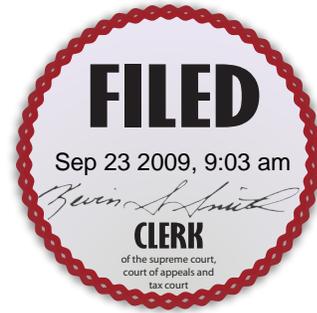


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAMAIRISS WALKER,

Appellant,

vs.

THREE RIVERS ENVIRONMENTAL,

Appellee.

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No. 93A02-0901-EX-7

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APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD

The Honorable Linda P. Hamilton, Chairman

The Honorable Daniel G. Foote, Member

Cause No. C-183073

C-183074

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**September 23, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Damairiss Walker appeals the Indiana Worker's Compensation Board's ("the Board's") denial of her claim for worker's compensation benefits. We remand.

### **Issue**

The dispositive issue we address is whether the Board's findings and conclusions are sufficient to support its denial of Walker's claim for benefits.

### **Facts**

In the fall of 2004, Walker worked for Three Rivers Environmental ("Three Rivers"). Her job duties included mold remediation, radon mitigation, and painting. Walker asserts that on October 22, 2004, she fell and hit her back while climbing into the crawlspace of what she called a "lake house" to help perform mold remediation; Walker stated that the house was not directly on a lake, but was near one. Tr. p. 20. Although her back initially hurt, the pain went away and she did not, at that time, mention anything to her supervisors at Three Rivers. A Three Rivers representative stated that Walker never was assigned to work at a house on a lake that had a crawlspace, although she acknowledged that Walker did work at a house near a lake that had a crawlspace.

On November 2, 2004, Walker was working on radon mitigation projects when she developed severe back pain. Walker recalled that she worked on "a minimum of about four jobs" that day, but a Three Rivers representative stated that they rarely

scheduled more than two radon remediation projects on one day.<sup>1</sup> Id. at 22. Walker initially thought her back pain was related to a urinary tract infection, but antibiotics prescribed to her did not alleviate her pain and it continued to worsen.

On November 12, 2004, Walker was working on a project when she experienced severe back pain, which caused her to drop a drill and thus break a water softener, causing the client's basement to flood. Because of this incident, Three Rivers fired Walker on November 15, 2004. When Walker went to collect her last paycheck on November 17, 2004, she requested to fill out a worker's compensation report in connection with her back pain. She also has sought medical treatment for her back pain, which led to a diagnosis of a disc herniation and treatment with medications and physical therapy.

After Three Rivers' insurer evidently denied Walker's worker's compensation claim, she filed an application for adjustment of claim with the Board on September 29, 2006. Walker sought compensation for temporary disability and permanent impairment. A single hearing member conducted a hearing on September 25, 2007, at which Walker and two Three Rivers employees testified and medical records for Walker were introduced into evidence. On May 15, 2008, the single hearing member denied Walker's claim. The entirety of the hearing member's findings and conclusions stated:

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<sup>1</sup> There also was testimony that Three Rivers never scheduled radon mitigation on a Friday, and Three Rivers seems to argue that this is evidence Walker was being untruthful about developing back pain while working on radon mitigation projects. We take judicial notice of the fact that November 2, 2004, was a Tuesday, and was Election Day as testified to by Walker.

1. Defendant employed Plaintiff as of October 22, 2004 and November 2, 2004.
2. Plaintiff alleges that she sustained personal injuries by accident arising out of and in the course of her employment on those dates. Defendant denies that Plaintiff sustained personal injury by accident arising out of and in the course of her employment.
3. Defendant provided mold remediation, radon remediation and painting services.
4. The parties provided detailed and at times conflicting testimony regarding their activities and recollection of the dates in question.
5. Plaintiff testified that she experienced symptoms on October 22, 2004 when she struck her back while entering a crawl space. Plaintiff testified that she felt this pain for a while but did not immediately think to report it to Defendant.
6. Plaintiff testified that she experienced back pain on November 2, 2004 while using a rock hammer.
7. Plaintiff's last date of work for Defendant was November 12, 2004.
8. The hearing member finds that Plaintiff has not established by a preponderance of factual and expert evidence that she sustained personal injury by accident arising out of and in the course of her employment with Defendant.
9. As such, no award of benefits and compensation is entered pursuant to the Worker's Compensation Act.

Appellant's App. p. 34. On December 10, 2008, the full Board affirmed the single hearing member's denial of Walker's claim without issuing any additional findings or conclusions. Walker now appeals pro se.

### **Analysis**

Although not all of Walker's brief addresses issues relevant to evidence presented below and the Board's ultimate decision, the overall thrust of her argument is that there is insufficient evidence to support the Board's denial of her claim. Three Rivers responds that the denial of her claim is supported by evidence that Walters never worked at a house on a lake that had a crawlspace, that she did not report her injury until after she was fired, and by conflicting evidence regarding the nature of the drill Walker used for radon mitigation and the amount of vibration it produced. According to Three Rivers, this evidence means Walker failed to establish that her back pain is due to an injury arising out of and in the course of her employment.

We acknowledge that in reviewing the Board's denial of a worker's compensation claim, all unfavorable evidence must be disregarded in favor of an examination of only the evidence and the reasonable inferences therefrom that support the Board's findings, and that we neither reweigh the evidence nor judge the credibility of witnesses. Fitzgerald v. U.S. Steel, 892 N.E.2d 659, 662 (Ind. Ct. App. 2008). We also observe, however, that the Board has the duty to enter findings that reveal its analysis of the evidence and are specific enough to permit intelligent review of the Board's decision. Smith v. Bob Evans Farms, Inc., 754 N.E.2d 18, 23 (Ind. Ct. App. 2001), trans. denied.

Specific findings of basic fact must reveal the Board's determination of the various relevant sub-issues and factual disputes that are, in sum, dispositive of the particular claim or ultimate factual question before the Board. Outlaw v. Erbrich Products Co., Inc., 742 N.E.2d 526, 530-31 (Ind. Ct. App. 2001). "The findings must be specific enough to provide the reader with an understanding of the Board's reasons, based on the evidence, for its finding of ultimate fact." Id. at 531. The more complex or technical the sub-issues or factual disputes are, the greater the particularity that is needed to satisfy the purposes of the findings requirement. Id. "Statements to the effect that 'the evidence revealed such and such . . . ,' that 'Mr. Jones testified so and so . . . ,' or that 'the Industrial Board finds Dr. Smith testified so and so . . . ,' are not findings of basic fact in the spirit of the requirement." Perez v. U.S. Steel Corp., 426 N.E.2d 29, 33 (Ind. 1981).

Here, we cannot discern upon what basis the Board denied Walker's claim for worker's compensation benefits. The findings provide only a very sparse recitation of some of the evidence presented. They wholly fail to indicate which portions of the evidence the Board credited or did not credit. They also fail to mention any of the approximately 150 pages of medical records regarding treatment Walker received for back pain after she stopped working at Three Rivers. Although on appeal Three Rivers seems to contend the Board might not have believed Walker worked on the projects on October 22, 2004, and November 2, 2004, that she claimed to have worked on, the Board made no findings to that effect. Three Rivers' evidence on that issue appears to be quite sparse, in any event.

There also is no indication whether the Board believed the medical records combined with Walker's testimony failed to establish that her back pain and disc herniation arose out of and in the course of her employment by Three Rivers. Additionally, although Walker presented no expert testimony in support of her claim, such testimony was not absolutely necessary, particularly with respect to her seeking temporary disability benefits. See Tanglewood Trace v. Long, 715 N.E.2d 410, 414 (Ind. Ct. App. 1999), trans. denied.

In sum, the Board's present findings in this case are inadequate to permit intelligent appellate review of its decision to deny any benefits to Walker. Thus, it is necessary to remand to the Board for the entry of more detailed findings, despite the fact that neither party challenged the specificity of the findings in this appeal. See Van-Scyoc v. Mid-State Paving, 787 N.E.2d 499, 508 (Ind. Ct. App. 2003) (remanding to Board to enter more specific findings even though neither party had raised issue of specificity of findings on appeal).

### **Conclusion**

We remand to the Board for further proceedings consistent with this opinion, namely the entry of more specific findings.

Remanded.

NAJAM, J., and KIRSCH, J., concur.