

RENDERED: JANUARY 20, 2017; 10:00 A.M.  
TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2016-CA-000094-MR

DONNA BARTRUM

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 14-CI-00505

KENTUCKY RETIREMENT  
SYSTEMS AND BOARD OF  
TRUSTEES OF THE KENTUCKY  
RETIREMENT SYSTEMS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, DIXON AND NICKELL, JUDGES.

COMBS, JUDGE: Donna Bartrum appeals a decision of the Franklin Circuit Court affirming the final order of the Board of Trustees of the Kentucky Retirement Systems. The Board had denied her application for disability

retirement benefits. After our review, we affirm the decision of the court in upholding the denial of benefits.

Bartrum is a former employee of the Floyd County Board of Education where she worked as a Family Resources Director. Bartrum gave classroom presentations and implemented programs aimed at addressing barriers to learning. She was fifty-four years of age and had accumulated 232 months (just over nineteen (19) years) of service credit with the County Employees Retirement Systems when she applied for disability retirement benefits in 2012. Her application was based upon depression, obsessive compulsive disorder, fibromyalgia, chronic fatigue syndrome, and chronic pain. Bartrum filed her application pursuant to the provisions of KRS<sup>1</sup> 61.600. She indicated that she was “unable to stay awake, unable to stay alert, unable to concentrate, unable to maintain focus . . . unable to manage work-related stress. . . .” Bartrum had seen a battery of mental health professionals and physicians since 2006, and she claimed that she was distracted from her work by pain.

The agency’s medical services board ordered an independent psychological examination, which was performed by Dr. Paul Ebben. Based upon the results of standardized, normative-based instruments used to evaluate Bartrum, Dr. Ebben indicated that the overwhelming evidence suggested that an exaggeration of complaints or malingering for secondary gain had to be considered. Dr. Ebben reported as follows:

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<sup>1</sup> Kentucky Revised Statutes.

[Bartrum's] results suggest that she should not be considered a reliable informant, which is important to understand when reviewing any previous medical records that do not involve objective, standardized assessment instruments. Based on what I reviewed, inventories by Dr. Wright, Dr. Hall, and Mr. Spare did not involve objective psychological testing, so their opinions and conclusions would appear to be based on her self-report alone.

The medical review board denied Bartrum's application based upon a lack of objective medical evidence to support that any of her conditions were disabling.

Bartrum requested an administrative hearing. After the hearing conducted on July 11, 2013, the hearing officer recommended denial of the claim. The hearing officer was not persuaded that Bartrum had met her burden of proving that she had suffered a permanent disability due to any psychiatric issues. Additionally, the hearing officer found that Bartrum had not submitted any objective medical evidence or functional capacity testing that would indicate whether she was physically limited in her ability to work due to fibromyalgia, chronic fatigue syndrome, chronic pain syndrome, or any orthopedic issue. Finally, the hearing officer found that Bartrum had failed to meet her burden of proof that she suffers a permanent disability from the cumulative effects of her alleged medical conditions. On March 27, 2014, the Kentucky Retirement Systems' Board of Trustees rendered a final order adopting the hearing officer's recommended order.

Bartrum contested the denial of her application by filing an original action in Franklin Circuit Court. The circuit court found no error and affirmed the administrative decision. This appeal followed.

In all administrative proceedings where a fact-finder denies relief to the party bearing the burden of proof or persuasion, we must defer to the hearing officer's findings of fact. We may intervene only where the evidence in the complaining party's favor is so compelling that no reasonable person would have failed to be persuaded by it. *McManus v. Kentucky Ret. Sys.*, 124 S.W.3d 454 (Ky. App. 2003). We review issues of law and the legal conclusions of administrative agencies *de novo*. *Aubrey v. Office of Att'y Gen.*, 994 S.W.2d 516 (Ky. App. 1998).

On appeal, Bartrum argues that the administrative agency's decision to deny her disability retirement benefits should be reversed since it is arbitrary and unsupported by substantial evidence. She contends that the hearing officer and the agency erred by ignoring or dismissing the records and reports of all of her treating physicians and mental health specialists, which she contends clearly indicated that she was permanently incapacitated by mental illness and fibromyalgia. She argues that Dr. Ebben's report does not constitute substantial evidence "adequate to either contradict the overwhelming medical evidence proving [her] disability or to deny her disability benefits." Bartrum's argument, however, impermissibly shifts her burden of proof in this matter.

Throughout these proceedings, Bartrum bore the burden of producing evidence sufficient to prove her entitlement to disability benefits; she also bore the risk of non-persuasion for failure to do so. KRS 13B.090(7). Where the fact-finder denies relief to the party with the burden of production or persuasion, the issue on appeal is not whether the fact-finder's denial is supported by substantial evidence. Instead, the issue on appeal is whether the evidence in the claimant's favor is so compelling that no reasonable person could have failed to have been persuaded by it. *McManus, supra*.

The Franklin Circuit Court did not err by concluding that the evidence in Bartrum's favor was not so compelling that the Board of Trustees of the Kentucky Retirement Systems should have found in her favor as a matter of law. The Board of Trustees had the sole authority to determine the weight and credibility of Bartrum's evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418 (Ky. 1985). Moreover, Kentucky Retirement Systems had no burden to produce evidence to rebut Bartrum's proof since a fact-finder may reject even uncontested evidence as unconvincing. *Kentucky Retirement Systems v. West*, 413 S.W.3d 578 (Ky. 2013). Nevertheless, the persuasive effect of the evidence submitted by Bartrum was undermined by the evidence submitted in the form of Dr. Ebben's report. The report was based upon objective evidence and suggested that Bartrum might be feigning or malingering her symptoms. In light of this evidence, the hearing officer's findings were reasonable and thus beyond our purview to alter.

We affirm the order of the Franklin Circuit Court.

ALL CONCUR.

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