

IN THE UTAH COURT OF APPEALS

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Linda Malan Hilton,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Petitioner,	)		
	)	Case No. 20040950-CA	
v.	)		
	)		
State Retirement Board, Long	)	F I L E D	
Term Disability Program,	)	(September 29, 2005)	
	)		
Respondent.	)	<table border="1"><tr><td>2005 UT App 408</td></tr></table>	2005 UT App 408
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Original Proceeding in this Court

Attorneys: Loren M. Lambert, Midvale, for Petitioner  
David B. Hansen, Salt Lake City, for Respondent

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Before Judges Bench, McHugh, and Orme.

ORME, Judge:

In appeals from agency decisions, this court may grant relief if "it determines that a person has been substantially prejudiced [because] . . . the agency has erroneously interpreted or applied the law." Utah Code Ann. § 63-46b-16(4) (2004). The Retirement Board is not granted discretion by the Legislature to interpret the statutory language at issue in this case; thus, we give no deference to the Board's interpretation or application of the governing statutory provisions, but review its decision for correctness. See Epperson v. Utah State Ret. Bd., 949 P.2d 779, 781 (Utah Ct. App. 1997).

The Public Employees' Long-Term Disability Act (the Act), Utah Code Ann. §§ 49-21-101 to -407 (2002 & Supp. 2005), does not provide a comprehensive disability benefit to state employees. Not every impairment or disability qualifies a state employee for benefits under the Act; rather, the Act provides benefits only to those "eligible employee[s]" who are "totally disabled." Id. § 49-21-401(3) (Supp. 2005).<sup>1</sup> And "'total disability' or 'totally disabled'" is defined by the statute as "the complete inability, due to objective medical impairment, whether physical

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1. Many sections of this chapter have been amended since the 2002 codification, which was in effect at the commencement of the instant controversy. However, all provisions on which our analysis relies are unchanged from the earlier version. Accordingly, we cite to the current codification of the applicable statutes as a convenience to the reader.

or mental, to engage in the eligible employee's regular occupation during the elimination period and the first 24 months of disability benefits." Id. § 49-21-102(11)(a) (emphasis added). "'Objective medical impairment' means an impairment resulting from an injury or illness which is diagnosed by a physician and which is based on accepted objective medical tests or findings rather than subjective complaints." Id. § 49-21-102(6). Petitioner Linda Hilton bears the burden of proving that she has a total disability of the sort qualifying under the narrowly drawn statutory scheme. See id. § 49-11-613(4).

Given the terms of the statute, we cannot say that the Hearing Officer erred in concluding that Hilton failed to meet her burden. The tests on which Hilton relied to show fibromyalgia and chronic fatigue syndrome did not show any objective results. It was her own doctor's opinion that other tests might have been available to better objectify the conditions Hilton claims are disabling, but such tests were not administered. Although there were neuropsychological tests which objectively showed a cognitive disorder, the treating psychologist concluded that the results did not suggest Hilton could not perform her job as a result of this disorder. Finally, while Hilton's cognitive disorder, sleep apnea, degenerative disc disease, hypertension, and heart valve disease do have objective indicia, these diagnoses do not establish total disability.<sup>2</sup>

Affirmed.

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Gregory K. Orme, Judge

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WE CONCUR:

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Russell W. Bench,  
Associate Presiding Judge

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Carolyn B. McHugh, Judge

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2. A host of other issues were raised by Hilton in her brief and were fully considered by this court. Each of these issues is either irrelevant given our decision or wholly without merit, and we decline to discuss them further. See State v. Carter, 776 P.2d 886, 889 (Utah 1989).