

STATE OF MICHIGAN
COURT OF APPEALS

DAVID DENBESTE,

Petitioner-Appellee,

v

CIVIL SERVICE COMMISSION,

Respondent-Appellant.

UNPUBLISHED

August 7, 2012

No. 303215

Ingham Circuit Court

LC No. 09-000002-AA

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

This Court granted respondent leave to appeal the trial court's order that vacated in part the respondent, Civil Service Commission's decision to deny long-term disability (LTD) benefits to petitioner. We reverse the trial court's order with regard to the initial 24-month period of petitioner's claim and remand to the circuit court for proceedings consistent with this opinion. The court's decision with respect to the subsequent 24-month period is not before us.

I. FACTS AND PROCEEDINGS

Under the state LTD plan at issue, an employee is entitled to benefits for up to 24 months if the employee is found incapable of working at his or her usual occupation solely because of disease or accidental bodily injury. The employee is entitled to benefits after 24 months if the employee is incapable of working at any reasonable occupation solely because of disease or accidental bodily injury.

Petitioner, a resident unit officer for the Michigan Department of Corrections, applied for LTD benefits under the state plan on October 6, 2003, claiming that he suffered from major depressive disorder and post-traumatic stress disorder (PTSD), which rendered him incapable of working in any occupation. The next day, petitioner was suspended without pay pending an internal investigation into the possible use of excessive force against an inmate. On October 14, 2003, petitioner's suspension was converted to a paid suspension, and on December 12, 2003, petitioner was terminated for cause.

On November 3, 2003, before his termination, the LTD plan administrator denied petitioner's application for LTD benefits on the ground that petitioner became ineligible for LTD benefits on the date he was suspended without pay. On September 29, 2004, petitioner appealed to the plan administrator, who issued a decision finding that petitioner was not entitled to LTD

benefits because the medical documentation failed to support a finding of functional impairment. Petitioner then appealed to the new LTD plan administrator, who found petitioner ineligible to receive benefits on substantially similar grounds. On August 31, 2006, petitioner filed another appeal, this time to the Office of the State Employer, who denied petitioner LTD benefits on the ground that the weight of the evidence failed to establish that petitioner was disabled from working his usual occupation or any reasonable occupation.

On March 5, 2007, petitioner filed an appeal with the State Personnel Director. The benefit review officer (BRO) in charge of the appeal considered medical evidence from six health care professionals submitted by both petitioner and respondent. Petitioner submitted evidence from David Hardie, M.D., Barry Mintzes, Ph.D., and limited licensed psychologist S. George Field, M.A. Respondent submitted evidence from Harvey Ager, M.D., Edward Klarman, M.D., and Joseph Cimino, Psy.D. After reviewing the relevant medical records, the BRO issued a written opinion and concluded that petitioner failed to present evidence establishing that he was totally disabled from performing his usual occupation during the first 24 months of his disability claim, or that he was totally disabled from any reasonable occupation thereafter. In reaching its conclusion, the BRO noted that Hardie is not a mental health specialist, that Field is not a fully licensed psychologist, and that Ager and Klarman's evaluations were more persuasive than Mintzes's.¹ Petitioner filed for leave to appeal the BRO's decision, but respondent denied leave based on the BRO's recommendation.

Petitioner then appealed to the circuit court. On December 31, 2009, the court issued a written opinion vacating the denial of petitioner's LTD benefits for the initial 24 month period, but upholding the denial of LTD benefits subsequent to that 24-month period. The circuit court ruled that petitioner presented credible evidence of disability during the first 24 months, and that respondent lacked any evidence that petitioner was not disabled during that period. As such, the circuit court ruled the BRO's decision for that period to be arbitrary and capricious. However, the circuit court found that the denial of benefits following the initial 24-month period was not arbitrary and capricious, because respondent presented evidence that petitioner was not disabled during that time. The circuit court also awarded costs to petitioner.

II. DISCUSSION

¹ As respondent notes, the LTD plan states that a claimant seeking benefits for a mental condition must be under the care of a "legally qualified physician," which is specifically defined as a physician who "specializes in the practice of psychiatric medicine or has, by reason of training or experience, a specialized competency in the field of psychiatric medicine sufficient to render the necessary evaluation and treatment of mental illness." The BRO observed, based on the evidence submitted, that petitioner failed to show that Dr. Hardie had the requisite qualifications to diagnose or treat mental illness and, therefore, properly gave Dr. Hardie's diagnosis little weight. Further, the BRO afforded Mr. Field's opinion less weight because he had only a limited psychology license and Mr. Field's supervising psychologist did not meet or treat petitioner.

Respondent argues that the circuit court exceeded the proper scope of review when it vacated respondent's decision to deny LTD benefits to petitioner for the first 24 months of petitioner's disability claim.

[W]hen reviewing a lower court's review of agency action 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. This latter standard is indistinguishable from the clearly erroneous standard of review that has been widely adopted in Michigan jurisprudence. As defined in numerous other contexts, a finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made. [*Boyd v Civil Serv Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996).]

The circuit court was required to review the administrative decision to determine if it was authorized by law. Const 1963, art 6, § 28; *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 200-201; 550 NW2d 867 (1996). Where no hearing was held, a court cannot review the evidentiary basis for an agency decision. *Brandon Sch Dist v Michigan Ed Special Servs Ass'n*, 191 Mich App 257, 263; 477 NW2d 138 (1991). "[A]n agency decision that 'is in violation of statute [or constitution], in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious' is a decision that is not authorized by law." *Northwestern Nat'l Cas Co v Comm'r of Ins*, 231 Mich App 483, 488; 586 NW2d 563 (1998), quoting *Brandon Sch Dist*, 191 Mich App at 263 (alteration by *Northwestern Nat'l Cas Co*; emphasis omitted).

Here, petitioner was required to produce evidence that he was totally disabled from working at his usual occupation for the first 24 months of his claimed disability period. In support of his claim, petitioner presented the opinions of Hardie, Field, and Mintzes. Hardie and Field had treated petitioner throughout the first 24 months of his claimed disability period, while Mintzes conducted a one-time independent medical examination on December 3, 2005, just over 24 months from the date petitioner applied for LTD benefits, and just under 24 months after petitioner ceased being on active pay status. Respondent presented the opinions of Ager, Klarman, and Cimino. Ager had conducted a one-time independent medical examination on June 9, 2005, roughly 16 months after the date petitioner applied for LTD benefits, and roughly 18 months after petitioner ceased having active pay status. Klarman did not see petitioner during the initial 24 month period, and Cimino conducted a peer review of records only.

The circuit court found that petitioner had met his burden, and that the record was "barren" of evidence that petitioner did not meet the LTD plan's requirements prior to October 6, 2005, 24 months after the date petitioner applied for LTD benefits. However, Ager's examination was conducted prior to October 6, 2005, and Ager found that petitioner "has the ability to resume his employment as a corrections officer/RUO, even though he might not be the best candidate for that type of work." Ager diagnosed petitioner as suffering from generalized anxiety disorder, panic disorder with agoraphobia, and dysthymia. He noted that petitioner had "[m]ixed personality traits, including paranoid, dependent, and histrionic." Ager opined that petitioner's noted personality traits stemmed from his childhood, not his employment. Ager doubted that petitioner was suffering from PTSD.

The circuit court disregarded Ager's diagnosis and questioned whether some of the behaviors and traits identified by Ager during his examination of petitioner would constitute a disabling condition. In fact, the circuit court explicitly stated that "Dr. Ager's opinion strongly suggests that Petitioner was in fact disabled from working as a corrections officer in the first two years." (Emphasis in original.) This conclusion directly contradicts Ager's actual conclusion.

The circuit court's approach to Ager's evaluation represents a clear weighing of the evidence, which is outside of the proper scope of review in cases such as this one. *Michigan Ed Special Servs Ass'n*, 191 Mich App at 263. While the circuit court may have disagreed with the weight that respondent gave to the evidence in this case, it was not free to disregard, weigh, or reinterpret that evidence itself. Given the timing and content of Ager's evaluation, respondent's decision to deny petitioner LTD benefits for the first 24 months of his claimed disability was not arbitrary or capricious, and was, therefore, authorized by law.

Because of our resolution of this issue, we need not address the remaining issues raised on appeal. We note, however, that the basis for the award of costs to petitioner was the fact that he prevailed in part on his appeal to the circuit court. Our decision today means that petitioner did not prevail and did not better his position on appeal to the circuit court.

We reverse the circuit court's order vacating the denial of petitioner's LTD benefits for the initial 24-month period of his claim. We remand to the circuit court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Henry William Saad
/s/ Jane M. Beckering