

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001442-MR

KENTUCKY RETIREMENT SYSTEMS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 10-CI-00590

MONICA HALE-KEHRT

APPELLEE

OPINION
REVERSING

** ** * * * * *

BEFORE: NICKELL, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: The Kentucky Retirement Systems (Retirement Systems) brings this appeal from an August 5, 2011, Opinion and Order of the Franklin Circuit Court reversing a Final Order of the Board of Trustees denying Monica Hale-Kehrt's application for disability retirement benefits. We reverse.

Hale-Kehrt was a fourteen-year employee of the Department of Military Affairs, Division of Emergency Management, and was employed as a Training Development Specialist. Her last day of paid employment was October 31, 2005.

In 2007, Hale-Kehrt timely filed a claim for disability retirement benefits alleging sundry disabling illnesses and conditions. She was denied disability benefits on four previous occasions, being returned to work after the denial of each previous claim. Subsequently, a hearing officer for the Retirement Systems considered the 2007 claim and rendered a Final Report and Recommended Order in December 2009. Therein, the hearing officer recommended denying Hale-Kehrt's claim as she failed to present objective medical evidence proving a total and permanent disability from performing the duties of her job. The Board of Trustees then considered the claim and ultimately adopted the hearing officer's report denying Hale-Kehrt's application for disability retirement benefits.¹ Being dissatisfied with the Board's decision, Hale-Kehrt sought judicial review by the Franklin Circuit Court.

By Opinion and Order entered August 5, 2011, the circuit court reversed the Board of Trustees' decision to deny disability retirement benefits and remanded for the Board to consider the "cumulative effects" of Hale-Kehrt's medical conditions and illnesses. The circuit court stated that the Board of Trustees only considered each medical condition individually to determine

¹ The Board of Trustees also made additional findings of fact.

disability rather than considering the cumulative effects of all Hale-Kehrt's medical conditions. Hence, the circuit court remanded "for further consideration of the cumulative effects of Ms. Hale-Kehrt's conditions at the time of her last date of paid employment." This appeal follows.

The Retirement Systems contends that the circuit court erred by reversing the Board of Trustees' Final Order denying Hale-Kehrt's disability retirement benefits. For the following reasons, we must reluctantly agree.

Judicial review of an administrative agency's decision is limited. We review an administrative agency's decision for arbitrariness. *Am. Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450 (Ky. 1964). Arbitrariness has many facets. Herein, our inquiry focuses upon whether the administrative agency followed applicable law and whether sufficient evidence exists to support the agency's decision.

To determine if a claimant is entitled to disability retirement benefits, Kentucky Revised Statutes (KRS) 61.600(3) provides:

- (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. For purposes of this subsection, reemployment shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.

Additionally, our Supreme Court held that the Retirement Systems must consider the cumulative effects of a claimant’s myriad medical conditions when determining a disability retirement claim. *Ky. Ret. Sys. v. Bowens*, 281 S.W.3d 776 (Ky. 2009). If the Retirement Systems fails to do so, the Retirement Systems acts contrary to law and arbitrarily. *Id.*

In our case, the circuit court reversed and remanded ordering the Retirement Systems to consider the cumulative effects of Hale-Keht’s medical conditions. However, in the Board of Trustees’ Final Order, the Board explicitly found:

Claimant has failed to prove by a preponderance of the evidence . . . that she was disabled as of her last day of paid employment as a result of strokes, degenerative disc disease and joint disease, fibromyalgia, uncontrolled diabetes, chronic pain, fatigue, Hashimoto’s thyroiditis, muscle spasm, central disc protrusion with compression of the cord, postherpetic neuralgia, depression and

anxiety. Each of Claimant's medical conditions has been individually considered and do not alone support a finding of disability. The cumulative effect of Claimant's medical conditions has been considered. Claimant has failed to prove by a preponderance of the evidence that . . . she was disabled as of her last date of paid employment due to the cumulative effect of her medical conditions.

As set forth above, the Board of Trustees did consider the cumulative effects of Hale-Kehrt's medical conditions. The Board of Trustees specifically stated it considered the cumulative effects of Hale-Kehrt's medical conditions and found that Hale-Kehrt still failed to meet her burden of proof. As the Board of Trustees has already considered the cumulative effects of Hale-Kehrt's medical conditions, the circuit court erred by reversing and remanding for consideration of same.

We note that Hale-Kehrt submitted objective medical evidence to the Retirement Systems proving her permanent and total disability from performing the duties of her job. However, as a judicial body, our review of the Board of Trustees' decision is limited. As Hale-Kehrt carried the burden of proof to demonstrate her disability before the Board of Trustees, our review is restricted to whether the record compels a finding in her favor. *See McManus v. Ky. Ret. Sys.*, 124 S.W.3d 454 (Ky. App. 2003). Upon review of the evidence, we are unable to say that it does. Although we may have found differently upon the evidence submitted, we cannot disturb the Board of Trustees' finding that Hale-Kehrt failed to prove that she was totally and permanently disabled from performing the duties of her job.

In sum, we reverse the circuit court's August 5, 2011, Opinion and Order and affirm the Final Order of the Board of Trustees denying Hale-Kehrt's disability retirement benefits.

For the foregoing reasons, the Opinion and Order of the Franklin Circuit Court is reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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