

Circuit Court for Somerset County
Case No. 19-C-16-018290

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0042

September Term, 2018

JOY L. TYLER

v.

MARYLAND STATE RETIREMENT AND
PENSION SYSTEM

Reed,
Beachley,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: December 31, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a workplace injury on June 12, 2012, Joy L. Tyler (“Appellant”) filed an application for accidental and ordinary disability retirement benefits with the Maryland State Retirement and Pension System (“the System”). On September 5, 2013, the System’s Medical Board recommended denying Appellant’s application in its entirety. Following requested reconsideration by the Medical Board, the Board of Trustees for the System denied Appellant accidental and ordinary disability retirement benefits. Appellant appealed to the Office for Administrative Hearings.

On November 19, 2015, a full evidentiary hearing was heard before an Administrative Law Judge (“ALJ”). At the hearing, Appellant withdrew her claim for accidental disability benefits but proceeded forward with her claim for ordinary disability benefits. After the ALJ issued a Proposed Decision reaching the same conclusion as the Medical Board and Trustees, the Trustees conducted an exceptions hearing at the request of the Appellant and issued a final denial of Appellant’s claim for ordinary disability benefits.

On November 16, 2016, Appellant petitioned for judicial review in the Circuit Court for Somerset County. After holding a hearing, the circuit court issued a memorandum order affirming the ALJ’s Proposed Decision and upholding the Trustees’ decision. This appeal followed.

In bringing this appeal, Appellant presents one question for our review, which we have rephrased for clarity:¹

¹ Appellants presented the following question for appellate review:

- I. Was the Trustees’ decision to deny Appellant Ordinary Retirement Disability benefits supported by substantial evidence?

For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Joy L. Tyler (“Appellant”) began working as a Correctional Case Manager Specialist (“CCMS”) for the Division of Public Safety and Correctional Services in October 2002. A CCMS performs the administrative actions necessary to help inmates progress through the correctional system. Specifically, the job description provided by Appellant through her application for disability retirement benefits describes the primary function of a CCMS

as managing a caseload for 100 inmates and assessing, screening, and evaluating the personal and criminal records of inmates in order to protect public safety by ensuring the safe and orderly operation of the facility and the delivery of programs and services to provide for the opportunity for rehabilitation and socialization of individuals.

Further requirements of Appellant’s job as a CCMS included interviewing inmates and maintaining case files, case plans, correspondence, and other documents. According to testimony provided by Appellant’s supervisor, John Scramlin, the requirements of a CCMS were mostly clerical in nature.² Furthermore, the job requirements of a CCMS specifically

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- I. If the Applicant’s employer terminates the Applicant because she is permanently incapacitated from meeting the employer’s performance expectations, is the Applicant then entitled to ordinary Disability Retirement Benefits?

² Mr. Scramlin testified at the administrative hearing that 95% of the work performed by a CCMS could be done while sitting at a desk.

stated that it did not involve any special physical demands, such as lifting more than fifty (50) pounds or performing the duties of a correctional officer, such as guarding inmates.

During her time as a CCMS, Appellant worked in an office setting where she met with inmates while seated at a desk. These interviews with inmates were either conducted in her own office in the support building of the correctional facility or in another office in the housing unit. To travel between these two locations, Appellant had to travel approximately 100 yards. When transporting her files, Appellant was given the option to carry the files or transport them using a rolling file case.

Additionally, Appellant often performed educational training for inmates on subjects such as victim awareness or addiction. During victim awareness training, Appellant would play a video and then partake in a group conversation with the inmates; during those conversations, Appellant could either sit or stand. Mr. Scramlin testified during the administrative hearing that Appellant never suggested that she could not conduct such group conversations due to any physical limitation.

On June 12, 2012, while working as a CCMS, Appellant sustained injuries which provide the basis for her application for ordinary retirement benefits. Specifically, Appellant was opening a file cabinet when it began to fall forward, causing one of the drawers to strike Appellant in the stomach. While Appellant was able to return the file cabinet to an upright position, she later visited Flora Glasgow, a nurse practitioner, complaining of pain as a result of the incident. Ms. Glasgow diagnosed Appellant with an acute bilateral trapezius strain and a lumbar sacral strain, and authorized Appellant to miss work for a couple of days. Ms. Glasgow indicated that Appellant would be able to return

to her normal duties as a CCMS on Monday, June 18, 2012.

i. Appellant's Medical Evaluations

On June 21, 2012, Appellant began treatment with Dr. Johnathan Dunn of Peninsula Orthopedics. During a July 12, 2012 MRI, results indicated that Appellant had “[n]o” abnormality on her cervical spine. On August 16, 2012, Dr. Dunn examined Appellant and observed no swelling, ecchymosis or erythema and that Appellant had normal strength, reflex, and gait. Dr. Dunn ultimately diagnosed Appellant with an abdominal contusion and cervical strain.

Appellant returned to Dr. Dunn on September 10, 2012, and October 8, 2012. After finding no abnormality during either follow-up examination, noting that he “would not expect her symptoms to persist at this point from the initial cervical strain that she had back three months ago,” Dr. Dunn recommended that Appellant seek “psychological or psychiatric” help.

At Dr. Dunn’s request, Dr. Craig Joachimowski performed a Functional Capacity Evaluation (“FCE”) of Appellant on January 8, 2013. Following his evaluation, Dr. Joachimowski concluded that Appellant was able to work for eight hours per day at the sedentary light physical demand level as defined by the Department of Labor. Light work is defined as lifting up to 20 pounds and sitting or standing as needed.

On March 27, 2013, Dr. Nasima Jaffrey evaluated Appellant’s ability to perform all of the essential duties of her position. After his examination and review of Appellant’s FCE with Dr. Joachimowski, Dr. Jaffrey concluded that she was able to perform all of the essential duties of a CCMS, except for planning and leading addiction education groups

because she “could not stand for more than 15-to-20 minutes.”

ii. Appellant’s Termination & Subsequent Procedural Background

On June 11, 2013, nearly a year after the incident, Appellant was terminated by the Division of Public Safety and Correctional Services. In its termination letter, the Division stated that it was terminating Appellant based on the restrictions outlined in the FCE, that she could only work “limited duties,” and that such restrictions could not be accommodated on a permanent basis. Appellant then began working full-time as a customer service representative with Verizon on April 28, 2014.³

Following Appellant’s termination by the Division of Public Safety and Correctional Services, Appellant filed a workers’ compensation claim. At that time, Dr. Harvey Mininberg examined Appellant and performed x-rays on Appellant’s lumbar and cervical spine. While Dr. Mininberg concluded that Appellant had suffered “a 30% permanent impairment of the whole person,” he also noted that Appellant exhibited no neurological defect, instability or muscle weakness, and had full mobility of her upper and lower extremities. On December 4, 2014, the Workers’ Compensation Commission entered an Award of Compensation based upon its determination Appellant had suffered a 10% permanent partial disability of the whole body.

In addition to Appellant’s workers’ compensation claim, Appellant also submitted an application for accidental and ordinary retirement benefits with the Maryland State Retirement and Pension System (“the System”) on April 22, 2013. In reviewing

³ During Appellant’s work as a Verizon customer service representative, Appellant is seated at a desk.

Appellant's application, the Board of Trustees ("the Trustees") for the System asked the Medical Board to look into Appellant's claim for such benefits. The Medical Board subsequently requested Dr. Kevin Hanley, a board-certified orthopedic surgeon, to examine Appellant and review her medical records and job description as a CCMS.

On August 14, 2013, Dr. Hanley examined Appellant and subsequently reviewed the aforementioned medical records generated by Drs. Dunn, Joachimowski, Jaffrey, and Mininberg. During his expert testimony in front of the ALJ, Dr. Hanley opined that Appellant was not disabled from performing her job because there existed no objective evidence of a serious or lasting injury, nor was there any musculoskeletal condition preventing Appellant from performing any essential duties of a CCMS. Dr. Hanley described the incident causing Appellant's injury as "low energy" and doubted that such an incident would lead to anything more than a soft tissue injury. Furthermore, Dr. Hanley expressed that his examination of Appellant showed no abnormality and that her range of motion in her cervical and lumbar spine were "functional approaching normal."

In his review of Appellant's medical history, Dr. Hanley testified that Appellant's MRI results were normal and that Appellant's FCE indicated that Appellant could fulfill all the job functions of a CCMS. Finally, Dr. Hanley concluded that Appellant had "chronic subjective pain syndrome without objective correlate," meaning no medical condition existed to explain Appellant's subjective complaints of pain. As such, Dr. Hanley testified that Appellant was not permanently disabled from performing her job duties.

On September 5, 2013, the Medical Board recommended denying Appellant's request for both accidental and ordinary disability retirement benefits, citing to Dr.

Hanley’s medical review indicating Appellant was not permanently disabled or unable to perform her job duties as a CCMS. Following a request for reconsideration by Appellant, the Medical Board upheld its recommendation on June 26, 2014. The Trustees then adopted the Medical Board’s recommendation and denied Appellant accidental and ordinary disability retirement benefits. She appealed.

On November 19, 2015, the Office of Administrative Hearings conducted an evidentiary hearing on Appellant’s appeal before an Administrative Law Judge (“ALJ”). At the hearing, Appellant withdrew her claim for accidental disability benefits and proceeded only on the basis of a claim for ordinary disability retirement benefits. During the hearing, the ALJ heard testimony from Dr. Hanley and Mr. Scramlin, as well as reviewed the medical reports generated by the other doctors who examined Appellant following the incident. In reaching its decision, the ALJ placed emphasis on the “sedentary” nature of her job as a CCMS, as well as the similarities between her duties as a CCMS and the duties she currently has as a Verizon customer service representative. The ALJ further noted that although Appellant stated she was unable to perform the duty of carrying files, her former supervisor had testified that a rolling file case was available for her use if needed. The ALJ also stated that he found Dr. Hanley’s testimony “highly credible” and consistent with the findings of the other doctors who had examined Appellant, stating that no doctor had found that Appellant was permanently disabled from performing her job as a CCMS.

Finally, the ALJ rejected Appellant’s reliance on her employer’s termination letter. In so doing, the ALJ stated that although the employer’s reliance on Dr. Jaffrey’s

examination was flawed, the ALJ's only issue for consideration was whether Appellant was permanently disabled from her job. In stating that he was not constrained by the decisions of the employer, the ALJ stated:

Regardless of the propriety of the Claimant's termination, and regardless of whether her management misunderstood her limitation, her doctor's report, or her job description, I am not required to compound any such error by accepting Management's possible misapprehensions as a basis for my decision.

As such, the ALJ issued a Proposed Decision that reached the same conclusion as the Medical Board and the Trustees; the ALJ found that Appellant had failed to prove that she was totally and permanently disabled from performing the duties of a CCMS. After additional review by the Medical Board and an exceptions hearing held by the Trustees, the Trustees issued their final denial of Appellant's claim for ordinary disability retirement benefits.

On November 17, 2016, Appellant petitioned the Circuit Court for Somerset County for judicial review of the ALJ's Proposed Decision and the Trustees' decision to deny her claim for ordinary disability benefits. Following oral argument, the circuit court issued a memorandum opinion and order upholding the Trustees' decision. This appeal followed.

STANDARD OF REVIEW

Appeals from the Board of Trustees of the Maryland State Retirement and Pension Systems are governed by The Administrative Procedure Act, Md. State Gov't. Code Ann. § 10–101 et. seq. (1984). Under § 10–215(g)(3) the circuit court may:

reverse or modify the [agency's] decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision of the agency:

- (i) is unconstitutional;
- (ii) exceeds the statutory jurisdiction of the agency;
- (iii) results from an unlawful procedure;
- (iv) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
- (vi) is arbitrary or capricious.

As can be seen, the scope of review is narrow. *Secretary of Health & Mental Hygiene v. Crowder*, 43 Md. App. 276, cert. denied, 286 Md. 745 (1979). “The court’s statutory role upon review goes very little beyond its inherent power of review to prevent illegal, unreasonable, arbitrary or capricious administrative action.” *Harford Memorial Hospital v. Health Services Cost Review Commission*, 44 Md. App. 489, 506 (1980); *Chertkof v. Dept. of Natural Resources*, 43 Md. App. 10, 17, cert. denied, 286 Md. 745 (1979).

Where the agency has made no error of law, then, the standard of review is “whether the finding is supported by substantial evidence.” *Nationwide Mutual Insurance Co. v. Insurance Commissioner*, 67 Md. App. 727, 737 (1986). In *Bulluck v. Pelham Wood Apts.*, 283 Md. 505 (1978), the Court of Appeals discussed this standard, as well as other principles concerning judicial review of agency decisions:

“Substantial evidence,” as the test for reviewing factual findings of administrative agencies, has been defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” The scope of review “is limited ‘to whether a reasoning mind reasonably could have reached the factual conclusion the agency reached,’ ”....

In applying the substantial evidence test, we have emphasized that a “court should [not] substitute its judgment for the *expertise* of those persons who constitute the administrative agency from which the appeal is taken.” We also must review the agency’s decision in the light most favorable to the agency, since “decisions of administrative agencies are *prima facie* correct,” and “carry with them the presumption of validity.” Furthermore, not only is

it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences. (Citations omitted) (Emphasis in original).

Bulluck, 283 Md. at 512–13.

DISCUSSION

A. Parties' Contentions

Appellant contends that the ALJ erred in finding that Appellant failed to show she was totally and permanently disabled from performing the duties of a CCMS. Appellant relies on the fact that one of her treating physicians stated she could not stand more than 15 to 20 minutes, and argues that her employer utilized such a diagnosis as its basis for terminating her employment. As such, Appellant asserts that the ALJ was bound by the opinion generated by her employer: that Appellant could no longer adequately perform the duties of a CCMS.

The Trustees argue that the ALJ properly determined that Appellant failed to meet her burden of proof in order to receive ordinary disability benefits. The Trustees contend that objective medical evidence presented by numerous treating physicians shows that Appellant was not permanently disabled. Furthermore, the Trustees reject Appellant's belief that she was required to perform the same functions as a correctional officer. Instead, the Trustees rely on the testimony of Appellant's supervisor, who stated that Appellant's job was "overwhelmingly sedentary."

Finally, the Trustees assert that no case law supports Appellant's claim that the ALJ is bound by the opinion formulated by Appellant's former employer. The Trustees instead argue that the ALJ has the "exclusive province" to evaluate all evidence and generate its

own opinions regarding credibility. As such, the Trustees contend that the ALJ was not bound by the termination letter and that any issues regarding the appropriateness of Appellant's termination were not subject to review by the ALJ in these proceedings. We agree.

B. Analysis

As a long-time State employee, Appellant was also a member of the State Retirement and Pension System. Members who are unable to work may qualify for two types of disability retirement benefits: an ordinary disability retirement allowance or an accidental disability retirement allowance. The State Personnel and Pension Article instructs the Trustees to grant ordinary disability retirement allowance to a member if:

- (1) the member has at least 5 years of eligibility service; and
- (2) the medical board certifies that:
 - (i) the member is mentally or physically incapacitated for the further performance of the normal duties of the member's position;
 - (ii) the incapacity is likely to be permanent; and
 - (iii) the member should be retired.

See Md. Code Ann., State Personnel & Pensions § 29-105. Here, Appellant argues that the ALJ erred in concluding that Appellant was not permanently incapacitated. In so doing, she relies primarily on two factors: the conflict between Dr. Hanley's testimony and the examination of Appellant by Dr. Mininberg, and the termination letter provided to Appellant by her former employer.

i. Conflicting Medical Evaluations

Appellant argues that the ALJ erred in discounting Dr. Mininberg's report stating that Appellant had "a 30% permanent impairment of the whole person" and Dr. Jaffrey's

conclusion that Appellant could not stand for more than 15-to-20 minutes. Though the Trustees contend that the ALJ properly rejected Dr. Jaffrey's and Dr. Mininberg's opinions because Appellant failed to call her own expert witness following Dr. Hanley's testimony, this Court rejects Appellant's argument on other grounds.

In *Terranova*, this Court faced a similar question that Appellant attempts to argue here: whether it was error for an administrative agency to deny disability benefits given the existence of conflicting expert opinions. *Terranova v. Bd. of Trs. of Fire & Police Emps. Ret. Sys. of Balt. City*, 81 Md. App. 1, 2, 11–12 (1989). *Terranova* challenged a decision by a hearing examiner for the Board of Trustees of the Fire and Police Employees Retirement System of the City of Baltimore that found him fit to return to his duties as a police officer, ten years after first being placed on disability retirement. *Id.* at 2–3. A police department physician and *Terranova*'s attending physician both had determined that *Terranova* was completely disabled and diagnosed him as having a paranoid psychosis based on their review of available records and their examination of him. *Id.* at 3. A third physician, Dr. Potash, examined *Terranova* and deemed *Terranova* fit to return to work. *Id.* After hearing evidence and making findings of fact, the hearing examiner found Dr. Potash to be more persuasive than the two other physicians. *Id.* at 7. As such, the Board deemed *Terranova* fit to return to work, which was affirmed by the circuit court on appeal. *Id.* at 2, 4.

On appeal, this Court characterized the hearing examiner's determination that Dr. Potash was more persuasive as an act of “weigh[ing] conflicting evidence, assessing the

credibility of the witnesses in the process.” *Id.* at 7. After setting out the standard of review, we explained:

In the case at bar [Terranova]’s expert said that he was not fit. The police department’s doctors, who partially based their opinions upon the opinion of [Terranova]’s physician, said he was not fit. Dr. Potash said, in essence, that [Terranova] was misrepresenting his condition and/or malingering, and for that reason, and other reasons stated, was fit for police employment. **The fact that the opinion of three doctors go one way and the opinion of a fourth doctor another does not make the report of that fourth insubstantial, especially when, as here, credibility of the respective physicians has played an important role in the Panel’s decision.** Had the examiner found conversely, that finding also might have been supported by substantial evidence. *Id.* at 11–12 (emphasis added).

This Court then held that “[i]f there was evidence of fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power *to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.*” *Id.* at 12–13 (quoting *Comm’r, Balt. City Police Dep’t v. Cason*, 34 Md. App. 487, 508 (1977) (emphasis in *Terranova*)). Thus, this Court concluded that “were we the finder of fact, we might well have found to the contrary, there was substantial evidence supporting the examiner’s determinations[,]” reiterating that “[t]he weighing of the evidence and the assessment of witness credibility is for the finder of fact, not the reviewing court.” *Id.* at 13. *See also Fire & Police Emps.’ Ret. Sys. of City of Balt. v. Middleton*, 192 Md. App. 354, 364 (2010) (relying on *Terranova* for the proposition that “[i]n preferring [one doctor’s] report here, the hearing examiner shows that she found it more credible and that she viewed it as substantial.”).

This Court also considered the appeal of an agency decision based on conflicting expert testimony in *Blaker v. State Bd. of Chiropractic Exam’rs*, 123 Md. App. 243, 248,

258 (1998). There, Dr. Blaker argued that there was insufficient evidence for a finding of professional incompetence because two experts had opined that he had not fallen below the applicable standard of care—while a third expert testified that Dr. Blaker had breached that standard of care. *Id.* at 251–52, 258–59. After “not[ing] preliminarily that assessing the credibility of witnesses, resolving conflicts in the evidence, and determining the proper weight to assign to the facts in evidence are tasks within the province of the fact finder[,]” this Court concluded that the third expert’s “testimony *was itself* sufficient evidence of Dr. Blaker’s professional incompetency.” *Id.* at 259–60 (emphasis added). This Court reasoned that, “[i]n its role as fact-finder, the Board was free to accept or reject, in whole or in part, the evidence before it.” *Id.* at 259.

As such, this Court’s review in the case at bar is based solely on whether the ALJ had sufficient evidence to support its conclusion proposing that Appellant’s application for ordinary benefits be denied. In its review, the ALJ concluded that Appellant’s job as a CCMS was overwhelmingly sedentary and that none of the physicians who had treated Appellant concluded that she was “permanently” disabled from performing her job duties. As the ALJ noted, while Dr. Jaffrey concluded that Appellant could not stand for more than 15-20 minutes at a time, standing was not essential in Appellant’s performance as a CCMS. Furthermore, the ALJ noted that while Dr. Mininberg concluded that Appellant had suffered “a 30% permanent impairment of the whole person,” he also noted that Appellant exhibited no neurological defect, instability, and muscle weakness, and had full mobility of her upper and lower extremities. As the finder of fact, it was the ALJ’s power to weigh the evidence and credibility of each physician’s report in determining whether Appellant

was permanently disabled. As the record shows, the ALJ deemed Dr. Hanley credible and provided sufficient reasoning to justify its determination that Appellant was not, in fact, permanently disabled.

ii. Termination Letter

Appellant also contends that the ALJ erred in failing to place weight on the termination letter provided by Appellant's former employer. In the letter, Appellant's former employer stated it was terminating Appellant based on the restrictions outlined in the FCE, that she could only work "limited duties," and that such restrictions could not be accommodated on a permanent basis. As such, Appellant argues that the ALJ erred in reaching a different conclusion than that of her former employer.

This Court recognizes the discrepancy between Appellant's termination by her former employer and the Trustees' decision to deny Appellant's application for ordinary benefits. However, the employer's termination letter was merely one piece of evidence in a voluminous record, which the ALJ considered. As the ALJ correctly noted in its Proposed Decision, the only question before the ALJ was whether Appellant was permanently incapacitated from the performance of her normal duties as a CCMS. Based on the description of Appellant's job duties, Dr. Hanley's expert testimony following his review of Appellant's medical records, and Appellant's current job that is similarly sedentary in comparison to the role of a CCMS, the ALJ ultimately concluded that Appellant was not permanently incapacitated. As the ALJ stated, the basis for her termination is irrelevant to the ALJ's determination of Appellant's fitness to serve as a CCMS. Whether appellant was properly terminated from her employment is not before us.

Because we find that there was substantial evidence to support the Trustees' findings and that their decision was a reasonable application of the law to those facts, we cannot say that the Trustees' denial of Appellant's claim was arbitrary or capricious. Accordingly, the judgment of the Circuit Court for Somerset County is affirmed.

**JUDGMENT OF THE CIRCUIT
COURT FOR SOMERSET COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**