

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001559-MR

MATTHEW ELDRIDGE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 99-CI-00119

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: BAKER, COMBS, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. Matthew Eldridge appealed from a judgment of the Franklin Circuit Court which affirmed the denial of disability benefits by the Kentucky Retirement Systems. Eldridge contends the circuit court erred by finding the administrative agency's decision was based on substantial evidence. We agree and therefore we reverse and remand.

Matthew Eldridge (Eldridge) was employed as a janitor at the Letcher County Area Technology Center for the Department

of Technical Education, Workforce Development Cabinet, with 21 years of service. Eldridge's last day of employment was February 28, 1997. He was 59 years old at the time. Eldridge's work was classified as light to medium in nature. Eldridge did not seek accommodations for his medical conditions (back, arm, neck, and leg pain) but did file a claim for total disability benefits.

His application for disability included three doctors' reports. Dr. William Collins was Eldridge's treating physician who diagnosed severe osteoarthritis throughout his spine, with osteoarthritis in his neck and lumbar spine, with nerve root compression. Dr. Collins gave Eldridge a poor diagnosis, opined that Eldridge was completely incapacitated to perform his job or a job of like duties, and that such incapacity was expected to last for at least twelve months. Dr. J. Pampati, a specialist in rheumatology, diagnosed Eldridge with degenerative joint disease with facet hypertrophy, spinal stenosis, and apparent nerve root compression due to degenerative disc disease. Dr. Pampati also opined Eldridge was totally and permanently disabled. Dr. Usha Polisetty, a neurologist, concurred with the diagnosis of degenerative joint disease in both the cervical spine and in the lumbar spine, and opined that Eldridge was totally and permanently disabled.

The Retirement Systems had Eldridge examined by two physicians who agreed there was a medical condition but disagreed with the extent and duration of disability. Dr. Russell L. Travis diagnosed spondylitic degenerative changes through the cervical and lumbar spine, but he opined that they were mild and compatible with Eldridge's age. Dr. Travis wanted to perform a myelogram (which Eldridge initially refused). Without the myelogram, Dr. Travis could not say that Eldridge was totally and permanently disabled. Dr. Rita Ratliff diagnosed moderate degenerative changes throughout the cervical spine with a marked decrease in the C6 and C7 disk space consistent with moderate degenerative disk disease. Dr. Ratliff did recommend restrictions in lifting and carrying (including upward pulling). For lifting, carrying, etc., occasionally, she put a 20-pound restriction, and for frequent lifting, pulling, etc., she placed the restriction at 10 pounds.

Barbara Ison, the school principal where Eldridge worked, was contacted and asked a series of questions to see if the school could accommodate Eldridge's restrictions at his old job. Basically, Ison said no, that the job involved lifting, bending, pulling, etc. and they needed someone that could do it all.

The Retirement Systems had the Medical Review Board review the evidence. Two of the three doctors recommended

denying benefits and one recommended approving disability benefits. Dr. Esten S. Kimbel reviewed the evidence and commented that Eldridge did not have the myelogram that Dr. Travis recommended. Dr. Kimbel relied primarily on Dr. Travis's report and concluded Eldridge could perform light to medium work per his job description. Dr. Horace Adams reviewed the medical evidence and concluded that only Dr. Travis was reluctant to find disability, that the CAT scan proved the diagnosis of degenerative joint disease, and that there was Grade I spondylolisthesis. Dr. Adams noted the myelogram was not performed but opined he had enough evidence to see that Eldridge was not capable of doing medium work activity and he would approve the claim for disability benefits. Dr. William P. McElwain was the third medical review examiner. Dr. McElwain noted that while the conditions existed, it appeared that the conditions were somewhat treatable and reversible and that Eldridge was getting treatment. Therefore, Dr. McElwain recommended denying the claim.

Eldridge appealed the denial by the Medical Review Board and a Hearing Officer conducted a hearing on June 2, 1997. After a few procedural matters, the Hearing Officer issued his Report and Recommended Order on August 24, 1998. In the Hearing Officer's report, he made these specific findings:

5) Most of the physicians who have treated or examined Claimant are of the opinion that he is totally and permanently disabled. Dr. William Collins, Claimant's primary care physician, diagnosed Claimant as suffering from osteoarthritis with a poor prognosis and gives the opinion that Claimant is totally and permanently incapacitated. (Exhibit 5) Dr. J. Pampati, Arthritis and Osteoporosis Center, diagnosed Claimant as suffering from degenerative joint disease with facet hypertrophy, spinal stenosis and apparent nerve root compression due to degenerative disc disease. Dr. Pampati states the opinion that Claimant is totally and permanently incapacitated. (Exhibit 6) Dr. Usha Polisetty, Neurologist, concurs with the diagnosis of degenerative joint disease at both the cervical and lumbar spine levels, given by Dr. Pampati, and also concurs with the opinion that Claimant is totally and permanently incapacitated. (Exhibit 7) Dr. Rita Ratliff likewise finds Claimant to suffer from degenerative disc disease with decreased range of motion of the cervical and lumbar spines. She places restrictions on Claimant of frequent lifting of no more than ten pounds and occasional lifting of no more than twenty pounds. She also restricts Claimant's ability to walk and stand and perform job duties that require more than occasional exertion. (Exhibit 19)

6) The only physician who examined Claimant and found him not to be either totally and permanently incapacitated or severely restricted in his ability to work is Dr. Russell L. Travis. While Dr. Travis found spondylitic degenerative changes

throughout, he terms these mild and compatible with Claimant's age. (Exhibit 11)

7) Claimant's subjective complaints of back pain and the diagnosis of the several physicians of degenerative disc disease of the cervical and lumbar spine are supported by objective medical evidence of x-ray and CT scans interpreted and reported by Dr. Pampati (Exhibit 6), Dr. Polisetty (Exhibit 7), and Dr. Ratliff (Exhibit 19).

8) Based on Claimant's testimony, the opinions of treating and examining physicians, and objective medical evidence of record, Claimant is totally and permanently incapacitated from performing the duties of his former position as a janitor.

The Hearing Officer concluded that Eldridge had established by a preponderance of the evidence that he was entitled to disability retirement benefits pursuant to KRS 61.600, and recommended the claim be approved. The Deputy Commissioner of Benefit Services reviewed the record and the Hearing Officer's Report, and on August 28, 1988, recommended approval of the claim. Nevertheless, the Disability Appeals Committee met on Friday, September 11, 1998, to consider the case and decided to remand the case in order to have Eldridge undergo the myelogram that Dr. Travis had recommended. (Dr. Travis was the only examining doctor not finding total and permanent disability, and that finding was based on the absence

of a myelogram.) Eldridge again resisted the myelogram. Finally, on September 14, 1998, the Disability Appeals Committee said take the myelogram or else it would look unfavorably at his application. Eldridge did finally agree to the myelogram and signed the appropriate paperwork on November 2, 1998. However, on December 1, 1998, the Deputy Commissioner of Benefit Services cancelled the scheduling of a myelogram because "[S]taff was advised that a myelogram could not be performed without a doctor's order due to the invasive nature of the test." The Committee was advised of this and decided to review the claimant's case based upon the evidence currently in the record.

The "Board of Trustees Report and Order" then concluded Eldridge was not entitled to benefits. The Board's findings include:

5) There are conflicting opinions as to whether or not the Claimant is totally and permanently disabled. Dr. William Collins, Claimant's primary care physician, diagnosed Claimant as suffering from osteoarthritis with a poor prognosis and gives the opinion that Claimant is totally and permanently incapacitated. Dr. J. Pampati, Arthritis and Osteoporosis Center, diagnosed Claimant as suffering from degenerative joint disease with facet hypertrophy, spinal stenosis and apparent nerve root compression due to degenerative disc disease. Dr. Pampati states the opinion that Claimant is totally and permanently incapacitated. (Exhibit 6) Dr. Usha Polisetty, Neurologist, concurs with the diagnosis of degenerative joint disease at both the cervical and lumbar spine

levels, given by Dr. Pampati, and also concurs with the opinion that Claimant is totally and permanently incapacitated. (Exhibit 7)

6) Dr. Russell L. Travis examined the Claimant on July 8, 1996 and determined that, while the Claimant did have spondylitic degenerative changes throughout, they are mild and compatible with Claimant's age. (Exhibit 11) Dr. Rita Ratliff examined the Claimant most recently on January 11, 1997. She notes that the Claimant had no difficulty in getting on and off the examining table, that he was able to squat down and get back up without assistance, that he had negative straight leg raising while sitting and standing, that he showed no motor deficit or neurological impairment, and had no nerve root compression. Dr. Ratliff gave the Claimant the restrictions of lifting no more than 20 pounds for up to 1/3 of the day, lifting 10 pounds no more than 2/3 of the day, standing/walking no more than 4-6 hours per day, and climbing, balancing, stooping, crouching, kneeling, or crawling for no more than 1/3 of the day. (Exhibit 19)

Eldridge appealed to the Franklin Circuit Court which found, "[a] great amount of evidence supports Eldridge's position, but the conflicting evidence concerning Eldridge's disability prevents a finding that the Board acted arbitrarily. There is substantial, objective medical evidence to support both positions." The court affirmed and Eldridge brought his appeal to this Court.

On appeal to this Court, Eldridge has one argument, that the administrative agency's findings were not based on

substantial evidence in his case. The evidence compels us to agree with Eldridge. As the Retirement Systems' brief points out, there are two aspects to a claim for disability benefits. There must be a medical condition(s), and the claimant's impairments must be of a severity to prevent him from performing his previous work duties.

This case presents a question of fact as to whether Eldridge is totally and permanently disabled, i.e. whether Eldridge's medical condition(s) prevent him from performing his work duties. A court may overturn that decision if the administrative agency acted arbitrarily, that is, when the decision is not supported by substantial evidence on the record. Kentucky State Racing Commission v. Fuller, Ky., 481 S.W.2d 298 (1972); Kentucky Commission on Human Rights v. Fraser, Ky., 625 S.W.2d 852 (1981). "The test of substantiality of evidence is whether when taken alone or in light of all the evidence it has sufficient probative value to induce conviction in the minds of reasonable men." Mollette v. Kentucky Personnel Board, Ky. App., 997 S.W.2d 492, 496 (1999). (citation omitted.)

There is simply no way to find significant conflicting evidence in this case. All of the medical evidence shows back problems. The alleged conflicting evidence comes from Dr. Travis. However, Dr. Travis does not deny the medical condition, just the severity. As to the severity, Dr. Travis

said he could not really say without a myelogram. Eldridge finally agreed to submit to this test but then the Retirement Systems cancelled. Dr. Travis's diagnosis is a "not sure" whereas the other doctors were definite. Dr. Ratliff did not conclude the medical condition was as severe as the other doctors, but she too placed restrictions on Eldridge's work duties.

The Retirement Systems makes an issue of the fact that Eldridge did not request his employer make a reasonable work accommodation before he quit. This also is not an issue because Barbara Ison, the school principal, was asked that if Eldridge came back, could they make work accommodations based on his medical restrictions, to which she basically said no.

In spite of all the evidence in Eldridge's favor, and the lack of conflicting evidence, the appellee wants us to hold the claimant's burden to proof beyond a reasonable doubt. Even though Eldridge's proof comes close to that standard, we decline to require such a high burden.

For the foregoing reasons, the judgment of the Franklin Circuit Court is reversed and the matter remanded for proceedings consistent with this opinion.

COMBS, JUDGE, CONCURS.

BAKER, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

James W. Craft, II
Whitesburg, Kentucky

BRIEF FOR APPELLEE:

Katherine Siler
Frankfort, Kentucky