

STATE OF MICHIGAN
COURT OF APPEALS

THERESA G. HARMON,

Petitioner-Appellee,

v

STATE EMPLOYEES RETIREMENT BOARD,

Respondent-Appellant.

UNPUBLISHED

November 9, 2004

No. 249312

Ingham Circuit Court

LC No. 01-093622-AA

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Respondent appeals by leave granted the circuit court decision reversing its denial of petitioner's request for non-duty disability retirement benefits. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner applied for retirement benefits pursuant to MCL 38.24, asserting that she was unable to work due to her psychiatric condition, and providing documentation from her treating physicians. After an independent medical examiner concluded that there was little objective evidence to support a finding of disability and petitioner was able to return to work, respondent denied her application. An administrative hearing was held, and respondent found that petitioner failed to meet her burden of proving that her disabilities were total and permanent. The circuit court reversed and remanded for further proceedings. Respondent again denied benefits, and the circuit court again vacated that decision and remanded for further reconsideration.

A final agency decision must be upheld if it is not contrary to law; not arbitrary, capricious, or a clear abuse of discretion; and is supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; MCL 24.306. Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. *Motycka v Gen Motors Corp*, 257 Mich App 578, 581; 669 NW2d 292 (2003). "Substantial evidence is more than a mere scintilla but less than a preponderance." *McBride v Pontiac School Dist*, 218 Mich App 113, 123; 553 NW2d 646 (1996). This Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996).

We find that the circuit court exceeded its authority in vacating the board's decisions. A reviewing court cannot substitute its own judgment for that of an administrative agency if there

is substantial evidence that supports the decision of the agency. *McBride, supra*. Here, the circuit court, acting as an appellate court, improperly substituted its judgment for that of the board on the issue of total and permanent disability, and resolved conflicts in the evidence. It is not the court's function to resolve conflicts in the evidence or to pass on the credibility of the witnesses. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992).

The board's decision to deny benefits was supported by competent, material, and substantial evidence on the whole record. A reasonable mind would accept the evidence as adequate to support the hearing officer's findings and conclusions. *Motycka, supra*.

Reversed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski