

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 THE CIRCLE, SUITE 2  
COURTHOUSE  
GEORGETOWN, DE 19947

February 28, 2005

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RE: Delhaize America, Inc. v. Baker  
C.A. No. 04A-05-001 ESB

Dear Counsel:

This is my decision on Delhaize America Inc.'s ("Delhaize") second appeal of the Industrial Accident Board's ("Board") decision awarding Bonnie Baker ("Baker") total disability benefits. I have affirmed the Board's decision for the reasons set forth below.

Baker was employed by Delhaize as a grocery store cashier when she sustained a work-related injury on October 3, 2000. Baker filed a petition with the Board to determine compensation due. The Board ruled in Baker's favor. Delhaize appealed the Board's decision to the Superior Court. There were three issues on appeal:

1. Is a worker's compensation claimant entitled to total disability benefits although she is later determined to be fit?
2. Did the Board correctly apply the holding of *Gillard-Belfast v. Wendy's Inc.* in its analysis to the facts of this case?

3. Was Delhaize denied procedural due process to contest the claim?

The Honorable Richard F. Stokes ruled in favor of Baker and against Delhaize on all three issues.<sup>1</sup> However, he reversed and remanded the Board's decision to adjust only the period of total disability. The Board adjusted the period of total disability. Delhaize has now appealed both of the Board's decisions to the Superior Court.

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the Superior Court on appeal from a decision of the Industrial Accident Board is to determine whether the agency's decision is supported by substantial evidence and whether the agency made any errors of law.<sup>2</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>3</sup> The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>4</sup> It merely determines if the evidence is legally adequate to support the agency's factual findings.<sup>5</sup> Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.<sup>6</sup>

The arguments raised by Delhaize's second appeal are the same arguments that Judge Stokes rejected in Delhaize's first appeal. Judge Stokes' decision is the law of the case and I will not revisit it. Delhaize has not, in its second appeal, challenged the Board's adjustment of the

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<sup>1</sup>*Delhaize America, Inc. v. Baker*, 2002 WL 31667611 (Del. Super.).

<sup>2</sup> *General Motors v. McNemar*, 202 A.2d 803, 805 (Del. 1964); *General Motors v. Freeman*, 164 A.2d 686 (Del. 1960).

<sup>3</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.), *app. disp.*, 515 A.2d 397 (Del. 1986).

<sup>4</sup> *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66 (Del. 1965).

<sup>5</sup> 29 *Del.C.* § 10142(d).

<sup>6</sup> *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. Ct. 1958).

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period of total disability. Thus, there is simply nothing new for me to resolve. I will, therefore, affirm the Board's decision.

**IT IS SO ORDERED.**

Very truly yours,

E. Scott Bradley

ESB:tl

cc: Prothonotary's Office  
Industrial Accident Board