

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000090-MR

KENTUCKY RETIREMENT SYSTEMS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 04-CI-01189

CAROL LAMBDIN

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, CHIEF JUDGE; STUMBO AND TAYLOR, JUDGES.

STUMBO, JUDGE: Kentucky Retirement Systems appeals from an order of the Franklin Circuit Court reversing an administrative order of the Kentucky Retirement Systems terminating the disability retirement benefits of Carol Lambdin. Kentucky Retirement Systems terminated the benefits after determining that Lambdin was no longer incapacitated by the injury or disease which gave rise to the disability retirement allowance. The circuit court reversed the administrative order of the Kentucky Retirement Systems upon finding that its decision was not based on substantial evidence.

Kentucky Retirement Systems now argues that the circuit court's order is erroneous. For the reasons stated below, we affirm the order on appeal.

On September 16, 1991, Carol Lambdin was involved in a motor vehicle accident. As a result of the accident, she sustained injuries to her lower back and neck. Though the parties do not address the nature of these injuries nor the resultant treatment (if any), some three years later Lambdin was evaluated by Dr. Frank Burke at Bluegrass Orthopedics. Dr. Burke conducted a neurological examination, noting tenderness in the muscle group between the T12 and L5 vertebrae, limited flexion and extension accompanied by chronic pain. Lambdin underwent an MRI, which demonstrated slight to moderate disc bulging at C3-4 and C4-5. Moderate focal posterior central disc herniation was noted at C5-6, without evidence of nerve root entrapment or spinal stenosis. A physical therapy assessment indicated that Lambdin's pain was normally 7-8/10, but reduced with medication for short periods to 5-6.

The following month, Lambdin underwent a neurological consultation by Dr. Pursley. He noted that the neurological examination was normal, but did find that Lambdin was experiencing pain in her neck, back, left leg and right upper extremity. He determined that Lambdin was suffering from a cervical strain with possible lumbar sacral strain syndrome. He opined that physical therapy would not be beneficial, and he recommended no treatment for her condition.

During this time, Lambdin was employed as a school secretary for the Whitley County Board of Education. Her job entailed sitting for 5 hours per day and standing for 3 hours per day, during which time she performed general clerical duties.

She would occasionally lift boxes weighing 40 - 45 pounds, but was provided assistance by her co-workers. Her job was classified as sedentary to light.

Lambdin filed an application for disability retirement benefits, which was approved on February 27, 1996. Each year thereafter, she submitted annual recertification forms in order to continue receiving benefits. On January 31, 2002, she was notified that her claim for disability benefits would be reviewed, and was asked to provide the name of a treating physician. Lambdin provided the medical records of Dr. Douglas, who had evaluated her in early 2002. He noted that Lambdin's right thoracolumbar pain had improved post phizotomy, that her pain was improving, that she was able to walk 1.5 miles per day and was using decreased amounts of hydrocodone. Lambdin disputed that she was able to walk that distance. After reviewing the medical evidence, the Medical Review Board recommended terminating Lambdin's disability retirement benefits.

Lambdin sought an administrative hearing on the termination, which was conducted on January 28, 2004. Medical evidence was introduced and Lambdin testified that she continues to have muscle spasms in her shoulder and stabbing pain in her back. Kentucky Retirement Systems produced the medical report of Dr. Kenneth Graulich, who examined Lambdin at the request of Kentucky Retirement Systems in 2003. Dr. Graulich found that Lambdin experienced no low back or leg pain during a seated straight leg raising test, although a supine straight leg raising test produced severe pain at 20 degrees. He found her neck rotation to be 50% of normal, with severe head pain being produced by gentle palpation. Overall, Dr. Graulich opined that there were no physical findings beyond symptom magnification. He concluded that Lambdin should be able to return to

her sedentary work activity. The report of Dr. Douglas indicated that Lambdin was severely deconditioned, and opined that she was unable to return to work due to a recent back surgery and the associated deconditioning.

On April 26, 2004, a hearing officer rendered a report and recommended order. The report found that 1) Dr. Douglas noted a reduction in pain and ability to walk 1.5 miles; 2) Dr. Graulich's examination found symptom magnification but no neurological deficits; and, 3) of Lambdin's claim of experiencing high blood pressure, asthma, shortness of breath and anemia, said complaints were not being considered as they were not the basis for her award of disability benefits. The hearing officer concluded that Kentucky Retirement Systems met its burden of proving that Lambdin experienced an improvement in the conditions for which she had been approved for disability retirement benefits. It found that Lambdin was no longer entitled to receive disability retirement benefits pursuant to KRS 61.600, and recommended that those benefits be discontinued.

The Kentucky Retirement Systems' Board of Trustees adopted the recommended order by way of a final order entered on July 28, 2004. Lambdin sought judicial review of the order by filing a petition in Franklin Circuit Court. Proof was heard on the petition, after which the circuit court rendered an order on December 28, 2006, reversing the termination of the disability retirement benefits. As a basis for the ruling, the court determined that the hearing officer failed to find that Lambdin was able to perform the functional requirements of her previous job. That is to say, the court determined that the conclusion of the hearing officer - and subsequently that of the Board of Trustees - was not supported by substantial evidence. The circuit court stated:

In this case, the Hearing Officer made very few findings of fact. He noted that . . . she “had a reduction in pain level” and “was able to walk 1.5 miles.” Further, he noted that one doctor found “no neurological deficits, but rather evidence of symptom magnification.” Administrative Record, p. 194. The Respondent argues that the Hearing Officer reviewed the entire record and is “not required to recite all such facts.” This is true, a rote restatement of the entire record would be counterproductive. However, we are of the opinion that the Findings of Fact must contain enough evidence to meet the statutory standards Retirement Systems hopes to enforce. Retirement Systems must prove with substantial evidence that the Petitioner is able to return to work again. By making such scant factual findings, there is little foundation upon which a rational decision could be based. The ability to walk 1.5 miles, even if true, does not equate to the ability to return to work equivalent to that of a secretary, nor does a “reduction in pain level” necessarily indicate that this reduction is significant enough that Petitioner can return to work. . . . The Board’s decision to terminate benefits based on the factual findings in the Hearing Officer’s Report is essentially a *non sequitur* - the conclusion reached by the Hearing Officer and subsequently the Board does not follow the Findings of Fact in this case. Because the decision is based on a logical fallacy, it cannot have “sufficient probative value to induce conviction in the minds of reasonable men,” as the law requires. *Kentucky Retirement Systems v. Heavrin*, 172 S.W.3d 808 (Ky. App. 2005).

Having examined the record and the law, and having heard the oral arguments, we find no error in the circuit court’s determination that the hearing officer’s recommended order - and the Board’s decision arising therefrom - was not supported by substantial evidence of record. It is helpful to recite the hearing officer’s findings as set forth under the heading “FINDINGS OF FACT.” The recommended order stated,

1. Claimant was approved for disability retirement benefits based upon neck and back pain. She continued to complain of pain and had facet blocks and rhizotomy to relieve the pain. Her treating physician noted that she had a reduction in her pain level as a result of the treatment. Dr. Douglas also indicated that the Claimant was able to walk 1.5 miles, a fact

disputed by the Claimant. She did not obtain any updated statement from Dr. Douglas to confirm that this information was in error.

2. Claimant underwent an independent medical examination at the request of the Systems. Dr. Graulich, a Board Certified Neurologist, found no neurological deficits, but rather evidence of symptom magnification.

3. Claimant asserted that she is now disabled not only by neck and back pain, but also by high blood pressure, asthma, shortness of breath and anemia. She testified that all of the conditions did not manifest until the past few years. These conditions cannot be considered in this review as they were not the basis for her award of disability benefits. Additionally, she has submitted no evidence whatsoever regarding these new conditions.

Upon examining these findings, the circuit court determined that they did not constitute substantial evidence sufficient to sustain the Kentucky Retirement Systems' decision to terminate benefits. We find no error with this conclusion. Judicial review of administrative action is concerned with the question of arbitrariness. *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W.2d 450 (Ky. 1964). Administrative action is arbitrary unless it is supported by substantial evidence. *Id.* Substantial evidence is defined as "that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person." *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994). In weighing the evidence, "the trier of facts is afforded great latitude in its evaluation of the evidence heard and the credibility of witnesses appearing before it." *Id.*

While the trier of fact is afforded great latitude, its discretion is not unlimited. *Id.* Though evidence was tendered that Lambdin could walk 1.5 miles, this claim was refuted by Lambdin. The circuit court noted that even if this assertion is true, nothing in the record demonstrates that the ability to walk 1.5 miles evidences Lambdin's recovery from the symptomatology which supported the original finding of disability. Similarly, the circuit court also determined that Dr. Graulich's finding of no neurological deficit did not overcome the substantial medical record demonstrating Lambdin's disability. Ultimately, the court found that the evidence relied upon by the Kentucky Retirement Systems was not sufficient to induce conviction in the minds of reasonable men. *Bowling, supra.* This determination is not clearly erroneous, and accordingly we find no error.

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

ALL CONCUR.

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