

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

ROBERT OAKES, JR.,)
)
Plaintiff,)
)
5.) C.A. No. 99C-03-081 CHT
)
DAIMLER CHRYSLER CORPORATION,)
)
Defendant.)

OPINION AND ORDER

On the Plaintiff's Motion for Summary Judgment

Date Submitted: May 11, 2001
Date Decided: October 25, 2001

Walt F. Schmittinger, Esquire, SCHMITTINGER AND RODRIGUEZ, P.A., 414 South State Street, P.O. Box 497, Dover, Delaware 19903-0497, Attorney for the Plaintiff.

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TOLIVER, Judge

**STATEMENT OF FACTS AND
NATURE OF THE PROCEEDINGS**

This litigation arises out of an injury suffered by the Plaintiff on May 29, 1997, during the course of his employment at the Defendant's Newark, Delaware automobile assembly plant.

Due to the injuries he sustained, the Plaintiff was unable to return to work following the injury. On June 6, 1997, the parties entered into an agreement as to compensation pursuant to the Delaware Workers' Compensation Act, 19 Del. C. Ch. 23, and began receiving benefits effective May 30, 1997.¹

Following the Plaintiff's return to work on September 22, 1997, the Defendant terminated the payment of those benefits.

It is that action which spawned this litigation

When the Plaintiff returned to work, the Defendant presented him with a receipt evidencing the payment of benefits made under their agreement and that the Plaintiff's disability had terminated as of the date he returned to work.

¹ The Plaintiff began receiving total disability benefits on that date via 19 Del. C. §2326 at the rate of \$372.23 per week.

The Plaintiff refused to sign the receipt because he claimed that he was unsure that his disability had ended and his return to work was on a "trial basis". In any event, other than stopping payment of the benefits, the Defendant did not initiate any effort to formally terminate the benefits before the Industrial Accident Board pursuant to 19 Del. C. §2347.

On March 31, 1998, the Plaintiff again ceased working because of the injuries previously received. He remained out of work until October 29, 1999, but did not receive any workers' compensation benefits from the Defendant during this resumption of his disability in spite of at least three requests that the benefits be paid based upon the existence of the June 6, 1997 agreement.² This agreement had not been terminated by order of the Board or with a receipt signed by the Plaintiff evidencing the same. However, a petition to terminate had been filed by the Defendant but had not been

² The Plaintiff demanded payment in this regard by letters dated May 22, September 11 and 20, 1998, and February 3, 1999, based upon the existence of the agreement and the failure to terminate the same in a manner consistent with the prevailing law, at least according to

addressed by the Board.³

The parties first appeared before the Board on November 19, 1998 in response to the Defendant's petition to terminate the Plaintiff's disability benefits as of the date he initially returned to work, September 22, 1997. The Board, citing 19 Del. C. §2347, held that once a claim is deemed compensable and the employer begins paying the benefits to the employee, the benefits may not be terminated unless the Board issues an order terminating the benefits or the employee signs a final receipt acknowledging that he is no longer entitled to the benefits. Because the Defendant failed to produce evidence of either of those two events, it remained obligated to pay total disability benefits to the Plaintiff under the June 6, 1997 agreement. Oakes v. Daimler-Chrysler Corp., IAB

the Plaintiff.

³ The petition was filed by the Defendant in September of 1997, but for some reason had not been addressed by the time the Plaintiff was again forced to leave work.

Hearing No. 1105852 (December 17, 1998). The Defendant sought to reargue the Board's decision, but no response to that request was made by the Board at the time. The Defendant did not appeal or otherwise challenge the decision.

The Plaintiff initiated the instant action on March 11, 1999. The substance of his complaint is that the Defendant terminated payment of the total disability benefits due as a result of the Plaintiff's May 29, 1997 work-related injury in violation of 19 Del. C. §2357. The Defendant did so notwithstanding the June 6 agreement between the parties and after the requests by the Plaintiff for payment of that compensation. In addition to the unpaid workers' compensation, the Plaintiff sought penalties, costs and attorney's fees pursuant to the Delaware Wage Payment and Collection Act, 19 Del. C. Ch. 11 and the Delaware Supreme Court's decision in Huffman v. C. C. Oliphant & Sons, Del. Supr., 432 A.2d 1207 (1981).

The Defendant did not dispute the basic facts alleged by

the Plaintiff. Rather, it responded that the Plaintiff's disability had terminated as of the date he returned to work, September 22, 1997. Moreover, the Plaintiff tacitly acknowledged the end of his disability by his receipt of wages greater than the workers' compensation benefits then being paid. The Defendant asserts that nothing more was needed to satisfy its obligations to the Plaintiff under the Workers' Compensation Act.

On January 27 and 31, 2000, the parties filed cross motions for summary judgment. The Plaintiff alleged that the Board had determined that compensation was due and demand for payment had been made. Since there was no dispute as to any material facts, he was entitled to judgment as a matter of law. The Defendant also claimed that it was entitled to the relief sought in that the termination of benefits was lawful.

That claim was based upon the contention that the Plaintiff consented to and/or agreed to the termination of benefits by returning to work and receiving wages. The fact that the

Plaintiff had refused to execute a written agreement to that effect, the Defendant argued, did not change the import of his return to work. On March 2, 2000, arguments were presented on the cross motions to the Honorable Vincent A. Bifferato.⁴

The Court denied both motions based upon the record as it then existed in light of the positions taken by the parties.

Judge Bifferato reasoned:

[D]id the Industrial Accident Board make a ruling that he was entitled to compensation for that period of time [March 31, 1998 to October 28, 1999]? We're getting off on whether or not he signed a release or signed a consent form. That's not really important.

The issue here is whether or not when he went back to work full-time after the industrial accident and then lost time again, allegedly because of the industrial accident, that's what you're seeking compensation for.

If he was entitled to it, you can bring a Huffman action. If he wasn't entitled to it, you can't. You can bring it, but you're going to lose it.

So that's the issue as I see it in this case.

⁴ Judge Bifferato retired from the Superior Court on April 1, 2000 after 31 years of distinguished service. The case was subsequently reassigned to this judge.

. . .

I mean, we accept the Industrial Accident Board's decision that he's entitled to wages under workman's comp [sic]. And then under the Huffman case, Superior Court provides a forum in which he can get them, plus damages if they're not paid. . . . You [can] get double damages, you get interest, you get attorneys' fees, or whatever else it says. . . .

Tr. at 21-23 of March 2, 2000. Shortly thereafter, leave was granted to file an interlocutory appeal of the Court's decision to the Delaware Supreme Court. The Supreme Court refused to accept the appeal on April 11, 2000.

On May 11, 2000, the Board, at the request of the Defendant, heard argument and conducted an evidentiary hearing concerning its December 17, 1998 decision. A decision was rendered on June 13, 2000. The Board ruled that the decision to grant reargument was improvidently granted and refused to terminate the Plaintiff's total disability benefits as requested by the Defendant.

Further clarification of the aforementioned decision was requested by the Defendant. The Board responded on July 27,

2000. It reaffirmed its earlier pronouncements regarding the termination of workers' compensation benefits. Again it reiterated that an employer must either secure an order of the Board terminating the compensation or the employee must sign a receipt evidencing payment of benefits and termination of the disability. In the absence of such, payment of benefits must otherwise continue. The Board specifically rejected the Defendant's argument that the Plaintiff's return to work was a "de facto" consent or agreement to terminate benefits. Lastly, the Board ruled that the Defendant owed the Plaintiff total disability benefits from March 31, 1998, the date the Plaintiff's disability resumed, to October 29, 1999, the date that the Plaintiff concedes that his disability ended. Neither party appealed that decision and/or any of its predecessors. On August 16, 2000, the Plaintiff again filed a motion for summary judgment. He argues that given the Board's decisions and the procedural history of the case, he remains entitled to the workers' compensation benefits awarded

by the Board along with any other relief permitted by 19 Del.
C. §1113© and the Huffman decision. The Defendant, he further
argues, is estopped from relitigating the character of the
relief sought.

On August 22, 2000, the Defendant filed its response to
the Plaintiff's motion. The Defendant argued that estoppel
did not apply and it was not barred from relitigating the
Plaintiff's entitlement to workers' compensation benefits.
The issues in question were different and this Court, not the
Board, is the forum in which to resolve them. The Defendant
also argued that the Plaintiff's motion is no different than
that denied by Judge Bifferato on March 2, 2000, and should
suffer a similar fate.

After the submission of additional legal memoranda and
oral argument, that which follows is the Court's resolution of
the issues so presented.

DISCUSSION

The law as to summary judgment is well settled. "Summary judgment may be granted only where, considering the facts in a light most favorable to the non-moving party, there is no material issue of fact and the moving party is entitled to judgment as a matter of law." Pullman, Inc. v. Phoenix Steel Corp., Del. Super., 304 A.2d 334, 334 (1973). If, after viewing the evidence, the court finds that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances, then the court may not grant the motion for summary judgment. Guy v. Judicial Nominating Comm'n., Del. Super., 659 A.2d 777 (1995); and Wilson v. Triangle Oil Co., Del. Super., 566 A.2d 1016 (1989). It is the movant's burden to demonstrate that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Borish v. Graham, Del. Super., 655 A.2d 831

(1994). The party opposing that motion must be afforded the opportunity to come forward with evidence showing the existence of a dispute as to an issue of material fact. Phillips v. Del. Power and Light, Del. Supr., 216 A.2d 281 (1966). It is with these standards in mind that the Court has reviewed the Plaintiff's motion.

Reduced to its basic essence, the issue before the Court involves whether a determination by the Board that an injured employee is entitled to workers' compensation benefits, which is not otherwise appealed, can be enforced in the Superior Court without further challenge. The answer is in the affirmative based upon the opinion of the Delaware Supreme Court in Huffman. Stated differently, there having been no appeal of the Board's decisions in question, that which the Plaintiff was due as workers' compensation benefits was clearly established and may be enforced based upon the Huffman decision in the Superior Court. Furthermore, the Defendant is estopped as a result from raising that issue anew before this

tribunal.

A brief discussion of the Huffman decision is appropriate at this point. In Huffman, an agreement as to compensation was entered into between an employer and one of its employees injured in the course of his employment. Payments were made and continued for a time before they were terminated by mutual agreement. The employee's disability subsequently resumed and a second agreement was entered into. Payments were again made until the employee allegedly rejected what the employer thought was a suitable employment opportunity. At that point, the employer terminated the agreement. The employee demanded that payment be resumed and the employer refused. An action was filed here asking that the provisions of the second agreement be enforced and that damages allowed by statute as well as attorney's fees be awarded. Proceedings were also initiated before the Board.

After various maneuvers and proceedings, this Court ruled that it had concurrent jurisdiction with the Board regarding

the enforcement of orders entered by the Board. It then dismissed the employee's action, but not before the Board ruled that the employee continued to be totally disabled. The employee appealed the Superior Court's decision to the Delaware Supreme Court.

On appeal, the Supreme Court reversed that decision, having concluded, based upon the record before it, that the employer's termination of benefits was wrongful based on 19 Del. C. §2347.⁵ There had been no Board order or any agreement to terminate the compensation to which the employee was deemed to be entitled. The good faith belief of the employer was irrelevant under §2347. It also held that jurisdiction to enforce Board orders was within the authority

⁵ Section 2347, in relevant part, states that:

Compensation payable to an employee . . . shall not terminate until and unless the Board enters an award ending the payment of compensation after a hearing upon review of an agreement or award, provided that no petition for review, hearing or an order by the Board shall be necessary to terminate compensation where the parties to an award or an agreement consent to the termination.

of the Superior Court pursuant to 19 Del. C. §2357.⁶ The Board was not so empowered, with limited exceptions not relevant there. Huffman at 1209-1211.

⁶ Section 2357 provides:

If default is made by the employer for 30 days after demand in the payment of any amount due under this chapter, the amount may be recovered in the same manner as claims for wages are collectible.

The Supreme Court deemed that unpaid compensation as "wages" for purposes of §2357 and subject to collection via §1113(a).⁷ More specifically, the Court stated:

. . . [I]n order to give effect to the provisions of § 2357, the reference in §1113(a) to 'wages' must be construed to include claims based on unpaid workmen's compensation benefits due after proper demand therefore has been made.

Huffman at 1210.

In short, the Supreme Court concluded that workers' compensation benefits awarded by the Board may be recovered in the Superior Court in same manner as wages under the Delaware Wage and Payment Collection Act. However, before an employee can do so, he or she must establish the existence of three elements. First, the Board must have held that the employee is entitled to workers' compensation benefits. Second, the

⁷ Section 1113(a) allows that:

A civil action to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction.

employee must have made a proper demand for payment of the benefits upon the employer. Lastly, the employer must have continued to withhold the benefits due. Failure to establish any of the three would be presumptively fatal.

In light of Huffman, the Plaintiff appears to have established a legitimate basis to enforce the orders of the Board against the Defendant for the unpaid workers' compensation benefits called for in the June 6, 1997 agreement. The Plaintiff demanded that the monies be paid and the Defendant refused, arguing that the Plaintiff implicitly consented to the termination of the benefits when he returned to work on September 22, 1997. The Board disagreed and emphasized that the Defendant was obligated to continue paying the benefits in question absent an order of the Board or a voluntary agreement expressly entered into by the parties in that regard. The orders of the Board may therefore be enforced in this Court to the extent that the Board determined that the Defendant was obligated to provide workers'

compensation benefits to the Plaintiff. The question remains, however, whether the Defendant is foreclosed from relitigating the Plaintiff's entitlement to, or the amount of, those benefits. The answer, as the parties have suggested, is dependent upon the application of the Doctrine of Collateral Estoppel.

In that regard, the doctrine has been defined as follows:

The doctrine of collateral estoppel essentially prohibits a party who has litigated one cause of action from relitigating in a second cause of action matters of fact that were, or necessarily must have been, determined in the first action. A claim will be collaterally estopped only if the same issue was presented in both cases, the issue was litigated and decided in the first suit, and the determination was essential to the prior judgment. The defendant in the second lawsuit may properly assert the defense of collateral estoppel to prevent the plaintiff from litigating issues that the plaintiff previously litigated and lost. . . .

Sanders v. Malik, Del. Supr., 711 A.2d 32, 33-34 (1998).

Having reviewed the contentions of the parties and the record as it presently stands, it is readily apparent that the

Plaintiff is correct and this doctrine applies to the instant situation. The issues in question as well as the parties in the instant action, are the same as they were before the Board below.⁸ It is also clear that the resolution of the issue was essential to the judgment rendered by the Board. While the Defendant has raised several arguments as to why the doctrine should not apply, they are not persuasive.

First, the Defendant contends that the issues of general, special and consequential damages were not considered by the Board, and therefore collateral estoppel is not appropriate on these issues. That is correct. However, the Plaintiff's

⁸ Indeed, the Board did state, again, on at least two occasions, that the Plaintiff did not consent to the termination of his compensation benefits solely by returning to work. The Defendant has raised those issues here, but failed to challenge the Board's decision directly when it had the opportunity to do so. Had they initiated such a challenge, the relief that they seek to do now collaterally could have been addressed on appeal in this Court and ultimately in the Delaware Supreme Court. Such repetitive litigation is exactly what the doctrine was designed to avoid.

motion for summary judgment does not address those items of damages. It requests a legal determination regarding responsibility for benefits previously awarded by the Board.

In fact, the last sentence of the Plaintiff's motion explicitly states that it relates only to the issue of liability. A separate hearing on damages is requested in the event that the motion is granted.

Secondly, the Defendant contends that there is a dispute as to a material issue of fact which makes the entry of summary judgment inappropriate. That dispute centers around testimony by the Plaintiff where he allegedly expressed doubt regarding his entitlement to all of the benefits awarded as a result of the Board's December 17, 1998 decision. Tr at 28-30 of August 18, 1999.⁹ The Defendant is incorrect. The Plaintiff's view of the Board's largesse does not give rise to a dispute of a material issue of fact in these circumstances.

⁹ The Plaintiff, a nonlawyer, provided that opinion during the course of his testimony before the Court on August 18, 1999, in response to questioning by the Court concerning his understanding of the benefits that were due upon his return to work on September 22, 1997.

Any question as to the specific amount of compensation to be awarded is not material to the enforcement of the Board's orders. Rather, it must await a hearing on damages as the Plaintiff has requested. Moreover, and again, neither party appealed that decision and it is the Plaintiff who seeks to enforce it.

Finally, to the extent the Defendant contends that Judge Bifferato's denial of the Plaintiff's December 2, 1999 motion for summary judgement precludes the Court from granting this motion, that argument is misplaced. While there is an undeniable similarity between the two motions, particularly given the procedural history of this case, it is clear that Judge Bifferato denied the cross-motions so that the question as to what workers' compensation benefits the Plaintiff was entitled, could be resolved, which it was. He did not deny the Plaintiff's motion on its merits.

CONCLUSION

Based upon the foregoing, the Court finds that the Industrial Accident Board determined the Plaintiff was entitled to workers' compensation benefits, a demand was made and the Defendant refused to comply with the Board's order.

Accordingly, the Plaintiff's complaint seeking to enforce the Board's orders in that regard is properly before this Court.

In addition, because there are no material disputes of fact, it is apparent that the Plaintiff is entitled to judgment as a matter of law regarding enforcement of the Board's orders.

Nor can the Plaintiff's entitlement to those benefits or the amount thereof be relitigated. Still to be determined however, is the nature and scope of the relief sought by the Plaintiff pursuant to the Delaware Wage Payment and Collection Act. The Plaintiff's motion must therefore be **granted**.

IT IS SO ORDERED.

TOLIVER, JUDGE