

IN THE SUPERIOR COURT OF STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOSE CAMPOS,)	
)	
Employee-Appellant,)	
)	
v.)	C.A. NO. N13A-07-002 ALR
)	
DAISY CONSTRUCTION COMPANY)	
)	
Employer-Appellee.)	
)	
)	

Submitted: October 28, 2013
Decided: January 16, 2014

**On Appeal from Decision of the
Industrial Accident Board**

AFFIRMED

MEMORANDUM OPINION

Timothy E. Lengkeek, Esquire, Young Conaway Stargatt & Taylor, Attorney for
Employee-Appellant.

John W. Morgan, Esquire, Heckler & Frabizzio, Attorney for Employer-Appellee.

ROCANELLI, J.

This is an appeal by Jose Campos (“Appellant”) from the June 26, 2013 decision of the Industrial Accident Board (“Board”). The Board granted Daisy Construction Company’s (“Daisy”) Petition for Review terminating Appellant’s total disability benefits and finding him ineligible for partial disability benefits. The Board found that Appellant is physically capable of returning to work and that he does not qualify as a displaced worker. On September 19, 2013, Appellant appealed the Board’s decision citing that the Board committed an error of law. For the reasons set forth below, the Board’s decision is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was employed at Daisy Construction Company (“Daisy”) as a heavy equipment operator. On June 3, 2011, while working as part of a traffic crew, Appellant was thrown off the back of a truck when it suddenly stopped. As a result of this fall, Appellant suffered injuries to his left shoulder and lower back. Appellant initially missed three or four days of work after the accident but then returned to work in a light-duty position. In November 2011, Appellant underwent shoulder surgery and was placed on total disability. During the processing of Appellant’s workers compensation claim, it was discovered that Appellant’s Social Security number did not match his name. On November 7, 2011, Daisy sent a letter to Appellant requesting he provide his correct Social Security number, which Appellant failed to do. On December 16, 2011, Daisy terminated Appellant citing their inability to continue to employ Appellant due to immigration requirements and his failure to provide a valid Social Security number. However, Daisy indicated they would offer Appellant work if he were able to supply a

valid Social Security number. In April 2012, Appellant underwent additional surgery to Appellant's lumbar spine.

Daisy filed a Petition for Review on September 6, 2012. The Board concluded that Appellant is not entitled to total disability benefits nor is he eligible for partial disability benefits.

The Board's Decision

The Board conducted a hearing on May 24, 2013. At the hearing, the evidence consisted of testimony by Appellant, Edward Stepp, a risk manager with Daisy, Dr. Stephen Rodgers and the depositions of Dr. Jerry Case and Dr. Ali Kalamchi. In its June 26, 2013 decision, the Board made the factual finding that Appellant was physically capable of returning to work full time. In reaching this conclusion, the Board considered the testimony of Dr. Case who opined that Appellant is capable of returning to sedentary duty, full time work. Additionally, Appellant testified that he could go back to work operating milling machines. Based on this evidence, the Board concluded that Appellant was capable of returning to work. Therefore, the Board granted Daisy's petition to terminate total disability.

Next, the Board addressed if Appellant qualified as a displaced worker. The Board rejected Appellant's argument that Daisy was seeking a forfeiture of benefits based on Appellant's immigration status. The Board found that Daisy was willing to accommodate Appellant and have him return to work, however, absent a valid Social Security number, Daisy cannot legally hire Appellant. Accordingly, the Board concluded that Appellant's lost earnings were not causally related to a work related injury and does not qualify as a displaced worker eligible for partial disability benefits.

STANDARD OF REVIEW

This Court's scope of review on appeal is limited to determine whether the Board's factual findings are supported by substantial evidence and free from legal error.¹ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² On appeal, this Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.³ Questions of law are reviewed *de novo*.⁴ Absent an error of law, the standard of review for a Board's decision is abuse of discretion.⁵ The Board has abused its discretion where its decision is found to have exceeded the bounds of reason in view of the circumstances.⁶

DISCUSSION

This Court must decide if the Board's decision to terminate Appellant's total disability benefits and the Board's finding that Appellant is ineligible for partial disability benefits is supported by substantial evidence in the record and whether the Board made any errors of law.

Termination of Total Disability Benefits

The party who seeks to terminate the payment of total disability benefits carries the burden of proving that the disability has ceased.⁷ Once an employee's disability has ceased, there is no obligation for the employer to continue to pay total disability

¹ *Histed v. E.I. DuPont deNemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

³ *Person-Gaines v. Pepco Hldgs., Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *DeAngelo v. Del Campo Bakery*, 1990 WL 74300, at *2 (Del. Super. May 23, 1990).

benefits.⁸ Based on the evidence presented during the Board's May 24, 2013 hearing, the Board concluded that Appellant is capable of returning to work. The Board considered and weighed the testimony of several doctors who had examined Appellant. Additionally, Appellant testified during the hearing that he is physically capable of returning to work. Therefore, the Board's factual finding that Appellant is physically capable of returning to work is supported by substantial evidence.

Displaced Worker and Partial Disability Benefits

An injured employee may be eligible for partial disability benefits if it is established that the employee qualifies as a displaced worker. The Delaware Supreme Court has defined a displaced worker as one who, while not completely incapacitated, is so handicapped by the compensable injury that he or she will no longer be employed regularly in any well-known branch of the labor market and will require a specially-created job if he is to steadily employed.⁹

To qualify as a displaced worker, Appellant must establish: 1) that he is an unskilled worker, unable to perform any task other than general labor; and 2) that Appellant's inability to perform the duties of general laborer is due to the injury sustained in the employment accident.¹⁰ In the instant case, while it is undisputed that Appellant has been unable to gain employment; it has not been a result of Appellant's work injury. Daisy demonstrated that work is available to Appellant, and Appellant has stated that he is physically capable of taking the work. However, Appellant's inability to produce a valid Social Security number has barred him from gaining employment. The Board

⁸ 19 Del. C. § 2324.

⁹ *Keeler v. Metal Masters Foodservice Equipment Co.*, 712 A.2d 1004, 1005 (Del. 1998).

¹⁰ *Bentzen v. Ciba Specialty Chemicals*, 2013 WL 1209344, at *3 (Del. Super. Mar. 26, 2013).

concluded, and this Court agrees, that Appellant's lost earning capacity is not causally related to the work injury and he therefore does not qualify as a displaced worker.

Appellant argues that the Board erred as a matter of law by terminating Appellant's benefits because Appellant is unable to provide a valid Social Security number. However, the Board's finding was based on Appellant not being displaced from the labor market due to his injury, rather than Appellant's position that it was due to the invalid Social Security number.¹¹ Appellant contends that the Board's decision to deny Appellant benefits contravenes the Court's holding in *Ramirez*.¹² In *Ramirez*, the Court held that an employee's immigration status cannot be used as a basis to forfeit benefits that have already vested.¹³ However, the issues in *Ramirez* are distinguishable from those before the Court in this case. Unlike *Ramirez*, the Board made a factual finding that Appellant's total disability had ceased and he is capable of returning to work. Further, Daisy's basis to terminate benefits was based on a change in Appellant's physical condition and not Appellant's immigration status. This Court finds Appellant's reliance on *Ramierz* to be misplaced. Moreover, the Delaware Supreme Court's decision in *Torres*¹⁴ is most instructive to the instant case. In *Torres*, the Court upheld the Board's finding that claimant failed to adequately demonstrate that she was unable to procure

¹¹ In reaching its conclusion that Appellant was not displaced from the labor market, the Board considered Appellant's skill as a heavy equipment operator, Appellant's testimony that he is capable of returning to this position and Daisy's offer to employ Appellant at his pre-injury wage once a valid Social Security number is provided.

¹² *Delaware Valley Field Services v. Ramirez*, 2012 WL 8261599 (Del. Super. Sept. 13, 2012).

¹³ *Id.* at *11.

¹⁴ *Torres v. Allen Family Foods*, 672 A.2d 26 (Del. 1995).

work because of her injury and did not qualify as a displaced worker.¹⁵ Here, as in *Torres*, Appellant's inability to obtain employment is unrelated to the workplace injury. Accordingly, the Board did not commit any legal error in its decision to find Appellant ineligible for partial disability benefits.

Public Policy

Daisy is not under any obligation to continue to provide benefits to Appellant once the disability has ceased.¹⁶ The dual purpose of Delaware's Workers' Compensation statute is provide prompt payment of benefits without regard to fault; and to relieve employers and employees of the burden of civil litigation.¹⁷ The purpose of the statute is not to provide benefits to an employee who cannot gain employment for reasons independent of the work injury. Accordingly, the Board did not violate public policy in its decision to terminate Appellant's benefits.

¹⁵ *Id.* at * 31 (noting that the evidence demonstrated that claimant was refused employment for reasons other than her workplace injury).

¹⁶ *See* 19 *Del. C.* § 2324.

¹⁷ *Champlain Cable Corp. v. Employers Mut. Liability Ins. Co. of Wisconsin*, 479 A.2d 835, 840 (Del. 1984).

CONCLUSION

The Court has examined the record below and has determined that substantial evidence exists to support the Board's findings. The Board, in reaching its decision to terminate Appellant's benefits, did not commit any errors of law. Because this Court may not substitute its judgment and no legal error was committed, the Board's decision must be and hereby is AFFIRMED.

IT IS SO ORDERED this 16th day of January, 2014.

Andrea L. Rocanelli

The Honorable Judge Andrea L. Rocanelli