

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-002471-MR

BOBBY TERRY

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 03-CI-00199

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, McANULTY, AND VANMETER, JUDGES.

VANMETER, JUDGE: Bobby Terry appeals from an order of the Franklin Circuit Court affirming the denial of disability retirement benefits by appellee Kentucky Retirement Systems. Terry argues that the circuit court erred by finding that substantial evidence supported appellee's denial of his claim. We disagree with Terry's argument and affirm the circuit court's order.

Terry worked as a school bus driver and part-time janitor for the Lawrence County Board of Education. He was

employed during the month of September 1993 and again from August 17, 1995, until March 15, 2001. Terry retired on April 1, 2001. He filed for disability retirement benefits on March 15, 2001, claiming that he suffered from nerve, back and leg difficulties, and that he was on medications that prevented him from performing his duties as a bus driver. He later admitted that his depression, as well as his back and leg difficulties predated his membership in the retirement system, with the result that he was ineligible to receive disability benefits for those conditions.¹ However, he contended that also he suffers from debilitating sleep apnea which did not predate his enrollment in the retirement system. Following an evidentiary hearing appellee denied Terry's claim for benefits. The Franklin Circuit Court affirmed appellee's denial of benefits. This appeal followed.

An appellate court may not reconsider the merits of a claim.² Relief from an administrative agency's final order may only be granted when "the record compels a contrary decision in light of substantial evidence therein."³

¹ KRS 61.600(2)(d).

² *Kentucky Unemployment Ins. Commission v. King*, 657 S.W.2d 250, 251 (Ky. App. 1983).

³ *Bourbon County Board of Adjustment v. Currans*, 873 S.W.2d 836, 838 (Ky. App. 1994).

The medical evidence indicates that Terry first complained of drowsiness in 1997. In 1999 his physician took Terry off work due to sleep apnea. After several tests and corrective surgery in July 2000, Terry was cleared to return to work. The medical records indicate he had no further sleep apnea complaints.

Terry submitted a disability retirement claim on March 15, 2001, after he was hospitalized for depression and related issues. His initial claim contained no reference to sleep apnea as a disabling factor. In April 2002, after Terry admitted that his other claims were pre-existing conditions, Terry's treating physician submitted a letter linking his alleged disability to his sleep apnea. However, a reviewing physician reported that objective medical evidence, including the notes of Terry's own physician, indicated that Terry's sleep apnea condition had been successfully treated and that it was not the source of his inability to work. Further, although Terry's physician claimed that Terry was unable to work due to his sleep apnea, the record shows that his physician did not treat Terry for this condition after the July 2000 surgery. The hearing officer noted, "[t]here is no objective medical evidence showing that [Terry] is totally and permanently disabled as a result of sleep apnea."

The existence of conflicting medical opinions does not prevent appellee's findings from being supported by substantial

evidence.⁴ Having reviewed the record we cannot say that substantial evidence compelled a decision contrary to that reached by appellee.

For the reasons stated above the order of the Franklin Circuit Court is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Leonard Stayton
Inez, Kentucky

BRIEF FOR APPELLEE:

Jennifer A. Jones
Frankfort, Kentucky

⁴*Kentucky Racing Commission v. Fuller*, 481 S.W.2d 62 (Ky. 1970).