NO. 2008-SA-00341

IN THE SUPREME COURT OF MISSISSIPPI

LYNN LAUGHLIN

APPELLANT

VS.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM
OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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LYNN LAUGHLIN — APPELLANT

VS. — NO. 2008-SA-00341

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI — APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judge of this Court may evaluate possible disqualification or recusal.

1. Lynn Laughlin, Appellant;
2. George S. Luter, Attorney for Appellant;
3. Pat Robertson, Executive Director, Public Employees' Retirement System;
4. Honorable Jim Hood, Attorney General of Mississippi;
5. Mary Margaret Bowers, Special Assistant Attorney General assigned to the Public Employees' Retirement System of Mississippi; and,
6. Hon. Tomie T. Green, Hinds County Circuit Judge.

Respectfully submitted,

GEORGE S. LUTER

George S. Luter

ATTORNEY FOR APPELLANT

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BRIEF OF APPELLANT

I.

STATEMENT OF THE CASE

The appellant, Lynn Laughlin, files this Brief to urge the Supreme Court to reverse the order of the Hinds County Circuit Court which affirmed the order of the Board of Trustees of the Public Employees' Retirement System of Mississippi (hereafter "PERS") entered April 20, 2004 which adopted the recommendation of the PERS Disability Appeals Committee which found "Ms. Laughlin and her husband are pleasant and we do wish them well, but we are not persuaded by the evidence that a disability is present in this forum. We therefore recommend that Ms. Laughlin's request for disability benefits be denied." (R 135, RE 139, Tab 17).

Alternatively, Laughlin would urge the Supreme Court to reverse and remand her case for a new hearing based upon the action of PERS Executive Director Frank Ready who denied Laughlin's request for a continuance to allow her to obtain all of her medical records and adequately prepare for her hearing and who directed PERS employee Sharon Roberts not to answer Laughlin's questions regarding former Medical Board member and independent medical examiner Dr. David Collipp, issues which the Circuit Court declined to address.

II.

STATEMENT OF THE ISSUES

1. The decision of PERS should be reversed and rendered because it is not supported by substantial evidence since PERS refused to consider Laughlin's pain as disabling and the statements of her treating physicians and the lay opinions of her principal and fellow teacher that she was unable to perform her job.

2. Alternatively, Laughlin's case should be reversed and remanded for a new hearing since her due process rights to a fair hearing were violated by PERS Executive Director

Frank Ready's denial of Laughlin's request for a continuance to adequately prepare for her hearing and obtain all of her medical records.

3. Alternatively, Laughlin's case should be reversed and remanded for a new hearing since her due process rights to a fair hearing were violated by PERS Executive Director Frank Ready when he ordered PERS employee Sharon Roberts not to answer questions regarding Dr. David Collipp.

III.

STATEMENT OF THE FACTS

Lynn Laughlin was employed as a teacher for the Calhoun County Schools for 10.50 years. (R 109, RE 60, Tab 16). On May 4, 1999, Memphis rheumatologist Dr. Franklin Adams reported that Laughlin had done well after a cervical disc rupture ten years ago, but in the past few months had resurfaced with pain extending down both arms and diagnosed her with probable carpal tunnel syndrome, cervical spondylosis, bilateral tmj by history, and thoracolumbar scoliosis. (R R 168, RE 5, Tab 3).

On July 23, 1999, Laughlin underwent carpal tunnel surgery on her right hand by Memphis surgeon Dr. Dowen Snyder. (R 218, RE 11, Tab 4). Two months later, after suffering a new ruptured back disc, Laughlin underwent a cervical diskectomy and fusion on September 20, 1999 by Memphis surgeon Dr. Maurice Smith. (R 209, RE 16, Tab 5).

Dr. Adams continued to follow Laughlin for several years and reported on PERS form "Statement of Examining Physician" that Laughlin suffered from "scoliosis, spondylosis, fibromyalgia" and "patient's disability is manifest mainly by level of pain". (R 150, RE 10, Tab 3).

On January 23, 2003, Laughlin underwent a functional capacity evaluation at Cornerstone Rehabilitation which reported Laughlin reported "significant pain interference" and "shows all

the signs of doing as well as would be expected." (R 136, RE 20, Tab 6).

On March 24, 2003, Oxford orthopedic surgeon Dr. Edward Field reported that Laughlin suffered from "chronic persistent SI joint dysfunction as well as pain in the left hip and the right knee" and that he was going to send her "over to see anesthesia for blocks. I don't really have anything else to offer Lynn at this point." (R 174, RE 21, Tab 7).

On April 10, 2003, Lauglin's principal, Angie Weldon, reported on PERS form "Certification of Job Requirements" that Lauglin could not perform her job and "The school year consists of a 187 contract day that goes from July 1 to July 1 of the following year. This school year 2002-2003 Ms. Lauglin has missed 94 school contract days this school year." (R 121, RE 3, Tab 2).

On April 11, 2003, Laughlin applied for disability retirement pursuant to Miss. Code Ann. 25-11-113(a). (R 112, RE 1, Tab 1).

On October 7, 2003, onetime PERS Medical Board member and Disability Appeals Committee member Dr. David Collipp reported that he had performed an independent medical examination of Laughlin at PERS' request and reported that Lauglin "was capable of the work described in her paperwork..." (R 131, RE 23, Tab 8).

On November 3, 2003, PERS Executive Director Frank Ready informed Lauglin that the PERS Medical Board had determined that "there was insufficient objective evidence to support the claim that your medical condition prevents you from performing your duties as described of a Teacher." (R 240, RE 24, Tab 6).

On November 30, 2003, Laughlin was informed by the Social Security Administration that she had been found disabled beginning December 19, 2002. (R 281, RE 25, Tab 10).

Laughlin timely requested a hearing before the Disability Appeals Committee on December 29, 2003. (R 167, RE 27, Tab 11).

On January 5, 2004, PERS Executive Director Frank Ready informed Laughlin that her hearing was set for January 26, 2004 and that "...a copy of the record, for purposes of the hearing, including medical and membership information will be mailed to you prior to the hearing." (R 35, Tab 14).

On January 8, 2004, Laughlin's counsel was mailed a copy of her file and on the same day requested a continuance since he had not received a copy of the file or Dr. Collipp's report. (R 37, Tab 14).

On January 12, 2004, Executive Director Frank Ready informed counsel that the requested continuance had been approved. On January 20, 2004, Ready informed counsel that the hearing had been unilaterally reset for February 20, 2004 and that "We are unable to accommodate your request for a later hearing date." (RE 39, Tab 14).

On January 26, 2004, counsel against requested a continuance since he had "...only recently received her file and had not had sufficient time to determine if all of her medical files are complete." (RE 40, Tab 14).

Ready responded on January 30, 2004 and denied counsel's request for a continuance stating "You will have had the record a total of 42 days before the hearing set for February 20, 2004, This would appear to be sufficient time to review the medical records with your client." (RE 41, Tab 14).

Laughlin's hearing was held as unilaterally scheduled by PERS on February 20, 2004 before Disability Appeals Committee members Sheila Jones, presiding hearing officer, and Drs. Joseph Blackston and Mark Meeks, employees of the University of Mississippi Medical Center.

Laughlin testified at the hearing that she was a computer applications teacher that entailed teaching over a hundred students per day in a network computer lab with 21 work stations and also had up to an hour of outside duty every day in addition to ball game duties at night. She

added that she arrived at school at 7:30 a.m. and left about 3:40 p.m. (R 53-54, RE 77-78, Tab 16).

Laughlin testified she had two neck surgeries in 1999 and also had carpal tunnel surgery. She testified that after the surgery she did well but had to go straight home and go to bed due to pain in her arm and neck pain. (R 58, RE 82, Tab 16).

Laughlin added that she took many medications for sleep, pain, muscle spasms and other problems. (R 62 RE 85, Tab 16).

Laughlin testified that her job required her to lift as little as a box of computer paper or as much as a 200 pound boy off someone during a school day. (R 65, RE 89, Tab 16). She added that her last day of work was December 19, 2002 and that she did not go back to work because she got so sick with dizziness and pain that she could not work and that Dr. Adams had put her on part time work. (R 67-68, RE 91-92, Tab 16).

On direct examination by her attorney, Laughlin testified that she was 49 years old and had a laminectomy on her neck when she was 34 years old. She added that she had additional surgery in 1999 when they did a multi-level fusion, put in a plate and cleaned the disks out. She added that after the surgery the pain was 6-7 on a 10 scale. (R 83-84, RE 106-107, Tab 16).

Laughlin further testified she was diagnosed with TMJ by a dentist after Dr. Laura Gray, a physiastrist[1] referred her to him, thinking it could be the cause of pain. (R 84, RE 107, Tab 16). Laughlin testified she had an independent examination with Dr. David Collipp that lasted about 20 minutes and that she had never been diagnosed by a psychiatrist with passive aggressive narcissistic personality traits as stated by Dr. Collipp.[2] (R 88, RE 109, Tab 16).

Laughlin testified she did not go back to school after December 19, 2002 because she was hurting and fatigued and could not make it through the day. (R 89, RE 112, Tab 16). She further

[1] Dr. Gray is a physiastrist, a specialist in physical medicine and has also performed exams for PERS in past cases, but Laughlin was not given additional time to obtain her records or the dentist that treated her for TMJ.
[2] Dr. Collipp, like Dr. Gray, is a physiastrist, not a psychiatrist.

testified as a teacher she had to stand up and "just can't sit" and that she could not stand for more than one hour without pain. (R 90, RE 113, Tab 16). Laughlin further testified that she tried to do everything she could during the FCE. (R 92-93, RE 115-116, Tab 16).

Diane Simon testified she taught with Laughlin in the last few years and that she observed her in the last two to three years to be in almost constant pain based upon a lot of time she could not move and she would cover outside duty. Simon described teaching as a "heavy duty job. Physically and mentally." (R 97, RE 120, Tab 16).

Karen Owens testified she was also a teacher and observed Laughlin and she would tell her how her neck, shoulders and hips hurt and the medicines she took. (R 98, RE 121, Tab 16). She stated that teacher often lifted desks and students when they are in a fight. (R 98, RE 121, Tab 16).

David Laughlin testified his wife already "had it rough" prior to the time she quit teaching, that she always "tried to do a lot of things and has had pain and she has to rest." (R 99, RE 122, Tab 16). He added that in December 2002 she "literally could not get out of bed."

In a recommendation dated the same day as the hearing, the Disability Appeals Committee found "Ms. Laughlin and her husband are pleasant and we do wish them well, but we are not persuaded by the evidence that a disability is present in this forum. We therefore recommend that Ms. Laughlin's request for disability benefits be denied." (R 135, RE 139, Tab 17). The PERS Board of Trustees adopted such recommendation on April 20, 2004. (R 23, RE 141, Tab 17).

Laughlin appealed to Hinds County Circuit Court on May 14, 2004. (R 19, RE 142, Tab 18.) The record was filed by PERS with the Hinds County Circuit Clerk on September 30, 2005. The Hinds County Circuit Court affirmed the action of PERS' denying Laughlin's application for disability retirement on July 31, 2007. (R 14, RE 143, Tab 19) Lauglin timely appealed such action to the Supreme Court.

SUMMARY OF THE ARGUMENTS

PERS' decision should be reversed and rendered because Lauglin's denial of disability retirement is not supported by substantial evidence because Laughlin's medical disability is supported by the opinions of her treating physicians and the lay opinions of her principal and fellow teachers.

Alternatively, Laughlin's case should be reversed and remanded for a new hearing because PERS did not provide the case file to Laughlin's attorney until 42 days before the hearing and made a decision without obtaining all of her medical records.

Alternatively, Laughlin's case should be reversed and remanded for a new hearing because then PERS Executive Director Frank Ready ordered PERS' witness not to answer questions regarding the number of exams Dr. David Collipp had performed for PERS.

IV.

ARGUMENT

1. The decision of PERS should be reversed and rendered because it is not supported by substantial evidence since PERS refused to consider Laughlin pain as disabling, the statements of her treating physicians, or the lay opinions of her principal and fellow teacher that she was unable to perform her job.

The legal requirement of proving PERS disability is stated at Miss. Code Ann. 25-11-113(1)(a) which states:

> "...any active member in state service who has at least four (4) years of membership service credit may be retired by the Board of Trustees... provided the Medical Board, after medical examination shall certify that the member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that the member shall be retired."

Disability is defined in the same code section as the following:

"...the inability to perform the usual duties of employment or the incapacity

> to perform such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, or the incapacity to perform the duties of any employment covered by the Public Employees' Retirement System (Section 25-11-101 et seq.) that is actually offered and is within the same general territorial work area, without material reduction in compensation."

Contrary to the assertions of the opinions asserted in the recommendation of the Disability Appeals Committee, substantial lay and medical evidence support Laughlin's contention that she could not longer perform her duties as a teacher.

Consider:

On July 23, 1999, Laughlin underwent carpal tunnel surgery on her right hand by Memphis surgeon Dr. Dowen Snyder. (R 218, RE 11, Tab 4). Two months later, after suffering a ruptured back disc, Laughlin underwent a cervical diskectomy and fusion on September 20, 1999 by Memphis surgeon Dr. Maurice Smith. (R 209, RE 16, Tab 5). Despite such serious conditions, Laughlin continued to labor as a teacher for four more years.

On April 10, 2003, Lauglin's principal, Angie Weldon, reported on PERS form "Certification of Job Requirements" that Lauglin could **not** perform her job and "The school year consists of a 187 contract day that goes from July 1 to July 1 of the following year. This school year 2002-2003 Ms. Lauglin has missed 94 school contract days this school year." (R 121, RE 3, Tab 2).

Memphis rheumatologist Dr. Franklin Adams, who followed Laughlin for several years, reported on PERS form "Statement of Examining Physician" that Laughlin suffered from "scoliosis, spondylosis, fibromyalgia" and "patient's disability is manifest mainly by level of pain". (R 150, RE 10, Tab 3).

On March 24, 2003, Oxford orthopedic surgeon Dr. Edward Field reported that Laughlin suffered from "chronic persistent SI joint dysfunction as well as pain in the left hip and the right knee" and that he was going to send her "over to see anesthesia for blocks. I don't really have

anything else to offer Lynn at this point." (R 174, RE 21, Tab 7).

On January 23, 2003, Laughlin underwent a functional capacity evaluation at Cornerstone Rehabilitation which reported Laughlin reported "significant pain interference" and "shows all the signs of doing as well as would be expected." (R 136, RE 20, Tab 6).

On November 30, 2003, Laughlin was informed by the Social Security Administration that she had been found disabled beginning December 19, 2002. (R 281, RE 25, Tab 10).

Lay witnesses such as fellow teachers Diane Simon and Karen Owens testified they taught with Laughlin in the last few years and they observed her in the last two to three years to be in almost constant pain based upon a lot of time she could not move and Simon or Owens would cover outside duty. Simon described teaching as a "heavy duty job. Physically and mentally." (R 97, RE 120, Tab 16).

Laughlin would assert that all of the available medical evidence available to the Disability Appeals Committee at the time of her hearing[3] support her contention that she met the statutory definition of PERS disability which is merely inability to perform the specific job you had: "...the inability to perform the usual duties of employment..."

The law is clear in Mississippi that the decision of an administrative agency must be undisturbed unless it is (1) not supported by substantial evidence, (2) is arbitrary and capricious, (3) is beyond the scope or power granted to the agency, (4) violates one's constitutional rights. *Public Employees' Retirement System v. Marquez.* 774 So. 2d 421 (Miss. 2001); *Fulce v. Public Employees' Retirement System,* 759 So. 2d 401, 404 (Miss. 2000); *Davis v. Public Employees' Retirement System,* 750 So. 2d 1225, 1229 (Miss. 1999).

Additionally, the circuit court is "charged with the duty to review the record to determine whether there is substantial evidence...to reach a conclusion, a Circuit Court must look at the full record before it... while the Circuit Court performs limited appellate review, it is not relegated to

[3] Laughlin testified she had additional medical information but PERS Executive Director Frank Ready refused to allow her a continuance to obtain such information.

wearing blinders." *Mississippi State Board of Examiners. v. Anderson,* 757 So. 2d 1079, 1084 (Miss. App. 2000).

A review of the Disability Appeals Committee's recommendation reveals that the Committee "focused on the records of Dr. Adams, Dr. Field and Dr. Collipp" and then drew conclusions not supported by the evidence.

First the Committee attempts to dismiss Laughlin's complaints of pain by stating that Dr. Adams, a Memphis rheumatologist of The Arthritis Group, who followed Laughlin several years, found Laughlin to be "high strung and compulsive." (R 33, RE 137, Tab 17). While Dr. Adams did note such in his records and such would certainly be not unexpected for someone like Laughlin who continued to be in severe pain, he noted in August 2000---two years before Laughlin quit work the following:

> " Patient continues to have a great deal of pain. It seems to be very genuine and quite significant. She's had 2 or 3 neck operations with effusion and is a good candidate for problems. She's taking Vioxx now with only minimal benefits. Will increase the dosing.
>
> Recommend that she get in touch with pain clinic and make arrangements for her to see Dr. Kraus for his expertise." (R 164, RE 7, Tab 17).
>
> In November 2000, Dr. Adams noted Laughlin was still in a "great deal of pain" and noted he tended to "favor a diagnosis of fibromyalgia and scoliosis combined" and suggested Laughlin consider a "pain clinic".

Second, the Committee erred by finding that "there is nothing in the record from Dr. Adams that states Ms. Laughlin is medically disabled." (R 33, RE 137, Tab 17). Rather, Dr. Adams reports that Laughlin's "disability is manifest mainly by the level of pain." (R 150, RE 10, Tab 3). Amazingly, the Committee dismisses pain as disabling by stating cavalierly, "Pain, unfortunately, cannot be measured objectively and without some type of objective evidence, this Committee does not have the latitude to award disability." (R 34, RE 138, Tab 17).

Numerous federal decisions exist that state disability can be based upon pain when it is

'constant, unremitting, and wholly unresponsive to therapeutic treatment.' *Selders v. Sullivan,* 914 F. 2d 614 (5th Cir. 1990). The fact that Oxford orthopedic surgeon Dr. Edward Field reported that Laughlin suffered from "chronic persistent SI joint dysfunction as well as pain in the left hip and the right knee" and that he was going to send her "over to see anesthesia for blocks. I don't really have anything else to offer Lynn at this point" is overwhelming credible evidence of the disabling pain Laughlin suffered that was 'constant, unremitting, and wholly unresponsive to therapeutic treatment.' (R 174, RE 21, Tab 7). Even more indicative of Laughlin's disabling pain is the voluminous prescription drug record of Laughlin detailing her need for prescription pain killers since 1996. (R 284-299, RE 44-59. Tab 15).

Still, despite such overwhelming evidence of disabling pain with objective reasoning given by her treating physicians, the PERS Disability Appeals Committee erroneously refused to consider such disabling pain by stating "This Committee cannot award disability based on pain when there is symptom magnification and possibly some type of psychiatric component at play."[4]

Laughlin would assert that considering her testimony of extensive pain, the lay testimony of her fellow teachers regarding her disabling pain, her history of extensive back and neck surgery, and the opinions of her numerous longtime treating physicians regarding her pain, and considering the award of Social Security disability to Laughlin beginning December 19, 2002, substantial evidence does not exist in the record to uphold the decision of the Disability Appeals Committee that Laughlin is not disabled from her job as a classroom teacher due to such disabling pain and therefore this Court should reverse and render the Committee's decision and order benefits paid with prejudgement interest.

[4] However the Committee's opinion fails to say anywhere what "type of psychiatric component" was present. Nor did any psychiatrist serve on the Disability Appeals Committee.

2. Alternatively, Laughlin's case should be reversed and remanded for a new hearing since her due process rights to a fair hearing were violated by PERS Executive Director Frank Ready's denial of Laughlin request for a continuance to adequately prepare for her hearing and obtain all of her medical records.

On January 5, 2004, PERS Executive Director Frank Ready informed Laughlin that her hearing was set for January 26, 2004 and that "...a copy of the record, for purposes of the hearing, including medical and membership information will be mailed to you prior to the hearing." (R 35, Tab 14).

On January 8, 2004, Laughlin's counsel was mailed a copy of her file and on the same day requested a continuance since he had not received a copy of the file or Dr. Collipp's report. (R 37, Tab 14).

On January 12, 2004, Executive Director Frank Ready informed counsel that the requested continuance had been approved. On January 20, 2004, Ready informed counsel that the hearing had been unilaterally reset for February 20, 2004 and that "We are unable to accommodate your request for a later hearing date." (RE 39, Tab 14).

On January 26, 2004, counsel against requested a continuance since he had "...only recently received her file and had not had sufficient time to determine if all of her medical files are complete." (RE 40, Tab 14).

Ready responded on January 30, 2004 and denied counsel's request for a continuance stating "You will have had the record a total of 42 days before the hearing set for February 20, 2004, This would appear to be sufficient time to review the medical records with your client." (RE 41, Tab 14).

At the hearing counsel for Laughlin objected again and raised the issue of the unilateral setting of the hearing only 42 days after he was receive a copy of Laughlin's file but was told by the presiding hearing officer Sheila Jones that "You understand that we are just going to look at

the merits of the case..." (R 9, RE 69, Tab 16).

Laughlin's counsel further explained to the hearing officer that medical records from four of Laughlin's physicians including treating physiatrist Dr. Laura Gray and TMJ treating dentist Dr. Billy Hood and other medical providers were not in the PERS file. (R 9, RE 69, Tab 16).

The Mississippi Supreme Court in *Dean v. Public Employees' Retirement System,* 797 So. 2d 830 (Miss. 2000) stated that "Administrative hearings should be conducted in a fair and impartial manner, free from any suspicion or prejudice or unfairness. *McFadden,* 735 So. 2d at 158." *See also Burns v. Public Employees' Retirement System,* 748 So. 2d 181 (Miss. App. 1999) which states: "Both the United States and Mississippi Constitutions guarantee the right to due process of law before an administrative agency. U.S. Const. amend XIV; Miss. Const. art. 3, sect. 14. Administrative proceedings must be "conducted in a fair and impartial manner, free from any just suspicion or prejudice, unfairness, fraud or oppression." *Mississippi State Bd. of Health v. Johnson,* 197 Miss. 417, 19 So. 2d 445, 447 (1944).

Laughlin would contend that her due process right to a fair hearing requires that PERS provide her disability file to her with sufficient time to do the following: ensure that all medical records have been obtained, that medical reports from treating or consultive physicians that may be helpful to the prosecution of her disability case be obtained, and that lay opinions regarding that may be helpful to her case be obtained. The importance of adequate time to obtain such evidence that will enable a claimant, such as Laughlin, to obtain the evidence necessary to convince the PERS Disability Appeals Committee of her disability is even more important when one considers that no subpoena power exists to allow claimants to subpoena witnesses or even medical records[5]

Laughlin would assert that the forty-two (42) days as stated by PERS Executive Director Frank Ready as being adequate for Laughlin and her counsel to prepare for hearing and obtain any

[5] *PERS v. Stamps,* 898 So. 2d 644 (Miss. 2005).

additional evidence is woefully inadequate considering the amount of time required to obtain medical records from physicians in modern practice or to obtain additional reports or information required to successfully represent a claimant in such a one time hearing.[6] Lauglin would further assert that such inadequate time to prepare for her hearing is a violation of her due process rights to a fair and adequate hearing and is certainly not a hearing "conducted in a fair and impartial manner, free from any just suspicion or prejudice, unfairness, fraud or oppression." *Mississippi State Bd. of Health,* supra.

Laughlin would assert that alternatively, the Circuit Court should reverse and remand her case for a new hearing due to such violation of her due process rights to a fair hearing by the action of the PERS Executive Directive Frank Ready in only supplying Laughlin's case file to her only 42 prior to her hearing and then denying her request for a continuance to enable her to adequately prepare for her hearing.

3. Alternatively, Laughlin's case should be reversed and remanded for a new hearing since her due process rights to a fair hearing were violated by PERS Executive Director Frank Ready when he ordered PERS employee Sharon Roberts not to answer questions regarding Dr. David Collipp.

On October 7, 2003, onetime PERS Medical Board member and Disability Appeals Committee member Dr. David Collipp[7] reported that he had performed an independent medical examination of Laughlin at PERS' request and reported that Lauglin "was capable of the work described in her paperwork..." (R 131, RE 23, Tab 8).

At the hearing Laughlin questioned PERS witness and employee Sharon Roberts how many independent medical examinations Dr. Collipp had performed for PERS in the last year and Roberts was directed by PERS Executive Director Frank Ready not to answer such question. (R

[6] Unlike Social Security disability applicants who may reapply if denied if adequate quarters of coverage remain, PERS disability applicants only have a one time opportunity to be considered for disability unless they reenter or continue covered PERS positions.

[7] According to PERS witness Sharon Roberts, Dr. Collipp ceased to be a member of the PERS Medical Board in May 2003. (R 47, RE 71, Tab 16).

51, RE 75, Tab 16). The presiding hearing officer, Sheila Jones, apparently agreed with such stonewalling of presumably public information, and stated "I think the record will reflect exactly what happened. Anything else, Mr. Luter ?" (R 51, RE 75, Tab 16).

Laughlin would assert that her due process rights to a fair hearing and one "conducted in a fair and impartial manner, free from any just suspicion or prejudice, unfairness, fraud or oppression." *Mississippi State Bd. of Health,* supra, were violated by the arrogant ordering by the agency executive director, not even a statutory player in the administrative hearing, to the PERS employee Sharon Roberts not to answer a legitimate inquiry by Laughlin.

Mississippi Rule of Evidence 616 states "For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party is admissible." Laughlin would assert that she had a due process right to a fair hearing that included asking legitimate and relevant questions regarding Dr. Collipp, who has been both a member of the PERS Medical Board and Disability Appeals Committee as well as apparently, an independent medical examiner for PERS for apparently a secret number of cases as far as the then agency executive director is concerned.

"Both the United States and Mississippi Constitutions guarantee the right to due process of law before an administrative agency. U.S. Const. amend XIV; Miss. Const. art. 3, sect. 14. Laughlin would assert that the arrogant action of the PERS Executive Director Frank Ready in ordering a public employee not answer questions on an important and relevant question violated her due process rights to a fair hearing and require, alternatively, her case be reversed and remanded for a new hearing.

CONCLUSION

The Supreme Court should reverse and render the decision of the Hinds County Circuit Clerk which affirmed PERS denying Laughlin disability benefits pursuant to Miss. Code Ann. 25-11-113 or alternatively, reverse and remand her case for a new hearing based upon her arguments advanced in Arguments two and three.

Respectfully submitted,

LYNN LAUGHLIN, Appellant

BY: George A. Luter
GEORGE S. LUTER, Her Attorney

CERTIFICATE OF SERVICE

I, George S. Luter, attorney for Appellant, hereby certify that I have hand delivered a copy of the foregoing Brief of Appellant to the following:

Hon. Tomie T. Green
Hinds County Circuit Court
Hinds County Circuit Courthouse
Jackson, MS 39201

Margo Bowers, Esq.
Public Employees' Retirement System
429 Mississippi Street
Jackson, MS 39201-1005

SO CERTIFIED this the 9th day of July, 2008.

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