

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000973-MR

MARY COMBS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 05-CI-00871

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: The primary issues in this appeal are whether substantial evidence supports the decision of the Kentucky Retirement Systems to terminate the disability benefits of appellant Mary Combs and whether she was denied due process of law in the proceedings before the Administrative Appeals Committee. Finding no error in the opinion of the Franklin Circuit Court upholding the committee's determination, we affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Combs was granted disability retirement benefits in September 2000, pursuant to an August 2000 circuit court order, which found that the objective medical evidence compelled a finding of disability due to herniated discs in her cervical spine. In March 2003, Combs was notified that, pursuant to KRS 61.610, the medical review physicians would analyze her recent medical records in an annual review. Thereafter, the medical review physicians determined that Combs was no longer disabled and recommended that her disability benefits be terminated as provided for in KRS 61.615(3). At Combs' request, an administrative hearing was conducted on her appeal of the termination recommendation.

After receiving evidence and conducting a hearing, the administrative hearing officer initially recommended that Combs' benefits be continued. However, he noted in his report that he had requested and failed to receive a January 2004 report from Dr. Phillip Tibbs, without which it was impossible to determine if Dr. Tibbs continued to recommend surgical intervention as he had prior to the award of benefits. After reviewing the evidence and the hearing officer's report, the Administrative Appeals Committee remanded the matter for the hearing officer to obtain the requested document. The hearing officer then obtained and reviewed the requested report from Dr. Tibbs, as well as a report from Dr. Thad Jackson based upon an October 11, 2004, examination of Combs which had occurred just two days before the hearing officer rendered his initial recommendation. Based upon his consideration of this newly received medical

information, the hearing officer issued an amended report which included the following findings:

The Hearing Officer's previous report and recommended order is hereby modified to include Dr. Tibbs' report of January 17, 2004 as Exhibit 46 and Dr. Jackson's October 11, 2004 report as Exhibit 47. It is found that the evidence of record shows that the Claimant's condition has improved and that she now, based on these exhibits, has subjective complaints of numbness and pain, but the physical therapy is working, and there is no nerve root compression as had been previously indicated by Dr. Tibbs in Exhibit 6. In this exhibit, Dr. Tibbs recommended surgery for disc herniation and cord deformity at C8 and changes at C4-C5 and C5-C6.

Counsel for the Claimant has argued that the evidence continues to demonstrate small disc herniation at C3-C4, C4-C5, although the reading by Dr. Tibbs does not support this contention. Dr. Jackson states these are small and do not account for her symptomatology.

Counsel has also argued as to the basis of the remand and the process. Pursuant to KRS 13B.120, the agency has the authority to remand in whole or in part to the Hearing Officer for further proceedings as appropriate.

It is clear, based on the additional medical evidence, that the Claimant's condition has improved and it is so found.

It is further clear that there is no need for surgical intervention and, while the Claimant still has complaints as to pain and numbness, the medical records do not support her claim that her condition has remained the same, i.e., still having disc herniation as previously determined. **These are the most recent reports in this record, and Dr. Tibbs' report is completely changed from his initial determination.** [Emphasis added.]

On these findings, the hearing officer concluded that Combs had not provided objective medical evidence to support continuation of her disability retirement benefits and recommended upholding the decision of the Retirement System to discontinue those

benefits. The Administrative Review Committee adopted the hearing officer's recommendation and terminated Combs' disability benefits.

On petition for review, the circuit court determined that the reports of Drs. Jackson and Tibbs provided substantial evidence supporting the Retirement Systems' decision to terminate Combs' disability benefits. He also found no due process deprivation in the failure to afford her an opportunity to submit evidence in response to those reports. We find no error in either determination.

The scope of judicial review of an agency determination is clearly defined in the opinion of our Supreme Court in *Kentucky Commission on Human Rights v. Fraser*, 625 S.W.2d 852, 856 (Ky. 1981):

The rule in Kentucky is that if there is substantial evidence in the record to support an agency's findings, the findings will be upheld, even though there may be conflicting evidence in the record. *Taylor v. Coblin*, Ky., 461 S.W.2d 78 (1970); *Reeves v. Jefferson County*, Ky., 245 S.W.2d 606 (1951).

Thus, despite the fact that in this case Combs may have offered evidence to the contrary, it is clear that substantial evidence supported the decision to discontinue her benefits. A review of the record demonstrates that it was neither unreasonable nor an abuse of discretion to conclude, on the basis of the objective medical evidence in the reports of Drs. Tibbs and Jackson, that the herniation in Combs' spine had improved to the point that her symptomatology could no longer be explained. Accordingly, we find no error in the trial court's conclusion that the decision of the administrative review committee must be upheld.

We further agree with the trial judge that there was no violation of due process in denying Combs' request to further supplement the record with additional medical evidence. Both sides were afforded an opportunity to respond to the reports of Drs. Tibbs and Jackson, dispelling Combs' contention that she was not afforded a proper “hearing” after the reports were submitted to the hearing officer. The components of procedural due process in the context of Kentucky administrative proceedings are outlined in the opinion of the former Court of Appeals in *Kentucky Alcoholic Beverage Control Board v. Jacobs*, 269 S.W.2d 189, 192 (Ky. 1954):

In order that the requirements of due process of law be satisfied, the litigant must be afforded procedural due process as well as substantive due process. This includes a hearing, the taking and weighing of evidence, if such is offered, a finding of fact based upon consideration of the evidence, the making of an order supported by substantial evidence, and, where the party's constitutional rights are involved, a judicial review of the administrative action. (Citations omitted).

It is also plain that KRS 13B.080 affords hearing officers considerable discretion as to the manner in which administrative hearing shall be conducted:

(1) A hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. When a prehearing order has been issued, the hearing officer shall regulate the hearing in conformity with the prehearing order.

(2) The hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement. The hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed

findings of fact and conclusions of law, and proposed recommended or final orders.

Reason dictates that there must be some cut-off for the submission of proof. There is no indication that Combs was denied the opportunity to offer any evidence she chose before the initial hearing. Nor is there dispute as to why the additional reports were considered. The case was remanded only because the hearing officer noted in his original report that he could not fully assess whether there had been a change in Combs' condition without reviewing Dr. Tibbs's report, which had been referred to by other doctors but not provided as part of the proof. In his report after remand, the hearing officer noted that Dr. Jackson's examination could not have been previously considered as it was conducted just two days before he issued his initial report. Considering these factors, as well as the fact that both parties were afforded an opportunity to respond to the additional reports, we find no due process deprivation occurred in this case.

Because we find no error in the circuit court's decision that substantial evidence and a correct application of the law supported the decision to terminate Combs' disability benefits, we affirm its judgment in this appeal.

ALL CONCUR.

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