

RENDERED: May 5, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000612-MR

SHIRLEY MAE HATFIELD

APPELLANT

APPEAL FROM FRANKLIN CIRCUIT COURT
v. HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 00-CI-01204

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

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Shirley Mae Hatfield appeals from the decision of the Franklin Circuit Court, which affirmed the denial of her claim for disability benefits by the Kentucky Retirement Systems' Medical Review Board. Hatfield argues on appeal that the Board erred in holding that she was not disabled. We disagree and affirm the decision.

Hatfield first presented a claim for disability benefits in 1994. She has not worked since that time. Hatfield was a school bus driver in Hardin County, and her employment required her to be seated for five to six hours a day, operate foot pedals and the door mechanism, and to climb, reach and stoop to perform required inspections on her bus. She alleged chronic pain in her back, shoulders and neck and numbness in her legs, and introduced the testimony of three doctors, Shea, Patel and Neustadt, who opined that she was permanently disabled. But the Board found that the doctors' own findings were not supported by objective medical evidence of a disabling condition, but rather on the claimant's subjective complaints of pain. All three doctors' reports, taken at various times during the development of this case, confirm only mild degenerative changes and a lack of abnormalities that would correspond with Hatfield's subjective complaints of pain. Additionally, Dr. Thomas Loeb, an orthopedist, examined Hatfield and concluded that she was not permanently disabled, concluded that she had mild degenerative disc disease in her back, but that the condition should not cause her to be permanently disabled. Loeb also noted that over her medical history, her subjective complaints of pain had increased without corresponding changes in her physical condition.

The hearing officer recommended granting Hatfield's claim, but the Board instead rejected it, citing the objective medical evidence as the basis for its decision. Hatfield appealed to the Franklin Circuit Court and the court affirmed, holding that the Board's decision was based on substantial evidence. This appeal followed.

Kentucky Revised Statute 61.600 governs disability retirement for members of the County Employees Retirement System. Its provisions allow a person to take disability retirement if it is determined on review of the objective medical evidence that a person is permanently incapacitated to perform his or her job or jobs of like duties from which he or she received his or her last paid employment, taking into account reasonable accommodations by the employer. Claims are first heard by a hearing officer, who makes a recommendation to the Board, which has the discretion to accept or reject the hearing officer's recommendation based on the evidence.

Administrative bodies are afforded great latitude in evaluating evidence. Bowling v. Natural Resources, 891 S.W.2d 406 (Ky.App. 1995). A reviewing court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Louisville Edible Oil Products, Inc. v. Revenue Cabinet, Commonwealth of Kentucky, 957 S.W.2d 272, 273 (Ky.App. 1997). In reviewing its decision, we must determine

whether the Board based its decision on substantial evidence. Kentucky Comm'n on Human Rights v. Fraser, 625 S.W.2d 852 (Ky. 1981). Even where there is conflicting evidence, the court must defer to the agency if there is substantial evidence in the record supporting its decision. Id. at 856. In the matter below, the claimant had the burden of proof and the risk of non-persuasion. It is not necessary for the agency to prove the negative of an issue where the positive has not been sufficiently established. Personnel Bd. v. Heck, 725 S.W.2d 13 (Ky.App. 1987).

In this matter, the Board's decision is clearly supported by substantial evidence. Even though the claimant's witnesses opined that she was permanently disabled, the witnesses also testified that objective evidence of a disabling condition was somewhat lacking. The Board was free not to believe that the claimant was totally disabled based on that evidence, as the Board was free to choose which elements of testimony to believe and which to reject. Evidence showed that the claimant's subjective complaints of pain did not correspond to the objective evidence of degenerative changes in her body, and that, while there was evidence that showed some degenerative changes, the Board was free to conclude that the evidence did not show that she was disabled. The Franklin Circuit Court

reached the conclusion that the decision must be affirmed, and so do we.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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