

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD BAKER,

Petitioner-Appellee,

v

STATE EMPLOYEES' RETIREMENT
BOARD/DEPARTMENT OF MANAGEMENT
AND BUDGET,

Respondent-Appellant.

UNPUBLISHED

September 30, 2008

No. 277872

Marquette Circuit Court

LC No. 05-042267-AA

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

This case concerns petitioner's burden of proof in a duty disability benefit proceeding under MCL 38.21. This Court previously remanded this case to the circuit court for further consideration. *Baker v State Employees' Retirement Bd*, unpublished opinion per curiam of the Court of Appeals, issued October 24, 2006 (Docket No. 267302) (hereinafter *Baker I*). On remand, the circuit court denied respondent's motion to remand to present additional evidence and reversed respondent's decision denying petitioner duty disability benefits. Respondent appeals by leave granted. We affirm in part, reverse in part, and remand to respondent.

I

The relevant facts from *Baker I* are summarized as follows. The Department of Corrections employed petitioner as a teacher from 1994 to 2001. In the later part of 2001, petitioner took a leave of absence for depression. In 2002, he filed a claim for duty disability retirement benefits. Respondent denied the request but awarded petitioner non-duty disability benefits. Petitioner sought review of the decision at an administrative hearing. After the hearing, the Administrative Law Judge (ALJ) issued a proposal for decision stating that petitioner was not entitled to duty disability benefits. The ALJ found that petitioner "failed to sustain his burden of demonstrating that his disability was the natural and proximate result of the performance of his duty," as required by MCL 38.21(1)(b). Respondent subsequently adopted the ALJ's proposal and issued a decision denying petitioner benefits. Petitioner appealed to the circuit court, arguing that the ALJ had applied an erroneous evidentiary standard in issuing her proposal. The circuit court ultimately affirmed respondent's decision to deny petitioner benefits as based on competent, material, and substantial evidence of record.

On appeal to this Court, we noted that “[b]ecause the primary review of an agency’s decision is committed to the circuit courts, it was the circuit court’s responsibility to determine whether the ALJ’s . . . [p]roposal was affected by an error of law or merely represented the weighing of evidence and credibility.” *Baker I*, slip op at 3. Unfortunately, however, we could not determine whether the circuit court, in affirming respondent’s decision, simply deferred to the ALJ’s assessment of the weight and credibility of the evidence or “otherwise determined that any error of law was not substantial and material and, therefore, did not prejudice petitioner.” *Id.* Accordingly, we concluded that the circuit court “did not apply the correct legal principles to its review” of respondent’s decision. *Id.* We remanded the case to the circuit court to again review the decision and to “fully address petitioner’s claim that the [p]roposal was tainted by the ALJ’s misunderstanding of the applicable law.” *Id.*, slip op at 3-4.

On remand to the circuit court, respondent moved to remand the case to present additional evidence. Respondent sought to present evidence that during petitioner’s divorce proceedings, he attributed his depression entirely to his now ex-wife. The circuit court denied respondent’s motion to remand, finding the additional evidence immaterial under MCL 24.305, and later denied respondent’s motion for reconsideration. Pursuant to this Court’s remand order, the circuit court reviewed the ALJ’s proposal and concluded that the ALJ erred as a matter of law in applying an evidentiary standard contrary to MCL 38.21 and the Michigan Rules of Evidence. The court found competent, material, and substantial evidence on the record to support an award of duty disability benefits and reversed respondent’s decision. Thereafter, we granted respondent’s application for leave to appeal. *Baker v State Employees Retirement Bd*, unpublished order of the Court of Appeals, entered January 9, 2008 (Docket No. 277872).

II

Our review of a circuit court’s ruling on an appeal from an administrative decision is limited. *Adams v West Ottawa Schools*, 277 Mich App 461, 465; 746 NW2d 113 (2008). We must “determine whether the circuit court applied the correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency’s factual findings.” *Davis v State Employees’ Retirement Bd*, 272 Mich App 151, 152; 725 NW2d 56 (2006) (internal quotation marks and citations omitted). In other words, we review the circuit court’s legal conclusions de novo and its findings of fact for clear error. *Id.* A finding is clearly erroneous if, after review of the entire record, we are left with a definite and firm conviction that a mistake has been made. *Adams, supra* at 465.

III

Respondent first argues that the circuit court improperly denied its motion to remand to present additional evidence on the basis that the evidence was immaterial. We agree.

Review on direct appeal is confined to the agency’s record. MCL 24.304(3); *Northwestern Nat’l Cas Co v Ins Comm’r*, 231 Mich App 483, 496; 586 NW2d 563 (1998). “In order to enlarge the record, a party must obtain leave of the court by showing either that an inadequate record was made before the agency or that the additional evidence is material, and by further showing that there were good reasons for failing to present the additional evidence before the agency.” *Id.*; MCL 24.305.

MCL 24.305 provides, in part:

If timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that an inadequate record was made at the hearing before the agency or that the additional evidence is material, and that there were good reasons for failing to record or present it in the proceeding before the agency, the court shall order the taking of additional evidence before the agency on such conditions as the court deems proper.

On remand to the circuit court, respondent moved to remand to present evidence that during petitioner's divorce proceedings, he attributed his depression entirely to his ex-wife, Robyn Baker. Petitioner's ex-wife filed for divorce on August 30, 2004. In a letter to his ex-wife's attorney, dated November 4, 2004, petitioner stated, "I am not willing to give up my disability payment to Ms. Baker who works full time, she is the cause of my disability and that has been well documented since 2000." Petitioner's May 3, 2005, trial brief stated: "[Petitioner] discovered that Robyn was engaged in an extra-marital relationship. This discovery took a devastating toll on him and in no small measure led to severe emotional problems that resulted in permanent disability from employment." Additionally, at his September 23, 2005, divorce hearing, petitioner testified:

. . . I'm disabled from work because my wife put me in the hospital, not because work shafted me. I am disabled because of what my wife has done. That's what every doctor has told me.

* * *

. . . . But every doctor, every IME doctor has told me your problem lies in the fact that your wife – you have a problem with your wife having the affair, causing you severe disability, putting your butt in the hospital, and you can't get over it. And that is a true statement.

* * *

The nut of the problem is my wife had an affair on me, to cause me to go into the hospital. I have severe depression, and that's what the doctors have said from the onset.

We acknowledge that respondent did not include petitioner's testimony at the divorce hearing in its motion to remand. However, in denying respondent's motion for reconsideration, the circuit court stated that it had considered all of the evidence in the divorce proceedings. Specifically, the circuit court stated:

The undersigned judge presided over the divorce action between [p]etitioner and his former spouse The statements contained in [petitioner's] correspondence in the divorce action, and the trial brief filed in the divorce case on behalf of [petitioner] by his attorney, both follow the hearing and decision on appeal in this [duty disability benefits] case. This court does not find the self-serving statement of [petitioner] in the divorce action, in assessing the cause of his

depression and disability, a matter of professional opinion, or the advocacy statement of his counsel on his behalf in the divorce action, to be material to the agency findings, decision and record on appeal to this court.

Although not dispositive on the issue on appeal in this case, the divorce trial findings and conclusions indicate that . . . the trial court (the undersigned judge), *on hearing all of the evidence in the divorce action*, found and concluded that [petitioner] was disabled from substantial gainful employment with the stressors from his work and employment leading to deterioration and breakdown of [petitioner's] family life The court found and concluded the marital relationship broke down as a result of his workplace stresses prior to the alleged infidelity of his spouse [(Emphasis added).]

Initially, we note that it is undisputed on appeal that respondent timely applied for leave to present additional evidence. Further, we find that respondent had good reasons for failing to present the additional evidence in a previous proceeding before the agency, as required by MCL 24.305. Petitioner's ex-wife did not file for divorce until August 2004, almost four months after the administrative hearing in this case, and the divorce hearing did not take place until September 2005, almost one year after respondent adopted the ALJ's proposal and denied petitioner benefits. Further, respondent claims that it was unaware of the divorce proceedings until the fall of 2006 when this case was pending before this Court. While petitioner now asserts that evidence of his "marital strife" was previously presented to the ALJ, petitioner made no statements attributing his depression entirely to his ex-wife until after she filed for divorce in August 2004.

Moreover, contrary to the circuit court's conclusion, we find the additional evidence material under MCL 24.305. "A material fact is one that is 'in issue' in the sense that it is within the range of litigated matters in controversy." *People v Sabin (After Remand)*, 463 Mich 43, 57; 614 NW2d 888 (2000) (internal quotation marks and citations omitted). In this case, the only issue before the ALJ was whether petitioner's depression was "the natural and proximate result of [his] performance of duty." MCL 38.21(1)(b). Evidence that petitioner attributed the cause of his depression entirely to his ex-wife rather than his job duties, and that doctors have informed him of the same since 2000, is directly relevant to the issue of causation. The circuit court discounted this evidence as being "self-serving" and not "a matter of professional opinion." But, this Court has held that a petitioner's own testimony and medical records based on the petitioner's self-reported history may be used to establish the causation requirement in MCL 38.21(1)(b). See *Lombardi v Beaumont Hosp (On Remand)*, 199 Mich App 428, 435; 502 NW2d 736 (1993). Therefore, petitioner's statements and those of his counsel regarding the cause of petitioner's depression are material.

Because the additional evidence proffered by respondent is material, the trial court erred in denying respondent's motion to remand. The additional evidence should be considered by the agency pursuant to MCL 24.305.

IV

Respondent next argues that the evidentiary standard applied by the ALJ, and adopted by respondent, was not legally erroneous and that the circuit court erred in finding otherwise. We disagree.

On remand, the circuit court determined that the ALJ erred as a matter of law in requiring petitioner to produce both objective and corroborating evidence in support of his claim for benefits because neither the plain language of MCL 38.21 nor the Michigan Rules of Evidence set such a high evidentiary standard. Specifically, the court stated:

[The ALJ] imposed an evidentiary standard that [petitioner] was required to produce “objective medical evidence” to support his position that his disability was duty related, and that he was required to offer evidence other than his own testimony as to work relationship. The ALJ’s evidentiary standard also requires the examining and treating physicians to conduct an independent investigation to determine whether the history provided to them by petitioner is accurate. These requirements are contrary to the law of evidence and standards of the statute.

If it was the legislature’s intent to impose a standard of “objective medical evidence” and additional evidence beyond an applicant’s testimony, those provisions could clearly be set forth in the statute.

* * *

The hearing record in this case indicates the ALJ did not weigh the credibility of [petitioner], but simply imposed a standard that, without independent corroborating testimony, [petitioner’s] testimony is not sufficient. Such is not the standard in either the statute or the Michigan Rules of Evidence. . . . MRE 702 and 703 require no standard of independent corroboration before an expert’s opinion can be considered.

We agree with the circuit court that the plain language of MCL 38.21 does not require objective or independent, corroborating evidence of medical reports or the petitioner’s testimony to establish causation. The provision states that “a member who becomes totally incapacitated for duty because of a personal injury or disease shall be retired, if . . . [t]he retirement board finds that the member’s personal injury or disease is the natural and proximate result of the member’s performance of duty.” MCL 38.21(1)(b). As the circuit court explained, had the Legislature intended, it could have mandated higher evidentiary requirements in the context of retirement disability proceedings as it has done in other contexts. See, e.g., MCL 418.301(2); MCL 500.3135(7). Once properly admitted, medical records and even the petitioner’s own testimony may be used as substantive evidence of causation. See MRE 401 and 402; *Lombardi, supra* at 435.

In concluding that petitioner is not entitled to duty disability benefits, the ALJ noted that the “only evidence of causation is [p]etitioner’s own explanations of what caused his condition and his testimony,” and that although “several doctors found the depression directly related to work stress, these medical opinions were solely based on what [p]etitioner told the individual as

to the cause of his alleged problem. The evidence shows no independent checking of the ‘facts’ purported by [p]etitioner.” The ALJ twice noted that “there was no objective medical evidence introduced to support [p]etitioner’s theory that his disability was duty-related.” As we stated in *Baker I*, slip op at 3, these statements by the ALJ could be construed as an assessment of the weight and credibility of petitioner’s testimony and medical records, but it is equally likely that the ALJ was operating under an erroneous “assumption that the causation requirement stated under MCL 38.21(1)(b) may only be proved through ‘objective’ evidence as opposed to petitioner’s testimony and medical records based on petitioner’s self-reported history.” Therefore, we cannot conclude that the circuit court erred in finding that the ALJ applied an erroneous evidentiary standard to petitioner’s claim.

V

Finally, respondent argues that even if the circuit court was correct in finding that the ALJ applied an erroneous evidentiary standard, the court should have remanded for application of the correct legal standard in lieu of reversing respondent’s decision. We agree.

The Administrative Procedures Act, MCL 24.201 *et seq.*, authorizes reversal of an agency’s decision if the decision is based on a material error of law. MCL 24.306(2) allows “[t]he court, as appropriate, [to] affirm, reverse or modify the decision or order or remand the case for further proceedings.” Generally, we review a court’s reversal of an agency’s decision under MCL 24.306(2) for an abuse of discretion. See *Griffin v Civil Service Comm*, 134 Mich App 413, 420; 351 NW2d 310 (1984). We have found, however, that the Legislature did not intend for the court to have “unfettered discretion” in choosing among the remedies in MCL 24.306(2). *Id.*

In this case, the circuit court erred in finding the additional evidence concerning petitioner’s divorce proceedings immaterial. Pursuant to the plain language of MCL 24.305, once the reviewing court knows the additional evidence is material, the court is mandated to remand the matter. The use of the phrase “shall order the taking of additional evidence before the agency” in MCL 24.305 is not permissive and does not give the circuit court discretion in this regard. See *Kassab v Acho*, 125 Mich App 442, 455; 336 NW2d 816 (1983). Because the additional evidence in this case is material, this case must be remanded to respondent.

VI

Upon review of the circuit court’s ruling, we affirm its finding that the ALJ applied an erroneous evidentiary standard to petitioner’s claim, we reverse its denial of respondent’s motion to remand for the presentation of additional evidence, and we reverse its award of duty disability benefits to petitioner. This matter is remanded to respondent for the taking of additional evidence and for reconsideration of petitioner’s claim under the proper evidentiary standard.

Affirmed in part, reversed in part, and remanded to respondent for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Jane M. Beckering