IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

CHRISTIANNE M. HAGGERTY,	)	
	)	
Appellant,	)	**C.A. No. N16A-08-001 FWW**
	)	
v.	)	
	)	
BOARD OF PENSION TRUSTEES OF THE STATE OF DELAWARE, and the DELAWARE OFFICE OF PENSIONS,	)	
	)	
Appellees.	)	

Submitted: January 6, 2017
Decided: April 17, 2017

MEMORANDUM OPINION

On Appeal from the Board of Pension Trustees:
AFFIRMED.

Christianne M. Haggerty, *pro se*, 239 Manor Circle, Elkton, Maryland 21921; Appellant.

Ann Marie Johnson, Esquire, Delaware Department of Justice, 820 North French Street, 6th Floor, Wilmington, Delaware 19801; Attorney for Board of Pension Trustees of the State of Delaware.

WHARTON, J.

I. INTRODUCTION

Before the Court is Christianne Haggerty's ("Haggerty") appeal of the Delaware Board of Pension Trustees' ("Board") decision that denied her a "total disability" pension for injuries that she sustained in the line of duty as a police officer. Haggerty has successfully appealed the Board's decision to this Court on two previous occasions. The paramount issue in the previous appeals is the same issue that is currently before the Court, and that is whether the Board properly considered worker's compensation reports in making its determination. Haggerty argues that the Board has failed yet again to give them appropriate weight. If the Board were to give the reports due weight, Haggerty contends that she would be entitled to a "total disability" pension, instead of a "partial disability" pension.

After thoroughly reviewing the record, the Court finds that the Board's decision is supported by substantial evidence and is free from legal error. Accordingly, the Board's decision is **AFFIRMED**.

II. FACTUAL AND PROCEDURAL CONTEXT

[1]A. Haggerty's Injury

Haggerty was employed as a police officer with the New Castle County Police Department ("NCCPD") when she suffered an injury in the line of duty on

[1] The Court has adopted Sections A through E from Judge Brady's July 20, 2015 Opinion. *See Haggerty v. Bd. of Pension Trs.*, 2015 WL 4477798, at *1–*5 (Del. Super. July 20, 2015), *aff'd*, 132 A.2d 1159 (Del. 2016) (TABLE). Citations are omitted in these Sections.

March 9, 2009. Haggerty reported the incident the next day, sought treatment, and was immediately placed on "light duty." After the injury, Haggerty was diagnosed with a left shoulder strain/sprain, cervical whiplash, and potential bursitis. On January 6, 2010, after treatment for her injuries, therapy, and a job placement assessment, Haggerty was placed back on full duty. Three weeks later, Haggerty was put back on light duty due to aggravated neck pain and headaches. Dr. Ann Kim and Dr. Pierre LeRoy concluded that the pain was caused by the weight of Haggerty's uniform and gun. Haggerty was subsequently evaluated by Dr. Stephen Rogers, who concluded that Haggerty was totally disabled from all law enforcement work.

B. Haggerty's Termination and Application for Disability Pension

On August 20, 2010, NCCPD sent Haggerty a letter notifying Haggerty that she was being terminated. Haggerty was terminated because she was on light duty and the County maintained that there were no other light duty positions available in which Haggerty could continue. Haggerty's termination was effective as of October 7, 2010. Haggerty applied for a disability pension from the Delaware State Office of Pensions ("SPO") on September 2, 2010. On November 23, 2010, the SPO informed Haggerty that she had been granted a partial disability pension. Haggerty appealed the decision, seeking a total disability pension. At the time of the appeal, the SPO requested that Haggerty submit to an expert vocational

assessment by Malcolm & Associates, LLC ("Malcolm"), which Haggerty did. On April 4, 2011, Malcolm submitted its report (the "Malcolm Report") finding that Haggerty was not totally disabled but could do medium physical demand work for 8–10 hours per day. After considering the Malcolm Report, the SPO issued a decision confirming that Haggerty would receive only a duty-connected partial disability pension. Haggerty appealed the decision of the SPO, and, on September 14, 2011, a hearing was held before the hearing officers for the Board in accordance with 29 *Del. C.* § 8308(c)(8). On November 18, 2011, the Board voted to adopt the recommendation of the hearing officers and denied Haggerty's appeal.

C. Haggerty's Initial Appeal to Superior Court

On December 15, 2011, Haggerty appealed to Superior Court. Haggerty argued that the Board erred in not finding her totally disabled. Specifically, Haggerty suggested that because there is no job with New Castle County for which the County presently finds her suited, she is totally disabled.

On July 20, 2012, Judge Slights reversed and remanded the decision to the Board. The Court found the Board had correctly interpreted and applied 11 *Del. C.* § 8801, the statute defining "partial disability" and "total disability" for the purposes of the county and municipal police/firefighter pension plan. 11 *Del. C.* § 8801(16) defines "total disability" as "a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for

which the member is reasonably suited by training or experience, which is reasonably expected to last at least 12 months."

The Court explained that the definition of "total disability," as previously determined by Superior Court, focuses on the employee's ability to engage in "any occupation, whether police-related or *otherwise*." An individual is not totally disabled if she can work in some job, even if that job is with an organization other than New Castle County. In other words, "any occupation" in 11 *Del. C.* § 8801(16) is not, contrary to Haggerty's suggestion, limited to "any occupation with New Castle County." The Court concluded that "the Malcolm Report's conclusion that Haggerty can work in positions aside from those provided by the County" was consistent with the Board's finding that Haggerty is not totally disabled.

Despite the Board's proper interpretation of the statute, the Court found that the Board's decision was not supported by substantial evidence because the Board had completely ignored evidence that contradicted the Board's findings—specifically three medical opinions presented by Haggerty at the hearing, each of which opined that Haggerty was totally disabled, i.e., unable to work in any capacity. The Court explained, "[t]he Board failed to provide any indication that it actually considered the treating physician's opinion and apparently never considered or even reviewed the two separate medical opinions offered by Haggerty."

The Court directed that, upon remand, the Board should hold a new hearing, which effectively afforded the parties the opportunity to present new evidence. However, the Court made clear that evidence of Haggerty's condition having worsened subsequent to her original filing for benefits should not be considered: "There is nothing in the [disability pension] statute . . . to suggest that the Board is obligated to increase a partial disability pension to a full disability pension where a pensioner's physical state worsens. As unfair as this may seem to Haggerty and any other service-member faced with a degenerative condition caused by a work-related injury, this Court is not the proper forum for relief."

D. Evidence before the Board on Remand

In accordance with the Court's direction, the Board allowed the record to be supplemented by additional submissions and held a remand hearing before the hearing officers on November 13, 2013. In their Report and Recommendation, the hearing officers summarized the evidence before them as of the remand hearing. At the hearing, Haggerty testified that she had been working light duty as a dispatcher prior to her termination. Haggerty's initial treatment was with Dr. Kambhamettu, whom Haggerty consulted at the behest of the County. Dr. Kambhamettu placed Haggerty on light duty. In April 2009, Haggerty had her first MRI of her shoulder, which indicated that she had bursitis. Dr. Kambhamettu referred Haggerty to a surgeon, Dr. Sowa, who gave Haggerty a cortisone shot for

pain, ordered an MRI of Haggerty's spine, and referred Haggerty to a colleague who specialized in spines. The spine specialist did not think that Haggerty's injuries required surgery, and he referred Haggerty to Dr. Kim, a pain specialist. Haggerty began treatment with Dr. Kim in June 2010.

In March 2011, Haggerty switched doctors and began treating with Dr. Falco, also a pain specialist. In April 2011, Dr. Falco suggested Haggerty see Dr. Xing, who had treated Haggerty for a back injury that she "had years ago," for a second surgical consultation. Dr. Xing referred Haggerty to Dr. Katz, who ordered another MRI. According to Haggerty, the MRI showed degenerative disc disease, but Dr. Katz still did not think that surgery was necessary at that time. Haggerty testified that Dr. Katz referred her back to Dr. Sowa, who, in turn referred her to Dr. Eppley, a neurosurgeon. Haggerty testified that it was now January 2013, and Dr. Eppley recommended surgery.

Haggerty underwent spinal fusion surgery in July 2013. Haggerty testified that the surgery revealed "fragments of bone embedded into the disc" and that Dr. Eppley "said that that was consistent with having some type of trauma to the area." Haggerty indicated that her worker's compensation case was reopened as a result of the surgery, and that she is now on total disability until cleared to work by her doctors.

On cross-examination, Haggerty was asked why she had withdrawn her original June 2011 petition for worker's compensation for total disability. Counsel for the SPO asked Haggerty to read into the record a letter from her attorney at the time indicating that Dr. Falco was unable to testify that Haggerty was totally disabled at that time. Upon further questioning, Haggerty confirmed that prior to September 14, 2011, the date of the first Board hearing concerning Haggerty's appeal of the SPO's granting her only partial disability benefits, the only doctors who had opined that Haggerty was totally disabled were Dr. Kim, Dr. Falco, Dr. Coubarous, and Dr. DeJoseph. When asked whether any of the physicians had opined that Haggerty's disability would last more than 12 months, Haggerty indicated that Dr. Falco had written the word "never" in response to the question as to whether she could return to work.

The record contained several vocational assessments. First, there was the Malcolm report on which the SPO relied in making its original determination that Haggerty was only eligible for partial disability. The report concluded that at that time, given Haggerty's experience and education, a labor market survey indicated several jobs that she could work with her injury. Two other experts for the County, Dr. Meyers and Barbara Stevenson of Coventry Worker's Comp Services, similarly opined that there were jobs that Haggerty could do. In his August 3, 2011 Expert Medical Examination Report, Dr. Meyers opined that Haggerty "was

safe to return to work at light duty capacity as per Dr. Kim's recommendation of January 4, 2011" and was "not totally disabled." Barbara Stevenson identified ten jobs that Haggerty could perform.

Haggerty submitted numerous physician reports that had been prepared in connection with her worker's compensation claim, including reports by Dr. Kim, Dr. DeJoseph, Dr. Falco, and Dr. Coubarous. There are multiple reports, sometimes from the same doctor, tracking Haggerty's progress over time. These reports were made on a standard "Delaware Workers' Compensation: Physician's Report of Worker's Compensation Injury" form. The form does not explicitly ask whether the applicant is totally disabled from any kind of work (and not just prevented from performing her current job), a fact that the Board made much of in its decision on remand. Nonetheless, several of these reports indicated "total disability," by checking the box corresponding to "0" hours per day that the patient can work and writing some variation of "total disability/no work" in the "comments" section of the form.

Haggerty submitted two Pension Plan Medical Reports to the SPO. Both reports were discussed at the hearing. The Pension Plan Medical Report form asks directly after the officer's ability to work in any position for which she is suited. Question 11 asks, "Does the impairment render the officer totally unable to work in any occupation for which he/she is reasonably suited by training or experience. .

. ?" Question 12 asks, "If not, what occupation is the officer able to perform?" The first report by Dr. Kim was dated October 8, 2010. In response to Question 11, Dr. Kim answered "no." In response to Question 12, Dr. Kim stated that Haggerty was capable of "light duty . . . [and] administrative work, desk work." The second report by Dr. Rogers, submitted on October 29, 2010, answered "Yes" in response to Question 11 and "Not applicable" to Question 12. Haggerty was questioned about an apparent handwriting discrepancy in Dr. Rogers' report, but Haggerty was unable to explain the handwriting discrepancy at the hearing.

E. The Board's Findings

The hearing officers issued a Report and Recommendation, denying Haggerty's appeal, which was approved and adopted by the Board on December 20, 2013. The question before the Board was whether Haggerty had met the standard for "total disability" under 11 *Del. C.* § 8801(16). As a threshold issue, the Board considered whether it needed to take into account evidence that Haggerty's condition has worsened since she first applied for a disability pension. Citing the Court's decision on appeal, the Board determined that the County Plan was not intended to take into account worsening of an applicant's medical condition after she has filed for benefits.

The Board found that it was beyond dispute that Haggerty "had a medically determined physical impairment [that] rendered her unable to function as a police

officer [and] which was reasonably expected to last at least 12 months, at the time of her initial application in September 2010, and through the time of her initial Pension Board hearing on September 14, 2011." The Board identified numerous medical opinions in the record, which had been submitted for the purpose of Haggerty's worker's compensation claim. These opinions included reports by Dr. Kim, Dr. DeJoseph, Dr. Falco, and Dr. Coubarous. The Board found that

> [w]hile each of the WC [worker's compensation] Medical Reports are responsive to the question of whether Ms. Haggerty could perform the duties of a police officer, thereby meeting the standard required by 8801(13) of the County Plan for partial disability, they do not address whether Ms. Haggerty is able to perform any other work for which she may be qualified, as required for a finding of total disability pursuant to sec. 8801(16).

The Board pointed out that, in contrast to the worker's compensation form, the form for the Pension Plan Medical Report asks the physician completing it to directly address whether the claimant may do *any* work for which she is suited by training or experience.

Of the two Pension Plan Reports, the Board stated that it gave the Rogers report less weight than that of Dr. Kim. The Board pointed to the fact that Dr. Kim was the regular treating physician for Haggerty and "has the benefit of several months of evaluation and treatment on which to form her opinion." In contrast, said the Board, Dr. Rogers was a medical expert engaged by the County who has a much more limited role in Haggerty's care. The Board also noted that Dr. Rogers

had written an earlier medical review, dated July 6, 2010, in which he acknowledged that Haggerty was currently working light duty, that "Dr. Kim would be her physician of first resort," and that the permanent impairment to the cervical spine that was causally related to the work injury was "10%." The Board also says that both Haggerty and her husband testified that Rogers was not privy to the proper disability definitions under 11 *Del. C.* § 8801(16) and was instead making his evaluations premised on the worker's compensation standards. Finally, the Board expressed concern over the fact that Rogers' Pension Plan Medical Report appeared to contain two different handwritings.

The Board found that the vocational evaluations in the record provided "overwhelming support for a partial disability determination" as they indicated multiple jobs for which Haggerty would be qualified given her physical limitations.

Finally, the Board found that there was ample medical evidence in the record to suggest that Haggerty's disc condition was degenerative and had deteriorated since the September 14, 2011 hearing. However, the Board found no evidence to indicate that Haggerty's degenerative condition was caused by her work injury. The Board said that the only evidence of a causal connection between the work injury was the postoperative note and Haggerty's associated testimony concerning the "fragments of bone embedded into the disc" that Dr. Eppley said was

"consistent with having some type of trauma to the area." The Board concluded that Haggerty's injuries could have been caused by a multitude of other factors including a back issue that predated the injury and subsequent injuries from sneezing and in the shower.

F. Haggerty's Second Appeal to Superior Court

On January 23, 2014, Haggerty again appealed to Superior Court. Haggerty argued that the Board erred by giving more weight to Dr. Kim's Pension Plan Medical Report than to Dr. Rodgers' Report.[2] Haggerty also disputed the amount of weight that the Board gave to the Malcolm Report. Haggerty contended that the Malcolm Report's findings were "inconsistent with the County's assessment that . . . there were no suitable jobs open for [her]."[3] Finally, Haggerty argued that the Board committed legal error by concluding that "total disability" for worker's compensation purposes is different from "total disability" for pension purposes.[4]

The Court found that the Board acted reasonably by favoring Dr. Kim's Pension Plan Medical Report over Dr. Rodgers' Report because Dr. Kim was Haggerty's treating physician for several months and was better equipped to give an opinion about Haggerty's condition.[5] The Court also found that the Board acted

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[2] *Haggerty*, 2015 WL 4477798, at *6.
[3] *Id.*
[4] *Id.* at *8–*9.
[5] *Id.* at *11.

reasonably in "assigning significant weight to the opinions of the vocational experts even though they are not medical doctors."[6]

However, the Court found that the Board committed legal error by concluding that the definition of "total disability" for worker's compensation purposes is different from the definition of "total disability" for pension purposes.[7] Relying on precedent, the Court found that "total disability" for worker's compensation purposes is not limited to whether an employee can return to the "same occupation."[8] Rather, the definition includes an employee's "inability to obtain employment for which she is suited by her training and qualifications, including experience."[9] Consequently, the Court found that the definitions of "total disability" in both statutes are "substantially identical."[10] The Court reversed and remanded the case to the Board on this basis, and the Delaware Supreme Court affirmed the Court's "well-reasoned decision."[11]

G. The Board's Report and Recommendation on Remand

On remand, the Board reiterated that it could not take Haggerty's worsening condition into account in making its determination. The Board therefore reconsidered all of the evidence that existed at the time Haggerty applied for a

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[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Bd. of Pension Trs. v. Haggerty*, 132 A.3d 1159 (Del. 2016) (TABLE).

disability pension on September 2, 2010 through her first appeal to the Board on September 14, 2011.[12]

After reviewing the evidence, the Board found that, from the time Haggerty filed her pension application through her appeal hearing in September 2011, Haggerty was receiving partial disability worker's compensation benefits.[13] The Board found that Haggerty did not receive total disability worker's compensation benefits until she had spinal fusion surgery in July 2013.[14] As such, the Board implicitly discredited the worker's compensation reports that rendered Haggerty totally disabled because the worker's compensation board had already determined that Haggerty was partially disabled.[15]

Moreover, while the Board recognized that Dr. Falco's worker's compensation reports declared Haggerty totally disabled, the Board found that "[a]t no time did Dr. Falco opine that Ms. Haggerty's disability was likely to last for a period of at least 12 months," as required by 11 *Del. C.* § 8801(16).[16] In addition, the Board also gave appropriate weight to the fact that Dr. Falco withdrew his total disability determination for worker's compensation benefits prior to the October 3, 2011 hearing "when he realized that the standard required that he opine that Ms.

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[12] R. at 546–51.
[13] R. at 550.
[14] R. at 550.
[15] R. at 550.
[16] R. at 550.

Haggerty could not work in any occupation for which she was reasonably suited by training or experience."[17]

Like the Board's previous determination, the Board gave weight to the Malcolm Report.[18] Furthermore, it gave more weight to Dr. Kim's Pension Plan Medical Report than to Dr. Rogers' Report because Dr. Kim was Haggerty's treating physician who regularly monitored her condition.[19]

III. THE PARTIES' CONTENTIONS

On appeal, Haggerty argues that the Board's decision should be reversed for several reasons. First, Haggerty argues that the Board erred by failing to consider all of the evidence in the record.[20] Haggerty argues that evidence from 2010 to 2013 shows that she was totally disabled for pension disability purposes.[21] For example, Haggerty argues that the Board erred by giving significant weight to the Malcolm Report because it "only addresses a fraction of the record."[22] Haggerty asserts that the Malcolm Report is meaningful only if it is considered in light of all other evidence in the record.[23]

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[17] R. at 550.
[18] R. at 547, 551.
[19] R. at 550–51.
[20] Appellant's Opening Br., D.I. 6, at 11–13.
[21] *Id.* at 13.
[22] *Id.*
[23] *Id.*

Second, Haggerty contends that the Board erroneously weighed Dr. Kim's Pension Plan Medical Report over Dr. Rodgers' Report.[24] Haggerty argues that Dr. Rodgers' Pension Plan Medical Report is corroborated by the worker's compensation reports of Drs. Falco, DeJoseph, Coubarous, and Kim.[25] Haggerty asserts that Dr. Kim's Report is not supported by substantial evidence in the record.[26] In fact, Haggerty contends that Dr. Kim's Pension Plan Medical Report is not even supported by Dr. Kim's previous worker's compensation report. Therefore, Haggerty argues that the Board cannot accept Dr. Kim's Report in isolation of all other evidence.[27]

Third, and most importantly, Haggerty argues that the Board disregarded the Court's previous decisions by failing to properly consider the worker's compensation reports of Drs. Falco, DeJoseph, Coubarous, and Kim. In the Board's decision, it discredited the worker's compensation reports that declared Haggerty totally disabled because the worker's compensation board had already determined that Haggerty was partially disabled.[28] Citing precedent, however, Haggerty argues that a person who can only resume some form of employment by disobeying the orders of his or her treating physician is nevertheless totally

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[24] *Id.* at 7.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*

disabled.[29] Therefore, although the worker's compensation board declared Haggerty partially disabled, the subsequent worker's compensation reports are controlling.[30]

Fourth, Haggerty argues that the Board erred when it found that Dr. Falco did not opine that her disability was reasonably expected to last more than 12 months. Haggerty asserts that Dr. Falco did opine that her disability would last more than 12 months when Dr. Falco wrote the word "never" in response to the question as to whether she could return to work.[31] Relatedly, Haggerty contends that the worker's compensation reports cumulatively covered a time period greater than 12 months. Haggerty therefore argues that giving the worker's compensation reports less weight because they were limited until the next doctor's appointment does not hold up against the entire record.[32]

Finally, Haggerty takes issue with the Board giving less weight to Dr. Falco's worker's compensation reports.[33] Haggerty contends that, while Dr. Falco withdrew his worker's compensation total disability determination before the hearing, he continued to issue reports thereafter stating that Haggerty was totally disabled.[34]

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[29] *Id.*
[30] *Id.*
[31] *Id.* at 9–10.
[32] *Id.*
[33] *Id.*
[34] *Id.*

In response, the Board asserts that Haggerty's arguments essentially ask the Court to reweigh the evidence in the record.[35] However, the Board contends that the Court is not permitted to act in this manner so long as there is substantial evidence to support the Board's findings.[36] Here, the Board contends that its decision is supported by substantial evidence and is free from legal error.[37] Therefore, the Board argues that its decision must be affirmed.[38]

IV. STANDARD OF REVIEW

The decision of an administrative agency must be affirmed on appeal so long as it is supported by substantial evidence and is free from legal error.[39] Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.[40] While a preponderance of evidence is unnecessary, substantial evidence means "more than a mere scintilla."[41] Questions of law are reviewed *de novo*,[42] but because the Court does not weigh evidence, determine questions of

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[35] Appellee's Answering Br., D.I. 7, at 14–18.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Conagra/Pilgrim's Pride, Inc. v. Green*, 2008 WL 2429113, at *2 (Del. June 17, 2008); *Jordan v. Bd. of Pension Trs. of Del.*, 2004 WL 2240598, *2 (Del. Super. Sept. 21, 2004); *King v. Bd. of Pension Trs. of Del.*, 1997 WL 718682, at *3–*4 (Del. Super. Aug. 29, 1997).
[40] *Kelley v. Perdue Farms*, 123 A.3d 150, 153 (Del. Super. 2015) (citing *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009)).
[41] *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).
[42] *Kelley*, 123 A.3d at 152–53 (citing *Vincent v. E. Shore Markets*, 970 A.2d 160, 163 (Del. 2009)).

credibility, or make its own factual findings,[43] it must uphold the decision of the administrative agency unless the Court finds that the agency's decision "exceeds the bounds of reason given the circumstances."[44]

V. DISCUSSION

In Delaware, the law of the case doctrine is a judicially-imposed restriction that prohibits courts from reconsidering issues that were previously decided in a case.[45] The law of the case doctrine applies "when a specific legal principle is applied to an issue presented by facts which remain constant throughout the subsequent course of the same litigation."[46] However, the doctrine "only applies to issues the court actually decided."[47] The Delaware Supreme Court has determined that the issue need not be expressly decided to establish the law of the case.[48] Indeed, issues that are decided implicitly, "'or by necessary inference from the disposition' satisfy the actual decision requirement."[49] Although the purpose of

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[43] *Bullock v. K-Mart Corp.*, 1995 WL 339025, at *2 (Del. Super. May 5, 1995) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66–67 (Del. 1965)).
[44] *Bromwell v. Chrysler LLC*, 2010 WL 4513086, at *3 (Del. Super. Oct. 28, 2010) (quoting *Bolden v. Kraft Foods*, 2005 WL 3526324, at *3 (Del. Dec. 21, 2005)).
[45] *See State v. Wright*, 131 A.3d 310, 321 (Del. 2016) (citing *Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26, 39 (Del. 2005)).
[46] *Hoskins v. State*, 102 A.3d 724, 729 (Del. 2014) (quoting *Kenton v. Kenton*, 571 A.2d 778, 784 (Del. 1990)). *See Ins. Corp. of America v. Barker*, 628 A.2d 38, 40–41 (Del. 1993) ("The doctrine stands for the proposition that 'findings of fact and conclusions of law by an appellate court are generally binding in all subsequent proceedings in the same case in the trial court or in a later appeal.'" (citations omitted)).
[47] *Wright*, 131 A.3d at 321 (quoting *John B. v. Emkes*, 710 F.3d 394, 403 (6th Cir. 2013)).
[48] *Id.* (quoting 18B Charles Alan Wright Et. Al., Federal Practice and Procedure § 4478, at 657–58 (2d ed. 2015)).
[49] *Id.* (quoting *Hanover Ins. Co. v. Am. Eng'g Co.*, 105 F.3d 306, 312 (6th Cir. 1997)).

this doctrine, much like the doctrine of *stare decisis*, is to promote efficiency, finality, stability, and respect for the judicial system,[50] it will not apply when the prior decision is clearly wrong, produces an unjust result, or should be revisited because of changed circumstances.[51]

With these principles in mind, the Court finds that several arguments put forth by Haggerty are precluded from consideration under this doctrine. For example, the Court has found that the Board acted reasonably by favoring Dr. Kim's Pension Plan Medical Report over Dr. Rodgers' Report.[52] Likewise, the Court has found that the Board acted reasonably by giving weight to the Malcolm Report.[53] Finally, the Court has found that evidence of Haggerty's worsening condition subsequent to her original filing for pension benefits must not be considered.[54] Because the Court finds that none of the above-mentioned exceptions apply, the previous decisions of the Court must stand.

Haggerty next argues that the Board erred by failing to properly consider the worker's compensation reports of several physicians, which rendered Haggerty totally disabled. While the worker's compensation board deemed Haggerty

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[50] *Cede & Co.*, 884 A.2d at 39.
[51] *Id.* (citing *Hamilton v. State*, 831 A.2d 881, 887 (Del. 2003)).
[52] *Haggerty v. Bd. of Pension Trs.*, 2015 WL 4477798, at *11.
[53] *Id.*
[54] *Id.* at *2; *Haggerty v. Bd. of Pension Trs.*, 2012 WL 3029580, at *4–*5 (Del. Super. July 20, 2012).

partially disabled, Haggerty cites to *Gilliard-Belfast v. Wendy's, Inc.*[55] for the proposition 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."[56] Therefore, if the worker's compensation reports rendering Haggerty totally disabled are controlling, then Haggerty asserts that the Board's reasoning for discrediting them is erroneous.

The Court finds that Haggerty's argument is unpersuasive. Here, the worker's compensation board determined that Haggerty was partially disabled. Thereafter, several physicians, including Dr. Falco, determined that Haggerty was totally disabled for worker's compensation purposes. Based upon these reports, Haggerty filed a Petition to Determine Additional Compensation Due. Prior to the October 3, 2011 hearing before the worker's compensation board, however, Dr. Falco withdrew his opinion that Haggerty was totally disabled. Dr. Falco withdrew his total disability determination because he opined that she could return to work with restrictions. Consequently, Haggerty continued to receive partial disability benefits until she underwent spinal fusion surgery in July 2013.

Certainly, the Delaware Supreme Court in *Gilliard-Belfast* could not have meant what Haggerty proposes here—that is, once the board determines that a claimant is partially disabled, a physician's subsequent determination declaring the

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[55] 754 A.2d 251 (Del. 2000).
[56] *Id.* at 254 (citing *Malcom v. Chrysler Corp.*, 255 A.2d 706, 710 (Del. Super. 1969)).

claimant totally disabled supersedes the board's decision. It is well-established law that "it is the function of the Board, and not that of a physician, to determine a claimant's disability . . . ."[57] Given that the worker's compensation reports are not binding on the Board, the Court cannot say that it was unreasonable to weigh the worker's compensation board's determination over that of Haggerty's treating physicians.

Any remaining arguments relating to the worker's compensation reports are inconsequential because the Board's overarching reason for discrediting the reports is supported by substantial evidence and free from legal error. Nevertheless, the Court briefly notes that the Board's decision to discredit Dr. Falco's reports is also reasonable. As noted above, Dr. Falco submitted several reports indicating that Haggerty was totally disabled. However, Dr. Falco later withdrew this determination because he believed that Haggerty could undertake sedentary duties in the workplace. This change of opinion is a reasonable basis to discredit Dr. Falco. While Dr. Falco continued to issue total disability reports after he withdrew his opinion to the worker's compensation board, this further supports the Board's decision to discredit his opinion. Inconsistencies in Dr. Falco's reports undermine his credibility, and the Board was reasonable for recognizing this in its decision.

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[57] *Steele v. Animal Health Sales, Inc.*, 2001 WL 1355134, at *4 (Del. Super. Oct. 19, 2001) (quoting *Poor Richard Inn v. Lister*, 420 A.2d 178, 180 (Del. 1980)).

VI. CONCLUSION

For the foregoing reasons, the Board's decision granting Haggerty a "partial disability" pension is hereby **AFFIRMED**.

IT IS SO ORDERED.

Ferris W. Wharton, J.