

BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

EILEEN MOHR,)	
)	
Claimant,)	
)	
v.)	Hearing No. 1442616
)	
SHIVANI INC.,)	
)	
Employer.)	

ORDER

This matter came before the Board on July 5, 2018, on a Petition for Review by Shivani Inc. (“Employer”) seeking certain relief based on alleged fraud by Eileen Mohr (“Claimant”). Employer seeks to void *ab initio* an Agreement as to Compensation entered into by Claimant with Employer and a referral to the Fraud Prevention Bureau of the Delaware Insurance Department.¹

Background: Claimant alleged that she was involved in a compensable work accident on May 12, 2016, while working for Employer. She represented that she had cut her left thumb. While the accident was unwitnessed, Employer accepted Claimant’s story and entered into an Agreement as to Compensation whereby Claimant was paid total disability benefits at the rate of \$170.00 per week from May 13, 2016, through August 18, 2016 (a total of \$2,380.00) and paid medical expenses amounting to \$4,695.18.

¹ In its motion, Employer also sought an injunction against Global Financial, Inc., which apparently was attempting to assert a lien on Claimant’s workers’ compensation benefits pursuant to an alleged assignment of interest from Claimant. While it would appear that such an assignment is illegal under Delaware law, *see* DEL. CODE ANN. tit. 19, § 2355 (apart from child support orders, “claims or payment for compensation due or to become due under this chapter shall not be assignable and all compensation and claims therefor shall be exempt from all claims of creditors”), it does not appear that Global Financial Inc. was properly notified of this motion hearing. As such, the Board makes no ruling at this time on Employer’s request for an injunction.

Employer heard no further from Claimant until August 21, 2017, when Claimant filed a Petition to Determine Additional Compensation Due seeking compensation for permanent impairment to her left thumb. Claimant failed to appear at two scheduled examinations with Employer's medical expert, resulting in Employer incurring two "no show" fees in the amount of \$950.00. Claimant's counsel withdrew the petition in December of 2017 and, in April of 2018, withdrew as counsel for Claimant.

Employer finally obtained a medical record (never previously produced by Claimant despite multiple discovery requests), namely the emergency room record from Milford Memorial Hospital on May 12, 2016. This record reflects that Claimant presented to the emergency room at 10:32AM with a partial amputation of the ulnar side palmar surface of the left thumb. Claimant reported that she cut her left thumb while slicing tomatoes. The record specifically states "This is not a job related problem. Injury can be coded as occurring in home environs."

In light of this record, Employer seeks to have the Agreement as to Compensation declared void *ab initio* as it was based on Claimant's affirmative misrepresentation that she was injured at work. Employer also seeks a referral of Claimant to the Bureau of Fraud Prevention.

Notice of this hearing was sent to Claimant at 3465 Brownsville Road, Harrington, DE 19952. This and other notices to that address have been returned as "unclaimed" and "unable to forward." Claimant's former counsel failed to provide the Board with any updated address when he withdrew his representation. Claimant failed to appear for this hearing.

Determination: Certainly, it has been established that an Agreement as to Compensation can be voided upon a finding of fraud. *See* DEL. CODE ANN. tit. 19, § 2349 (noting that awards of the Board are final and conclusive "in the absence of fraud"). Thus, for example, in *Beebe Hospital v. Norwood*, Del. IAB, Hearing No. 823156 (November 27, 2013) the Board voided an

agreement for total disability back to 1999 upon finding that the claimant had, in fact, been receiving wages from another employer throughout the period (as evidenced by the fifteen W-2 forms issued to her over those years). In the present case, the contemporaneous emergency room note clearly states both that the injury was not work related and that it could be coded as happening in “home environs.” This contradicts Claimant’s story to Employer that she hurt herself in an unwitnessed accident at work.² The fact that Claimant failed to produce this medical record when requested in 2017 and failed to appear at two scheduled medical examinations by Employer’s medical expert to determine the validity of her impairment claim also reflects poorly on her credibility. Accordingly, the Board is satisfied that the Agreement as to Compensation entered into with respect to the alleged May 2016 work injury should be voided *ab initio*.

With respect to Employer’s request to have Claimant referred to the Fraud Prevention Bureau of the Delaware Insurance Department for further investigation, the Workers’ Compensation Act (“Act”) provides that:

If the Department or Board has reason to believe that any person is committing or has committed an act of insurance fraud, the Department or Board shall notify the Fraud Prevention Bureau of the Delaware Insurance Department, which shall review the facts and circumstances of the alleged fraud in order to determine whether administrative, civil, or other proceedings are appropriate, in accordance with chapter 24, Title 18 of the Delaware Code.

DEL. CODE ANN. tit. 19, § 2344(b)(4).

Thus, if the Board “has reason to believe” that there has been fraud, the matter is to be referred to the Fraud Prevention Bureau for a determination. The Board needs only to recite the

² There is also some question as to whether Claimant presented to the emergency room even before her work day began with Employer. However, the Board was provided with no documentary evidence as to Claimant’s work hours. As such, the Board does not include this as a basis for its decision.

facts that suggest that there may have been fraud. It is not a finding of fraud in itself, as that is more properly handled by the Fraud Prevention Bureau.

In the present case, Claimant and Employer entered into an Agreement as to Compensation for total disability. The Act requires that checks for total or partial disability carry a warning that accepting the check constitutes a representation of being legally entitled to the payment and that any false representation is punishable under the law. *See* DEL. CODE ANN. tit. 19, § 2344(b)(2). Any misrepresentation as to eligibility for benefits is subject to punishment for insurance fraud. *See* DEL. CODE ANN. tit. 19, § 2344(b)(3). For the same reasons as discussed above, the Board finds that there is evidence, most notably in the contemporaneous emergency room record, giving the Board reason to believe that fraud has occurred. Therefore, in accordance with title 19, section 2344(b)(4) of the Delaware Code, the Board refers this matter to the Fraud Prevention Bureau of the Delaware Insurance Department for further proceedings.

Employer notes that it has paid benefits to Claimant pursuant to her representation that she was injured at work. A total of \$2,380.00 was paid in wage replacement benefits and \$4,695.18 in medical expenses, for a total payout of \$7,075.18. It also incurred \$1,900.00 in “no show” charges for Claimant’s failure to appear at scheduled medical examinations. The Act provides that:

Upon any order imposed by the Insurance Commissioner under § 2411(e) of Title 18 of the Delaware Code requiring payment of restitution following a finding of insurance fraud, and after all rights of appeal from said order have been waived or exhausted, the Board shall, upon any motion of the party to whom restitution was ordered and after hearing and opportunity to be heard, allow a credit against benefits under §§ 2324, 2325 and/or 2326 of this title, for any restitution ordered by the Insurance Commissioner remaining unpaid.

DEL. CODE ANN. tit. 19, § 2347. This provision was designed to protect an employer from the consequences of a claimant's alleged fraud. Thus, if the Insurance Commissioner finds fraud and orders restitution, there is statutory authority for the Board to grant a credit to Employer against Claimant's future benefits in the amount of such restitution.

Conclusion: For the reasons discussed above, the Board declares the Agreement as to Compensation between Claimant and Employer void *ab initio*. The Board also makes a referral of this matter to the State's Fraud Prevention Bureau for further proceedings in accordance with title 19, section 2344(b)(4) of the Delaware Code.

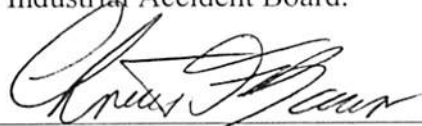
IT IS SO ORDERED this 9th day of July, 2018.

INDUSTRIAL ACCIDENT BOARD


PETER W. HARTRANFT

for 
MARK MUROWANY

I, Christopher F. Baum, Hearing Officer, hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.



Mailed Date: 7-10-18



OWC Staff

Eileen Mohr, Claimant *pro se*
Joseph Andrews, Esquire, for Employer

cc: Fraud Prevention Bureau
Delaware Insurance Department
841 Silver Lake Blvd.
Dover, DE 19904