

**INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

Abdon Soriano,)	
<i>Employee,</i>)	I.A.B. No.: 1435246
)	
vs.)	
)	
Natural House,)	
<i>Employer.</i>)	

ORDER

This matter came before the Industrial Accident Board on Employer’s motion to enjoin Claimant from filing false First Reports of Injury and to expunge a false report from the record. On January 27, 2016 Claimant filed an initial petition on which he alleged to have been injured on October 9, 2015. He alleges that he reported an injury to his Employer. Employer denies that he ever reported an injury and intends to rely, in part, on the defenses available under 19 *Del. C.* § 2341, which states that if the employer is not notified of injury within 90 days of accident, no compensation shall be due until such notice is given or knowledge obtained.

Within the I.A.B.’s record is a document that purports to be an Employer’s First Report of Injury in this matter. Employer never completed this report because it was never notified of any injury. Employer’s first notice of any alleged injury was the Claimant’s petition, which was more than 90 days after Claimant alleged to have been injured. When Employer’s counsel reviewed the purported form, he realized that Section 14 of the document lists Claimant’s attorney’s paralegal as the “person who made out this report.”

The Employer’s First Report of Injury form is an *employer’s* form. By law, only employers may file it with the Board and must do so within ten days after knowledge of the occurrence of an accident that resulted in personal injury. 19 *Del. C.* § 2313(a). Employees and their representatives are prohibited to file them. These forms may not be used as evidence against the Employer in any proceedings under the workers’ compensation law or otherwise. 19

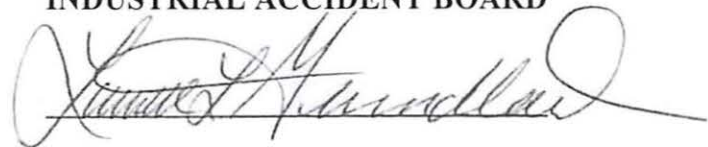
Del. C. § 2313(d). This case exemplifies the rationale behind this protection: By filing a false report as though it was filed by Employer, Claimant essentially created a document that could be used as Employer's statement (or even admission) against its own interest when in reality any statements on the form currently in the record are Claimant's and run contrary to Employer's statement of events in this case. While information in First Reports of Injury is prohibited from being used as evidence against employers, Employer fears that this report may still leave a cloud over defenses it may wish to raise under 19 *Del. C. § 2341* when the Board deliberates after the hearing on the merits. Employer also argues that this is not the first time this has occurred and the Board should take appropriate action to deter others from filing false reports.

Employer asks the Board to expunge the form that is currently in the record and replace it with the form that Employer has prepared (and signed to verify its authenticity). Employer also asks the Board to enjoin Claimant or his representative from filing First Reports of Injury. The Board has previously enjoined parties from improper litigation tactics. 29 *Del. C. § 10102(3)*. *Ruba v. State*, No. 1312734 (Del. I.A.B. Jan. 10, 2013).

Employer's motion is GRANTED. Claimant and his counsel are perpetually enjoined from filing First Reports of Injury. Only employers may file those forms. The report currently in the I.A.B.'s record is hereby expunged and Employer shall prepare a new report.

IT IS SO ORDERED this 24TH day of March, A.D. 2016.

INDUSTRIAL ACCIDENT BOARD



Robert J. Mitchell

Joseph Andrews, Esquire for Employer
Brian Legum, Esquire for Employee