



In the Missouri Court of Appeals Eastern District

DIVISION FOUR

MICHAEL TAYLOR,	)	No. ED109142
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Honorable Christopher E. McGraugh
THE BOARD OF TRUSTEES OF THE	)	
FIREFIGHTERS' RETIREMENT PLAN OF	)	
ST. LOUIS,	)	
	)	
Respondent.	)	FILED: July 20, 2021

Michael Taylor appeals the judgment of the circuit court affirming the decision of the Board of Trustees of the Firefighters' Retirement Plan of St. Louis (the "Board") denying his claim for disability benefits. Taylor argues the Board erred in denying his claim because (1) it found that mental disabilities are not compensable under section 4.19.070 of the Revised Code of the City of St. Louis;¹ (2) the Board's decision was not supported by substantial and competent evidence in light of evidence from Taylor's doctors and therapist; and (3) the Board's findings that he was malingering and unmotivated to work were against the overwhelming weight of the evidence. We affirm.

¹ All section references are to the Revised Code of the City of St. Louis (2017), unless otherwise indicated.

Factual and Procedural Background

Taylor worked as a firefighter for the City of St. Louis for over ten years. In April 2017, he responded to the scene of a fire and was injured when falling bricks knocked him to the ground. On August 20, 2018, he filed an application for disability retirement benefits with the Firefighters' Retirement Plan. In his application, Taylor stated: "A [three] story brick wall collapsed on me, and rendered me unconscious." He described the parts of his body injured as his "head, neck, nerves in cervical, left arm, right foot, right ankle, left foot, left ankle, [and] left knee." Taylor claimed he was disabled from engaging in any gainful employment in any occupation. His application did not reference any psychiatric conditions. Taylor subsequently amended his claim to reflect that he was only unable to work as a firefighter.

Summary of Taylor's Medical Records

On the day of the incident, Taylor was transported to the emergency room at St. Louis University Hospital, where he was treated for various physical injuries. After being released from the emergency room, he received further treatment from Dr. James Doll, a physiatrist. Taylor first saw Dr. Doll on May 31, 2017 and reported his symptoms as insomnia, frequent headaches, numbness and tingling in his right arm, joint pain, and swelling of his joints and limbs. Dr. Doll treated Taylor for cervical and right shoulder strain and prescribed physical therapy and work conditioning beginning in June 2017. During work conditioning, Taylor had the ability to perform all necessary tasks with no difficulty. When Dr. Doll mentioned Taylor returning to work, Taylor stated "there was no way he could possibly perform the requirements of his work activities." Dr. Doll reported that Taylor progressed "extremely slowly" in the work conditioning program. He also found Taylor's "level of motivation [to be] questionable" and noted inconsistencies between Taylor's "self-assessments, his subjective complaints, his physical examination findings and his

actual performance during his work conditioning sessions.” On June 3, 2018, Dr. Doll found that Taylor had reached maximum medical improvement and did not need restrictions on his physical activities as a result of his cervical and shoulder injuries. He opined that Taylor had suffered no permanent partial disability as a result of his injuries. Taylor saw Dr. Doll a final time on July 19, 2018 and reported his symptoms as numbness and weakness. Dr. Doll also noted that Taylor complained of tremoring, limited range of motion and ongoing pain. Dr. Doll again concluded Taylor was at maximum medical improvement and that he did not need any further medical treatment.

Dr. John Krause, an orthopedic surgeon who treated Taylor from May 5, 2017 to March 19, 2018, noted that Taylor presented signs of symptom magnification. On September 8, 2017, Dr. Krause opined that it was “somewhat predictable that he is not going to get back to being able to work as a firefighter” based on his effort at physical therapy and demeanor in the office. Dr. Krause also reported that Taylor claimed to have suffered a knee injury during physical therapy. The physical therapist’s report, however, stated that Taylor never suffered an injury during physical therapy and Dr. Krause himself found no objective abnormal findings. Dr. Krause opined that Taylor was at maximum medical improvement and returned him to full duty with no restrictions.

Taylor also saw Dr. David Peeples, a neurologist, for evaluation and treatment. During a visit on June 13, 2017, Taylor stated he ruminates about the incident and “freaks out if he sees bricks.” Dr. Peeples noted “symptoms of posttraumatic stress” and recommended counseling. Two months later, Taylor sent Dr. Peeples an email requesting a referral to a therapist. Dr. Peeples saw Taylor again on August 9, 2017, and Taylor indicated he was suffering from a “degree of

posttraumatic stress,” but Dr. Peeples never diagnosed Taylor with post-traumatic stress disorder (“PTSD”). Dr. Peeples released Taylor from his care without imposing any work restrictions.

On September 25, 2017, Taylor was evaluated by Dr. Robert Fucetola, the chief of clinical neuropsychology at Washington University School of Medicine. Dr. Fucetola opined that Taylor did not exhibit any “serious psychological pathology,” noting that Taylor denied “clinically significant symptoms of depression, anxiety, or stress/worry.” He concluded Taylor’s “symptoms did not meet [the] threshold criteria for [PTSD] as there were no clinically significant symptoms of anxious arousal, dissociative symptoms, or significant depression and anger.” He also found “no evidence of a major mental disorder” but did diagnose Taylor with “Adjustment Disorder with Anxiety.” Dr. Fucetola concluded Taylor was not permanently psychologically disabled, noting that “[a]djustment disorders resolve spontaneously or respond well to treatment, and are not typically associated with permanent psychological problems by definition.” Dr. Fucetola recommended ten counseling sessions.

Taylor attended 40 counseling sessions with Craig Politte, a licensed professional counselor, between October 16, 2017 and September 5, 2018. Mr. Politte’s notes indicated a significant number of Taylor’s sessions were devoted to discussions about his anger with his workers’ compensation doctors and his anger and distrust of the fire department and its employees. Although he is not a medical doctor, Mr. Politte suggested in his notes and correspondence that Taylor was suffering from PTSD.

On February 9, 2018, Dr. Stacey Smith, a psychiatrist, performed an independent psychiatric evaluation on Taylor. During the evaluation, Taylor refused to consider psychiatric medications and further advised Dr. Smith there was only a “50-50” chance he would return to full duty, emphasizing he would be turning 60 the following month. Dr. Smith opined the prognosis

for Taylor returning to work was low and that his “heart is not in it.” Dr. Smith diagnosed Taylor with “Adjustment Disorder Unspecified, causally related to [his] work injury.”

Taylor had several visits with Dr. Smith, who ultimately concluded he would “not be returning to full duty.” On June 25, 2018, Dr. Smith found Taylor had reached maximum medical improvement. At that visit, Taylor expressed frustration with the fire department and his workers’ compensation doctors. Dr. Smith found that “[p]sychiatrically, [Taylor] can continue working desk duty. A job change away from the Fire Department is recommended.” She further found that “[h]is interests would be best served by closing his [workers’ compensation] case. He can then pursue treatment (or not...) according to his own wishes. Prolonging his treatment within [workers’ compensation] would be psychologically counter-therapeutic at this point.”

In a report dated August 9, 2018, Dr. Smith explained her treatment goals were based on her hope that Taylor “would see some physician treating his physical complaints who would reassure him (or explain to him his problems in such a way that pleased/satisfied him) but [Taylor]...might be able to emotionally reconstitute fully post-injury.” She concluded Taylor “would be a risk to himself and possibly to other firefighters” because of his current state of mind. On August 23, 2018, Dr. Smith reported she and Mr. Politte were in agreement to “put [Taylor] off-work permanently.” At no time did Dr. Smith diagnose Taylor with a permanent physical disability or PTSD.

On March 23, 2018, Taylor was evaluated by Dr. Richard Katz, a professor of clinical physical medicine and rehabilitation at Washington University School of Medicine. Dr. Katz concluded there was a strong psychological component to Taylor’s ongoing distress but declined to make a diagnosis and deferred to Dr. Smith.

On October 24, 2018, Dr. Thomas Kibby, a physician for the Board, reviewed Taylor's medical records and agreed that Taylor had reached maximum medical improvement and was suffering from "Adjustment Disorder with Anxiety." He concluded Taylor was permanently unable to work as a firefighter but could work in other employment.

Proceedings Before the Board

The Board denied Taylor's claim at an informal hearing on January 31, 2019, concluding: (1) Taylor's failure to return to work was caused by his "unwillingness to return to work" as shown by his lack of effort in physical therapy; and (2) based on the opinion of Dr. Fucetola, Taylor was "not suffering from any permanent psychological disability."

Taylor appealed and requested an evidentiary hearing. He testified that PTSD, not his physical injuries, was preventing him from returning to work as a firefighter, noting that he had thought about the incident "24 hours a day, 7 days a week" since the day it happened. He stated his doctors never prescribed any psychiatric medications because he "didn't need it" and that it was "probably true" he told Dr. Smith he did not want to take any psychiatric medications. Taylor testified he was working as a stationary engineer trainee for the City of St. Louis at a water purification facility and that his PTSD symptoms were not preventing him from performing that job. He reported he was not currently experiencing nightmares or flashbacks regarding the incident and that counseling helped him with those issues. He explained the only symptom of PTSD he was currently experiencing was that he had been "thinking about" the incident. Taylor acknowledged he had not received any other counseling since he last saw Mr. Politte in September 2018.

The Board found Taylor's testimony regarding "the extent of his claimed inability to continue his employment as a firefighter due to PTSD was not credible or worthy of belief." The

Board concluded Taylor had never been credibly diagnosed with PTSD, noting that Dr. Fucetola, Dr. Smith, and Dr. Kibby all agreed that Taylor was suffering from adjustment disorder with anxiety, that Dr. Katz deferred to Dr. Smith without making a diagnosis and that Dr. Peeples noted symptoms of PTSD but did not diagnose Taylor as having that condition.

The Board found Dr. Smith's opinion that Taylor could not return to work as a firefighter was not credible because she did not articulate a medical basis for that conclusion. The Board stressed that although Dr. Smith concluded Taylor "would be a risk to himself and possibly to other firefighters based on his current state of mind and beliefs," she did not connect that conclusion to Taylor's diagnosis of adjustment disorder with anxiety. The Board found Dr. Kibby's opinion that Taylor was permanently unable to return to work as a firefighter to not be credible since he did not personally examine him and only reviewed the records of other medical professionals.

The Board found the physicians' conclusion that Taylor was suffering from adjustment disorder with anxiety to be credible. The Board also credited and gave weight to Dr. Fucetola's opinion that adjustment disorder is not associated with permanent psychological problems by definition.

The Board denied Taylor's claim for benefits, concluding he had failed to establish by a preponderance of the evidence that: (1) he incurred a total and permanent disability; (2) his health condition "resulted from bodily injury"; and (3) his health condition rendered him totally and permanently disabled from working as a firefighter. Taylor filed a petition for administrative review, and the circuit court affirmed the Board's decision. This appeal follows.

Standard of Review

“On an appeal from a judgment of a trial court addressing the decision of an administrative agency, we review the decision of the administrative agency and not the judgment of the trial court.” *Sanders v. Firemen’s Ret. Sys. of St. Louis*, 393 S.W.3d 135, 137 (Mo. App. E.D. 2013). “According to Article V, Section 18 of the Missouri Constitution, we must determine whether the agency’s findings are supported by competent and substantial evidence on the record as a whole; whether the decision is arbitrary, capricious, unreasonable or involves an abuse of discretion; or whether the decision is unauthorized by law.” *Id.* “A court reviewing the actions of an administrative agency should make a single determination whether, considering the whole record, there is sufficient competent and substantial evidence to support the award.” *Id.* “This standard would not be met in the rare case when the [agency’s decision] is contrary to the overwhelming weight of the evidence.” *Lagud v. Kansas City Bd. of Police Comm’rs*, 136 S.W.3d 786, 791 (Mo. banc 2004) (alteration in original) (quoting *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo. banc 2003)). If the “ruling is supported by competent and substantial evidence upon the whole record the ruling will be affirmed, even though the evidence would also have supported a contrary determination.” *Sanders*, 393 S.W.3d at 137.

“Though we consider the entire record to determine whether the decision is supported by competent and substantial evidence, we may not substitute our judgment on the evidence for that of the agency, and we must defer to the agency’s determinations on the weight of the evidence and the credibility of witnesses.” *Id.* “We must look to the whole record in reviewing the [agency’s] decision, not merely at that evidence that supports its decision, and we no longer view the evidence in the light most favorable to the agency’s decision.” *Id.* “When an administrative agency decision

is based on the agency's interpretation and application of the law, we review the administrative agency's conclusions of law . . . de novo." *Id.*

Discussion

We begin our analysis by addressing Taylor's second and third points relied on, which both assert the Board's decision was "unsupported by competent and substantial evidence upon the whole record." In Point II, Taylor argues the Board "erroneously credited" Dr. Fucetola's opinion over the opinions of Dr. Smith, Dr. Kibby and therapist Craig Politte, all of whom concluded Taylor was permanently unable to work as a firefighter due to a mental disability.

The opinions of Dr. Smith, Dr. Kibby and Mr. Politte were based on Taylor's representations as to his condition. As noted, the Board explicitly found Taylor lacked credibility regarding the extent of his claimed inability to return to work as a firefighter due to PTSD. We are bound by the Board's credibility determinations. *See id.* at 139. The Board's credibility determination as to Taylor eliminates the bases for the opinions of Dr. Smith, Dr. Kibby and Mr. Politte. *See Dunn v. Treasurer of Mo. as Custodian of Second Inj. Fund*, 272 S.W.3d 267, 274 (Mo. App. E.D. 2008). Therefore, Taylor's argument fails.

In Point III, Taylor asserts the Board erred because its finding that he was "malingering and unmotivated to work [was] contrary to the overwhelming weight of the evidence." Again, the Board found Taylor's testimony about "the extent of his claimed inability to continue his employment as a firefighter due to PTSD was not credible or worthy of belief." The Board stressed that the only symptom of PTSD Taylor "claimed to currently be experiencing was that he was 'thinking about' the incident" and that he had "refused to consider psychiatric medications." The Board also pointed out that Taylor told Dr. Smith there was only a "50-50" chance he would return to full duty and emphasized to her he would be turning 60 the following month. Additionally, the

Board noted that, despite the fact that Taylor “had demonstrated the ability to perform all necessary tasks with no difficulty,” he insisted there was no way he could perform his work requirements when Dr. Doll mentioned returning to work. Again, Dr. Doll concluded Taylor’s “level of motivation is questionable” and noted further inconsistencies between Taylor’s “self-assessments, his subjective complaints, his physical examination findings, and his actual performance during his work conditioning sessions.” And Dr. Krause also reported symptom magnification and that Taylor had claimed a knee injury that his physical therapist and Dr. Krause’s own evaluation indicated did not happen.

Viewing the record as a whole, we conclude the Board’s decision was supported by competent and substantial evidence. Points II and III are denied.

We now turn to Taylor’s first point relied on. He contends the Board erred in denying his claim on the basis that mental disabilities are not compensable under section 4.19.070. We disagree.

Section 4.19.070(B)(2), which pertains to “Line of Duty” disability benefits for firefighters, provides:

A participant who incurs a termination of employment because of a total and permanent disability resulting from bodily injury incurred while engaged in the actual performance of duty as a firefighter in response to an emergency call that renders the participant totally and permanently unable to continue his employment as a firefighter, but not other gainful employment . . . , shall receive a disability income while so disabled equal to twenty-five percent of his average final compensation

According to Taylor, the Board’s “construction of the ordinance is inconsistent with caselaw” and with section 87.200, RSMo (2016), which provides:

Upon application by the member or the chief of the fire department, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty or exposure while in the actual performance of duty in response to an emergency

call shall be retired by the board of trustees, if the medical board shall certify that the member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that the member should be retired.

Taylor's argument is premised on the erroneous belief that the Board interpreted the "resulting from bodily injury" requirement contained in section 4.19.070(B)(2) to exclude mental disabilities. Contrary to Taylor's assertion, the Board did not deny his claim on that basis; it instead found he failed to carry his burden of proof to establish three of the requirements of section 4.19.070(b)(2)—specifically, that (1) he incurred a total and permanent disability, (2) his health condition "resulted from bodily injury," and (3) his health condition rendered him totally and permanently disabled from working as a firefighter.

But even if the Board's finding that Taylor's condition did not result from a bodily injury could be construed as a determination that mental injuries are not compensable, his claim would still fail since he did not meet his burden to establish he suffered a termination of employment because of a total and permanent disability and that he was totally and permanently disabled from working as a firefighter but not other gainful employment. See section 4.19.070(B)(2). Point I is denied.

Conclusion

For the foregoing reasons, the judgment is affirmed.

A handwritten signature in blue ink, appearing to read "M. Gardner", is written over a horizontal line.

MICHAEL E. GARDNER, Judge

Gary M. Gaertner, Jr., P.J., concurs.
Philip M. Hess, J., concurs.