

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001818-MR

ROSE HUFF

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 05-CI-01343

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; NICKELL AND WINE, JUDGES.

NICKELL, JUDGE: Rose Huff appeals from the August 2, 2006, opinion and order of the Franklin Circuit Court affirming a decision of the Kentucky Retirement Systems (hereinafter “System”) denying Huff disability retirement benefits. We affirm.

Huff was employed by the Kentucky Department of Community Based Services as a case management specialist. Her membership in the System began on July 1, 1984, and ended on July 4, 2002, her last day of paid employment, with 216 months of accumulated service. Huff’s job was classified as light-duty work and consisted of

interviewing applicants for the K-TAP program, maintaining contact with program participants, making home visits, coordinating efforts of participants to obtain employment, reviewing work of other case workers for accuracy, and assisting in the training of other case managers. Her employer stated that Huff usually stood or walked up to one hour during a seven and one-half hour work day, and had the ability to alternate between sitting and standing. She was required to lift up to ten pounds occasionally.

Huff's medical history and medical records date back to 1997. Some of these records pertain to conditions that would not be considered disabling, or which were successfully treated including hypertension, bunions, and an endometrial polyp. In December 2000 Huff underwent a heart catheterization which was completely normal. In March 2001 a lumbar x-ray of Huff's spine showed mild degenerative changes at L1-L2. An x-ray showed post rod fixation in the right hip from a 1991 fracture and mild early osteoarthritis, but no bone or joint abnormality. A CT scan of the head in July 2001 was normal.

Huff applied for disability retirement benefits on December 27, 2001. She claimed to have sustained injuries as the result of an automobile accident¹ in October 2001, including torn cartilage and muscles. She also claimed a constellation of other disabling medical maladies, including severe sleep apnea; herniated discs; pinched nerves and spurs in her back and feet; a strained lower back; foot swelling; asthma and breathing

¹ Our review of the record does not reveal whether the automobile collision was work-related. However, as no challenge has been raised, we must assume the collision and the alleged resultant injuries were work-related and will treat them as such for purposes of this appeal.

problems; panic and anxiety attacks; heart problems; high blood pressure; degenerative disc disease; thyroid problems; headaches; numbness in her hands, back, and feet; a distended bladder; osteoarthritis; stress; depression; and chronic pain.

The System's Medical Review Board denied disability retirement benefits on July 8, 2002. Huff requested an administrative hearing, which was held on August 11, 2003. The Hearing Officer found insufficient objective medical evidence in the record to support a finding that Huff was totally and permanently disabled, and recommended denial of Huff's claim on November 26, 2003. The System's Board of Trustees affirmed the Hearing Officer's recommendation and denied Huff's claim for disability retirement benefits on February 26, 2004. Huff appealed the System's denial of her application for disability retirement benefits to the Franklin Circuit Court.² That appeal was held in abeyance pending the System's review of her re-application for disability retirement benefits which was filed on June 1, 2004, based upon new evidence of disability.³

Huff's re-application for disability retirement benefits was denied by the Medical Review Board on August 20, 2004, and an administrative hearing was subsequently held on December 17, 2004. The Hearing Officer concluded Huff was substantially limited and practically incapacitated by her degenerative disc disease, but only because a fall that occurred after her last date of paid state employment aggravated

² Civil Action No. 04-CI-00401.

³ With her re-application for benefits, Huff submitted additional medical records, including an MRI of her lumbar spine from December 2003, an MRI of her cervical spine from May 2004, and records from a hospital stay in January 2004 related to depression and anxiety.

the pre-existing degenerative changes. His recommendation to deny benefits was affirmed by the System's Board of Trustees on August 25, 2005. Huff appealed this denial to the Franklin Circuit Court.⁴

By agreed order, both the appeal from the initial denial of disability retirement benefits and the appeal from the denial of the re-application for disability retirement benefits were consolidated. On August 2, 2006, the circuit court issued its opinion and order affirming both denials of disability retirement benefits. This appeal followed.

The crux of Huff's appeal is that the System's original decision incorrectly ignored overwhelming substantial medical evidence she had provided in support of her claim. Additionally, she argues the System acted arbitrarily in denying her re-application for disability retirement benefits since she believes it was supported by additional overwhelming and substantial evidence. We disagree.

To trigger state disability retirement benefits, pursuant to Kentucky Revised Statutes (KRS) 61.600(3)(a)-(d), a claimant must offer "objective medical evidence by licensed physicians" showing that since the last day of her paid state employment, she "has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which [she] received [her] last paid employment." Such incapacity must be the result of bodily injury, mental illness, or disease, and must be deemed permanent. Further, the incapacity cannot "result directly or indirectly from bodily injury, mental

⁴ Civil Action No. 05-CI-01343.

illness, disease, or condition which pre-existed membership in the system. . . .” A claimant for disability retirement benefits must prove she satisfies all the foregoing statutory criteria to justify payment of benefits. *See Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky.App. 1980).

When a claimant is denied administrative relief, the question to be decided on appeal is “whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in [claimant’s] favor,” *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky.App. 1984), and whether the denial of the relief sought was arbitrary. *Bourbon County Board of Adjustment v. Currans*, 873 S.W.2d 836, 838 (Ky.App. 1994).

In determining whether an agency’s action was arbitrary, the reviewing court should look at three primary factors. The court should first determine whether the agency acted within the constraints of its statutory powers or whether it exceeded them. . . . Second, the court should examine the agency’s procedures to see if a party to be affected by an administrative order was afforded his procedural due process. The individual must have been given an opportunity to be heard. Finally, the reviewing court must determine whether the agency’s action is supported by substantial evidence. . . . If any of these three tests are failed, the reviewing court may find that the agency’s action was arbitrary.

Bowling v. Natural Resources & Environmental Protection Cabinet, 891 S.W.2d 406, 409 (Ky.App. 1995) (quoting *Commonwealth, Transportation Cabinet v. Cornell*, 796 S.W.2d 591, 594 (Ky.App. 1990)).

It is fundamental “that administrative agencies are creatures of statute and must find within the statute warrant for the exercise of any statutory authority which they

claim.” *Department for Natural Resources & Environmental Protection v. Stearns Coal & Lumber Co.*, 563 S.W.2d 471, 473 (1978). “[F]indings of fact are essential to support the orders of administrative agencies, at least where the order issued by the agency rests upon a factual determination.” *Pearl v. Marshall*, 491 S.W.2d 837, 839 (Ky. 1973).

In reviewing an administrative decision, the circuit court’s role is not to reinterpret or reconsider the merits of the claim. *Kentucky Unemployment Insurance Commission v. King*, 657 S.W.2d 250, 251 (Ky.App. 1983); *Kentucky Board of Nursing v. Ward*, 890 S.W.2d 641, 642 (Ky.App. 1994). Instead, the circuit court must determine two things: are the findings of fact “supported by substantial evidence of probative value” and has the administrative agency “applied the correct rule of law to the facts so found.” *Southern Bell Telephone & Telegraph Co. v. Kentucky Unemployment Insurance Commission*, 437 S.W.2d 775, 778 (Ky. 1969) (citing *Brown Hotel Co. v. Edwards*, 365 S.W.2d 299 (Ky. 1962)). See also *Kentucky Commission on Human Rights v. Fraser*, 625 S.W.2d 852, 856 (Ky. 1981). As long as there is substantial evidence in the record to support the agency’s decision, the circuit court must defer to the agency, even if there is conflicting evidence. *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972) (citing *Blankenship v. Lloyd Blankenship Coal Co., Inc.*, 463 S.W.2d 62 (Ky. 1970)).

Our standard⁵ in reviewing the circuit court’s affirmance of an

⁵ KRS 13B.150(2) states as follows:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for

administrative decision is whether the circuit court's findings are clearly erroneous. *Johnson v. Galen Health Care, Inc.*, 39 S.W.3d 828, 833 (Ky.App. 2001). See also Kentucky Rules of Civil Procedure (CR) 52.01. Thus, we begin our review by considering the findings of fact relied upon by the System in denying disability retirement benefits to Huff. In his recommended order denying Huff's re-application for disability retirement benefits, the Hearing Officer made the following findings of fact and conclusions of law:

The Claimant is permanently incapacitated by her degenerative disc disease, but her condition has been aggravated by a fall that occurred after the Claimant's last day of paid employment. Even with the fall in September, 2003, the MRI to which the Claimant directs the undersigned Hearing Officer's attention shows mild degenerative disease. The record does not show that the Claimant was permanently and totally incapacitated on account of degenerative disc disease as of her last day of paid employment, nor does it show that she was unable to sit, stand, walk or lift as the Claimant originally alleged.

The record contains no objective medical evidence to suggest that Ms. Huff's depression and anxiety are permanently or totally disabling. Dr. Campbell has

further proceedings if it finds the agency's final order is:

...

- (b) In excess of the statutory authority of the agency;
- (c) Without support of substantial evidence on the whole record;
- (d) Arbitrary, capricious, or characterized by abuse of discretion; [or]

...

- (g) Deficient as otherwise provided by law.

completed reports in which he states his opinions. These opinions appear to be for the benefit of some reviewer, or perhaps for the records of Pathways, Inc., but they do not include any mention or report of any psychological testing. The record contains little evidence at all regarding the claim of panic disorder, other than brief mention of anxiety attacks. A single episode of hospitalization led to simplification of Ms. Huff's medication, with the result that she experienced significant improvement in her mental state.

The record contains no objective medical evidence that Ms. Huff's alleged distended bladder is in any way totally and permanently disabling.

The record does contain objective medical evidence of problems with Ms. Huff's knees, but does not contain evidence that the knee problems are permanently and totally disabling.

The record shows that the Claimant did suffer from severe obstructive sleep apnea, but it also shows that this was successfully treated. Although the Claimant has alleged continued problems with sleep, the record contains no objective medical evidence to support that claim.

The record does not show objective medical evidence that any of the other ancillary conditions, alleged by Ms. Huff to be disabling, actually have disabled her as of her last day of paid employment.

. . . .

The record, taken as a whole, does not contain substantial evidence that the Claimant, Rose Huff, suffered from permanent and total disability within the meaning of KRS 61.600, as of her last day of paid employment from any of her individual ailments. Although the claimant clearly has numerous medical problems, this Hearing Officer cannot find substantial evidence in the record as a whole that the combined effect of her several ailments would have made Ms. Huff totally and permanently disabled as of the last day of her paid employment. In part, this is because the record lacks

objective medical evidence regarding the psychological claims. . . . Ms. Huff is not entitled to disability retirement benefits.

Contrary to Huff's argument, the Hearing Officer's order recited substantial evidence consisting of adequate findings of fact and conclusions of law, including a detailed summary of medical treatment Huff received from several different physicians. Although substantial evidence existed which could have supported a finding of disability, other substantial evidence clearly supported the System's determination that Huff did not meet her burden of showing she was disabled from her job duties. *See* KRS 61.665 (3)(d). We cannot say the evidence was insufficient to support the Hearing Officer's finding that "[t]he record does not show objective medical evidence that any of the other ancillary conditions, alleged by Ms. Huff to be disabling, actually have disabled her as of her last day of paid employment." Thus, the System did not act in an arbitrary fashion in denying disability retirement benefits to Huff.

Finally, the circuit court undertook a detailed analysis of the evidence presented to it for review, including the Hearing Officer's reports and testimony to the contrary presented by Huff. As the court aptly noted, "[c]onflicting evidence does not compel reversal." Further, the court correctly found "Huff had the burden to prove her worsening condition was not the result of a 2003 fall. Since the fall occurred after her last day of paid employment, any disability caused by it cannot be considered." After consideration of all of the evidence and arguments presented, the circuit court concluded

Huff had failed to meet her burden⁶ and thus, reversal was not required. The circuit court's well-crafted order properly applied the law to the facts and we cannot say its findings were clearly erroneous.

Therefore, for the foregoing reasons, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Stephen C. Sanders
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Katherine Rupinen
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⁶ We note, as did the trial court, that Huff incorrectly attempted to shift her burden of proof to the System. The burden of proving entitlement to disability retirement benefits remains on the person seeking such benefits. *See Energy Regulatory Commission v. Kentucky Power Co., supra.*