

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002426-MR

MAGDALENE JANES

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SAM G. McNAMARA, JUDGE
ACTION NO. 06-CI-00863

BOARD OF TRUSTEES OF KENTUCKY
RETIREMENT SYSTEMS

APPELLEE

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: LAMBERT, TAYLOR, AND WINE, JUDGES.

WINE, JUDGE: Magdalene Janes was employed as a nurse's aide at the Glasgow State Mental Hospital and Retardation Center. Her last date of full-time employment was July 5, 2004. On June 30, 2004, she filed an application for disability retirement benefits, claiming that she is permanently disabled from performing her job duties due to severe back pain. Her application was denied by the medical review panel three times and she subsequently requested an administrative hearing.

After considering the evidence, the hearing officer recommended that Janes' claim be denied because the disability pre-existed her employment and because she had failed to establish that she is permanently incapacitated from performing her job duties. Janes did not file exceptions to the hearing officer's report. Thereafter, on May 24, 2006, the Disability Appeals Committee entered a final order adopting the hearing officer's report.

Janes then filed an appeal to the Franklin Circuit Court pursuant to KRS 61.665(5) and 13B.140. The Retirement Systems moved to dismiss, arguing that Janes' failure to file exceptions left no issues preserved for judicial review. The circuit court agreed and dismissed the appeal. Janes now appeals to this Court.

In *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004), the Kentucky Supreme Court addressed the requirements for seeking judicial review from a final order of an administrative agency. The Court rejected the position that the filing of exceptions from the hearing officer's recommended order is an administrative remedy which the aggrieved party must exhaust before obtaining judicial review. Consequently, the Court held that a reviewing court has jurisdiction to review the final order notwithstanding the failure to file exceptions. *Id.* at 563-64.

Nevertheless, the Court went on to hold that the filing of exceptions is necessary to preserve issues for judicial review.

Under Chapter 13B, the filing of exceptions provides the means for preserving and identifying issues for review by the agency head. In turn, filing exceptions is necessary to preserve issues for further judicial review. *Cf. Eiland v.*

Ferrell, Ky., 937 S.W.2d 713, 716 (1997) (failure to file objections to a domestic relations commissioner's report adopted by the trial court precluded challenging, on appeal, whether the trial court's order was supported by sufficient evidence). Under Kentucky law, this rule of preservation precludes judicial review of any part of the recommended order not excepted to *and* adopted in the final order. *Cf. United States v. Central Bank & Trust Co.*, Ky., 511 S.W.2d 212, 214 (1974). (The failure to file written objections to a commissioner's report precluded aggrieved party from "questioning on appeal the action of the circuit court in confirming the commissioner's [report].") Thus, when a party fails to file exceptions, the issues the party can raise on judicial review under KRS 13B.140 are limited to those findings and conclusions contained in the agency head's final order that differ from those contained in the hearing officer's recommended order.

Id.

Based upon *Rapier v. Philpot*, the circuit court concluded that Janes had failed to preserve any issues for judicial review. We likewise agree that *Rapier v. Philpot* is controlling and we adopt the following portion of the circuit court's opinion:

[Janes] argues that policy dictates an upheaval of the Kentucky Supreme Court's requirement for the filing of exceptions to preserve the record for appeal. According to [Janes], the Complaint provides notice of the issues for judicial review, making exceptions unnecessary and redundant. However, the issue is preservation of issues and strict compliance with the administrative appeal process, not notice. The filing of exceptions allows the agency head, in this case the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems, the opportunity to review and correct any actual problems [Janes] took exception to in the Hearing Officer's Report and Recommended Order. The Complaint does not provide the agency head with the opportunity to consider [Janes's] issues. Thus, in order to properly preserve issues for judicial review,

a party must take exception to the Hearing Officer's Report and Recommended Order before the agency's final decision.

[Janes] finally argues that she can still file for judicial review of the record as a whole, even if she did not file exceptions, under the arbitrary, capricious, or abuse of discretion standard. It is true that a court may examine whether an agency based its decision on substantive evidence or made an arbitrary decision. A court may also determine whether an administrative agency misapplied the law or exceeded its authority. However, the Court may only examine these issues if either [Janes] filed exceptions to the Hearing Officer's Report or if the [Disability Appeals Committee] deviated from the Hearing Officer's Report. As neither situation is the case here, the Court need not examine the propriety of the [Committee's] findings of fact and conclusions of law. In fact, since no issue was properly preserved for this Court's review, the case must be dismissed.

While [Janes] may assert many arguments in support of reform of the administrative system, the law and policy in favor of the mandatory filing of exceptions to a Hearing Officer's Report before it is adopted to preserve issues for appeal is clear. This Court is bound by the Kentucky Supreme Court's ruling on the matter and hereby **GRANTS** the Motion to Dismiss as there are no properly reviewable matters before the Court.

Accordingly, the order of the Franklin Circuit Court dismissing Janes' appeal is affirmed.

ALL CONCUR.

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