



Corazon Caimol-Cruz v. Retirement Board of the City and County of San Francisco

2012 | Cited 0 times | California Court of Appeal | March 22, 2012

Caimol-Cruz v. Retirement Bd. of San Francisco

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Corazon Caimol-Cruz appeals from the denial of her petition for writ of mandate overturning a decision of the Retirement Board of the City and County of San Francisco (the Board) denying her application for a disability retirement. We affirm.

I. BACKGROUND

A. Facts¹

Cruz was hired by the City and County of San Francisco as a legal secretary in July 1981 and was assigned to the district attorney's (DA's) office. She was assigned to various units over the years including consumer fraud, investigations, special prosecutions, welfare fraud, and child support. In 1999, Cruz was reassigned to the Youth Guidance Center where she worked until approximately 2005. Her final assignment was to the secretarial pool in the criminal division of the Hall of Justice. Her last day of work was July 3, 2007.

In May 1988, Cruz had her appendix removed after being admitted to the emergency room with abdominal pain and cramping. A few months later, she was diagnosed with fibroids and underwent a myomectomy. In 1994, Cruz had her gall bladder removed which did not relieve her abdominal symptoms. In 1998, Cruz was diagnosed with endometriosis and underwent an exploratory laparotomy with hysterectomy and resection of endometriosis. At that time, Cruz was thought to have a bowel obstruction and underwent a bowel resection and diverting colostomy requiring her to wear a colostomy bag for several months, until her intestines were reattached in a follow-up surgery. After her 1998 bowel surgeries, Cruz was diagnosed with irritable bowel syndrome (IBS), which required her to go to the bathroom frequently. She was off of work for a year and returned to work in 1999 at the Youth Guidance Center, but continued to experience bowel problems. To accommodate



Corazon Caimol-Cruz v. Retirement Board of the City and County of San Francisco

2012 | Cited 0 times | California Court of Appeal | March 22, 2012

her need for frequent bathroom breaks due to her IBS, Cruz was transferred in 2005 to the secretarial pool in the criminal division where she mostly processed DUI complaints that were not under stringent time deadlines, and she was not required to leave her work area, e.g., to bring papers to court. She was also offered some flexibility in her reporting and quitting times.

In 2006, Cruz was disciplined for repeatedly failing to follow DA office protocols for calling in sick. In June 2007, the DA's office notified Cruz she had again violated the office's sick leave policy by failing to provide medical certification for her absences from work. Cruz returned to work on or about July 3, 2007, when she was afforded a Skelly² hearing stemming from her unauthorized absences. The Skelly hearing was interrupted when Cruz suffered an anxiety attack and was taken to the hospital by ambulance. She did not return to work any time after July 3.

By letter of July 17, 2007, the DA's office notified Cruz she was being suspended for the periods July 16 through July 20 and July 23 through July 27. She was instructed to return to work on July 30 with a medical provider certification for each day of absence since July 3, 2007. On July 18, 2007, Cruz's primary care physician, Silvia Yuen, M.D., wrote a note certifying Cruz had been unable to work as of July 2, with no medical reason offered. On July 26, Cruz faxed a letter to Dr. Yuen stating in part: "I need to cover all angles--so I need for Dr. Yuen to fax me that certificate [referenced in the DA's office July 17 notification] . . . I need the certification to read like this: . . ." The note proceeded to spell out a suggested medical certification based on "undue stress as a result of the 'unexplained indefinite administrative leave' placed [on Cruz] by her employer." On July 31, Dr. Yuen submitted a certification to the DA's office explaining Cruz had been unable to work because of "a severe stress reaction due to her unexplained placement on indefinite administrative leave." Dr. Yuen's letter did not mention IBS.

In July 2007, Dr. Yuen referred Cruz to Jonathan Terdiman, M.D., a gastroenterologist, for treatment of her abdominal complaints, including frequent bowel movements. He performed diagnostic tests which showed no major intra-abdominal pathology. He also prescribed a variety of antidepressants and antispasmodics which were unsuccessful in resolving her symptoms. On November 2, 2007, Dr. Terdiman recommended Cruz's leave of absence be extended through early December due to gastrointestinal symptoms which made it impossible for Cruz to work. In reports prepared in 2008, Dr. Terdiman expressed the opinion Cruz's symptoms were most likely "functional" in etiology (meaning there was no known pathology or organic explanation), and had not "progressed." On May 23, 2008, he recommended her leave of absence be extended through August 1, 2008, stating: "It is extremely difficult for [Cruz] to work because of the frequent abdominal pain and bowel movements. Our attempts to control her symptoms have, so far, been unsuccessful."

Based on his belief Cruz's symptoms were functional, Dr. Terdiman continued to prescribe antidepressant medications. Cruz reported to him that her medications were helping to control her diarrhea, but causing constipation, exacerbation of her back pain, chest tightness, and shortness of breath--symptoms Dr. Terdiman opined were anxiety-related.



Corazon Caimol-Cruz v. Retirement Board of the City and County of San Francisco

2012 | Cited 0 times | California Court of Appeal | March 22, 2012

On August 5, 2008, Dr. Terdiman requested authorization to extend Cruz's disability leave until January 1, 2009, stating: "Based on [Cruz's] report to me of her symptoms, I would judge these symptoms to be disabling from her job" Based on Dr. Terdiman's May 23 and August 5 reports, Cruz was medically separated from her employment effective August 22, 2008.

B. Administrative Proceedings

Cruz filed an application for disability retirement on September 26, 2008, requesting an effective date of September 1, 2008. On the same date, she also filed an application for voluntary service retirement with the stipulation her service retirement would be converted to disability retirement if her disability retirement application was granted. Cruz's disability application listed 16 different disabilities including herniated discs, migraine headache, carpal tunnel, asthma, depression, and the following: "Irritable bowel syndrome, crampy abdominal pain, gas, bloating, episodes of diarrhea and constipation" Cruz presented no medical evidence specifically addressing any of the grounds cited except those related to IBS.

Following an evidentiary hearing, a hearing officer determined Cruz "failed to produce any persuasive medical evidence that she is permanently disabled due to irritable bowel syndrome, or any of the other grounds alleged in her application," and denied the application. (*Italics added.*) The hearing officer stated: "[Dr. Terdiman's] reports emphasize his belief that [Cruz's] symptoms are functional, i.e., signifying that there is [sic] no known organic or pathological tissue changes found by diagnostic tests or physical examination. Thus, as acknowledged by Dr. Terdiman in his reports, he has repeatedly extended [Cruz's] medical leave of absence based on her subjective reports of symptoms, including her subjective reports of medication side effects."

Cruz filed a petition for rehearing contending she did not need to establish she was "permanently" disabled under the applicable provision of the Charter of the City and County of San Francisco, only that her disability was of an "extended and uncertain duration."³ On rehearing, the hearing officer determined Cruz failed to establish she had an incapacity of an extended and uncertain duration. The hearing officer stated: "While Dr. Terdiman has opined that [Cruz's] symptoms make it difficult to work because of abdominal pain and frequent bowel movements, he has not provided an opinion that, in his medical judgment, [Cruz's] subjective symptoms have brought about an incapacity of extended or uncertain duration. Where Dr. Terdiman has failed to address the issue of incapacitation as defined by Charter section A8.587-3, his opinion does not support the granting of the application." The hearing officer found there was no medical evidence Cruz's long-standing bowel symptoms--which did not prevent her from performing her job duties for many years--became significantly exacerbated in the period preceding her last day worked. She further observed the record showed (1) Cruz's subjective reports of symptoms intensified when she was facing disciplinary action; (2) she left work in July 2007 due to a "'severe stress reaction,' " not due to her IBS symptoms; and (3) Cruz failed to follow Dr. Terdiman's IBS treatment recommendations, militating against a finding of incapacitation.



Corazon Caimol-Cruz v. Retirement Board of the City and County of San Francisco

2012 | Cited 0 times | California Court of Appeal | March 22, 2012

C. Trial Court Proceedings

After the hearing officer's decision became final, Cruz petitioned for a writ of mandamus to set aside the hearing officer's decision. Cruz argued the hearing officer's original finding that she failed to produce any persuasive evidence she was permanently disabled did not support the decision denying her application and was, therefore, an abuse of discretion under Code of Civil Procedure section 1094.5, subdivision (b).⁴ Cruz further contended there was substantial--and, in fact, uncontradicted--evidence in the record to support a finding she was incapacitated for the performance of duty because of a disability of an extended and uncertain duration.

After reviewing the administrative record and exercising its independent judgment, the trial court found the weight of evidence supported the Board's decision Cruz's evidence was insufficient to grant her application. This timely appeal from the trial court's order followed.

II. DISCUSSION

Cruz's sole contention on appeal is that the hearing officer's finding of insufficient evidence of permanent disability did not support the denial of her application, and therefore constitutes an abuse of discretion. She seeks an order requiring a new administrative hearing to determine instead "if the weight of evidence supports a finding that CRUZ'S claimed disability is likely to be of an extended and uncertain duration." (Italics added.)

A. Standard of Review

"In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial, credible and competent evidence." (Sanchez v. Unemployment Ins. Appeals Bd. (1984) 36 Cal.3d 575, 585.) "[W]here the probative facts are not in dispute, and those facts clearly require a conclusion different from that reached by the trial court, the latter's conclusions may be disregarded." (Ibid.)

B. Analysis

The hearing officer's written decision on rehearing directly addressed the very issue on which Cruz now seeks a new administrative hearing--whether her claimed disability is likely to be of an extended and uncertain duration--and determined it adversely to Cruz. Cruz cites no legal authority--no Board rules, no charter provisions, and no administrative law precedents--which would require us to proceed as if the hearing officer had never considered her evidence or rendered a determination of her application using the proper standard of disability.

A judgment or order of the trial court is presumed correct and reversible error must be affirmatively shown. (Ballard v. Uribe (1986) 41 Cal.3d 564, 574; Denham v. Superior Court (1970) 2 Cal.3d 557, 564.)



Corazon Caimol-Cruz v. Retirement Board of the City and County of San Francisco

2012 | Cited 0 times | California Court of Appeal | March 22, 2012

The appellant must "present argument and authority on each point made." (County of Sacramento v. Lackner (1979) 97 Cal.App.3d 576, 591; Cal. Rules of Court, rule 8.204(a)(1)(B).) It is not our responsibility to conduct a search for authority to support the contentions on appeal. (Del Real v. City of Riverside (2002) 95 Cal.App.4th 761, 768.)

Here, Cruz has failed to meet her burden of demonstrating the trial court erred when it found the weight of evidence supported the hearing officer's decision. On rehearing, the hearing officer applied the correct standard of incapacity, finding Cruz failed to produce persuasive medical evidence she was incapacitated for an extended and uncertain duration. Exercising its independent judgment, the trial court concurred. The evidence established Cruz worked for many years despite her IBS. Her own physician acknowledged her symptoms had not "really . . . progressed" and there was no organic or pathological basis for those symptoms. The DA's office accommodated her symptoms by reassigning her to work that minimized her need to leave her work area. The evidence is more than sufficient to support the denial of Cruz's disability retirement application. We therefore affirm.

III. DISPOSITION

The judgment is affirmed.

We concur: Marchiano, P.J. Dondero, J.

1. The facts are drawn from the hearing officer's decision and the administrative record.
2. Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194 (Skelly).
3. Section A8.587-3 of the Charter of the City and County of San Francisco provides in pertinent part: "Any member who becomes incapacitated for performance of duty because of disability determined by a qualified hearing officer to be of extended and uncertain duration, and who shall have completed at least 10 years of service credited in the Retirement System in the aggregate, . . . shall be retired upon an allowance of 1.8% (one and eight-tenths percent) percent [sic] of the average final compensation of said member . . . for each year of credited service, if such retirement allowance exceeds 40 percent of his or her average final compensation" (Italics added.) Cruz had 24.207 years of service as of her last day of work in 2007.
4. Code of Civil Procedure section 1094.5, subdivision (b) specifies that an administrative agency abuses its discretion in making a discretionary decision based on the taking of evidence when it "has not proceeded in the manner required by law, the . . . decision is not supported by the findings, or the findings are not supported by the evidence."

