

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001565-MR

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 97-CI-00782

CHARLES DAVID WARD AND
KENTUCKY PERSONNEL BOARD

APPELLEES

OPINION
REVERSING

** ** * * * * *

BEFORE: BUCKINGHAM, KNOPF, and SCHRODER, Judges.

BUCKINGHAM, JUDGE: The Transportation Cabinet appeals from an order of the Franklin Circuit Court requiring it to credit Charles David Ward with additional sick leave consisting of donated sick leave¹ following a finding by this court that the Transportation Cabinet had erroneously placed Ward on involuntary sick leave. We reverse.

In 1995, Ward was employed by the Transportation Cabinet as an Engineering Technologist II. His duties included

¹ See Kentucky Revised Statute (KRS) 18A.197.

permit inspection of billboards and junkyards. In August 1995, as part of a general reorganization, his duties were expanded to include permit inspections for encroachment related to construction activities. In September 1995, Ward submitted an opinion from Dr. John Adams indicating that he suffered from hypertension that could be aggravated by the stress of his new job duties but that he could perform his previous duties. In December 1995, upon request by the Cabinet, Ward provided a statement from Dr. Adams that he could return to work only if he could avoid stressful situations and extensive walking and standing. Ward also submitted a statement from Dr. S. G. Badrudduja, who had performed surgery on Ward for an incisional hernia in October 1995, that he could return to work with no restrictions.

On February 12, 1996, immediately following his return to work from a fifteen-day suspension on sexual harassment charges, the Cabinet notified Ward that he was being placed on involuntary sick leave pursuant to 101 Kentucky Administrative Regulation (KAR) 2:100 § 2(14)(b), based on a perceived conflict in the medical statements provided to the Cabinet. In February 1996, Dr. Badrudduja again stated that Ward had recovered from his surgery and had been able to return to work since January 1996. In April 1996, Dr. Adams released Ward to work, but recommended he avoid a stressful environment. In June 1996, the Cabinet was prepared to terminate Ward's involuntary sick leave status and allow him to return to work but delayed that action after receiving letters from his coworkers objecting to his return.

In March 1996, Ward filed an appeal to the Kentucky Personnel Board challenging, inter alia, the Cabinet's action placing him on involuntary sick leave.² In October 1996, Ward filed a motion seeking an order directing the Cabinet to return him to active employment, which the hearing officer granted in an interim order dated October 29, 1996. Ward was taken off involuntary sick leave and returned to active employment on November 13, 1996.

Following several hearings, the hearing officer issued findings of fact, conclusions of law and a recommended order holding that the Cabinet had not exceeded its authority in placing Ward on involuntary sick leave but that he should have been allowed to return to work no later than July 1, 1996. The hearing officer recommended that all of Ward's annual and sick leave that he was required to take for the period of July 1–November 13, 1996, be restored to him. The Personnel Board adopted the hearing officer's findings and recommendations. The circuit court affirmed the Personnel Board stating that Ward had not produced sufficient medical evidence that he was able to perform his job until June 1996.

On appeal, this court reversed and remanded the trial court's decision.³ We noted that the only issue raised in the appeal was whether Ward was entitled to reinstatement of his sick

² This appeal was one of five appeals filed by Ward involving various personnel issues. This particular appeal also challenged his fifteen-day suspension for violation of the sexual harassment policy and denial of his request to inspect records.

³ Ward v. Commonwealth of Kentucky, Transportation Cabinet, 1999-CA-000939-MR (unpublished opinion rendered March 31, 2000).

leave and annual leave from February 13, 1996, until June 30, 1996. We held that under 101 KAR 2:100 § 2(14)(b),⁴ an employee can be placed on involuntary sick leave because his health prevented him from performing his duties only after he has failed to produce a satisfactory medical certificate upon request by the appointing authority. We found that the Cabinet did not comply with the regulation by failing to notify him that he would be placed on sick leave if he did not produce a satisfactory medical certificate prior to placing him on involuntary sick leave. We reversed and remanded the case to the trial court "with directions that an order be entered reinstating appellant's sick leave and annual leave effective February 13, 1996, through November 13, 1996."

Upon remand, Ward filed a motion asking the trial court to enter an order reinstating all of the sick leave used by Ward. The Cabinet had reinstated the annual leave and sick leave that Ward personally had accrued⁵ and used during the February–November 1996 period, but had not credited him for sick leave that he had been allowed to use under the donated sick leave policy. The Cabinet filed a responsive memorandum arguing

⁴ This regulation states as follows:

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

⁵ More specifically, Ward was credited with both the sick leave accrued prior to February 13, 1996, and the amount of sick leave he would have earned for the period of February 13–November 13, 1996, had he been working.

Ward was not entitled to an award for the donated sick leave. Following a reply by Ward, the trial court granted the motion by awarding him additional sick leave commensurate with the used donated sick leave. This appeal followed.

The Cabinet contends that the trial court misconstrued the statutory and regulatory provisions pertaining to donated sick leave in crediting Ward with the donated sick leave he used during the period he was placed on involuntary sick leave. Under KRS 18A.197(3), the appointing authority determines the amount of donated leave an employee may receive. An employee may receive donated leave only after he has exhausted his accumulated sick leave, annual leave, and compensatory leave balances. KRS 18A.197(2)(c).

KRS 18A.197(7) states:

Any leave transferred under this section which remains unused shall be returned to the employees who transferred the leave when the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

101 KAR 2:105 §§ 7 and 8 provide as follows:

(7) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors, unless the recipient provides medical evidence that will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(8) If a sick leave donor resigns, retires or is otherwise terminated from state government before the process of transferring leave to

the recipient has begun, such leave shall not be available for use by the recipient.⁶

The guiding principle of statutory construction is that courts are to construe statutes so as to give effect to the intent of the legislature. Hale v. Combs, Ky., 30 S.W.3d 146, 151 (2000); Kentucky Ins. Guar. Ass'n v. Jeffers, Ky., 13 S.W.3d 606, 610 (2000). A court is "not at liberty to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used." Hale, supra at 151 (quoting Beckham v. Board of Educ. of Jefferson County, Ky., 873 S.W.2d 575, 577 (1994)); Stogner v. Commonwealth, Ky. App., 35 S.W.3d 831 834-35 (2000). In construing a statute, a court should consider and attempt to further the purpose of the statute. See Reyes v. Hardin Co., Ky., 55 S.W.3d 337, 342 (2001); Barker v. Commonwealth, Ky. App., 32 S.W.3d 515, 516-17 (2000). "Any apparent conflict between sections of the same statute should be harmonized if possible so as to give effect to both; and, in so doing, the statute should be construed so that no part of it is meaningless or ineffectual." DeStock #14, Inc. v. Logsdon, Ky., 993 S.W.2d 952, 957 (1999) (citing Combs v. Hubb Coal Corp., Ky., 934 S.W.2d 250, 252 (1996)). The same principles for interpretation and construction of statutes apply to administrative regulations. See Smithkline Beecham Corp. v. Revenue Cabinet, Ky. App., 40 S.W.3d 883, 885 (2001); Aubrey v. Office of the Attorney General, Ky. App., 994 S.W.2d 516, 520 (1998). Agency rules and regulations may not amend, alter,

⁶ These provisions appeared in Section 7 and 8 of the 1996 version of the regulation but now appear in Sections 10 and 11 following amendment of the regulation.

enlarge or limit the terms of legislative statutory enactments. See Camera Center, Inc. v. Revenue Cabinet, Ky., 34 S.W.3d 39, 41 (2000); United Sign Ltd. v. Transportation Cabinet, Ky. App., 44 S.W.3d 794, 798 (2000). Interpretation of a statute is a question of law subject to de novo review. See Hardin Co. Schools v. Foster, Ky., 40 S.W.3d 865, 868 (2001); Commonwealth v. Montague, Ky., 23 S.W.3d 629, 631 (2000); Rogers v. Fiscal Court of Jefferson Co., Ky. App., 48 S.W.3d 28, 31 (2001).

The record indicates that Ward exhausted his own annual and sick leave before receiving and using the donated sick leave from another Transportation employee, who retired after Ward had used the donated sick leave.⁷ The trial court said that Ward was entitled to be placed in the same circumstance as before he was placed on involuntary sick leave. It held that because the transfer of donated sick leave was completed by the retired employee, Ward was entitled to retain all the sick leave properly donated to him.

The trial court's reliance on 101 KAR 2:105 § 8 is misplaced. Both KRS 18A.197(7) and 101 KAR 2:105 § 7 clearly state that unused donated leave shall be returned to the donor employee. The court's interpretation of 101 KAR 2:105 § 8 consists of a negative implication that if a sick leave donor retires after the process of transferring leave has been completed, such leave shall be available for use by the recipient. However, the purpose of the donated sick leave policy is to provide sharing of sick leave for a specific medical

⁷ The record does not reveal the exact amount of donated sick leave that Ward used and is at issue in this appeal.

illness pursuant to a specific request. See, e.g., KRS 18A.197(1); 101 KAR 2:105 § 3. As KRS 18A.197(7) indicates, transfer of donated leave alone does not entitle a recipient to retain the sick leave and any unused leave shall be returned to the donor. It is this requirement that the donated sick leave must be used by the recipient pursuant to a specific request that militates against Ward's position and exposes the inconsistency in the trial court's ruling.

We agree with the court that Ward should be placed in the same position as before the Cabinet improperly placed him on involuntary sick leave. By awarding him the donated sick leave, however, the trial court effectively placed him in a better position by giving him sick leave earned by another employee. Moreover, crediting Ward with the donated sick leave would allow him to use it in the future for a purpose not designated by his initial request or contemplated by the donor. This is contrary to the intent and purpose of the donated sick leave statute and is not justified by the implementing regulations.

Ward's assertion that he was entitled to the donated sick leave because the donor had retired and "the sick leave had to remain subject to use by someone" is erroneous. He has already received compensation for the period covered by the donated sick leave⁸ and has had his own annual and sick leave that he was required to exhaust reinstated.⁹ Ward has been

⁸ There has been no suggestion by Ward or the Cabinet that he may be required to reimburse the state for this amount.

⁹ Ward also has received credit for the leave he would have earned during the February–November 1996 period.

placed in at least as good a position as he would have been prior to the improper action by the Cabinet. By restoring him to his situation prior to February 13, 1996, the transfer of and Ward's actual use of the donated sick leave during the subsequent period is no longer relevant, and it should be treated as unused sick leave.

As the Cabinet suggests, the donated sick leave in this case would be subject to return to the donor, rather than credited to Ward. This court's directions on remand did not address or require awarding Ward the donated sick leave. This is a unique situation not specifically addressed by the statute or regulations. Nevertheless, based on a reading of all the provisions and consideration of the purpose of the statute, we conclude the trial court erred in awarding Ward the donated sick leave.

For the foregoing reasons, the Franklin Circuit Court's order is reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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