with confidence that the Hearing Member and subsequently the Board would not have changed their findings even if Dr. Divers had reviewed the excluded evidence and even if it changed his opinion. We therefore hold that any error in the Hearing Member’s order prohibiting the Trucking Companies from providing Dr. Divers with the video footage or Dr. Lieber’s supplemental report was harmless.

Issue Two: Order that all Trucking Companies Pay

[28] The Trucking Companies next assert that the Board erred when it ordered all three companies to contribute to Snuffer’s medical expenses. The Trucking Companies do not dispute that they are joint employers, but they contend that they had a “reasonable arrangement” for the distribution of liability. Appellants’ Br. at 26. To support their assertion, the Trucking Companies rely on Indiana Code Section 22-3-3-31 (2023), which provides:

Whenever any employee for whose injury or death compensation is payable under IC 22-3-2 through IC 22-3-6 shall at the time of the injury be in the joint service of two (2) or more employers subject to IC 22-3-2 through IC 22-3-6, such employers shall

contribute to the payment of such compensation in proportion to their wage liability to such employees; provided, however, that nothing in this section shall prevent any reasonable arrangements between such employers for a different distribution as between themselves of the ultimate burden of compensation.

[29] The Trucking Companies specifically assert that they had an agreement among themselves that Steel Transport could not “be forced to contribute to the payment of benefits.” Appellants’ Br. at 27. And they contend that the Board “fail[ed] to honor” that agreement when it ordered all three companies to contribute to Snuffer’s expenses. *Id.* at 27.

[30] We agree with the Trucking Companies that the statute explicitly allows them to enter into a reasonable arrangement for the distribution of liability. However, we disagree with the Trucking Companies that the Board violated that agreement. In its order, the Board found that all three Trucking Companies were joint employers and that “all three (3) shall contribute to [Snuffer’s] payment compensation.” Appellants’ App. Vol. 2 at 20. As such, the Board ordered that Snuffer’s medical bills and expenses related to the accident “are deemed to be reimbursable by Defendants[.]” *Id.* at 24.

[31] There is nothing in that order that specifies how much each of the Trucking Companies is required to contribute. Rather, it simply requires that Snuffer’s expenses get paid by the Trucking Companies in some fashion. If the Trucking Companies have an agreement to release Steel Transport from liability, then the Board’s order would simply require the other two companies to pay Snuffer’s

bills. That is a matter to be sorted internally by the Trucking Companies. The Board did not violate their agreement.

Issue Three: Board's Findings

[32] Finally, the Trucking Companies assert that the Board's findings do not adequately reconcile Snuffer's account of the events with the "objective video evidence showing no accident." Appellants' Br. at 27. In particular, the Trucking Companies assert that the Board "does not identify when and where Driver Snuffer was allegedly hurt" and that an "inability to specify those details would suggest a failure of proof." *Id.* The Trucking Companies allege that Snuffer testified that he "fell forward thirty to forty feet, only stopping when he reached the railing at the base of the station," but that the video shows him "upright during his walk from his semi-tractor to the cashier's station[.]" *Id.* at 29-30. Stated differently, the Trucking Companies assert that there are inconsistencies between the video and Snuffer's testimony and that the Board should "explain how it reach[ed] its conclusion" despite those inconsistencies. *Id.* at 31.

[33] However, we hold that the Board's findings and conclusions are more than adequate. Indeed, in its findings, the Board explicitly determined that Snuffer was credible and that, in light of all of the testimony, medical records, and other evidence, Snuffer had sustained a work-related fall. In addition, the Board reviewed the video and specifically found that the "footage was obstructed and did not capture [Snuffer's] entire visit." Appellants' App. Vol. 2 at 9. Indeed, there is a period of approximately eleven seconds during which Snuffer is

obstructed from view while the truck passes him, which is when he asserts he fell. However, the video does show that, after the truck passed, Snuffer used both railings to climb a few stairs and appeared to be in pain. In addition, the uncontroverted testimony by Snuffer, Flora, and Guerrero demonstrate that Snuffer was not injured that morning but that he was limping and needed assistance when he returned to the yard and that he was in pain and badly bruised when he returned home.

[34] Still, we acknowledge that certain details of Snuffer's testimony may have been inconsistent or even exaggerated. And we agree that, had Snuffer actually flipped thirty feet, that likely would have been visible on the video. However, the exact details of Snuffer's fall are not relevant; it only matters that he fell. Snuffer never wavered from his testimony that he slipped in gas and injured himself in a fall while refueling his truck. The video does not refute that testimony but, rather, partially corroborates it. And the remaining evidence, including witness testimony, medical records, and the opinions of medical professionals that his fall caused his injury, also supports his testimony. The Trucking Companies' argument is simply a request that we reweigh the evidence, which we cannot do. *Wright Tree Serv.*, 907 N.E.2d at 186. We therefore hold that the Board adequately explained its reasoning in its findings and that there existed ample evidence to support the Board's award in favor of Snuffer.

Conclusion

[35] We hold that any error in the Hearing Member's limitation of evidence presented to Dr. Divers was harmless in light of all of the evidence the Board considered in making its final determination. Further, the Board's order that Snuffer's medical expenses are reimbursable by the Trucking Companies does not violate any agreement they may have regarding which company or companies are liable for the expenses. Finally, the Board adequately explained its reasoning for awarding Snuffer benefits. We therefore affirm the Board's order.

[36] Affirmed.

Brown, J., and Weissmann, J., concur.