

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Coleman and Bumgardner
Argued at Salem, Virginia

WILLIAM H. LEIGHTY, DIRECTOR AND
VIRGINIA RETIREMENT SYSTEM

v. Record No. 2072-97-3

JANE S. MUNSEY

MEMORANDUM OPINION* BY
JUDGE RUDOLPH BUMGARDNER, III
APRIL 28, 1998

FROM THE CIRCUIT COURT OF WISE COUNTY
J. Robert Stump, Judge

(Richard Cullen, Attorney General; John Paul Woodley, Jr., Deputy Attorney General; Michael K. Jackson, Senior Assistant Attorney General; Cameron P. Quinn, Assistant Attorney General; James W. Osborne, Assistant Attorney General, on briefs), for appellants.
Appellants submitting on briefs.

Robert B. Hines, II (Montgomery Law Offices, on brief), for appellee.

Jane S. Munsey applied for Virginia Retirement System disability benefits. The Director denied these benefits, and she appealed that decree to the Circuit Court of Wise County. The circuit court found that no substantial evidence existed to support the finding of nondisability. Specifically it found that the opinion of no-disability of Dr. Eric Moffett was not substantial evidence when compared to the opinions of Drs. E.R. Kidwell and Donald Bales who had treated Ms. Munsey for long periods. The circuit court reversed the agency determination. Finding that the trial court applied the wrong standard of review

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

when it weighed the conflicting evidence, we reverse the trial court's decision.

Jane S. Munsey is 61 years old and has taught fifth grade in the Wise County school system for approximately fourteen years. She applied for retirement disability benefits stating that she suffered from panic anxiety disorder. Her family physician, Dr. Bales, treated her for anxiety and opined that she was probably permanently disabled. Upon referral, Dr. Kidwell, a psychiatrist, treated her for anxiety and depression through April 1995. Dr. Kidwell reported that she had received no long term benefits from her medications taken over the years and that her prognosis for significant improvement was guarded.

The Medical Review Board for the Virginia Retirement System appointed Dr. Moffett to conduct an independent examination. He concluded that Ms. Munsey was not disabled. Ms. Munsey later made an appointment to see Dr. Russell D. McKnight, a psychiatrist. He reported that she was moderately depressed and disabled and was not likely to return to competitive employment.

The Medical Review Board recommended denial of benefits. Munsey appealed that decision.

The administrative hearing examiner conducted an evidentiary hearing July 9, 1996. He concluded that Ms. Munsey had not proved she was disabled from further performance of her duties. The Virginia Retirement System accepted this recommendation and issued a final decision denying an award of disability retirement benefits.

The review of an agency decision on appeal to a circuit court is limited to determining whether there is substantial evidence in the agency record to support its decision. Substantial evidence is a term of art defined as evidence that might lead a reasonable person to come to the conclusion the agency reached. See Virginia Real Estate Comm'n v. Bias, 226 Va. 264, 269, 308 S.E.2d 123, 125 (1983).

The trial court weighed and evaluated the evidence, compared the opinions of the different experts, and then concluded that the evidence of the appellee was stronger. In doing so, it slipped into the role of fact finder rather than a review tribunal. It thereby substituted its judgment on the factual issues for those of the agency and exceeded its defined role. The court may reject the agency's findings of fact only if, considering the record as a whole, a reasonable mind would necessarily come to a different conclusion. See id. The record does not reveal a sound or valid reason why the agency was not entitled to accept Dr. Moffett's opinion.

In this case credible evidence existed that might lead a reasonable person to come to the same conclusion that the agency reached. Accordingly, we reverse the trial court's decision and remand with the direction that the agency decision denying disability retirement benefits be reinstated.

Reversed and remanded.