

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PEGGY SNYDER,

Plaintiff,

v.

E.I. DUPONT de NEMOURS, INC.
AND COMPANY,

Defendant.

Civil Action No. 18-1266-CFC

Gary W. Aber, ABER, BAKER & OVER, Wilmington, Delaware

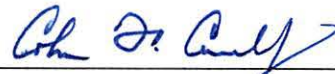
Counsel for Plaintiff

Margaret M. DiBianca, CLARK HILL PLC, Wilmington, Delaware; John M. Nolan, John M. Nolan, III, JACKSON LEWIS PC, Philadelphia, Pennsylvania

Counsel for Defendant

MEMORANDUM OPINION

February 5, 2021
Wilmington, Delaware



COLM F. CONNOLLY
UNITED STATES DISTRICT JUDGE

Plaintiff Peggy Snyder alleges that Defendant E.I. DuPont de Nemours, Inc. terminated her employment in retaliation for her use of benefits under the Family Medical Leave Act (FMLA) in violation of 29 U.S.C. § 2615(2). D.I. 15 ¶ 80. Before me is DuPont's motion for summary judgment. D.I. 123.

I. BACKGROUND

Snyder was hired as a technician with DuPont at the Tralee Park worksite on September 1, 1997. D.I. 125 ¶ 1–2, D.I. 153 ¶ 1–2. Her position was “mostly” sedentary. D.I. 126 at A54. DuPont has a short-term disability plan for employees who are “unable to work because of an illness or injury.” D.I. 125 ¶ 44; D.I. 153 ¶ 44. From 1997 through September 2016, Snyder took approximately 20 FMLA and short-term disability leaves of absence. D.I. 125 ¶ 121, D.I. 153 ¶ 121. Upon returning to work after each of these leaves, Snyder was placed in the same or a similar position with the same salary and benefits. D.I. 125 ¶ 122–123, D.I. 153 ¶ 122–123. DuPont granted every request Snyder made for a leave of absence. D.I. 125 ¶ 121; D.I. 153 ¶ 121.

On March 16, 2016, Snyder underwent posterior tibial tendon reconstruction surgery on her left foot. D.I. 125 ¶ 46–47; D.I. 153 ¶ 46–47. Dr. Paul Kupcha performed the surgery. D.I. 126 at A23. Snyder was approved for approximately

three months of FMLA leave to recover from her surgery, and she concurrently received short-term disability pay during that time. D.I. 125 ¶ 56–57; D.I. 153 ¶ 56–57. The FMLA healthcare provider certification form produced by Dr. Kupcha’s office stated that Snyder was to not bear weight for ten weeks after her surgery. D.I. 125 ¶ 52–53, D.I. 153 ¶ 52–53. Reports from Dr. Kupcha’s office dated March 25, April 15, May 11, May 17, and June 2 that were provided to DuPont reaffirmed that Snyder should not place weight on her injured foot. D.I. 125 ¶ 58, 60, 69–70, 76; D.I. 153 ¶ 58, 60, 69–70, 76.

While Snyder was on leave, DuPont’s Area Manager Stephen Coughlan was told by another employee, Paul Klimek, that Klimek saw Snyder walking around at a pool party. D.I. 127 at A121. Klimek also stated that he heard from “two-thirds of the [work]site, countless people” over a period of years that Snyder was taking advantage of DuPont’s short-term disability program and was acting in a manner inconsistent with a need for disability leave. D.I. 127 at A190. Plant Manager Joe Guerrieri, Snyder’s supervisor Randall King, and Coughlan made the decision to hire an investigative agency to surveil Snyder’s activities. D.I. 125 ¶ 63; D.I. 153 ¶ 63. Surveillance of Snyder’s actions during her recovery from foot surgery began April 13, 2016. D.I. 140 at C161. Coughlan testified that the surveillance was initiated to “ensur[e] that [Snyder] abided by the restrictions [of her doctor] on and off-duty.” D.I. 127 at A123.

Video surveillance conducted by the investigator in April and May 2016 captured Snyder (1) repeatedly climbing into her Hummer SUV and driving, (2) walking around a backyard and down stairs, and (3) lifting a small child off the ground. D.I. 125 ¶¶ 65–68, 73–75.

Reports from Dr. Kupcha’s practice for Snyder’s May 17 and June 2 office visits that were provided to DuPont stated that Snyder was to remain “non weightbearing” and “no driving.” D.I. 125 ¶ 70, 77; D.I. 153 ¶ 70, 77. During her leave, Snyder told King that “all she does is lay around...in pain” and that she was unable to “come into work and sit down.” D.I. 125 ¶ 82, D.I. 153 ¶ 82. In a phone call with King on June 16, Snyder stated that she could barely walk. D.I. 127 at A136. Dr. Kupcha noted after an August 5 visit that Snyder told him she felt a “sharp, stabbing, aching, dull, throbbing pain that occurs constantly,” along with “swelling, bruising, tingling, weakness,...stiffness and numbness” and that her symptoms were aggravated by “standing, squatting, exercise, lying in bed, stairs, sitting, and walking.” D.I. 125 ¶ 93, D.I. 153 ¶ 93.

Eventually, Dr. Kupcha approved Snyder to return to work on a two-hour light duty schedule starting June 27, 2016. D.I. 125 ¶ 88, D.I. 153 ¶ 88. Snyder continued to receive short-term disability payments for the hours she did not work each day. D.I. 125 ¶ 116; D.I. 153 ¶ 116. On August 1, Dr. Kupcha released Snyder to work eight hours a day with restrictions; but after Snyder explained to

DuPont Medical Nurse McLaughlin that “the eight hours is killing me,” Dr. Kupcha restricted Snyder to four-hour workdays beginning August 22. D.I. 125 ¶ 92, 98, 102; D.I. 153 ¶¶ 92, 98, 102.

On August 17, Snyder reported to DuPont Medical that her “left foot bec[a]me very pain[ful].” D.I. 125 ¶ 98; D.I. 153 ¶ 98. On August 18, she told Nurse McLaughlin that her foot was “swollen and very painful.” D.I. 125 ¶ 99; D.I. 153 ¶ 99. On August 19, she told McLaughlin that her foot was “swelling.” D.I. 125 ¶ 100; D.I. 153 ¶ 100. On August 19, 20, 22, and 23, the investigator reported that Snyder was walking without any apparent physical issues. D.I. 125 ¶ 100–102; D.I. 153 ¶ 100–102. On August 25, while still receiving partial disability payments from DuPont and working four-hour light duty shifts because the eight-hour shifts were “killing [her],” Snyder was recorded on surveillance walking through a Wal-Mart parking lot without crutches, a boot, or a limp, getting a manicure and pedicure, and mowing her lawn on a riding tractor for 90 minutes. D.I. 125 ¶ 98, 104–107; D.I. 153 ¶ 98, 104–107.

On September 14, DuPont fired Snyder. D.I. 126 at A56. HR Manager Cheryl Drew testified that Snyder was terminated because she “gave [DuPont] inaccurate information[,] . . . did not follow her own doctor’s orders..., and [did] not behav[e] in a manner that’s consistent with [her] recovery.” D.I. 127 at A156–A157. Snyder testified that Drew informed her of her termination and told her that

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