

RENDERED: MARCH 5, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

OPINION OF SEPTEMBER 4, 2009, WITHDRAWN

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000857-MR

MOLLY SMITH

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 05-CI-01431

KENTUCKY RETIREMENT SYSTEMS;
BOARD OF TRUSTEES, KENTUCKY
RETIREMENT SYSTEMS; COUNTY
EMPLOYEES' RETIREMENT
SYSTEMS

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE AND LAMBERT, JUDGES; HARRIS,¹ SENIOR JUDGE.

¹ Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

ACREE, JUDGE: Molly Smith applied for disability retirement benefits under KRS 61.621. The Kentucky Retirement Systems' medical review board denied her application. She requested a hearing to challenge the denial and one was conducted. The hearing officer found that Smith was not permanently and totally disabled and that her conditions pre-existed the incident giving rise to her claim; therefore he recommended that Smith's application for disability retirement benefits be denied. On the strength of that recommendation, the Systems' Board of Trustees denied Smith's claim for benefits. Smith sought relief from the Board's decision with the Franklin Circuit Court. The court entered an order affirming the Board's denial of benefits. Smith now appeals *pro se* from the lower court's order. After careful review of the record and consideration of the briefs, we affirm.

Smith's claim for disability retirement arises from an injury suffered while employed as a daycare worker for the Pulaski County School System. She began work for the school on June 1, 2001. On October 23, 2001, while at work and pursuing a child, Smith slipped in a puddle of water and fell. Her last day of paid employment was October 24, 2001.

Smith bases her claim for disability retirement on this fall and a number of health problems that she claims resulted from this fall. These problems include injury to her back, neck, legs and knees. Besides these injuries, Smith also

claims that her other health conditions, heart disease, anemia, sinus problems, incontinence and high blood pressure, were caused or exacerbated by this fall.

Disability retirement under the foregoing circumstances is only available if all of the requirements of KRS 61.621² are met. On the date of Smith's accident, KRS 61.621 stated, in pertinent part:

(1) . . . any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position . . . shall be eligible for minimum benefits . . . if the employee . . . becomes disabled 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 . . . and
2. The event or act of violence produces a harmful change in the human organism evidenced by objective medical findings.

In summary, Smith was required to show (1) that her job is not classified as hazardous duty, (2) that she is disabled, and (3) that this disability is the result of a "single traumatic event that occurs while the employee is performing the duties of his position." The Kentucky Retirement Systems, tasked with the administration of KRS 61.621, determined she failed to establish the second and third elements.

In reviewing the decision of the Kentucky Retirement Systems' Board of Trustees, this Court must determine whether that decision was based

² Smith cannot seek a claim under the general disability retirement statute applicable to state employees, KRS 61.600. KRS 61.600 requires that an employee accrue sixty months of service before being eligible for disability retirement. Smith had only accrued four months of service.

upon substantial evidence or whether the evidence is so compellingly in favor of the claimant that no reasonable person could have denied her benefits. *McManus v. Kentucky Retirement Systems*, 124 S.W.3d 454, 458 (Ky.App. 2003). Given the evidence of record, the decision of the Board must remain undisturbed.

Smith bore the burden of showing that her disability resulted from a “single traumatic event that occur[ed] while [she was] performing the duties of h[er] position.” KRS 61.621(2)(a)1.2.; KRS 13B.090(7). The record is replete with references to the source of her back pain, each indicating her back condition was not caused by a single traumatic event. Her condition is attributed to “degenerative change,” even “severe degenerative change . . . throughout the lumbar spine” and “multiple levels of degenerative change[.]” (Record pp. 55, 56, 149). In fact, the record indicates that Smith experienced back problems and pain as early as 1999, thereby pre-dating her employment. Furthermore, her medical records also clearly indicate “[n]o disc herniation” or “spinal cord impingement” as could be expected with a single traumatic event. (Record p. 149).

The record also is abundantly clear that Smith’s other complained-of health conditions – heart disease, anemia, sinus problems and high blood pressure – pre-date her fall at work. She was noted to have had cardiac problems in 1994 and poorly controlled hypertension in 1995. Smith was also admitted to the hospital on September 7, 2001, with an atrial fibrillation. Even if this were not the case, there is no medical evidence in the record to indicate that these conditions were caused or exacerbated by her fall. Clearly, this is substantial evidence,

sufficient to “induce conviction in the minds of reasonable men,” that Smith’s medical problems, including her back problems, pre-dated her employment and fall at work and were not caused by it. *McManus*, 124 S.W.3d at 458.

In summary, the board found, among other disqualifying findings, that Smith’s conditions were not the result of a single traumatic event. This is clearly supported by substantial evidence. We need not further examine the record or Smith’s arguments because even if she prevailed on any or even all of her other claims, this finding is sufficient to support the denial of Smith’s claim.

We conclude that the circuit court properly upheld Kentucky Retirement Systems’ administrative decision. Accordingly, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Molly Smith, *Pro se*
Burnside, Kentucky

BRIEF FOR APPELLEES:

Katherine Rupinen
Frankfort, Kentucky