

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001847-MR

SYLVIA SCHGALLIS

APPELLANT

V. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 98-CI-01602

BOARD OF TRUSTEES,  
KENTUCKY RETIREMENT  
SYSTEMS

APPELLEE

### OPINION REVERSING AND REMANDING

\* \* \* \* \*

BEFORE: BARBER, GUDGEL, and KNOPF, Judges.

GUDGEL, JUDGE: This is an appeal from an order entered by the Franklin Circuit Court affirming an administrative order of the Board of Trustees (board) of the Kentucky Employees Retirement System (KERS) denying appellant Sylvia Schgallis's claim for disability retirement benefits. For the reasons stated hereafter, we reverse and remand for further proceedings.

Appellant was employed as a registered nurse in a classified employee position at Hazelwood Hospital from June 1983 to February 1996, at which time she filed for disability retirement benefits based on her mental condition. After reviewing the evidence, KERS medical examiners concluded that

benefits should be denied on the ground that appellant's mental condition preexisted her employment. The hearing officer disagreed and recommended that appellant be awarded benefits. The disability appeals committee then remanded the matter for an independent medical examination by a board-certified psychiatrist, Dr. Wolfgang Kuhn. After twice examining appellant, and after reviewing the record and appellant's history, Dr. Kuhn concluded that appellant's primary diagnosis of "delusional disorder, erotomanic type" neither preexisted her employment, nor directly or indirectly resulted from a condition which preexisted that employment. The hearing officer again recommended that appellant be awarded disability benefits, but the board denied her benefits on the ground that her condition preexisted her employment. The circuit court affirmed the board, and this appeal followed.

It is undisputed that appellant's mental condition rendered her unable to perform the duties of her job. Hence, the issue on appeal is whether the board's finding, that appellant's current mental condition directly or indirectly resulted from a mental illness, disease or condition which preexisted her 1983 employment at Hazelwood, see KRS 61.600(2)(d), is "so unreasonable under the evidence that it must be viewed as erroneous as a matter of law." McNutt Construction/First General Services v. Scott, Ky., 40 S.W.3d 854, 860 (2001). See Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986); American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission, Ky., 379 S.W.2d 450 (1964).

The board made lengthy findings of fact which we shall individually address, in pertinent part, as follows. In Finding #5 the board stated:

Claimant's mental condition is such that she is unable to perform her duties of a Registered Nurse at Hazelwood. The Claimant was diagnosed by Dr. Charles Bensenhaver, III, with delusional disorder, erotomanic type. Dr. Bensenhaver indicated Claimant's prognosis was quite poor, and that Claimant was presently disabled and that there was no foreseeable time in the future when Claimant would be capable of maintaining gainful employment. On remand, Dr. Wolfgang Kuhn gave the diagnosis of delusional disorder, erotomanic type; dysthymia; and trichotillomania, in remission. Dr. Kuhn gave a GAF score of 45. Dr. Kuhn indicated that Claimant was incapacitated as of February 29, 1996 and that her condition would last for more than twelve months. Mr. Michno counseled Claimant for over 20 years and throughout this time she had to cope with depression, later changed to dysthymia [sic], different obsessive compulsive behaviors, and a form of dyslexia. (Citations omitted.) (Emphasis added.)

Finding #5 clearly was based on a February 1996 letter in which appellant's longtime counselor, Chris Michno, stated:

I have counseled with Mrs. Schgallis on a weekly basis for the past 2 years. My professional contact with her spans over 20 years when she was seeking help with her son. Throughout this time one of the major problems she has had to cope with is depression. In addition to the clinical depression she has also had to cope with different obsessive-compulsive behaviors and what appears to be a form of dyslexia.

In the past 6 months the depression has become more severe. . . .

. . . .

In addition to the clinical problems, Mrs. Schgallis has had to file bankruptcy. In spite of having her current job for over 12

years she continually worries about losing her job or getting fired. The past several years have also involved problems with coworkers and at times supervisors which have also added to her stress and anxiety. Some of this no doubt is related to the reality of having been fired from jobs prior to this one.

In my professional opinion all these years have taken their toll on Mrs. Schgallis, mentally, emotionally and physically to the point of where she is no longer able to function effectively on her job. (Emphasis added.)

Mr. Michno clarified the language of his February 1996 letter when he stated in an October 1996 letter:

Prior to 1983, many of Ms. Schgallis [sic] problems revolved around her son . . . . In addition, having had some problematic early job experiences Ms. Schgallis would live with the daily fear that she might lose her job. Weight has been an on-going problem along with the above and has contributed to Ms. Schgallis' on-going depression and belief that no one will want her and she will always be alone.

Within the past 3 years, Ms. Schgallis' depression centered more around work . . . . She began having trouble sleeping, stomach problems and other physical ailments that are highly correlated to emotional stress. Within the past year, Ms. Schgallis began to display some obsessive behaviors to the degree that she had difficulty concentrating at work and worried that she might make medication errors. These obsessive thoughts led to some behaviors on her part that resulted in confrontation from others and a worsening of her depression and feelings of rejection and self-isolation. It was also during this past year that the depression also involved some suicidal thoughts and plans which had not occurred before. The obsessive thoughts and the depression of Ms. Schgallis not being able to concentrate, focus on what she needs to do and at times not taking care of herself. Her fears and worries have become overwhelming and all-consuming to where she is unable to

function at work and also struggles in her personal life. (Emphasis added.)

Finally, in a February 1997 letter Mr. Michno described his clinical impressions of appellant during the time of her employment, and in a May 1997 letter he eliminated any doubt as to whether her delusional behavior preexisted that employment by stating:

Initially when Ms. Schgallis was in counseling her depression was related to situational problems with her son and her diagnosis was Adjustment Disorder with Depressed Mood. Two years later when the depression was still present the diagnosis was changed to Dysthymia. At neither time was there present any signs of delusional beliefs, thinking or behavior. Medication was not a part of treatment during this time. This treatment occurred prior to 1983 and records are no longer available. (Emphasis added.)

Having carefully reviewed the record, it is clear that as a whole the record fails to provide any substantial evidence to support the board's finding that appellant "had to cope with" obsessive-compulsive behaviors throughout her twenty-year counseling relationship with Mr. Michno. Instead, the evidence shows that Mr. Michno indicated that such behaviors did not begin until several years prior to the filing of appellant's disability claim, which was long after her employment at Hazelwood commenced.

The board next found:

6) Dr. Margaret O'Connor, Ph.D., gave a History of Disability and Symptoms of:  
"History of being fired from . . . nursing

positions in the past. . . . Mr. Michno stated that Claimant continually worried about losing her job at Hazelwood despite having worked over 12 years and that her stress and anxiety was no doubt related to the reality of having been fired from her jobs prior to employment at Hazelwood. Claimant's stress and anxiety about being terminated from her job pre-existed her initial employment at Hazelwood in 1983.

7) Claimant was diagnosed with dysthymia and delusional disorder, erotomaniac type. A history of physical abuse by an alcoholic father and probable sexual abuse by a brother was given. Dr. O'Connor wrote that Claimant's presenting problem was her belief that her former gynecologist was in love with her, trouble with relationships, and gaining weight again. Claimant later believed her rabbi was in love with her. Dr. O'Connor wrote about Claimant: "Apparently she has a long [history] of setting her sights on high status, fatherly men, all or most of them married . . . Long [history] erotomania." Mr. Michno stated that Claimant had an on-going weight problem and depression and belief that no one would want her and that she would always be alone. Claimant's problems with relationships and depression, weight gain, and feelings of rejection and self-isolation pre-existed her initial employment at Hazelwood in 1983. Claimant had a long history of erotomania. (Citations omitted.) (Emphasis added.)

Our review of the record shows that although Dr. O'Connor's clinical notes referred to appellant as having a long history of erotomania, the period of time encompassed by the term "long history" was never defined in any way. Moreover, as noted in Dr. Kuhn's evaluation, the record in fact indicates that the erotomania disorder did not surface until after appellant's hysterectomy in the mid-1990's. Absent any specific proof to contradict appellant's evidence that her erotomaniac condition did not emerge until the mid-1990's, Dr. O'Connor's use of the phrase

"long history" simply does not, by itself, support a finding that the condition predated appellant's employment.

Next, the board stated in Finding #8:

Mr. Michno stated in his February 16, 1996 letter: "In my professional opinion all these years [20 years] have taken their toll on Mrs. Schgallis, mentally, emotionally and physically to the point of where she is no longer able to function effectively on her job." (Citations omitted.)

The board itself added the bracketed phrase "20 years" to the quote from Mr. Michno's letter based on the fact that he had treated appellant for a total of some twenty years. However, we cannot agree with the board that the original statement in any way supports a finding that appellant's primary disabling condition of erotomania disorder has existed for twenty years, or that the disabling condition arose directly or indirectly from a condition which preexisted her employment. Instead, it is clear from a reading of Mr. Michno's four letters and the record as a whole that appellant has been treated for several conditions over the years, that the disabling erotomania disorder did not surface until long after her employment began, and that the latter condition was not related to the situational depression for which appellant was treated prior to her employment.

Next, in Finding #9 the board stated as follows:

Dr. Kimbel stated in a memorandum dated June 18, 1997, after a review of the record, that Claimant had "a long history, dating back to an early age, of emotional and mental impairments with intermittent therapy for this during her entire lifetime." Dr. Kimbel stated Claimant's current symptoms "merely manifests a progression of an underlying disorder that has been present for years" and "her current impairment is related to the

mental impairment she had at the time of her employment." (Citation omitted.) (Emphasis added.)

Dr. Kimbel's memorandum recommending the denial of disability benefits specifically relied upon two reports which are contained in the case file. The first document was Mr. Michno's above-cited February 1996 letter, which referenced his twenty-year professional relationship with appellant and noted that "[t]hroughout this time" she had to cope with depression as well as with "different obsessive-compulsive behaviors and what appears to be a form of dyslexia." The second document was Dr. Bensenhaver's September 1996 report, in which he noted that appellant had "been followed at this facility" since early 1995, and that her initial diagnosis of schizoaffective disorder versus bipolar disorder, coupled with borderline personality disorder, had been changed to a diagnosis of delusional disorder, erotomanic type, coupled with depression and "some symptoms of trichotillomania or obsessive hair pulling." He determined that appellant was disabled due to impaired "judgment and insight . . . ongoing paranoid and erotomanic delusions as well as the depression related to these symptoms."

Dr. Kimbel did not conduct a personal examination of appellant. Instead, he relied on the reports of Mr. Michno and Dr. Bensenhaver in concluding that appellant's diagnosis "merely manifests a progression of an underlying disorder that has been present for years" and that "[t]here is no evidence that the claimant has a new impairment but merely progressive symptoms of a prior impairment that has been present for years."



Our review of the entire record in fact shows that in his October 1996 and May 1997 letters, Mr. Michno confirmed that appellant's pre-1983 counseling was related to problems with her son, that she showed no "signs of delusional beliefs, thinking or behavior" during the pre-1983 counseling, and that she did not begin displaying the obsessive-compulsive behavior which affected her work until about 1995. Moreover, there is nothing in Dr. Bensenhaver's report to support a conclusion that appellant's impairment was a progression of a disorder which existed prior to her 1983 employment. We must conclude, therefore, that substantial evidence did not support a conclusion that appellant's current primary and disabling condition of erotomania is in any way related to the mental health problems which appellant experienced prior to her 1983 employment.

Next, in Finding #10 the board found that:

Counsel for Claimant set forth that the delusional disorder erotomaniac type was a specific mental condition defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) under classification 297.1 and that it does not support the argument that one specific classification is a natural precursor to another mental condition. However, the DSM-IV treatment of 297.1 Delusional Disorder as attached to Petitioner's Reply to Defendant's Position Statement stated:

\* \* \*

The boundary between  
**Obsessive-Compulsive Disorder**  
(especially With Poor Insight) and  
Delusional Disorder can sometimes  
be difficult to establish. The  
ability of individuals with  
Obsessive-Compulsive Disorder to  
recognize that the obsessions or  
compulsions are excessive or

unreasonable occurs on a continuum. In some individuals, reality testing may be lost, and the obsession may reach delusional proportions (e.g., the belief that one has caused the death of another person by having willed it). If the obsessions develop into sustained delusional beliefs that represent a major part of the clinical picture, an additional diagnosis Delusional Disorder may be appropriate. (DSM-IV, pp. 300-301).

\* \* \*

The DSM-IV stated that there was difficulty in establishing a "boundary" between obsessive-compulsive disorder and delusional disorder, that there was the existence of a "continuum" between obsessive-compulsive disorder and delusional disorder, and that if the obsessions "develop into" sustained delusional beliefs, an additional diagnosis of delusional disorder may be appropriate.

While there is no dispute that the DSM-IV refers to a continuum between obsessive-compulsive disorder and delusional disorder, that fact is irrelevant herein since appellant was never diagnosed as having an obsessive-compulsive disorder. Although the record contains several references to possible obsessive-compulsive "behaviors" exhibited by appellant, there is no basis for considering such behaviors as the equivalent of an obsessive-compulsive disorder. Hence, there is no evidence to support a finding that appellant's prior exhibition of possible obsessive-compulsive behaviors constituted a preexisting condition which developed into the disabling delusional disorder.

Finally, in Finding #11 the board specifically found that Claimant suffered from depression and various obsessive-compulsive behaviors for over a 20 year history and that, consistent

with the opinions of Mr. Michno, Dr. O'Connor, Dr. Kimbel and the treatment of Delusional Disorder made by the DSM-IV, Claimant's current mental impairment of delusional disorder, erotomanic type is a direct or indirect result of a mental condition that pre-existed Claimant's membership in KERS and initial employment at Hazelwood in 1983. (Citations omitted.)

Although evidence was adduced to show that appellant suffered from depression for more than twenty years, there was simply no evidence to show that she had any history of obsessive-compulsive behaviors or delusional disorders prior to her employment. That being so, it is clear there is no substantial evidence to support the board's finding that appellant's delusional disorder, erotomanic type, directly or indirectly resulted from a mental condition which preexisted her 1983 employment at Hazelwood. It follows, therefore, that the board's denial of appellant's disability claim, on the ground that her current mental impairment preexisted her employment, was so unreasonable under the evidence that we are constrained to conclude that it was erroneous as a matter of law. McNutt, 40 S.W.3d at 860.

For the reasons stated, the circuit court's order affirming the board is reversed and remanded, with directions to enter a judgment reversing the board's order and remanding this matter with directions to the board to enter an order on remand consistent with our views.

BARBER, J., CONCURS.

KNOFF, J., CONCURS BY SEPARATE OPINION.

KNOFF, JUDGE, CONCURRING: I fully concur with the reasoning and the result reached by the majority opinion. I

write separately merely to note where the Board's reasoning seems to have gone awry. KRS 61.600(2)(d) requires that an applicant for disability retirement benefits must show that the "incapacity does not result *directly or indirectly* from bodily injury, mental illness, disease, or condition which pre-existed membership in the system . . . ." (*Emphasis added*). In prior appeals, I have expressed the concern that the Board's interpretation of the statute is so broad that it could be used to exclude any disabling condition that is not the direct result of a work-related injury. An employee's mere susceptibility to the development of a disabling condition should not be deemed necessarily to be a pre-existing condition within the meaning of KRS 61.600(2)(d). There must be a causative nexus, direct or indirect, between the pre-existing condition and the subsequent disabling condition.

In this case, Schgallis's history of depression and obsessive-compulsive behaviors is so attenuated from her current mental condition that it was unreasonable for the Board to draw an inference that no intervening factors contributed significantly to the onset of the disability. Moreover, as noted in the majority's thorough opinion, the Board made assumptions about the relationship between Schgallis's pre-existing disorders and her current mental condition that were not supported by the medical evidence. Consequently, the Board found a causative nexus between the pre-existing condition and the subsequent disabling condition where none existed. Therefore, Schagallis

was entitled to an award of disability retirement benefits, and the Board clearly erred in denying her application.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

James Dodrill  
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