

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000109-MR

BOARD OF TRUSTEES, KENTUCKY
RETIREMENT SYSTEMS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 99-CI-00928

ERWIN D. RAY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BUCKINGHAM, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE: The Board of Trustees of the Kentucky Retirement Systems (AKentucky Retirement Systems@) appeals from an opinion and order of the Franklin Circuit Court which reversed a hearing officer's determination that Edwin D. Ray (ARay@) was not entitled to receive full retirement benefits. We affirm.

In order to supplement his income as a Christian minister, Ray commenced his employment with the Warren County Board of Education as a school bus driver at the beginning of the 1975-1976 educational year. During the course of his employment,

Ray drove numerous school bus routes for the Board of Education. Ray retired from his driving duties effective February 1, 1997. By virtue of his employment with the Warren County Board of Education, Ray was a member of the County Employees Retirement System (ACERS®). CERS is managed and administered by Kentucky Retirement Systems.

In July 1993, Ray traveled to Frankfort to meet with a Kentucky Retirement Systems benefit counselor concerning the status of his retirement account. During this meeting, Ray received a projection based upon a retirement date of July 1, 1998, when Ray intended to retire because he would be sixty-five (65) years of age. The counselor informed Ray that, if he purchased seventeen (17) months of service credit, he would accumulate 242 months of service credit on the date of his projected retirement. The counselor recommended that Ray purchase the 17 months of credit and accumulate at least 240 months of total credit so that Kentucky Retirement Systems would completely pay his health insurance premiums. Ray, desiring to have his health insurance premiums paid in their entirety by Kentucky Retirement Systems, followed this recommendation.

Near the end of 1993, Ray met again with a benefits counselor to check on the status of his retirement account. At this time, Ray was informed that, with a projected retirement date of December 1, 1996, he would accumulate 240 months of total service credit and that his health insurance premiums would be

paid in their entirety. The projection was marked ACorrected@ in order to indicate the change in his total months of service credit by two months.

In July 1996, Ray returned to Kentucky Retirement Systems' Frankfort office to meet with another benefits counselor concerning the status of his retirement account. This counselor informed Ray that, with a projected retirement date of January 1, 1997, he would possess 241 months of total service credit. The benefits counselor did not indicate to Ray that these figures were inaccurate in any manner.

On December 30, 1996, Ray visited the Kentucky Retirement Systems office for the final time. During this visit, a benefits counselor reviewed Ray's account status and informed Ray that he had earned 240 months of service credit. The benefits counselor assured Ray that this information was correct and encouraged Ray to retire immediately. Ray informed the counselor that he wanted to provide his employer with notice of his intent to retire. Thus, having no reason to believe that his account was incorrect, Ray set February 1, 1997¹ as the effective date of his retirement. Ray then informed his employer of his decision to retire. In subsequent conversations with officials of Kentucky Retirement Systems and the Warren County Board of

¹ Kentucky Retirement Systems asserts that Ray set January 1, 1998 as the effective date of his retirement. The record does not support this assertion.

Education, Ray was assured that all of his retirement information, including his service credit, was correct.

After notifying his employer of his decision to retire, Kentucky Retirement Systems Account Manager Gerri Miller notified Ray that his service credit was being reduced by 41 months. Miller explained to Ray that his service credit was being reduced because an audit of his account found that the Warren County Board of Education inaccurately reported the number of hours that he actually worked between 1976 and 1982. Further, the school board was not able to document the actual number of days Ray worked. Thus, according to all of the methods used by Kentucky Retirement Systems to calculate the amount of time a member actually works, Ray's account was improperly credited. Thus, as a result of the audit, Kentucky Retirement Systems eventually reduced Ray's total service credit from 242 months to 203 months. This reduction in service credit meant that Ray was responsible for a portion of his health insurance premium. Ray requested and was granted an administrative hearing to review this matter.

An administrative hearing was commenced on July 8, 1998. During this hearing, Miller testified that she selected Ray's file for an audit because the information used to calculate his retirement benefits was ablatantly low. While conducting her audit, Miller reasserted that the Warren County Board of Education failed to accurately record the time Ray actually worked. Thus, using figures provided by the employer concerning

Ray's annual salary, daily salary, hourly salary and approximate days worked each month, Miller determined that Ray worked less than 80 hours per month, as mandated by Kentucky Revised Statutes (KRS) 78.615, for 41 months from 1976 until 1982.

On cross-examination, Miller could not explain exactly what information in Ray's file was ablatantly low. Miller was also unable to explain why an audit was not requested after Ray's previous status requests in 1993 or July 1996, even though the same information was used each time to project Ray's retirement benefits. Further, Miller confirmed that Ray never formally requested that an audit be conducted on his account because the members of Kentucky Retirement Systems are not aware that an audit would be conducted upon request. However, if a member inquires as to the correctness of his file, Kentucky Retirement Systems will automatically conduct an audit. Despite Ray's desire to ensure that his retirement account was accurate, no audit was ever conducted until after Ray informed his employer of his retirement. Finally, Miller admitted that, prior to 1996, Kentucky Retirement Systems was aware that numerous school districts, including Ray's employer, erroneously reported the service credit of their bus drivers. The result was that these employees were improperly given credit for time which was not actually worked. Ray was never informed that he was improperly given unearned service credit until after he retired.

The hearing officer recommended that the Board of Trustees affirm Kentucky Retirement Systems' determination that Ray was entitled to only 203 months of service credit after determining that the calculations were proper. The Board of Trustees of the Kentucky Retirement Systems concurred and dismissed Ray's appeal. Ray appealed to the Franklin Circuit Court, which sustained his appeal and reversed the decision of the hearing officer. The circuit court held that equitable estoppel applied in this matter because Ray relied on prior assurances from at least four benefit counselors that he had, in fact, attained the required service credit. Thus, Kentucky Retirement Systems was equitably estopped from reducing Ray's service credit below 240 months. This appeal followed.

On appeal, Kentucky Retirement Systems argues that the trial court erred in applying the doctrine of equitable estoppel to prohibit it from reducing Ray's service credit and retirement benefits. In support of this argument, Kentucky Retirement Systems asserts that the circuit court lightly invoked equitable estoppel against it, a governmental agency, without evidence of exceptional or extraordinary circumstances. Thus, according to this appellant, the circuit court improperly substituted its own judgment of the evidence for that of the hearing officer, who determined that Ray failed to prove entitlement to full retirement benefits. After reviewing the record and the arguments herein, we disagree.

In reviewing an administrative decision, the court must determine whether the agency based its decision upon substantial evidence. Kentucky Commission on Human Rights v. Fraser, Ky., 625 S.W.2d 852 (1981). The test of substantiality of evidence is whether . . . it has sufficient probative value to induce conviction in the minds of reasonable men. @ Kentucky State Racing Commission v. Fuller, Ky., 481 S.W.2d 298, 308 (1972). The court's role is to review the administrative decision, not to reinterpret or reconsider the merits of the claim. Kentucky Unemployment Ins. Commission v. King, Ky. App., 657 S.W.2d 250, 251 (1983). As long as there is substantial evidence in the record supporting the agency's decision, the court must defer to the agency, even if there is conflicting evidence. Fraser, 625 S.W.2d at 856. However, the reviewing court is not required to uphold an administrative decision if that decision is arbitrary or unsupported by substantial evidence in the record. Id.

In this matter before us, KRS 78.615(1) provides the correct rule of law for this case:

(1) Employee contributions shall be deducted each payroll period from the credible compensation of each employee of an agency participating in the system while he is classified as regular full-time as defined in KRS 78.510 unless the person did not elect to become a member as provided by KRS 61.545(3) or by KRS 78.540(2). After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).

. . .

(b) For noncertified employees of school boards, for service prior to July 1, 2000, service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month if the employee received creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of days worked, the rate of pay, and the hours in a work day for each employee monthly or annually. . . .

1. If the employee works fewer than the number of contracted days, the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and rounded to the nearest whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.

2. If the employee works fewer than the number of contracted days and the average number of hours worked is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he worked eighty (80) or more hours.

3. The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.

The record clearly reveals that the Warren County Board of Education did not accurately certify the amount of time Ray worked from 1976 to 1982. After making the calculations required by this statute, Ray was improperly granted 41 months of service credit. Thus, we agree with Kentucky Retirement Systems that

Ray's service credit was correctly calculated at 203 months. The hearing officer's findings in this regard, as Kentucky Retirement Systems correctly points out, were based upon substantial evidence from the record. Thus, the only question for the circuit court on review is whether the hearing officer properly rejected Ray's equitable estoppel argument.

Kentucky law is very clear concerning the doctrine of equitable estoppel. A panel of this Court has held that equitable estoppel may be invoked against a governmental agency only under exceptional circumstances. Sizemore v. Madison County Fiscal Court, Ky. App., 58 S.W.3d 887, 891 (2000). Although no Kentucky case clearly delineates what constitutes exceptional or special circumstances, this Court refers to circumstances Aso exceptional@ as to work a Agross inequity@ between the parties. Shelbyville, ex rel. Shelbyville Municipal Water & Sewer Com. v. Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Ky. App., 706 S.W.2d 426 (1986). In this matter, Ray was informed by at least four benefit counselors that his service credit was equal to or above 240 months. Moreover, Ray was advised during his meetings with these benefits counselors that his file contained no problems. Finally, Ray first learned of his 41 months of unearned service credit after he notified his employer of his retirement plans. Learning about this deficiency after submitting his retirement date prevented Ray from resuming his employment with the school board. We

believe that these circumstances are sufficiently unique to warrant the invocation of equitable estoppel.

Gray v. Jackson Purchase Production Credit Association, Ky. App., 691 S.W.2d 904, 906 (1985) set forth the elements of equitable estoppel. Those elements include:

(1) Conduct, including acts, language and silence, amounting to a representation or concealment of material facts; (2) the estopped party is aware of these facts; (3) these facts are unknown to the other party; (4) the estopped party must act with the intention or expectation his conduct will be acted upon; and (5) the other party in fact relied upon this conduct to his detriment.

Id. Additionally, the Kentucky Supreme Court has stated, A[o]ne who knows or should know of a situation or a material fact is precluded from denying it or asserting the contrary where by his words or conduct he has mislead or prejudiced another person or induced him to change his position to his detriment.@ Hunts Branch Coal Company v. Canada, Ky., 599 S.W.2d 154, 155 (1980) (citations omitted).

We agree with the circuit court that the record clearly shows that each element of equitable estoppel is met in Ray's case. Agents and employees of Kentucky Retirement Systems acted inconsistently by assuring Ray on at least four different visits and numerous telephone communications that his service credit was sufficient to obtain full retirement benefits. In fact, during each meeting, Ray clearly informed the benefit counselors that he would retire only if his service credit was 240 months because

having his health insurance premiums paid in full by his retirement was extremely important to him. Kentucky Retirement Systems knew that Ray was relying on the information presented during these meetings in order to make an informed decision about retirement. By urging Ray to retire immediately on December 30, 1996, the benefit counselor falsely represented to Ray that his service credit was correct, meaning that Ray was entitled to full retirement benefits. By actively soliciting Ray's decision to retire, the benefit counselor intended Ray to act upon inaccurate information. Also, Kentucky Retirement Systems, not Ray, was aware that an audit was never conducted on Ray's file even though it knew that service credit for school bus drivers had been miscalculated for several years due to inaccurate reporting practices. Thus, Kentucky Retirement Systems was in the best position of correcting this error prior to February 1, 1997, the date Ray set for retirement. In fact, Miller testified while an audit of a file may be conducted at a member's request, this service is not communicated to the membership. Finally, Ray relied upon the incorrect assertions of the benefit counselors to his detriment because he believed their information was accurate. Thus, these facts clearly demonstrate that all elements necessary for invocation of equitable estoppel are present in this matter.

Instead of basing his decision upon this evidence, the hearing officer gave significant weight to his own conclusion that Ray actually retired because he was having difficulty

driving his bus due to a pinched nerve. This conclusion is completely unsupported by the record because, while Ray did admit this was a factor in determining what type of employment he could perform with the school system, Ray began inquiring into his retirement status in 1993, a full three years before he pinched his nerve. Thus, we believe that the record clearly reveals that Ray had good reason to accept the assertions of the Kentucky Retirement Systems office as true and accurate and submitted his retirement plans to his detriment in accordance with these representations. Since all of the elements were present, the hearing officer's rejection of Ray's equitable estoppel argument was arbitrary and unsupported by the record.

Prior Kentucky decisions also support our holding that Ray is entitled to invoke the doctrine of equitable estoppel against Kentucky Retirement Systems. In Laughead v. Commonwealth of Kentucky Department of Transportation, Bureau of Highways, Ky., 657 S.W.2d 228 (1983), the Commonwealth argued that a ferry boat operator failed to meet the continuous operation requirement of a statute which permitted compensation to ferries located within five miles of new bridges and in continuous operation for fifteen years. The Supreme Court held that the Commonwealth was equitably estopped from asserting that a ferry boat operator was barred from collecting damages under the statute because, by informing the ferry operator that the statute was not constitutional, it lulled the ferry operator into failing to

renew his franchise for an additional term before the statute was declared constitutional. Id.

We believe that the case presently before us is similar to Laughead because the appellant induced Ray to retire under the representation that he earned sufficient credit for full retirement benefits while knowing Ray's credit calculation was probably inaccurate. Like Laughead, Ray was lulled into retirement even though Kentucky Retirement Systems was aware that Ray's service credit, by virtue of inaccurate reporting, was probably miscalculated. Laughead clearly establishes that equity will not allow any party to benefit from its own intentional, inconsistent conduct. However, if the hearing officer's decision is allowed to stand, Kentucky Retirement Systems obtains a benefit at Ray's expense because this appellant, through its own misconduct, will be permitted to provide Ray with fewer retirement benefits. Thus, we believe that the facts of this matter herein, as well as Laughead, clearly justify the circuit court's application of equitable estoppel to prevent a major inequity from occurring.

Further, we find this appellant's reliance on J. Branham Erecting & Steel Service Co., Inc. v. Kentucky Unemployment Insurance Commission, Ky. App., 880 S.W.2d 896 (1994), to be misguided. In J. Branham Erecting, a panel of this Court found that the Unemployment Insurance Commission was not estopped from requiring the payment of additional unemployment

contributions from companies engaged in contract construction business when the correct contribution rates were clearly specified by statute, but erroneously applied by the agency. Id., at 898. The improper assessments at issue in J. Branham Erecting were merely the result of a mistake in applying rates which were available to the parties. In Ray's matter, however, the reduction of service credit resulted from the assessing authority's conduct. Ray was encouraged to retire despite the fact that Kentucky Retirement Systems knew that service calculations from school bus drivers were systematically inaccurate. Ray had no access to this information because he reasonably relied on the Frankfort office to keep accurate data. An audit conducted during any of Ray's numerous inquiries into the correctness of his account status, which Miller admits should have been done automatically, would have quickly revealed this error. At that point, Ray could have been given the choice to return to his employment with the Warren County Board of Education or retire with less than full benefits. This appellant's intentional misrepresentation of material facts distinguishes this case at bar from J. Branham Erecting because Ray's reliance on the information disclosed by the benefit counselors was not the result of a mere mistake. Since it is apparent that the balance of equities is clearly weighed in Ray's favor, we reach the same conclusion as the trial court. Kentucky

Retirement Systems' conduct herein does indeed rise to the level of conduct necessary to require an estoppel.

For the foregoing reasons, we affirm the judgment of the Franklin Circuit Court.

ALL CONCUR.

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