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**IN THE
COURT OF APPEALS OF INDIANA**

JEWEL FOOD STORES,)

Appellant-Defendant,)

vs.)

LANA BEVIL,)

Appellee-Plaintiff.)

No. 93A02-0612-EX-1104

APPEAL FROM THE WORKER'S COMPENSATION BOARD OF INDIANA
The Honorable Linda P. Hamilton, Chair
Application Nos. C-150979 and C-163908

August 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Jewel Food Stores (“Jewel”) appeals the decision of the Worker’s Compensation Board of Indiana (“Board”), which concluded that Lana Bevil (“Bevil”) was permanently and totally disabled and was entitled to worker’s compensation benefits. Jewel raises several issues, which we restate as:

- I. Whether the evidence supported the Board’s determination of permanent and total disability;
- II. Whether an injury in 1999 broke the chain of causation between the 1997 injury and the 2002 injury; and
- III. Whether Bevil was foreclosed from claiming benefits for the injury in 1999.

We affirm.

FACTS AND PROCEDURAL HISTORY

Bevil began working for Jewel in 1986, and during her employment there, she worked in various capacities. She began seeing Dr. Charles Chuman for spine problems in 1992. In 1994, Bevil suffered a work-related injury, which required Dr. Chuman to perform a lumbar decompression and cervical spinal fusion on her. She received a settlement as a result of this injury. Dr. Chuman continued to treat Bevil through August 26, 1997, when he referred her to Dr. Arshad Malik. On September 17, 1997, Bevil was working in the bakery department at Jewel when she slipped and fell. As a result of this injury, she was paid temporary total disability benefits. Bevil was able to return to work in her normal capacity after this injury. She continued to work at Jewel until June 1999.

On June 27, 1999, Bevil suffered another injury to her lower back while at work. She received a settlement regarding this injury and returned to work on June 25, 2002. On

November 9, 2002, she suffered an additional work-related injury to her lower back. After this injury, Bevil's back pain worsened, and she never returned to work. A spinal stimulator was placed in her back in 2004. Bevil was deemed disabled by the Social Security Administration on June 15, 2004.

Bevil filed two Applications for Adjustment of Claim against Jewel for injuries arising out of the course and scope of her employment with Jewel. The first application was filed on September 14, 1999 and alleged an injury date of September 17, 1997. The second application was filed on December 12, 2002 and alleged an injury date of November 9, 2002. A hearing relating to Bevil's claims under both applications was conducted before Single Hearing Member A. James Sarkisian on November 29, 2005. On February 27, 2006, Sarkisian issued his findings and conclusions thereon, finding that Bevil was permanently and totally disabled and awarding her benefits. Jewel filed an application for review by the Board on March 9, 2006. A hearing was held on this application, and on November 9, 2006, the Board affirmed Sarkisian's decision finding Bevil permanently and totally disabled. Jewel now appeals.

DISCUSSION AND DECISION

An appellant faces a deferential standard of review when challenging the Board's decision. *Shultz Timber v. Morrison*, 751 N.E.2d 834, 836 (Ind. Ct. App. 2001), *trans. denied*. Upon appeal from a decision by the Board, we are bound by the Board's findings of fact and may not disturb its determination unless the evidence is undisputed and leads undeniably to a contrary conclusion. *Id.* We employ a two-tiered standard of review when evaluating the Board's decision. *Id.* First, we examine the record to determine if there is

competent evidence of probative value to support the Board's findings. *Graycor Indus. v. Metz*, 806 N.E.2d 791, 797 (Ind. Ct. App. 2004), *trans, denied*. We then examine the findings to determine if they are sufficient to support the decision. *Id.* The Board has a duty to enter specific findings of fact that support its ultimate conclusions of law. *Id.* These findings must be stated with sufficient specificity so as to allow intelligent review. *Id.* In our review, we will not reweigh the evidence or assess the credibility of the witnesses and will consider only the evidence most favorable to the award, including all reasonable inferences. *Id.* Therefore, to prevail, Jewel must demonstrate that there is no probative evidence from which the Board might reasonably conclude as it did. We conclude that Jewel has not met this burden.

I. Sufficiency of the Evidence to Prove Permanent Total Disability

Jewel argues that Bevil did not produce sufficient evidence to support the Board's decision to find her permanently and totally disabled. As previously stated, we do not reweigh the evidence or assess the credibility of the witnesses, and we only consider the evidence most favorable to the award. *Graycor Indus.*, 806 N.E.2d at 797.

Here, the evidence presented showed that Bevil sustained injury to her back in 1994, 1997, 1999, and 2002. After the injuries in 1994, 1997, and 1999, Bevil was able to return to her employment with Jewel, but she was unable to return after the injury sustained in 2002. The evidence showed that this injury occurred in the course of her employment with Jewel and that it exacerbated her prior back problems. A vocational expert testified that:

In summary, we have a pleasant 55 year old woman with a failed back syndrome with resulting constant pain. This pain level has been well documented by the medical professionals who have treated her. The need to

lay down precludes all employment. The lack of skills, inability to concentrate or focus, and her depression only add to an already totally disabled person. There would be no reasonable work at any exertion or skill level that she could do.

Appellant's App. at 35. Additionally, one of Bevil's treating physicians stated that "[d]ue to the patient's weakness, deconditioning and spinal degeneration, and also coupled with her age, I do not see that this patient is capable of maintaining gainful employment." *Id.* at 49. We conclude that, looking at the evidence most favorable to the award as we must do, sufficient evidence was presented to support the Board's decision.¹

II. Chain of Causation

Jewel argues that Bevil's 1999 injury broke the chain of causation between the 1997 injury and the 2002 injury, and therefore, she cannot be deemed permanently and totally disabled as a result of these injuries. The evidence in the record demonstrated that permanent and total disability did not occur until the 2002 injury to Bevil's back. The 1999 injury was a prior injury as were the injuries in 1994 and 1997. None of these prior injuries resulted in permanent and total disability to Bevil. In fact, Bevil was able to return to her employment at Jewel after each of these incidents. It was not until she injured her back in 2002, that she was deemed to be permanently and totally disabled. Although the doctors termed her 2002 injury trivial in nature, they also noted that it was an aggravation of her usual back pain. Jewel has failed to show that the 1999 injury broke the chain of causation between the 1997 injury and the 2002 injury.

¹ Additionally, Jewel contends that several of the Board's findings were not supported by the evidence presented. Because we have concluded that sufficient evidence existed to support the Board's

III. Foreclosure of 1999 Claim

Jewel contends that Bevil is foreclosed from claiming benefits for the 1999 injury. It claims that this is because she failed to file a claim within the statute of limitation period, because no evidence was presented that the 1999 injury played a causative role in her permanent total disability, and because she did not properly request a modification of her previous compensation agreement regarding this injury. In fact, in Bevil's applications for benefits, she did not claim benefits resulting from the 1999 injury but from the exacerbation of that injury and other previous injuries, which occurred when she injured her back in 2002. Such exacerbation was supported by the record and nothing forecloses Bevil from claiming the benefits therefrom.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.

determination that Bevil was permanently and totally disabled, the evidence and findings in the record of which Jewel complains are irrelevant to the Board's determination.