

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2626

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

BEVERLY WILSON,

PLAINTIFF-APPELLANT,

V.

**CITY OF MILWAUKEE AND MILWAUKEE EMPLOYEES'
RETIREMENT SYSTEM/ANNUITY AND PENSION BOARD,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
TIMOTHY G. DUGAN, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Beverly Wilson appeals an order affirming a decision of the Milwaukee Employees' Retirement System Annuity and Pension Board. The issue is whether there was sufficient evidence to support the board's

determination that Wilson is not incapacitated for duty as a result of a workplace injury. We affirm.

¶2 Wilson was terminated from employment with the City of Milwaukee in December 1996. The ground was that Wilson had “some physical ailment or defect” which rendered her unfit for city service, as determined by a medical evaluation. Wilson applied for a duty disability retirement allowance on the basis of “low back injury” sustained on three different dates from 1993 to 1996. The parties agree that to be eligible for this allowance under the City’s “Employees’ Retirement Act,” Wilson must be “permanently and totally incapacitated for duty as the natural and proximate result of an injury occurring at some definite time and place while in the actual performance of duty.” The board concluded that Wilson did not meet this test because it believed that while she may have suffered a work-related back injury, it was probably not the primary cause of her disability, but was instead an exacerbation of an underlying condition, namely, a degenerative disk disease. The board also concluded that Wilson’s back injury did not cause her to become permanently and totally incapacitated for duty, because the City could have accommodated her with restrictions related to her back.

¶3 Wilson argues that the evidence did not support the board’s decision. On certiorari review, we apply the substantial evidence test, that is, whether reasonable minds could arrive at the same conclusion reached by the department. *State ex rel. Richards v. Traut*, 145 Wis. 2d 677, 680, 429 N.W.2d 81 (Ct. App. 1988). Wilson’s argument is that when the City terminated her as unfit for duty, it did so solely on the basis of her back condition, which resulted from a work-related injury. Therefore, she argues, the reasoning which led the City to conclude that she was unfit for duty must also lead to the conclusion that she is entitled to a disability allowance.

¶4 We disagree. There is sufficient evidence from which the board could reasonably conclude that Wilson’s back problem was not the “natural and proximate result of an injury occurring at some definite time and place while in the actual performance of duty.” This evidence included the opinion of her treating physician that in the workplace injury she suffered “low back strain superimposed on degenerative disk disease.” In addition, a physician who conducted an independent medical evaluation for the City before Wilson’s termination concluded that there was no objective evidence of any ongoing work-related condition, and therefore her restrictions should not be seen to arise from work-related factors. The fact that the City terminated her as unfit does not, by itself, compel the board to conclude that it was due to a work-related condition.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

