IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

LORRAINE DUFFY,	:	
	:	**C.A. No: 12A-12-002 (RBY)**
Appellant,	:	
	:	
v.	:	
	:	
STATE OF DELAWARE,	:	
	:	
Appellee.	:	

Submitted: July 3, 2013
Decided: October 11, 2013

Upon Consideration of Appellant's Appeal of
the Industrial Accident Board Decision
AFFIRMED

ORDER

Roy S. Shiels, Esq., Brown, Shiels & Beauregard, LLC, Dover, Delaware for Appellant.

Natalie L. Palladino, Esq., Tybout, Redfearn & Pell, Wilmington, Delaware for Appellee.

Young, J.

SUMMARY

The Industrial Accident Board ("the Board") determined that Claimant, Lorraine Duffy ("Claimant"), sustained a compensable psychological injury due to her hostile work environment. The Board awarded her total disability for the period of February 8, 2006 to June 16, 2006, from the time of her injury to the Board's determination of its resolution. Claimant contended that her total disability lasted until at least June 18, 2008. That decision was appealed to this Court. On that appeal, Claimant made two arguments. First, she argued that the Board made factual errors which led to legal error by an incorrect application of the case of *Gilliard-Belfast v. Wendy's Inc.*[1] More specifically, she contended that the Board erred by finding that the Claimant did not change psychiatrists from Dr. Kraman-Roach to Dr. Cindrich until after Dr. Kraman-Roach wrote her a letter on July 19, 2006. She alleges that the Board compounded this error by allowing that finding to influence the Board's assessment of her credibility.

Second, she argued that the Board committed legal error by refusing to admit evidence contained in a July 2006 letter written by Dr. Lilian Kraman-Roach to the Claimant, while permitting and relying on a characterization of the letter by a witness, Dr. Neil Kaye. As to the Claimant's second argument, Judge Vaughn found no error in the Board's decision not to admit the July 2006 letter into the evidence. As to the Claimant's first argument, Judge Vaughn expressed no opinion on the Claimant's credibility. He declined to determine if the *Gilliard-Belfast* analysis was

[1] 754 A.2d 251, (Del. 2000).

determinative in this matter. Instead, he remanded the case to the Board for further findings of fact and conclusions of law, so that Claimant's credibility could be evaluated on correct facts.

In November 2012, the Board rendered a revised opinion, reaching the same result, based on new findings of fact. It again rejected the *Gilliard-Belfast* analysis in reliance on the opinion of a treating professional. The Board found that, since the doctor who provided Claimant with no work notes was no longer treating her, the doctrine did not apply to this case.

Claimant again appeals to this Court. This Court must decide if the Board properly applied the *Gilliard-Belfast* doctrine. This doctrine serves to protect employees from being forced to return to work against their doctor's orders. For the reasons discussed below, the *Gilliard-Belfast* doctrine was not intended to protect Claimant in Duffy's position. Further, evidence on the record supports the Board's decision. The Board's decision is **AFFIRMED**.

FACTS

Claimant was employed by the State of Delaware in 1975 at Central Date Processing (later Office of Information Services). The record demonstrates that she transferred to the Department of State in 2002. Beginning in summer of 2002, Claimant was out of work for a period of time for cancer treatment. When she returned, she began having problems with her co-worker Fred and supervisor Carroll, which worsened in 2005 and 2006. Claimant asserts that, in April of 2005, Carroll physically threatened Claimant, who claims that she was physically shaken by the event, causing her to leave work. Her work relationship with Fred also

continued to be stressful. Hence, Claimant sought assistance from the State of Delaware Employee Assistance Program in 2004. She began treatment with Dr. Kramen-Roach, a psychiatrist, whom she saw until she started seeing Dr. Cindrich, also a psychiatrist, in May 2006. Claimant continued treatment until September 2007. At the time Dr. Cindrich left the area, discontinuing his practice. Dr. Guariello continued to be Claimant's therapist. During the time Dr. Guariello was seeing Claimant, he allegedly indicated to her that she should not return to work. After Dr. Cindrich left his practice, Claimant saw several other psychiatrists, none of whom indicated she should return to work. During Claimant's treatment period with Dr. Guariello, in 2008 the therapist wrote a letter indicating that she felt Claimant could return to some type of work at that time.

In September 2006, employee was seen by Defense Medical Expert, Dr. Kaye. Dr. Kaye later testified that he believed Claimant's mental condition improved in May 2006. Previously, Dr. Guariello had advised her that her seeming improvement was actually a manic-phase of her bi-polar disorder.

STANDARD OF REVIEW

For administrative board appeals, this Court is limited to reviewing whether the Board's decision is supported by substantial evidence and is free from legal errors.[2] Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion."[3] It is "more than a scintilla, but less than

---

[2] 29 *Del C.* §10142(d); *Avon Prods. v. Lamparski*, 203 A.2d 559, 560 (Del. 1972).

[3] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Super. 1981) (citing *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

preponderance of the evidence."[4] An abuse of discretion will be found if the Board "acts arbitrarily or capaciously...exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."[5] Questions of law will be reviewed *de novo*.[6] In the absence of an error of law, lack of substantial evidence or abuse of discretion, the Court will not disturb the decision of the Board.

DISCUSSION

Claimant contends that the Board erred in making findings of fact not supported by the record, which facts were used by the Board to deny the application of the *Gilliard-Belfast* doctrine.

Claimant argues that, in its Decision on Remand, the Board erred when it failed to apply *Gilliard-Belfast* to extend the period of total disability beyond July 19, 2006. More specifically, Claimant argues that the Board made several new factual findings, not supported by the record, when it continued to limit Claimant's period of total disability benefits. According to Claimant, the Board's alleged errors included: 1) the assumption that Dr. Cindrich did not issue any "no work" or total disability notes to Claimant; 2) the rejection of Claimant's testimony regarding Dr. Cindrich's work recommendations was not credible due to her

---

[4] *Id.* (quoting *Cross v. Calfano*, 475 F.Supp. 896, 898 (D. Fla. 1979).

[5] *Delaware Transit Corp. v. Roane*, 2011 WL 3793450, at *5 (Del. Super. Aug. 24, 2011) (quoting *Straley v. Advanced Staffing, Inc.,* 2009 WL 1228572, at *2 (Del. Super. April 30, 2009)0.

[6] *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998).

denial of pre-existing mental health problems; 3) the conclusion that Dr. Guariello opined that Claimant should return to work; 4) the assumption, as Claimant characterized it, that Dr. Little's hope that Claimant could return to work was tantamount to a recommendation that she return to work; and 5) the characterization of Dr. Cindrich's opinions set forth in his June 2007 note as being expressed in an uncertain context, because it did not contain a detailed etiology of Claimant's stress.

The *Gilliard-Belfast* doctrine holds that a claimant who can resume working only by disobeying her treating doctor's order not to work is deemed to be temporarily totally disabled, regardless of her capabilities, until the Board determines otherwise. But the Board noted that the *Gilliard-Belfast* presumption does not apply when the treating doctors disagree about the Claimant's ability to work. Also, the *Gilliard-Belfast* doctrine does not apply if the disability is due to non-work related conditions.

The Board determined that Claimant's medical records reflected that Dr. Kraman-Roach, her treating physician when she stopped working in February 2006, issued two total disability notes directing her not to work for the period from about February 27, 2006 through April 27, 2006. The doctors also agreed that, by a letter dated July 19, 2006 to Claimant, Dr. Kraman-Roach advised Claimant she was capable of working, and that the initial two disability notes were provided only to allow Claimant time to stabilize her medications and develop coping strategies through counseling.

Further, the Board correctly noted that Dr. Kraman-Roach's disability notes

were for a specific time, for the two month period from February 27, 2006 through April 27, 2006. There is no medical evidence in the record that Dr. Kraman-Roach, or any of Claimant's multiple other treating physicians totally disabled Claimant from working due to her work injury after April 27, 2006. In fact, there is evidence that Dr. Kraman-Roach affirmatively advised Claimant that she was capable of working in the July 19, 2006 letter. Similarly, in a letter dated July 18, 2008 to Claimant's counsel, Dr. Guariello indicated Claimant was capable of working, specifically stating that it would be a mistake for her not to return to work.

CONCLUSION

For the foregoing reasons, the decision of the Industrial Accident Board is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Opinion Distribution
Counsel
File