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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 09-216

ROBERT SPRIGGS APPELLANT V. ARKANSAS LOCAL POLICE & FIRE RETIREMENT BOARD APPELLEE	Opinion Delivered FEBRUARY 24, 2010 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CV 2006-010226 (K)] HONORABLE COLLINS KILGORE, JUDGE REVERSED AND REMANDED

WAYMOND M. BROWN, Judge

Former North Little Rock police officer Robert Spriggs sought retirement benefits from the Arkansas Local Police and Fire Retirement Board (LOPFI), but was denied benefits. An appeal to the Pulaski County Circuit Court was unsuccessful. Spriggs now comes before this court seeking reversal. He argues that the circuit court erred in not remanding his case for an additional hearing and that the decision of the board was in error. We previously ordered rebriefing for Spriggs's failure to file a brief that complied with the Arkansas Rules of the Supreme Court and Court of Appeals. *See Spriggs v. Ark. Local Police and Fire Retirement Bd.*, 2009 Ark. App. 762. Now that Spriggs has filed a conforming brief, we reverse and remand without reaching the merits, as LOPFI's decision does not contain sufficient findings of fact to allow for proper judicial review.

Spriggs had been an officer for the North Little Rock Police Department (NLRPD) for eleven years. On September 24, 2002, he suffered a knee injury while carrying a heavy bag of tools down some stairs. He presented to the department doctor, who prescribed anti-inflammatory medication and returned him to full duty. However, Spriggs later presented to his own doctors for more treatment. In March 2005, the NLRPD was in the process of adopting a new light-duty policy, which required a mandatory physical-training test. The test required crawling, which Spriggs opined he was unable to do as a result of his injury.

The record is full of medical evidence. Spriggs presented to Dr. Michael Weber on November 5, 2002. Dr. Weber opined that Spriggs did not give a history compatible with an ACL rupture, but his physical examination suggested one. After reviewing an MRI, taken the following week, Dr. Weber wrote that the injury was not significant and prescribed physical therapy. He was discharged from physical therapy on December 5, 2002. Spriggs returned to Dr. Weber on September 11, 2003, and reported that his knee never recovered. Dr. Weber stated that there was nothing more he could do other than an arthroscopic examination.

Spriggs presented to Dr. Richard Nix on November 17, 2003. Dr. Nix agreed with Dr. Weber regarding the need for an arthroscopic exam, and said exam was performed on December 8, 2003. The exam revealed a vertical tear of the anterior horn lateral meniscus and anterolateral synovitis, upon which surgery was performed. In follow-up reports, Spriggs reported good progress, and on February 25, 2004, Dr. Nix returned Spriggs to full duty with no restrictions. However, Spriggs wanted another opinion on his knee and was returned to light

duty on March 3, 2004. He presented to Dr. James Mulhollan later that month, who opined that Spriggs had failed to recover from the knee surgery, but would eventually recover to the point that he could do any activity.

Spriggs returned to Dr. Nix on June 16, 2004, where he complained of new pain in his left forefoot. Dr. Nix assessed Spriggs with mild second MTP synovitis with no objective findings. He opined that the foot pain was unrelated to his work activity or his surgery. However, on December 16, 2004, Spriggs started seeing Dr. Edwin Clark, a podiatrist, for the problems with his foot. Dr. Clark placed Spriggs on desk work during the period of treatment. At some point, Spriggs presented to chiropractor Mellorya Wynn. On September 9, 2005, she wrote that Spriggs had pain in his left knee upon kneeling past ninety degrees or applying any pressure. She also opined that Spriggs was permanently disabled and unable to perform his duties as a police officer.

The Board asked Dr. Dale Blasier to perform an independent medical evaluation (IME), which took place on October 22, 2005. Included in the review was a job description for a police officer. He concluded that Spriggs was not disabled from police activity. Spriggs submitted to another IME, this time at the behest of his attorney, on February 13, 2006. Dr. Barry Baskin, who performed the IME, diagnosed Spriggs with probable residual chondromalacia. He ultimately opined that Spriggs was likely disabled from his job so long as his knee was not operating at maximum effectiveness. Finally, Dr. Blasier reported to LOPFI by letter on July 20, 2006. He reviewed the medical records and the IME performed by Dr. Baskin. Dr. Blasier

criticized Dr. Baskin's opinion for being based largely upon subjective factors, which he stated did not constitute disability. Dr. Blasier held to his opinion that Spriggs lacked any objective factors precluding him from doing police activity.

Spriggs applied for retirement on May 7, 2005, with the effective date of the retirement to be September 11, 2005. By letter dated October 31, 2005 (prior to the Baskin IME), the executive director rejected his disability claim:

> The concern with which you are faced is the ability to kneel and crawl in order to successfully pass the departmental PT test. You have advised all other components of the test could be passed except for the kneeling and crawling. However, because we were unable to identify objective factors that would support a determination of total and permanent disability, LOPFI cannot award you a disability retirement benefit.

Spriggs appealed the decision to the full Board, which held a hearing on August 9, 2006, and ultimately decided to deny benefits. The resulting order provided:

FINDINGS OF FACT

1. Robert Spriggs applied for duty related disability benefits based upon an injury that occurred on September 24, 2002 while on duty.

2. In support of the request for benefits in his appeal, Mr. Spriggs submitted testimony before the Board of Trustees. Additionally, the applicant's medical records and two reports from Dr. Blasier were submitted.

3. This appeal was based upon a notice of appeal of an adverse determination on disability benefits, said notice being timely filed by Mr. Spriggs.

CONCLUSIONS OF LAW

1. Pursuant to Arkansas Code Annotated 24-10-607(a)(1)(B) the employee shall be retired only if, after medical examination of a member made by or under the direction of a physician or physicians designated by the Board, the physician reports to the Plan in writing that the member is physically or mentally totally

incapacitated for further performance of any suitable duty, that the incapacity will probably be permanent, and that the member should be retired.

2. After evaluating the two reports from the Board's physician and the evidence presented at the hearing on behalf of Mr. Spriggs, the Board determined that no substantial evidence was submitted sufficient to demonstrate that the applicant was disabled.

Spriggs appealed LOPFI's decision to the circuit court. In his argument, counsel for Spriggs asked the court to reverse the decision or, in the alternative, remand the case with instructions to consider that there was no evidence showing that Dr. Blasier was familiar with the practices and procedures of the NLRPD. An order affirming LOPFI's decision was entered on November 18, 2008, and Spriggs filed a timely notice of appeal to this court.

Our review of an administrative appeal is very limited. Review is directed toward the decision of the administrative agency, not the reviewing circuit court. *Ark. Prof'l Bail Bondsman Lic. Bd. v. Oudin*, 348 Ark. 48, 69 S.W.3d 855 (2002). Administrative decisions will be upheld if they are supported by substantial evidence and are not arbitrary, capricious, or characterized by an abuse of discretion. *Id.* Substantial evidence is defined as valid, legal, and persuasive evidence that a reasonable mind might accept as adequate to support a conclusion, and force the mind to pass beyond conjecture. *Ark. State Police Comm'n v. Smith*, 338 Ark. 354, 994 S.W.2d 456 (1999).

Spriggs urges us to remand this case for proper findings of fact and conclusions of law. We agree that remand is in order. Arkansas Code Annotated section 25-15-210(b)(2) (Repl. 2002) requires a final decision of an administrative body to include findings of fact and

conclusions of law, separately stated. A finding of fact is "a simple straightforward statement of what happened. A statement of what the Board finds has happened; not a statement that a witness, or witnesses, testified thus and so." *Nesterenko v. Ark. Bd. of Chiropractic Exam'rs*, 76 Ark. App. 561, 566, 69 S.W.3d 459, 461 (2002). Whether sufficient findings of fact have been made is a threshold question in an appeal from an administrative board. *Vallaroutto v. Alcoholic Beverage Control Bd.*, 81 Ark. App. 318, 101 S.W.3d 836 (2003). As noted by LOPFI, Spriggs never raised this issue below.[1] However, the statute requiring findings of fact and conclusions of law is for the benefit of the reviewing courts and, therefore, cannot be waived by any litigant. *First State Bldg. & Loan Ass'n, Mountain Home v. Arkansas Sav. & Loan Bd.*, 257 Ark. 599, 518 S.W.2d 507 (1975); *Arkansas Sav. & Loan Ass'n Bd. v. Central Arkansas Sav. & Loan Ass'n*, 256 Ark. 846, 510 S.W.2d 872 (1974).[2] Courts cannot perform reviewing functions assigned to them on review of state agency decisions in the absence of adequate and complete findings of the agency and all essential elements pertinent to determination. *Sanders v. Employment Sec. Dep't*, 80 Ark. App. 110, 91 S.W.3d 520 (2002).

While the order in this case has the labels "findings of fact" and "conclusions of law,"

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[1] Generally, an argument must be raised before the administrative body to be preserved for appellate review. *See Stilley v. Supreme Court Comm. on Prof'l Conduct*, 370 Ark. 294, 259 S.W.3d 395 (2007).

[2] LOPFI also describes the statutory requirement of findings of fact as "a minor and inconsequential matter," citing *Independence Savings & Loan Association v. Citizens Federal Savings & Loan Association*, 265 Ark. 203, 211, 577 S.W.2d 390, 394 (1979). However, the court in that case made that statement in reference to the requirement that findings of fact be concise, not the requirement for findings of fact in general.

it is merely a procedural history of the administrative proceedings. The order contains no information stating the facts upon which the board made its decision. Further, the order states that Spriggs presented no substantial evidence of a disability. This is not true, as at least two doctors opined that Spriggs was disabled. The long-standing rule is that, when an administrative agency fails to make a finding upon a pertinent issue of fact, the courts do not decide the question in the first instance. *Chandler v. Ark. Appraisers Lic. & Certification Bd.*, 92 Ark. App. 423, 214 S.W.3d 861 (2005). Accordingly, we reverse and remand this cause to the circuit court, with directions to remand it to LOPFI to make appropriate findings of fact.

Reversed and remanded.

HART and GLADWIN, JJ., agree.