

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDITH MARTIN,	§
	§ No. 232, 2013
Claimant Below,	§
Appellant,	§ Court Below: Superior Court of
	§ the State of Delaware, in and for
v.	§ Kent County
	§
DELAWARE HOME AND	§ C.A. No. K11A-07-001
HOSPITAL,	§ C.A. No. K12A-05-007
	§
Employer Below,	§
Appellee.	§

Submitted: August 28, 2013  
Decided: September 24, 2013

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 24<sup>th</sup> day of September 2013, upon consideration of the briefs of the parties, it appears to the Court that:

1. Edith Martin, the appellant-below (“Martin”), appeals from two Superior Court orders. The first Superior Court order, in 2012, reversed an Industrial Accident Board (the “Board”) decision that found Martin entitled to total disability benefits from her employer, Delaware Home & Hospital, which is operated by the State of Delaware (the “State”). On remand from the Superior Court, the Board found that Martin had failed to sustain her burden of proof, and denied her petition for benefits. In 2013, the Superior Court affirmed. Martin

appeals from both Superior Court orders, claiming that she is entitled to total disability benefits. We affirm both trial court orders.

2. In 2007, Martin was employed as a dietary aide by the State when she suffered a work-related knee injury. Because of that injury, she underwent her first surgery in 2008 and has not worked since May 2008.<sup>1</sup> Martin underwent a second surgery on January 21, 2011, at which time her surgeon placed her on total disability status from January 21, 2011 through March 30, 2011. On March 30, 2011, Martin's surgeon certified her as capable of returning to sedentary work.

3. Martin filed a Petition before the Board for total disability benefits during her two-month post-surgical period, *i.e.*, from January 21, 2011 through March 30, 2011. The State argued that Martin was ineligible for those benefits. The State contended that total disability benefits are considered "wage replacement benefits," and that because Martin had voluntarily left the workforce before her 2011 surgery, she had no wages to be replaced. Therefore, the State argued, Martin was not entitled to receive total disability benefits.

4. In its first (June 2011) decision, the Board determined that Martin had not voluntarily withdrawn from the workforce, because she had taken active steps

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<sup>1</sup> In 2009, she received partial disability benefits as a result of suffering that injury and commuted those partial disability benefits, thereby receiving them in a lump sum. The partial disability benefits are uncontroverted and not a subject of this appeal.

to find a job.<sup>2</sup> The Board found that, before her 2011 surgery, Martin had earned a degree in medical billing and coding from the Harris School of Business “with the intent to find employment in that field,” although she had been unsuccessful in that quest.<sup>3</sup> The Board further found that Martin had completed “vocational rehabilitation,” learned to be a cashier at Goodwill, applied for a job at Capitol Cleaners, and also searched the local newspapers for other jobs.<sup>4</sup>

5. In February 2012, however, the Superior Court reversed.<sup>5</sup> The court held that the Board had abused its discretion by admitting evidence of Martin’s job search that had been unavailable during discovery.<sup>6</sup> The court found that although the State had twice requested Martin to produce information and documentation supporting her job search, Martin had not done so.<sup>7</sup> As a result, the court held, the Board erred by admitting into evidence Martin’s testimony of her job search over the State’s objection.<sup>8</sup> Martin contended that the State’s request for documentation supporting her job search was an impermissible discovery, and that therefore she

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<sup>2</sup> *Martin v. State*, Hearing No. 1307651, slip op. (IAB June 15, 2011).

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Delaware Home & Hospital v. Martin*, C.A. No. K11A-07-001, slip op. (Del. Super. Feb. 21, 2012).

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 3, 5-6.

had no obligation to provide any written documents to the State. Rejecting that argument, the Superior Court held that:

[Martin's] characterization of the [State's] request as an interrogatory may be fair. [Martin's] suggestion that [the State] is not entitled to an answer thereof, however, is not. [Martin] argues that nothing in the Board rules indicates that interrogatories are permitted. The fact that the rules do not suggest interrogatories does not mean, necessarily, that they are not allowed. [Martin] does not present any authority to the contrary. The request was proper. [The State] was entitled to the information.<sup>9</sup>

The trial court then reversed and remanded for a new Board hearing.

6. In May 2012, on remand, the Board issued its second decision. The Board found that although Martin had been “medically capable of working with restrictions” before her 2011 surgery, she had “failed to produce evidence of a reasonable job search.”<sup>10</sup> As a result, the Board concluded, Martin had voluntarily left the workforce and was not entitled to any total disability benefits.<sup>11</sup>

7. In its April 2013 decision, the Superior Court agreed.<sup>12</sup> The court noted that during the Board's hearing on remand, the State had again requested Martin to provide information pertaining to her job search.<sup>13</sup> Martin, however, provided only

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<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Martin v. State*, Hearing No. 1307651, slip op. at 4 (IAB May 14, 2012).

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Martin v. Delaware Home & Hospital, C.A. No. K12A-05-007*, slip op. (Del. Super. Apr. 8, 2013).

<sup>13</sup> *Id.* at 5.

a “handwritten list of businesses, without dates, names or contact information of any kind” to the State less than 48 hours before the Board hearing.<sup>14</sup> As a result, the Board sustained the State’s objection to admitting Martin’s testimony about her job retraining efforts and attempts to find a job.<sup>15</sup> The Board did, however, admit Martin’s transcript from the Harris School of Business as an exhibit.<sup>16</sup> The Superior Court concluded that due to Martin’s “wilful noncompliance” with the State’s repeated requests for information, the Board had properly determined that Martin had not satisfied her burden of proving her intent either to remain in or to return to the workforce.<sup>17</sup> The court then upheld the Board’s determination that Martin was ineligible for total disability benefits.<sup>18</sup> This appeal followed.

8. We review a Superior Court ruling that, in turn, has reviewed a ruling of an administrative agency, by directly examining the decision of the agency.<sup>19</sup> We review the Board’s decision to determine if the decision is supported by

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 10, 12.

<sup>18</sup> *Martin v. Delaware Home & Hospital*, C.A. No. K12A-05-007, slip op. at 12 (Del. Super. Apr. 8, 2013).

<sup>19</sup> *Pub. Water Supply Co. v. DiPasquale*, 735 A.2d 378, 380-81 (Del. 1999).

substantial evidence and free from legal error.<sup>20</sup> Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>21</sup> On appeal, this Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>22</sup> We review questions of law *de novo*.<sup>23</sup> Absent an error of law, the standard of review for a Board's decision is abuse of discretion.<sup>24</sup> The Board has abused its discretion where its decision is found to have exceeded the bounds of reason in view of the circumstances.<sup>25</sup>

9. On appeal, Martin advances two claims of error. First, she argues that the State's request for documentation of her job search is an interrogatory that is not permitted under the Board Rules, and therefore, she need not comply with the State's request to furnish evidence of her job search. Alternatively, she contends that her academic transcript (admitted as an exhibit at the second Board hearing)

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<sup>20</sup> *Olney v. Cooch*, 425 A.2d 610, 613 (Del. 1981); *Unempl't Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975).

<sup>21</sup> *Olney*, 425 A.2d at 614.

<sup>22</sup> *Person-Gaines v. Pepco Hldgs., Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* (quotation omitted).

sufficiently evidenced her intent to remain in the workforce, thereby entitling her to total disability benefits.

10. Martin's first impermissible interrogatories contention is misconceived. The Board Rules are silent about the role of interrogatories in an administrative hearing. Board Rule 11, however, provides that "any party may serve on any other party a written request for the production . . . of any designated documents . . . which contain or constitute evidence relevant to the claim or petition . . . and which are in the possession, custody or control of the party upon whom the request is served."<sup>26</sup> The State therefore properly requested Martin to provide documents supporting her claim of an ongoing job search.

11. Martin's second argument is that, in any event, her academic transcript sufficiently evidenced an intent to remain in the workforce. The Board admitted Martin's transcript as an exhibit at the hearing. The Board did not err, however, by implicitly finding that, absent other support information besides the transcript, Martin had not met her burden of proving that she was actively searching for a job before her 2011 surgery. Accordingly, the Superior Court properly affirmed the Board's decision and held that Martin was not entitled to total disability benefits.

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<sup>26</sup> Department of Labor, *State of Delaware Industrial Accident Board Rules*, available at <http://dia.delawareworks.com/documents/Rules%20of%20the%20Industrial%20Accident%20Board.pdf> (Rule 11(A)).

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice