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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

WILLIAM McNAMES,

Plaintiff and Appellant,

v.

BOARD OF RETIREMENT OF THE
ORANGE COUNTY EMPLOYEES
RETIREMENT SYSTEM,

Defendant and Respondent.

G049246

(Super. Ct. No. 30-2012-00559378)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

William McNames, in pro. per., for Plaintiff and Appellant.

David H. Lantzer for Defendant and Respondent.

* * *

William McNames appeals from the trial court's denial of his petition for a writ of mandate (Code Civ. Proc., § 1094.5; all further statutory references are to this code unless otherwise designated) to overturn a decision of the Board of Retirement (Board) of the Orange County Employees Retirement System (OCERS) finding his psychological condition entitling him to disability retirement was *not* connected to his work as a research attorney at the Orange County Superior Court. According to petitioner, no reasonable trier of fact confronted with the administrative record could fail to conclude his psychological disability was service connected.

As the record shows, however, a reasonable factfinder could conclude petitioner's major depressive disorder (MDD) condition arose from life events outside work. Its profound toll on his productivity and efficiency required him to spend twice as long as would be expected to complete his tasks, effectively preventing him from performing his job. A reasonable factfinder could conclude that any contributing mental stress petitioner later may have suffered from neck strain due to falling asleep at his computer or from carpal tunnel syndrome or other work-related injuries for which he received a workers' compensation award did *not* tip the balance to render him disabled on psychological grounds. Rather, his MDD condition by itself already qualified him as fully disabled. Accordingly, those physical factors did not transform his psychological disability requiring retirement into a service-connected disability. Because petitioner bore the burden of proof to establish his disability was service connected, and because substantial evidence supports the trial court's decision on independent review of the administrative record that petitioner's psychological condition was not service connected, we affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

Consistent with the standard of review, we set out the facts in the light most favorable to the order or judgment on appeal. (*Delgado v. Trax Bar & Grill* (2005))

36 Cal.4th 224, 229; see 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 370, pp. 427-428 [“All of the evidence most favorable to the respondent must be accepted as true, and that unfavorable discarded as not having sufficient verity to be accepted by the trier of fact”].) Notably, because petitioner bore the burden of proof below to establish his disabling condition was service connected, the standard of review requires us to uphold the trial court’s order denying a writ of mandate unless the petitioner shows the evidence *necessitates* the conclusion his disabling condition was service connected. (*Valero v. Board of Retirement of Tulare County Employees’ Assn.* (2012) 205 Cal.App.4th 960, 965-966 (*Valero*)). Under that high standard, we need only set forth evidence supporting the trial court’s conclusion petitioner’s condition was not service-connected.

Petitioner worked as a research attorney at the superior court from June 1992 until the court applied on his behalf in August 2002 for disability retirement, designating his incapacitating condition as *not* service connected. (See Govt. Code, § 31721, subd. (a) [“an employer may not separate [i.e., terminate a member employee] because of disability . . . but [instead] shall apply for disability retirement of any eligible member believed to be disabled,” unless the member elects to withdraw his or her service retirement contributions].)

Petitioner’s performance evaluations in every year of his tenure except 1997 noted a problem with timeliness in completing his work, culminating in several judges refusing to work with petitioner. It appears petitioner’s divorce in 1998 and other issues outside work exacerbated the problem. He sought psychological assistance in handling these issues beginning in January and February 2001, complaining of difficulty in completing his work. The therapist diagnosed petitioner’s condition as chronic major depressive disorder, which neither petitioner, nor the therapist attributed to petitioner’s work. His symptoms included fatigue, an inability to concentrate, and disruption of effective information processing. The therapist noted petitioner’s psychological difficulties began after his divorce and after he ran unsuccessfully for judge, a business

venture failed, and he was asked to leave the church he helped found. The therapist also noted a history of back and neck injuries from car and motorcycle accidents in which petitioner reported he lost consciousness. In a follow-up report, the therapist stated petitioner needed twice the “normal amount of time allotted for him to complete his work tasks.”

On a Sunday evening in August 2001, petitioner was working through the night at the court and fell asleep or “passed out” at his computer, suffering painful spasms in his neck and “upper extremities” when he awoke. He returned to half-duty work in October 2001 with restrictions that included a work day no longer than eight or nine hours, limitations on lifting heavy weights, frequent exercise breaks, and an ergonomic workplace evaluation. Beginning in January 2002, petitioner’s supervisor assigned him an ordinary full workload, which he proved unable to meet, resulting in poor performance reviews.

A July 2002 letter from the court’s human resources department noted the “indefinite” restriction of twice “the normal time allotted to complete your normal job tasks as an attorney,” and concluded: “Because of this work restriction, it appears that you are unable to perform the essential job functions of an attorney.” The court filed petitioner’s disability retirement application with OCERS, which the Board granted in March 2005 on nonservice-connected grounds for his psychological condition. Petitioner objected, and administrative proceedings continued through January 2012, culminating in a hearing officer’s report concluding petitioner failed to carry his burden to establish his psychological incapacity was service connected. When the Board adopted the hearing officer’s findings, petitioner sought a writ of administrative mandamus, which the trial court denied, and petitioner now appeals.

II

DISCUSSION

Petitioner contends the trial court erred in declining to order mandamus writ relief directing the Board to designate his disability retirement service connected. When a petitioner challenges a retirement board's decision by seeking a writ of administrative mandamus (§ 1094.5), the trial court exercises its independent judgment in reviewing the board's decision. (*Valero, supra*, 205 Cal.App.4th at p. 965.) On appeal, the deferential substantial evidence standard applies. "After the trial court has exercised its independent judgment in weighing the evidence, our task is to review the record to determine whether the trial court's findings are supported by substantial evidence. [Citation.] The trial court's decision should be sustained if it is supported by credible and competent evidence. [Citation.]" (*Wieser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.)

The Government Code provides in pertinent part that a county employee qualifies for a service-connected disability retirement "if and only if: [¶] (a) The member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity" (Govt. Code, § 31720, subd. (a).) This language requires simply a "'real and measurable' connection" between the person's job and his or her incapacitating condition. (*Bowen v. Board of Retirement* (1986) 42 Cal.3d 572, 577-578.) The condition must "permanently incapacitate[]" the employee "physically *or mentally* for the performance of his duties." (Govt. Code, § 31724, italics added; see, e.g., *Valero, supra*, 205 Cal.App.4th at pp. 966-968 [panic disorder may disable employee, but was not service-connected].)

Notably, the employee bears the burden of proof to establish the incapacitating condition he or she suffers from is service connected. (*Masters v. San Bernardino County Employees Retirement Assn.* (1995) 32 Cal.App.4th 30, 47.) The

retirement board need not negate a service connection: “it is not necessary for the agency to show the negative of the issue when the positive is not proved.” (*Lindsay v. County of San Diego Ret. Bd.* (1964) 231 Cal.App.2d 156, 161-162.)

The employee’s burden has important ramifications on appeal. Where, as here, the party challenging the decision shouldered the burden of proof below, the question for the reviewing court is whether the evidence *required* a service-connected disability finding as a matter of law. (*Valero, supra*, 205 Cal.App.4th at pp. 965-966.) Put another way, the appellant’s evidence must be legally dispositive and conclusive, i.e., ““of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.” [Citation.]’ [Citation.]” (*Id.* at p. 966.)

The appellant’s hurdle is particularly high because the appellate court must view the evidence in the light most favorable to the judgment. (*Molina v. Board of Administration, etc.* (2011) 200 Cal.App.4th 53, 61.) It is not enough that reasonable minds may disagree and it is of no import whether the reviewing court would have reached a different conclusion in the first instance; rather, when two or more inferences can be reasonably deduced from the evidence, the appellate court may not substitute its judgment for the trier of fact’s. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) To the contrary, the reviewing court has ““no power to judge . . . the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence *or in the reasonable inferences that may be drawn therefrom.*” [Citation.]’ [Citation.]” (*People v. Orange County Charitable Services* (1999) 73 Cal.App.4th 1054, 1071-1072, original italics.)

Here, the standard of review controls the outcome on appeal. The trial court in its independent review of the administrative record reasonably could conclude petitioner’s MDD condition arose from stress factors outside work that by themselves rendered him fully disabled. The psychological therapy petitioner obtained in early 2001 revealed he suffered from chronic major depression since at least 1998, which neither

petitioner nor his therapists attributed to work, but rather to traumatic life events including divorce, his failed election bid, a failed business venture, and alienation or exclusion at his church. A follow-up assessment based on these factors indicated the psychological impairment petitioner suffered required double the allotment of time to complete his ordinary work tasks. Based on a typical work day of 8-10 hours for a research attorney at the superior court, a reasonable trier of fact could conclude by simple arithmetic that the relentlessly grueling 16-20 hours petitioner would need daily to complete his work was neither a healthy, nor realistic solution. A reasonable factfinder could conclude the 16- to 20-hour workdays his psychological condition would require was beyond the scope of his employment terms, rendering him fully disabled because he could not complete his work reasonably near the ordinary allotted time.

Petitioner contends lingering neck strain or other physical impairment from striking his head when he fell asleep at his computer in August 2001, together with alleged cumulative injury from poor ergonomic keyboarding conditions, coalesced together in an unhealthy “interplay” with his psychological condition to increase his psychological burden, and therefore rendered his psychological disability service connected. Petitioner relies on three hypothetical statements in a 2003 postretirement report by psychologist James Deck opining that *if* certain work-related events occurred or physical conditions existed, they *could* impact petitioner’s psychological condition. Deck described the three scenarios as follows. First, “[i]f [petitioner’s] duties, requirements, responsibilities, or some other objective aspect of his employment . . . was changed since 1998, I would . . . consider *whether* this would also constitute a real and measurable industrial contribution to his state of permanent disability.” (Italics added.)

Second, Deck stated: “If his physical condition and associated sequelae are determined to be work-related . . . then this *clearly* would be a real and measurable contributor to the course of his psychological condition and his overall psychological disability.” Third, Deck wrote in his report: “[I]f . . . his physical condition is work-

related, then this event meets the threshold for a real and measurable contribution to the course of his permanently disabling psychological condition. Included in this assessment is the claim that he was not given an ergonomically correct work station despite recommendations from a treating neurologist.”

According to petitioner, evidence in the administrative record fulfilled the “if” premise in each of Deck’s conditional assessments, and therefore the inherent necessity of an “if/then” logical statement required the trial court to conclude his disabling psychological condition was service connected. As an initial matter, however, we note petitioner does not point to anything in the record suggesting his work duties *changed* since 1998, as contemplated in Deck’s first scenario. Therefore, petitioner’s argument fails on its own terms as to the first premise.

Additionally, Deck’s second and third scenarios expressly contemplate a potential causal connection between a work-related physical health condition and “the course of” a psychological condition. Thus, the *timing* of *when* a psychological condition runs sufficiently along its “course” to become permanently disabling is therefore critical, but petitioner does not address it. A reasonable trier of fact could conclude the traumatic nonwork factors identified in petitioner’s early 2001 assessments caused his psychological condition to deteriorate to the point he was effectively disabled because his job terms did not include working 16 to 20 hours every day. Indeed, Deck himself attributed petitioner’s major depressive condition to his wife leaving him, and in referencing 1998 in his first hypothetical, Deck implicitly suggested petitioner’s debilitating condition began then. In any event, substantial evidence supports the conclusion petitioner’s psychological condition requiring twice the standard time to complete his work rendered him disabled *before* there was any evidence or suggestion that an “interplay” of work-related physical factors added to petitioner’s psychological burden. Consequently, the trial court was not required to credit petitioner’s interplay theory.

Similarly, plaintiff's reliance on a subsequent workers' compensation award compensating him for ergonomic and similar work-related physical conditions is unavailing. Plaintiff suggests that because the award necessarily ties compensable physical injuries to the workplace, his disabling psychological condition is also necessarily work related. But this argument simply rehashes his interplay theory, which the trial court reasonably could reject. Indeed, a reasonable trier of fact could conclude it was important for petitioner to retire based on his psychological condition before he suffered any further harm from incidents like falling asleep at his computer or repetitive stress keystroking in the extended hours his condition required. In other words, a reasonable trier of fact could conclude petitioner's work-related physical conditions resulted *from* his psychological condition, contrary to his claim that those physical injuries added to his psychological burden and rendered it service connected.

III

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.