

RENDERED: SEPTEMBER 2, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002273-MR

JOYCE A. SLITER

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 00-CI-00576

KENTUCKY RETIREMENT SYSTEMS; THE
BOARD OF TRUSTEES OF THE KENTUCKY
RETIREMENT SYSTEMS; AND COUNTY EMPLOYEES
RETIREMENT SYSTEM

APPELLEES

OPINION AFFIRMING

** ** * * *

BEFORE: DYCHE AND GUIDUGLI, JUDGES; PAISLEY, SENIOR JUDGE.¹

DYCHE, JUDGE: Joyce A. Sliter was employed as an assistant manager, cook, and part-time cashier at North Laurel Middle School. Her last day of paid employment was June 25, 1998. She

¹ 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 Kentucky Revised Statutes (KRS) 21.580.

filed this action to recover disability retirement benefits. KRS 61.600. In order to prove her entitlement to such benefits, she had to prove, by competent evidence, that she suffered from her disabling condition prior to the last day of paid employment. The Medical Review Board, Hearing Officer, and Disability Appeals Committee all found that she had not produced such proof. The Franklin Circuit Court affirmed, and this appeal followed. We likewise affirm.

Determination of the burden of proof also impacts the standard of review on appeal of an agency decision. When the decision of the fact-finder is in favor of the party with the burden of proof or persuasion, the issue on appeal is whether the agency's decision is supported by substantial evidence, which is defined as evidence of substance and consequence when taken alone or in light of all the evidence that is sufficient to induce conviction in the minds of reasonable people. **Where the fact-finder's decision is to deny relief to the party with the burden of proof or persuasion, the issue on appeal is whether the evidence 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 (Ky.App. 2003)(emphasis added)(citations omitted).

We have examined the whole record in this light and are not compelled to find a different result than the fact-finder and other reviewing bodies. The evidence of the date of onset of Sliter's complaints is scanty or non-existent. Most

noticeable is the lack of any mention of these complaints in the notes of her internist following a visit just three months prior to her departure from work. Although Sliter's brief attempts to paint this visit as solely for "female problems," other items, such as smoking cessation and the stress she was under, drew the doctor's attention. We have to believe that any sincere complaints of the problems Sliter claims to have disabled her would have been noted by the doctor.

The order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James P. Benassi
Henderson, Kentucky

BRIEF FOR APPELLEE KENTUCKY
RETIREMENT SYSTEMS:

Katherine Rupinen
Frankfort, Kentucky