655 A.2d 307 (Table)
Unpublished Disposition
(The decision of the Court is referenced
in the Atlantic Reporter in a 'Table of
Decisions Without Published Opinions.')
Supreme Court of Delaware.

Jewell HOEY, Appellee Below, Appellant,

v.

CHRYSLER MOTORS CORPORATION,
Appellant Below, Appellee.

No. 85, 1994.
|
Submitted: Nov. 15, 1994.
|
Decided: Dec. 28, 1994.

Court Below: Superior Court of the State of Delaware, in and for New Castle County; C.A. No. 91A-12-018.

Synopsis
Superior Court, New Castle County, 1994 WL 149248.

REVERSED.

Before WALSH, HOLLAND and HARTNETT, JJ.

ORDER

HARTNETT, Justice.

***1** This 28th day of December 1994, it appears to the Court from the briefs and the oral argument of the parties that:

1. Jewell Hoey ("Hoey") appeals from a Superior Court order reversing a decision of the Industrial Accident Board ("Board"). Pursuant to 19 *Del. C.* § 2324, the Board awarded Hoey ongoing, temporary, total disability payments, based on its findings that Hoey was partially physically disabled as a result of an employment related injury; that she remained an employee of Chrysler; and that Chrysler had not notified her whether it could provide her with a light-duty position.

2. The Superior Court reversed the Board, finding that the Board's decision was unsupported by substantial evidence and was erroneous as a matter of law. Specifically, the Superior Court found that Hoey had not sustained her burden of proving that she had made reasonable efforts to secure another job, and that her reliance on the fact that Chrysler had neither offered her a light-duty position nor informed her that such a position would not be available did not overcome her burden.

3. The Superior Court's holding reversing the Board was incorrect as a matter of law and, therefore, we must reverse.

4. Hoey had been employed by Chrysler for more than 17 years when she was injured at work on November 29, 1989. As a result of her injury, she was physically unable to work until May 30, 1991, and received total disability payments for that period. On May 30, 1991, Hoey's physician determined that she was able to return to work with certain restrictions that would prevent her from resuming the position she held before she was injured. She continued, however, to be listed by Chrysler as an employee and, therefore, continued to be eligible for substantial employee benefits.

5. At Chrysler's direction, Hoey reported approximately every six weeks for an examination by the company physician, Dr. Edward Gliwa. Dr. Gliwa testified that he advises a Chrysler Placement Committee, as to when and under what circumstances light duty will be offered to an injured worker.

6. While awaiting the availability of a light-duty position at Chrysler, Hoey did not seek other employment. She continued to participate in therapy and in a work-hardening program prescribed by her physician. Chrysler continued to schedule physical examinations to evaluate Hoey's condition and neither informed Hoey that light-duty work would not be available, nor informed her that her employment would be terminated.

7. Under the displaced worker doctrine, where an injured employee is able to work but only in a limited capacity, "[b]oth the employer and the employee share a mutual duty to obtain employment for the employee, the precise extent of which cannot be clearly and definitely expressed as a general rule." *Chrysler Corp. v. Duff,* Del. Supr., 314 A.2d 915, 918 (1973). However, "the primary burden is upon the employee to show that he has made reasonable efforts to secure suitable employment which have been unsuccessful because of the injury[.]" *Franklin Fabricators v. Irwin,* Del. Supr., 306 A.2d 734, 737 (1973); *see also Governor Bacon Health Ctr v. Noll,* Del. Super., 315 A.2d 601, 605 (1974).

***2** 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. Under the facts in this case, it was not reasonable to expect Hoey to seek employment elsewhere until she was advised by Chrysler that no light-duty work would be available for her and that she would be discharged.

8. Chrysler provided light-duty work for many of its employees injured on the job and Hoey remained willing to return to work at Chrysler as soon as a light-duty position became available. To that end, she continued to participate in the work-hardening program and followed Chrysler's instructions to report to the company physician. Chrysler was in exclusive control of the decision whether light-duty work would be offered to Hoey, and as to any information regarding whether light-duty work was likely to become available. It was, therefore, reasonable for Hoey to believe that a light-duty job might soon become available for her at Chrysler.

9. Under these particular facts and circumstances, we find that Chrysler had a duty to advise Hoey that it intended to discharge her if it did not intend to provide her with light-duty work. It was unreasonable for Chrysler to withhold this information from Hoey and then expect her to seek employment with a new employer for what would likely be a greatly reduced wage, without the significant Chrysler employee benefits that she had accrued. It was reasonable for Hoey to believe that Chrysler intended to place her in a light-duty position and she, therefore, was under no duty to seek employment elsewhere until Chrysler advised her that she would not be given a light-duty position.

NOW, THEREFORE, IT IS ORDERED that the decision of the Superior Court reversing the Board's award of ongoing, temporary, total disability payments is REVERSED.

All Citations

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