

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002094-MR

CAROL MORAN, ADMINISTRATRIX
OF THE ESTATE OF
LOUIS FORD, JR., DECEASED

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
ACTION NO. 02-CI-00379

UNIVERSITY OF KENTUCKY
AND COMMONWEALTH OF KENTUCKY
BOARD OF CLAIMS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE: Carol Moran, Administratrix of the estate of Louis Ford, Jr., deceased, appeals from an opinion and order of the Fayette Circuit Court that affirmed the decision of the Board of Claims which had dismissed her claim against the Commonwealth of Kentucky, University of Kentucky. We affirm.

The following findings of fact made by the Board of Claims sets forth a concise factual history of Moran's claim before the Board:

FINDINGS OF FACT

1. That Louis Ford, Jr. began full-time employment at the University of Kentucky in the physical plant division on or about July 19, 1999.
2. That Louis Ford, Jr. became seriously ill in January 2000, and was placed on no-pay status by the University of Kentucky on January 7, 2000.
3. That the University of Kentucky terminated Mr. Ford's employment on March 6, 2000, and attempted to notify Mr. Ford of this termination by mailing a copy of the termination notice to Mr. Ford at the address on record at the University of Kentucky. This notice was returned undelivered and unopened to the University.
4. That the University of Kentucky had actual knowledge that Mr. Ford was not living at his usual mailing address at the time of termination on March 6, 2000, and at the time of mailing him the termination notice. The University of Kentucky knew that Mr. Ford was a seriously ill patient housed at the University of Kentucky hospital.
5. That on April 6, 2000, Mr. Ford's family received via first-class mail notice of COBRA Continuation of Health Care Coverage given by the University of Kentucky as required under federal law. The notice was dated April 3, 2000 and contained reference to Mr. Ford's termination on March 6, 2000. The reference to Mr. Ford's termination contained in the COBRA notice was the first notice actually received by

the family of Louis Ford of the termination of his employment by the University of Kentucky on March 6, 2000.

6. That Mr. Ford died on April 2, 2000.

7. That Carol Moran, sister of the decedent, was appointed Administratrix of the Estate of Louis Ford, Jr. after his death by order of the Fayette District Court.

8. That Mr. Ford received a "Staff Handbook" from the University of Kentucky on July 26, 1999.

9. That the Staff Handbook states in part as follows with respect to life insurance benefits:

Regular full-time staff members employed by the University are insured under the Basic Life Insurance Program for \$7,500. This insurance may be increased optionally to a total of either 1, 2, or 3 times the employee's basic annual salary. The premium for the \$7,500 basic insurance is paid by the University, while the employee pays through payroll deduction for optional insurance if elected.

The life insurance is term insurance and no cash values accumulate. This insurance terminates at retirement or upon separation from University employment, whichever is earlier. Employees may, at the time of employment termination or retirement and for a period of 30 days thereafter, convert part of all of their group insurance to an individual plan. No evidence of insurability is required for this

guaranteed coverage privilege.
Rates are determined by the
company and will differ
considerably from the University
group rate.

10. That the University Staff Handbook
contains the following disclaimer in bold,
capital font:

**THIS HANDBOOK EXPLAINS UNIVERSITY
HUMAN RESOURCES POLICY AND
PROCEDURES IN GENERAL TERMS. IN
CASE OF ANY CONFLICT OR ANY
DIFFERENCE IN INTERPRETATION
BETWEEN THIS HANDBOOK AND THE
HUMAN RESOURCES POLICY AND
PROCEDURE ADMINISTRATIVE
REGULATIONS, FORMERLY KNOWN AS
STAFF PERSONNEL POLICY AND
PROCEDURE ADMINISTRATIVE
REGULATIONS, THE LATTER IS THE
CORRECT AND FINAL AUTHORITY.**

11. That the University Human Resources
Policy and Procedure Administrative
Regulations with respect to life insurance
policies, mailed to University employees in
1999, states as follows:

When life insurance ceases because
that part of the group contract
discontinues as to your employee
class, and insurance on the life
of the person has been in force
under the group contract for at
least 5 years in a row prior to
such discontinuance, the amount
that ceases less the amount of any
group life insurance for which the
person becomes eligible within 31
days of discontinuance may be
converted to an individual policy.
The maximum amount that can be
converted by each person in any
event is \$2,000.

12. That Mr. Ford was a full-time employee of the University of Kentucky, eligible for group life insurance benefits, for a period less than eight (8) months prior to his termination.

Based upon these findings of fact, the Board of Claims determined that Moran would not be entitled to any award of pecuniary damages under any theory of actionable negligence. The Board dismissed, with prejudice, Moran's claim. Moran appealed that decision to the Fayette Circuit Court.

On appeal, the circuit court held:

The claim presented by [Moran] to the Commonwealth of Kentucky Board of Claims was that the University acted negligently by failing to notify him of his termination thereby causing him to lose the \$7,500.00 life insurance policy benefit. [Moran] challenges the Board of Claims finding of facts and conclusions of law which stated that the University was not negligent and that Mr. Ford was not eligible for the life insurance coverage.

The Board found that even if it were established that the University owed Mr. Ford a duty [to] notify him and in turn breached such duty, Mr. Ford was still ineligible to receive such benefits in light of the University's established policies. University policy required Mr. Ford to be employed in a class eligible for group life insurance benefits for a period of five years prior to conversion of the life insurance to an individual plan. In its findings of fact, the Board found that Mr. Ford was employed in the eligible class for a period of less than eight months prior to his termination. Therefore, Mr. Ford was ineligible to convert the group life insurance policy to an individual plan

regardless of whether or not he received actual notice.

[Moran] argues nonetheless that such policy was not in the Staff Handbook [Mr. Ford] received upon his employment with the University. However, the Board of Claims found that the Handbook included a disclaimer which stated that if any conflict arose between what was set forth in the Handbook and any subsequent Human Resources Policy and Procedure Administrative Regulations, the latter would control. The latter was in fact mailed to University employees in 1999.

The standard of review for Board of Claims suits is found in K.R.S. 44.140 which provides that a decision is "conclusive if there exists substantial evidence to support the findings...of the board. The Board acts as a fact finder and those findings, if supported by substantial, competent evidence, are conclusive. Pemberton v. Commonwealth, 298 S.W.2d 487 (Ky. 1966). Since there is substantial evidence to support the Board's findings and conclusions here, its decision must stand.

For the foregoing reasons, the decision of the Board of Claims is hereby **AFFIRMED**.

On appeal to this Court, Moran presents two arguments. First, she contends that the University had actual knowledge of Mr. Ford's location and negligently failed to notify him of his termination. Next, she argues that the University presented no proof that Mr. Ford received the updated handbook with the different life insurance provisions that required five years of employment before one was eligible for the conversion benefit. Unfortunately for Moran, neither of the arguments affect the

outcome of this case. The issue is not one of notice but one of eligibility. While the Board clearly indicated that the University may have breached its duty to notify Mr. Ford of his termination, it held that pursuant to University policies and regulations Mr. Ford was not entitled to convert his life insurance policy upon his termination. The University did present substantial evidence by introducing its Exhibit #1, entitled Your Group Plan University of Kentucky Term Life, ADDC and Group Accident Plan. Included in Exhibit #1 were the terms quoted by the Board of Claims relative to the five years of continuous employment to be eligible to convert the group life insurance benefit. In that Mr. Ford was employed by the University for less than eight months prior to his termination, he was not eligible to convert the group insurance policy to an individual policy. Moran can show no injury to the estate nor can she demonstrate that the estate was entitled to any award under any theory of actionable negligence.

As the circuit court correctly noted in its order "[t]he standard of review for Board of Claims suits is found in KRS 44.140 which provides that a decision is conclusive if there exists substantial evidence to support the findings...of the board. The Board acts as a fact finder and those findings, is supported by substantial, competent evidence are conclusive. Pemberton v. Commonwealth, 398 S.W.2d 487 (Ky., 1966)." We

believe, as did the circuit court, that there is substantial evidence to support the Board's finding and conclusions.

Therefore, for the foregoing reasons, the opinion and order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Ross Stinetorf
Heather Pack Howell
Lexington, KY

BRIEF FOR APPELLEE:

R. Bruce Lankford
Lexington, KY