

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000254-MR

LORNA D. MALONE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 99-CI-01243

BOARD OF TRUSTEES,  
KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: BUCKINGHAM, COMBS, and DYCHE, Judges.

COMBS, JUDGE: Lorna Malone brings this appeal from a January 25, 2001 opinion and order of the Franklin Circuit Court. We affirm.

Malone worked at Western State Hospital from February 1991 to June 1998 as a registered nurse. She filed an application for disability retirement benefits with Kentucky Retirement Systems on September 24, 1998. In her application, Malone alleged permanent and total disability as a result of pain from a back sprain suffered in January 1998. She also suggested that she was suffering from depression.

After the Medical Review Board denied her claim for disability benefits, Malone requested a hearing. The hearing

officer issued a report and recommended order denying her application for disability retirement benefits. In accord with Kentucky Revised Statutes (KRS) 13B.120, the Disability Appeals Committee of the Retirement System's Board of Trustees next reviewed the case. Ultimately, the Board of Trustees adopted the hearing officer's report and recommended order.

Malone sought judicial review of the Trustees' opinion in the Franklin Circuit Court. Following its review, the Franklin Circuit Court affirmed the decision denying Malone's benefits. This appeal followed.

Upon review, we step into the shoes of the circuit court and review the Trustees' decision for arbitrariness. American Beauty Homes Corporation v. Louisville and Jefferson County Planning and Zoning Commission, Ky., 379 S.W.2d 450 (1964). We must determine whether the administrative decision to deny Malone disability benefits is supported by substantial evidence and whether the law was applied correctly.

KRS 61.600(2) requires that disability or physical incapacity to perform a job be must proven by "objective medical evidence." The Trustees concluded that Malone had failed to present objective medical evidence of an incapacity to perform the duties of a registered nurse upon having been afforded appropriate accommodations. Following their meticulous review of the allegations, Malone's testimony, each exhibit, and the proffered medical evidence, the Trustees found as follows:

- 5) The medical evidence indicates that Claimant did suffer an injury at work on

January 13, 1998, that she has been seeking treatment and the MRI of October, 1998 indicated bulges at various lumbar discs and no disc herniation. She has been placed on restrictions for lifting. There is a question of whether or not these are permanent restrictions even though one doctor indicated that they would be as of January 1999. No accommodations were provided the Claimant on her initial restriction. The restrictions as of October 1998 do not appear to have been presented to the employer. These do not set forth any restrictions for pushing or pulling.

6) It is further noted Dr. Fielder was more concerned with the Claimant's depression and it appears that the depression developed after her last date of paid employment because of her pain and inability to work. Further, the depression, as argued by counsel for the Retirement Systems, is amenable to treatment, although there is some question as to what the prognosis is at this time because she continues to set forth that she has pain in her back.

7) There is little if any objective evidence to support the claim of incapacity based on her back condition. It has been diagnosed originally as a strain, further as degenerative changes, and there are no herniated discs. She also has a diagnosis of mild lumbar spondylosis.

8) Claimant's depression was not set forth with specificity on her . . . application and it does appear to be directly related to the fact that the Claimant is unable to return to work after her last date of paid employment of June 30, 1998. The medical exhibits indicate diagnosis and treatment after her last date of paid employment.

9) The Claimant's statements of pain are certainly believable. However, the record reflects that the Claimant did not attempt to return to work in any capacity after the incident and while there has been an indication that she would be unable to perform these duties, the restrictions have been reduced somewhat from the original

restrictions, and accordingly, the Claimant's back pain and degenerative disc does [sic] not support a claim for incapacity.

10) The Claimant's depression, besides being treatable, was not present at the last date of paid employment.

11) [T]he Claimant has not presented objective medical evidence to support her claim for disability retirement benefits.

On appeal, Malone contends that the evidence presented requires a finding of permanent inability to perform her duties as a registered nurse. While she presented evidence tending to establish her back sprain, a somatoform pain disorder, and depression, Malone failed to offer compelling objective medical evidence to establish a continued incapacity to work.

Medical evidence presented by Malone was carefully reviewed by the physicians of the Medical Review Board. These physicians concluded unanimously that Malone's alleged impairments were not so severe as to prevent her from performing her work as a registered nurse nor were they expected to be permanent as required by the disability statute. The Trustees' opinion is in harmony with the physicians' reports and recommendations and is supported by substantial evidence.

As the Board of Trustees notes in its brief, the only evidence tending to show the extent of Malone's pain and inability to work consists of her subjective complaints of back pain. These reports are not uniform. In September 1998, Malone reported to Dr. Fielder, her family physician, that her back pain had much improved. However, by October 1998, Malone was again

reporting disabling pain. Dr. Hester, Malone's treating neurosurgeon, was beginning to wonder in his notes why his patient's pain had not diminished significantly. Upon review of the evidence as a whole, we are simply unable to conclude that the evidence presented compels a finding in Malone's favor.

Malone also alleges that she suffers from disabling depression stemming from or aggravated by her back injury. She contends that an award of benefits is justified on this basis.

After reviewing the evidence, the Hearing Officer specifically rejected this contention. He reported that Malone's condition was treatable and, moreover, that it had not been present on the last date of paid employment as required by statute. Again, having reviewed the record as a whole, we conclude that the administrative decision to deny Malone disability benefits is supported by substantial evidence. The relevant law was not misapplied.

For the foregoing reasons, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Cadiz, KY

BRIEF FOR APPELLEE:

J. Eric Wampler  
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