

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE DEPARTMENT OF ADMINISTRATION**

In the Matter of:

R.W.R.

OAH No. 07-0305-TRS
Div. R&B No. 2005-013

DECISION ON SUMMARY ADJUDICATION

I. Introduction

R.R. applied for occupational disability retirement benefits. The administrator of the Teachers' Retirement System issued a decision denying the application on March 27, 2007. Mr. R. filed an appeal, which was referred to the Office of Administrative Hearings on May 16, 2007, along with the agency record (consisting of numbered pages 1-61).

The division filed a motion for summary adjudication. For the reasons that follow, the motion is granted.

II. Facts

R.R., presently aged 51, has been employed in the Teachers' Retirement System for about 15 years.¹ For the six years through the 2005-2006 school year, Mr. R. worked as a special education coordinator for the *** School District.² Mr. R. felt increasingly depressed and anxious in that capacity, to the point that in February, 2006, he sought medical care from his physician, Dr. Lehmann.³ Initially, Dr. Lehmann did not have the impression of clinical depression and Mr. R. did not want medication.⁴ Dr. Lehmann referred Mr. R. to a psychologist, Charles Morgan, Ph.D.⁵ At intake, Mr. R.

¹ R. 7

² R. 40 (3/1/06).

³ R.52-53 (2/15/06).

⁴ R. 53 (2/15/06)

⁵ R. 40 (3/1/06).

described himself as irritable, hopeless, and headachy.⁶ Mr. R. met the criteria for a major depressive disorder, single episode.⁷

In March, Mr. R. was the subject of a disciplinary inquiry initiated by other teachers;⁸ his psychologist suggested that he consider anti-depressant medication.⁹ By April, the disciplinary inquiry had resulted in a plan of action.¹⁰ In April Mr. R. was counseled by Dr. Lehmann, who prescribed Trazadone.¹¹

Mr. R. completed the 2005-6 school year and after summer vacation he returned to work at the beginning of the 2006-7 school year. At the beginning of the school year, Mr. R. felt less anxious about his work environment: he "described school as continuing to go well for him."¹² This improvement last into December.¹³

In mid-December, 2006, however, things took a turn for the worse. Mr. R. was released from the administrative reprimand from the prior school year, but he was advised of renewed concerns on the part of the school administration.¹⁴ Mr. R. reported to Dr. Lehmann that he felt increasing anxiety, and he requested medical leave.¹⁵ Dr. Lehmann prescribed Zoloft.¹⁶ School administrators suggested that he should look for work elsewhere, although his position was not in "immediate jeopardy,"¹⁷ and Mr. R. began considering the possibility of a disability retirement.¹⁸ Although the Zoloft had improved his symptoms, Mr. R. did not return to work immediately following the Christmas break.¹⁹ Dr. Lehmann prescribed Prilosec in addition to the Zoloft.²⁰ In mid-January, Mr. R. returned to work, but he stopped taking the medication, telling his psychologist that it "was making him a bit groggy, which he felt interfered with his school performance."²¹

⁶ R. 40 (3/1/06).

⁷ R. 40 (3/1/06).

⁸ R. 39 (3/7/06).

⁹ *Id.*

¹⁰ R. 37 (4/10/06); R. 36 (4/18/06).

¹¹ R. 50-51 (4/12/06).

¹² R. 32 (10/25/06).

¹³ R. 31 (11/21/06); R. 30 (12/4/06) ("School seems to be going moderately well for him so far this year...").

¹⁴ R. 29 (12/18/06).

¹⁵ R. 45 (12/18/06).

¹⁶ R. 44 (1/11/07); R. 46 (12/18/06).

¹⁷ R. 28 (12/20/06).

¹⁸ R. 26 (1/2/06).

¹⁹ R. 43 (1/11/07).

²⁰ R. 44 (1/11/07).

R. 25 (1/16/07).

Mr. R. filed an application for disability retirement on January 17, 2007. His psychologist provided a diagnosis of major recurrent depression and a statement of disability, indicating that Mr. R. might improve within 6-12 months.²³ By the end of January, Mr. R. was no longer working, and his symptoms improved.²⁴ Asked for an opinion regarding his ability to return to work, Dr. Lehmann deferred to Mr. R.'s psychologist.²⁵ The school district provided a statement indicating that Mr. R. was not performing satisfactorily.²⁶ In February, Mr. R. returned to work on a part-time basis, helping out the substitute hired to replace him.²⁷

The division of retirement and benefits asked Dr. Thomas Rodgers to review Mr. R.'s application in light of the medical records.²⁸ Dr. Rodgers opined that Mr. R. should have a more thorough evaluation and more aggressive treatment, and that without additional treatment it was premature to determine whether he is permanently disabled.²⁹ Based on Dr. Rodgers' report, the administrator denied the application.³⁰ Mr. R. filed an appeal. While the appeal was pending, Mr. R. returned to work at the *** School District for the 2007-2008 school year, working as a mathematics tutor to eight to ten non-special education students on a one-on-one basis.

III. Discussion

Summary adjudication in the administrative context is equivalent to summary judgment in a court proceeding;³¹ the evidence is viewed in the light most favorable to the non-moving party, and all reasonable inferences from the evidence are drawn in favor of the non-moving party.³² Summary adjudication may be granted when the evidence, so viewed, shows that there is no genuine dispute on an issue of material fact.³³

²³ R. 21 (1/16/07).

²⁴ R. 23 (1/30/07).

²⁵ R. 42 (1/31/07).

²⁶ R. 16 (2/2/07).

²⁷ R. 22 (2/13/07).

²⁸ R. 11-12(3/2/07).

²⁹ R. 9-10(3/18/07).

³⁰ R. 7-8 (3/27/07).

³¹ See, e.g., Schikora v. State, Department of Revenue, 7 P.3d 938, 940-41 (Alaska 2000).

³² Samaniego v. City of Kodiak, 2 P.3d 78, 82-83 (Alaska 2000).

³³ 2 A A C 64.250(a). See, e.g., Church v. State, Department of Revenue, 973 P.2d 1125 (Alaska 1999). A fact is not "material" unless it would make a difference to the outcome. Whaley v. State, 438 P.2d 718, 720 (Alaska 1968).

The division's motion for summary adjudication asserts that Mr. R. is ineligible for disability retirement because the undisputed evidence establishes that: (1) he has not terminated his employment with the *** School District,³⁴ and (2) he is not presumably permanently disabled.³⁵ Mr. R. did not file a written opposition to the motion, but at oral argument his position was that he can only function by taking drugs, and that the drugs impair his ability to work at his highest level.

A. Mr. R.'s Employment Is Not a Bar to a Disability Determination

The undisputed evidence establishes that Mr. R. did not terminate his employment with the *** School District and that he is presently employed by the district.

The division's motion argued that under AS 14.25.130(a), Mr. R. is ineligible to receive disability benefits because he has not terminated his employment. In a supplemental memorandum, the division acknowledged that under 2 A A C 36.023, an employee may obtain a disability determination prior to termination. In light of that regulation, the division has recast its argument. The division now asserts that Mr. R. is not eligible because his employer has provided a comparable position to his prior position.³⁶

The undisputed evidence is that prior to his application, Mr. R. was working as a special education teacher at *** Middle School, generally working with 10-15 students, and that he is currently working as a mathematics teacher, tutoring eight to ten students (not special education students) one-on-one.³⁷

Alaska Statute 14.25.220(30) states:

"permanent disability" means a...mental condition that...presumably prevents a member from satisfactorily performing the member's usual duties for the member's employer or the duties of another position or job that an employer makes available for which the member is qualified by training or education.

Mr. R., in his application for disability, identified stress "associated with providing services and advocating for adolescent special needs students" as the cause of this disability.³⁸ His letter of appeal references the demands of a position as a special education teacher as the source of his disability, and specifically notes that "in-district job situation exists that would

³⁴ Motion at 3.

³⁵ Motion at 4.

³⁶ DRB Ex. 10, at 3.

³⁷ DRB Ex. 11, p. 1.

³⁸ R. 14.

enable me to resume my career as an educator."³⁹ Mr. R.'s principal noted that movement from the special needs caseload of 10-15 students to a classroom of 20-30 students "would not be in [Mr. R.'s] best interest,"⁴⁰ but there is no indication that either Mr. R. or his principal believed that he would be unable to perform satisfactorily in an alternative position of some sort. There is no evidence that he has received any adverse reports in his new position. The undisputed evidence, taking all inferences in Mr. R.'s favor, is that the school district has provided an alternative position and that Mr. R.'s mental condition does not prevent him from performing it in a satisfactory manner. For that reason, the division is entitled to summary adjudication on this argument.

B. Mr. R. Has Presented No Evidence of Permanent Disability

The division argues that the undisputed evidence establishes that Mr. R. is not presumably permanently disabled, relying on his psychologist's observation that additional treatment could improve his condition, to which Mr. R.'s treating physician deferred, and with which the division's consulting physician concurred.⁴¹

Mr. R. presented no evidence to dispute his psychologist's opinion. He argues, however, that to the extent that the treatment modality will include medication, it would be contrary to applicable ethical standards for teachers if he were to return to work under the influence of medications.

20 A A C 10.020(d) provides:

[A]n educator...(18) may not continue in...professional employment while unfit due to (A) use of drugs...that impairs the educator's competence or the safety of students or colleagues; [or] (B) ...mental disability that impairs the educator's competence or the safety of students or colleagues.

Mr. R.'s position is that any medication that has an adverse impact on his teaching ability is banned under this regulation. Because, in his view, the prescribed medications had made him a less effective teacher, he viewed his use of the medications as contrary to the regulation.

The regulation, however, does not preclude the use of any medication that has an adverse effect on a teacher's ability. It only applies to the use of drugs that render a teacher "unfit": the drugs that Mr. R. has been prescribed are medications that do not render him unfit as a

³⁹ R. 2-3.

⁴⁰ R. 16.

⁴¹ Motion at 4 & Ex. 3-5.

teacher. To the contrary, the undisputed evidence in this case is that the medications enabled Mr. R. to continue to teach while reducing the symptoms of depression, even though (as he asserts) they have some side effects (*e.g.* grogginess) that may have adversely affected his performance as a teacher. Because the undisputed evidence is that the medications did not impair Mr. R.'s competence to the point of unfitness, the division is entitled to summary adjudication on this argument as well.

IV. Conclusion

The undisputed evidence establishes that Mr. R. is not presumably permanently unable to perform the duties of his current position in a satisfactory manner. The administrator correctly denied Mr. R.'s application.

V. Order

The division's motion for summary adjudication is GRANTED.

DATED November 20, 2007.

By: Andrew M. Hemenway
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 14.25.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 26th day of December, 2007.

By: Andrew M. Hemenway
Administrative Law Judge

The undersigned certifies that
this date an exact copy of the
foregoing was provided to the
following individuals:

Case Parties
12/26/07