20-P-957 Appeals Court

ANTHONY CATALANO'S CASE.

No. 20-P-957. April 12, 2021.

Massachusetts Bay Transportation Authority, Insurance. Labor, Public employment. Public Employment, Worker's compensation. Workers' Compensation Act, Public employee, Decision of Industrial Accident Reviewing Board, Findings by administrative judge, Total incapacity. Department of Industrial Accidents.

While doing heavy lifting during his job as an ironworker at the Massachusetts Bay Transportation Authority (MBTA), the plaintiff, Anthony Catalano, suffered permanent injuries to his back and shoulder. He therefore filed a claim for workers' compensation benefits against the MBTA. Catalano eventually was awarded permanent partial disability payments of $885.96 per week. He was not awarded permanent total disability payments, because an administrative judge at the Department of Industrial Accidents (department) found that despite his injuries, Catalano could still perform light work at a retail job for which he could earn a weekly minimum wage salary of $440.[1] After the department's reviewing board affirmed, Catalano filed the current appeal.

The nature and extent of Catalano's physical injuries are not in dispute. Nor does he appear to dispute that he could hold down a minimum wage job despite his injuries. In any event, our review of the administrative judge's fact finding is extremely limited. "We do not review the underlying factual

[1] Between his pensions and Social Security disability compensation, Catalano also receives approximately $6,780 per month.

findings for substantial evidence." Xudong Yang's Case, 95 Mass. App. Ct. 749, 753 (2019) (Yang), citing Wilson's Case, 89 Mass. App. Ct. 398, 400 (2016); G. L. c. 152, § 12 (2). "Rather, settling questions of fact is 'the exclusive function' of the agency fact finders, and findings 'are to be sustained whenever possible.'" Yang, supra at 753-754, quoting Mandell's Case, 322 Mass. 328, 330 (1948). Even apart from the limited nature of our review, the administrative judge's findings that Catalano could hold down a minimum wage job are well supported on the record.

Accordingly, Catalano is left to argue that with his having been employed for decades as an ironworker, his taking a low-wage retail job would be so demeaning that such a job should not be considered in the calculus. We are not unsympathetic to Catalano's perspective, but we discern nothing in the workers' compensation statute or case law that required the administrative judge to accept that position. We recognize that under the cases, a worker can show that he is totally disabled if his injuries "prevent[] him from performing remunerative work of a substantial and not merely trifling character." Frennier's Case, 318 Mass. 635, 639 (1945). It follows that an employee can still be totally disabled if the only jobs open to him or her are of an "[in]substantial" or "merely trifling character." Id.[2] While that standard often has been repeated, its meaning in practice remains somewhat opaque. It is well established, however, that the question of total and permanent disability "is usually a question of fact." Id., citing Hummer's Case, 317 Mass. 617, 624 (1945), and cases cited. See LaFlam's Case, 355 Mass. 409, 410 (1969).

Here, the administrative judge found that Catalano was not totally disabled because he still could hold down a minimum wage retail job. To overturn that decision, we would have to conclude that such a job, held by a fair portion of the population, is so clearly "insubstantial" or "merely trifling" as to render the administrative judge's findings an abuse of discretion. Because we cannot reasonably say that, we affirm

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[2] It bears noting that in Frennier's Case, while the court upheld the reviewing board's finding that the employee was totally disabled despite evidence of the potential availability of one type of "laborer" position, the court made clear its view that "[t]he finding of the reviewing board that the employee [who had been employed as a "skilled worker"] has never worked as a laborer is inconsequential." 318 Mass. at 638-640.

the decision of the reviewing board summarily affirming the decision of the administrative judge.[3] Catalano's request for attorney's fees is denied.

So ordered.

Karen Hambleton for the employee.
Paul Brien for the employer.

[3] Catalano also points to cases that stand for the proposition that we are to interpret the Workers' Compensation Act with its beneficent purpose in mind. See, e.g., Sellers's Case, 452 Mass. 804, 810 (2008). But that is a principle that applies to the interpretation of ambiguous statutory language. Id. It does not provide employees a freestanding source of relief untethered to statutory text.