

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. E-13-697

WILLIAM WELLER

APPELLANT

V.

DIRECTOR, DEPARTMENT OF  
WORKFORCE SERVICES, and  
DRIVELINE RETAIL  
MERCHANDISING

APPELLEES

Opinion Delivered February 12, 2014

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW  
[NO. 2013-BR-01487]

REVERSED AND REMANDED

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**ROBIN F. WYNNE, Judge**

In this unbriefed case, pro se appellant William Weller appeals from the Arkansas Board of Review's decision denying him unemployment benefits under Arkansas Code Annotated section 11-10-507(3)(A) (Repl. 2012), which requires that a person be unemployed, physically and mentally able to perform suitable work, available for such work, and doing things that a reasonably prudent individual would be expected to do to secure work. Because we hold that substantial evidence does not support the Board's decision, we reverse and remand for an award of benefits.

Appellant worked part-time for Driveline Retail Merchandising, and his job required him to go to clients' stores to do merchandising. On December 5, 2012, while working, appellant was on foot when he was hit by a car. He reported the injury to his employer immediately, but he initially declined medical treatment and continued working. After his

pain became worse, appellant told his employer on February 6, 2013, that he needed to see a doctor. He was told that, pursuant to the employer's policy, he would not be permitted to return to work without a full release from a doctor. Appellant filed a workers' compensation claim on February 15 and saw a doctor on February 28. He did not obtain a release. Appellant testified that he was unable to return to the doctor because he did not have the money to do so and was in a "Catch-22" situation with the driver's insurance company and the workers' compensation carrier. Appellant further testified that he was able to work and available for work immediately; no doctor had said he was unable to work. The Appeal Tribunal denied appellant benefits under Ark. Code Ann. § 11-10-507(3)(A), and the Board of Review affirmed and adopted that decision.<sup>1</sup>

Arkansas Code Annotated section 11-10-507 provides in pertinent part:

An insured worker shall be eligible to receive benefits with respect to any week only if the Director of the Department of Workforce Services finds that:

.....

(3) Able to Work and Available for Work.

(A) The worker is unemployed, is physically and mentally able to perform suitable work, and is available for such work. Mere registration and reporting at a local employment office shall not be conclusive evidence of ability to work, availability for work, or willingness to accept work unless the individual is doing those things which a reasonably prudent individual would be expected to do to secure work. . . .

In the present case, the Board reasoned that appellant knew that he would be taken off the work schedule after filing a claim for workers' compensation; that he indicated that he had not gone to a doctor again to try to get a release due to issues with liability for payment

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<sup>1</sup>When the Board affirms and adopts the decision of the Appeal Tribunal, the Appeal Tribunal decision becomes the decision of the Board for purposes of appellate review. *Ferren v. Dir.*, 59 Ark. App. 213, 956 S.W.2d 198 (1997).

between the driver's insurance and workers' compensation, but he needed a release to show he is able to return to his job or do other work; and that he testified that work intensified his pain, which was excruciating. Based on these factors, the Board found that "the claimant has not been able to perform suitable work or available for such work."

We review the findings of the Board in the light most favorable to the prevailing party, reversing only where the Board's findings are not supported by substantial evidence. *Ballard v. Dir., Ark. Dep't of Workforce Servs.*, 2012 Ark. App. 371. Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* Even when there is evidence on which the Board might have reached a different decision, the scope of our judicial review is limited to a determination of whether the Board could reasonably reach its decision upon the evidence before it. *Id.* Issues of credibility of witnesses and weight to be afforded their testimony are matters for the Board to determine. *Id.*

In the present case, the Board's conclusion that appellant was not able to perform work or available for work is not supported by substantial evidence. Regarding appellant's physical ability to perform work, the evidence showed that while appellant was in pain, he was never taken off work by a doctor, nor did he at any time tell his employer that he was unable to work. Similarly, the only evidence presented at the hearing was that appellant was available for work. Accordingly, the decision of the Board is reversed, and the case is remanded for an award of benefits.

Reversed and remanded.  
HARRISON and GLOVER, JJ., agree.  
*William Weller*, pro se appellant.  
*Phyllis Edwards*, for appellees.