

RENDERED: MAY 2, 2003; 10:00 a.m.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2002-CA-000059-MR

GENE P. BLANCHET

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 01-CI-00062

KENTUCKY RETIREMENT SYSTEM

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS AND DYCHE, JUDGES; AND JOHN WOODS POTTER, SPECIAL JUDGE.<sup>1</sup>

POTTER, SPECIAL JUDGE. Former police officer Gene Blanchet appeals from an opinion and order of the Franklin Circuit Court affirming the decision of the Kentucky Retirement Systems' Disability Appeals Committee Board of Trustees (Board) denying Blanchet an award of enhanced act in-line-of-duty disability

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<sup>1</sup> Senior Status John Woods Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

retirement benefits. Because the record does not compel a result different from the decision of the Board, we affirm.

Blanchet was employed as a Police Officer with the City of Fort Wright Police Department in a hazardous duty position. Blanchet's last day of paid employment was July 31, 1999. On July 29, 1999, Blanchet filed an application for disability retirement benefits. In his statement of disability, Blanchet stated as follows:

My psychological traumas began in December of 1998. I witnessed an infant's death at a fire scene on that day which I cannot forget about because that incident caused re-occurring flashbacks of the Beverly Hills fire of May 28, 1977 when I was a member of the Southgate Fire Department. I find it hard to accept stress and want to avoid certain incidents. In June of 1995 I also injured my left knee while running to my patrol vehicle and underwent physical therapy for that injury. Again in July 1999 I injured the same knee while on duty and I am again undergoing physical therapy for that injury. Since 1995 my injured knee has not been right.

Following the required medical reviews, Blanchet was awarded hazardous disability retirement benefits pursuant to KRS 61.665 and KRS 16.582(1)(b) on the basis that he suffered from debilitating depression. However, Blanchet's request for the statutory "act in line of duty" benefits enhancement pursuant to KRS 16.505(19) and KRS 16.582(6) was denied. Blanchet appealed the denial of act-in-line-of-duty benefits, and the case was

assigned to a Hearing Officer. A disability hearing was held on July 20, 2000.

On November 6, 2000, the Hearing Officer issued a report and recommended order recommending that Blanchet's request for act in-line-of-duty benefits be denied. At its December 12, 2000, meeting, the Board accepted the Hearing Officer's recommendation that Blanchet be denied act in-line-of-duty benefits. Blanchet thereafter filed an appeal with the Franklin Circuit Court. On December 28, 2001, the Circuit Court entered an opinion and order affirming the decision of the Board. This appeal followed.

Blanchet contends that the Board erred when it denied his request for enhanced retirement benefit under the act in-line-of duty statute. Blanchet alleges that his depression disability resulted from two events which amounted to acts in the line of duty: (1) the suicide of a juvenile Blanchet was acquainted with through a drug investigation, and (2) his experiences in responding to and investigating a horrific rape, and the rape victim's subsequent dependence on him for consoling.

KRS 16.582 recognizes two types of disabilities and one benefit enhancement. A total and permanent disability means one that prevents a member from engaging in any occupation for remuneration or profit. KRS 16.582 (1)(a). A hazardous

disability means one that prevents a member from serving in a hazardous position, but does not result in the member's total and permanent incapacity to engage in other occupations for remuneration or profit. KRS 16.582(1)(b). If a member is found to be disabled under one of the foregoing categories, an enhancement of disability retirement benefits is available if the disability "is the direct result of an act in line of duty." KRS 16.582(6); KRS 16.505(19).

Following his initial application for disability benefits, Blanchet was found to be eligible for hazardous disability pursuant to KRS 16.582(1)(a) (that is, he could no longer work as a policeman but could perform other work) as a result of depression. However, the Board declined to find that his disability was the direct result of an act in-line-of-duty and, and thus did not award the enhanced benefits available under KRS 16.582(6).

As previously noted, Blanchet attributes his condition to two specific incidents that occurred during the same month about a year before he retired. He asserts that these incidents occurred while he was acting in the line of duty, and hence he is entitled to the enhanced benefits. In the first incident he was scheduled to interview a juvenile in connection with a drug investigation. The juvenile did not show as scheduled and Blanchet later learned that the juvenile had committed suicide.

Shortly thereafter he reported to a crime scene and a rape victim confronted him in a very emotional manner. The meeting was dramatic, and the victim kept in contact with him.

The Board found against Blanchet on two bases. First, the Board found that the acts involved, the suicide and the confrontation with the rape victim, were not the types of incidents envisioned by the statute as acts in the line of duty. Second, the Board found that Blanchet's depression was the result of other factors. The Circuit court affirmed the denial on the basis that the two incidents alleged did not involve acts in the line of duty.

In reviewing an appeal from an administrative decision, our judicial review is concerned with the question of arbitrariness. American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission, Ky., 379 S.W.2d 450, 456 (1964). If there is substantial evidence in the record to support an agency's findings, the findings will be upheld, even though there may be conflicting evidence in the record. Kentucky Commission on Human Rights v. Fraser, Ky., 625 S.W.2d 852, 855 (1981). An administrative agency's failure to grant relief to one carrying the burden of proof is arbitrary if the record compels a contrary decision in light of substantial evidence therein. Bourbon County Bd. of Adjustment v. Currans, Ky. App., 873 S.W.2d 836, 838 (1994). Blanchet bore the burden

of proving by a preponderance of the evidence that he is entitled to act in-line-of-duty disability retirement benefits. KRS 13B.090(7). Therefore, we must determine whether the evidence compels a finding in favor of Blanchet's claim that his disabling depression occurred as a direct result of an act in the line of duty. For evidence to be compelling, it must be so overwhelming that no reasonable person could fail to reach the same conclusion. Reo Mechanical v. Barnes, Ky. App., 691 S.W.2d 224, 226 (1985).

Here, the evidence is not so overwhelming that no reasonable person could reach the same conclusion as reached by the Board, i.e., that Blanchet's disabling depression was not a direct result of the juvenile suicide incident and the rape incident. First and foremost, as the Hearing Officer noted on the first page of his report, in his initial application for disability Blanchet stated:

My psychological traumas began in December 1998. I witnessed an infant's death at a fire scene on that day which I cannot forget about because that incident causes re-occurring flashbacks of the Beverly Hills fire on May 28, 1977 when I was a member of the Southgate Fire Department. I find it hard to accept stress and want to avoid certain incidents.

Hence Blanchet's own statement of disability in his initial application for benefits undermines his present claim that his disability was caused by the events surrounding the

juvenile's suicide and the rape incident. In addition, Blanchet testified to other more routine stresses of the job, including office turmoil due to a turnover in police chiefs, frustration with assigned computer work, and reprimands. In this vein the Board's decision, as recommended by the Hearing Officer, contained the following finding:

It is further found that Dr. [Ed] Conner has attributed Claimant's condition to several factors and stressors from Claimant's police work. While trying to focus on these two factors, his testimony and reports indicate that the Beverly Hills fire and the incident with the dead baby at a fire are part of the cause for his condition. In fact, the application for disability benefits specifically addresses the infant's death and the Beverly Hills fire. Furthermore, Claimant when he met with Dr. [James] Daum in July 1999 made no report of the rape or suicide indicated. Rather, he reported the fire death and problems at work such as not wearing a vest and not getting along with fellow employees.

This finding is supported by substantial evidence.

Under the foregoing the Board could reasonably find that, assuming the rape and suicide incidents to be acts in the line of duty, Blanchet's depression was not the direct result of those acts. In light of this, the evidence does not compel a decision in favor of Blanchet.

For the foregoing reasons the decision of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Teddy B. Gordon  
Louisville, Kentucky

BRIEF FOR APPELLEE:

James Dodrill  
Frankfort, Kentucky