

STATE OF MICHIGAN
COURT OF APPEALS

JANET CAFFIE,

Petitioner-Appellee,

v

STATE EMPLOYEES RETIREMENT BOARD,

Respondent-Appellant.

UNPUBLISHED
February 15, 2005

No. 247885
Wayne Circuit Court
LC No. 01-105658-AA

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J..

PER CURIAM.

Respondent appeals by leave granted the circuit court order reversing the State Employee Retirement Board's denial of petitioner's application for non-duty disability retirement benefits. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner applied for non-duty disability retirement from her secretarial position with the State of Michigan due to back injuries she sustained when she slipped on ice in a parking lot. The board denied the application, concluding that petitioner had not met her burden of demonstrating that she is incapable of performing any job reasonably related to her past training and experience. The board found that the preponderance of the medical evidence, including that of petitioner's treating physician, established that petitioner is capable of performing restricted work as a general office worker. The circuit court reversed, and this Court granted respondent's application for leave to appeal.

When reviewing a lower court's review of an agency decision, this Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Dignan v Pub School Employees Retirement Bd*, 253 Mich App 571, 576-577; 659 NW2d 629 (2002); *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence. *Wayne Co v Michigan State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004). If there is sufficient evidence, the circuit court may not substitute its judgment for that of the agency, even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). An agency's findings of fact are afforded deference, particularly with regard to witness credibility and evidentiary questions. *THM, Ltd v Comm'r of Ins*, 176 Mich App 772, 776; 440 NW2d 85 (1989).

The circuit court in this case substituted its judgment for that of the board and erroneously reviewed the hearing referee's proposal for decision, rather than the board's decision, to determine whether it was supported by competent, material and substantial evidence. See, generally *Galuszka v State Employees Retirement System*, ___ Mich App ___; ___NW2d___(2004). The circuit court erred in substituting its evaluation of the witnesses' credibility for that of the board. There was substantial expert testimony to support the finding that petitioner was not totally and permanently disabled.

The circuit court also erred in holding that plaintiff was totally disabled because she could not perform full-time employment. To qualify for benefits under the State Employees Retirement Act, the employee's disability must prevent him or her from performing his or her previous job or any other employment reasonably related to his past experience and training. MCL 38.24; *Knauss v State Employees' Retirement System*, 143 Mich App 644, 648-650; 372 NW2d 643 (1985). One doctor testified that plaintiff could only perform part-time work. The other experts testified that plaintiff could perform full-time work with restrictions. The board's conclusion that the preponderance of the evidence established that plaintiff was not totally disabled was supported by competent, material and substantial evidence.

The decision of the circuit court is reversed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen