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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000569-MR

NANCY SWORD

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
CIVIL ACTION NO. 04-CI-00763

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

MINTON, JUDGE: Nancy Sword appeals from the Franklin Circuit Court's order affirming the Kentucky Retirement Systems' decision to deny her claim for disability retirement benefits. Finding no error, we affirm.

Sword was employed as a secretary for the Department of Highways and had sixteen years of eligible service in the state retirement system in July 2000, when she was last employed. In May 2000, Sword applied for disability retirement

benefits due to back pain; but a hearing officer, the Disability Appeals Committee (DAC), and the Franklin Circuit Court denied her claim. In July 2002, Sword again applied for disability retirement benefits due to anxiety and depression. Each side marshaled evidence after which a hearing officer and the DAC denied Sword's claim. Sword's appeal to the Franklin Circuit Court was unsuccessful, and she now asks us to reverse the Franklin Circuit Court's decision.

Our role as an appellate court is to review the administrative decision, not to reinterpret or reconsider the merits of the claim.¹ In reviewing the administrative decision, we must determine whether the agency based it upon substantial evidence.² As long as there is substantial evidence in the record to support the agency's decision, the court must defer to the agency's decision even if there is conflicting evidence.³

In the case at hand, we need not belabor this opinion by reciting at length the findings of the various medical and mental health professionals. Suffice it to say that Sword points to some evidence, such as the notes of Dr. Jay Narola, a psychiatrist, to support her contention that her depression and

¹ Kentucky Unemployment Insurance Commission v. King, 657 S.W.2d 250, 251 (Ky.App. 1983).

² Kentucky Commission on Human Rights v. Fraser, 625 S.W.2d 852, 856 (Ky. 1981).

³ *Id.*

anxiety rendered her disabled. On the other hand, the Retirement System points to evidence showing that Sword was not disabled, such as the findings of Dr. Paul Ebben, a psychologist, who opined that Sword's problems were mild or moderate in nature and were not incapacitating. Furthermore, the record reflects that Sword's depression understandably worsened after the death of her father, an event which has no bearing on whether Sword was disabled when she ceased working because that death occurred approximately two years after Sword's last day of paid employment. In short, the evidence regarding the nature and severity of Sword's mental condition was conflicting.

In all cases, especially those with conflicting evidence, "the trier of facts in an administrative agency may consider all of the evidence and choose the evidence that he believes."⁴ In the face of this conflicting evidence, we cannot say that the hearing officer, DAC, or circuit court erred in finding that Sword was not entitled to disability benefits. As that decision is supported by substantial evidence, we must affirm.

For the foregoing reasons, the decision of the Franklin Circuit Court is affirmed.

⁴ Commonwealth Transportation Cabinet Department of Vehicle Regulation v. Cornell, 796 S.W.2d 591, 594 (Ky.App. 1990).

ALL CONCUR.

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