

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-000310-MR

KENTUCKY BOARD OF MEDICAL LICENSURE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 00-CI-006369

WARREN M. COX, IV, M.D.

APPELLEE

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: DYCHE, KNOPF, AND McANULTY, JUDGES.

McANULTY, JUDGE. This is an appeal of a decision of the Jefferson Circuit Court reversing an order of the Kentucky Board of Medical Licensure which revoked the license to practice medicine of Warren M. Cox, IV, M.D. (hereinafter appellee). The basis for the Jefferson Circuit Court's decision was that the order of the Board was not supported by substantial evidence. The Board argues on appeal that the court acted erroneously, and that the Board's findings were conclusive because they were

supported by evidence of substance. We agree with the Board, and we reverse.

Where an administrative agency's findings of fact are supported by substantial evidence, those findings are binding on the reviewing court. Kosmos Cement Co. v. Haney, Ky., 698 S.W.2d 819, 820 (1985); Kentucky State Racing Comm'n v. Fuller, Ky., 481 S.W.2d 298, 307 (1972). This is so even though there may be conflicting evidence in the record. Urella v. Kentucky Bd. of Med. Licensure, Ky., 939 S.W.2d 869, 873 (1997).

Substantial evidence has been defined as being that of substance and relative consequence. O'Nan v. Ecklar Moore Express, Inc., Ky., 339 S.W.2d 466 (1960). The test of substantiality is whether, when taken alone or in the light of all the evidence, the evidence has sufficient probative value to induce conviction in the minds of reasonable persons. Fuller, 481 S.W.2d at 308.

A reviewing court is not free to substitute its judgment for that of the agency, unless the latter acted in an arbitrary and capricious manner. Johnson v. Galen Health Care, Ky. App., 39 S.W.3d 828 (2001). In an appeal of an administrative action by an agency, the circuit courts are to provide review, not reinterpretation. Kentucky Unemployment Ins. Comm'r v. King, Ky. App., 657 S.W.2d 250 (1983). Thus, when substantial evidence exists in the record to support an administrative agency's action, the circuit court has no

authority to overturn it. Fuller, 481 S.W.2d at 309. Our task on appeal of a circuit court's review of an administrative action is to determine whether or not the circuit court's determination was clearly erroneous. Johnson v. Galen Health Care, 39 S.W.3d at 833, citing CR 52.01; Jones v. Cabinet for Human Resources, Ky. App., 710 S.W.2d 862, 866 (1986).

The circuit court did not support its decision in this case by reference to the record before the administrative agency, so this Court cannot readily discern what the court found lacking. Appellee argued before the circuit court that the Board ignored significant evidence. Further, appellee disputed the veracity of Patient A, challenged the lack of objective evidence and questioned the weight the hearing officer gave to the corroborating evidence. Under the standard above, the circuit court could not make its own determinations as to credibility or weight to be given the evidence; those determinations were for the trier of fact. The circuit court's only concern was whether the Board's findings were based on substantial evidence.

We have reviewed the record and conclude that the findings of fact adopted by the Board were supported by substantial evidence. Thus, we determine that it was clearly erroneous for the circuit court to find otherwise. The hearing officer below considered this a "close case," and his findings

of fact and conclusions of law contained dicta as to the risk of fabricated allegations in a case involving a patient complaint against a physician involving no eyewitnesses. However, it is clear in this case that the hearing officer was careful to examine the record for corroborative evidence of Patient A's allegations before finding a violation of KRS 311.595(5). The evidence served to show that Patient A informed another person of the beginning of an inappropriate relationship with appellee before such time as appellee claims Patient A became angry at him and motivated to fabricate a violation. Additionally, the Board found significant a lapse in patient records for Patient A at the time that she alleges the inappropriate relationship took place. The hearing officer found Patient A's allegations sufficiently credible. While appellee claims that Patient A's perception of reality was affected by her personality disorder, the hearing officer was persuaded by the fact that appellee did not chart this diagnosis until after Patient A made her allegations.

Therefore, this was more than a "swearing contest" between two parties. The hearing officer was able to point to evidence of substance in the record which was fit to induce conviction in the minds of reasonable persons. We acknowledge that there was contradictory evidence, but the hearing officer did not find it persuasive. It was proper for the hearing

officer and the Board to decide which evidence it would rely upon. This evidence in the record supports the Board's finding of a violation.

For the foregoing reasons we reverse the order of the Jefferson Circuit Court, and reinstate the Order of the Board. Appellee raised an additional claim of error below regarding the subject matter jurisdiction of the Board to hear the case for failure to comply with KRS 311.591(1) and KRS 311.565(3). The circuit court did not review this allegation due to its vacation of the Board's order on other grounds. Therefore, we remand for consideration of the remaining issue before the court.

ALL CONCUR.

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