STATE OF MICHIGAN

COURT OF APPEALS

SUZANNE FELEY, Plaintiff-Appellee,	UNPUBLISHED June 22, 1999
v	No. 205253 Ingham Circuit Court
STATE EMPLOYEES' RETIREMENT SYSTEM, Defendant-Appellant.	LC No. 96-083959 AA

Before: Cavanagh, P.J., and MacKenzie and McDonald, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order reversing a decision by the State Employees' Retirement System Board, which had determined that plaintiff's back injury did not entitle her to disability retirement benefits under MCL 38.21; MSA 3.981(21) because the injury did not render her "totally incapacitated for duty in the service of the state." The trial court, concluding that the evidence did not support the board's determination and that plaintiff was indeed "totally incapacitated" under the statute, ruled that retirement benefits were warranted. We reverse and remand for reinstatement of the retirement board's decision.

Defendant argues that competent, material, and substantial evidence supported the board's denial of benefits and that the trial court therefore should not have vacated the board's decision. We agree. As this Court indicated in *Arnold v State Employees' Retirement Board*, 193 Mich App 137, 138; 483 NW2d 622 (1991):

> The State Employees' Retirement Board['s] . . . decision must be affirmed on appeal if it is supported by competent, material, and substantial evidence on the entire record, provided the decision is not arbitrary, capricious, or clearly an abuse of discretion or otherwise affected by a substantial and material error of law.

Furthermore,

> "Substantial evidence" has been defined as evidence which a reasoning mind would accept as sufficient to support a conclusion. While it consists of more than a mere

> scintilla of evidence, it may be substantially less than a preponderance of the evidence. [*Gersbacher v State Employees' Retirement System*, 145 Mich App 36, 46; 377 NW2d 334 (1985).]

Here, more than a scintilla of competent, material evidence supported the board's conclusion that plaintiff was not "totally incapacitated for duty in the service of the state." See MCL 38.21; MSA 3.981(21).

Although plaintiff's personal physician checked the "yes" box on defendant's standard form when asked whether plaintiff was totally incapacitated for employment with the state of Michigan, the physician also stated that "plaintiff can work under [a] restricted capacity" when asked whether plaintiff would be able to resume her work or secure other employment. Plaintiff's occupational therapist also indicated that plaintiff could work, provided that she could sit, stand, or walk at will and provided that she did not have a commute longer than one-half of an hour. Additionally, defendant's medical advisor indicated that although plaintiff was totally disabled for the performance of her present job, she "could work at [a] sedentary job where driving [is] not involved[, where she] can sit or stand at will, and [where there is] limited lifting and bending." Finally, plaintiff herself admitted that she could "possibly" work for a few hours a day if she had a short commute and if she could sit, stand, or walk at will.

We conclude that the statements of plaintiff and of her health-care professionals constituted "more than a scintilla" of evidence supporting the board's conclusion that plaintiff was not totally incapacitated for state service. Although the evidence indicated that plaintiff could not perform her former job, this was not dispositive on the issue of her entitlement to retirement benefits. As this Court stated in *Knauss v State Employees' Retirement System*, 143 Mich App 644, 648-650; 372 NW2d 643 (1985), a person is "totally incapacitated" under MCL 38.21; MSA 3.981(21) only if she cannot work in a job *reasonably related her past experience and training*. The record in the instant case revealed that plaintiff had twenty years of experience working with the Department of State and had progressed through the ranks to a position as a district manager. Her skills were numerous and varied. Therefore, unlike the narrowly-trained, disabled airline pilot in *Chalmers v Metropolitan Life Ins Co*, 86 Mich App 25, 32-33; 272 NW2d 188 (1978), plaintiff, although precluded from working in her former job, was capable of performing a different job that was reasonably related to her past experience and training and that could accommodate her lifting and bending restrictions and her need to move freely throughout the day. Moreover, the record contained potential state jobs in this category. Accordingly, the board's determination that plaintiff's injury did not warrant retirement benefits had a sound basis in the evidence, and the trial court therefore erred in reversing the determination, especially since courts are not to "invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views." *Gordon v City of Bloomfield Hills*, 207 Mich App 231, 232; 523 NW2d 806 (1994), quoting *Michigan Employment Relations Commission v Detroit Symphony Orchestra, Inc*, 393 Mich 116, 124; 223 NW2d 283 (1974).

Although it appeared that no jobs fitting plaintiff's commuting restrictions – as opposed to her work-environment restrictions – existed, nothing in MCL 38.21; MSA 3.981(21) or in *Knauss, supra* at 644, indicates that a person may receive retirement benefits merely because otherwise appropriate jobs are located too far from a person's home to be successful employment options. Indeed, that no

appropriate jobs existed in close proximity to her home does not change the fact that plaintiff remained inherently capable of "duty in the service of the state" under MCL 38.21; MSA 3.981(21).

Reversed and remanded for reinstatement of the retirement board's decision. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie
/s/ Gary R. McDonald