

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-002171-MR

KENTUCKY RETIREMENT SYSTEMS

FORMDROPDOWN

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 07-CI-00465

JOHN BONNER EDWARDS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: STUMBO, THOMPSON AND WINE, JUDGES.

THOMPSON, JUDGE: The Kentucky Employee Retirement Systems (KERS) appeals from an order of the Franklin Circuit Court reversing its denial of disability retirement benefits to John Bonner Edwards. For the reasons stated herein, we affirm.

On June 14, 2005, Edwards, a maintenance worker for the Muhlenberg County Water District, applied for disability retirement benefits citing head and neck cancer and depression. Prior to filing his application, Edwards's last day of paid employment was December 20, 2005. After the reviewing physicians denied Edwards's application, an administrative hearing was conducted. Following the hearing, Edwards was again denied benefits. Edwards appealed but KERS adopted the hearing officer's conclusion denying disability benefits.

Edwards then filed a petition in the Franklin Circuit Court for relief. Subsequently, the trial court issued an order finding that the "record includes clear, objective medical evidence of Petitioner's continued incapacity to perform . . ." his job. Therefore, the trial court ruled that KERS's decision was not supported by substantial evidence and reversed. This appeal followed.

KERS contends that the trial court improperly substituted its judgment when it found that KERS's denial of Edwards's disability benefits claim was not supported by substantial evidence. Additionally, KERS contends that the trial court improperly reached its own findings of fact. Contending that its findings adequately supported its decision, KERS contends that the trial court's order must be reversed. We disagree.

Our review of a decision of an administrative agency is centered on the issue of arbitrariness because of our constitution's prohibition against arbitrary administrative actions. *Com. Transp. Cabinet Dept. of Vehicle Regulation v. Cornell*, 796 S.W.2d 591, 594 (Ky.App. 1990). If an agency's findings of fact are

supported by substantial evidence, we must accept these facts as binding. *Burch v. Taylor Drug Store, Inc.*, 965 S.W.2d 830, 834 (Ky.App. 1998).

“Substantial evidence is defined as ‘evidence of substance and relative consequence having the fitness to induce conviction in the minds of reasonable [persons].’” *Kentucky Unemployment Insurance Commission v. Landmark Community Newspapers of Kentucky, Inc.*, 91 S.W.3d 575, 579 (Ky. 2002). “Upon determining that the Commission's findings were supported by substantial evidence, the court's review is then limited to determining whether the Commission applied the correct rule of law.” *Burch*, 965 S.W.2d at 834.

A claimant can only receive disability retirement benefits by establishing with objective medical evidence that “[he], 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. . . .” KRS 61.600(3)(a). This incapacity must be permanent, meaning that it must be expected to result in death or must continue in duration for a period not less than twelve (12) months from a claimant’s last day of paid employment in a regular full-time position. KRS 61.600(3)(c); KRS 61.600(5)(a)(1).

The trial court’s order highlighted medical evidence that supported a disability award. The trial court first noted a “PHYSICAL THERAPY RECERTIFICATION AND PROGRESS REPORT,” dated November 29, 2005, opining that Edwards suffered from muscle atrophy due to illness, had a physical output defined by the U.S. Department of Labor as sedentary, and had a “poor”

prognosis for returning to work. This report cited severe fatigue as Edwards's most prominent physical impairment.

The trial court then discussed a "MEDICAL SOURCE STATEMENT OF ABILITY TO DO WORK-RELATED ACTIVITIES (MENTAL)," by Dr. William U. Weiss, dated October 22, 2005. Dr. Weiss's statement indicated that Edwards's psychological impairment markedly reduced his ability to carry out detailed instructions; reduced his judgment on simple work-related decisions; and caused marked deficiencies in his handling of work-related pressures and changes to his "routine work setting." Dr. Weiss further opined that Edwards suffered from a mood disorder due to his cancer with "major depressive-like episode," and had "[b]orderline intellectual functioning." Dr. Weiss's statement, in relevant part, concluded with the following:

Prognosis: John Edwards has developed a depressive disorder. He does need to seek assistance for it. \* \* \* His mood disorder stems from the carcinoma. His mental disorder affecting a medical condition is a result of the same problem. His problems are likely to be long term. Prognosis is fair.

The trial court further relied on a "MEDICAL SOURCE STATEMENT OF ABILITY TO DO WORK-RELATED ACTIVITIES (PHYSICAL)," completed by Dr. James L. Salmon, Jr., dated July 7, 2006. Dr. Salmon opined that Edwards should not frequently handle ten or more pounds and should never climb, kneel, crouch, crawl, or stoop.

Edwards had the burden to establish to KERS that he was entitled to disability benefits. KRS 13B.090(7). If a claimant's request for benefits is denied and he appeals to the circuit court, "the question before the court is whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor." *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky.App. 1984). After reviewing the entire record, we conclude that the evidence was so overwhelming that a finding in Edwards's favor was compelled. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986).

While KERS contends that the trial court substituted its judgment for the ALJ, there was substantial evidence in the record that Edwards's physical condition was impaired to a degree which prevented his employment. The evidence in the record demonstrates that Edwards suffered from the following: (1) muscle atrophy due to illness; (2) a psychological impairment which reduced his ability to follow detailed instructions; (3) marked deficiencies in handling work-related pressures; (4) a depressive disorder; and (5) the inability to frequently handle ten or more pounds and to climb, kneel, crouch, crawl, or stoop.

Additionally, we observe that the ALJ and KERS operated under an incorrect premise that Edwards did not request a workplace accommodation. However, Edwards's supervisor wrote a letter providing that there was no possibility of accommodating Edwards in light of his disabilities. The ALJ's and KERS's erroneous belief appears to have tainted the manner in which they viewed

the evidence during the administrative process. Therefore, the trial court did not err by finding that Edwards qualified for disability retirement benefits.

Based on the foregoing reasons, the Franklin Circuit Court's order is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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