

RENDERED: JANUARY 14, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-000081-MR

LARRY KIDD

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 00-CI-00573

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, McANULTY, AND VANMETER, JUDGES.

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

Kidd was employed as a maintenance man by the Floyd County Fiscal Court for approximately twenty-three years. His job required him to regularly perform physical tasks such as stooping, crouching, climbing, lifting, carrying, and other related tasks. Kidd ceased working in June 2001, claiming that his diabetes, arthritis, carpal tunnel syndrome, and high blood pressure prevented him from continuing to work. In October 2001 Kidd filed a retirement disability application with appellee. Reports were submitted from Kidd's treating physicians, as well as from physicians who reviewed his medical records on behalf of the appellee. On April 17, 2003, appellee adopted the Hearing Officer's recommendation and issued a final order denying benefits. On appeal, the Franklin Circuit Court determined that substantial evidence supported appellee's findings and affirmed the denial of benefits. This appeal followed.

An appellate court may not reconsider the merits of a claim,<sup>1</sup> and 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."<sup>2</sup> For this reason the only issue before us is whether substantial evidence was presented below which compelled a finding in Kidd's favor.

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<sup>1</sup> *Kentucky Unemployment Ins. Commission v. King*, 657 S.W.2d 250, 251 (Ky. App. 1983).

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

Here, the medical reports included in the record show that substantial disagreement existed as to the severity and ramifications of Kidd's medical conditions. Kidd's own doctors disagreed as to the effect his condition had on his ability to perform work tasks. Appellee determined that Kidd did not meet his burden of proof under KRS 13B.090(7) and KRS 61.510(33), as there was insufficient objective medical evidence to support an award of disability benefits. In finding that even though competing medical conclusions were presented appellee's decision was based on substantial evidence,<sup>3</sup> the circuit court cited the report of Dr. Kimbel, a reviewing physician, who stated:

There is no evidence in the objective evidence submitted that the claimant has any changes secondary to his neuropathy, nor is there any evidence of motor weakness or functional impairment. The claimant complains of numbness in the lower extremities, but no other significant abnormal findings are seen. There is no history of any other end organ damage from his diabetes. There is no evidence submitted of any significant arthritis. Extensive old records are submitted. In reviewing this there is no evidence of any previous problems that would show evidence of disability at this time. In looking at the job requirements the claimant's current physical condition it appears the claimant should be capable of performing his previous work activities.

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<sup>3</sup> *Kentucky Racing Commission v. Fuller*, 481 S.W.2d 298, 307 (Ky. 1972).

We cannot say that the circuit court erred by finding that substantial evidence supported appellee's denial of Kidd's claim.

For the reasons stated above we affirm the Franklin Circuit Court's order.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephen A. Sanders  
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BRIEF FOR APPELLEE:

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