

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY CLEVELAND,

Petitioner-Appellee,

v

STATE EMPLOYEES RETIREMENT BOARD
and STATE EMPLOYEES RETIREMENT
SYSTEM,

Respondents-Appellants.

UNPUBLISHED

March 29, 2011

No. 294852

Wayne Circuit Court

LC No. 08-108468-AA

Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

SHAPIRO, J. (*dissenting*).

I respectfully dissent as I do not believe the trial court committed clear error in its review of the administrative agency decision.

This is a challenging appeal to analyze given the standards of review at play. Having reviewed the administrative agency record, I would conclude that the evidence weighed heavily in favor of a finding of disability and, had I been sitting on the agency, would have voted to grant the petitioner's request. However, had I been sitting as the circuit court, applying the very low standard of review applicable, I would have seen it as a close question, but would have affirmed the agency decision. We are not, however, deciding whether petitioner is disabled (the role of the agency), or whether the agency decision had a substantial evidentiary basis (the role of the circuit court). We are only reviewing the circuit court's determination of the question it faced and we must affirm the circuit court unless it applied incorrect legal principles or "misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." *Dignan v Mich Pub Sch Employees Retirement Bd*, 253 Mich App 571, 575; 659 NW2d 629 (2002) (internal quotation and citation omitted).

In answer to that question, I cannot conclude that the trial court clearly erred in reversing the agency. The trial court's criticism of the agency's failure to fully take into account Dr. Blasier's opinion, as well as the agency's failure to give sufficient weight to the opinions of the physician who had treated petitioner for many years, were well-taken. Moreover, the agency seemed to give almost no weight to the objective MRI findings of multiple disc herniations and the testimony of the petitioner.

I respectfully suggest that the majority is substituting its judgment for that of the circuit court as the reviewer of the agency decision. As already noted, were that our role, I would join the majority opinion. However, since our review is of the circuit court, it is governed by the clear error standard and, since the question before the circuit court was close, I would affirm.

/s/ Douglas B. Shapiro