

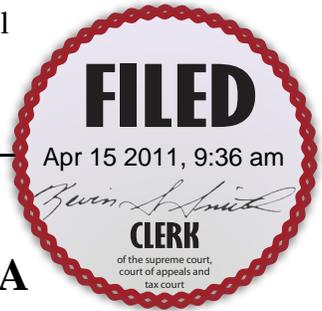
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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D.B., )  
 )  
Appellant-Claimant, )  
 )  
vs. ) No. 93A02-1010-EX-1172  
 )  
A.C., )  
 )  
Appellee-Employer. )

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APPEAL FROM THE FULL WORKER'S COMPENSATION BOARD OF INDIANA  
The Honorable Linda Peterson Hamilton, Chairperson  
Application No. C-177310

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**April 15, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

D.B. appeals from an order of the Full Worker's Compensation Board ("Full Board"), which affirmed the Single Hearing Member's dismissal of D.B.'s application for adjustment of claim, where his employer alleged that the claim was barred by collateral estoppel and res judicata. The following dispositive issue is presented for our review: whether the Full Board failed to enter findings of fact with sufficient specificity to permit meaningful appellate review of its decision.

We reverse and remand with instructions.

### **FACTS AND PROCEDURAL HISTORY**

D.B. is a Wisconsin resident hired by O.I.S.<sup>1</sup> on August 16, 2003, as a private investigator to perform services wherever O.I.S. transacted business. On October 5, 2003, O.I.S. assigned D.B. to perform surveillance in two separate cases involving Indiana residents. On October 9, 2003, the vehicle D.B. was operating crossed the center line of the highway and caused a catastrophic head-on collision in Lakeland, Indiana.

D.B. filed a worker's compensation claim against O.I.S. in Wisconsin in 2004. Ultimately, O.I.S., with two of its worker's compensation carriers, negotiated a compromise settlement in Wisconsin with D.B. for a total payment of \$100,000.00. The compromise settlement was approved by the Wisconsin Department of Workforce Development, Worker's Compensation Division. Prior to the approval of the compromise settlement in Wisconsin, D.B. filed a second worker's compensation claim against O.I.S., this time in Indiana, for the same motor vehicle accident. O.I.S. had worker's compensation coverage

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<sup>1</sup> A.C. does business as O.I.S. and will be referred to as O.I.S. in this opinion.

through a different carrier in Indiana. After approval of the compromise settlement in Wisconsin, an issue arose in the Indiana claim regarding whether the claim should be dismissed because O.I.S. claimed that D.B. had submitted to jurisdiction in Wisconsin and had reached a settlement with O.I.S. in Wisconsin. O.I.S. filed a motion to dismiss the Indiana claim on May 14, 2009, alleging: (1) that “Indiana is not the state with preferred venue”; (2) that re-litigation of the claim in Indiana was barred by res judicata; and (3) the defensive use of collateral estoppel. *Appellant’s App.* at 11-12. D.B. filed a response to the motion to dismiss claiming that the compromise settlements reached with O.I.S.’s Wisconsin worker’s compensation carriers included provisions whereby the carriers denied liability and that D. B. had reserved the right to proceed against O.I.S.’s Indiana worker’s compensation carrier. The motion to dismiss proceeded to review by a Single Hearing Member of the Full Board. The Single Hearing Member issued an order on March 29, 2010, which reads as follows:

This matter came before [the] Single Hearing Member . . . for hearing on O.I.S.’s Motion to Dismiss filed May 14, 2009. [D.B.] appeared by his attorney . . . ; [O.I.S.] appeared by its attorney . . . . The parties submitted briefs in response to said Motion to Dismiss. The Single Hearing Member, having reviewed the file and the submissions herein, now finds the Defendant’s motion to be meritorious and hereby grants [O.I.S.]’s Motion to Dismiss.

*Appellant’s App.* at 4.

D.B. timely filed an application to the Full Board for review of the Single Hearing Member’s order dismissing the Indiana claim. A Full Board hearing was held on August 30,

2010. The Full Board entered an order affirming the Single Hearing Member's decision, which reads in pertinent part as follows:

The [Full Board], having heard arguments of counsel and being duly advised in the premises, now finds the Single Hearing Member entered his Award dated March [2]9, which said Award is in the following words and figures, to-wit:

(H.I.)

It is further found that the [Full Board] by the majority of its members concurs and adopts the Single Hearing Member's decision.

*Appellant's App.* at 5-6. D.B. now appeals.

### **DISCUSSION AND DECISION**

D.B. argues that, because the Full Board did not enter findings of fact to explain its dismissal of his application, the decision does not permit meaningful appellate review. We agree.

Indiana Code section 22-3-4-7 provides as follows:

If an application for review is made to the board within thirty (30) days from the date of the award made by less than all the members, the full board, . . . shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives, and witnesses as soon as practicable and *shall make an award and file the same with the finding of the facts on which it is based* and send a copy thereof to each of the parties in dispute, in like manner as specified in section 6 of this chapter.

(Emphasis added). The Full Board serves as a trier of fact and is required by statute to make findings of fact which reveal its analysis of the evidence and are specific enough to permit intelligent review of the Full Board's decision. *Stytle v. Angola Die Casting Co.*, 783 N.E.2d 316, 319 (Ind. Ct. App. 2003). Our Supreme Court has previously stated as follows:

We believe that both claimant and employer have a legal right to know the evidentiary bases upon which the ultimate finding rests. That responsibility

initially lies with the administrative agency, who for that reason must enter specific findings of basic fact to support its finding of ultimate fact and conclusion of law. Parties will thereby be enabled to formulate intelligent and specific arguments on review. In turn, the reviewing court can expeditiously and effectively review the agency's determination; the integrity of that decision will be maintained by judicial review which is limited to these findings.

Additionally, the statutory requirement serves to protect against careless or arbitrary administrative action. Answers to difficult questions may easily be stated, but the validity and respect to be accorded the answer lies in the rationale and facts upon which it is founded. That requirement that findings of basic fact be entered insures that a careful examination of the evidence, rather than visceral inclinations, will control the agency's decision.

*Perez v. U.S. Steel Corp.*, 426 N.E.2d 29, 32 (Ind. 1981) (internal citations omitted).

In the present appeal, the Single Hearing Member's decision contains no findings of fact, but contains only a recitation of the sources of the evidence considered, and the argument submitted by the parties, before concluding that D.B.'s appeal should be dismissed. The Full Board did not enter its own findings, but adopted and affirmed the Single Hearing Member's decision.

The problem presented by the dearth of findings in this case is illustrated in the appellant's brief where D.B. speculates as to the Full Board's rationale for concluding that his claim should be dismissed, and then attempts to create arguments in response to that speculation. Without considering whether the lack of findings rise to the level of a due process violation, the decisions of the Single Hearing Member and the Full Board do not meet the statutory requirements for such and do not fulfill the mandate of our Supreme Court as pronounced in *Perez*. Therefore, because meaningful appellate review is impossible at

this point, we must remand this matter to the Full Board for a statement of the specific findings of basic fact which support its findings of ultimate fact and conclusion of law.

Reversed and remanded with instructions.

MATHIAS, J., and VAIDIK, J., concur.