

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Edward Rozek, :
 :
 Claimant Below :
 Appellant, :
 :
 v. :
 : C. A. No. N09A-12-009 (CHT)
 :
 Chrysler, LLC., :
 :
 Employer Below :
 Appellee. :

ORDER

On September 2, 2010, upon notice and after due consideration of the appeal by Edward Rosek from the Industrial Accident Board's decision rendered on December 1, 2009, this Court denied the aforementioned application and affirmed the action taken by the Board. The reasoning which underlies that decision is as follows:

1. Edward Rozek was injured during the course of his employment with Chrysler on June 20, 2007. He applied for and received worker's compensation benefits pursuant to 19 *Del. C.* § 2304, but subsequently returned

to work at Chrysler with restrictions. At some point prior to his departure, Mr. Rozek's restrictions were lifted, and he visited the plant physician to have them reinstated. Mr. Rozek's employment with Chrysler ended in December, 2008 when he voluntarily accepted a retirement package. That retirement was a "regular" retirement and was not connected with any injury.

2. On January 12, 2009, Mr. Rozek applied for additional partial disability benefits ongoing from his departure from Chrysler pursuant to 19 *Del. C.* § 2304. He contended that his injuries reduced his earning capacity from that which he earned at Chrysler to some unstated lower level. Chrysler opposed that petition, and a hearing took place before the Industrial Accident Board on November 16, 2009.

3. On December 1, 2009, The Board issued a decision denying Mr. Rozek's application. Mr. Rozek appealed that decision to this Court on December 17, 2009, claiming that the Board erred as a matter of law in concluding that a claimant must first find employment before a claim for loss of earnings or temporary partial

disability can be granted, failed to address a labor market survey and disallowed Mr. Rozek's testimony about his job search. He also claimed that the Board's decision was not supported by substantial competent evidence.

4. The duty of the Court on appeal from the Industrial Accident Board is to determine whether the Board's decision is supported by substantial evidence and free from legal error.¹ The Court does not sit as the trier of fact with authority to weigh the evidence, determine questions of credibility and make its own factual findings and conclusions.² However, the Board must give its reasons for reaching the findings and conclusions it reaches.³ Only when there is no substantial, competent evidence to support the Board's factual finding may this Court overturn the Board's

¹ *General Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super. 1985).

² *Munyan v. Daimler Chrysler Corp.*, 909 A.2d 133, 136 (Del. 2006).

³ *Turbitt v. Blue Hen Lines, Inc.*, 711 A.2d 1214, 1215 (Del. 1998).

decision.⁴

5. When reviewing the Board's decision for substantial evidence, the Court will consider the record in the light most favorable to the prevailing party below.⁵ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁶ The Board is entitled to reject a portion of the testimony of a witness and accept another portion or accept one document over another.⁷ Lastly, questions of law are reviewed *de novo*.⁸

6. The Court finds that the Board was presented with substantial evidence from which it could conclude that Mr. Rozek had not searched for employment at the time of his petition. The Board noted that Mr. Rozek told Dr. Meyers that he had not looked for work since he

⁴ *Streett v. State*, 669 A.2d 9, 11 (Del. 1995).

⁵ *Sewell v. Delaware River and Bay Authority*, 796 A.2d 655, 660 (Del. Super. 2000).

⁶ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

⁷ *DiSabatino Bros. Inc. v. Wortman*, 453 A.2d 102, 106 (Del. 1962).

⁸ *Munyan*, 909 A.2d at 136.

left Chrysler. The Board also noted that Mr. Rozek's credibility was called into question when he proffered conflicting testimony regarding his intentions upon leaving Chrysler as well as the relatively short time period between his retirement and applying for partial disability benefits along with the overall lack of evidence of any job search during that period. Based on these facts, the Court finds that the Board's ruling was based on substantial competent evidence.

7. The Board's decision to deny awarding partial disability benefits was not premised on Mr. Rozek's failure to secure employment. The Board stated:

. . . [A]bsent evidence of a credible job search, the Board finds that Claimant is not entitled to receive partial disability at this time. Had he followed through with his intention and found employment that showed a loss of earning capacity, he could have possibly presented a valid claim for partial disability.⁹

It does not appear, however, that the last sentence reflected the Board's holding. The Board's decision

⁹ *Rozek v. Chrysler*, No. 1315237 (Del. I.A.B. Dec. 1, 2009).

relied on *General Motors Corp. V. Willis*,¹⁰ which states that "voluntary retirement does not automatically preclude receipt of partial disability benefits if an employee wishes to continue working and actively seeks, and obtains employment after retirement."¹¹

8. The Board noted: "Claimant did not seek work prior to filing this petition and apparently did not do so afterwards. Rather it appears that he has retired from the labor market."¹² In so ruling, the Board clearly stated that its holding was based on Mr. Rozek's retirement from the labor market. Accordingly, the Court is satisfied that the Board's decision rested on Mr. Rozek's failure to search for employment, rather than his failure to secure it.

9. The Court further notes that securing employment is not a prerequisite to obtaining partial disability benefits. While *Willis* does make reference to

¹⁰ 2000 WL 1611067 (Del. Super. Sept. 5, 2000).

¹¹ *Id.* at *3.

¹² *Rozek v. Chrysler*, No. 1315237 at 10 (Del. I.A.B. Dec. 1, 2009).

obtaining employment to show that a claimant has not removed himself from the work force, other passages from the opinion indicate that obtaining employment is not a dispositive requirement. The opinion also states, for instance, that retirement can disqualify an employee from receiving worker's compensation benefits especially "where an employee does not look for work after his retirement."¹³

10. Finally, the Court finds that the Board did not commit legal error in barring Mr. Rozek from identifying any specific job search based on what appeared to be a failure to disclose information in the discovery process. Indeed, Mr. Rozek was allowed to testify generally that he had searched for work when he left Chrysler in December 2008 up until August 2009. The Board was free to accept or reject this testimony due to lack of credibility. In light of Mr. Rozek's statements to Dr. Meyers, referenced above, the Board's decision to reject Mr. Rozek's testimony was supported by substantial evidence on which the Board could reasonably rely.

¹³ *Willis*, 2000 WL 1611067 at *2.

WHEREFORE, in light of the facts and circumstances of this case, the Court concluded that substantial evidence supported the Board's decision to deny Mr. Rozek partial disability benefits pursuant to 19 *Del. C. § 2325* and that the decision was free from legal error.¹⁴ As a result, the decision of the Industrial Accident Board denying Mr. Rozek's petition must be **affirmed**.

IT IS SO ORDERED this 7th day of December, 2010.

TOLIVER, JUDGE

¹⁴ *Gen. Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super. 1985).