

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELHAIZE AMERICA, INC.,	§	
	§	No. 108, 2005
Employer Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
BONNIE BAKER,	§	in and for Sussex County
	§	C.A. No. 04A-05-001
Claimant Below,	§	
Appellee.	§	

Submitted: July 13, 2005
Decided: August 12, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 12th day of August, 2005, on consideration of the briefs of the parties, it appears to the Court that:

1) Delhaize America, Inc. appeals from a Superior Court decision affirming an Industrial Accident Board (Board) decision awarding compensation to Bonnie Baker. Delhaize argues that the Superior Court misapplied the holding in *Gillard-Belfast v. Wendy's, Inc.*¹ and deprived Delhaize of due process.

2) On October 3, 2000, Baker fell and injured her back while working at a supermarket owned by Delhaize. Baker did not seek medical attention for her injury until October 31, 2000. Baker's family doctor referred her to Dr. William Moore, a

¹754 A.2d 251 (Del. 2000).

board certified orthopedic surgeon, who ordered Baker not to work while she underwent a series of epidural injections intended to reduce the inflammation and pain. Baker received the epidural injections from May through June 2001. On July 20, 2001, Moore cleared Baker for part-time work.

3) Baker filed a Petition to Determine Compensation Due, claiming that she was totally disabled from October 31, 2000, until July 20, 2001, and partially disabled thereafter. The Board determined that Baker suffered from chronic lower back pain, which was aggravated by the fall at work. The Board rejected Moore's opinion that Baker suffered from nerve root irritation, however, and concluded that Baker failed to establish that she was totally disabled for any period of time. Nonetheless, the Board determined that Baker was totally disabled, as a matter of law, during the period that Moore ordered her not to work (from December 21, 2000 until July 20, 2001). The Superior Court affirmed, holding that Baker is entitled to total disability benefits, under *Gillard-Belfast*, for the period of time during which her doctor ordered her not to work.

4) In this appeal, Delhaize repeats the arguments it presented to the Superior Court. We affirm on the basis of the well-reasoned decision of the Superior Court.² That decision, however, pre-dated *Flax v. State of Delaware*,³ a decision of this Court

²*Delhaize America, Inc. v. Bonnie Baker*, 2002 WL 31667611 (Del. Super.).

³2004 WL 1535816 (Del. Supr.).

that also addressed the applicability of *Gillard-Belfast*. In *Flax*, claimant's doctor did not dispute the fact that claimant could have worked in some capacity during the time period in question. The doctor stated that, if claimant had given him a job description to review, he would have determined whether claimant could undertake it. Thus, in *Flax* the doctor's instruction was not really a "no-work" order.

5) The holding in *Flax* is limited to its facts, and does not control the result here. The *Gillard-Belfast* rule applies to any claimant, whether the parties agree that the claimant is disabled or not. Simply stated, if a claimant is instructed by his treating physician that he or she is not to perform *any* work, the claimant will be deemed to be totally disabled during the period of the doctor's order. This rule assumes that the doctor acts in good faith, and does not extend beyond the time that the Board decides whether the claimant is disabled as a matter of fact.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice