

RENDERED: SEPTEMBER 12, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001972-MR

SHARON MAYNARD

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 05-CI-01600

KENTUCKY RETIREMENT
SYSTEMS

APPELLEE

OPINION
AFFIRMING

*** * * * *

BEFORE: ACREE AND CAPERTON, JUDGES; ROSENBLUM,¹ SPECIAL JUDGE.

ACREE, JUDGE: Sharon Maynard appeals from the August 3, 2007, opinion and order of the Franklin Circuit Court affirming a decision of the Kentucky

¹ Retired 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 Statute (KRS) 21.580.

Retirement Systems (Retirement Systems) denying Maynard disability retirement benefits. We affirm.

Maynard was employed as a Deputy Clerk for the Lawrence County Clerk's Office for approximately twelve years from February 1990 through August 2002. Maynard's position was considered sedentary to light in nature. She was seated 75% of the time and had the option of alternating between standing, walking and sitting. Her job duties included issuing licenses, recording documents, making photocopies, and monitoring inventory.

In August 2002, Maynard applied for disability retirement benefits pursuant to KRS 61.600 and was denied. In July 2004, she again applied for disability retirement benefits based on a variety of conditions including fibromyalgia, chest pain, migraine headaches, joint pain, blood pressure problems, bladder and bowel problems, numbness and back pain. The Retirement Systems' Medical Review Board denied Maynard's application and she petitioned for an administrative hearing. The hearing officer recommended Maynard's application be denied based on her finding that the objective medical evidence did not establish by a preponderance of the evidence that Maynard was totally and permanently incapacitated from her job duties as deputy clerk, nor was she likely to remain incapacitated for a period of more than twelve months from her last date of paid employment. Maynard filed exceptions to the hearing officer's report and

recommended order. The Board of Trustees (Board) reviewed these exceptions, as well as all evidence of record, and accepted the hearing officer's report and recommended order. Maynard appealed to the Franklin Circuit Court. The circuit court affirmed the denial of disability retirement benefits. This appeal followed.

The crux of Maynard's appeal is that the Retirement System's original decision incorrectly ignored overwhelming substantial medical evidence she had provided in support of her claim. We disagree.

To trigger state disability retirement benefits, pursuant to KRS 61.600(3)(a)-(d), a claimant must offer "objective medical evidence by licensed physicians" showing that since the last day of her paid state employment, she "has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which [she] received [her] last paid employment." Such incapacity must be the result of bodily injury, mental illness, or disease, and must be deemed permanent. Further, the incapacity cannot "result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system. . . ." A claimant for disability retirement benefits must prove she satisfies all the foregoing statutory criteria to justify payment of benefits. *See Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky.App. 1980).

When a claimant is denied administrative relief, the question to be decided on appeal is "whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in [claimant's] favor," *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky.App. 1984), and

whether the denial of the relief sought was arbitrary. *Bourbon County Board of Adjustment v. Currans*, 873 S.W.2d 836, 838 (Ky.App. 1994).

In determining whether an agency's action was arbitrary, the reviewing court should look at three primary factors. The court should first determine whether the agency acted within the constraints of its statutory powers or whether it exceeded them. . . . Second, the court should examine the agency's procedures to see if a party to be affected by an administrative order was afforded his procedural due process. The individual must have been given an opportunity to be heard. Finally, the reviewing court must determine whether the agency's action is supported by substantial evidence. . . . If any of these three tests are failed, the reviewing court may find that the agency's action was arbitrary.

Bowling v. Natural Resources & Environmental Protection Cabinet, 891 S.W.2d 406, 409 (Ky.App. 1995) (quoting *Commonwealth, Transportation Cabinet v. Cornell*, 796 S.W.2d 591, 594 (Ky.App. 1990)).

In reviewing an administrative decision, the circuit court's role is not to reinterpret or reconsider the merits of the claim. *Kentucky Unemployment Insurance Commission v. King*, 657 S.W.2d 250, 251 (Ky.App. 1983); *Kentucky Board of Nursing v. Ward*, 890 S.W.2d 641, 642 (Ky.App. 1994). Instead, the circuit court must determine two things: are the findings of fact "supported by substantial evidence of probative value" and has the administrative agency "applied the correct rule of law to the facts so found." *Southern Bell Telephone & Telegraph Co. v. Kentucky Unemployment Insurance Commission*, 437 S.W.2d 775, 778 (Ky. 1969) (citing *Brown Hotel Co. v. Edwards*, 365 S.W.2d 299 (Ky.

1962)). *See also Kentucky Commission on Human Rights v. Fraser*, 625 S.W.2d 852, 856 (Ky. 1981). As long as there is substantial evidence in the record to support the agency's decision, the circuit court must defer to the agency, even if there is conflicting evidence. *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972) (*citing Blankenship v. Lloyd Blankenship Coal Co., Inc.*, 463 S.W.2d 62 (Ky. 1970)).

We review an administrative agency's exercise of adjudicative authority by applying KRS 13B.150. In reviewing the circuit court's affirmance of an administrative decision our standard is whether the circuit court's findings are clearly erroneous. *Johnson v. Galen Health Care, Inc.*, 39 S.W.3d 828, 833 (Ky.App. 2001). *See also* Kentucky Rules of Civil Procedure (CR) 52.01.

Maynard argues that the evidence compels a finding that she is entitled to disability retirement benefits based upon her numerous medical conditions, particularly her fibromyalgia. We disagree.

As previously pointed out by the circuit court, Maynard had the burden to prove her entitlement to disability benefits, and the standard of review is whether the evidence compelled a different result. *McManus v. Kentucky Retirement Systems*, 124 S.W.3d 454, 458 (Ky.App. 2004). This Court must affirm the board "whenever the claimant's evidence is not sufficiently persuasive to require a favorable finding as a matter of law." *Dawson v. Driver*, 420 S.W.2d 553, 555 (Ky. 1967).

After a thorough review of the record we find that there was certainly evidence of Maynard's many health issues. However, there was also evidence that some of her symptoms were easily treatable and that she was able, physically and mentally, to carry on with the activities of her daily life. Taking into account all of the evidence within the record before us, we are unable to conclude that a different outcome was compelled.

Finally, Maynard notes that the Retirement Systems should have given credence to the determination made by the Social Security Administration, which found her condition to be “severe” under their standards. We note that pursuant to 105 Kentucky Administrative Regulations (KAR) 1:210 § 8(1), a hearing officer may allow a claimant to introduce evidence of Social Security Administration awards. However, “[t]he hearing officer shall consider only objective medical records contained within the determination and shall not consider vocational factors or be bound by factual or legal findings of other state or federal agencies.” 105 KAR 1:210 § 8(2). Thus, Maynard's argument in this regard is without merit.

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

ALL CONCUR.

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