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**SUPREME COURT HOLDS  
ADEA DOES NOT BAR  
DISABILITY BENEFITS  
DISPARITY BASED ON AGE**

On June 19, 2008, the U.S. Supreme Court, in a 5-4 decision, ruled that a Kentucky state pension plan that provides more generous benefits to employees who become disabled before reaching the plan's normal retirement age than to employees who become disabled after reaching normal retirement age does not violate the Age Discrimination in Employment Act (ADEA). In *Kentucky Retirement Sys. v. EEOC*, Case No. 06-1037, the U.S. Equal Employment Opportunity Commission (EEOC) had argued that the Kentucky plan discriminated against a 61-year-old former sheriff's office employee by calculating his disability pension benefits differently than it did for younger employees, in violation of the ADEA.

The high court explained that the Kentucky plan adds unearned years of service to actual years of service for employees in certain hazardous duty positions, such as firefighters and police officers, who become disabled before reaching retirement age, in an effort to provide disability benefits on par with "normal" retirement benefits. The plan, however, does not add any extra years of service to employees who become disabled after having already reached the plan's minimum retirement age. The result, as acknowledged by the Court, is that some older disabled employees, given the plan's benefit calculations, may receive pension benefits that are less than the benefits a younger disabled employee can receive.

Relying upon its precedent in *Hazen Paper Co. v. Biggins*, 507 U.S. 604, (1993), the Court determined that the issue is whether the employer, in creating a pension benefit disparity, was "actually motivated" by age bias. The Court found that the Kentucky plan is not motivated by age bias because the disparity "is simply an artifact of plan rules that treat one set of workers more generously in respect to the *timing of their eligibility for normal retirement benefits* but which do not treat them more generously in respect to the *calculation of the amount of their normal retirement benefits*."

"Age," the Court said, "factors into the disability calculation only because the normal retirement rules themselves permissibly include age as a consideration." The disparity, the Court found, "turns upon pension eligibility and nothing more."

**FOR MORE INFORMATION**

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