STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

FILED: AUGUST 24, 2012

LINDA ACCIARDO	:	
	:	
v.	:	**C.A. No. PC-10-2822**
	:	
EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND (ERSRI)	:	

DECISION

VAN COUGHYEN, J. The matter before the Court is an appeal from a decision of the Retirement Board of the Employees' Retirement System of Rhode Island (hereafter "ERSRI" or "Board"). The Board denied Linda Acciardo's application for accidental disability retirement benefits. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

Ms. Acciardo, a Chief Inspector with the Department of Health, filed an application for accidental disability retirement on July 14, 2008. (Record of Administrative Appeal Ex. 2 (hereinafter, "R.").) In support of her application, Ms. Acciardo claimed to have suffered from neck pain and low back pain that radiates down her left leg, resulting from an on the job injury that occurred on March 31, 2006. The injury suffered was the result of a fall in a parking lot.[1] (R. Ex. 7.)

Ms. Acciardo's injury was documented by Dr. Ruggieri, Ms. Acciardo's treating physician, who specializes in internal medicine. (R. Ex. 3.) Dr. Ruggieri stated that Ms.

[1] Ms. Acciardo was also involved in two motor vehicle accidents while working—one in 2004 and the other in 2007—that resulted in injuries to her neck and back.

Acciardo had lumbar disc disease "with evidence of a radiculopathy in that she has complaints of low back pain with radiation down from left buttocks to her left big toe."[2] Id. Dr. Ruggieri also noted that Ms. Acciardo complained of bilateral neck pain "that may be related to another automobile accident she was involved in" while employed by the Department of Health. Id. Dr. Ruggieri went on to state that both these injuries were exacerbated by a motor vehicle accident in which Ms. Acciardo was involved in August 2007. Dr. Ruggieri supported Ms. Acciardo's application and found that Ms. Acciardo was totally disabled because she could not sit or stand for long periods of time, which were requirements of her position at the Department of Health. Id. Finally, Dr. Ruggieri stated that Ms. Acciardo's disability was the natural and proximate result of the March 31, 2006 accident. Id.

Ms. Acciardo was also under the care of Dr. Stutz, who also submitted a letter to ERSRI, supporting Ms. Acciardo's application for accidental disability. Dr. Stutz opined that Ms. Acciardo's motor vehicle accident in 2007 aggravated a lumbar strain. Dr. Stutz found that Ms. Acciardo had spasms, loss of motion, and positive traction signs. Dr. Stutz concluded that Ms. Acciardo was totally disabled because she was unable to drive long distances as is required. Id.

After submitting her application for accidental disability, Ms. Acciardo was examined by three independent medical examiners. The first independent medical examiner was Dr. Savoretti, a specialist in internal medicine. Dr. Savoretti also reviewed documents relating to Ms. Acciardo's prior treatment for neck and back pain. (R. Ex. 8.) However, Dr. Savoretti found this evidence "not very convincing or supportive of permanent disability." Id. Dr. Savoretti also found that Ms. Acciardo's MRI reports did not reveal any impressive or disabling lesions of the lower spine. Instead, Dr. Savoretti found that Ms. Acciardo suffered from

[2] Dr. Ruggieri also stated that Ms. Acciardo complained of insomnia, fatigue, and depression related to her back pain.

depression, which he stated was untreated. Id. In fact, Dr. Savoretti concluded that Ms. Acciardo's disability was "more a symptom of her untreated depression than of any lower back injuries she may have suffered in the past." Id.

Next, Ms. Acciardo was examined by Dr. Wiggins, an orthopedic specialist. Dr. Wiggins opined that Ms. Acciardo had "subjective complaints of radiculopathy but no objective findings of such. Additionally all diagnostic studies including MRI and EMG/NCV are within normal limits." (R. Ex. 9.) Dr. Wiggins determined that Ms. Acciardo suffered from impingement syndrome with respect to her shoulder. Dr. Wiggins concluded that Ms. Acciardo could return to work on a full-time basis and was not disabled. Id. Dr. Wiggins based this conclusion on the job description provided to him, which indicated Ms. Acciardo was a Chief Field Inspector. Id.

Finally, Dr. Wilterdink, a specialist in neurology, examined Ms. Acciardo. Dr. Wilterdink diagnosed Ms. Acciardo with low back pain, lumbosacral strain, and lumbosacral radiculopathy. (R. Ex. 10.) Dr. Wilterdink opined that Ms. Acciardo was physically incapacitated such that she could not perform the duties of her position. Id. Dr. Wilterdink noted that Ms. Acciardo was unable to perform the duties of Chief Field Inspector because Ms. Acciardo could not sit and drive for long periods of time. Dr. Wilterdink further opined that Ms. Acciardo's disability was the natural and proximate result of the injuries Ms. Acciardo suffered in March 2006.

After reviewing the reports regarding the aforementioned medical examinations, the Board voted to deny Ms. Acciardo's application for accidental disability on September 11, 2009. (R. Ex. 11.) In its decision, the Board adopted the Disability Subcommittee's initial decision as its findings of fact and conclusions of law. The Subcommittee's decision was based upon the opinions of Doctors Savoretti and Wiggins. The Subcommittee did not believe Ms. Acciardo

was disabled because both doctors determined that Ms. Acciardo could perform the functions of her job. The Subcommittee specifically discredited Dr. Wilterdink's conclusion that Ms. Acciardo could not perform the essential functions of her job because she could not drive for a significant amount of time. In so doing, the Subcommittee found it noteworthy that Ms. Acciardo could, however, sit, stand, and walk, "which are all activities identified by Acciardo's employer as being involved with this particular position." Id.

Ms. Acciardo appealed the Board's decision, which afforded her a hearing before the Subcommittee. The matter was scheduled for a hearing on November 6, 2009. Before the hearing, Ms. Acciardo's counsel submitted additional medical information relating to Ms. Acciardo's injuries. Ms. Acciardo submitted medical evidence from Dr. Golini, a neurologist who was treating Ms. Acciardo. On October 20, 2009, Dr. Golini performed a clinical examination and determined that Ms. Acciardo's "work up [remained] entirely normal." (R. Ex. 15.) Ms. Acciardo also submitted several reports from Dr. Golini that outlined her complaints, his impressions, and treatment dating back to 2006. Id.

After the November 2009 hearing, the Subcommittee withheld its decision in order for Ms. Acciardo to provide the Subcommittee with additional information relating to her injuries. Specifically, the Subcommittee requested that Ms. Acciardo provide accident reports related to her two previous on the job motor vehicle accidents, a copy of her current job description, "three years medical claim reports for 2002-2005," and a copy of any medical records for her treatment of depression. (R. Ex. 17.) Ms. Acciardo complied with this request in December 2009. (R. Ex. 18.)

In February 2010, the Subcommittee again voted to deny Ms. Acciardo's application for disability pension. (R. Ex. 21.) The Subcommittee found it significant that the additional

material submitted by Dr. Golini showed that Ms. Acciardo's physical examination was within normal limits. Id. The Subcommittee also found it significant that Dr. Savoretti's diagnosis regarding Ms. Acciardo's depression were substantiated by Dr. Ruggeiri.[3] Id. Later that month, the Board again adopted the Subcommittee's findings and voted to deny her application for accidental disability.

Aggrieved by this decision, Ms. Acciardo filed an appeal to the full board. (R. Ex. 23.) Before the hearing, Ms. Acciardo's counsel issued a witness subpoena to Dr. Christopher Ley, the Board's medical advisor. (R. Ex. 25.) However, counsel for the Board informed Dr. Ley that the subpoena was without force and that the doctor was not required to attend the hearing. Id. Counsel for the Board also informed Ms. Acciardo's counsel that Dr. Ley would only attend the hearing if the Board required the doctor to be there. The hearing was ultimately held without Dr. Ley.

At the hearing, Ms. Acciardo's counsel argued that the Subcommittee's recommendation should not be adopted by the Board and that Ms. Acciardo's application for accidental disability should be approved. Ms. Acciardo argued that the conclusions of the two independent medical examiners who found her not to be disabled—Doctors Savoretti and Wiggins—were flawed. Ms. Acciardo argued that Dr. Savoretti's conclusion that Ms. Acciardo was not disabled was flawed because the doctor opined that Ms. Acciardo's disability was the result of her untreated depression, when in fact, Ms. Acciardo was being treated for her depression. (R. Ex. 26). Ms. Acciardo then argued that Dr. Wiggins' medical examination relied on a faulty job description, which did not indicate that driving was part of Ms. Acciardo's job, when in fact driving was part of her job description. Id. At the close of the hearing, the members of the Board voted

[3] Although Dr. Ruggeiri confirmed Ms. Acciardo's complaints of depression, it appears that he determined that the cause of her depression was related to her back injury. (R. Ex. 3.)

unanimously to adopt the Subcommittee's recommendation denying Ms. Acciardo's application. Appellant timely filed this appeal.

II

Standard of Review

The Superior Court's review of the decision of an administrative agency is governed by the Administrative Procedures Act ("APA"), § 42-35-1, et seq. Iselin v. Retirement Bd. of Employees' Retirement System of Rhode Island, 943 A.2d 1045, 1048 (R.I. 2008) (citing Rossi v. Employees' Retirement System of Rhode Island, 895 A.2d 106, 109 (R.I. 2006)). Section 42-35-15(g) of the APA states:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inference, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing an agency decision, this Court is limited to an examination of the certified record in deciding whether the agency's decision is supported by substantial evidence. Center for Behavioral Health, R.I., Inc., v. Barros, 710 A2d 680, 684 (R.I. 1998) (citations omitted). Substantial evidence has been defined as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means more than a scintilla but less than a preponderance." Murphy v. Zoning Bd. of Review of Town of South Kingstown, 959 A.2d 535, 541 (R.I. 2008) (citing Caswell v. George Sherman Sand & Gravel Co., 424 A.2d 646, 647

(R.I.1981)). This Court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Interstate Navigation Co. v. Div. of Pub. Utils. & Carriers of R.I., 824 A.2d 1282, 1286 (R.I. 2003) (citations omitted). This Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Baker v. Dept. of Employment & Training Bd. of Review, 637 A.2d 360, 363 (R.I. 1994) (quoting Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981)). The Board is, however, required to make some connection between the facts presented and the conclusions it has drawn. Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962).

ERSRI utilizes a two-tier review process, in which application is first heard by the Disability Subcommittee. The Subcommittee then issues a written decision that is submitted to the Retirement Board. The Board considers the decision, along with any further briefs or arguments, and renders its own decision. ERSRI Reg. § 10.00(a). This two-step procedure has been likened to a funnel. Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 207-08 (R.I. 1993). The Disability Subcommittee, at the first level of review, "sits as if at the mouth of the funnel" and analyzes all of the evidence, opinions, and issues. Id. The Board, stationed at the "discharge end" of the funnel, the second level of review, does not receive the information considered by the hearing officer first hand. Id. Our Supreme Court has held, therefore, that the "further away from the mouth of the funnel that an administrative official is . . . the more deference should be owed to the fact finder." Id. Determinations of credibility by the Disability Subcommittee, for example, should not be disturbed unless they are "clearly wrong." Id. at 206.

III

A

Subpoena Power

Ms. Acciardo argues that the Court is without authority to review the record before it because it is incomplete. Ms. Acciardo argues that because Dr. Ley did not respond to her subpoena, she was not allowed to present his testimony, and as a result, the Court does not have all the evidence before it. Ms. Acciardo goes on to argue the legal basis for issuing a subpoena to Dr. Ley. In response, the Board argues that Ms. Acciardo was without authority to issue a subpoena; thus, the record before the Court is complete.

The Court will not enter into a lengthy discussion with respect to this argument. Additionally, the Court need not address the arguments raised by each party as to whether a subpoena is valid in the administrative context because even if Dr. Ley appeared, he would not have been able to present testimony as Ms. Acciardo had intended. ERSRI's regulations make clear that the hearing before the Board is the final opportunity an applicant has to present his or her argument as to why he or she should be granted an accidental disability pension. See ERSRI Reg. § 9.11 (5) (The Board's decision shall constitute the "final administrative action for all purposes pursuant to R.I.G.L. §45-35-1, et. seq."). At this final phase, the Board renders its decision regarding accidental disability based upon the record established during the Subcommittee proceedings. ERSRI's regulations make clear that the Board is not authorized to accept additional evidence. See ERSRI Reg. § 9.11(4). Instead, an applicant's opportunity to present evidence is at the Subcommittee proceedings. Consequently, here, the Court need not decide whether Ms. Acciardo had the right to subpoena Dr. Ley because the Board would not have been allowed to hear any testimony he may have given. If the Board had heard Dr. Ley's

testimony, it would have been in violation of its regulations, which would have constituted an error of law. Therefore, the record before this Court is complete regardless of Dr. Ley's failure to appear at the final hearing.

B

Ms. Acciardo's Due Process Rights

Next, Ms. Acciardo argues that her Due Process rights were violated because she was not afforded a full and fair hearing before the Board. Specifically, Ms. Acciardo argues that she was not afforded the right to present additional evidence before the Board; namely, the testimony of Dr. Ley. As a result, Ms. Acciardo claims that her right to a full and fair hearing was infringed and her Due Process rights were violated. The Board counters that Ms. Acciardo's Due Process rights were not violated because she was afforded ample opportunity to present evidence and testimony before the Subcommittee.

The right to due process of law emanates from the Fourteenth Amendment to the United States Constitution and Article 1, Section 2, of the Rhode Island Constitution. Both prohibit a state from depriving any person "of life, liberty, or property, without due process of law." U.S. Const. amend. XIV; R.I. Const. art. 1, § 2. "A claimant alleging a deprivation of due process rights must demonstrate that either a property or liberty interest clearly protected by the due process clause was divested . . . without [adequate] procedural safeguards." Bradford Associates v. Rhode Island Division of Purchases, 772 A.2d 485, 490 (R.I. 2001) (quoting Salisbury v. Stone, 518 A.2d 1355, 1360 (R.I. 1986)). However, to determine whether due process requirements apply in the first place, the Court must look not to the weight but to the nature of the interest at stake. See Morrissey v. Brewer, 408 U.S. 471, 481 (1972). The preliminary

question is whether or Ms. Acciardo has a property interest at stake. Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 570-71 (1972).

Property interests have taken many forms. See id. The United States Supreme Court has made clear that "the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money." Id. at 571-572. Our Supreme Court has recognized a property interest when a statute confers a benefit on an employee. Pellegrino v. Rhode Island Ethics Comm'n, 788 A.2d 1119, 1126 (R.I. 2002). As applied here, it should be determined that Ms. Acciardo is entitled to due process because § 36-10-14 confers a benefit of an accidental disability pension in the event she was injured while working for the State.

It is well established that due process within administrative procedures requires the opportunity to be heard "at a meaningful time and in a meaningful manner." Millett v. Hoisting Engineers' Licensing Div. of Dept. of Labor, 119 R.I. 285, 296, 377 A.2d 229, 235-36 (1977)). Under the Fourteenth Amendment, administrative tribunals must not be "biased or otherwise indisposed from rendering a fair and impartial decision." Davis v. Wood, 444 A.2d 190, 192 (R.I. 1982).

Ms. Acciardo was afforded ample opportunity to present evidence and testimony. She was provided an opportunity to present additional testimony before the Subcommittee during her request for reconsideration, which she did when she submitted medical documentation provided by Dr. Golini. It was at this reconsideration hearing that Ms. Acciardo could have presented any other additional evidence that she deemed relevant. Ms. Acciardo rests her Due Process argument on the fact that she was not allowed to present the testimony of Dr. Ley. However, as stated above, Dr. Ley's testimony would not have been allowed pursuant to the Board's regulations because additional evidence cannot be taken by the Board at that phase. See ERSRI

Reg. § 9.11(4). As a result, Ms. Acciardo's Due Process rights were not violated. Ms. Acciardo was afforded ample opportunity to present evidence and testimony within the confines of ERSRI regulations. See Gimmicks, Inc. v. Dettore, 612 A.2d 655, 660 (R.I. 1992) (court held that appellant's due process rights were not violated because agency afforded him the opportunity to present evidence and testimony).

C

Evidence before ERSRI and Findings of Fact

Pursuant to G.L. 1956 § 36-10-14, an employee can apply for and receive an accidental disability pension upon meeting certain conditions. In pertinent part, that section provides as follows:

> "(a) Medical examination of an active member for accidental disability and investigation of all statements and certificates by him or her or in his or her behalf in connection therewith shall be made upon the application of the head of the department in which the member is employed or upon application of the member, or of a person acting in his or her behalf, stating that the member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident while in the performance of duty, and certify the definite time, place, and conditions of the duty performed by the member resulting in the alleged disability, and that the alleged disability is not the result of willful negligence or misconduct on the part of the member, and is not the result of age or length of service, and that the member should, therefore, be retired.
> (b) The application shall be made within five (5) years of the alleged accident from which the injury has resulted in the members present disability and shall be accompanied by an accident report and a physicians report certifying to the disability; provided that if the member was able to return to his or her employment and subsequently reinjures or aggravates the same injury, the application shall be made within the later of five (5) years of the alleged accident or three (3) years of the reinjury or aggravation. The application may also state the member is permanently and totally disabled from any employment.
> (c) If a medical examination conducted by three (3) physicians engaged by the retirement board and such investigation as the

> retirement board may desire to make shall show that the member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident, while in the performance of duty, and that the disability is not the result of willful negligence or misconduct on the part of the member, and is not the result of age or length of service, and that the member has not attained the age of sixty-five (65), and that the member should be retired, the physicians who conducted the examination shall so certify to the retirement board stating the time, place, and conditions of service performed by the member resulting in the disability and the retirement board may grant the member an accidental disability benefit." § 36-10-14.

On appeal, Ms. Acciardo argues that the Board erred in not granting her application for accidental disability pension because she clearly met the statutory requirements. In support of her argument, Ms. Acciardo argues that the conclusions of two out of three independent medical examiners who concluded that she was not disabled—were based on faulty or inadequate evidence in the record—thus, she argues the Board's decision was not supported by competent evidence. The Board counters that its decision was supported by the evidence on the whole record because it accepted the opinions of Doctors Savoretti and Wiggins, the independent medical examiners who determined that Ms. Acciardo was not disabled.

Essentially, Ms. Acciardo contends the Board's reliance of the opinions of Doctors Savoretti and Wiggins was clearly erroneous and affected by error of law because their opinions were based on false information. Ms. Acciardo argues that the opinion of Dr. Savoretti was based on the fact that Ms. Acciardo was suffering untreated depression; however, at the time Ms. Acciardo was diagnosed and being treated for depression. (R. Ex. 18.) The record evidences it was Dr. Savoretti's opinion that this untreated depression was the cause of Ms. Acciardo's back pain and not her injuries suffered while working as a Chief Inspector for the Department of Health. Dr. Savoretti noted that Ms. Acciardo's disability is "more [a] symptom of her untreated depression than of any lower back injuries she may have suffered in the past." (R. Ex. 8.)

Ms. Acciardo also contends that Dr. Wiggins' opinion that she was not disabled is equally erroneous because Dr. Wiggins based his decision on an inaccurate job description. Dr. Wiggins concluded that "[u]pon review of the job description supplied to [him], that of Chief Field Inspector (Board of Hairdressing), [he] [found] no reason that she cannot perform these duties on a full time basis." (R. Ex. 9.) However, notably, the job description provided to Dr. Wiggins stated that Ms. Acciardo's work as a Chief Field Inspector was largely sedentary work, when in fact Ms. Acciardo was required to drive throughout the state conducting inspections. It was precisely this type of work—sitting and standing for long periods of time—that Ms. Acciardo complained that she could not perform. (R. Ex. 10.)

"[T]he ultimate decision regarding a claimant's ability to do work depends on medical reports." Rosado v. Richardson, 372 F. Supp. 469, 470 (D.P.R. 1973). Pursuant to § 31-10-14, Ms. Acciardo underwent three independent medical examinations. Two of these medical examiners determined that Ms. Acciardo was not disabled and was therefore not eligible for an accidental disability pension. However, the two medical examiners that found that Ms. Acciardo was not disabled based their decisions on false and inaccurate information. Dr. Savoretti's conclusion that Ms. Acciardo's untreated depression was the result of her back pain was contradicted by medical records indicating that Ms. Acciardo was being treated for depression. (R. Ex. 8.) Likewise, Dr. Wiggins' conclusion that Ms. Acciardo was not disabled based on the job description provided to the doctor was also invalid because Dr. Wiggins was provided with an inaccurate job description. Id.

It is axiomatic that this Court's review is limited. However, the Board is required to make a "rational connection between the facts found and the choice made." Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962). In order to make such a rational connection,

there must be an accurate factual foundation to support the conclusions of the independent medical examiners. See Barrett Mobile Home Transp., Inc. v. United States, 381 F. Supp. 1317, 1323-24 (D. Minn. 1973) ("The decisions of such an agency must be sustained by the reviewing Court if they are . . . based on appropriate findings which, in turn, taking the record as a whole, are supported by substantial evidence."). An agency is not free to "disregard of the facts or circumstances of the case" State of Ga., Dept. of Human Res. v. Califano, 446 F. Supp. 404, 409 (N.D. Ga. 1977), and this Court is not required to rubber-stamp an agency's decision as correct. See Montana Power Co. v. Envtl. Prot. Agency, 429 F. Supp. 683, 695 (D. Mont. 1977) ("To do so would render the appellate process a superfluous . . . ritual. Rather, the reviewing court must assure itself that the agency decision was 'based on a consideration of the relevant factors.") (quoting Ethyl Corp. v. EPA, 541 F.2d 1, 34-35 (D.C. Cir. 1976)).

After a careful review of the entire record before it, this Court determines that the Board's reliance on the incorrect information of the independent medical examiners was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In its decision, the Board clearly relied upon the opinions of Doctors Savoretti and Wiggins when it stated that it was "persuaded by the reports of Drs. Savoretti and Wiggins, in that it does not appear that [Ms. Acciardo] is unable to perform the functions of her job." (R. Ex. 11.) However, the doctors' opinions were falsely based on a presumed undiagnosed mental illness and a faulty job description, not supported by the evidence on the record. Aquino v. Harris, 516 F. Supp. 265, 273 (E.D. Pa. 1981) (administrative law judge could not rely on opinion of physician because failure of physician's opinion to take into consideration relevant information regarding the claimant's medical history). Moreover, the Board could not make a rational connection

between the facts presented and its conclusions because the facts presented to Doctors Savoretti and Wiggins were incorrect. See Burlington Truck Lines, 371 U.S. at 168.

The record further evidences that the Board knew of these deficiencies. (R. Exs. 18, 26.) An agency, such as ERSRI, is not free to ignore evidence placed before it. Consumers Union of U. S., Inc. v. Consumer Prod. Safety Comm'n, 491 F.2d 810, 812 (2d Cir. 1974). In its two decisions, the Subcommittee made findings of fact and conclusions of law as required by the statute. In its findings of fact, the Subcommittee noted Doctors Savoretti and Wiggins' observations regarding Ms. Acciardo's application for accidental disability pension. (R. Exs. 11, 21.) In its conclusion, the Board stated that it was "persuaded by the reports of Drs. Savoretti and Wiggins, in that it does not appear that [Ms. Acciardo] is unable to perform the functions of her job." (R. Ex. 11.) Importantly, however, neither the Subcommittee's written decisions nor the Board's decisions addressed the invalid factual foundation regarding Doctors Savoretti and Wiggins' conclusions.

As stated above, the Court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15. However, the Court's "deferential standard of review . . . is contingent upon sufficient findings of fact by the [agency]." Kaveny v. Town of Cumberland Zoning Bd. of Review, 875 A.2d 1, 8 (R.I. 2005); see also E. Greenwich Yacht Club v. Coastal Res. Mgmt. Council, 118 R.I. 559, 568, 376 A.2d 682, 687 (1977) (Court held that "[t]he absence of required findings makes judicial review impossible.").

In the instant case, as the Board's decision does not present the Court with sufficient findings of fact because the independent medical examiners relied on inadequate and false information and thus, the matter should be remanded. See Ferrelli v. Dep't of Employment Sec.,

106 R.I. 588, 594, 261 A.2d 906, 910 (1970) (court found that it was in the interest of justice to remand the matter to the agency because a material issue was not addressed by the agency). As our Supreme Court has stated, necessary factual findings by a Board is not an empty requirement. JCM, LLC v. Town of Cumberland Zoning Bd. of Review, 889 A.2d 169, 176 (R.I. 2005). Here, without such important factual findings being made, the Court is without the ability to conduct a meaningful review to determine whether the Board's decision was supported by substantial evidence on the whole record. The Board's reliance on medical opinions, which were in turn based upon inaccurate material facts, constitutes error. See United States v. Dist. Council of New York City & Vicinity of United Broth. of Carpenters & Joiners of Am., 880 F. Supp. 1051, 1066 (S.D.N.Y. 1995). (regardless of the merits of the actual decision, an agency must adequately consider all the viewpoints which it was required to consider).

IV

Conclusion

After review of the entire record, this Court finds the decision to deny Ms. Acciardo's application for accidental disability retirement was made in violation of statutory provisions and was affected by error in law. The Court remands this matter because the Board failed to make adequate findings of fact and conclusions of law due to the fact that Doctors Savoretti and Wiggins' opinions were based upon inaccurate factual determinations. The matter shall be remanded so that Doctor Savoretti can issue a supplemental opinion in light of Ms. Acciardo's treatment for depression. In addition, in light of Dr. Wiggins' death, Ms. Acciardo shall undergo a third independent medical examination, and that doctor shall be provided with an accurate job description. See Bernstein v. CapitalCare, Inc., 70 F.3d 783 (4th Cir. 1995) (court held that case had to be remanded to ERISA administrator to review evidence developed since original denial,

to receive additional evidence, and to make a new determination). Accordingly, the matter is remanded for a hearing de novo consistent with this Decision. Counsel shall submit the appropriate judgment for entry.