

STATE OF MICHIGAN
COURT OF APPEALS

PAULA JOHNSON,

Petitioner-Appellee,

v

STATE EMPLOYEES RETIREMENT BOARD,

Respondent-Appellant.

UNPUBLISHED

March 17, 2005

No. 251505

Ingham Circuit Court

LC No. 03-000491-AV

Before: Hoekstra, P.J., and Neff and Schuette, JJ.

PER CURIAM.

Respondent State Employees' Retirement Board (the Board) appeals by leave granted from an order awarding duty disability retirement benefits to Petitioner Paula Johnson. We find that the circuit court used an incorrect standard of review when considering the Board's appeal. We vacate the circuit court's order and remand for reconsideration using the proper standard of review. We do not retain jurisdiction.

I. FACTS

Petitioner is a social worker who has been employed with the State of Michigan since 1971. Her disability claim arises from her reaction to physical attacks made against other state employees. The first attack, in April 1993, was the rape and murder of a colleague by an inmate at the Maxey Training School to whom Johnson had been providing therapy for several years. Johnson took a leave of absence from the school, returning in October 1993 to a job without inmate contact. In that month, another school staff member was attacked and beaten. Johnson became depressed; by 1996, she stopped working and was granted worker's compensation. Johnson resumed working for the state as a foster care worker in 1998. Soon after that, Johnson learned that a state welfare worker had been murdered in a client's home. Johnson suffered an emotional breakdown in August 1999, after which she was put on medical leave. In 2001, Johnson saw clients as a private therapist for a short period, and she obtained a part-time job as a secretary in a school run by her church.

Johnson applied for duty and non-duty disability benefits retirement in 2001, which the Board denied in January 2003. She appealed, and the circuit court ordered that she be paid duty disability retirement benefits. The Board appealed.

II. CIRCUIT COURT REVIEW OF A DECISION BY AN ADMINISTRATIVE AGENCY

A. Standard of Review

This Court reviews a circuit court's direct review of an agency decision for clear error. *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996).

B. Analysis

A final agency decision is subject to direct judicial review and must be upheld if it is not contrary to law; not arbitrary, capricious, or a clear abuse of discretion; and is supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; MCL 24.306(1)(d). A circuit court's direct review of a decision by an administrative agency is circumscribed by both our state constitution and statute.

A circuit court's review of an administrative agency's decision is limited to determining whether the decision was contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary or capricious, was clearly an abuse of discretion, or was otherwise affected by a substantial and material error of law. "Substantial" means evidence that a reasoning mind would accept as sufficient to support a conclusion. Courts should accord due deference to administrative expertise and not invade administrative fact finding by displacing an agency's choice between two reasonably differing views. [*Dignan v Michigan Public School Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002) (citations omitted).]

In this case, the court did not address the substantial evidence test in its comments from the bench or in its order. Instead, the court appears to have functioned as a trier of fact rather than as a court reviewing an agency determination:

So it's been about ten years, looks like a little over ten years since the initial rape and murder occurred to her coworker and I think just based on the preponderance of the evidence, which is a higher standard than the ALJ is required to find, but even competent and material testimony would support a finding that the Petitioner is permanently and totally disabled from her duty work.

The court also referred to the preponderance standard in its order: "Plaintiff has proven her entitlement to said benefits by a preponderance of the evidence." We conclude that, instead of determining whether substantial evidence supported the Board's decision, the court treated its task as deciding whether a preponderance of the evidence "would support a finding that the Petitioner is permanently and totally disabled from her duty work." This is not the role given to the circuit courts with respect to review of agency decisions.

The court also erred in considering a letter from petitioner's psychologist, which was not submitted until after the hearing referee closed the case record and prepared the proposal for

decision. On remand, the court may decide whether good cause justified the late submission and, if so, direct the Board to reconsider the case on the expanded record. MCL 24.305.

Review on direct appeal is confined to the agency's record. In order to enlarge the record, a party must obtain leave of the court by showing either that an inadequate record was made before the agency or that the additional evidence is material, and by further showing that there were good reasons for failing to present the additional evidence before the agency. [*Northwestern National Casualty Co v Comm'r of Ins*, 231 Mich App 483, 496; 586 NW2d 563 (1998) (citations omitted).]

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Bill Schuette