

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001979-MR

JANIE MITCHELL

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 09-CI-00751

BOARD OF TRUSTEES OF THE
KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, DIXON, AND MAZE, JUDGES.

DIXON, JUDGE: Janie Mitchell appeals an order of the Franklin Circuit Court, which dismissed her appeal from a final order of the Board of Trustees of the Kentucky Retirement Systems denying her application for disability retirement benefits. Finding no error, we affirm.

Mitchell was employed as a Family Services Manager for the Breckinridge County Board of Education. Mitchell applied for disability retirement benefits in October 2007, alleging back pain, leg cramps, radiculopathy, and degenerative disc disease. The medical review board denied her application on two occasions. Mitchell requested an evidentiary hearing, and she represented herself *pro se*. After considering the evidence, the hearing officer recommended denial of Mitchell's application for benefits. As required by KRS 13B.110, the hearing officer's order informed Mitchell that "each party shall have fifteen (15) days from the date of this Recommended Order to file exceptions with the Board of Trustees of the Kentucky Retirement Systems." Mitchell did not file any exceptions to the hearing officer's recommended order. In its final order denying benefits, the Board adopted the recommended order and added one additional finding of fact.

Mitchell appealed to the Franklin Circuit Court. Pursuant to *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004), the circuit court dismissed Mitchell's petition, concluding that her failure to file exceptions precluded judicial review of her claims. Mitchell now appeals.

Mitchell opines that, as a *pro se* claimant, she did not receive sufficient notice of her right to file exceptions; further, she contends the Board owed her a fiduciary duty to provide notice of the consequences of failing to file exceptions.¹ We disagree.

¹ Mitchell also raised an issue for the first time in her reply brief regarding the additional finding of fact made by the Board. We decline to address that claim, as Mitchell neither identified it as

Rapier states, in relevant part: “Under Chapter 13B, the filing of exceptions provides the means for preserving and identifying issues for review by the agency head. In turn, filing exceptions is necessary to preserve issues for further judicial review.” *Id.* at 563. The notice language at issue here advised Mitchell that “each party shall have fifteen (15) days from the date of this Recommended Order to file exceptions with the Board of Trustees of the Kentucky Retirement Systems.” In *Rapier*, the Supreme Court found that similar language “fully advised” the claimant “of his right to file exceptions.” *Id.* at 564. Thus, pursuant to the principles set forth in *Rapier*, Mitchell was fully advised of her right to file exceptions. Likewise, we are not persuaded that the Board’s fiduciary status warranted a more stringent notice standard than what *Rapier* requires. The hearing officer provided notice to Mitchell that comported with the requirements mandated by KRS 13B.110 and *Rapier*; accordingly, the Board satisfied its fiduciary duty.

Mitchell further argues that the notice provided was insufficient to advise her, as a *pro se* claimant, of her right to file exceptions.

Rapier clearly instructs that “filing exceptions is necessary to preserve issues for further judicial review.” *Rapier*, 130 S.W.3d at 563. This principle has been held applicable to claimants who appeared *pro se* during administrative proceedings before the Board. *See, e.g., Mask v. Kentucky Retirement Systems*, 2009-CA-000656-MR, 2010 WL 985295 (Mar. 19, 2010); *Risk v. Kentucky Retirement Systems*, 2009-CA-002358-MR, 2010 WL 3810852 (Oct. 1, 2010);

an issue in her prehearing statement, CR 76.03(8), nor cited the location in the record where she preserved that issue for appellate review. CR 76.12(4)(c)(v).

Slone v. Kentucky Retirement Systems, 2012–CA–001590–MR, 2013 WL 4400289 (Aug. 16, 2013). Further, in *Givens v. Cabinet for Health and Family Services*, 359 S.W.3d 454 (Ky. App. 2011), this Court noted that “*pro se* litigants are still required to preserve error” and concluded that *pro se* claimants are obligated to file exceptions identifying specific errors in order to preserve them for judicial review. *Id.* at 463.

We are bound to follow the precedent established by our Supreme Court in *Rapier*, and *pro se* claimants are not exempt from preservation requirements. *See id.* Mitchell did not file exceptions to the recommended order; consequently, her claims of error were not preserved for judicial review. *Rapier*, 130 S.W.3d at 563. After careful review, we conclude the court properly dismissed Mitchell’s petition.

For the reasons stated herein, we affirm the order of the Franklin Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Scott M. Miller
Louisville, Kentucky

BRIEF FOR APPELLEE:

Leigh A. Jordan
Frankfort, Kentucky