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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001730-MR

SUSAN LAY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 05-CI-01640

KENTUCKY RETIREMENT
SYSTEMS and the BOARD OF
TRUSTEES OF THE KENTUCKY
RETIREMENT SYSTEMS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON AND TAYLOR, JUDGES; KNOPF, SENIOR JUDGE.

CLAYTON, JUDGE: Susan Lay (Lay) appeals from the June 27, 2008, opinion and order of the Franklin Circuit Court affirming a decision of the Kentucky Retirement Systems denying Lay disability retirement benefits. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Lay was employed by the McCreary County Board of Education as a school bus driver. Her membership in the Kentucky Retirement Systems (hereinafter "Systems") began on November 15, 1993. Her last day of paid employment was April 21, 2004, with 107 months of service credit. Lay describes her job duties as operating a school bus, cleaning and inspecting the bus, and overseeing student passengers. Her supervisor stated that she worked a five hour workday in which she had sat four hours and alternated between standing and walking during the balance of the time. Lay was required to lift up to ten pounds occasionally. Given the physical exertion requirements for the job, it is classified as light work within the meaning of KRS 61.600(5)(c).

Following Lay's application for disability retirement benefits on May 17, 2004, the Systems' Medical Review Board denied her disability retirement benefits. Her application for benefits was based on diagnoses of fibromyalgia, and arthritis, plus experiencing fatigue and back, leg, and knee pain. Lay requested an administrative hearing, which was conducted on March 1, 2005, to decide whether she had been permanently, mentally, or physically incapacitated since her last date of paid employment, and thus, unable to perform her job or a job with similar duties. The hearing officer recommended denial of her claim and the report, dated July 22, 2005, was adopted by the Disability Appeals Committee of the Board of Trustees in a final order entered on October 26, 2005. The Board based its decision denying Lay's application on the determination that she had not established by objective medical evidence that she was totally and permanently

disabled. Then, on November 28, 2005, Lay appealed the System's denial of her application for disability retirement benefits to the Franklin Circuit Court. As noted above, the Franklin Circuit Court upheld the decision of the Disability Appeals Committee, and this appeal follows.

ISSUE

The crux of Lay's appeal is that the System's original decision incorrectly ignored overwhelming substantial medical evidence supporting her claim for disability retirement benefits. Lay further contends that since the agency's decision was not based on substantial evidence, it is clearly arbitrary, and should have been found clearly erroneous by the circuit court. We disagree.

STANDARD OF REVIEW

First, we observe that the circuit court's role in reviewing an administrative decision is not to reinterpret or reconsider the merits of the claim. *Kentucky Unemployment Ins. Com'n v. King*, 657 S.W.2d 250, 251 (Ky. App. 1983); *Kentucky Bd. of Nursing v. Ward*, 890 S.W.2d 641, 642 (Ky. App. 1994). Instead, the circuit court must determine whether the findings of fact were "supported by substantial evidence of probative value" and whether the administrative agency "applied the correct rule of law to the facts so found." *Southern Bell Tel. & Tel. Co. v. Kentucky Unemployment Ins. Commission*, 437 S.W.2d 775, 778 (Ky. 1969) (citing *Brown Hotel Co. v. Edwards*, 365 S.W.2d 299 (Ky. 1963)). Finally, when an administrative agency's findings are supported by

substantial evidence, these findings must be accepted by a reviewing court. *Ward*, 890 S.W.2d at 642.

Next, we examine the circuit court's order affirming the Systems' decision. In reviewing a state agency's administrative decision adverse to a claimant, we will not overturn it unless the agency has acted arbitrarily, outside the scope of its authority, applied an incorrect legal standard, or its decision is not supported by substantial evidence. *E.g.*, *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 307-08 (Ky. 1972). "Substantial evidence" is proof having "sufficient probative value to induce conviction in the minds of reasonable men." *Kentucky Retirement Systems v. Heavrin*, 172 S.W.3d 808, 814 (Ky. App. 2005). Thus, under the controlling legal standards, the question before us is whether the circuit court's decision was arbitrary because it erred in holding that substantial evidence supported the Systems' determination that Lay failed to prove by a preponderance of the evidence that she has a permanent, occupational disability that cannot be accommodated. Finally, as long as there is substantial evidence in the record supporting the agency's decision, we must defer to the agency, even if there is conflicting evidence. *Kentucky Commission on Human Rights v. Fraser*, 625 S.W.2d 852, 856 (Ky. 1981).

ANALYSIS

1. KRS 61.600

According to KRS 13B.090(7), which governs administrative procedure, Lay bears the burden of persuasion. In addition, in order to receive disability retirement benefits, she must establish under KRS 61.600(3):

Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:

- (a) The person, since his last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he received his last paid employment. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered;
- (b) The incapacity is a result of bodily injury, mental illness, or disease. For purposes of this section, “injury” means any physical harm or damage to the human organism other than disease or mental illness;
- (c) The incapacity is deemed to be permanent; and
- (d) The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent. . . .

In sum, Lay must provide objective medical evidence that she is permanently physically incapacitated since her last date of paid employment by fibromyalgia, arthritis, back pain, fatigue, plus leg and knee pain so as to be unable to perform her job.

We begin our discussion by considering the findings of fact relied upon by the System in denying Lay disability retirement benefits. Lay’s medical

records indicate some degenerative changes in her hips and back. Although she was diagnosed with degenerative arthritis, which was labeled as “quite limiting,” the doctor did not state that Lay was disabled or unable to perform her job duties. The prognosis for her fibromyalgia is fair. Her bone density studies show osteopenia but not osteoporosis. Put differently, Lay’s medical evidence demonstrated that she had mild test results and subjective complaints of pain. Subjective complaints of pain do not meet the requirements of objective medical evidence by a licensed physician as required by KRS 61.600(3). In sum, given that a bus driver’s job duties are classified as sedentary to light and that in all the medical testimony and reports, no doctor stated that Lay was disabled or unable to perform her job duties, the agency found that she did not qualify as disabled under KRS 61.600. Therefore, Lay did not provide objective medical evidence that she is permanently mentally or physically incapacitated and unable to perform her job duties.

Furthermore, the circuit court properly found that the Systems applied the correct legal standard by using the criteria in KRS 61.600. And the Board of Trustees reviewed the evidence of record, ascertained that Lay did not meet her burden of proof because the objective evidence did not compel a finding of disability. Consequently, because Lay did not prove the requisite permanent physical incapacity, she is not entitled to an award of disability retirement benefits. The circuit court properly found that substantial evidence supported the Systems’ decision to deny Lay benefits.

CONCLUSION

Accordingly, it is our determination that the Franklin Circuit Court's decision upholding the Kentucky Retirement Systems was legally correct, based on substantial evidence, and not erroneous. For these reasons, we affirm the judgment of the Franklin Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

John H. Gray
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Katherine Rupinen
Kentucky Retirement Systems
Frankfort, Kentucky