

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000418-MR

BOARD OF TRUSTEES OF THE
KENTUCKY RETIREMENT SYSTEMS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 07-CI-00816

GERTRUDE DAVIS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, TAYLOR, AND WINE, JUDGES.

CLAYTON, JUDGE: The Kentucky Retirement Systems (“KRS”) appeals the judgment of the Franklin Circuit Court, whereby the court reversed the Kentucky Retirement Systems' Disability Appeals Committee of the Board of Trustees' (“the Board”) decision that denied disability benefits to Gertrude Davis. After

considering the arguments provided by the parties, a thorough review of the record, and the accompanying law, we affirm the Franklin Circuit Court.

FACTUAL AND PROCEDURAL BACKGROUND

Davis was employed as a home health aide by the Kentucky River District Health Department. Her job duties consisted of driving to patients' homes, helping them with personal care, housekeeping, meals, and various related tasks. Davis was employed for 7.5 hours per day, and her job duties were classified under Kentucky Revised Statutes (KRS) 61.600 as "medium work". On March 26, 2004, while driving to a patient's home, she was involved in an automobile accident wherein she sustained serious physical injuries, which required several months of intensive rehabilitation. Davis, who was 55 years old at the time of the accident, suffered a fractured pelvis, three fractured ribs, a punctured lung, a lacerated spleen, and a bulging disc with neuropathy. At the time of her administrative hearing, on June 8, 2006, she was still receiving medical care for problems resulting from the accident.

After the Kentucky River District Health Department was unable to provide accommodations to Davis to allow her to continue in the job, she filed an application for disability benefits on July 19, 2005. Because Davis did not have the requisite 60 months of service credit to qualify for regular disability retirement benefits under KRS 61.600, she applied for duty-related disability benefits under KRS 61.621. This statutory provision, known as the Fred Capps Memorial Act, provides that any state employee, who dies or is permanently disabled as the result

of a duty-related injury, shall be eligible for minimum benefits. In her application, Davis alleges that she is unable to engage in any paid occupation as a result of the injuries sustained in her work-related accident.

Following Davis's application for duty-related disability retirement benefits under KRS 61.621, the KRS' medical review board denied her application. Davis then requested a hearing on the matter. An administrative hearing was held on June 8, 2006, and the resulting hearing officer's report, dated February 19, 2007, recommended that duty-related disability benefits be paid. Thereafter, the KRS filed exceptions to the hearing officer's report. Following the filing of exceptions, the Disability Appeals Committee of the Board, rejected the hearing officer's recommended order and issued its own order, which denied Davis's application for duty-related disability benefits. Then, Davis appealed this decision to the Franklin Circuit Court. The Franklin Circuit Court issued its Opinion and Order on December 1, 2008, reversing the Board's denial of benefits. This appeal followed.

ISSUE

No dispute exists that Davis suffered a traumatic, job-related injury. The only issue is whether the Franklin Circuit Court erred when it reversed the Board's order. The Board found that in spite of the serious injuries sustained by Davis, she was not "totally and permanently disabled" from employment as a result of the duty-related injury, and thus, ineligible to receive benefits under KRS 61.621. Yet, the Franklin Circuit Court determined that, contrary to the Board's

order, Davis was “totally and permanently disabled,” from paid employment, and entitled to duty-related disability benefits.

STANDARD OF REVIEW

When a court reviews an agency’s final order, the court may only overturn the agency's decision if the agency acted arbitrarily or outside its scope, if the agency applied an incorrect rule of law, or if the decision itself is not supported by substantial evidence on the record. *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 300-301 (Ky. 1972).

It is well-established in Kentucky jurisprudence that “judicial review of administrative action is concerned with the question of arbitrariness Unless action taken by an administrative agency is supported by substantial evidence it is arbitrary.” *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W.2d 450, 456 (Ky. 1964). Moreover, reversal of an administrative decision is justified when the evidence is “so compelling that no reasonable person could have failed to be persuaded by it.” *McManus v. Kentucky Retirement Systems*, 124 S.W.3d 454, 458 (Ky. App. 2003). And while it is true that “a reviewing court is not free to substitute its judgment for that of an agency on a factual issue,” it is authorized to do so if “the agency's decision is arbitrary and capricious.” *Id.* at 458-59. *See Johnson v. Galen Health Care, Inc.*, 39 S.W.3d 828, 832 (Ky. App. 2001).

In the case at hand, we will focus on whether the administrative decision was arbitrary. In *American Beauty Homes Corp.*, a landmark case, we

find an outline for the parameters of judicial review of an administrative agency. It provides that the judicial review is not a *de novo* review of factual determinations made by an administrative agency but rather a review by the court of whether there was substantial evidence to support the agency's conclusion, whether the parties were afforded due process, and whether the agency acted with its established authority. *American Beauty Homes Corp.*, 379 S.W.2d at 456. “[S]ubstantial evidence’ means “evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Owens-Corning Fiberglas v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). With this standard in mind, we will review the circuit court’s actions.

ANALYSIS

KRS argues that the court, in reversing the Board’s decision, substituted its own judgment for the Board, and further, improperly found that the Board’s decision was not supported by substantial evidence. Moreover, KRS suggests that the court altered the standard of review for an appeal from a final agency decision. And finally, KRS asserts that the court erred by determining that Davis’s physical restrictions prevented her from performing sedentary work as statutorily defined, and the court improperly considered factors outside the statute in ascertaining whether Davis was eligible for duty-related disability benefits. Conversely, Davis contends that the court’s order should be affirmed as the Board’s decision was legally arbitrary because it was not based on substantial evidence.

We are not persuaded by KRS' arguments that the court, in reversing the Board's decision, substituted its own judgment for the Board or that the court altered the standard of review for an appeal from a final agency decision or that the court erred by determining that Davis's physical restrictions prevented her from performing sedentary work and improperly considered factors outside the statute in ascertaining whether Davis was eligible for duty-related disability benefits. The key issue for us and the one that we will address is whether the court erred when it determined that the Board's decision was not supported by substantial evidence.

In sum, the issue here involves whether substantial evidence exists on the record to establish that Davis has become "totally and permanently disabled to engage in any occupation for remuneration or profit as a result of a duty-related injury." KRS 61.621(1). A chronological review of the history of the case shows the following events.

First, after denial by the KRS' medical review board for duty-related disability benefits, Davis requested a hearing. Following the hearing, the hearing officer recommended benefits based on his findings in the February 19, 2007, report. In the report is found the following statement:

3. The preponderance of the medical evidence contained of record indicate that the Claimant sustained numerous and severe injuries as a result of a single traumatic event that occurred while she was performing the duties of her position, and though now healed and at maximum medical improvement, numerous residual effects remain. The Claimant's primary physicians have indicated that she retains the functional capacity to perform sedentary activity limited by stringent permanent restrictions which

include no bending, twisting, stooping, climbing, kneeling, crawling, or lifting of more than ten (10) pounds on an occasional basis. The restrictions also require no prolonged sitting or standing, with the ability to change postures frequently.

Based on these and other observations, plus the extent and severity of Davis's injuries, her ongoing pain, and the extreme limits on her physical actions, the hearing officer recommended that she receive duty-related disability benefits.

Next, the KRS filed exceptions to the recommended order and the Board's disability appeals committee reviewed the findings. On May 18, 2007, the committee issued its own order denying Davis's application for benefits. The two orders were virtually identical. The only real difference was one phrase in the two orders. In the hearing officer's finding of fact No. 4 it was stated:

The Claimant alleges disability on the basis of the numerous injuries sustained in a motor vehicle accident which occurred on March 26, 2004, while on duty. These injuries included: three (3) broken ribs, punctured and collapsed lungs, hip broken in three (3) places, a lacerated spleen, and her pelvis was broken in two (2) places. The Claimant continues to experience problems with her neck and low back and also continues to experience pain in her hips. She is unable to walk or stand for prolonged periods of time. Her primary physicians have restricted her from prolonged sitting or standing or lifting more than ten (10) pounds and only on an occasional basis. She is also restricted from frequent bending, stooping, climbing, twisting, etc. The Claimant's primary physicians also indicate that she retains the functional ability to perform sedentary activities, **so long as they are coupled with her stringent permanent physical restrictions referred to above.**
(Emphasis added).

The Board's order was exactly the same as the hearing officer's recommended order except for the words that are in bold typeface in the above-cited paragraph. Therefore, by eliminating the above fifteen-word phrase, the Board reached an entirely different conclusion and determined that Davis could, following her injury, return to paid "sedentary" employment. The Board, however, provided no explanation for eliminating the phrase or, more significantly, a rationale for holding that Davis could maintain employment categorized as sedentary.

Then, Davis filed a petition for review, with the Franklin Circuit Court. The court reversed the decision of the Board, which had denied benefits to Davis. Significantly, the court found that Davis had very stringent and permanent restrictions to her activities that are inconsistent with "sedentary work" as defined in KRS 61.600. Further, the court opined that the Board simply ignored these restrictions when it rejected the recommended order of the hearing officer. We concur with the findings and conclusions of the circuit court.

Keeping in mind that one standard of evaluation for a reviewing court is whether an administrative agency has made an arbitrary decision and that an arbitrary decision is one that is not based on substantial evidence, we note the following facts. In the job-related accident Davis incurred three (3) broken ribs, a punctured and collapsed lung, hip broken in three (3) places, a lacerated spleen, a pelvis broken in two (2) places, and a bulging disc with neuropathy. She was still receiving medical care. And while, according to her treating physicians, she

retains functional ability to perform sedentary activities, the physicians also stated these activities must be coupled with stringent, permanent physical restrictions.

We believe that these facts as well as the other facts in the record most definitely provide substantial evidence that Davis is not able to procure and keep paid employment. Indeed, Davis's work-related accident and resulting disability are expressly the reason for which the Fred Capps Memorial Act, (KRS 61.621) was created.

Pertinent portions of the Act state:

(1) Notwithstanding any provision of any statutes to the contrary, effective June 1, 2000, any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position, as defined in KRS 61.592, shall be eligible for minimum benefits equal to the benefits payable under this section or KRS 61.702 if the employee dies or becomes totally and permanently disabled to engage in any occupation for remuneration or profit as a result of a duty-related injury.

(2) (a) For purposes of this section, "duty-related injury" means:

1. a. A single traumatic event that occurs while the employee is performing the duties of his position; or

.....

2. The event or act of violence produces a harmful change in the human organism evidenced by objective medical findings.

Undoubtedly, the purpose of the Fred Capps Memorial Act is to provide benefits to state employees who are unable to engage in gainful employment after sustaining a

traumatic injury during the performance of these job duties. Davis suffered serious physical injuries with long-lasting implications after a work-related car accident. But the key question becomes is she still able to participate in “sedentary work.” Sedentary work is statutorily defined as “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.” KRS 61.600(5)(c)(1).

The evidence in the administrative record, which is summarized in the hearing officer’s report, persuasively establishes that Davis has very stringent permanent restrictions that are inconsistent with the definition of “sedentary work.” These un-refuted restrictions prevent Davis from not only obtaining such employment but also performing the associated duties of such employment. The Board simply did not address these restrictions in its order, which was copied directly from the hearing officer’s report, other than redacting the following phrase in the hearing officer’s finding of fact no. 4, which stated that Davis could perform sedentary activity “so long as they are coupled with her stringent permanent physical restrictions referred to above.” We find that Davis met her burden of proof in establishing her eligibility for duty-related disability benefit. Furthermore, we find nothing in the record suggesting that Davis could perform “sedentary work.” Finally, not only do we find the Board’s order unsupported by substantial evidence, but also that the evidence is “so compelling that no reasonable person

could have failed to be persuaded by it.” *See McManus*, 124 S.W.3d at 458.

Therefore, we conclude that the board’s decision is a classic case of an arbitrary decision. We agree with the Franklin Circuit Court decision.

CONCLUSION

In reviewing the decisions of the Kentucky Retirement Systems' Board of Trustees, it is this Court's duty only to determine whether that decision was based upon substantial evidence or whether the evidence is so compelling that no reasonable person could have made that decision. *Id.* Given the evidence presented, the law demands that the decision of the Franklin Circuit Court, reversing the Board, remain undisturbed. Therefore, the order of the Franklin Circuit Court to reverse the Board’s decision is now affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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