

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
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April 17, 2015

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*Pro se* Plaintiff

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RE: *Mossinger v. State*  
C.A. No. S14A-09-003 THG

Dear Parties:

Before the Court is claimant Ruth Mossinger's ("Claimant") appeal from the State Employee Benefits Committee's ("SEBC") determination that she is not entitled to short-term disability benefits ("STD benefits") for the period of February 21, 2014 to April 29, 2014 (the "Period"). After reviewing the record and the decisions of the State of Delaware's ("the State") insurance carrier, The Hartford ("Hartford"), and the State itself, the Court agrees with the decision to deny Claimant STD benefits for the Period. As such the determination of the SEBC is **AFFIRMED**.

**PROCEDURAL POSTURE**

The relevant procedural history regarding Claimant's STD benefits claim is as follows. Claimant left work on December 23, 2013 due to a disability.<sup>1</sup> Hartford granted Claimant's request

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<sup>1</sup> For privacy purposes, the Court will not recite her entire medical history.

for STD benefits for a period beginning on December 23, 2013. On January 22, 2014, Hartford sent Claimant's therapist, Dr. Faye Bibee-Friedman ("Friedman"), a request for additional information regarding Claimant's continued eligibility for STD benefits. Hartford requested additional information on February 26, 2014, after Friedman's responses on the January 22, 2014 questionnaire spurred further questions.

On March 4, 2014, Hartford contacted Claimant via a letter. Hartford indicated that upon its review of Claimant's STD benefits claim, Claimant was no longer eligible for STD benefits. Claimant filed a timely appeal with Hartford, requesting it review its decision pursuant to 29 *Del. C.* §5258. On March 25, 2014, Hartford again contacted Claimant via letter, explaining that its appeals unit conducted a review of her claim separate and apart from those that made the initial decision to deny her STD benefits. Hartford stated its determination remained the same.

Claimant filed a timely appeal with the State of Delaware by filing an appeals request with Delaware's Statewide Benefits Office ("SBO"), a sub-branch of the Office of Management and Budget ("OMB"). On July 2, 2014, the appeals administrator of the SBO contacted Claimant by letter stating the SBO had carried out a complete review of her disability file and interviewed Claimant with regard to her disability and eligibility for STD benefits. However, the letter explained the SBO agreed with Hartford's determination to deny Claimant benefits for the Period.

Claimant then filed a timely appeal with the SEBC. In accordance with 29 *Del. C.* §5258, the SEBC designated SBO's director as a hearing officer to hear evidence presented by Claimant and to determine whether Hartford's denial of STD benefits comported with the State's applicable disability plan. A hearing was held on August 11, 2014. On September 3, 2014, the SEBC released a written decision accepting the hearing officer's final report, which advised that Claimant's appeal

should be denied and that the SEBC should affirm the decision of Hartford.

On October 2, 2014, Claimant filed a timely appeal to this Court. Briefing has since concluded and the issue is ready for decision.

### **FACTS**

Claimant has been employed by the State since 2001. Her most recently held position was a Child Support Specialist III. As an employee of the State (“state employee” or “employee”), Claimant is entitled to STD benefits provided she meets the statutory and insurance policy requirements.

Claimant began experiencing problems several years ago; some work related and some exclusively personal. In 2009, Claimant had a dispute with one of her supervisors<sup>2</sup> at work. The conflict resulted in Claimant’s arrest for terroristic threatening. Claimant was allegedly taken to jail and stripped searched, which resulted in her development of PTSD. This event has led her to feel bullied at her current position as a Child Support Specialist III in the Sussex County Office (alternatively “the Sussex office”). She believes her supervisor selectively reprimanded her and frequently conspired to get her in trouble.

Meanwhile, Claimant was also dealing with mortgage and foreclosure issues. Apparently, Claimant has been fighting foreclosure and seeking a mortgage modification for approximately five years.<sup>3</sup> The stress of potentially losing her house was exasperated by the little to no family support,

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<sup>2</sup> Claimant repeatedly indicates in her opening brief that this is not the proper term for her superior, and that the term “administrator” is her superior’s proper title. This distinction makes no difference with regard to the Court’s analysis of Claimant’s entitlement to STD benefits. As such, the Court will continue to use the term “supervisor” to describe Claimant’s superior.

<sup>3</sup> At her hearing, Claimant stated she was recently successful in having her mortgage modified. She also made it known that being denied STD benefits prompted her to go back to work despite not feeling well because without either STD benefits or working, she would not have been able to keep her house or survive. *See* Aug. 11, Hearing Tr. Pg. 13. In short, this assertion amounts to her being stuck between a rock and a hard place. However, it

her issues at work, and her numerous disabilities and symptoms.

This overwhelming stress was too much for Claimant, and prompted her to take a leave of absence and seek STD benefits for the period of December 23, 2013 to February 20, 2014, which Hartford granted. On January 22, 2014, Hartford reached out to Friedman, Claimant's attending physician and therapist, who had been treating Claimant in order to address several of her issues and disabilities. Friedman was asked to explain Claimant's current capabilities and medical condition. Friedman described Claimant as having fear of losing control and hurting herself.<sup>4</sup> She also stated that Claimant's depression had left her with virtually no motivation to clean herself or her house, that claimant had not bathed in weeks, and that she only lies around and stays in her pajamas all day.<sup>5</sup> Friedman, more importantly, explained that Claimant could function and perform her work duties provided her supervisor did not bully her at work, and that Claimant believed she worked well with clients.<sup>6</sup>

Due to Friedman's answers for the January 22 questionnaire, Hartford sent Friedman several other follow up questions in a letter dated February 26, 2014. These questions primarily concerned Claimant's capacity to work generally. Friedman's responses reported that Claimant's current symptoms were attributable to her current work environment and supervisor, rather than her capacity to work.<sup>7</sup> Friedman again stated that other than Claimant's inability to work with or under her

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goes without saying that financial troubles do not qualify as having a disability and will not be considered as having any weight in the Court's analysis.

<sup>4</sup> See Jan. 22, 2014 Letter from The Hartford.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Feb. 26, 2014 Letter from the Hartford.

supervisor, Claimant had reported that she did her job well and could do work under a different supervisor.<sup>8</sup>

On March 4, 2014, Hartford mailed Claimant a letter denying her request for an extension of STD benefits beyond February 20, 2014. The letter explained that Claimant no longer qualified as having a “Total Disability” or being “Totally Disabled” under the State’s insurance plan.<sup>9</sup> The letter stated that due to Friedman’s statements regarding Claimant’s capacity to work as opposed to her inability to work with or under her supervisor, Claimant was not entitled to benefits.<sup>10</sup>

In response to Hartford’s initial denial of STD benefits, Friedman sent Hartford a letter clarifying that she believed Claimant was not ready to return to work and that a return to work would hinder Claimant’s progress.<sup>11</sup> Claimant appealed the initial decision. On March 25, 2014, Hartford sent Claimant another letter indicating that Claimant’s appeal was denied after reviewing Claimant’s file and taking into account Friedman’s letter advising Hartford to reconsider its decision.<sup>12</sup>

Claimant then simultaneously sought a third appeal to with the SBO and a return to work release (“RTW”), pursuant to 19 *Del. Admin. C.* 2007-20.0. However, Friedman allegedly refused to grant Claimant a RTW until Claimant signed a waiver relieving her of all liability for any problems or consequences flowing for Claimant’s return to work.<sup>13</sup> At this juncture, the facts are

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<sup>8</sup> *Id.*

<sup>9</sup> Mar. 4, 2014 from The Hartford (hereinafter “Exh. C.”).

<sup>10</sup> *Id.*

<sup>11</sup> See Undated Letter Signed by Faye Bibee-Friedman, LCSW.

<sup>12</sup> See Mar. 25 Letter from The Hartford.

<sup>13</sup> Aug. 11, Hearing Tr. Pg. 4.

somewhat confusing in that Claimant asserts in her briefs that she never signed a waiver, but the record contains a letter dated March 31, 2014, that appears to be a waiver of liability for Friedman.<sup>14</sup> Regardless of whether it functioned as a waiver, Dr. Harry Anthony, Jr., (“Anthony”) Claimant’s primary care provider for over 12 years, provided a RTW on April 29, 2014.<sup>15</sup> Anthony’s RTW expressed that, in his opinion, Claimant was capable of returning to work without restrictions.<sup>16</sup>

Several more appeals followed, each denying Claimant’s request for benefits. Finally, on August 11, 2014, a hearing was held with the SEBC regarding Claimant’s entitlement to STD benefits for the Period. During the hearing, Claimant either avoided answering whether she could work, or admitted she was capable of holding a job.<sup>17</sup> However, Claimant qualified these assertions by explaining she was unable to work with her supervisor and that her work environment spurred or exacerbated her issues.<sup>18</sup>

On September 3, 2014, the SEBC issued a written decision denying Claimant’s request for STD benefits. The SEBC explained “[the SEBC’s] decision was based on the issue of performance of the duties related to your specific work environment relative to your supervisor. This ability to perform the duties of your position was confirmed by your return to work at the same position.”<sup>19</sup>

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<sup>14</sup> See Mar. 31, 2014 Letter Signed by Ruth Mossinger.

<sup>15</sup> Apr. 29, 2014 Letter Signed by Harry Anthony, Jr., MD.

<sup>16</sup> At the August 11 hearing, the hearing officer asked Claimant if there were any discussions between her and Anthony where he mentioned he did not believe Claimant should return to work, and whether Anthony indicated he could provide justification for her not returning to work. Aug. 11, 2014 Hearing Tr. Pg. 13. Claimant asserted “Dr. Anthony basically probably would not have released me, but I told him I’ve got no income.” *Id.*

<sup>17</sup> See, e.g., Aug. 11, 2014 Hearing Tr. Pg. 17, 18.

<sup>18</sup> See *Id.* at Pg. 16–17, 18, 19–20.

<sup>19</sup> Sept. 3, 2014 Letter from OMB.

The SEBC went further stating in its decision:

In order to be eligible for [STD benefits], [Claimant] must meet the definition of Total Disability during the period she alleges an entitlement to such benefits. A determination of Total Disability in the present Appeal requires medical evidence demonstrating that [Claimant] was *unable* to perform the essential duties of her occupation in the *general workplace*. The term “occupation” *does not mean the specific job [Claimant] was performing for her specific employer or at any specific location, but is a general term referring to the category of work she performed* (emphasis added).<sup>20</sup>

Thus, the SEBC, after reviewing all the evidence, found that Claimant did not meet the definition of “Total Disability,” and was not entitled to STD benefits.<sup>21</sup>

#### STANDARD OF REVIEW

As has been articulated in several other opinions, this Court has limited appellate review of the factual findings of the State’s administrative agencies.<sup>22</sup> Superior Court’s review is limited to whether “the agency’s decision is supported by substantial evidence and whether the agency made any errors of law.”<sup>23</sup> The Court will not “weigh the evidence, determine questions of credibility, or make [its] own factual findings,”<sup>24</sup> since doing such is not within the Court’s purview.<sup>25</sup>

Substantial evidence is “such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.”<sup>26</sup> It is evidence from which an agency could fairly and reasonably

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<sup>20</sup> SEBC Decision, pg. 4.

<sup>21</sup> *Id.*

<sup>22</sup> *Yost v. Bd. of Adjustment of Sussex Cty.*, 2011 WL 4826112, \*2 (Del. Super. Sept. 20, 2011); *Dexter v. New Castle Cty. Bd. of Adjustment*, 1996 WL 658861, \*2 (Del. Super. Sept. 17, 1996).

<sup>23</sup> *Yost*, 2011 WL 4826112 at \*2.

<sup>24</sup> *Bd. of Adjustment of Sussex Cty. v. Verleysen*, 36 A.3d 326, 329 (Del. 2012).

<sup>25</sup> *Burgos v. Perdue Farms, Inc.*, 2011 WL 1487076, \*2 (Del. Super. Apr. 19, 2011).

<sup>26</sup> *Dexter*, 1996 WL 658861 at \*2.

reach the conclusion it came to.<sup>27</sup> If substantial evidence exists to support the [SEBC's] decision, the Court will affirm the decision even if it may have reached the opposite conclusion had the case come before it in the first place.<sup>28</sup> “Absent an error of law, the [SEBC's] decision will not be disturbed as long as there is substantial evidence to support its conclusions.”<sup>29</sup>

Thus, “[t]o prevail on appeal, the appellant must show the [SEBC] committed an error of law or demonstrate the findings of the Board are not supported by substantial evidence” in the record.<sup>30</sup> Where the appellant fails to convince the SEBC, the resulting factual findings can only be overturned by the Court due to errors of law, inconsistencies, or capricious disregard for competent evidence.<sup>31</sup>

## **DISCUSSION**

### **Entitlement to Benefits**

29 *Del. C.* §9601 established the State Employee Benefits Consolidation Act (“Act”). This Act created the SEBC for the purpose of controlling and managing all state employee<sup>32</sup> benefit coverages, subject to a few exceptions.<sup>33</sup> In addition to control and management, the SEBC is also charged with selecting “all carriers<sup>34</sup> or third-party administrators necessary to provide coverages to

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<sup>27</sup> *Hollowka v. New Castle Cty. Bd. of Adjustment*, 2003 WL 21001026, \*3 (Del. Super. Apr. 15, 2003).

<sup>28</sup> *Dexter*, 1996 WL 658861 at \*2.

<sup>29</sup> *Yost*, 2011 WL 4826112 at \*2.

<sup>30</sup> *Behr v. Unemployment Ins. Appeal Bd.*, 1995 WL 109026, \*1 (Del. Super. Feb. 7, 1995).

<sup>31</sup> *Id.*

<sup>32</sup> “Employee,” for purposes of the Act, means “an individual who [r]eceives compensation wholly or in part directly from the State Treasury or from the Treasury through an agency within the State that is wholly or in part supported by the State.” 29 *Del. C.* §5251 (e); 29 *Del. C.* §5501 (f) (3).

<sup>33</sup> 29 *Del. C.* §9602 (b) (1).

<sup>34</sup> “Carrier” refers to “the disability insurance company selected” in accordance with 29 *Del. C.* §5254. 29 *Del. C.* §5251.



State employees,”<sup>35</sup> and to “adopt rules and regulations for the general administration of the employee benefit coverages.”<sup>36</sup> One of the several benefits the SEBC is entrusted to manage is disability coverage.<sup>37</sup>

When discharging its duty to select a disability insurance carrier, the SEBC is expected to enlist “an insurance carrier licensed under the laws of . . .” Delaware.<sup>38</sup> The insurance carrier selected by the SEBC “may determine the eligibility of a participating employee to receive short-term . . . disability benefits. Such carrier shall also provide short-term . . . disability benefits to eligible employees, and shall administer both the short and long-term disability programs. . . .”<sup>39</sup> The SEBC has contracted Hartford to provide and administer such disability insurance benefits.

As stated earlier, STD benefits fall under those managed and controlled by the SEBC. The SEBC has sole discretion<sup>40</sup> in determining whether an employee is eligible for STD benefits.<sup>41</sup> For an employee to be entitled to such benefits, the SEBC must find the employee “to be mentally or physically *unable to perform the essential job functions of the employee’s position* (emphasis added).

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<sup>35</sup> 29 Del. C. §9602 (b) (2).

<sup>36</sup> 29 Del. C. §9602 (b) (4).

<sup>37</sup> 29 Del. C. §9602 (b) (1); 29 Del. C. §5256.

<sup>38</sup> 29 Del. C. §5254.

<sup>39</sup> 29 Del. C. §5255.

<sup>40</sup> Though the SEBC has “sole discretion” in determining an employee’s eligibility for such benefits, the code seems to indicate some level of deference to the insurance carrier’s determination of eligibility. This is evidenced by the carrier making the initial eligibility determination and hearing the first appeal pursuant to 29 Del. C. §5258, and 29 Del. C. §5255, which states “[t]he carrier selected . . . may determine the eligibility of a participating employee. . . .”

<sup>41</sup> 29 Del. C. §5253 (b) (1).

. . .”<sup>42</sup> Eligibility for STD benefits terminates upon the employee’s “[a]bility to return to employment (emphasis added).”<sup>43</sup> With that said, though benefits may terminate, a claimant is not necessarily permitted to return to work once benefits expire. Before a claimant can return to work after an exhaustion of STD benefits, “[t]he employer must have a [Return To Work] Authorization from his/her attending physician to be permitted to return to work.”<sup>44</sup>

### **Procedural Framework**

Once the carrier has made a determination as to an employee’s eligibility for STD benefits, it must notify the employee “in writing . . . within 10 days of the carrier’s determination.”<sup>45</sup> The employee may appeal the carrier’s denial of benefits by filing a written petition within 90 days of the carrier’s written decision.<sup>46</sup> “The carrier shall have the authority to reverse all or any part of its initial decision to deny benefits and shall notify the employee, the employing organization and the [SBO] in writing . . . within 10 days of the carrier’s determination.”<sup>47</sup> After the carrier’s second decision to deny benefits, an employee “may file a second level appeal . . . by filing a written petition . . . with the Appeals Administrator, who shall have the authority to reverse all or any part of the decision of the carrier to deny benefits. The Appeals Administrator . . . shall issue a final written decision and shall mail it to the employee. . . .”<sup>48</sup> The Appeals Administrator is selected by the

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<sup>42</sup> *Id.*

<sup>43</sup> 29 *Del. C.* §5255 (d) (1).

<sup>44</sup> 19 *Del. Admin. C.* 2007-201.1.2.

<sup>45</sup> 29 *Del. C.* §5258.

<sup>46</sup> 29 *Del. C.* §5258.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

SEBC, and must be an officer of the SBO.<sup>49</sup>

“If the Appeals Administrator affirms the carrier’s decision to deny disability benefits or any part thereof,” the employee may then appeal to the SEBC itself.<sup>50</sup> Once the claimant’s appeal is filed, the SEBC may either designate an appropriate hearing officer from the OMB, or hear the appeal directly.<sup>51</sup> The SEBC or hearing officer is expected to hear evidence and make a determination as to whether the decision to deny benefits comports with the applicable disability plan<sup>52</sup> adopted by the SEBC.<sup>53</sup> If the SEBC assigns a hearing officer, the hearing officer must decide the matter and prepare a report containing its findings of fact and conclusions of law, which the SEBC may accept or modify.<sup>54</sup>

Finally, if the SEBC denies the employee STD benefits, she may appeal to the Delaware Superior Court within 30 days of the postmark date of the SEBC’s decision.<sup>55</sup> “The appeal shall be on the record.”<sup>56</sup>

### **APPLICATION**

Under the State’s disability insurance policy,<sup>57</sup> a claimant must qualify as being “Totally

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<sup>49</sup> 29 *Del. C.* §5258; 19 *Del. Admin. C.* 2007-11.3.

<sup>50</sup> 29 *Del. C.* §5258.

<sup>51</sup> 29 *Del. C.* §5258; 19 *Del. Admin. C.* 2007-11.4.

<sup>52</sup> This refers to the applicable insurance policy the SEBC adopted for state employees.

<sup>53</sup> 29 *Del. C.* §5258.

<sup>54</sup> 29 *Del. C.* §5258 (3), (4); 19 *Del. Admin. C.* 2007-11.4.3.

<sup>55</sup> 29 *Del. C.* §5258 (6); 19 *Del. Admin. C.* 2007-11.5.

<sup>56</sup> 29 *Del. C.* §5258 (6).

<sup>57</sup> The plan number for the State is GRH 071675.

Disabled.” The plan defines having a “Total Disability or being Totally Disabled” as meaning the claimant is “*prevented by: (1) accidental bodily injury; (2) sickness; (3) mental illness; (4) substance abuse; (5) pregnancy; or (6) loss of license due to medical condition, from performing the essential duties of his/her occupation (emphasis added).*”<sup>58</sup> Further, the term “occupation” “does not [refer to] the specific job [Claimant] was performing for her specific employer or at any specific location, but is a general term referring to the *category of work* she performed.”<sup>59</sup> Based the State’s plan’s definition of “Totally Disabled,” it is clear from the record Claimant does not meet the qualifications for being “Totally Disabled” to entitle her to STD benefits.

Despite the several explanations proffered by the lower tribunals as to why Claimant does not meet the definition of “Total Disability,” Claimant remains confused as to why she is not eligible for STD benefits.<sup>60</sup> The Court will thus attempt to explain why she is ineligible to receive money under the State’s insurance policy. First, the phrases “prevented by” and “from performing the essential duties of your occupation,” in conjunction, mean that due to the claimant’s disability, she is *incapable* of performing her job. According to the answers given Hartford from Friedman, and Claimant’s own admissions at her August 11, 2014 hearing, Claimant did her job as a Child Support Specialist III well. The only “essential duty” of her job she seemingly was unable to perform was getting along with her supervisor. Though the relationship between a subordinate and a supervisor may be important for an individual to be successful at her job, it is by no means essential.

Second, the term “occupation” does not refer to Claimant’s specific job as a Child Support

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<sup>58</sup> See Exh. C.

<sup>59</sup> SEBC Decision, pg. 4.

<sup>60</sup> See Aug. 11, 2014 Hearing Tr. Pg. 10, 14, 23–24.

Specialist III in the Sussex County office. The term, instead, refers more broadly to the line of work she is in. Claimant's admissions during her August 11, 2014 hearing indicated that she has specific problems with a supervisor in the Sussex County office. Claimant explained: "[t]here was an incident in Sussex. They sent me to Kent for six months. At the end of six months I asked to go back home. They put me under a supervisor who there are witnesses too [sic.] that she did nothing but bully me morning, noon, and night."<sup>61</sup> She went on to state: "[a]fter going home in tears every day for six months, I said put me back in Dover. So then again I'm driving from Georgetown to Dover. Now in the interim this time I have put applications in, and I am trying to get out of that environment."<sup>62</sup> When asked if she had ever asked to be transferred to a different office, Claimant respond: "I've asked—I've asked HR to find me something else. I've begged them to find me something else."<sup>63</sup>

These statements indicate that Claimant was not prevented from doing her job duties due to a mental health problem,<sup>64</sup> but instead due to her inability to get along with her supervisor at the Sussex County office. She was moved to the Kent County office, and apparently did her job well there. She requested to be moved back down to the Sussex office. It is thus apparent to the Court that Claimant's STD benefits claim has everything to do with her poor relationship with her supervisor, and nothing to do with her capacity to work. Thus, because Claimant and her therapist

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<sup>61</sup> *Id.* at pg. 16.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 17.

<sup>64</sup> Though Claimant's mental health may be what was impacting her inability to get along with her supervisor, Claimant did not allege during the August 11 hearing that she was incapable of doing what was expected of a Child Support Specialist III. Friedman indicated the same in her responses to Hartford in January and February 2014.

believe Claimant could have done her job, just at a different office, Claimant was not disabled.

### **CONCLUSION**

In short, there is substantial evidence in the record through both Friedman and Claimant that Claimant was capable of performing her essential job functions as a Child Support Specialist III. This is evidenced by Claimant's own admission and her ability and request to work in a different office. Her capacity to perform this same job, or one like it, in a different location working under a different supervisor requires the Court to affirm the denial of STD benefits for the Period. It is irrelevant that Claimant later received benefits for a subsequent period of time. The grant of benefits during that period is not at issue and does not automatically indicate Claimant qualifies as being "Totally Disabled" for the period in question. As such, the decision of the SEBC to deny STD benefits is **AFFIRMED**.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ T. Henley Graves*

T. Henley Graves