

IN THE SUPREME COURT OF THE STATE OF DELAWARE

OPPORTUNITY CENTER, INC.,	§
	§ No. 339, 2006
Employer Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ C.A. No. 05A-06-011
NATHANIEL JAMISON,	§
	§
Claimant Below,	§
Appellee.	§

Submitted: May 9, 2007
Decided: May 24, 2007

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

This 24th day of May, 2007, it appears to the Court that:

1) The employer-appellant, Opportunity Center, Inc. (“OCI”), appeals from a Superior Court judgment affirming an Industrial Accident Board (the “IAB” or the “Board”) decision awarding Nathaniel Jamison (“Jamison” or “Claimant”) total disability benefits. OCI presents two arguments on appeal: first, that the Industrial Accident Board misapplied this Court’s holding in *Gilliard-Belfast v. Wendy’s, Inc.*¹ by determining that Jamison was totally disabled despite Claimant’s attempts to obtain

¹ *Gilliard-Belfast v. Wendy’s, Inc.*, 754 A.2d 251, 254 (Del. 2000) (holding that “a person who can only resume some form of employment by disobeying the orders of his or her treating physician is totally disabled, at least temporarily, regardless of his or her capabilities”).

employment during his disability; and, second, that there was no substantial evidence to support the Board's decision. We have concluded that the Board's decision is free from legal error and is supported by substantial evidence. Accordingly, the judgment of the Superior Court must be affirmed.

2) The Claimant, Nathaniel Jamison, was injured at work on October 15, 2004, while lifting boxes of shredded credit card applications on to a conveyor belt. At the time of the accident, Jamison was a full-time employee of the appellant OCI. On the day of his injury, Jamison developed a lower back spasm while lifting the boxes.

Believing the spasm would resolve on its own, Jamison went home shortly before the end of his regular work day without notifying OCI of his injury and without seeking medical treatment. Jamison testified that the following day his back was "completely out" and he "couldn't even move." He rested for the remainder of the weekend and sought medical treatment at the St. Claire Medical Unit the following Monday, October 18, 2004.

3) During the visit, Jamison told the physician he was injured at work. The doctor prescribed medication and gave Jamison a "no-work" disability order. Jamison was driven to OCI where he presented the medical

leave note to one of its supervisors. However, Jamison did not mention that his injury had occurred while he was working.

The following Monday, Jamison was re-examined and received a second medical disability note. Jamison did not submit this note to OCI nor did he contact OCI with the results of his re-evaluation. The next day, Jamison's direct supervisor, Mildred Aikens, called Jamison to discuss his attendance problems. Unaware that the injury was work related, Ms. Aikens terminated Jamison. Thereafter, Jamison had no further contact with OCI.

4) Jamison filed his Petition to Determine Compensation Due with the IAB on November 15, 2004. In November 2004, Jamison also obtained insurance and began to see Dr. Domingo Singson, a private physician. Based on the examination, Dr. Singson diagnosed Jamison with lumbosacral strain and muscle spasms secondary to a work injury, and prescribed medication and physical therapy. Dr. Singson found the Claimant to be totally disabled because of his lower back pain, his limited range of motion and muscular spasms. That diagnosis remained consistent throughout Jamison's treatment, although some improvement was noted.

5) In his deposition, taken on March 11, 2005, Dr. Singson testified that Claimant remained totally disabled as of his most recent clinical evaluation on March 4, 2005. Despite the total disability diagnosis,

Claimant began seeking work in February 2005. Jamison testified that he wanted to work and began looking for employment with light duties. Jamison testified that he went to see Dr. Jeffrey S. Meyers, OCI's physician, because he believed Dr. Meyers would help him get another job with OCI.

6) Dr. Meyers, who was a witness for OCI, testified that Jamison was scheduled for a Defense Medical Examination with him (Dr. Meyers) in January 2005. However, the day before the scheduled exam, Jamison cancelled the appointment.² Jamison testified that he was unable to attend the examination because he needed to accompany his sister, who had suffered a heart attack, to Johns Hopkins Hospital in Baltimore.

7) At a rescheduled visit, in early February 2005, Dr. Meyers evaluated Jamison and diagnosed Jamison with a soft-tissue strain. Dr. Meyers testified that Jamison was capable of maintaining employment with restricted duties, and that Jamison had expressed his desire to return to work. Although Jamison indicated that he had difficulty attending physical therapy because of personal issues, including his brother's death and his sister's health problems, Dr. Meyers opined that Jamison did not desire to attend physical therapy. Therefore, Dr. Meyers concluded Jamison's injuries were not severe.

² The Board did award a credit of \$600 to OCI for the missed appointment.

8) Based on the testimony of Jamison, Mildred Aikens, and Drs. Singson and Meyers, the IAB³ awarded Jamison medical and disability benefits commencing on October 18, 2004, and continuing thereafter. Jamison was also awarded medical expenses, attorneys fees and medical witness fees. The IAB found Dr. Singson's testimony regarding causation more credible than that of Dr. Meyers. Although, the Board noted it had more difficulty rejecting Dr. Meyers' opinion that Jamison was capable of working in some capacity, it relied on our holding in *Gilliard-Belfast v. Wendy's, Inc.*,⁴ finding that Jamison remained totally disabled from work.

9) The standard of review for decisions of the IAB is limited to whether the decision is supported by substantial evidence and is free from legal error.⁵ On appeal from the Board, the reviewing court "does not sit as a trier of fact with authority to weigh the evidence, determine questions of credibility, and make its own factual findings and conclusions," those functions being reserved for the Board.⁶ Absent errors of law, the standard of review of an IAB decision is abuse of discretion.⁷

³ By stipulation of the parties, pursuant to Title 19, section 2301B(a)(4) of the Delaware Code, the case was presented to a Hearing Officer rather than the full Board, and a hearing was held on April 21, 2005.

⁴ *Gilliard-Belfast v. Wendy's, Inc.*, 754 A.2d 251, 254 (Del. 2000).

⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁶ *Id.* at 66.

⁷ *Digiacoimo v. Bd. of Pub. Educ. in Wilmington*, 507 A.2d 542, 546 (Del. 1986).

10) OCI argues that because Jamison believed he could work and had also applied for work, he was not entitled to rely on Dr. Singson's opinion that he was totally disabled. Specifically, OCI argues that the holding in *Gilliard-Belfast* does not automatically apply simply because a physician issues a disability note. In *Gilliard-Belfast*, we held that "a person who can only resume some form of employment by disobeying the orders of his or her treating physician is totally disabled, at least temporarily, *regardless of his or her capabilities.*"⁸

11) OCI argues this case is distinguishable from *Gilliard-Belfast*, because in *Gilliard-Belfast*, the claimant was placed on total disability while awaiting further surgery. OCI's argument is contrary to the holding of that case. Although Jamison may have been seeking work and able to maintain some type of restricted employment, he did so by disobeying the orders of his treating physician, Dr. Singson.⁹

12) Based on his review of Jamison's medical history and his on-going medical evaluations, Dr. Singson found that Jamison was totally disabled. The Board accepted this conclusion over Dr. Meyers' contrary

⁸ *Gilliard-Belfast v. Wendy's, Inc.*, 754 A.2d 251, 254. (emphasis added).

⁹ *See id.* at 253. "[I]f the treating physician's order not to work is disregarded, a claimant who returns to work not only incurs the risk of further physical injury but also faces the prospect of being denied compensation for that enhanced injury."

opinion that Jamison could have returned to work on a restricted basis. If there is substantial evidence of disability, the Board is free to accept the testimony of one expert over another.¹⁰ The record reflects that the Board properly applied the holding of *Gilliard-Belfast* to the facts of this case and that its decision is free from legal error.

13) OCI argues that Board's decision was not based on substantial evidence. Specifically, OCI claims that the Board did not adequately consider the discrepancies in Jamison's testimony and mischaracterized evidence in its opinion. "The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency."¹¹ "Substantial evidence' means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹² "It is more than a scintilla but less than a preponderance of the evidence."¹³

14) OCI argues that there is insufficient evidence to support a finding that Jamison was credible. OCI points to several discrepancies in his testimony, including his failure to report the accident to OCI and his being

¹⁰ *Standard Distrib. Co. v. Nally*, 630 A.2d 640, 646 (Del. 1993).

¹¹ Del. Code Ann. tit. 29, § 10142.

¹² *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994) (citing *Consolo v. Federal Maritime Comm.*, 383 U.S. 607, 620 (1966)).

¹³ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

confused about the date of his injury. Determinations of credibility are functions that are reserved exclusively for the Board.¹⁴ The Board explained that Jamison had difficulty clearly communicating during the hearing and, thus, did not find his misrepresentations to be purposeful.¹⁵

15) OCI further argues that Jamison was not credible because he did not consistently attend physical therapy and failed to provide sufficient notice when cancelling his initial appointment with Dr. Meyers. On appeal from a Board decision, this Court does not weigh the evidence or determine questions of credibility.¹⁶ That is true even where, as here, there is evidence to support a view contrary to that reached by the Board.¹⁷

16) The record reflects significant evidence to support the Board's determination. The Board found Dr. Singson's testimony as to causation and diagnosis more credible than that of Dr. Meyers, because Dr. Meyers examined Jamison only once, four months after the injury. "[T]he Board is free to choose between conflicting medical expert opinions, and either opinion constitutes substantial evidence for purposes of appeal."¹⁸ The Board also found Jamison credible, notwithstanding his testimony that the

¹⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

¹⁵ *Nathaniel Jamison v. Opportunity Center, Inc.*, IAB Hearing No. 1259486 at 12 (May. 24, 2005).

¹⁶ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

¹⁷ *Id.* at 67.

¹⁸ *State v. Thompson*, 2004 WL 2830901 *2 (Del. Supr.).

injury occurred one week later than the actual date of the injury, attributing the mistake to confusion on Jamison's part.

17) OCI next argues that the Board mischaracterized evidence in its opinion. “[I]t is an abuse of discretion for the Board to mischaracterize a witness's testimony on a material issue in the case.”¹⁹ OCI cites to four instances of “mischaracterizations” in the Board's decision.²⁰ None is material to Jamison's ability to prove the accident was compensable. Therefore, OCI's arguments are without merit.

18) The Board set forth the factual basis for its credibility determinations. There is substantial evidence in the record to support those

¹⁹ *Track & Trail, Inc. v. Conran*, 2000 WL 141529 *3 (Del. Super.).

²⁰ The Board stated, “Claimant was then terminated after he submitted the note excusing him from work.” *Nathaniel Jamison v. Opportunity Center, Inc.*, IAB Hearing No. 1259486 at 2. Claimant was terminated after he sustained his injury, other details specific to his termination are irrelevant to his compensation claim.

Secondly, OCI points out the Board stated, “When Claimant called in to Ms. Aiken to tell her about his back she told him that he was no longer needed.” *Id.* at 4. Again, details about Jamison's termination are not material to causation or the determination of actual disability.

Thirdly, the decision states that the Claimant sustained injury in 1999 when a truck hit the building in which he was working. *Id.* In 1999, Claimant was actually hit by a vehicle in a parking lot. Although Claimant's previous injury is material, the inadvertent mischaracterization of the exact circumstances do not rise to an abuse of discretion by the Board.

Fourthly, OCI argues that the Board's decision inaccurately states that the Claimant told Dr. Meyers the chiropractic treatment he was receiving helped alleviate his pain. *Id.* at 3. However, Jamison did not begin seeing a chiropractor until after his examination by Dr. Meyers.

determinations. The record reflects that the IAB's decision is free from legal error and is supported by substantial evidence.

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

BY THE COURT:

/s/ Randy J. Holland
Justice