

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

AS MODIFIED: AUGUST 27, 2009  
RENDERED: APRIL 23, 2009  
NOT TO BE PUBLISHED

# Supreme Court of Kentucky

2007-SC-000604-DG

FINAL

BOARD OF TRUSTEES OF  
KENTUCKY RETIREMENT SYSTEMS

DATE 8/27/09 Kelly Klaber D.C.  
APPELLANT

V. ON REVIEW FROM COURT OF APPEALS  
CASE NO. 2006-CA-0001808-MR  
FRANKLIN CIRCUIT COURT NO. 05-CI-00867

CAROLYN LEDFORD

APPELLEE

## MEMORANDUM OPINION OF THE COURT

### REVERSING

This is a companion case to the series of appeals, including Board of Trustees of Kentucky Retirement Systems v. Bowens, No. 2006-CA-000941, which have recently come before this Court concerning the applicability of the “treating physician rule” in disability proceedings.

Appellee, Carolyn Ledford, was employed by the Laurel County Board of Education for 20 years. Appellee applied for disability retirement on March 9, 2001, on the basis of acute severe asthmatic attacks. After review of her application and subsequent hearings, Appellant rejected her claim on grounds that Appellee failed to provide objective evidence of a condition that would

prevent her from performing her usual work activity. Appellee then filed an appeal with the Franklin Circuit Court.

At issue in the instant appeal is the decision of the Franklin Circuit Court. The Franklin Circuit Court affirmed the final administrative decision by Kentucky Retirement Systems (KERS), finding, in pertinent part:

The Hearing Officer's Opinion was based on objective medical evidence from Ledford's own doctors. His opinions were supported by the analyses of competent doctors based on this objective medical evidence. His determinations regarding the requirements of Ledford's employment are based on her own descriptions of her job. Even if Ledford's assertions that her treating doctor's opinions (contrary to the hearing officer's determination) are more reliable or persuasive than the evidence relied upon by the Hearing Officer, the Hearing Officer's opinions are still support[ed] by some "substantial evidence." Therefore, the Hearing Officer's opinion, adopted by the [Appellees] in this case, is not arbitrary and Ledford did not satisfy her burdens of proof and persuasion to overturn the [Appellee's] decision.

Although Appellee argues the Hearing Officer could not have based his opinion on the "objective medical evidence of Ledford's own doctors" because all of her treating physicians opined that Appellee was disabled, the objective medical evidence of record does not support the treating physicians' opinion that Appellee was disabled under the provisions of KRS 61.600. Moreover, even were the objective medical evidence sufficient to support contradictory conclusions on the issue of disability, it is well-settled that the trier of fact may evaluate the evidence presented and give the evidence the weight the fact-finder deems appropriate. McManus v. Kentucky Retirement Systems, 124 S.W.3d 454, 457-458 (Ky.App. 2003). "To put it simply the trier of facts in an

administrative agency may consider all the evidence and choose the evidence that he believes.” Bowling v. Natural Resource And Environmental Protection Cabinet, 891 S.W.2d 406, 410 (Ky.App. 1994).

Accordingly, this Court’s recent decision in Board of Trustees of Kentucky Retirement Systems v. Bowens is dispositive. In Bowens, we held that the opinion of a treating physician is not entitled to greater weight than the opinion of a non-treating physician. Here, Appellee objects to the weight afforded the opinion of her treating physician that she was disabled. Because the trial court properly applied the provisions of KRS 61.600 and because it is not mandated that the opinion of a treating physician must be afforded greater weight, the trial court did not err in affirming the decision of KERS. As such, in accordance with Bowens, we affirm the judgment of the Franklin Circuit Court.

All sitting. Minton, C.J.; Cunningham, Noble, Schroder, Scott and Venters, JJ., concur. Abramson, J., concurs in result only.

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# Supreme Court of Kentucky

2007-SC-000604-DG

BOARD OF TRUSTEES OF  
KENTUCKY RETIREMENT SYSTEMS

APPELLANT

V.

ON REVIEW FROM COURT OF APPEALS  
CASE NO. 2006-CA-001808-MR  
FRANKLIN CIRCUIT COURT NO. 05-CI-00867

CAROLYN LEDFORD

APPELLEE

**ORDER DENYING PETITION FOR REHEARING**  
**AND**  
**MODIFYING OPINION ON THE COURT'S OWN MOTION**

The petition for rehearing filed by appellee, Carolyn Ledford, is hereby DENIED.

On the Court's own motion, this Court hereby modifies the opinion rendered on April 23, 2009 by editing party designation throughout. The attached unpublished opinion substitutes in full for the previously rendered opinion. Said modification does not affect the holding.

All sitting. All concur.

Entered: August 27, 2009.

  
CHIEF JUSTICE