

STATE OF MICHIGAN
COURT OF APPEALS

NAGI ZARKA,

Petitioner-Appellee,

v

STATE EMPLOYEES' RETIREMENT SYSTEM,

Respondent-Appellant.

UNPUBLISHED
December 30, 2003

No. 239391
Ingham Circuit Court
LC No. 01-092988-AA

Before: Sawyer, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Respondent State Employees' Retirement System appeals by leave granted from the circuit court's order vacating the State Employees' Retirement Board's decision that denied petitioner Nagi Zarka's application for "duty-disability" retirement benefits and from the circuit court's order awarding petitioner attorney fees and costs associated with respondent's motion for a stay of enforcement of the circuit court's previous order. We reverse.

Respondent first argues that the circuit court erred in failing to follow binding precedents of this Court. We agree. Published opinions of the Michigan Court of Appeals have precedential effect under the rule of stare decisis. MCR 7.215(C)(2); *Straman v Lewis*, 220 Mich App 448, 451; 559 NW2d 405 (1996). The rule of stare decisis "requires courts to reach the same result when presented with the same or substantially similar issues in another case with different parties." *Topps-Toeller, Inc v Lansing*, 47 Mich App 720, 729; 209 NW2d 843 (1973). A case is stare decisis on a particular point of law if the issue was raised in the action and decided by the Court, and the decision was included in the opinion. *Terra Energy, Ltd v Michigan*, 241 Mich App 393, 399; 616 NW2d 691 (2000).

In the present case, the issue is whether petitioner, whose psychiatric condition renders him totally and permanently disabled,¹ is entitled to duty disability retirement benefits under provisions of the State Employees' Retirement Act, MCL 38.1 *et seq.* During the administrative proceedings, respondent contended that petitioner's condition preexisted petitioner's employment, and therefore petitioner could not satisfy the proximate cause element of MCL 38.21.

¹ Respondent concedes this point.

At the time in question, MCL 38.21,² the “duty disability” provision, read:

Subject to the provisions of sections 33 and 34, upon the application of a member, or his department head, or the state personnel director, *a member who becomes totally incapacitated for duty in the service of the state of Michigan without willful negligence on his part, by reason of a personal injury or disease, which the retirement board finds to have occurred as the natural and proximate result of the said member’s actual performance of duty in the service of the state, shall be retired:* Provided, The medical advisor after a medical examination of said member shall certify in writing that said member is mentally or physically totally incapacitated for the further performance of duty in the service of the state, and that such incapacity will probably be permanent, and that said member should be retired: And provided further, That the retirement board concurs in the recommendation of the medical advisor. [Emphasis supplied.]

In *Buttleman v State Employees’ Retirement System*, 178 Mich App 688, 690-691; 444 NW2d 538 (1989), this Court addressed the proximate cause element of MCL 38.21, stating:

In this case, [MCL 38.21] is ambiguous in that it can support two interpretations: (1) that a claimant’s incapacity must proximately result from actual performance of duty, or (2) that only the specific-event injury triggering onset of the disability must be the natural and proximate result of work-related duties. Accordingly, we defer to the statutory construction given by the retirement board as the enforcing agency. *Howard Pore, Inc [v State Comm’r of Revenue*, 322 Mich 49, 66; 33 NW2d 657 (1948)]. The interpretation given by the retirement board makes duty-related proximate cause an element of a claimant’s prima facie case for duty disability retirement benefits. MCL 38.21 See *Stoneburg v State Employees’ Retirement System*, 139 Mich App 794, 800-801; 362 NW2d 878 (1984). Upholding this interpretation does not appear to conflict with legislative intent. *Knauss [v State Employees’ Retirement System*, 143 Mich App 644, 648; 372 NW2d 643 (1985)].

After reviewing the three depositions and numerous medical reports indicating that petitioner suffered from both kidney disease and degenerative lumbar-disc disease, the hearing examiner denied petitioner’s claim to disability retirement benefits on the ground that petitioner’s disability was caused by aggravation of a preexisting condition rather than directly by work-related causes. We must uphold the retirement board’s decision because it is supported by competent, material and substantial evidence and was not arbitrary, capricious or clearly an abuse of discretion or legal error. *Stoneburg, supra*; *Gersbacher [v State Employees’ Retirement System*, 145 Mich App 36, 46; 377 NW2d 334 (1985)].

² MCL 38.21 has since been amended by 2002 PA 93, effective March 27, 2002.

Further, in *Arnold v State Employees' Retirement Board*, 193 Mich App 137, 137-140; 483 NW2d 622 (1992), this Court quoted the operative language in *Buttleman* and, consistent with *Buttleman*, upheld the board's decision denying the petitioner's request for duty disability benefits "because aggravation of a preexisting [psychiatric] condition is not sufficient under § 21"

In the present case, the board applied its interpretation of the proximate cause element of MCL 38.21 as affirmed by both *Buttleman* and *Arnold* and held that petitioner could not establish duty-related proximate cause because the psychiatric condition for which he claimed a disability preexisted his employment. Petitioner appealed the board's decision to the circuit court. The circuit court determined that *Buttleman* had no application in petitioner's case because (1) the *Buttleman* Court violated longstanding principles of statutory interpretation in deferring to the board's construction of the statute where the board's construction was in conflict with the legislative intent as reflected in what the circuit court deemed an unambiguous statutory provision; (2) the "stingy recitation of facts" indicates that *Buttleman* is "fundamentally" distinguishable because that case "apparently had nothing to do with duty-related injury or disease"; and (3) *Buttleman* does not stand for the board's position that petitioner "must show proximate causation between actual performance of duty and the resultant incapacity for further performance[.]" After dismissing *Buttleman* on these grounds, the circuit court held that "the [b]oard's denial of duty-disability retirement benefits pursuant to section 21 of the [a]ct was predicated on substantial errors of law and selective readings of the evidence." The circuit court vacated the board's decision and remanded the case to the board for reconsideration within 45 days.

Regardless of the circuit court's opinion of the reasoning or holding of *Buttleman*, that case is the law and, under well-settled principles of stare decisis, is binding on the circuit court. MCR 7.215(C)(2); *Straman, supra*; *Topps-Toeller, supra*; *Terra Energy, supra*. Although the circuit court concluded that *Buttleman* was distinguishable due to its "stingy recitation of facts," the holding of *Buttleman*, which was reaffirmed and applied in *Arnold*, is both applicable and controlling to the resolution of this case. Thus, the circuit court erred in refusing to follow binding precedents of this Court.³

Respondent next argues that its decision to deny petitioner's application for duty-disability retirement benefits was supported by competent, material, and substantial evidence. We agree.

An administrative agency's determination is reviewed to determine "whether it is authorized by law and supported by competent, material, and substantial evidence on the whole record." *Cogan v Bd of Osteopathic Medicine & Surgery*, 200 Mich App 467, 469; 505 NW2d 1 (1993); Const 1963, art 6, § 28. Substantial evidence is "more than a mere scintilla, but somewhat less than a preponderance" – evidence that would be acceptable as sufficient to a reasonable person. *Cogan, supra* at 469-470. When reviewing a lower court's review of agency action,

³ Moreover, because *Arnold* was decided after November 1, 1990, that decision, which quoted and adopted the holding of *Buttleman*, is binding precedent in this Court. MCR 7.215(J)(1).

this Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. This latter standard is indistinguishable from the clearly erroneous standard of review that has been widely adopted in Michigan jurisprudence. As defined in numerous other contexts, a finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made. [*Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996).]

Here, the board's denial of petitioner's request for duty-disability retirement benefits on the basis of petitioner's pre-existing psychiatric condition is supported by competent, material and substantial evidence. The record reveals that petitioner had a history of psychiatric problems and treatment. Testimony shows that petitioner was treated for stress, anxiety, and depression in 1993 and had mental health problems since 1982 stemming from his marital relationship. Further, the evidence showed that petitioner was treated on several occasions during his employment for mental health problems that were similar to those that existed before his employment. In 1996, only shortly before petitioner stopped working for a period to receive psychiatric treatment, did he relate his problems to work-related circumstances. Further, despite conflicting expert testimony, the board reasonably relied on the opinions of the experts that related petitioner's disabling psychiatric condition to his longstanding preexisting mental health problems, not to his employment. Thus, in light of the applicable law, the record evidence was sufficient to support the board's decision and the trial court clearly erred in finding otherwise.

Finally, respondent argues that the circuit court erred in finding that respondent's motion for stay was frivolous and in awarding attorney fees and costs. We agree. A trial court's decision finding that a motion is frivolous is reviewed for clear error. See *Attorney General v Harkins*, 257 Mich App 564, 575; 669 NW2d 296 (2003).

Here, the circuit court found that defendant's motion for stay was frivolous because the opinion and order entered in this case remanded the matter to the board for reconsideration and consequently was not a final order subject to a motion for stay under MCR 2.614(B) and MCR 2.612. However, MCR 7.209(A)(2) requires a party to request a stay in the lower court before filing a motion for a stay in this Court. Once defendant decided to pursue an interlocutory appeal of the circuit court's order, attempting to obtain a stay was reasonable and understandable. Otherwise, the board would have been required to reconsider its decision within 45 days using the standard for the proximate cause factor ordered by the circuit court. Obviously, an appeal would extend beyond that time frame. Because MCR 7.209(A)(2) requires that a motion for stay in this Court must be preceded by one in the lower court, defendant's motion was required even though the circuit court's order was not a final order. Consequently, we conclude that the trial court clearly erred in finding that the motion was frivolous and warranted sanctions.

In sum, we find that the circuit court erred in failing to apply controlling precedents of this Court and that the board's decision was supported by competent, material, and substantial evidence and must be affirmed. Lastly, we find that the circuit court erred in finding that defendant's motion for stay was frivolous and warranted sanctions.

Reversed.

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray