

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-002055-MR

JAMES STEVEN BARNES

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 00-CI-00201

KENTUCKY RETIREMENT SYSTEM

APPELLEE

OPINION  
VACATING AND REMANDING  
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BEFORE: BUCKINGHAM; McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from an order affirming a decision of the Kentucky Retirement Systems adjudging that appellant's application for disability retirement benefits was untimely filed. Both parties agree that the Administrative Appeals Committee, which made the determination for the Board of Trustees of the Kentucky Retirement Systems, did not have the legal authority to so act. In light of this Court's recent decision in Baker v. Commonwealth of Kentucky, Kentucky Retirement Systems, Ky. App., 50 S.W.3d 770 (2001), we likewise agree that the Administrative Appeals Committee was not authorized to act for the Board of Trustees in this matter and,

thus, we remand the matter to the appellee for a proper determination on the matter.

Appellant, Steven Barnes, worked for the Kentucky Transportation Cabinet and on October 19, 1992, was seriously injured on the job. Although he never returned to work after the accident, his last day of paid employment was February 18, 1993. There is much disputed evidence regarding Barnes's subsequent inquiries with the Kentucky Retirement Systems (~~A~~Retirement Systems~~@~~) about what was needed to file a claim for benefits with them and their responses to those inquiries. Barnes maintains that his wife made the first call to the Retirement Systems before February 18, 1994, and that it took two more phone calls before an application form for benefits was finally sent to him. It is undisputed that the completed application form was not filed with the Retirement Systems until April 11, 1994. The application was consequently denied on grounds that it was untimely filed. Barnes then requested a hearing on the matter. After much litigation on whether Barnes was entitled to a hearing, an evidentiary hearing was finally held on August 10, 1999. On November 15, 1999, the hearing officer entered his report and recommended order determining that Barnes's application was filed beyond the 12-month limitation period in KRS 61.600(1)(c). In response to the exceptions filed by Barnes, the Administrative Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems adopted the report and recommendations of the hearing officer. Barnes then petitioned the Franklin Circuit Court for review of the Administrative

Appeals Committee's decision. From the circuit court's order affirming the Retirement Systems's decision and denying Barnes's petition, Barnes now appeals.

After the notice of appeal was filed in this case, this Court rendered its decision in Baker v. Commonwealth of Kentucky, Kentucky Retirement Systems, Ky. App., 50 S.W.3d 770 (2001), on June 15, 2001. Hence, the Board moved to have the case remanded to the Board in light of the decision in Baker. The motion was denied and the issue was passed to this three-judge panel for consideration as part of the merits of the appeal.

The version of KRS 61.600 in effect in 1994 provided as follows:

1) Any person may qualify to retire on disability, subject to the following conditions:

(a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1);

(b) The person shall be less than normal retirement age;

(c) The person's application shall be on file in the retirement office no later than twelve (12) months after the person's last day of paid employment in a regular full-time position;

(d) The person shall receive a satisfactory determination pursuant to KRS 61.665;

(2) Upon the examination by licensed physicians pursuant to KRS 61.665, it shall be determined that:

(a) The person, since his last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he received his last paid employment;

(b) The incapacity is a result of bodily injury, mental illness, or disease;

(c) The incapacity is deemed to be permanent; and

(d) The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent.

KRS 61.665, as was in effect in 1994, set out the procedures for a determination of medical eligibility to receive disability retirement benefits pursuant to KRS 61.665(1)(d). First, KRS 61.665(1) authorizes the Board of Trustees of the Kentucky Retirement Systems (the ~~A~~Board@ to employ at least three physicians to serve as medical examiners to investigate the medical evidence submitted by a claimant. Subsection (2) discusses the procedure to be followed in reviewing a claim for benefits. In particular, subsection (2)(e) directs the Retirement Systems to select a medical examiner to evaluate the medical evidence submitted by the employee's physician. Based upon the evidence submitted, the examiner shall make a recommendation that disability retirement be approved or denied. If the examiner recommends that benefits be denied, the application shall be submitted to two additional examiners who both must recommend approval of disability benefits to overturn the original recommendation. The recommendations of the examiners shall be submitted to the Board for approval. KRS 61.665(3) states in pertinent part, ~~A~~Any person aggrieved by an order or determination of the system may request that a hearing be conducted by the system.@ Under KRS 61.665(2)(g) and (3)(a),

any person who is denied disability benefits is entitled to a formal de novo hearing. The hearing officer then renders a report and recommendations to the Board based on his findings of fact and conclusions of law. KRS 61.665(3)(h). The Board, in turn, may adopt the report and recommendations of the hearing officer or issue their own final order. KRS 61.665(3)(j).

Finally, KRS 61.665(4) provides:

The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.

A final order of the Board may be appealed to the Franklin Circuit Court.

Besides the Administrative Appeals Committee which acted on behalf of the Board in the present case, there also apparently exists a Disability Appeals Committee which acts on behalf of the Board regarding the merits of claims for disability benefits. The Retirement Systems and Barnes maintain that the Administrative Appeals Committee did not have statutory authority to act on behalf of the Board because the appeals committee referred to in KRS 61.665(4) is the Disability Appeals Committee, which can act on behalf of the Board only on matters involving the merits of a disability claim under KRS 61.665. Their position is essentially that the requirements of KRS 61.600(1)(a)-(c) are separate, administrative threshold criteria which must be met before a claim for disability is allowed to proceed under KRS 61.665. Since KRS 61.600 does not contain a provision like KRS 61.665(4) specifically authorizing the Board

to delegate administrative matters, they maintain that the Administrative Appeals Committee did not have authority to act in the present case according to Baker v. Commonwealth of Kentucky, Kentucky Retirement Systems, Ky. App., 50 S.W.3d 770 (2001).

In Baker, the claimant sought to cross-reference his health insurance premiums, but the Retirement Systems would not allow it as a matter of policy. Acting on the Board's behalf upon authority of 105 KAR 1:215, Section 11, the Administrative Appeals Committee rejected the hearing officer's recommendation in the claimant's favor. The claimant ultimately appealed to this Court, arguing that the Administrative Appeals Committee was not authorized to enter an order on behalf of the Board. We agreed with the claimant that the Board's delegation of duties to the Administrative Appeals Committee constituted an unlawful delegation of authority in violation of KRS 13B.030(1) and, thus, remanded the matter to the Board.<sup>1</sup>

KRS 13B.030(1)<sup>2</sup> provides:

An agency head may exercise all powers conferred on an agency relating to the

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<sup>1</sup>KRS 61.645(16) has since been amended effective July 15, 2002, to give the Board the authority to establish an Administrative Appeals Committee (in addition to the appeals committee authorized under KRS 61.665(4)) to act on behalf of the Board upon the recommendations and reports of the hearing officer.

<sup>2</sup>Although KRS Chapter 13B, which governs administrative hearings, was not enacted until 1994 and was not effective until July 15, 1996, both parties agree it was nonetheless applicable since the hearing in this case was held on August 10, 1999. See Spurlin v. Adkins, Ky., 940 S.W.2d 900 (1997) (remedial or procedural C nonsubstantive C statutes can be retroactively applied in the absence of specific statutory mandate if retroactive application is consistent with the legislative intent.)

conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head, or he may delegate conferred powers to a hearing officer to conduct an administrative hearing before a hearing panel, reserving the authority to render a recommended order to that panel. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute, or unless disqualified in accordance with KRS 13B.040(2).

The biggest distinction between Baker and the present case is that Baker did not involve a claim for disability benefits. Hence, KRS 61.665 was not at issue in Baker. Nevertheless, Baker in *dicta* did specifically point out that if it had been a disability case, KRS 61.665(4) would authorize the Board to delegate their power to enter a final order. However, in our view, that *dicta* was likely referring to a disability order ruling on the merits of a disability claim pursuant to KRS 61.665, not an administrative ruling pursuant to KRS 61.600(1)(c) on whether the application was timely filed.

We agree with the Board and Barnes that KRS 61.665 would not apply in the instant case. KRS 61.665 clearly only applies when making the medical determination as to whether the claimant is entitled to disability benefits. Further, KRS 61.665(4) specifically states that the appeals committee has the authority to act on behalf of the Board relative to the Arecommendations and reports of the hearing officer pursuant to this section.@ (emphasis added.) In the absence of KRS 61.665(4), there was no authority for the Board to delegate to the Administrative Appeals Committee the power to rule on whether

Barnes's claim was timely filed under Baker. Accordingly, we vacate the order of the Franklin Circuit Court and the order of the Administrative Appeals Committee and remand the matter to the Board for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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