IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JUNIUS SAUNDERS,	:	
	:	C.A. No. 04A-07-001 WLW
Respondent Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
DAIMLERCHRYSLER CORP.,	:	
	:	
Petitioner Below,	:	
Appellee.	:	

Submitted: June 29, 2005
Decided: September 27, 2005

ORDER

Upon Appeal of a Decision of the Industrial Accident Board. Affirmed.

Walt F. Schmittinger, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware; attorneys for the Appellant.

Scott L. Silar, Esquire of Marshall Dennehey Warner Coleman & Goggin, Wilmington, Delaware; attorneys for the Appellee.

WITHAM, R.J.

Upon consideration of the parties' briefs and the record below, it appears to the Court:

On February 24, 2004, DaimlerChrysler ("Employer") filed a Petition for Review to terminate Junius Saunder's ("Claimant") total disability benefits. The Industrial Accident Board ("Board") conducted a hearing on June 24, 2004, where Employer contended that Claimant was capable of returning to work.[1] By a decision dated July 6, 2004, the Board determined that Claimant was no longer totally disabled, but was still partially disabled.[2] The Board found that both Dr. Matz and Dr. Moran agreed that Claimant could work in at least a sedentary capacity.[3] However, because Dr. Moran continued to provide total disability slips for Claimant, he was permitted to rely on those slips and was under no obligation to seek employment elsewhere until June 17, 2004, which is the date of Dr. Moran's deposition when he stated that Claimant could perform sedentary work.[4] The Board also found that Claimant has been a long-term employee of Employer; Employer has accommodated Claimant's restrictions in the past; Claimant continues to receive substantial employee benefits; and Claimant continues to be examined by Employer's

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[1]*Saunders v. DaimlerChrysler Corp.,* IAB Hearing Nos. 922931, 1122375, 1223525 (July 6, 2004).

[2]*Id.* at 14 - 15.

[3]*Id.* at 8.

[4]*Id.* at 8 - 9.

plant physician.[5] The Board also determined that Claimant believed that Employer was still attempting to find him a job, but that claim was uncorroborated.[6] Additionally, Employer sent Claimant a letter in February alerting him that it had no available positions within his restrictions.[7] The Board concluded that Employer's unsuccessful attempts to place Claimant in April were further proof that he would not be able to return to work with Employer.[8] Claimant appealed the Board's decision contending that it misapplied *Hoey*[9] and, therefore, improperly determined that Claimant was not totally disabled. For the reasons set forth below, this Court affirms the Board's decision.

Standard of Review

The review of an Industrial Accident Board's decision is limited to an examination of the record for errors of law and a determination of whether substantial evidence exists to support the Board's finding of fact and conclusions of law.[10] Substantial evidence equates to "such relevant evidence as a reasonable mind might

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[5] *Id.* at 12.

[6] *Id.* at 13.

[7] *Id.*

[8] *Id.* at 13.

[9] *Hoey v. Chrysler Motors Corp.,* 1994 Del. LEXIS 401.

[10] *Histed v. E. I. Dupont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *Willis v. Plastic Materials*, 2003 Del. Super. LEXIS 9; *Robinson v. Metal Masters, Inc.,* 2000 Del. Super. LEXIS 264.

accept as adequate to support a conclusion."[11] This Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.[12] Errors of law are reviewed de novo. Absent error of law, the standard of review for a Board's decision is abuse of discretion.[13] The Board has abused its discretion only when its decision has "exceeded the bounds of reason in view of the circumstances."[14] Additionally, "this Court will give deference to the expertise of administrative agencies and must affirm the decision of any agency even if the Court might have, in the first instance, reached an opposite conclusion."[15]

Discussion

Claimant asserts that the Board committed reversible error because they improperly applied *Hoey*. In *Hoey*, the Delaware Supreme Court observed that under the displaced worker doctrine, both the employer and the employee have a mutual duty to obtain employment for the employee, but the burden is on the employee to show that he has made reasonable efforts to procure employment which were

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[11] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (*quoting Consolo v. Federal Mar. Comm'n,* 383 U.S. 607, 620 (1966)).

[12] *Collins v. Giant Food, Inc.*, 1999 Del. Super. LEXIS 590 (*quoting Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

[13] *Digiacomo v. Bd. of Pub. Educ.*, 507 A.2d 542, 546 (Del. 1986).

[14] *Willis*, 2003 Del. Super. LEXIS at *2-3.

[15] *Collins*, 1999 Del. Super. LEXIS at *9.

unsuccessful because of the injury.[16] The Court also opined, "[a] displaced employee, however, who does not know or have reason to know that she is a displaced employee cannot be expected to seek new employment."[17] The Court determined that the employee was reasonable in believing that the employer would place her in a light-duty position because they had previously provided light-duty work for other injured employees, they instructed her to report to the company physician, and she remained an employee and continued to be eligible for substantial benefits.[18] Therefore, the Court reasoned that the employer should not have expected her to seek work elsewhere until they informed her that she would be discharged.[19]

However, in *Zigman v. State*,[20] this Court affirmed the decision of the Board to terminate temporary total disability benefits when the employee knew that she could not return to her previous position; she was informed that her previous employer did not have any light-duty positions available; and her employer said they would try to accommodate her, but also provided her with job placement assistance "thereby placing her on notice that there might not be a light duty position available

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[16]*Hoey*, 1994 Del. LEXIS 401, at *3.

[17]*Id.* at *4.

[18]*Id.* at *2, 4.

[19]*Id.* at *4.

[20]1995 Del. Super. LEXIS 383.

for her with the State."[21] Consequently, the Court opined that she had an obligation to seek other employment.[22]

In the case *sub judice*, the Board concluded that Claimant had notice of an obligation to seek employment elsewhere as a result of the letter Employer sent in February stating that they had no light-duty positions available and did not anticipate having any in the future. Additionally, the Board found that Employer's three unsuccessful attempts in April to place Claimant in a position confirmed the fact that Employer would not be able to find another suitable position for Claimant. The Board reasoned that although Employer had previously found another position for Claimant after his two prior injuries, his injuries were now "cumulative" and, therefore, prevented Employer from accommodating Claimant. The Board also noted that while Claimant asserted that efforts to place him in a job were continuing, this testimony was not corroborated by any other evidence.

Conclusion

Because the Board determined that Claimant knew Employer would not be able to find another position for him, and that finding was supported by relevant evidence, its conclusion that Claimant was no longer totally disabled and had an obligation to seek other employment was proper. Consequently, the Board did not err in terminating Claimant's total disability benefits.

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[21] *Id.* at *13.

[22] *Id.*

Upon finding that the Board did not commit an error of law, this Court must examine the decision for abuse of discretion. Because the Board's decision correctly applied the relevant case law and was supported by evidence in the record, its decision does not exceed the bounds of reason.

For the foregoing reasons, the decision of the Board is ***affirmed***.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution