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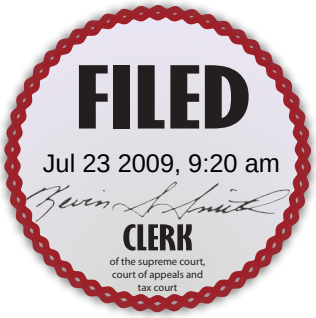

ATTORNEY FOR APPELLANT:

NATALIE FIEREK
Klezmer Maudlin
North Webster, Indiana

ATTORNEYS FOR APPELLEE:

CARLA R. HOUNSHEL
R. JAY TAYLOR JR.
Scopelitis, Garvin, Light, Hanson & Feary
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DEBORAH HUNTER,	)	
	)	
Appellant-Claimant,	)	
	)	
vs.	)	No. 93A02-0811-EX-992
	)	
SOUTHWEST ALLEN COUNTY SCHOOLS,	)	
	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE WORKER'S COMPENSATION BOARD OF INDIANA
The Honorable Linda P. Hamilton, Chairperson
Claim No. C-178570

July 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Claimant Deborah Hunter appeals the determination by the Indiana Worker's Compensation Board's ("Board") that she is not entitled to worker's compensation benefits because her alleged shoulder injury did not arise out of the course of her employment at the high school ("the School") of the Southwest Allen County School Corporation. Specifically, Hunter claims that the Board's order lacked the specificity necessary to permit meaningful review on appeal and that the Board erred in denying her worker's compensation claim because the undisputed medical evidence leads only to the reasonable inference that her shoulder injury arose out of and in the course of her employment in the School's cafeteria. Concluding that the Board's order was sufficient to permit meaningful review and that the Board did not err in denying Hunter's claim for worker's compensation benefits, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

At all times relevant to this appeal, Hunter worked in the School cafeteria. Hunter's duties in the cafeteria included, *inter alia*, retrieving food products from a large walk-in freezer which involved pushing or pulling large racks upon which the food products are stored. The racks are connected to a roller system for easy mobility.

Over time, Hunter began to complain of pain in her right shoulder. On January 22, 2004, Hunter visited her family physician, Dr. Andreana L. Hodgini, complaining that her

[1] Although Hunter's original worker's compensation claim included claims for both right ankle and right shoulder injuries, Hunter does not appeal the Board's determination that her right ankle injury did not arise out of the course of her employment. Hunter has therefore waived any challenge to the Board's determination regarding her alleged ankle injury. *See generally*, *Choung v. Iemma*, 708 N.E.2d 7, 13 (Ind. Ct. App. 1999) (providing that the failure to present an argument constitutes a waiver of the alleged error for appellate review).

shoulder was continuing to hurt her. Hunter again visited Dr. Hodgini on September 26, 2005, complaining of shoulder pain. Dr. Hodgini described Hunter's shoulder pain as "chronic" dating back to 2001 or 2002. Due to the chronic nature of Hunter's shoulder pain, Dr. Hodgini referred Hunter to Dr. Ronald G. Caldwell of Fort Wayne Orthopedics for further evaluation and treatment. Hunter informed Dr. Caldwell that she had been suffering from right shoulder pain since January 20, 2004. Hunter was diagnosed with having chronic impingement with a small rotator cuff tear. Dr. Caldwell initially recommended a conservative course of treatment. Eventually, Dr. Caldwell determined that surgery was necessary because the conservative treatment had failed to alleviate Hunter's pain. Dr. Caldwell performed surgery on Hunter's shoulder on January 30, 2006.

On December 15, 2005, Hunter filed an application for worker's compensation benefits alleging that she had suffered a torn rotator cuff in her right shoulder as a result of her work in the School cafeteria. A hearing on Hunter's worker's compensation claim was held before a single hearing member ("hearing member") of the Board on May 22, 2007. Hunter provided the hearing member with two letters she had written on January 27, 2006 and May 15, 2006, outlining the facts surrounding her alleged shoulder injury. Hunter stated in the January 27, 2006 letter that her shoulder started hurting "a little over two years ago" when she was "pushing and pulling the racks in the freezer." Plaintiff's Ex. 1. Hunter testified that she had reported her injury to the school nurse, Elizabeth Quigley, in January of 2004. Nurse Quigley, however, testified that she had no record of Hunter's alleged January 2004 injury report. Nurse Quigley further testified that, pursuant to school policy, she would

have "fill[ed] out a worker's compensation form on the spot" had Hunter reported being injured in January of 2004. Tr. p. 47.

On October 4, 2007, the hearing member issued its decision that, although Hunter provided credible testimony at the hearing regarding her work duties and her medical condition, the hearing member was "unable to find that [Hunter] timely notified her employer of a claim under the Worker's Compensation Act or that the evidence submitted regarding [her] various medical conditions [met] the legal standard necessary to establish compensability." Appellant's App. p. 6. On October 28, 2007, Hunter applied for review of the hearing member's determination by the full Board. The full Board affirmed the decision of the hearing member and added the following "modification[] and clarification[]" regarding Hunter's shoulder injury:

> At the hearing below, [Hunter] presented documentary evidence as contained in [Hunter's] Exhibits, that her shoulder conditions were work related. Although [Hunter's] medical report might make a prima facie case that [Hunter's] shoulder injuries were work related, the Full Board finds by a preponderance of all of the facts and evidence admitted at the hearing below that [Hunter's] shoulder conditions were more likely ongoing or personal in nature and that any injury or aggravation thereof did not occur by accident and did not arise out of and in the course of her employment or as the result of the work activity alleged.

Appellant's App. p. 4. This appeal follows.

DISCUSSION AND DECISION

Hunter challenges the Board's determination that she was not entitled to receive worker's compensation benefits because her claimed shoulder injury did not arise out of the course of her employment at the School. Specifically, Hunter challenges whether the

Board's order was specific enough to permit meaningful review and whether the Board erred in denying her claim for worker's compensation benefits relating to her alleged shoulder injury.

I. Worker's Compensation Claims, Board Decisions, and Appellate Review

A. Worker's Compensation Benefits and a Claimant's Burden of Proof

The Indiana Worker's Compensation Act ("Act") requires employers to provide their employees with compensation for personal injuries caused by an accident arising out of and in the course of the employment. *Outlaw v. Erbrich Prods. Co.*, 777 N.E.2d 14, 25 (Ind. Ct. App. 2002), *trans. denied*. Here, the primary issue before the Board was whether Hunter's shoulder injury arose out of and in the course of her employment. An injury arises out of employment when there is a causal relationship between the employment and the injury. *Id*. A causal relationship exists when the injury would not have occurred in the absence of the accident. *Id*. An accident occurs in the course of employment when it happens within the period of employment, at a place where the employee may reasonably be, and while the employee is fulfilling the duties of employment. *Id*. The Board, as the trier of fact, has a duty to issue findings that reveal its analysis of the evidence and that are specific enough to permit intelligent review of its decision. *Triplett v. USX Corp.*, 893 N.E.2d 1107, 1116 (Ind. Ct. App. 2008), *trans. denied*. The party seeking benefits bears the burden to prove that his or her injury arose out of and in the course of employment. *Outlaw*, 777 N.E.2d at 25. Ultimately, the issue of whether an employee's injury arose out of and in the course of his employment is a question of fact to be determined by the Board. *Id*.

B. Decisions of the Worker's Compensation Board

"Because both a claimant and an employer have a legal right to know the evidentiary basis for the Board's decision, the Board generally must enter specific findings of basic fact that support its finding of ultimate fact and its legal conclusion when it renders a decision." *Id*. at 25-26. "The Board's findings must be sufficiently specific to give the reader an understanding of the Board's reasons, and the supporting evidence, for the ultimate finding of fact." *Id*. at 26. However, when the Board renders a negative judgment against the claimant, the Board's decision need only be supported by findings related to the issue of proof, not the factual question. *Id*.

C. Appellate Review

Hunter, as the claimant, had the burden to prove a right to compensation under the Act. *Triplett*, 893 N.E.2d at 1116. As such, she appeals from a negative judgment. *Id*.

> When reviewing a negative judgment, we will not disturb the Board's findings of fact unless we conclude that the evidence is undisputed and leads inescapably to a contrary result, considering only the evidence that tends to support the Board's determination together with any uncontradicted adverse evidence.… While this court is not bound by the Board's interpretations of law, we should reverse only if the Board incorrectly interpreted the Worker's Compensation Act. We will construe the Worker's Compensation Act liberally in favor of the employee.

Id. (citations and quotations omitted.). Further, we will not reweigh the evidence or assess witness credibility. *Id*.

II. Analysis

A. Sufficiency of the Board's Findings

Hunter challenges whether the Board's order is "sufficiently specific to permit

meaningful review." Appellant's Br. p. 3. Specifically, Hunter contends that the Board's findings do not specifically address the medical evidence presented to the Board by Hunter. Hunter further claims that the reader cannot determine whether the Board fully considered Hunter's medical records because the Board's order failed to cite to any particular evidence.

In support, Hunter relies upon *Smith v. Henry C. Smithers Roofing Co.*, 771 N.E.2d 1164 (Ind. Ct. App. 2002), in which this court concluded that it was impossible to determine from the findings set forth in the Board's order whether the hearing judge adequately considered, or considered at all, certain medical testimony. 771 N.E.2d at 1169. In *Smith*, this court found that the hearing judge's findings that Smith suffered from pre-existing sickle cell disease and degenerative changes to his spine, that Smith's condition of avascular necrosis was not causally connected to the accidental injury therein, and that Smith was not entitled to worker's compensation benefits, were merely conclusions and did not demonstrate which facts the hearing judge relied upon in reaching his decision. *Id*. at 1168.

Here, unlike in *Smith*, both the decision rendered by the hearing member and the opinion rendered by the Full Board made mention of their reliance upon the medical records submitted by the parties in determining whether Hunter was entitled to receive worker's compensation benefits. With respect to Hunter's injuries and the medical records submitted by the parties, the hearing member found that although Hunter's testimony at the hearing was credible, "the single hearing member [was] unable to find that … the evidence submitted regarding [Hunter's] various medical conditions [met] the legal standard necessary to establish compensability in this case. Appellant's App. p. 6. As previously mentioned, the

Full Board adopted the findings and conclusions of the hearing member subject to the modification and clarification that:

> [a]lthough [Hunter's] medical report *might* make a *prima facie* case that [Hunter's] shoulder injuries were work related, the Full Board finds by a preponderance of all of the facts and evidence admitted at the hearing below that [Hunter's] shoulder conditions were *more likely* ongoing or personal in nature and that any injury or aggravation thereof did not occur by accident and did not arise out of and in the course of her employment or as the result of the work activity alleged.

Appellant's App. p. 4 (emphasis added).

In *Outlaw*, this court interpreted the Indiana Supreme Court's holding in *Hill v. Worldmark Corp./Mid America Extrusions Corp.*, 651 N.E.2d 785 (1994), concluding that:

> *Hill* plainly stands for the proposition that while the Board is always obligated to enter findings that provide the reader and the reviewing court with an understanding of the Board's reasons for its decision, when the Board delivers a negative judgment adverse to the claimant, who bears the burden of proof, the Board does not need to make specific findings of fact disproving a plaintiff's claim for entitlement to benefits. Rather the Board need only determine that the plaintiff has failed to prove entitlement to the benefits.

Outlaw, 777 N.E.2d at 27. Thus, the Board in the instant matter was not required to make specific factual findings negating or disproving Hunter's entitlement to benefits. In particular, the Board was not required to find specific facts from the medical records establishing that Hunter's condition was not caused by her work at the School or determine the actual cause of Hunter's injuries. Upon concluding that Hunter was not entitled to benefits, the Board was obligated only to find that Hunter had failed to meet her burden of proof and to enter findings explaining the reasons for this determination with sufficient particularity.

We conclude that the findings entered by the Board in this case fulfilled this obligation. The Board found that the evidence regarding Hunter's shoulder injury, *i.e.* the medical records, was insufficient to meet the legal standard necessary to establish compensability because although the medical records *may* have established a *prima facie* case that Hunter's shoulder injury was work related, the medical records relating to Hunter's shoulder injury also indicated that Hunter's shoulder injury was *more likely* ongoing and personal in nature and did not arise out of Hunter's employment. The Board's findings clearly state that Hunter failed to prove that her shoulder injury was work related, and coherently explained the Board's reasons for reaching this conclusion.

B. Evidentiary Support for the Board's Conclusion

Hunter also claims that the Board's rejection of her claim for benefits was contrary to the evidence. Again, we will overturn a negative judgment like this one only if there is no substantial evidence and reasonable inferences which can be drawn therefrom to support the Board's findings and conclusion such that reasonable people would be compelled to reach a conclusion contrary to the decision of the Board. *See Outlaw*, 777 N.E.2d at 28. We cannot say here that the evidence is undisputed and leads inescapably to a result contrary to the Board's findings.

As the claimant, Hunter bore the burden of proving a right to compensation under the Act. *Mueller v. Daimler Chrysler Motors Corp., Transmission Plant*, 842 N.E.2d 845, 847 (Ind. Ct. App. 2006). Here, Hunter alleged that she suffered a shoulder injury as a result of repetitive pushing and pulling shelves at work. Hunter presented evidence supporting this

claim, including her application for worker's compensation benefits which lists the date of her shoulder injury to be January 20, 2004. Hunter testified by self-authored letter that her shoulder began hurting "when [she] was pushing and pulling racks in the freezer" in about January of 2004 and that she had immediately reported her injury to School Nurse Quigley. Vol. IV - Plaintiff's Ex. 1 p. 663. Hunter also provided medical records from Dr. Caldwell and Dr. Hodgini that indicated that she had been suffering from shoulder pain since January of 2004, and that her injury was likely caused by her repetitive work in the School cafeteria.

Our review of Hunter's medical records and the testimony presented before the Board, however, reveals evidence supporting the Board's determination that Hunter's injuries were more likely caused by personal, as opposed to job-related activities. Hunter's medical records indicate that Hunter complained of sharp, stabbing pain in and around her shoulder blades as early as March of 2000. Hunter's medical records further indicate that although Hunter claims that she did not injury her shoulder until January of 2004, Hunter had complained of shoulder pain to Dr. Hodgini since at least 2001. Dr. Hodgini described this pain as chronic. In addition, School Nurse Quigley testified that she had no record of Hunter's alleged January 2004 injury report and that she would have "fill[ed] out a worker's compensation form on the spot" had Hunter reported being injured at work in January of 2004. Tr. p. 47.

Our review of the Board's findings and the pertinent evidence in the record does not convince us that the evidence leads inescapably to the conclusion opposite to that reached by the Board such that reasonable persons would be compelled to reach the contrary conclusion.

Rather the evidence was in dispute at the hearing. The Board weighed the evidence and determined that Hunter failed to prove that her shoulder injury arose out of and in the course of her employment. Under the circumstances, we may not disturb the Board's conclusion.

In sum, the Board's findings are sufficient to demonstrate the reasons for its ultimate conclusion that Hunter failed to carry her burden to prove that her shoulder injury arose out and in the course of her employment with the School. The Board's decision is not contrary to the evidence and therefore, must be affirmed. Having reached this conclusion, we need not consider the School's claim that Hunter waived her right to this appeal because she failed to challenge the Board's determination that she timely notified the School of her injuries on appeal.

The judgment of the Worker's Compensation Board is affirmed.

CRONE, J., and BROWN, J., concur.