

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000110-MR

BOARD OF TRUSTEES,
KENTUCKY RETIREMENT SYSTEMS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 00-CI-00528

DEBRA SUE GOODPASTER

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: BARBER, BUCKINGHAM, AND HUDDLESTON, JUDGES.

BUCKINGHAM, JUDGE: Kentucky Retirement Systems appeals from an opinion and order of the Franklin Circuit Court which reversed a decision by the Board of Trustees of Kentucky Retirement Systems denying disability retirement benefits to Debra Sue Goodpaster. We reverse and remand.

Goodpaster was employed as a custodian by the Morgan County Board of Education from September 1, 1991, until the fall of 1998. Her position as a custodian was classified as a "medium work" position under KRS¹ 61.600(4)(c). She was injured

¹ Kentucky Revised Statutes.

in an automobile accident on June 15, 1998, and her final date paid employment was on October 15, 1998. On December 14, 1998, she filed an application for disability retirement benefits with Kentucky Retirement Systems.

Goodpaster was denied disability retirement benefits on initial consideration and on reconsideration by the Medical Review Board physicians of the Kentucky Retirement Systems. See KRS 61.665(1). On September 24, 1999, a formal hearing on Goodpaster's claim was held at her request. See KRS 61.665(3). In addition to introducing medical records into evidence, both Goodpaster and her husband testified at the hearing. Goodpaster's claim for benefits was based on "severe neck, shoulder, back and leg pain" resulting from the automobile accident.

The hearing officer issued his report on March 13, 2000. Therein, he noted in detail the medical evidence presented in regard to the claim. The hearing officer made the following finding of fact at the end of the report:

The Hearing Officer finds that the record does not contain objective medical evidence to support her claim of pain to prevent her from performing her duties of a Custodian. Certainly, the Claimant does suffer pain as a result of the automobile accident. However, there has been no development of the restrictions that this could place on her ability to perform the duties.

The hearing officer then concluded that Goodpaster was not entitled to disability retirement benefits. Goodpaster filed exceptions to the hearing officer's report, but the Disability Appeals Committee of the Board of Trustees rejected the exceptions and accepted the report. See KRS 61.665(4).

Goodpaster thereafter filed a petition in the Franklin Circuit Court seeking a reversal of the Board of Trustees' decision denying her application for benefits. See KRS 61.665(5). She asserted in her petition that there was substantial evidence to support her claim for benefits and that the Board's decision was not based on substantial evidence. Following the submission of briefs and the presentation of oral arguments, the case was submitted to the circuit court for final adjudication.

On December 12, 2001, the circuit court entered its opinion and order reversing the Board's decision. The court stated that it could not find substantial evidence to support the Board's decision to deny benefits and that "substantial evidence in the record compels a contrary finding to that of the Board." The court stated that "the Board relied exclusively upon the reports generated by its retained medical examiners, and completely dismissed the uncontroverted evidence regarding Ms. Goodpaster's residual functional capacity limitations in light of her injuries." The court went on to state that the

medical evidence from Goodpaster's treating physicians was uncontroverted. Stated another way, the court asserted that "the substantial evidence in the record compels a finding that the Petitioner established a *prima facie* case and KRS did not refute this evidence." Kentucky Retirement Systems then filed this appeal from the circuit court's opinion and order reversing the decision of the Board of Trustees.

In order to qualify for disability retirement benefits, a person must meet the conditions of KRS 61.600. It must be shown by "objective medical evidence" that the person is physically or mentally incapacitated to perform the job from which he received his last paid employment. KRS 61.600(2)(a). As the statute relates to this case, Goodpaster was also required to show that her incapacity resulted from bodily injury, that the incapacity was deemed to be permanent, and that the incapacity did not result from a pre-existing injury, illness, disease, or condition. KRS 61.600(2)(b),(c), and (d).

In their briefs to this court, the parties have framed the issue in terms of whether there was substantial evidence to support the decision of the Board of Trustees to deny benefits to Goodpaster. The framing of the issue in that manner is not entirely correct. In fact, the standard of judicial review on appeal from an administrative agency differs depending on whether the agency grants or denies the claimant's request.

This court noted the different standards of review in Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984).

Therein the court stated:

The claimant bears the burden of proof and risk of persuasion before the board. If he succeeds in his burden and an adverse party appeals to the circuit court, the question before the court is whether the decision of the board is supported by substantial evidence. On the other hand, if the claimant is unsuccessful before the board, and he himself appeals to the circuit court, the question before the court is whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor.

Id. at 736. In reiterating this distinction in the standard of review based on whether the agency granted or denied the relief sought, in Bourbon County Bd. Of Adjustments v. Currans, Ky. App., 873 S.W.2d 836 (1994), this court acknowledged that "[n]ot infrequently, contestants appear at the judicial level arguing that the administrative decision is not supported by substantial evidence when the board has offered no relief in the first instance." Id. at 838. The court went on to say that "[i]n such cases, attention should be directed to the administrative record in search of compelling evidence demonstrating that the denial of the relief sought was arbitrary. The argument should be that the record compels relief. The argument that there is no substantial evidence to support nonrelief is an anomaly." Id. Therefore, the issue in this case is not whether the

Board's decision was supported by substantial evidence, but the issue is whether there was compelling evidence indicating that the denial of relief was arbitrary. Id.

As we have noted, Goodpaster was required to prove her case with "objective medical evidence." KRS 61.600(2).² Goodpaster asserts that her claim was substantiated by Dr. Don Bryson and Dr. James Vansant, her treating physicians. She states in her brief that their conclusions were based on their observations of her as well as diagnostic testing and her response to the treatment administered to her.

On the other hand, the Board relied upon the reports generated by its retained medical experts who, according to Goodpaster, "took the same records of Dr. Bryson and Dr. Vansant and came to the conclusion that Appellee was not permanently disabled." Goodpaster argues that the Board adopted their findings, "even though these findings were made by examiners who had never even seen the Appellee and were totally opposite of her treating physicians who had seen her on several occasions." She asserts that the Board's physicians "merely took the records of her treating physicians and turned their opinions completely around." In other words, the reviewing physicians reached a

² "Objective medical evidence" has not been defined in the statutes concerning disability retirement benefits. However, for purposes of workers' compensation benefits, "objective medical evidence" is defined in KRS 342.0011(33). See also Gibbs v. Premier Scale Co./Indiana Scale Co., Ky., 50 S.W.3d 754 (2001).

conclusion contrary to that of the treating physicians based on the same objective test results.

An administrative agency, as the trier of the facts, "is afforded great latitude in its evaluation of the evidence heard and the credibility of the witnesses." Kentucky State Racing Comm'n. v. Fuller, Ky., 481 S.W.2d 298, 308 (1972).

Unless Goodpaster met her burden of proving to the circuit court that the evidence before the Board compelled a finding in her favor, then the court was required to affirm the Board's decision even though the court may have reached a contrary result if it were hearing the case *de novo*. Id. Further, the fact that two inconsistent conclusions could have been drawn from the evidence does not prevent the administrative agency's decision from being affirmed. Id. at 307. See also Bowling v. Natural Resources, Ky. App., 891 S.W.2d 406, 410 (1994).

The circuit court stated that the medical evidence from Goodpaster's treating physicians was "uncontroverted." It held that the Board "completely dismissed the uncontroverted evidence regarding Ms. Goodpaster's residual functional capacity limitations in light of her injuries." Goodpaster relies on the limitations Dr. Bryson felt her injuries imposed on her, the range of motion comments made by Dr. Vansant, Dr. Bryson's conclusion that her injuries were permanent, and the fact that Dr. Vansant changed his initial determination that she would

recover to his final conclusion that she was permanently disabled. The circuit court maintained that this evidence was ignored by the Board.

Although Dr. Bryson and Dr. Vansant reached the aforementioned conclusions, they did so without summarizing the underlying facts supporting them. Rather, they relied on Goodpaster's subjective statements concerning her condition. Dr. Bryson detailed the functions he believed were limited by Goodpaster's injuries, yet he provided no details on how he arrived at those limitations. Dr. Vansant commented on Goodpaster's claims of pain when she was asked to move her head and neck, yet he did not identify objective factors that his examinations revealed which would support Goodpaster's claims.

Furthermore, the hearing officer noted the deficiencies in Goodpaster's medical evidence which caused him to deny her claim. For example, the hearing officer noted that Goodpaster failed to present any evidence demonstrating the orthopedic or neurological development of her condition. He also pointed out that there had been no objective development of the restrictions imposed upon her by the injuries. While Dr. Bryson did describe the limitations he felt should apply, the hearing officer noted that Dr. Bryson's treatment notes were "difficult if not impossible to read." In addition, Dr. C.C.

Smith, Goodpaster's treating chiropractor, indicated that he expected Goodpaster to recover within a year.

We view this case as simply one of conflicting medical evidence. The testimony of the treating physicians differed from that of the reviewing physicians. As in workers' compensation proceedings, the question of which evidence to believe is within the exclusive province of the fact finder. See Square D Co. v. Tipton, Ky., 862 S.W.2d 308, 309 (1993); and Staples, Inc. v. Konvelski, Ky., 56 S.W.3d 412, 416 (2001). The fact finder in this case chose to believe the evidence of the reviewing physicians, and we conclude that the circuit court erred when it rejected the Board's determination. Further, the evidence did not compel a result in Goodpaster's favor.

The order of Franklin Circuit Court is reversed, and this case is remanded for the entry of an order affirming the Board's decision to deny disability retirement benefits to Goodpaster.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
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