

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-002635-MR

MARGIE SIMMONS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 96-CI-00245

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION

AFFIRMING

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BEFORE: DYCHE, KNOPF, AND MINTON, JUDGES.

DYCHE, JUDGE: We have examined the entire record herein, and find that the opinion by the Circuit Court correctly, adequately, and clearly sets out the facts of this case, the argument of the appellant, and the applicable law. We adopt that opinion as our own.

This matter is before the Court on Petitioner Margie Simmons' appeal from Respondent Kentucky Retirement Systems' ("KRS") decision to deny her disability retirement benefits. The Court, having

considered the arguments, and being otherwise sufficiently advised, hereby makes the following findings.

## **I. Background.**

Ms. Simmons was dismissed from her position as Secretary Principal, Department for Social Insurance, Cabinet for Human Resources on August 16, 1994. Her dismissal was a result of her employer's inability to adequately accommodate Ms. Simmons' physician imposed restrictions due to her disability. In October 1994 Ms. Simmons pursued her dismissal before the Personnel Board. In an Order dated January 30, 1995, the Personnel Board declined to reinstate Ms. Simmons.

On January 25, 1995, Ms. Simmons filed her application for disability retirement benefits. The hearing officer denied her request for disability retirement because Ms. Simmons failed to comply with the statute of limitations for filing an application. In rejecting Ms. Simmons' constitutional claims, the hearing officer found that Ms. Simmons was not precluded from pursuing her Personnel Board claim and her retirement benefits at the same time. The Administrative Appeals Committee adopted the hearing officer's recommendations as final on August 31, 1995. Ms. Simmons appeals the decision to this Court, seeking reversal of their decision.

## **II. Discussion**

When this Court is presented with an appeal from an administrative agency, the Court's function is to ensure that the agency did not act arbitrarily in that its decision is based on substantial evidence of fact in the record and that it did not apply the wrong rule of law. *Kentucky Unemployment Insurance Comm'n v. King*, Ky. App., 657 S.W.2d 250 (1983). Evidence is

substantial if "when taken alone or in light of all the evidence it has sufficient probative value to induce conviction in the minds of reasonable men." *Kentucky Racing Comm'n v. Fuller*, Ky., 481 S.W.2d 298, 308 (1972) (citing *Blankenship v. Lloyd Blankenship Coal Co.*, 463 S.W.2d 62 ([KY.]1970)). While "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence," *Fuller* at 307, an agency acts arbitrarily when it denies relief to a party and "the record compels a contrary decision in light of substantial evidence therein." *Bourbon County Bd. of Adjustment v. Currans*, Ky. App., 873 S.W.2d 836, 838 (1994).

The following statute, KRS 61.600(1) provides the correct rule of law in this case:

Any person may qualify to retire on disability, subject to the following condition[s]:

(c) The person's application shall be on file in the retirement office no later than twelve (12) months after the person's last day of paid employment, as defined in KRS 61.510, in a regular full-time position, as defined in KRS 61.510 or KRS 78.510.

The issues before this Court are whether this provision of the statute, in its application, violated Ms. Simmons' rights to due process, her rights to equal protection, and her protection from absolute and arbitrary government power.

Ms. Simmons argues that KRS 61.600(1)(C) should have been tolled while she was pursuing her claim before the Personnel Board. Ms. Simmons' claim before the Personnel Board was that she should be

reinstated in her position, with reasonable accommodations. She asserts that filing for disability retirement benefits would have resulted in her having to take a position against herself.<sup>1</sup> Therefore, Ms. Simmons asserts that she was unable to apply for disability benefits because she asserted her rights as a disabled person in order to continue her employment.

While this Court is sympathetic to Ms. Simmons' concern of proceeding with conflicting actions, we cannot find a constitutional violation in the statute of limitations. As the hearing officer noted, Ms. Simmons was not precluded from initiating her application for retirement benefits. KRS 61.600 only requires that the application be "on file" within twelve months. This Court cannot find that Ms. Simmons' due process nor equal protection rights were deprived by the process. We further cannot find that the statute of limitations allows an absolute or arbitrary power by the administrative agency. Each agency must comply with their respective statutes and regulations, ensuring that pursuing two actions will not disadvantage an employee.

We cannot find a violation of the Americans with Disabilities Act ("ADA") as well. Ms. Simmons had the right to seek employment as a disabled person, and in fact did through the administrative process. KRS 61.600, even if complied with, did not prevent Ms. Simmons from pursuing an action under the ADA. Thus, Ms. Simmons' claim that KRS 61.600 is unconstitutional because it deprives her an action pursuant to the ADA and cannot be sustained.

### **III. Conclusion.**

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<sup>1</sup> To file for retirement disability, Ms. Simmons must argue she was physically incapacitated from performing her job. To assert rights as a disabled worker, Ms. Simmons must assert that she was able to work with accommodations.

This Court finds that KRS 61.600 is constitutional on its face and in its application. We further find that the administrative agency was correct in denying Ms. Simmons' application for disability retirement benefits in that she failed to comply with the statute of limitations, and that the administrative agency's decision was based on substantial evidence on the record as a whole.

The order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

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