IN THE SUPREME COURT OF THE STATE OF DELAWARE

VAUDIE PUCKETT III,	§	
	§	No. 435, 2012
Employee Below-Appellant	§	
	§	Court Below: Superior Court of
	§	The State of Delaware in and for
v.	§	New Castle County
	§	
MATRIX SERVICES,	§	C.A. No. 11A-11-003
	§	
Employer Below-Appellee	§	
	§	

Submitted: November 12, 2012
Decided: January 7, 2013

Before **STEELE**, Chief Justice and, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

On this 7th day of January, 2013, it appears to the Court that:

(1) Claimant-below/Appellant Vaudie Puckett II ("Puckett") appeals from a Superior Court decision affirming the Industrial Accident Board's ("the Board") grant of Employer-Below/Appellee Matrix Services' ("Matrix") Petition to Terminate Puckett's total disability benefits. Puckett raises two claims on appeal. First, Puckett claims the doctrines of *res judicata* and collateral estoppel bar the Board from finding Puckett is not totally disabled since the Board previously determined Puckett is totally disabled physically and Matrix presents no new evidence that his physical condition has changed. Second, Puckett claims since a

previous Board determined Puckett is totally disabled physically, the Superior Court judge erred by affirming the current Board's decision to terminate Puckett's disability benefits without evidence of a change in Puckett's physical condition. We find no merit to Puckett's appeal and affirm.

(2) While working for Matrix as a boiler maker in 2002, Puckett would repeatedly hit his head while inside of an oil tank, hunched-over welding and carrying pipe. This repeated physical injury exacerbated his syrinx, a rare abnormal cyst inside his spine. In 2004, Puckett filed a Petition with the Board claiming total disability and seeking to determine compensation due. The Board found Puckett totally disabled and entitled to receive compensation.[1] The Board found Puckett "cannot return to any work due to his current symptomatology, including severe, chronic pain, as well as the risk of further aggravation of his syrinx."

(3) In 2011, Matrix filed a Petition to Terminate Puckett's total disability benefits under 19 *Del. C.* § 2347. Matrix alleged that Puckett's total disability has ceased and he is now able to work. Matrix supported its petition with the testimony of Dr. Jeffrey Meyers, a medical expert, and Robert Stackhouse, a vocational expert. Puckett was supported by medical expert Dr. Manonmani Antony.

[1] *Puckett v. Matrix Services*, I.A.B. No. 1230651 (Del. I.A.B. Sept. 16, 2005).

(4) Dr. Meyers examined Puckett twice, once in 2010 and once in 2011. Dr. Meyers also reviewed the results of a functional capacity examination ("FCE"), which indicated Puckett was physically able to work eight-hours a day so long as his job did not involve heavy lifting above 20 lbs. Dr. Meyers testified that it was safe for Puckett to return to work at a minimum sedentary level with the ability to change positions as needed and minimal use of his left upper extremities. Dr. Meyers's opinion was based on the stability of Puckett's condition, and his conclusion that this stability indicated sedentary activity would not aggravate Puckett's syrinx condition. Stackhouse reviewed the FCE and determined that Puckett could work in jobs with the lowest level of physical demand. Stackhouse reviewed a labor market survey of 12 jobs, and identified 11 jobs which were physically suited to Puckett's condition, including clerical, sales, security, greeter and customer service jobs. Dr. Antony testified that Puckett's condition has not improved, a finding with which Dr. Meyers agreed. Dr. Antony explained that while Puckett may have performed adequately in the FCE, she was concerned about his ability to perform tasks repeatedly over time. Finally, Dr. Antony testified that the risk of re-injury while performing sedentary work may be the same as staying at home.

(5) The Board concluded that Puckett's incapacity has terminated, relying on the expert testimony that sedentary work would not risk aggravating or re-

injuring Puckett's syrinx than his staying at home.[2] The Superior Court affirmed the Board's decision.[3] This appeal followed.

(6) We review a decision of the Board for errors of law and determine whether substantial evidence exists to support the Board's findings of fact and conclusions of law.[4] "Substantial evidence equates to 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"[5] We will not weigh the evidence, determine questions of credibility, or make our own factual findings.[6] Errors of law are reviewed *de novo*.[7] Absent an error of law, the standard of review for a Board's decision is abuse of discretion.[8] "The Board has abused its discretion only when its decision has 'exceeded the bounds of reason in view of the circumstances.'"[9] The Board "may adopt the opinion testimony of one expert over another; and that opinion, if adopted, will constitute substantial evidence for purposes of appellate review."[10] The Board also "may accept or reject an expert's testimony in whole or in part."[11]

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[2] *Puckett v. Matrix Services*, I.A.B. No. 1230651 (Del. I.A.B. Oct. 4, 2010) ("Board Op.").
[3] *Puckett v. Matrix Services*, C.A. No. 11A-11-003 (July 9, 2012).
[4] *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009) *citing Stanley v. Kraft Foods, Inc.*, 2008 WL 2410212, at *2 (Del. Super. Mar. 24, 2008).
[5] *Id. quoting Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).
[6] *Id. citing Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).
[7] *Id.*
[8] *Id. citing Stanley*, 2008 WL 2410212, at *2.
[9] *Id. quoting Stanley*, 2008 WL 2410212, at *2.
[10] *Id. citing Bolden v. Kraft Foods*, 889 A.2d 283, 2005 WL 3526324, at *4 (Del. 2005) (TABLE).
[11] *Id. citing Lewis v. Formosa Plastics Corp.*, 1999 WL 743322, at *3 (Del. Super. July 8, 1999).

(7) Puckett argues that the doctrines of *res judicata* and collateral estoppel prohibit the Board from terminating his benefits. *Res judicata* prohibits judicial bodies from "reconsidering conclusions of law previously adjudicated."[12] Collateral estoppel bars judicial bodies from reconsidering conclusions of fact made previously by another body.[13]

(8) Title 19, Section 2347 of the Delaware Code states, in relevant part:

> On the application of any party in interest on the ground that the incapacity of the injured employee has subsequently terminated, increased, diminished or recurred or that the status of the dependent has changed, the Board may at any time, but not oftener than once in 6 months, review any agreement or award.[14]

Puckett argues that the only method for a benefit award to be terminated under § 2347, the employer must prove the physical medical condition of a claimant has changed. However, in *Harris v. Chrysler Corp.*, this Court explained:

> [I]t [is] clearly the law that the doctrine of res judicata is not a bar to the Board's exercise of its authority conferred by 19 *Del. C.* § 2347 to review, modify or terminate previous awards upon proof of subsequent change of condition….[15]

Section 2347 allows an employer to petition the Board to review previous total disability awards, so long as there is a change in condition or circumstances. This is different from a requirement that the employer must prove the physical injury

[12] *Betts v. Townsend, Inc.*, 765 A.2d 531, 533 (Del. 2000).
[13] *Id*. at 534.
[14] 19 *Del. C.* § 2347.
[15] *Harris v. Chrysler Corp.*, 541 A.2d 598, 1988 WL 44783 at *1 (Del. 1988).

has changed. The Superior Court has explained that a petitioner seeking to alter benefits under § 2347 must "show that [claimant's] condition *or circumstances* have changed since [the prior determination of total disability] such that her disability has diminished and she is now able to return to work in some capacity."[16] Section 2347 does not require the symptoms of the injury or condition be significantly diminished, rather:

> 'To show that a claimant's incapacity has terminated, evidence must be presented that the claimant is medically able to return to work and that employment is available within the claimant's restrictions.'[17]

(10) In *Betts v. Townsends, Inc.*, a claimant with a previous award for temporary total disability appealed the denial of her subsequent petition for permanent partial disability benefits.[18] The claimant argued on appeal that *res judicata* and collateral estoppel barred the board from revisiting the issue of causation, since the finding of temporary disability already established a causal link between the work-related accident and her injury. We determined that neither *res judicata* nor collateral estoppel barred the Board's determination.[19] Rather these doctrines would only preclude the Board from revisiting the "correctness of

[16] *State v. Sturgeon*, 2011 WL 2416306 at *2 (Del. Super. June 9, 2011) (internal citations omitted) (emphasis added).
[17] *Id*. at *4 *quoting Bailey v. State*, 2004 WL 745716 at *4 (Del. Super. April 5, 2004).
[18] *Betts v. Townsends, Inc.*, 765 A.2d 531, 532-33 (Del. 2000).
[19] *Id*. at 535.

the prior award."[20] The second petition by the claimant related to a wholly separate issue—permanent partial disability rather than temporary total disability. Similarly, in this case the 2011 Board was determining a wholly separate issue from the one decided by the 2005 Board. The 2011 Board was not invalidating or even revisiting the correctness of the 2005 award. Rather, it was examining whether Puckett's current condition precluded him from entering the workforce.

(11) In *Shively v. Allied*, the Superior Court applied our holding in *Betts*.[21] The employer in *Shively* had previously filed two petitions for termination, and each was unsuccessful. The claimant argued that the denial of these two previous petitions barred consideration of the third. The court found that the employer, in each petition, was seeking to show the claimant was no longer incapacitated, and "the passage of time" presents new evidence.[22] Each petition "is not an adjudication as to the claimant's future condition and does not preclude subsequent awards or subsequent modifications of the original award."[23] As the trial court stated, if *res judicata* and collateral estopped always applied to petitions to terminate, "the Board's 'review'…would be a remarkably one-sided affair."[24]

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[20] *Id*. at 533.
[21] *Shively v. Allied Systems, Ltd.*, 2010 WL 537734 at *9-10 (Del. Super. Feb. 9, 2010); *aff'd* 998 A.2d 851, 2010 WL 2651602 (Del. 2010).
[22] *Id*. at *12.
[23] *Id*. at *10.
[24] *Id*.

(12) Matrix's medical expert testified that as time has passed, Puckett's condition has proven to be stable. It is this stability that indicates a return to work within his limitations would not increase the risk of aggravating Puckett's syrinx. Though Dr. Antony believed it would be harmful for Puckett to return to work, "the Board was entitled to accept the testimony of one medical expert over the views of another."[25]

(13) The Board's grant of the petition to terminate was not legally erroneous and was supported by substantial evidence, including expert medical and vocational testimony. The Superior Court did not err in upholding the Board's determination.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED.**

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[25] *Standard Distributing Co. Through Pennsylvania Mfrs. Ass'n Ins. Co. v. Nally*, 650 A.2d 640, 646 (Del. 1993) *citing DiSabatino v. Wortman*, 453 A.2d 102, 105 (Del. 1982).