

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2008-0710, Appeal of New London Hospital Association, the court on August 18, 2009, issued the following order:

The employer, New London Hospital Association, appeals an order of the compensation appeals board (board) finding that the claimant established, pursuant to RSA 281-A:23, that medical bills relative to reimplantation of a right upper extremity simulator and associated adjustments were related to her previously accepted workers' compensation injury. The employer argues that the board erred in: (1) finding that an unappealed 2004 department of labor (DOL) decision required it to find the 2006-2007 surgeries compensable; (2) relying upon the claimant's testimony about improvements that she experienced subsequent to the January 2008 department of labor hearing; and (3) rejecting expert psychiatric evidence in favor of medical evidence from a treating physician with no psychiatric expertise. We affirm.

"[A]ll findings of the [board] upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable." RSA 541:13 (2007); see RSA 281-A:43, I(c) (Supp. 2008).

We turn first to the employer's argument that the board erred in finding that a 2004 DOL decision required it to find the 2006-2007 surgeries compensable. In support of its argument, the employer cites the following excerpt from the board's order, "If the implantation was appropriate in 2004, the Panel cannot find it is inappropriate in 2006-7, without further medical opinion on that subject." A review of the entire paragraph, however, does not support the employer's argument. In the same paragraph, the board stated, "The factors leading to the removal of the Stimulator are not questioned, but the question of the current reasonable and necessary treatment for the reimplantation remains" and, further, "Claimant's evidence at the *de novo* hearing is that the reimplanted Stimulator had solved the right upper extremity symptoms of discoloration due to improved circulation and lowered pain levels." Finally, the sentence following the sentence cited by the employer provides: "Having found that Claimant has met her burden of proof on this subject, the Panel turns to Employer's evidence the reimplantation is not reasonable or necessary, or being reimplanted for another condition."

Construing the order in its entirety, the board found that the claimant satisfied her burden of proof that the 2006-2007 surgeries were causally related, reasonable and necessary medical care. See *Appeal of Wingate*, 149 N.H. 12, 15

(2002) (injured employee bears burden of proving that subsequent medical treatment is reasonable and required as result of injury). The employer failed to present sufficient evidence to rebut this.

The employer also argues that it was error for the board to rely upon the claimant's testimony concerning improvements to her condition which she experienced subsequent to the January 2008 DOL hearing. In its order, the board cited the claimant's testimony that "[b]y January 2008 she was off all regular medications except sleep and that as of 1/15/06 (sic), her pain levels were 4-6/10." This was not error. Although, as the employer argues, there was no documentary evidence of this improvement, the employee testified and provided this evidence. The board further found: "The IME opinion has not been updated to include Claimant's new status in January 2008." Both findings indicate that the board limited its review to the claimant's condition as of January 2008.

Finally, the employer argues that the board erred in rejecting expert psychiatric evidence in favor of medical evidence from a treating physician with no psychiatric expertise. In support of its argument, the employer cites the following excerpts from the board's order: "The reasonable view of [the psychiatrist's] report is that Claimant is a poor candidate for the ongoing implantation surgical treatments, " and, "The treating physician's opinion needs to be given greater weight in the absence of a reason to discount that opinion." A review of the eight-page, single-spaced order of the board indicates that it was faced with determining whether the treatment was unreasonable given the claimant's psychological condition or reasonable given her physical condition and medical history. The board found the medical evidence of reasonableness more persuasive. Because there is evidence in the record to support this finding, we find no error.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**