

No. A06-531

STATE OF MINNESOTA

IN COURT OF APPEALS

In the Matter of the Claim for Benefits by Alexander Benjamin Sloan

RESPONDENT'S BRIEF AND APPENDIX

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BENEFIT ELIGIBILITY PANEL

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LEGAL ISSUES

- I. Is Appellant entitled to benefits under Minn. Stat. § 299A.465, subs. 1 and 6?

The Minnesota Public Safety Officers Benefit Eligibility Panel ruled in the negative.

Apposite Authority:

Minn. Stat. § 299A.465, subd. 1 (Supp. 2005)

Minn. Stat. § 299A.465, subd. 6 (Supp. 2005)

- II. Should the Court give judicial deference to a decision of the Minnesota Public Safety Officers Benefit Eligibility Panel in denying a claim for benefits under Minn. Stat. § 299A.465?

That issue did not come before the Board.

Apposite Authority:

Matter of Friedenson, 574 N.W.2d 463 (Minn. Ct. App. 1998)

Matter of Quantification of Environmental Cause, 578 N.W.2d 794 (Minn. Ct. App. 1998)

Reserve Mining v. Herbst, 256 N.W.2d 808 (Minn. 1977)

STATEMENT OF THE CASE

On December 22, 2005, Appellant Alexandar B. Sloan (hereinafter referred to as “Appellant”) filed a claim with the Minnesota Public Safety Officers Benefit Eligibility Panel (hereinafter referred to as “the Panel”) requesting continuing health insurance benefits under the provisions of Minn. Stat. § 299A.465, subd. 1 (Supp. 2005). (R.A. 1-5)¹

On February 9, 2006, the Panel met to consider the claim of Appellant. While Appellant’s injuries occurred while serving as a police officer for the University of Minnesota, the Panel believed that his occupational duties or professional responsibilities did not put him at risk for the type of injury he had sustained, as required by Minn. Stat. § 299A.465, subd. 6 (Supp. 2005). (A. 2)² The Panel voted 4-2 to deny Appellant’s claim for benefits under Minn. Stat. § 299A.465, subd. 1(c) (Supp. 2005), because the Panel determined that Appellant did not establish that his occupational duties or professional responsibilities put him at risk for the type of illness or injury which he sustained.

Denial of Appellant’s claim was based upon:

1. Appellant’s injury occurred while lifting a heavy object;
2. Lifting a large heavy object was not an occupational duty unique to the job of law enforcement; and

¹ R.A. refers to the page of Respondent’s appendix.

² A. refers to the page of the appendix of Appellant’s brief.

3. The act of lifting a heavy object is not the intended use of a benefit under Minn. Stat. § 299A.465 (Supp. 2005). (A. 2)

Appellant filed a Petition for Writ of Certiorari appealing the February 16, 2005 decision of the Panel. (A. 1)

STATEMENT OF FACTS

Appellant, a University of Minnesota police officer, was on duty the day of October 8, 2001. This was 27 days after September 11, 2001.

He responded to a call regarding a large object that had been placed in front of the Computer Science/Electrical Engineering Building at the University of Minnesota. (T. 3, 11)³ Arriving at the scene, he found a 25-inch console television on the pavement about ten feet from the main entrance of the Computer Science/Electrical Engineering Building. (T. 3, 11) Appellant suspected that the console television may be a possible bomb. (T. 4) He noticed that the back panel of the television was loose and used his flashlight to look inside. (T. 4) He looked for a triggering device or trip wire. Not noticing any triggering device, he took the back panel off the television set. (T. 4) Appellant determined that the television was not an explosive or dangerous device, however, he decided the television set needed to be moved because it would cause anxiety if he left it there, (T. 4) and because other calls were pending and assistance from other law enforcement officers was not available. (T. 10-11)

³ T. refers to the transcript of the Panel meeting on February 9, 2006.

Because his department was short-handed, and no help was available, Appellant decided to move the television himself. (T. 4-5) He backed up his squad car to the television set, opened his squad car trunk and picked up the television set. (T. 5) He dropped the television set into the car trunk, injuring his back. (T. 5)

The Panel concluded that lifting a very large item in itself does not meet the standards for benefits under Minn. Stat. § 299A.465 (Supp. 2005). (T. 6) Once Appellant determined that the television set was not an explosive device, the Panel believed that this was a maintenance activity of picking up a large object. (T. 8) The Panel determined that it was a maintenance situation, not an emergency situation unique to law enforcement. (T. 9)

A motion to deny Appellant's Claim for Benefits under Minn. Stat. § 299A.465, subd. 1 (Supp. 2005) passed on a 4-2 vote. (T. 10-13)

ARGUMENT

I. STANDARD OF REVIEW OF THE PANEL'S DECISION.

Review by *certiorari* is limited to looking at the legal import of the facts in the record and determining whether there was a reasonable basis for the lower tribunal's decision. *Dietz v. Dodge County*, 487 N.W.2d 237, 241 (Minn. 1992). Decisions of an agency will be reversed only if they are "fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within the jurisdiction or based upon an error of law." *Axelson v. Minneapolis Teacher Retirement Fund Assoc.*, 544 N.W.2d 297 at 299 (quoting *Dokomo v. Ind. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990)); *In re*

Application of Allers, 533 N.W.2d 646, 652 (Minn. Ct. App. 1995), *rev. denied* (Minn. Aug. 30, 1995). Substantial evidence is “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than ‘some evidence’; (4) more than ‘any evidence’; and (5) evidence considered in its entirety.” *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977).

An agency’s decision may be reversed or modified by a reviewing court if it finds that the decision is not supported by substantial evidence. *Hazelton v. Commissioner of Dept. of Human Services*, 612 N.W.2d 468 (Minn. Ct. App. 2000); *Matter of Quantification of Environmental Costs*, 578 N.W.2d 794 (Minn. Ct. App. 1998), and *Matter of Friedenson*, 574 N.W.2d 463 (Minn. Ct. App. 1998).

An agency’s decision is not arbitrary or capricious if there is room for two opinions on the matter. If there is room for two opinions on the matter, an agency’s action is not arbitrary or capricious even if a court believes that erroneous conclusions have been reached. *Matter of Rochester Ambulance Service*, 500 N.W.2d 495 (Minn. Ct. App. 1993). Decisions of administrative agencies are presumed to be correct and deference should be shown by the courts to agency’s expertise and its special knowledge in the field of technical training, education and experience. *Friedenson*, 574 N.W.2d at 465 ; *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808 (Minn. 1977).

The parties seeking to overturn the agency’s action bears the burden of proof. *Minnesota Loan and Thrift Co. v. Dept. of Commerce*, 278 N.W.2d 522 (Minn. 1979); *Markwardt v. State*, 254 N.W.2d 371 (Minn. 1977).

Upon application of these well settled principles to this appeal, the Court should affirm the Panel's decision denying Appellant's claims for benefits under Minn. Stat. § 299A.465, subd. 1 (Supp. 2005).

II. JUDICIAL DEFERENCE SHOULD BE GIVEN TO DECISIONS OF THE PUBLIC SAFETY OFFICERS BENEFIT ELIGIBILITY PANEL.

In recognition of the separation of powers doctrine, decisions of administrative agencies are accorded great respect by a reviewing court. A presumption of correctness attaches to an agency decision. *Crookston Cattle Co. v. Minnesota Dept. of Natural Resources*, 300 N.W.2d 769 (Minn. 1980); *Matter of Pautz*, 295 N.W.2d 635 (Minn. 1980). An agency's construction of the laws it enforces or administers is similarly entitled to great weight. *Mammenga v. State Dept. of Human Services*, 442 N.W.2d 786, 792 (Minn. 1989); *Krumm v. RA Nadeau Co.*, 276 N.W.2d 641 (Minn. 1979). As stated by the Minnesota Supreme Court in *Mammenga*:

We are not bound by an agency's interpretation of its governing statute, it is also true that "[w]hen the meaning of a statute is doubtful, courts should give great weight to a construction placed upon it by the Department charged with its administration."

442 N.W.2d at 792. (Citation omitted.)

Substantial judicial deference must be accorded to the fact finding processes of an administrative agency. *Matter of Quantification of Environmental Costs*, 578 N.W.2d at 799. Courts should defer to administrative agencies' expertise and its special knowledge in the field of its technical training, education and experience. *Friedenson*, 574 N.W.2d at 465; *Reserve Mining*, 256 N.W.2d at 824.

The Panel was created by the 2005 Minnesota Legislature. 2005 Minn. Laws, ch. 136, art. 8, §§ 7 and 8. The Panel consists of seven members, two members recommended by the Minnesota Police and Peace Officers Association or a successor, one member recommended by the Minnesota Professional Firefighter Association or a successor, two members recommended by the Minnesota League of Cities or a successor, one member recommended by the Association of Minnesota Counties or its successor, and one non organizational member recommended by the six organizational members. Minn. Stat. § 299A.465, subd. 7 (Supp. 2005).

Panel Chair Mike Stockstead is a retired firefighter and was recommended by the Minnesota Professional Firefighters Association. Deputy Jim Bayer and Sergeant Marty Earley, are current law enforcement officers, and were recommended by the Minnesota Police and Peace Officers Association. Police Chief Veid Muiznieks was recommended by the Minnesota League of Cities. County Commissioner Nan Crary was recommended by the Association of Minnesota Counties. City Administrator Mark Sather was recommended by the Minnesota League of Cities.

Each of these Panel members bring their expertise as law enforcement officers, former firefighter, elected official, and city administrator to determine whether a claimant is eligible for benefits under Minn. Stat. § 299A.465, subs. 1 and 6 (Supp. 2005). The Panel, on a 4-2 vote, concluded that Appellant did not establish that he was entitled to continued healthcare benefits under the statute because he did not establish that his occupational duties or professional responsibilities put him at risk for the type of illness or injury which he sustained, as required by Minn. Stat. § 299A.465, subd. 6 (Supp.

2005).

The Court should give great weight to the factual considerations made by the Panel in determining that Appellant did not establish that he is eligible for benefits under Minn. Stat. § 299A.465, subs. 1 and 6 (2005).

III. APPELLANT IS NOT ENTITLED TO BENEFITS UNDER MINN. STAT. § 299A.465 (SUPP. 2005).

Minn. Stat. § 299A.465, subd. 1 (Supp. 2005) provides in part that:

(a) This subdivision applies when a peace officer . . . suffers a disabling injury that:

(1) Results in the officer's . . . retirement or separation from service;

(2) Occurs while the officer . . . is acting in the course and scope of duties as a peace officer . . . ; and

(3) The officer . . . had been approved to receive the officer's . . . duty-related disability pension.

Id.

Minn. Stat. § 299A.465, subd. 1(c) (Supp. 2005) provides in part:

The employer is responsible for the continued payment of the employer's contribution for coverage of the officer or . . . if applicable, the officer's . . . dependents.

Id.

To qualify for this benefit, the Minnesota legislature established a two-prong test under Minn. Stat. § 299A.465, subd. 6 (Supp. 2005). That two-prong test is:

(1) Whether the peace officer has been approved to receive a duty-related disability pension *AND*

(2) The panel shall determine whether or not the officer's occupational duties or professional responsibilities put the officer at risk for the type of illness or injury actually sustained.

Id.

The Panel in this case determined that Appellant did not establish that his occupational duties or professional responsibilities put him at risk for the type of injury he sustained.

A. Appellant Did Not Establish That His Occupational Duties Put Him At Risk For The Injury He Sustained.

Appellant argues that he sustained injuries in the line of duty as a police officer for the University of Minnesota and therefore he is eligible for continuing health benefits under Minn. Stat. § 299A.465, subd. 1 (Supp. 2005). Appellant argues that because he was disabled from working as a police officer as a result of a back injury sustained in the line of duty, and was awarded in line of duty disability benefits, he should therefore awarded benefits under Minn. Stat. § 299A.465 (Supp. 2005) as a matter of law. (A.B. 1, 2.)⁴ Appellant asserts that because he sustained a disabling injury and was acting within the scope of his duties, he is eligible for continuing health care benefits. (A.B. 4-5, 8.)

Adopting Appellant's arguments would mean that a peace officer who has been approved to receive a duty-related disability pension would automatically qualify for the benefits under Minn. Stat. § 299A.465 (Supp. 2005). If that is what the legislature intended, the legislature would not have had to create the Panel under Minn. Stat. § 299A.465, subd. 7 (Supp. 2005) and make its determination using the two-prong test required by Minn. Stat. § 299A.465, subd. 6 (Supp. 2005).

⁴ A.B. refers to the page of Appellant's brief.

Under the arguments put forward by Appellant, as soon as an officer qualifies for an in line of duty disability pension, continued health insurance benefits would be an automatic right. That is not what the legislature adopted, and it is not what the legislature intended. Minn. Stat. § 299A.465, subd. 6 (Supp. 2005) requires that:

The Panel shall determine whether or not the officer's . . . occupational duties or professional responsibilities put the officer . . . at risk for the type of illness or injury actually sustained.

Appellant asserts that the Court's decision in *Conaway v. St. Louis County*, 702 N.W.2d 779, 783 (Minn. Ct. App. 2005) sets PERA as an effective screen in determining an officer's eligibility for benefits, and that there is a similarity between Minn. Stat. § 353.656 and Minn. Stat. § 299A.465, subd. 1(a)(3) (Supp. 2005) (A.B. 6). However, it is significant to note that the comments made by the *Conaway* Court were prior to the implementation of Minn. Stat. § 299A.465, subds. 6 and 7 (Supp. 2005). The Panel and the two-prong test established by Minn. Stat. § 299A.465, subd. 6 (Supp. 2005) went into effect on July 1, 2005. 2005 Minn. Laws ch. 136, art. 8, §§ 7 and 8.

The *Conaway* decision was decided in August of 2005, a little over one month after the implementation of Minn. Stat. § 299A.465, subds. 6 and 7 (Supp. 2005). The underlying district court action in *Conaway* occurred in July and October of 2004. The appeal and the filing of briefs occurred in January and February of 2005. All occurred before the implementation of Minn. Stat. § 299A.465, subd. 6 (Supp. 2005). The Court's statements in *Conaway* are prior to the statutory implementation of Minn. Stat. § 299A.465, subd. 6 (Supp. 2005) requiring a peace officer's occupational duties or

professional responsibilities put the officer at risk for the type of illness or injury actually sustained.

B. There Is Substantial Evidence That Appellant's Injuries From Lifting A Heavy Object Is Not Included In The Continuing Health Care Benefits Under Minn. Stat. § 299A.465 (Supp. 2005).

Substantial evidence is “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than ‘some evidence’; (4) more than ‘any evidence’; and (5) evidence considered in its entirety.” *Reserve Mining Co. v. Herbst*, 256 N.W.2d at 825.

Appellant was called to the Computer Science/Electrical Engineering Building to investigate a foreign object that was ten feet away from the main entrance of the building. That object was a 25-inch console television set. Appellant believed that the object may have been a possible bomb or explosive device. The incident occurred on October 8, 2001.

While Appellant was concerned about the mind set following September 11, 2001, this incident occurred 27 days after those tragic events. While Appellant originally believed that the console television could have contained a bomb or explosive device, after Appellant examined the object, he determined that there was no triggering device nor trip wire. He determined the television console needed to be removed because it was causing anxiety. He decided to move the television himself to avoid having his department receive future calls.

Once Appellant determined that the object was not an explosive device or bomb, it was then a maintenance situation to remove the television set which the majority of the

Panel determined was a task that could be performed by someone other than a law enforcement officer.

While Appellant sustained permanent injuries to his back and was no longer able to perform law enforcement duties, the Panel majority believed that lifting a very large item in itself did not meet the standards of Minn. Stat. § 299A.465, subd. 6 (Supp. 2005). Once Appellant determined the console television set was not an explosive device, it was a maintenance activity of picking up a large object which is not unique to law enforcement.

The Panel believes that Minn. Stat. § 299A.465 (Supp. 2005), was enacted because the services of law enforcement officers and fire fighters differs from that of other government employees. Peace officers and fire fighters protect the general public and put their lives on the line. The Panel believed that lifting a console television set into the trunk of a squad car was not what the legislature intended in awarding continuing health care benefits to peace officers and fire fighters.

Appellant's injury, the fact that he is receiving a duty-related disability pension from PERA, and was injured while he was a peace officer with the University of Minnesota Police Department are not at issue in this appeal. What is at issue, is whether Appellant's occupational duties or professional responsibilities put him at risk for the type of illness or injury actually sustained.

Because the injuries occurred lifting a heavy console television set, a duty that is not unique to law enforcement officers, the Panel believed it had substantial evidence to

determine that Appellant did not establish that his occupational duties put him at risk for the injuries he sustained.

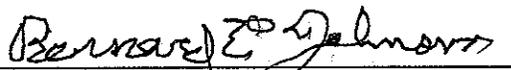
CONCLUSION

The Court should give judicial deference to the Panel's decision that the Appellant has not established that he is eligible for benefits under Minn. Stat. § 299A.465 (Supp. 2005), and affirm the Panel's Determination Order.

Dated: June 19, 2006

Respectfully submitted,

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).