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Barbara Romines vs. Board of Appeals

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**BEFORE THE BOARD OF APPEALS
OF THE STATE OF TENNESSEE**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
FINANCE AND ADMINISTRATION,
BUREAU OF TENNCARE,**

DOCKET NO: 60.09-125750A

v.

**BARBARA ROMINES,
*Complainant.***

**ORDER GRANTING
MOTION FOR SUMMARY JUDGMENT**

Pending before the undersigned is the Motion for Summary Judgment, filed June 5, 2014, by Bureau of TennCare (Bureau). An opposing party has seven (7) days from the date a motion is filed to file a written response to a motion. RULE 1360-04-01.09, UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES BEFORE STATE ADMINISTRATIVE AGENCIES, TENN. COMP. R. & REGS. CH. 1360-04-01.¹ The Complainant Romines failed to file a response within the required time period and did not request an extension. However, on June 23, 2014, the Complainant filed lengthy documentation that failed to specifically address the issues implicated in Motion for Summary Judgment. Instead, the Complainant discussed her medical issues, her

¹ RULE 1360-04-01.09(3), UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES BEFORE STATE ADMINISTRATIVE AGENCIES states as follows:

Time Limits; Argument - A party may request oral argument on a motion; however, a brief memorandum of law submitted with the motion is preferable to oral argument. Each opposing party may file a written response to a motion, provided the response is filed within seven (7) days of the date the motion was filed. A motion shall be considered submitted for disposition seven (7) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the administrative judge.

perception of her work environment, and her grievances with her former employer. The documentation filed on June 23, 2014, cannot be considered a response to the Motion for Summary Judgment since it goes to the merits of the case and fails to address any arguments raised in the Motion for Summary Judgment.

Based upon the facts, law, and arguments of the parties, and for the reasons stated below, the Bureau's Motion for Summary Judgment is **GRANTED**.

DISCUSSION OF APPLICABLE LAW

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” [TENN. R. CIV. PROC. 56.04](#); [Byrd v. Hall](#), 847 S.W.2d 208, 211 (Tenn.1993). *See also* T.C.A. §20-16-101.²

The party seeking summary judgment has the burden of persuading the court that its motion satisfies these requirements. *See Byrd v. Hall*, 847 S.W.2d at 211; *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn.1991). Further, when considering a summary judgment motion, the court must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor. *Guy v. Mutual of Omaha Ins. Co.*, 79 S.W.3d at 534; *Byrd v. Hall*, 847 S.W.2d at 215.

² In July, 2011, the Tennessee legislature abrogated or superseded the standard for summary **judgment set forth by the Tennessee Supreme Court in *Hannan v. Alltel Pub. Co.*, 270 S.W. 3d 1** (Tenn. 2008), by enacting T.C.A. §20-16-101. (In *Hannan*, the Court announced a new burden-shifting analysis for a trial court to employ when faced with a motion for summary judgment. The *Hannan* court announced that “[i]t is not enough for the moving party to challenge the nonmoving party to ‘put up or shut up’ or even to cast doubt on a party's ability to prove an element at trial.” [Hannan](#), [270 S.W.3d at 8](#).) The Tennessee legislature essentially changed the standard for summary judgment back to the old pre-*Hannan* standard.

No material facts are in dispute and the legal question can be disposed of as a matter of law only if the evidence and the inferences reasonably drawn from the evidence would permit a reasonable person to reach only one conclusion. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn.2002); *Seavers v. Methodist Med. Ctr. of Oak Ridge*, 9 S.W.3d 86, 91 (Tenn.1999); *Beaudreau v. General Motors Acceptance Corp.*, 118 S.W.3d 700 (Tenn. Ct. App. 2003.)

Summary judgment should therefore be granted only when the facts and conclusions to be drawn from the facts permit a reasonable person to reach but one conclusion. *Guy v. Mutual of Omaha Ins. Co.*, 79 S.W.3d 528, 534 (Tenn.2002).

At the summary judgment phase, “it is not the role of a trial court to weigh the evidence or substitute its judgment for that of the trier of fact [at a trial on the merits].” *Byrd v. Hall*, 847 S.W.2d at 211.

UNDISPUTED FACTS

1. By letter dated February 7, 2014, the Complainant was notified of management's intent to terminate her employment with TennCare.
2. Complainant Romines timely filed Step I and II TEAM Act appeals of her termination from state employment.
3. The termination was upheld in both Step I and Step II appeals.
4. The Grievant has subsequently appealed the termination decision to Step III, and this matter is now pending before the Board of Appeals.
5. A qualified member of the Tennessee Consolidated Retirement System (TCRS) who “suffers from a total and permanent disability” may be approved for Ordinary Disability Retirement pursuant to TENN. CODE ANN. § 8-36-501(a).

6. Before approval, a member must file an application as well as required documentation:

[T]he member must provide competent medical evidence conclusively documenting that the member is totally and permanently disabled from engaging in any type of substantial gainful activity and that such disability existed at and since the date of the member's separation from service.

TENN. CODE ANN. § 8-36-501(a).

7. By initial application dated January 28, 2014, the Complainant submitted her Application for Disability to the TCRS.

8. The Grievant also submitted her Statement of Disability which set out among other things "...the nature of [her] disability and the reason why [she] believe[s] [she is] incapacitated from further service[.]" The Grievant listed numerous health issues which she believed qualified her for Ordinary Disability.

9. This application was supported by the Attending Physician's Report of Disability.

10. The statement of her physician listed a diagnosis of Addison's Disease due to adrenalectomy as a primary impairment and Optic Neuritis and Hypo-Estrogenism as secondary impairments.

11. More importantly, the physician stated that the impairment "prevents performance of past work" and "prevents engagement in all other gainful employment," including sedentary or light work.

12. The Complainant was found to qualify pursuant to TENN. CODE ANN. § 8-36-501, *et seq.*, and was granted Ordinary Disability Retirement.

13. From the time of the Complainant's termination of service, she was totally and permanently disabled from engaging in any type of substantial gainful activity.

ANALYSIS and CONCLUSIONS OF LAW

In this case, there is no genuine issue of material fact. Even though the Complainant could have filed a response to the Motion for Summary Judgment, she failed to do so. In the documentation she did file, she failed to dispute *any* of the “Undisputed Material Facts” listed in the Motion. On the contrary, she described her serious health conditions and acknowledged that she had applied for Ordinary Disability Retirement, which requires total and permanent disability and an inability to engage in any substantial gainful activity. The Complainant also acknowledged that her disability existed at and since the date of her termination.

Without dispute, the Complainant admitted that she was completely unable to work. The only remedy available in this case is reinstatement of position and benefits. TENN. CODE ANN. §§ 8-30-301 *et seq.* Since the Complainant has acknowledged that she is totally and permanently disabled and cannot perform any type of work, she cannot be reinstated to her former position and therefore is not entitled to any relief through this appeals process.

It is concluded that there is no genuine issue of material fact.

It is further concluded that the Bureau of TennCare is entitled to judgment as a matter of law.

Accordingly, it is **ordered** that the Bureau’s Motion for Summary Judgment is hereby **GRANTED**, and the Complainant’s appeal is hereby **DISMISSED**.

Entered and effective this _____ day of July, 2014.

Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
_____ day of _____ 2014.

A handwritten signature in black ink that reads "J. Richard Collier". The signature is written in a cursive style with a large, looped initial "J".

J. Richard Collier, Director
Administrative Procedures Division