

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001002-MR

PATTY SUE MULLINS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 01-CI-00205

BOARD OF TRUSTEES OF  
KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION

AFFIRMING

\*\* \*\* \* \* \*

BEFORE: BUCKINGHAM, McANULTY AND PAISLEY, JUDGES.

PAISLEY, JUDGE. This is an appeal from an opinion and order entered by the Franklin Circuit Court affirming the decision of the Kentucky Retirement Systems (KRS) to deny disability retirement benefits to appellant Patty Sue Mullins. For the reasons stated hereafter, we affirm.

Appellant was employed by the Kentucky Cabinet for Families and Children as a Secretary Principal for eight years

before she applied for disability retirement benefits in August 1999. The record indicates that appellant's employment duties were considered to be sedentary work for purposes of KRS 61.600.

The disability retirement application form which appellant filed in August 1999 indicated that she suffered from multiple ailments including degenerative disc disease, carpal tunnel syndrome, fibromyalgia, degenerative knee joints, and depression. On three different occasions, three medical review board physicians recommended that appellant's claim be rejected as not justified by the medical evidence. The hearing officer who reviewed those recommendations found that although appellant was disabled due to her back condition, her condition preexisted and was not aggravated by her employment. Further, the hearing officer concluded that appellant did not sustain her burden of showing that she was otherwise disabled by virtue of her other medical problems. On review, the Board of Trustees denied appellant's application for disability benefits. The Franklin Circuit Court then affirmed the board's denial of disability benefits. This appeal followed.

KRS 61.600 provides in pertinent part:

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

. . . .

(2) Upon the examination of the objective medical evidence 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. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;

(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 preexisted membership in the system . . . .

(3) Paragraph (d) of subsection (2) shall not apply if:

(a) The incapacity is a result of bodily injury, mental illness, disease, or condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or

(b) The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.

(Emphasis added.)

The parties do not dispute that appellant is disabled by virtue of her degenerative disc disease. However, the record shows that appellant admitted below that such disease preexisted her eligible employment. Although appellant asserts that her back condition worsened during her employment, substantial evidence supported the board's finding that she did not sustain any work-related accident or injury which "substantially aggravated" her preexisting condition and entitled her to disability retirement benefits. KRS 61.600(3)(a). Indeed, the evidence indicates only that appellant's physical condition deteriorated due to the disease's progressive nature, her obesity, and/or other nonwork-related factors. As our review of the record therefore shows that substantial evidence supported the board's determination that appellant was disabled as a result of a condition which preexisted her eight years of eligible employment, we cannot say that the evidence compelled a finding that appellant was entitled to an award of disability retirement benefits. See Bourbon County Board of Adjustment v. Currans, Ky. App., 873 S.W.2d 836 (1994).

Moreover, we also are not persuaded by appellant's assertion that she is entitled to disability retirement benefits due to the disabling effects of her other medical conditions. Clearly, the evidence did not compel a finding that such medical conditions rendered her "incapacitated to perform the job" of

secretary. KRS 61.600(2)(a). Hence, the board did not err by failing to award her disability retirement benefits based on those conditions.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Terence K. Mulliken  
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Jennifer A. Jones  
Frankfort, Kentucky