

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002958-MR

REGINA K. COX

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 97-CI-01664

BOARD OF TRUSTEES,
KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, KNOPF, and MILLER, Judges.

BUCKINGHAM, JUDGE. Regina K. Cox appeals from an opinion and order of the Franklin Circuit Court affirming a decision of the Board of Trustees of the Kentucky Retirement Systems ("the Board") denying her disability benefits. We conclude that there was substantial evidence to support the Board's decision; thus, we affirm.

Cox began employment with the Work Force Development Cabinet, Department for Employment Services ("the Cabinet") on January 1, 1985. She was last employed as a supervisor with the Cabinet, and her last paid date of employment was October 5,

1995. On the date of her retirement, Cox was forty-six years old.

In March 1996, Cox filed her claim for disability benefits. She was denied benefits on three separate occasions prior to a formal hearing. In May 1997, a hearing was held and the hearing officer denied Cox benefits. The Disability Appeals Committee accepted the hearing officer's report and upheld the denial of benefits. Because Cox had exhausted her administrative remedies, she sought judicial review in the Franklin Circuit Court. In November 1998, in the Franklin Circuit Court entered an opinion and order affirming the Board's denial of disability benefits to Cox. This appeal followed.

The hearing officer found that Cox had experienced chronic low back pain for a period of time. The complaints of chronic low back pain began in 1987 after Cox lifted her disabled husband into his wheelchair. Her complaints were documented in the medical record and were demonstrated by her testimony. The hearing officer noted, however, that the issue was whether Cox was permanently incapacitated to perform her job or other jobs of like duties as a result of her pain.

The hearing officer was initially confronted with deciding whether Cox's job duties should be classified as "sedentary work" or "light work." Apparently relying on the testimony of Carolyn J. Rainwater, whom Cox listed as a supervisor, the hearing officer determined that Cox's job was appropriately classified as "sedentary work." The hearing officer further concluded that Cox was not capable of performing

"light work" but was capable of performing "sedentary work." See Kentucky Revised Statute (KRS) 61.600(4)(c) for a description of actions which constitute "sedentary work" and actions which constitute "light work." Thereafter, the trial court found that there was substantial evidence to support the hearing officer's finding that Cox's job should be classified as "sedentary work."

Dr. John L. Nehil, an orthopedic surgeon who most recently treated Cox, stated that x-rays taken in August 1996 showed degenerative changes. The hearing officer concluded, however, that these changes were too remote in time from Cox's last date of paid employment to be considered in determining whether she was disabled at that time. The hearing officer also noted that Dr. Nehil failed to explain the medical significance of his finding of degenerative changes. Thus, the hearing officer concluded that Cox's proof failed to support a conclusion of legal disability based on objective medical evidence. The trial court agreed that there was no objective evidence of Cox's pain and concluded that there was substantial evidence to support the hearing officer's determination that the objective evidence did not support a finding of disability.

"The rule in Kentucky is that if there is substantial evidence in the record to support an agency's findings, the findings will be upheld, even though there may be conflicting evidence in the record." Kentucky Comm'n on Human Rights v. Fraser, Ky., 625 S.W.2d 852, 856 (1981). "The test of substantiality of evidence is whether when taken alone or in light of all the evidence it has sufficient probative value to

induce conviction in the minds of reasonable men." Kentucky State Racing Comm'n v. Fuller, Ky., 481 S.W.2d 298, 308 (1972). Where the evidence is conflicting, an administrative agency may choose the evidence that it believes. Bowling v. Natural Resources & Environ. Protection Cabinet, Ky. App., 891 S.W.2d 406, 410 (1994), quoting Commonwealth, Transp. Cabinet v. Cornell, Ky. App., 796 S.W.2d 591, 594 (1990). "The position of the Circuit Court in administrative matters is one of review, not of reinterpretation." Kentucky Unemployment Ins. Comm'n v. King, Ky. App., 657 S.W.2d 250, 251 (1983).

Cox argues that it was improper to classify her job as "sedentary work" rather than "light work." She contends that the Board's reliance on the testimony of Carolyn J. Rainwater rather than evidence from Mary Acklin as to the nature of Cox's job was error. The testimony of Rainwater supported the finding that Cox's job was sedentary work, and the evidence from Mary Acklin indicated that Cox's job was of a more active nature. Cox argues that Rainwater was her supervisor at the time of her retirement but not during the majority of her time as an employee with the Cabinet. She asserts in this regard that the weight of the evidence was that Acklin was her supervisor and that Acklin's evidence should have been followed by the Board and the trial court.

Rainwater and Acklin were identified by Cox as supervisors on different documents that she filed. We are not persuaded that Rainwater was unable to give competent testimony concerning Cox's job duties. Thus, we conclude that there was

substantial evidence to support the Board's findings based upon Rainwater's testimony, even though there was conflicting evidence from Acklin. See Fraser, 625 S.W.2d at 856.

Cox next argues that medical evidence proves that she is disabled and unable to work. The medical evidence from the time Cox began to experience low back pain in 1987 until her treatment by Dr. Nehil in 1996 gives no indication of a condition which could reasonably be expected to give rise to the degree of pain of which Cox complained. In a July 1996 letter, Dr. Nehil confirms this.

Cox relies on Dr. Nehil's determination that x-rays taken in August 1996 showed degenerative changes and that the Board erred in not accepting this testimony and finding her to be disabled. The hearing officer concluded that these changes were too remote in time from her last date of paid employment to be considered in determining whether she was disabled at that time. The hearing officer also noted that Dr. Nehil failed to explain the medical significance of his findings of degenerative changes. We find nothing arbitrary in the hearing officer's conclusion that Cox failed to prove disability based on objective medical evidence.

Finally, Cox argues that the court failed to make its decision based on the record as a whole. See KRS 61.665(3)(d). She argues that both the Board and the trial court failed to explain why her evidence was rejected. She asserts that if the whole record is considered, then evidence that is both favorable and unfavorable should be discussed. Cox cites no authority for

her argument in this regard, and we conclude that our determination is merely whether substantial evidence exists to support the findings of the administrative agency. Fraser, 625 S.W.2d at 856.

The opinion and order of the Franklin Circuit Court is affirmed.

KNOPF, JUDGE, CONCURS.

MILLER, JUDGE, DISSENTS.

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