

RENDERED: OCTOBER 21, 2005; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001166-MR

ZINA KIDD

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 03-CI-01172

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; PAISLEY,  
SENIOR JUDGE.<sup>1</sup>

COMBS, CHIEF JUDGE: Zina Kidd appeals from an Opinion and Order of the Franklin Circuit Court of May 24, 2004. The court affirmed the denial of her claim for disability retirement benefits by the Kentucky Retirement Systems (the Systems)

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<sup>1</sup> Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

pursuant to KRS<sup>2</sup> 61.600. Kidd argues that the circuit court erred as a matter of law in concluding that the Systems' decision is supported by substantial evidence. After our review of the record, we have found no error. Thus, we affirm the order of the circuit court.

Kidd began her employment as a cook with the Floyd County Board of Education in 1977. She was later promoted to the position of Cook/Manager. In June 2001, she injured her back while cleaning grease from a filter in a stove vent. She returned to work when school resumed in August of that year with the restriction that she lift no more than twenty-five (25) pounds. However, she resigned from her job in December 2001 due to pain that she was experiencing in her back and legs.

Kidd filed an application for disability retirement benefits in April 2002. After reviewing her medical evidence, the Systems' Medical Review Board recommended denial of the claim. At Kidd's request, a hearing was conducted. The hearing officer agreed with the recommendation of the Medical Review Board and rendered the following findings:

- 8) There is no objective medical evidence to support [Kidd's] claim of back problems. [Kidd's] MRI's of the lumbar spine are normal. Dr. Goodman has indicated in his examination and evaluation that [Kidd] should not lift more than 25 pounds maximum, and

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<sup>2</sup> Kentucky Revised Statutes.

concludes that she could work as a manager.

- 9) The record reflects that [Kidd's] accommodations from Ms. [Brenda] Fish [Kidd's supervisor] were provided, which included assistance available from co-workers.
- 10) It is found that [Kidd] was not solely a cook, but also the manager of the lunchroom and, while she did assist with the other duties, based on the information provided by Ms. Fish accommodations were available for the lifting of up to 50 pounds. [Kidd] testified and the record reflects that she did work in rearranging the stocks in the freezer and pantry, but there are an additional four or five employees who worked under her supervision.
- 11) While [Kidd] has testified and there is evidence to show that she does have various pain problems, there is no objective medical evidence to support her claim for lower back and leg pain.
- 12) If [Kidd] was solely a cook and was responsible for the duties of lifting up to 50 pounds, she could not perform this function. However, due to the fact that she was a manager and also that Ms. Fish indicated that she was accommodated with coworkers [*sic*], it is found that she has failed to provide sufficient evidence to show that she is unable to perform her duties as the Cook/Manager.

The hearing officer concluded that Kidd's claim should be denied because of: (1) her ability to delegate physically demanding jobs to employees under her supervision and (2) her failure to present sufficient medical evidence of a permanently

incapacitating impairment that was required to meet the statutory criteria.

The Systems adopted the hearing officer's recommendations in its final administrative order, and Kidd accordingly appealed that order to the Franklin Circuit Court. The sole issue raised by her in the circuit court was whether there was substantial evidence to support the administrative finding that her physical limitations could be accommodated. The court disagreed with her argument and concluded that the final order of the Board of Trustees of the Systems was supported by the requisite substantial evidence.

Our review of the Board's order is essentially limited to determining whether the agency's decision is arbitrary. Commonwealth, Transportation Cabinet, Department of Vehicle Regulation v. Cornell, 796 S.W.2d 591, 594 (Ky.App. 1990). A decision that is not supported by substantial evidence is deemed to be arbitrary as a matter of law. Id.

Substantial evidence has been conclusively defined by Kentucky courts as that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.

Bowling v. Natural Resources and Environmental Protection Cabinet, 891 S.W.2d 406, 409 (Ky.App. 1994), citing Kentucky State Racing Commission v. Fuller, 481 S.W.2d 298, 308 (Ky.

1972). When the party with the burden of proof is denied relief, "the issue on appeal is whether the evidence in that party's favor is so compelling that no reasonable person could have failed to be persuaded by it." McManus v. Kentucky Retirement Systems, 124 S.W.3d 454, 458 (Ky.App. 2003).

Kidd contends that the hearing officer's findings that accommodations were available to her are not supported by the evidence. She observes that the hearing officer's findings sharply conflict with her testimony. Kidd testified that she resigned because she was unable to perform **any** part of her job without pain -- not just the portion pertaining to the lifting of heavy supplies. She also testified that it was impossible for her to delegate all of her physically demanding, non-managerial work.

However, the hearing officer was not required to accept Kidd's testimony concerning her abilities or her employer's accommodations. See, Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418, 419 (Ky. 1985). As the finder of fact within the context of an administrative proceeding, a hearing officer "is afforded great latitude in [his] evaluation of the evidence heard and the credibility of witnesses. . . ." Bowling, supra, 891 S.W.2d at 409-410. As the sole arbiter of witness credibility, he is free to accept or reject any portions of the testimony presented.

KRS 61.600(3) specifically provides that in making a disability determination, the hearing officer is required to consider "any reasonable accommodation by the employer." Although Kidd has challenged his findings, the hearing officer relied on the following evidence to support his findings: Kidd's testimony concerning the team approach to the work involved in operating a school cafeteria; her authority to delegate job responsibilities to those under her supervision; and a statement provided by her supervisor that co-workers were available to enable Kidd to restrict her duties to those functions falling within the scope of her physical limitations. In light of this evidence, it was neither unreasonable nor arbitrary for the hearing officer to determine that Kidd was not disabled within the meaning of KRS 61.600. Thus, there was substantial evidence to support the administrative findings.

Additionally, Kidd did not meet her burden of establishing that she is disabled under the pertinent statutory criteria. In order to qualify for disability retirement benefits, she was required to submit "objective medical evidence" that she has a permanent incapacity that prevented her from returning to work. KRS 61.600(1)-(3). After considering and summarizing all of the medical evidence, the hearing officer concluded that there was no "objective medical evidence to

support [Kidd's] claim for lower back and leg pain." See, infra  
at p. 3.

On the contrary, objective medical evidence was presented to support the conclusion that there was no injury to the back. A report authored by Dr. Nolan Sakow following an MRI performed in February 2002 provided as follows:

T1 and T2 weighted sagittal and axial views of the lumbar spine were acquired and correlated with that of the patient's lumbar plain films. There is normal alignment. There is no evidence of a fracture or subluxation. The intervertebral disc spaces and vertebral heights are well maintained. The bone marrow signal intensity is normal. There is no evidence of a herniated disc or canal stenosis. The nerve roots exit normally.

Impression: Normal MRI of the lumbar spine. No change from that of the patient's previous lumbar spine done on 2-03-00.

After reviewing the evidence, we cannot conclude that the record compels a different determination of this claim. The objective evidence supports the hearing officer's finding that the medical evidence falls short of explaining Kidd's subjective complaints of pain. We are not permitted to substitute our judgment for that of the administrative tribunal despite the undoubtedly sympathetic and credible arguments of Ms. Kidd.

The order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Randy Clark  
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BRIEF FOR APPELLEE:

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