

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-002161-MR

MARK TALLEY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SAM G. McNAMARA, JUDGE
ACTION NO. 05-CI-01612

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: LAMBERT, TAYLOR, AND WINE, JUDGES.

LAMBERT, JUDGE: Mark Talley appeals the decision of the Franklin Circuit Court affirming the Kentucky Retirement Systems' decision to deny his application for disability benefits. For the reasons set out herein, we affirm the judgment below.

Background

After working as a clerk in state government for a numbers of years, Mark Talley found himself in a new working environment as a result of an administrative restructuring. Soon thereafter, Talley terminated his employment with the State. He then

applied to the Kentucky Retirement Systems for disability benefits, alleging occupational disability due to head trauma, migraine headaches, vision loss, memory loss, nausea, and irritability. After conducting an evidentiary hearing and consulting medical experts, the Systems denied Talley's claim.

Issue and Legal Standards

Talley claims that he is entitled to disability benefits under KRS 61.600(3), which provides that a state-government employee is entitled to benefits if and only if he is *permanently* incapacitated from working, *even considering the possibility of reasonable work-place accommodations*. Under KRS 13B.090(7), which governs administrative procedure, the burden of persuasion rests upon the disability claimant. In reviewing a state agency's administrative decision adverse to a claimant, we will not overturn it unless the agency has acted arbitrarily, outside the scope of its authority, applied an incorrect legal standard, or its decision is not supported by substantial evidence. *E.g., Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 307-08 (Ky. 1972). “Substantial evidence” is proof having “sufficient probative value to induce conviction in the minds of reasonable men.” *Kentucky Retirement Systems v. Heavrin*, 172 S.W.3d 808, 814 (Ky.App. 2005). In sum, synthesizing the controlling legal standards, the question before us is whether the circuit court erred in holding that substantial evidence supports the Systems' determination that Talley failed to prove by a

preponderance of the evidence that he has a permanent, occupational disability that cannot be accommodated.

Analysis

I.

All the medical experts that expressed an opinion regarding Talley's disability claim in the proceedings below indicated serious reservations about Talley's ability to work. And we take these reservations to mean, in effect, that they believed Talley to be occupationally disabled, at least presently. But, somewhat frustratingly, we note that none of these experts, nor any other evidence of record, definitively establishes that Talley's disability is permanent or whether it could be accommodated. Indeed, the inconclusiveness of the record only allows reasonable minds to reach the conviction that Talley is presently occupationally disabled. It does not allow reasonable minds to reach any conviction, opposed to a speculative supposition, whether his disability is permanent or can be accommodated. Consequently, we hold that the circuit court did not err in holding that substantial evidence supports the Systems' determination that Talley failed to meet his burden of persuasion that, more likely than not, he is permanently disabled and that his disability cannot be accommodated.

II.

Because we have found that Talley failed to prove that his disability is permanent and cannot be accommodated, he cannot prevail on his claim for benefits in

any case. Thus, the question of whether he is not entitled to benefits under KRS 61.600(3)(d) because the disability is the result of a preexisting condition is moot, and we therefore decline to address its merits.

Conclusion

For the the foregoing reasons, we affirm the judgment of the Franklin Circuit Court.

TAYLOR, JUDGE, CONCURS.

WINE, JUDGE, CONCURS IN RESULT AND FILES SEPARATE OPINION.

WINE, JUDGE, CONCURRING IN RESULT: I concur in the result only. I believe the Hearing Officer made insufficient findings as to the Appellant's preexisting condition under KRS 61.600(3). While the Appellant admitted to the facts surrounding his head injury 40 years earlier, he now claimed current work conditions had aggravated his mental impairments. In her findings of fact, the Hearing Officer simply says ". . . the presence of a preexisting condition is at issue in this case."

Had the Hearing Officer made further findings, it is very likely that the denial of benefits could have been predicated on the simple finding that there *was* a preexisting condition. *See McManus v. Kentucky Retirement Systems*, 124 S.W.3d 454 (Ky.App. 2003).

I concur with the majority that Talley has failed to show by a preponderance of the evidence either that he has a permanent disability, or that if his disability was permanent, there were no reasonable accommodations possible.

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