

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELMARVA WAREHOUSES, INC.,	§ § § No. 355, 2001
Defendant Below- Appellant,	§ §
v.	§ Court Below—Superior Court § of the State of Delaware, § in and for New Castle County
PHINEAS YODER,	§ C.A. No. 99C-10-016 §
Plaintiff Below- Appellee.	§ §

Submitted: September 27, 2001
Decided: October 23, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices

ORDER

This 23rd day of October 2001, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The employer/defendant-appellant, Delmarva Warehouses, Inc. (“Delmarva”), claims error in the Superior Court’s entry of summary judgment on behalf of the employee/plaintiff-appellee, Phineas Yoder. The Superior Court held that Yoder was entitled to damages based on Delmarva’s failure to timely pay him workers’ compensation benefits awarded by the

Industrial Accident Board (the “Board”).¹ Yoder has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Delmarva’s opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) Yoder sustained a work related injury on August 10, 1993 while employed by Delmarva. The Superior Court affirmed the Board’s decision awarding benefits on August 26, 1999. On August 30, 1999, Yoder’s attorney made a demand for payment of the Board’s award. The time period within which to appeal the Superior Court’s decision to this Court had not yet expired.³ On October 1, 1999, after the appeal period had run,⁴ and without making any further demand, Yoder filed suit against Delmarva on the basis

¹19 Del. C. § 2357; *Huffman v. Oliphant*, Del. Supr., 432 A.2d 1207, 1210-11 (1981). The Board awarded Yoder benefits for a permanent partial impairment, medical expenses and medical witness fees. Delmarva appealed the decision of the Board, which was affirmed by the Superior Court.

²Supr. Ct. R. 25(a).

³Supr. Ct. R. 6.

⁴19 Del. C. § 2349 provides that an award of the Board is final and conclusive unless within 30 days after a copy thereof has been sent to the parties either party appeals to the Superior Court. Industrial Accident Board Rule 20(B) provides that the first payment of compensation awarded shall be drawn to the claimant’s order not later than seven days after the appeal period has run.

that the Board's award had not yet been paid.⁵ In granting Yoder's motion for summary judgment, the Superior Court ordered Delmarva to pay Yoder damages on the basis of the unpaid medical expert fee and medical expenses awarded by the Board.⁶ In a subsequent order, the Superior Court awarded Yoder the attorney's fees he had incurred in bringing suit. In this appeal, Delmarva claims that the Superior Court committed legal error in determining that Yoder's original demand for payment, asserted before his benefits were "due," was "valid" and remained "valid" thereafter.

(3) Delmarva mischaracterizes the essence of the Superior Court's decision. The Superior Court determined that, once Yoder had made a demand for payment of the Board's award on August 30, 1999, he was not required to renew the demand after the appeal period had run and the award had become final. This determination by the Superior Court was correct. Delmarva cites to no such requirement in the Workers' Compensation Act. In addition, Delmarva presents no evidence suggesting that it was not aware of Yoder's demand. Under these circumstances, it would amount to an unreasonable elevation of form over substance to require the employee to re-

⁵19 Del. C. § 2357; *Huffman v. Oliphant*, 432 A.2d at 1210-11.

⁶*Id.* Delmarva had already paid Yoder the amount of the permanency award.

assert his demand in order to trigger the employer's obligation to pay the award. Moreover, such a requirement would be contrary to the settled policy that the Workers' Compensation Act is to be liberally construed to promote its "twin purposes of providing a scheme for assured compensation for work related injuries without regard to fault and to relieve employers and employees of the expenses and uncertainties of civil litigation."⁷

(4) It is manifest on the face of Delmarva's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice

⁷*Streett v. State*, Del. Supr., 669 A.2d 9, 12 (1995) (quoting *New Castle County v. Goodman*, Del. Supr., 461 A.2d 1012, 1014 (1983)).