

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000106-MR

DARLENE MOONEY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 03-CI-00562

BOARD OF TRUSTEES OF THE
KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, GUIDUGLI, AND McANULTY, JUDGES.

DYCHE, JUDGE: This matter is before us on review of the Franklin Circuit Court's decision affirming the denial of disability retirement benefits to Darlene Mooney. We have reviewed the briefs of the parties and the record, and find that the opinion of the Franklin Circuit Court clearly and correctly sets out the pertinent facts and law, and resolves the case correctly. We therefore adopt it as our own, as set out below.

This matter is before the Court on Petitioner Darlene Mooney's ("Mooney") appeal from Respondent Kentucky Retirement Systems' ("KRS") decision to deny her disability retirement benefits. The Court, having considered the arguments, denies Petitioner's appeal and affirms the decision of the Respondent.

I. Background

Mooney was employed with the Board of Education as a 'substitute teacher caller'. She testified that during work hours on December 6, 1999, while carrying a box weighing approximately five pounds, she heard a pop in her back. She underwent surgery on July 24, 2000. Dr. David Petruska performed Right L4-5 and L5-S1 Diskectomies. Subsequently, Mooney continued to complain of chronic back and right leg pain. Following a sporadic work period, she decided to quit her employment as a substitute teacher caller. Her last date of paid employment was November 3, 2000. She filed her application for disability retirement benefits on July 16, 2001. She argued that she was unable to perform her work duties due to chronic back pain, right leg pain, and depression. Following the denial of her application, Mooney requested, and received, an administrative hearing on September 18, 2002. The Hearing Officer found that Mooney was not unable to perform the duties of a substitute caller for the Board of Education, a sedentary job with minimal lifting. KRS adopted the Hearing Officer's findings and conclusions. Mooney appealed the KRS decision to this Court.

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 (1970)). This Court may uphold an agency's findings even though the record may indicate that there is evidence to the contrary. *Kentucky Comm'n on Human Rights v. Fraser*, Ky., 625 S.W.2d 852 (1981). This is so especially where those findings go to the credibility of witnesses. *Bowling v. Natural Resources & Env'tl. Protection Cabinet*, Ky. App., 891 S.W.2d 406 (1994). 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*, 481 S.W.2d 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 Adjustments v. Currans*, Ky. App., 873 S.W.2d 836, [838] (838 (1994)).

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

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

* * * *

(2) Upon 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. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered.

KRS 61.600. As the hearing officer applied this law to the case before it, the only question for this Court is whether the decision is based on substantial evidence on the record as a whole.

The hearing officer was presented with testimony and documents from numerous physicians. This Court must defer to the determinations of credibility as long as they are supported by substantial evidence on the record as a whole. *See Bowling v. Natural Resources & Env'tl. Protection Cabinet*, Ky. App., 891 S.W.2d 406 (1994). Pursuant to the evidence in the record, this Court finds substantial evidence to support the finding that Mooney failed to establish that she has been mentally or physically incapacitated to perform the job of substitute teacher caller, or jobs with similar duties.

Mooney's back and leg pain require limitations on any lifting and bending. However, the position of substitute teacher caller is classified as sedentary in nature. Thus, her lifting and bending restrictions would not inhibit her ability to return to work in that position. Additionally, Mooney argues that she is unable to remain seated for longer than a period of fifteen (15) to twenty(20) minutes due to her coccydynia condition. However, there is nothing in the record to establish that such a restriction

would prevent her from performing her duties as a substitute teacher caller. Furthermore, there is substantial evidence in the record that her coccydynia condition arose after her last date of employment, as the Hearing Officer held.

Mooney contends depression has mentally incapacitated her from performing the duties of substitute teacher caller or a job of like duties. However, substantial evidence in the record supports the Hearing Officer's findings that Mooney did not suffer from depression as of her last day of employment nor would such depression prevent her from returning to work as a substitute teacher caller. She did not seek counseling until March 2001. Furthermore, there is no evidence in the record that depression affected her in such a way as to incapacitate her from performing the job duties of a substitute teacher caller.

In sum, the evidence of record falls short of compelling a finding that Mooney is incapacitated from performing the job of substitute teacher caller or similar job. The hearing officer correctly weighed the evidence presented from all the doctors, before finding that Mooney did not meet her burden of proof. Therefore, this Court finds substantial evidence on the record as a whole supporting the KRS decision, and Mooney's appeal cannot be sustained.

III. CONCLUSION

This Court finds that Mooney did not meet her burden of proof. The KRS decision to deny her disability benefits was supported by substantial evidence on the record as a whole.

The opinion of the Franklin Circuit Court is affirmed.

GUIDUGLI, JUDGE, CONCURS.

McANULTY, JUDGE, CONCURS IN RESULT.

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