

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001953-MR

CHARLOTTE SMITH

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 01-CI-01465

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION AND ORDER
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, JUDGE; MILLER,¹ SPECIAL JUDGE; ROSENBLUM,²
SENIOR JUDGE.

TAYLOR, JUDGE: Charlotte Smith brings this appeal from an
August 16, 2005, order of the Franklin Circuit Court affirming
the decision of the Disability Appeals Committee of the Board of
Trustees of the Kentucky Retirement System (Board) to deny Smith
disability retirement benefits. We affirm.

¹ Retired Judge John D. Miller sitting as Special Judge by assignment of the
Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

² Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the
Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and
Kentucky Revised Statutes 21.580.

Smith was employed as a school secretary with the Clay County Board of Education from 1997 until June 16, 2000. Smith filed a claim for disability retirement benefits with the Kentucky Retirement Systems on July 19, 2000. Smith claimed to be disabled because of rheumatoid arthritis, carpal tunnel syndrome, osteoarthritis, and fibromyalgia. It is undisputed that Smith suffers from rheumatoid arthritis. A hearing was held upon her claim, and thereafter, the hearing officer entered his report and recommended order denying Smith disability retirement benefits. The hearing officer found:

It is the conclusion of the Hearing Officer that the claimant is not entitled to disability retirement benefits pursuant to KRS 61.600, since she failed to establish by objective medical evidence the existence of a permanent mental or physical impairment which would prevent her from performing her former job, or a similar job from which she received her last paid employment.

It is not disputed that the claimant suffers from rheumatoid arthritis, which causes swelling and pain in her joints - especially in the legs. The record establishes that this condition alternately becomes more active and less active. When it is active, the rheumatoid arthritis limits the claimant's physical abilities, and Dr. Goldfarb indicates that work perhaps aggravates the disease. Yet, during the years that the claimant has experienced this problem, she has remained able to perform the sedentary duties of a school secretary. The medical records do not demonstrate any recent worsening that would explain why she cannot continue in this employment. Instead, the plaintiff relies on her

subjective complaints related to fibromyalgia. While her treating physicians have listed that diagnosis, there is no objective documentation that it affects her memory, as claimed, or increases her physical restrictions. Similarly, there is no evidence to suggest the claimant's high blood pressure or heart condition interfere with her ability to perform clerical work in any way. Finally, while the evidence mentions carpal tunnel syndrome as a possibility, that diagnosis is not objectively established, and again, no particular restrictions are listed in that regard.

The Board ultimately adopted the hearing officer's report and recommended order to deny Smith disability retirement benefits. Smith then sought judicial review in the Franklin Circuit Court. By order entered August 16, 2005, the Franklin Circuit Court affirmed the Board's decision to deny Smith disability retirement benefits. This appeal follows.

Smith's sole contention on appeal is that the Franklin Circuit Court erred by concluding the Board's decision to deny her disability retirement benefits was supported by adequate evidence. Specifically, Smith argues:

The conclusion of the Hearing Officer is simply unsupported by the record which was before him at the time he made his decision. As is stated herein above, evidence was introduced from Dr. Goldfarb, a specialist in his field, and a treating physician for Ms. Smith for over 5 years at the time of the hearing. Dr. Goldfarb, as a longtime treating physician, was in a particularly good position from which to express opinions about Ms. Smith's

abilities. The decision of the Haring Officer scarcely mentions Dr. Goldfarb and gives his opinions short shrift. Instead, the Hearing Officer gives controlling weight to the opinions of individuals who never actually examined Ms. Smith.

Ms. Smith's Treating Physician's opinion was the most persuasive and credible evidence in the record and it was essentially ignored. . . .

As an appellate court, we step into the shoes of the circuit court and review the administrative agency's decision for arbitrariness. Am. Beauty Homes Corp. v. Louisville and Jefferson Co. Planning and Zoning Comm'n, 379 S.W.2d 450 (Ky. 1964). Arbitrariness has many facets; in this appeal, we must decide whether the Board's decision to deny Smith disability retirement benefits was supported by adequate evidence. As Smith carried the burden to prove entitlement to disability benefits, she must demonstrate that the record compels a finding in her favor to be successful in this appeal. See Bourbon Co. Bd. of Adj. v. Currans, 873 S.W.2d 836 (Ky.App. 1994). Additionally, it is well-settled that weight and credibility of evidence is within the sole province of the fact-finder, which is the Board. New v. Commonwealth, 156 S.W.3d 769 (Ky.App. 2005).

Two medical review board physicians, Dr. Esten S. Kimbel and Dr. William P. McElwain, opined that Smith's application for disability retirement benefits should be denied.

Both physicians concluded that Smith was not disabled from performing the essential duties of her job. Moreover, as pointed out by the circuit court, Smith's rheumatoid arthritis began to flare in 1996. The court noted that when she left her position in 2000:

[H]er condition was not significantly worse than it was when this flare up began in 1996. A review of the record indicates that Smith missed very little time from work due to her RA. (A.R., at 17, 94, 104, 111 and 112) Since there is no evidence that her condition was worse when she quit than it was while she was working, there is insufficient evidence to find that she is unable to perform her job.

As it was within the sole province of the Board to judge the weight and credibility of evidence, we are unable to conclude the record compels a finding that Smith suffered a physical impairment that prevented her from performing the essential duties of her job under Kentucky Revised Statutes 61.600.

Having considered Kentucky Retirement Systems' motion to dismiss and being otherwise sufficiently advised; it is hereby ORDERED that the motion to dismiss be DENIED.

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

ALL CONCUR.

ENTERED: January 5, 2007

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

Allen B. Roberts
McKee, Kentucky

BRIEF AND ORAL ARGUMENT FOR
APPELLEE:

Jennifer A. Jones
Kentucky Retirement Systems
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