

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000016-WC

KENTUCKY RETIREMENT SYSTEMS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 2005-CI-01421

DORIS JANE HARROD

APPELLEE

OPINION  
AFFIRMING IN PART AND REVERSING IN PART

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BEFORE: COMBS, CHIEF JUDGE; MOORE AND VANMETER, JUDGES.

MOORE, JUDGE: Kentucky Retirement Systems (KERS) appeals the Franklin Circuit Court's order granting Doris Jane Harrod's appeal and reversing the final order of the Board of Trustees of KERS. After a careful review of the record, we affirm in part and reverse in part.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Harrod was employed by KERS as an Administrative Specialist III. As of her last day of paid employment on March 2, 2002, she had accumulated 150 months of service credit. When Harrod filed for disability retirement benefits on May 21, 2001, she alleged that she was disabled due to pain and numbness in her arms that she experienced when she used them for an extended period of time. In November 2001, the KERS Medical Review Board denied Harrod's disability benefits application.

Harrod requested an administrative hearing to appeal the denial of her application. However, a hearing was not conducted until several years later on November 29, 2004. During that three-year delay, Harrod added other ailments to her claim for disability retirement benefits, which the hearing officer addressed in his report. The hearing officer found that Harrod's job as an Administrative Specialist III fell "within the category of sedentary to light work activity as defined by KRS 61.600." The hearing officer noted that, per the restrictions imposed on her by her doctor, Harrod "was accommodated to lifting no more than [ten] pounds, no overhead work, no prolonged standing/sitting without changing positions, no repetitive bending, twisting or stooping and no operating potentially dangerous equipment." He further noted that, in addition to the claims of pain and numbness in her arms that Harrod alleged in her application for disability benefits, "[d]uring the hearing process, she also alleged disability due to neck problems, lumbar pain and psychiatric impairments."

The hearing officer concluded that Harrod's psychiatric impairments preexisted her membership in KERS and, therefore, they could not form a basis for providing her disability benefits. Additionally, he found that Harrod's lumbar problems occurred following her last day of paid employment; thus, disability benefits could not be awarded for those problems. The hearing officer concluded that Harrod was

not disabled by numbness and tingling in her hands or cervical problems. The records indicate [Harrod's] surgery<sup>[1]</sup> was successful from an objective standpoint. . . . [Doctors] have indicated that [Harrod] is capable of performing her sedentary work activity with minor accommodations. [Harrod's] employer has, and apparently would continue, to abide by the restrictions of alternating positions as needed, no lifting more than [ten] pounds, no overhead work, no repetitive bending, twisting or stooping and no operating potentially dangerous equipment.

Regarding a functional capacity evaluation performed by Rebecca George in December 2004, the hearing officer noted that Ms. George determined that Harrod could not work a sedentary job for a full eight-hour workday, and Ms. George indicated that Harrod was unable to complete the functional capacity evaluation without taking added rest breaks. The hearing officer then noted that Ms. George stated in her report that "the level of work was merely a guideline without taking into consideration any accommodations." The hearing officer found that "[a]mong the other accommodations,

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<sup>1</sup> In July 2002, Harrod underwent surgery on her neck. Specifically, she underwent an "anterior cervical discectomy with subsequent fusion at C6-7," according to her doctor's report.

[Harrod's] employer has agreed to allow [Harrod] to break as needed." Therefore, the hearing officer denied Harrod's request for disability benefits.

Harrod appealed the hearing officer's decision. The Board of Trustees of KERS denied her application for disability benefits.

Harrod then appealed to the Franklin Circuit Court. The circuit court reversed the Board's final order, ruling that

[t]he Hearing Officer's Recommended Order, adopted by the Board of Trustees, emphasizes that [Harrod's] employer made accommodations for [her] condition and appeared willing to continue to do so. The functional capacity evaluation performed by Rebecca George on December 10, 2004 indicates that [Harrod] is unable to sustain sedentary work activities for an 8-hour day. The evaluation notes that [Harrod] has a work tolerance of less than 4 hours in duration. . . . The hearing officer dismisses this conclusion, claiming that the report failed to consider accommodations made by the employer. However, upon review of the evaluation, it seems clear that Ms. George's statement regarding potential accommodations by the employer applies to the overall level of work of which [Harrod] is capable, not her tolerance for an 8-hour day.

Additionally, the circuit court noted that the Social Security Administration relied on the same medical evidence that KERS relied on but found Harrod to be disabled. The court stated that although KERS and the court were not bound by the Social Security Administration's finding of disability, "such determination does indicate that [Harrod] is in fact disabled and incapable of performing sedentary work activities."

KERS now appeals, raising the following claims: (1) the circuit court erred in its findings of fact and conclusions of law, requiring reversal; (2) the circuit court failed to note that there was substantial evidence supporting KERS's decision; and (3) KERS correctly applied the law in this case. On the contrary, Harrod contends that she is entitled to disability benefits because she was disabled due to her cervical problems for more than one year following her last day of paid employment on March 2, 2002.

## II. STANDARD OF REVIEW

Pursuant to KRS 13B.090(7),<sup>2</sup> Harrod had the burden of proof during her disability hearing. *See also McManus v. Kentucky Ret. Sys.*, 124 S.W.3d 454, 457-58 (Ky. App. 2003) (discussing how KRS 61.600 and KRS 13B.090 should be read in conjunction with one another). Where, as in the present case, “the fact-finder's decision is to deny relief to the party with the burden of proof or persuasion, the issue on appeal is whether the evidence in that party's favor is so compelling that no reasonable person could have failed to be persuaded by it.” *Id.* at 458. “In its role as a finder of fact, an administrative agency is afforded great latitude in its evaluation of the evidence heard and

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<sup>2</sup> KRS 13B.090(7) provides, in relevant part, as follows:

In all administrative hearings, unless otherwise provided by statute or federal law, the party proposing the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought. . . . The party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion in all administrative hearings is met by a preponderance of evidence in the record. Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.

the credibility of witnesses, including its findings and conclusions of fact.” *Id.* (internal quotation marks and citation omitted). “A reviewing court is not free to substitute its judgment for that of an agency on a factual issue unless the agency's decision is arbitrary and capricious.” *Id.* at 458-59.

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 Res. and Env'tl. Prot. Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994)

(internal quotation marks and citation omitted). “‘Substantial evidence’ means evidence

of substance and relevant consequence having the fitness to induce conviction in the

minds of reasonable men.” *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d

409, 414 (Ky. 1998). "In weighing the substantiality of the evidence supporting an

agency's decision, a reviewing court must hold fast to the guiding principle that the trier

of facts is afforded great latitude in its evaluation of the evidence heard and the credibility

of witnesses appearing before it." *Bowling*, 891 S.W.2d at 409-10. We review the

agency's conclusions of law *de novo*. See *Aubrey v. Office of Attorney Gen.*, 994 S.W.2d

516, 519 (Ky. App. 1998).

However, KRS 13B.150(2) provides, in pertinent part, that on review of the final order of an administrative agency, a court

may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is: (a) In violation of constitutional or statutory provisions; . . . (c) Without support of substantial evidence on the whole record; [or] (d) Arbitrary, capricious, or characterized by abuse of discretion. . . .

### III. ANALYSIS

The hearing officer correctly determined that Harrod's job as an Administrative Specialist III qualified as sedentary work. *See* KRS 61.600.<sup>3</sup>

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<sup>3</sup> KRS 61.600 provides, in pertinent part, as follows:

- (1) Any person may qualify to retire on disability, subject to the following conditions:
  - (a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1); . . . .
- (3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:
  - (a) The person, since his last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he received his last paid employment. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer as provided in 42 U.S.C. § 12111(9) and 29 C.F.R. Part 1630 shall be considered;
  - (b) The incapacity is a result of bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;
  - (c) The incapacity is deemed to be permanent; and
  - (d) The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system . . . .
- (4) Paragraph (d) of subsection (3) of this section shall not apply if:
  - (a) The incapacity is a result of bodily injury, mental illness, disease, or condition which has been substantially aggravated by an

Additionally, the hearing officer properly found that Harrod had 150 months of service, at least twelve of which were current service.

To qualify for disability retirement benefits, Appellant's alleged incapacity must be based on the objective medical evidence, as well as her "residual functional capacity and physical exertion requirements." KRS § 61.600(5)(a)(2).

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injury or accident arising out of or in the course of employment. . .

- (5) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a regular full-time position.
2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
- (b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments . . . postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.
- (c) The person's physical exertion requirements shall be determined based on the following standards:
1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.

“Objective medical evidence” means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests.

KRS 61.510(33).

During the course of the proceedings before the hearing officer, Harrod alleged that, in addition to her cervical problems, she was also depressed and having lumbar problems, as well as tingling and numbness in her hands. However, on appeal, she argues only that she is disabled based on her cervical problems, and she acknowledges that she was not disabled during the twelve months following her last day of paid employment based on her depression and her tingling and numbness in her hands. Therefore, Harrod's claims of disability based on her depression, lumbar problems, and

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2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.

tingling and numbness in her hands are waived on appeal. *See Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 815 (Ky. 2004).

Harrod's last day of paid employment was March 2, 2002. Pursuant to KRS 61.600(5), in order to qualify for disability retirement benefits, Harrod's disabling condition will be deemed permanent if, *inter alia*, it "can be expected to last for a continuous period of not less than twelve (12) months from [her] last day of paid employment in a regular full-time position." Harrod's treating physician, Greg Wheeler, M.D., reported in December 2002 that since undergoing surgery in July 2002, Harrod had recovered slowly and she continued to suffer from neck pain, arm pain, and muscle spasms. KERS asserts that many of Dr. Wheeler's findings were not based on "objective medical evidence," such as test results. However, Dr. Wheeler is Harrod's treating physician, and he performed her surgery. His reports were written following each of Harrod's office visits during which he examined her. Thus, because such reports were written based on his examinations of Harrod, they qualify as "objective medical evidence." *See* KRS 61.510(33).

Dr. Wheeler's December 2002 report was written during the twelve-month period following Harrod's last day of paid employment. And, as Harrod correctly notes, there is no evidence in the record from that twelve-month period contradicting Dr. Wheeler's report that Harrod was recovering slowly and that she still suffered from neck pain, arm pain, and muscle spasms. Additionally, there is no evidence in the record from

that twelve-month period that contradicts the following statements from Dr. Wheeler's December 2002 report:

In regards [sic] to her condition, I do not think that she can return to any type of gainful employment at this time. I think there would still be severe restrictions including no significant bending of her neck, working on the computer, no twisting of her neck, no lifting greater than 20 pounds and no lifting over ten pounds more than an occasional basis. A sedentary job, such as working at a desk, would not be tolerated by her at this time.

Thus, Harrod was physically incapacitated "to perform the job, or jobs of like duties, from which [s]he received [her] last paid employment." KRS 61.600(3)(a). Furthermore, because there is no evidence from the twelve-month period rebutting Dr. Wheeler's December 2002 report, Harrod's incapacity must necessarily be deemed "permanent" for at least those twelve months following her last day of paid employment. *See* KRS 61.600(3)(c), (5). Moreover, the record supports that Harrod's cervical problems were not pre-existing conditions. *See* KRS 61.600(3)(d). Thus, the evidence in Harrod's favor "is so compelling that no reasonable person could have failed to be persuaded by it." *McManus*, 124 S.W.3d at 458. Consequently, the circuit court's finding that Harrod is entitled to disability retirement benefits is proper.

KERS contends that there were inconsistencies in Dr. Wheeler's diagnosis and reading of an MRI test and that these inconsistencies are relevant for purposes of Dr. Wheeler's credibility, which was the hearing officer's responsibility to determine. KERS

is correct in the sense that a hearing officer's credibility determination is afforded great latitude. *See Bowling*, 891 S.W.2d at 409-10.

Despite the deference given to a hearing officer's credibility determinations, the alleged inconsistencies all predated Harrod's last day of paid employment. They consisted of a February 2001 report by Dr. Wheeler, where he noted that Harrod's cervical MRI showed "bone spurs at [the] C6-7 area but no pressure on her nerves and no disc ruptures." Then, in May 2001, Dr. Wheeler reported that an MRI showed spinal cord compression. Thus, the alleged inconsistency was due to Dr. Wheeler's February 2001 report that there was no pressure on her nerves and May 2001 report that there was nerve compression. However, it is unknown whether the MRI reviewed in the May 2001 report was the same MRI reviewed in the February 2001 report. If the reports were based on different MRI tests, then it is reasonable for Dr. Wheeler to have found no pressure on Harrod's nerves based on the first MRI. However, due to the natural progression of the condition, he could have found nerve compression based on the second MRI.

Regardless of whether Dr. Wheeler's reports were based on two different MRIs or one, in September 2001, Timothy C. Kriss, M.D., examined Harrod and reviewed her cervical MRI scan. Dr. Kriss reported that the MRI showed "a disc herniation at the C6/C7 level with associated bilateral lateral recess stenosis. This pinches a[t] the right C7 nerve root." Thus, like Dr. Wheeler in May 2001, Dr. Kriss found nerve compression.

Dr. Kriss further opined that Harrod's problems would get worse if “an operation to unpinch the nerve is not performed,” and he recommended that an “anterior cervical dis[c]ectomy and fusion” be performed. Likewise, Dr. Wheeler's May 2001 report recommended an “anterior cervical discectomy with subsequent fusion C6-7.” Therefore, Dr. Kriss's September 2001 report lent credibility to Dr. Wheeler's May 2001 report because they both reported that Harrod had nerve compression and a disc herniation at the C6-7 level. And, both doctors recommended surgery in the form of an anterior cervical discectomy with fusion.

According to the operation report from Harrod's surgery, Dr. Wheeler's pre-operative diagnoses were: herniated nucleus pulposus C6-C7;<sup>4</sup> cervical spondylosis;<sup>5</sup> stenosis;<sup>6</sup> and cervical radiculopathy.<sup>7</sup> The same report indicates that Dr. Wheeler's post-operative diagnoses were the same as his pre-operative diagnoses. Therefore, his pre-operative impressions concerning Harrod's problems proved were correct, as Dr. Wheeler was able to verify this while he was performing surgery on Harrod's neck.

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<sup>4</sup> No definition or explanation regarding the meaning of this was provided, and none was found.

<sup>5</sup> According to the *American Heritage Stedman's Medical Dictionary*, "spondylosis" is defined as: "A degenerative disease of the spinal column, especially one leading to fusion and immobilization of the vertebral bones."

<sup>6</sup> The *American Heritage Stedman's Medical Dictionary* defines "stenosis" as: "A constriction or narrowing of a duct or passage; a stricture."

<sup>7</sup> The *American Heritage Stedman's Medical Dictionary* defines "radiculopathy" as: "Disease of the spinal nerve roots."

Thus, the alleged inconsistencies in Dr. Wheeler's reports as noted by KERS occurred prior to Harrod's last day of paid employment, and none of the alleged inconsistencies occurred in the twelve months following her last day of paid employment. Further, even if the "inconsistencies" in Dr. Wheeler's two reports were considered by the hearing officer in finding Dr. Wheeler's opinions lacked credibility, and even though the hearing officer is afforded great latitude in his "evaluation of the evidence heard and the credibility of witnesses," *Bowling*, 891 S.W.2d at 409-10, Dr. Kriss, who also examined Harrod, reached the same ultimate conclusion as Dr. Wheeler, thus lending credibility to Dr. Wheeler's May 2001 report. Furthermore, during surgery, Dr. Wheeler was able to verify that his pre-operative diagnoses of Harrod's problems were correct, and this occurred during the twelve months following her last day of paid employment.

KERS also alleges that the discharge report written by Dr. Wheeler upon Harrod's discharge from the hospital the day after her neck surgery is inconsistent with the subsequent restrictions he placed on Harrod. The discharge report indicated that Harrod's "activity is as tolerated," but Dr. Wheeler subsequently found that Harrod was unable to perform her sedentary level of work activity. We fail to see how the statement "activity is as tolerated" contradicts Dr. Wheeler's subsequent findings, particularly because "activity is as tolerated" was written on her discharge report the day after Harrod had surgery. In this Court's opinion, "activity is as tolerated" simply means that Harrod did what she could do until she began experiencing pain, and it had nothing to do with whether she could perform her job activities the day after having neck surgery.

Regarding KERS's allegation that John J. Guarnaschelli, M.D.'s November 2001 report showed that Harrod "suffered no total and permanent disability and was not in need of surgery," Dr. Guarnaschelli diagnosed Harrod with "[n]eck pain and headaches associated with radiographic evidence of mild osteoarthritis and degenerative changes of the cervical spine [which] predominate at C6/7." As for treatment options, Dr. Guarnaschelli opined that Harrod was not a surgical candidate at that time but noted that her candidacy may change if "in the future the pain becomes intractable or she develops a progressive neurologic deficit."

The record shows that Harrod ultimately decided to undergo surgery in July 2002 because she was having difficulty swallowing and her pain had worsened. Thus, by the time she had surgery, Harrod had met the "conditions" Dr. Guarnaschelli had set forth for recommending surgery. Thus, his opinion does not support KERS's position and, in fact, his opinion supports the opinions and recommendations of Dr. Wheeler and Dr. Kriss.

KERS next contends that, in regard to the functional capacity evaluation performed by Rebecca George in December 2004, the circuit court improperly substituted its judgment for that of the hearing officer on the weight of the evidence. Regarding Ms. George's evaluation, the hearing officer found that Ms. George indicated Harrod was "incapable of sustaining the Sedentary level of work for an 8-hour day. Unable to complete the evaluation without added rest breaks." The hearing officer then noted, however, that Ms. George indicated "the level of work was merely a guideline without

taking into consideration any accommodations. Among the other accommodations, [Harrod's] employer has agreed to allow [her] to break as needed.” Thus, the hearing officer found that Ms. George's evaluation did not support Harrod's claim of disability.

The circuit court disagreed and noted that Ms. George's

evaluation notes that [Harrod] has a work tolerance of less than 4 hours in duration . . . . The hearing officer dismisses this conclusion, claiming that the report failed to consider accommodations made by the employer. However, upon review of the evaluation, it seems clear that Ms. George's statement regarding potential accommodations by the employer applies to the overall level of work of which [Harrod] is capable [*i.e.*, sedentary], not her tolerance for an 8-hour day.

The circuit court found that the restrictions placed on Harrod by her doctors were substantial, and noted that because Harrod “attempted to return to work<sup>8</sup> under these restrictions and with accommodations from her employer, but was unable to do so, it is clear that [she] is in fact not able to perform the sedentary work activities required by her position.” As noted by the circuit court, after receiving a letter from KERS informing her

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<sup>8</sup> Harrod attempted to return to work in June 2003, after her one year of unpaid sick leave ended upon receiving a letter from KERS that stated as follows:

This letter is [to] inform you that your last day of sick leave without pay is June 18, 2003, therefore you must return to work on June 19, 2003, at 8:00 a.m. As you have previously been advised, you may only remain on sick leave without pay status for up to one year. You were placed on sick leave without pay status effective June 19, 2002. Your sick leave without pay will end on June 18, 2003. If you do not return to your position at Kentucky Retirement Systems on or before June 19, 2003, you will be considered to have resigned your position with Kentucky Retirement Systems in accordance with KRS 61.645 . . . .

that if she did not return to work by June 19, 2003, she would be considered to have resigned her position, Harrod asked her doctors to write letters explaining that she could return to work only to avoid losing her job. Harrod then attempted to return to work on June 18, 2003, but, according to KERS, she was only able to work “for approximately one day.” The record supports that she did not return to work after that because her physical problems prevented her from performing her job.

We are uncertain whether, when Harrod returned to work on June 18, 2003, she worked for a full day or less than a full day. KERS only states in its brief that Harrod worked "for approximately one day." Assuming that this means Harrod worked less than a full day on June 18, 2003, this implies that Harrod remained disabled even on that day because she was unable to perform her sedentary work duties for a full eight-hour day. Thus, her disability continued through that date.

Further, as of December 2004, when Ms. George performed her functional capacity evaluation of Harrod, she reported that Harrod was “incapable of sustaining the Sedentary level of work for an 8-hour day. Unable to complete the evaluation without added rest breaks. Work tolerance is less than 4[-]hour duration.” Therefore, assuming that Harrod was unable to work for a full day on June 18, 2003, the record shows that Harrod remained disabled from her last day of paid employment in March 2002 through December 2004, when Ms. George performed her functional capacity evaluation of Harrod. Thus, contrary to KERS's assertion, the circuit court did not act improperly by substituting its judgment for that of the hearing officer, as the hearing officer's decision

was arbitrary and capricious because it was not based on substantial evidence. *See McManus*, 124 S.W.3d at 458-59; *Bowling*, 891 S.W.2d at 409.

However, even if we were to assume that Harrod worked a full day on June 18, 2003, the record nevertheless shows that she was disabled for at least twelve months after her last day of paid employment, *i.e.*, until at least March 2, 2003, for the reasons discussed previously. Therefore, we affirm the circuit court's disability finding.

Finally, KERS argues that the circuit court improperly considered the findings of the Social Security Administration. Under 105 KAR 1:210 § 8(2), a “hearing officer shall consider only objective medical records ... and shall not consider vocational factors or be bound by factual or legal findings of other state or federal agencies.” However, based on the entire record, this finding was at most a harmless error, especially in light of the circuit court's earlier determination that Harrod was disabled.

Accordingly, the order of the Franklin Circuit Court is affirmed in part as to the finding that Harrod is entitled to disability retirement benefits, and it is reversed in part, regarding the circuit court's statements concerning the Social Security Administration determination.

ALL CONCUR.

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