

RENDERED: OCTOBER 11, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2018-CA-000417-MR

CHAD WINGLER

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 16-CI-01231

KENTUCKY RETIREMENT SYSTEMS

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \*\*

BEFORE: COMBS, TAYLOR, AND L. THOMPSON, JUDGES.

TAYLOR, JUDGE: Chad Wingler brings this appeal from an Opinion and Order of the Franklin Circuit Court entered February 16, 2018, affirming the final order of the Board of Trustees of the Kentucky Retirement Systems (the Board) denying Wingler's application for disability retirement benefits under Kentucky Revised Statutes (KRS) 61.621. After careful review, we affirm.

The relevant facts are uncontested, but the administrative record is voluminous. In the interests of judicial economy, we will set forth only the facts truly needed to resolve the limited legal issues herein.

Wingler had been employed by the Metropolitan Sewer Department in Louisville as a utility worker for less than a year when he injured his back while attempting to move a heavy steel plate in 2012. Wingler had physical therapy and back surgery but continued to experience pain. Two functional evaluations in 2013 concluded Wingler could not return to his former job but could perform less strenuous work. Independent medical examinations by Dr. Gregory Gleis and Dr. Luca Conte reached similar conclusions.

Wingler applied for duty-related disability benefits under KRS 61.621<sup>1</sup> in June 2014. After three medical examiners twice recommended denying Wingler's application, he requested a hearing. A hearing officer conducted an evidentiary hearing in May 2016. On September 23, 2016, the hearing officer issued extensive Findings of Fact, Conclusions of Law and a Recommended Order which opined that Wingler suffered a serious work-related injury, but he nonetheless should not receive benefits because he had failed to prove he was

---

<sup>1</sup> Chad Wingler could not seek disability retirement benefits under Kentucky Revised Statutes (KRS) 61.600 because he did not have sixty months of service as required by KRS 61.600(1)(a).

disabled to the extent that he could not engage in any occupation for remuneration or profit. That conclusion is crucial because KRS 61.621(1) states that:

Notwithstanding any provision of any statutes to the contrary, effective June 1, 2000, any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position, as defined in KRS 61.592, shall be eligible for minimum benefits equal to the benefits payable under this section or KRS 61.702 if the employee dies *or becomes totally and permanently disabled to engage in any occupation for remuneration or profit as a result of a duty-related injury.*

KRS 61.621(1) (emphasis added).

The Board adopted the hearing officer's recommendations by a final order rendered October 27, 2016. Thereafter, Wingler timely filed a petition for review with the Franklin Circuit Court. By Opinion and Order entered February 16, 2018, the circuit court affirmed the Board, stressing that "[t]he heightened standard under KRS 61.621 requires an applicant to prove that they are completely unable to receive any employment for any type of pay." Opinion and Order at 7. This appeal follows.

The Kentucky Supreme Court recently clarified our limited scope of review in disability retirement cases. When, as in this case, the Board renders a decision adverse to an applicant who bears the burden of proof, we must first look to see if the Board's decision is supported by substantial evidence. *Kentucky Retirement Systems v. Ashcraft*, 559 S.W.3d 812, 822 (Ky. 2018). If the Board's

decision is not supported by substantial evidence, it must be reversed; if it is we must then determine whether the applicant's proof was so compelling that it would have persuaded all reasonable people. *Id.* This two-pronged review is intended to ensure that courts do not substitute their judgment for the Board's when substantial evidence supports both the claimant and the Board's positions. *Bradley v. Kentucky Retirement Systems*, 567 S.W.3d 114, 119-20 (Ky. 2018).

It is uncontested that Wingler worked briefly as a paid, part-time soccer coach after he was injured. We emphatically reject Wingler's argument that the coaching job is "irrelevant." To the contrary, as the circuit court cogently noted, KRS 61.621(1) plainly requires an applicant to prove he cannot do any work for any pay. In addition, though Wingler stresses evidence more favorable to him, it is uncontested that at least some functional evaluations and independent medical exams contain conclusions that he can perform sedentary work. Therefore, though it is uncontested that Wingler suffered a severe work-related injury which prevents him from returning to his prior position, he is facially ineligible for KRS 61.621 disability benefits. The Board's decision on this issue is supported by substantial evidence and applicable law.

As noted, we interpret Wingler's primary argument on appeal is both the Board and circuit court improperly relied upon KRS 61.621(1) in making their

decision and failed to consider KRS 61.621(4).<sup>2</sup> As we understand Wingler's argument, he believes KRS 61.621(4) incorporates by reference the more lenient disability standard of KRS 61.600(3)(a). In other words, Wingler argues he does not have to be totally and permanently disabled and unable to engage in any occupation for remuneration or profit to receive disability benefits as provided for in KRS 61.600(3)(a). Under the lesser standard, he merely must be unable to perform the job or similar duties in his position as a utility worker to receive benefits.

We agree with the Board that KRS 61.621(4) "is not the clearest statutory subsection." Board's Brief at 20. Subsection (4) reads as follows:

If the employee is determined to be disabled as provided in KRS 61.600, or other applicable disability statutes in any other state-administered retirement system, as the result of a duty-related injury, the employee may elect to receive benefits determined under the provisions of KRS 61.605, or other applicable disability statutes in any other state-administered retirement system, except that the monthly retirement allowance shall not be less than twenty-five percent (25%) of the employee's monthly final rate of pay. For purposes of determining disability, the service requirement in KRS 61.600(1)(a), or other applicable statutes in any other state-administered retirement system, shall be waived.

KRS 61.621(4).

---

<sup>2</sup> Though its contents were not changed, effective in April 2018, KRS 61.621(4) was recodified by the legislature and is now set out in KRS 61.621(5).

While this Court has not found any published authority addressing the interplay between KRS 61.600 and KRS 61.621, we believe the circuit court thoroughly and correctly analyzed the issue which we incorporate and adopt as follows:

First, the Board utilized the correct legal standard to determine if Wingler was rendered totally and permanently disabled from a single traumatic event, which occurred while he was performing the duties of his position pursuant to KRS 61.621. Wingler argues that the Board failed to give regard to the provisions of KRS 61.600, which further define the inability to engage in an occupation as a result of permanent and total disability. KRS 61.600 applied to non-hazardous disability retirement benefits while KRS 61.621 concerns non-hazardous duty-related benefits. [Wingler] is not eligible for non-hazardous disability retirement benefits under KRS 61.600 because at the time of his injury he had only obtained ten (10) months of service credit and KRS 61.600 requires an applicant to have sixty (60) months of service credit. The Board properly found that KRS 61.600 only applies to KRS 61.621 insofar as KRS 61.621(4) incorporates the requirements of non-hazardous disability retirement benefits under KRS 61.600 that must be met, in addition to the heightened standard for non-hazardous duty-related benefits under KRS 61.621. The heightened standard under KRS 61.621 requires an applicant to prove that they are completely unable to receive any employment for any type of pay. Ky. Rev. Stat. Ann. § 61.621 (West 2017). Under 61.621 an applicant bears a high burden to demonstrate their unemployability, however, the plain language of the statute requires such proof. *Id.* Applicants who meet the required sixty (60) month service credit are able to apply for benefits under both KRS 61.600 and KRS 61.621. The distinction between the two statutes is clearly the required service credit time,

which determines the standard an applicant must meet in order to receive benefits. Additionally, the language of the statute is clear that legislative intent of KRS 61.621 is to provide benefits to non-hazardous employees who are killed or rendered permanently incapable for employment by a duty-related injury. *Id.*

Under KRS 61.621 Wingler is required to prove that he is unable to engaged [sic] in any occupation for remuneration or profit as a result of his duty-related injury. *Id.* The Board properly determined that Wingler did not meet this burden. Following his injury, Wingler was employed as a youth soccer coach, received a Commercial Driver's License on June 26, 2013, and ran for the position of Constable in 2014. Wingler was compensated for his position as a youth soccer coach, which directly represents that he is able to be employed for remuneration or profit. Additionally, running for election of a position that involves compensation and active participation, such as the duties of Constable require, demonstrate[s] Wingler's employability and ability to engage in work for remuneration or profit. Moreover, the record containing the Independent Medical Evaluation performed by Dr. Bilkey; the Functional Capacity Evaluation by Justin Travis PT, DPT; the vocational evaluation by Dr. Luca E. Conte, Ph. D; and records from Wingler's pain management specialist and back surgeon demonstrate that Wingler is not totally and permanently disabled and is able to engage in any occupation for remuneration or profit as a result.

Opinion and Order at 7-8.

Accordingly, in applying the eligibility requirements set out in KRS 61.621(1), we do not find that the proof submitted by Wingler was so compelling that no reasonable person could have failed to be persuaded by Wingler's

argument. To the contrary, Winglers's proof presented at the hearing below failed to establish the necessary requirements for eligibility under KRS 61.621(1).

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

THOMPSON, L., JUDGE, CONCURS.

COMBS, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

Alan W. Roles  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Carrie Bass  
Frankfort, Kentucky