RENDERED: SEPTEMBER 28, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

**ORDERED NOT PUBLISHED BY SUPREME COURT:
OCTOBER 15, 2008
(FILE NO. 2007-SC-0944-D)**

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002352-MR

BOARD OF TRUSTEES,
KENTUCKY RETIREMENT SYSTEMS — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 05-CI-1304

MICHAEL DOSSETT — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, TAYLOR AND WINE, JUDGES.

LAMBERT, JUDGE: The Board of Trustees of the Kentucky Retirement Systems appeal the Franklin Circuit Court's finding that no substantial evidence of record indicates that Michael Dossett's (Dossett) four-month employment period as a police recruit constituted nonhazardous-duty service. We agree that Dossett's four-month recruit period constituted nonhazardous-duty service and, therefore, affirm the judgment below.

Officer Micheal Dossett approached the Systems seeking to purchase service credit toward his pension for a four-month period when he was employed as a Louisville Police Recruit in the Fall and Winter of 1976. At that time, Dossett did not and could not contribute to any qualified retirement plan. The Systems determined that Dossett could purchase service credit for the time in question, but only at the hazardous-duty service rate, which is substantially more expensive than the nonhazardous-duty service rate. Contending that his employment as a full-fledged police officer is hazardous-duty service but that his recruit period was nonhazardous-duty service, Dossett pursued administrative remedies within the Systems. In the end, the Systems stood by its original determination that the recruit period constituted hazardous-duty service. Hence, Dossett brought an original action in the Franklin Circuit Court to challenge the Systems' determination. On review, the circuit court determined that no substantial evidence supported the Systems' insistence that Dossett's four-month recruit period constituted hazardous-duty service.

The sole question here is whether Dossett's four-month recruit period in 1976 and 1977 is properly classified as hazardous-duty service. In reviewing a state agency's administrative decision, we will not overturn it unless the agency has acted arbitrarily, outside the scope of its authority, applied an incorrect legal standard, or the decision is not supported by substantial evidence. *E.g., Kentucky State Racing Comm'n 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. Haevrin*, 172 S.W.3d 808, 814 (Ky.App. 2005).

The official documentary or paper record of Dossett's service as a police officer, both as a recruit and as a full-fledged officer, has all been classified as hazardous-duty service for purposes of the Retirement Systems. In contrast, the uncontroverted testimonial evidence given by Systems' employees during the the administrative hearing below indicates that Dossett's employment as a recruit was nonhazardous-duty service. The Systems' own employees testified without rebuttal that, to their knowledge, Dossett is the only Louisville Police Officer among hundreds who has had his recruit time classified as hazardous by the Systems. In fact, the Systems' own employee explained that the sole reason for the Systems' current classification of Dossett's recruit time as hazardous is due to a clerical error in the paper record that Dossett almost certainly could never have perceived as a layman in terms of administrative employment documents. Finally, the same Systems employee testified, again without rebuttal, that classification errors similar to Dossett's, had been corrected by the Systems at the time an Officer purchased service credit.

Despite the overwhelming evidence indicating that Dossett is the victim of a simple clerical error that he could not reasonably have been expected to discover on his own prior to these proceedings, the Systems remains steadfast that the documentary records regarding Dossett's employment classification are somehow automatically correct, unimpeachable, and substantial evidence in their own right regardless of the testimony of its own employees refuting this position. While we of course regard the documentary proof regarding Dossett's employment history as *some* evidence against his position, we do not regard it as *substantial* evidence against his position in light of the facts and circumstances of this case. Indeed, the Systems' repeated reliance on the

documentary record despite the unrebutted proof impeaching it, does not constitute reliance on the sort of proof having "sufficient probative value to induce conviction in the minds of reasonable men." *Kentucky Retirement Systems v. Haevrin*, 172 S.W.3d 808, 814 (Ky.App. 2005). Consequently, we agree with the Franklin Circuit Court's adjudication of this dispute and affirm its ruling.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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