

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

ALLEN OVERTON,

Petitioner-Appellee,

V

STATE EMPLOYEES RETIREMENT BOARD,

Respondent-Appellant.

---

UNPUBLISHED

March 8, 2011

No. 292186

Genesee Circuit Court

LC No. 07-087461-AA

Before: GLEICHER, P.J., and ZAHRA and K.F. KELLY, JJ.

PER CURIAM.

After sustaining two knee injuries while working at a residential treatment facility for delinquent youth, petitioner Allen Overton applied for disability retirement benefits from the State Employees Retirement System (SERS). A hearing referee recommended that Overton receive duty disability retirement benefits pursuant to MCL 38.21. After the SERS filed exceptions to the hearing referee's recommendation, respondent State Employees Retirement Board (the Board) determined that Overton had failed to prove a total disability, and denied his application. Overton then petitioned for review in the Genesee Circuit Court, which reversed the Board's ruling. We granted the Board's application for leave to appeal,<sup>1</sup> and we now vacate the circuit court's order and remand to the Board for further proceedings.

**I. UNDERLYING FACTS AND PROCEEDINGS**

Overton commenced state employment in 1990, and at the time of his injuries worked as a youth offender supervisor at the Maxey Boys Training School. In June 2003, an unruly inmate kicked Overton in the left knee, forcing Overton to remain off work for around three weeks. Shortly after Overton returned to duty another inmate kicked him in the same knee, and Overton could not return to work for approximately six months. When Overton tried returning, he worked at a job that Maxey designated as a "sit-down" assignment. However, the job obligated

---

<sup>1</sup> *Overton v State Employees Retirement Bd*, unpublished order of the Court of Appeals, entered September 1, 2009 (Docket No. 292186).

Overton to frequently leave his chair to open and close a security gate. Overton's physician instructed him to discontinue the gate job. Subsequently, Overton had four surgeries on his knee, with the most recent in October 2006.

In July 2005, Overton applied for duty disability retirement benefits pursuant to MCL 38.21. He later added an alternative claim for nonduty disability retirement benefits under MCL 38.24.<sup>2</sup> In March 2006, the Office of Retirement Services denied Overton's application. Overton appealed, and in June 2007 a hearing referee issued a proposal for decision finding Overton totally and permanently disabled "within the meaning of MCL 38.21 and MCL 38.24." The hearing referee further determined that Overton's disability "occurred as the natural and proximate result of an injury in the performance of his employment with the State of Michigan within the meaning of MCL 38.21." The SERS filed exceptions to the hearing referee's proposal for decision. The SERS maintained that Overton's knee problems derived in part from an athletic injury sustained in high school, and challenged the hearing referee's finding that Overton had a total disability.

In September 2007, the Board issued a decision and order rejecting the hearing referee's proposal for decision. In a lengthy and detailed explanation, the Board examined the reports and testimony supplied by Overton and seven physicians who had rendered opinions concerning Overton's knee. The Board began its analysis of the facts by observing the following:

There is no dispute that petitioner has a disability and that the disability is permanent. After four operations and with other procedures likely in the future, it is beyond dispute that petitioner will not recover from his left knee problems. The issues are whether petitioner retains the capacity to perform jobs for which the petitioner is reasonably qualified by education, training or experience, *Knauss* [v *State Employees Retirement Sys*, 143 Mich App 644, 649-650; 372 NW2d 643 (1985)], and, if not, whether the disability was solely caused by work, rather than merely an aggravation of a pre-existing condition . . . . [Citations omitted.]

The Board then set forth a number of factual findings and legal conclusions. The pertinent factual findings include:

(7) Prior to the work injuries, petitioner had a second job as a mortgage assistant for six to eight hours per week. In 2004, Petitioner was fired from his job. At the time of his termination, his leg was giving him many problems. He was told by his boss that it did not look professional to have

---

<sup>2</sup> To obtain either duty or nonduty disability retirement benefits, a petitioner must show that he or she "is mentally or physically totally incapacitated for further performance of duty." MCL 38.21(1)(c), MCL 38.24(1)(b). A duty-related disability may exist if a petitioner proves that his or her "personal injury or disease is the natural and proximate result of the member's performance of duty." MCL 38.21(1)(b).

someone sitting at his desk with his leg elevated and that is the reason he was let go. . . .

\* \* \*

(15) Dr. [John] Flood found that the condition that necessitated Petitioner's first surgery was a chronic condition. Petitioner's second surgery was not related to any work injury. . . . Instead there was a preexisting condition. . . .

(16) Dr. Flood also stated that the work restrictions that he gave Petitioner was [sic] due to the surgery that Petitioner had, not the injuries that he sustained at work. . . . Dr. Flood concluded that petitioner could do sedentary work with some restrictions. . . .

\* \* \*

(19) Independent Medical Advisor Dr. [Russell] Holmes concluded that Petitioner's condition was permanent but not total and not duty related and that he could work with moderate restrictions. . . .

(20) No doctor found Petitioner to be totally disabled.

(21) No doctor opined that Petitioner could not work as a mortgage processor or perform a similar sedentary job.

(22) No doctor concluded that the condition of Petitioner's left knee was "the natural and proximate result of the member's performance of duty."<sup>3</sup>

In light of these factual findings, the Board concluded as a matter of law that Overton had failed to prove that the inmates' kicks naturally and proximately caused his knee condition, rendering him ineligible for duty-related disability under MCL 38.21. The Board offered the following additional conclusion:

Petitioner has failed to prove that he is totally disabled as required by MCL 38.21 and 38.24. No doctor has reached that conclusion and at least Dr. Flood and Dr. Holmes have said he could work in a sedentary job. Petitioner held a sedentary job as a mortgage processor. There is no evidence that Petitioner has tried to perform the job of mortgage processor or a similar job subsequent to his last surgery.

---

<sup>3</sup> A "member" is "a state employee included in the membership of the retirement system." MCL 38.1f(1).

Overton petitioned for circuit court review, and in March 2009 the circuit court announced a bench ruling reversing the Board's decision and order and adopting the hearing referee's proposal for decision. The circuit court summarized as follows:

Following a review of the complete record, this Court is persuaded that the well documented, well analyzed decision of the [hearing referee] is correct. The Court finds the Board's decision to be arbitrary and capricious in that there was no meaningful analysis of the evidence and, further, the Board's conclusion that no doctor had disabled Overton is clearly erroneous based on the certified file provided to this Court.<sup>[4]</sup>

## II. ANALYSIS

A circuit court may review a final agency decision, but must generally uphold the agency if the decision "is not contrary to law, is not arbitrary, capricious, or a clear abuse of discretion, and is supported by competent, material and substantial evidence on the whole record." *VanZandt v State Employees' Retirement Sys*, 266 Mich App 579, 583; 701 NW2d 214 (2005). "Substantial" means evidence that a reasoning mind would accept as sufficient to support a conclusion." *Dignan v Michigan Pub School Employees Retirement Bd*, 253 Mich App 571, 575; 659 NW2d 629 (2002). This Court reviews a circuit court's ruling in an administrative appeal "to determine whether the circuit court applied correct legal principles and whether the court misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings, which essentially constitutes a clearly erroneous standard of review." *Nason v State Employees' Retirement Sys*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 290431, issued 10/28/10), slip op at 5. "A finding is clearly erroneous when, after review of the record, this Court is left with a definite and firm conviction that a mistake was made." *Id.*

The Board first challenges the circuit court's consideration of the medical form signed by Dr. Sattar. Overton's counsel submitted the form to the hearing referee on January 19, 2007, and the form appears within the administrative record bearing a Bates stamp consistent with its submission in 2007. Given that the Board has presented no authority supporting its contention that the circuit court incorrectly reviewed the form under the circumstances of this case, we find no merit in this argument.

The Board further asserts that because competent, material and substantial evidence supported its decision, the circuit court improperly reversed the Board. Dr. Holmes opined that Overton's knee condition "is long-standing and was exacerbated by the incidents at work." Although other physicians disagreed with Dr. Holmes's opinion, the applicable legal standards of

---

<sup>4</sup> The "certified file" of the administrative proceedings contains a form signed by Overton's personal physician, Dr. Syed Sattar, conveying Dr. Sattar's conclusion that Overton was "totally disabled from [his] usual occupation" and will "never" "be able to return-to-work" at "any reasonable occupation." The parties disagree whether the circuit court should have considered this form. We address this issue *infra* at 5-6.

review constrain us to conclude that Dr. Holmes's report constitutes competent, material and substantial evidence refuting that Overton's knee condition qualified as duty-related. Because the circuit court clearly erred by rejecting the Board's conclusion that Overton's injury was not duty-related, we reverse the circuit court's order adopting the hearing referee's proposal for decision regarding Overton's claim under MCL 38.21.

However, on the basis of this Court's recent decision in *Nason*, we apply a different analysis to Overton's claim for nonduty disability retirement benefits under MCL 38.24. The petitioner in *Nason*, a corrections officer, submitted an application for nonduty disability retirement benefits. *Id.*, slip op at 1. The Board denied the petitioner's application in light of its finding that he could perform jobs other than a corrections officer. *Id.* at 2.<sup>5</sup> The circuit court reversed and remanded for entry of an order approving the petitioner's application for nonduty disability retirement benefits. *Id.* at 4-5. This Court vacated the circuit court's order, but did not reinstate the Board's ruling. The Court instead held that "the term 'duty' in § 24(1)(b) refers or relates to state employment, and thus the total incapacitation must relate to the member's performance as a state employee." *Id.* at 7. Because the Board had denied nonduty disability retirement benefits on the ground that the petitioner could perform jobs other than a corrections officer, the Court remanded to the Board for a determination whether the petitioner could do the work required of a corrections officer. *Id.*

Here, the Board ruled that Overton had not substantiated a total disability under MCL 38.24: "No doctor has reached that conclusion and at least Dr. Flood and Dr. Holmes have said he could work in a sedentary job. Petitioner held a sedentary job as a mortgage processor. There is no evidence that Petitioner has tried to perform the job of mortgage processor or a similar job subsequent to his last surgery." Because the Board neglected to specifically address whether Overton was totally incapacitated relative to his job as a youth specialist, pursuant to *Nason*, slip op at 7, we vacate the circuit court's order and remand for the Board to directly decide that issue.

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

/s/ Elizabeth L. Gleicher  
/s/ Kirsten Frank Kelly

ZAHRA, J. did not participate.

---

<sup>5</sup> The Board in *Nason* found that "the Petitioner can still perform other jobs that he has performed in the past, as he possesses experience and training in a number of occupations that he was employed in prior to working for the state." *Id.* at 4.