

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed November 19, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-3303
Lower Tribunal No. 06-7993

Carlotta J. Lawrence,
Appellant,

vs.

**State of Florida, Department of Management Services, Division of
Retirement,**
Appellee.

An Appeal from the State of Florida, Department of Management Services,
Division of Retirement.

G. William Allen, Jr., for appellant.

Larry D. Scott, and Elizabeth R. Stevens, for appellee.

Before RAMIREZ, SUAREZ, and CORTIÑAS, JJ.

RAMIREZ, J.

This is an appeal from an order denying Carlotta Lawrence's claim with the Division of Retirement for permanent and total disability caused by an in-line-of-duty accident. The Division did not dispute that Lawrence was in fact totally and

permanently disabled. The only issue at the hearing before the State Retirement Commission was whether the cause of her disability was pre-existing osteoarthritis. Because the legally-sufficient evidence presented by Lawrence went un rebutted, we reverse.

This Court may not “substitute its judgment for that of the commission as to the weight of the evidence on any disputed finding of fact where the decision of the commission was supported by substantial evidence.” See § 121.23(4), Fla. Stat. (2008). The test for an in-line-of-duty disability award is whether “‘an injury or illness arising out of and in the actual performance of duty required by a member’s employment,’ section 121.021(13), was the substantial, producing cause or an aggravating cause of a member’s total and permanent disability.” Blanton v. Div. of Ret., 480 So. 2d 134, 135 (Fla. 1st DCA 1985). Lawrence had the burden of proof at the hearing. Id. See also Fla. Admin. Code R. 60R-1.0047.

At the hearing, both parties presented medical records, but the only medical testimony received was that of Dr. Virginia Gipps, whose testimony was received by way of a deposition transcript, and the only live witness was Lawrence. Lawrence testified, and the commission found, that she suffered an injury on August 25, 2004, while at work. Dr. Gipps testified that the cause of Lawrence’s symptoms was the accident. The Division offered no contrary evidence. The testimony of Lawrence and Dr. Gipps constitute substantial evidence that

appellant's work-related injuries were the substantial, producing cause of her permanent and total disability. Because the record contains no competent, substantial evidence to support the commission's denial of in-line-of-duty benefits, we reverse and remand with directions to the commission to award full in-line-of-duty benefits.

Reversed and remanded.