

NO. A04-2407

State of Minnesota
In Court of Appeals

Stephen Brittain,

Relator,

v.

Public Employees Retirement Association
of Minnesota,

Respondent.

RELATOR'S BRIEF

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STATEMENT OF THE CASE

Stephen Brittain seeks a review by certiorari of a decision by the Public Employees Retirement Association's Board of Trustees denying him line-of-duty benefits pursuant to Minn. Stat. § 353.64.

A fact-finding conference was held on July 15, 2004, an Administrative Law Judge recommended that the PERA Board grant a line-of-duty disability benefit to Stephen Brittain. The ALJ's recommendation was based on Conclusions of Law citing that Stephen Brittain has demonstrated that his disability was incurred in or arose out of his service as a Ramsey County Sheriff's Deputy and that such service constituted "any active duty." The PERA Board declined to adopt the ALJ's recommendation, deciding instead to narrowly interpret the statute and to limit the duty disability benefits to disabilities arising out of hazardous situations.

STATEMENT OF FACTS

This case involves Stephen Brittain's pursuit of line-of-duty disability benefits as a member of the Public Employee's Retirement Association ("PERA") pursuant to Minn. Stat. § 353.656. Brittain served as a Ramsey County Deputy Sheriff for over 16 years. Brittain had no difficulties with performance up until the year 2002. In early 2002 Sgt. Joanne Springer became the acting Sergeant of the Transportation Unit. Brittain claims that it is her supervision and the hostile work environment she created that is at the heart of his disability benefit claim. Also, proximate to that time, Brittain's hearing difficulties increased. Record, Exh. 37.

On November 10, 2003, Brittain submitted an application for PERA line-of-duty disability benefits. Record, Exhs. 1, 5. The PERA claim intake representative completed the Disability Request Form based on a telephone interview of Brittain. The representative marked on the form that his disability was an "in-line" disability. *See* Record, Exh. 1.

Brittain's last date worked was August 27, 2002. Record, Exh. 6, p. 2. His request for disability benefits is based on significant job stress and harassment which resulted in anxiety and depression and anxiety caused from his hearing loss. Record, Exh. 6. In support of his applications, he submitted physician forms from his family physician and his psychologist. Dr. Kenneth Hodges diagnosed him with depression and opined that his condition rendered him unable to perform the duties of his job and that his condition was a direct result of an injury or illness which occurred during, or arose out of, an active duty. Record, Exh. 8. Psychologist Brockman Schumacker diagnosed him with major depressive disorder, moderate, anxiety disorder and dysthymia. Record, Exh. 9. Schumacker also opined that Brittain's disability was a direct result of an injury or illness which occurred during, or arose out of, an act of duty. *Id.* Schumacher projected that Brittain would be disabled for his lifetime.

PERA's staff made a request to the Minnesota Department of Health to render an opinion on whether or not Brittain was occupationally disabled. Record, Exh. 16. On

December 17, 2003, Dr. James C. Mankey issued a report on behalf of the Department of Health opining that Brittain was occupationally disabled.¹ Record, Exh. 18.

Without any written analysis or deliberation in the Record, the Committee determined that Brittain's disability was not duty related. App. 001. By letter dated March 2, 2004, PERA notified Brittain that his application for disability benefits had been approved, but that his request for line-of-duty benefits was denied. App. 002. On April 29, 2004, Brittain appealed that decision. Record, Exh. 26. In support of his appeal, Brittain provided a letter from psychologist Schumacher. Schumacher asserts that when he first saw Brittain, he was experiencing debilitating symptoms that prevented him from performing the basic tasks of his employment, reporting that his symptoms included insomnia, somatic difficulties, diminished enjoyment of usual activities (anhedonia), intrusive rumative thinking, depressed mood, exhaustion, difficulty concentrating, emotional lability, and agitation. Record, Exh. 27. Schumacher further states that the conditions of work were a source of severe distress (due to prolonged, conflicted relationships) at work. Schumacher's letter reports that Brittain's psychological functioning worsened to a point more severe than his first visit. *Id.*

A fact-finding conference was held on July 15, 2004, to gather additional evidence regarding Brittain's appeal. At the fact-finding conference, in addition to his own testimony, Brittain provided medical information relating to his hearing loss, which had

¹ Dr. Mankey's report states that he was unable to utilize Dr. Schumacher's report because he is a psychologist, not a physician, relying upon Minn. Stat. § 353.656, subd. 5. However, during the pendency of Brittain's application that subdivision was amended, effective July 1, 2004, providing that proof of disability may be proffered by a licensed psychologist.

forced him to resign as a firearms instructor. Record, Exh. 35. Brittain was diagnosed with a hearing loss of 18.75% on his left ear by Dr. Fozia Abrar for workers' compensation purposes. App. 006. On February 11, 2003, Brittain's physician, Dr. Frank Ondrey, completed a disability form opining that Brittain's significant hearing limitations will affect interpersonal communications, but otherwise there were not restrictions on his ability to work. *Id.* On October 14, 2003 an independent medical examination was performed in which he was diagnosed with a hearing loss in his left ear at 15%. App. 007. The hearing loss was a result of an injury which arose out of and in the course and scope of his employment. Record, Exh. 35 (Stipulation for Settlement). The hearing loss caused him additional anxiety because of his concern for job safety. *Id.* (Brittain's Written Statement). Brittain felt that his inability to hear well was a danger to others and himself.

Brittain also provided declarations from several former co-workers, all Ramsey County Deputy Sheriffs. The declarations provided consistent evidence of a hostile work environment and evidence that Brittain was a target of abuse by his supervisor.

During the time that Sgt. Joanne Springer was the acting sergeant for our Unit, the atmosphere was hostile. Sgt. Springer seemed very vindictive and acted like she was out to hang someone. Her behavior was directed at the male deputies.

Record, Exh. 35. (Declaration of Mary Kampa).

I recall from the very beginning after Sgt. Springer moved to the Transportation Unit that there appeared to be a general animus by Sgt. Springer toward targeted male deputies within the Transportation Unit. . . . Sgt. Springer (sic) made it known to others in the Unit that she had created a list of targeted deputies . . . out of the male deputies in the Unit, Sgt.

Springer made it clear through her actions that Steve Brittain was one of the targeted deputies.

Id. (Declaration of Michael Joelson).

During the time Sgt. Springer supervised Steve, I recall many complaints from Steve about Sgt. Springer. I know that her behavior towards him had a severe impact on him.

Id. (Declaration of David Nelson).

It was clear to everyone that Sgt. Springer was trying to find reasons to get rid of Deputy Brittain. . . . it seemed as if Sgt. Springer was on a witch hunt, directed at certain people, especially Brittain. She monitored him much more closely, looking for reasons to criticize him.

Id. (Declaration of Pam Riley).

In my opinion, the atmosphere at work was hostile due to the actions of Lt. Mann and Sgt.s Drucker and Springer. In fact, I have specifically told Sgt. Drucker that we work in a hostile work environment.

Id. (Declaration of Joe Ockwig).

Brittain also submitted evidence relating to his job duties. A Deputy Sheriff performs law enforcement services in areas which may include detention, patrol, court, legal process services. The job requires an ability "to act calm in stressful or emergency situations." Obviously, the job requires constant interaction with the public, inmates, victims, the court and other law enforcement personnel. Record, Exh. 10. The hostile environment to which Brittain was subjected affected his ability to conduct the required law enforcement services. Record., Exh. 35 (Brittain's Written Statement).

There was no testimony elicited or evidence submitted by PERA's staff that disputed Brittain's reasons for his disability.

On August 26, 2004, Administrative Law Judge Allan Klein issued Findings of Fact, Conclusions, Recommendation and Memorandum. App. 004-012. Judge Klein concluded that Brittain demonstrated by a preponderance of the evidence that his disability is a direct result of a depression that incurred in or arose out of his service as a Ramsey County Sheriff's Deputy. Judge Klein concluded that "Brittain's disability -- his depression which is so severe that he is not able to work as a Deputy Sheriff -- arose because of his treatment in the office." App. 011. He noted that it was not a pre-existing condition nor attributable to his family life or any other activity outside of the office. Judge Klein held that Brittain met his burden of showing that it was caused by the adverse behavior of his supervisor in the office. Judge Klein held that he believed that Brittain's claim was covered within the meaning of the term "act of duty" and if the legislature desires to limit the payment of benefits to persons who are actually involved in hazardous duties at the time of their disabling incident, then the legislature must amend the statute to clearly include that limitation.

On August 30, 2004, PERA's staff submitted its recommendation to the Board of Trustees. Record, Exh. 38. PERA's staff recommended that the PERA Board of Trustees reject Judge Klein's recommendation and deny Brittain's application for duty-related disability benefits. PERA's staff's recommendations concluded: "Mr. Brittain's mental illness was not a result of the trauma normally associated with the duties of a Deputy Sheriff. Rather, Mr. Brittain perceived a hostile working environment, and felt that he was being harassed by his supervisor." *Id.*

Following a short hearing on October 14, 2004, the Board of Trustees issued an Order denying Brittain's application for line-of-duty disability benefits. App. 013. At the Board hearing on October 14, Board Trustee Gray moved to reject the ALJ's recommendation and accept the PERA staff recommendation to deny Brittain line-of-duty benefit for two reasons: 1) PERA already approved a disability benefit for him, which he is currently receiving, which is based on his physical maladies and his emotional maladies; and 2) that PERA cannot give benefits based on a perception and that Brittain's depression was based on the hostility which he perceived in his working environment. Record, Exh. 48. Board Trustee Gray's motion was granted. The Board found that:

. . . Mr. Brittain's depression resulted from his perception that his supervisor harassed him and that while Stephen Brittain experienced depression and a slight hearing loss, his inability to continue in his position did not result from an Act in duty as the Board interprets Minn. Stats. § 353.63 and § 353.656, subd. 1 (2004).

App. 013.

SUMMARY OF ARGUMENT

Steven Britain is a former Ramsey County Sheriff's Deputy, with 16 years of service to his credit. In or about August, 2002, Brittain suffered the onset of severe depression connected with the performance of his job duties as sheriff's deputy. Under Chapter 353 of the Minnesota Statutes, the Public Employees Retirement Association ("PERA") is required to provide enhanced disability benefits for officers whose disabilities arise out of any act of duty. Yet, despite the fact that Brittain's disabling injuries undisputedly occurred in the course and scope of his normal job duties, the

PERA Board of Trustees (“Board”) rejected his claim for enhanced benefits, claiming that his disabilities did not, in fact, occur in the line of duty. Without any basis in the statute’s plain language or legislative history, the PERA Board essentially rewrote the line-of-duty benefit to apply exclusively to “hazardous situations.”

Stephen Brittain seeks review by certiorari from this Court to review the PERA Board’s Order denying him line-of-duty benefits. PERA’s decision reflects an unreasonable and erroneous interpretation of Minnesota Statute § 353.64. The Court should reverse the PERA Board’s Order because Board’s decision was unsupported by the governing statute and was therefore unreasonable and erroneous as a matter of law.

THE LEGAL STANDARD

The question raised in this petition is one of statutory interpretation. Statutory interpretation is a question of law which this Court reviews *de novo*. *Disability Benefits Application of Craig Wallin*, No. C8-99-129, 1999 WL 507601, at *2 (Minn. Ct. App. July 20, 1999) (unpublished) (App. 016) (citing *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996)). This Court is therefore not bound by an agency’s statutory interpretation, and there is no need for it to defer to an agency’s expertise. *St. Otto’s Home v. Minn. Dep’t of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989). An agency decision that is based upon an error of law must be reversed. *Harting v. Public Employees Retirement Assoc. of Minnesota*, No. 403-451, 2003 WL 22890079, at *2 (Minn. Ct. App. Dec. 9, 2003) (unpublished) (App. 019) (citing *Axelsson v. Minneapolis Teachers’ Ret. Fund Ass’n*, 544 N.W.2d 297, 299 (Minn. 1996)).

ARGUMENT

This appeal raises the narrow question of what qualifies as a disability “incurred in or arising out of any act of duty.” Minn. Stat. § 353.656, subd. 1, which governs the computation of line-of-duty disability benefits, states in relevant part:

A member of the police and fire plan who becomes disabled and physically unfit to perform duties as a police officer, firefighter, or paramedic as defined under section 353.64, subdivision 10, as a direct result of an injury, sickness, or other disability incurred in or arising out of *any act of duty*, which has or is expected to render the member physically or mentally unable to perform the duties as a police officer, firefighter, or paramedic as defined under section 353.64, subdivision 10, for a period of at least one year, shall receive disability benefits during the period of such disability (*emphasis added*).

By limiting “line-of-duty” benefits to disabilities arising out of a dangerous or hazardous act, the PERA Board interpreted state law in a narrow, erroneous and unreasonable fashion, ignoring the statute’s plain and unambiguous language. The PERA Board has a statutory fiduciary obligation to:

act in good faith and [to] exercise that degree of judgment and care * * * that persons of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation, considering the probable safety of the plan capital as well as the probable investment return to be derived from the assets.

Minn. Stat. § 356A.04, subd. 2 (1989). PERA violated this duty by narrowly construing the statute against its plain language.

I. Brittain’s Disabilities Were Incurred During An “Act of Duty.”

The narrow issue on this appeal is whether or not Brittain’s disabilities “arose out of any act of duty.” The PERA Board does not dispute that the hostile work environment and supervisory harassment that led to Brittain’s disability occurred while Brittain was on

duty. Moreover, the Board cannot seriously dispute (and appears not to dispute) that Brittain became disabled during the course of performing his duties. Therefore, unless the words “*any act of duty*” mean something other than they say, Brittain should be entitled to line-of-duty disability benefits.

To avoid the clear and unambiguous statutory language, the PERA Board opined that Brittain’s disability resulted from his own “perception,” rather than “any act of duty”:

Specifically, the Board found that Mr. Brittain’s depression resulted from his perception that his supervisor harassed him and that while Stephen Brittain experienced depression and a slight hearing loss, his inability to continue in his position did not result from an Act of Duty as the Board interprets Minn. Stats. § 353.63 and § 353.656, subd. 1 (2004).

App. 013. The Board’s assertion that Brittain’s disability was the result of his “perception” rather than the direct result of hostile environment/supervisory harassment suffered while engaged in acts of duty is unreasonable, both on its face and as applied to the undisputed facts.

With the exception of mental disorders thought to be caused by chemical imbalance (*e.g.*, schizophrenia), mental health disabilities are by definition the product of one’s mental perceptions. The Court may take judicial notice that disabilities of this nature are incurred because the five senses take in information and the brain processes, or “perceives” such information. Under the Board’s reasoning, virtually no mental health injury would ever be covered by line-of-duty benefits, because only mental injuries

caused by chemical imbalance (or physical trauma to the head) would be covered.² The clear language of the statute indicates the contrary, encompassing, without limitation, all injuries “expected to render the member physically or *mentally unable* to perform the duties...” (Emphasis added). Through its interpretation, the Board in essence seeks to rewrite (and eviscerate) the statute by imposing a restriction found nowhere in the statute or its legislative history. See *Egan v. Hamline United Methodist Church*, 679 N.W.2d 350, 354 (Minn. Ct. App. 2004) (citing Minn. Stat. § 645.16, which provides, “Every law shall be construed, if possible, to give effect to all its provisions.”).

To the contrary, the sole criterion for determining whether a mental health disability is covered by the line-of-duty benefit is whether the disability was *incurred in or arose out of* any act of duty. Although no court has addressed the narrow question presented on this appeal, the Minnesota Court of Appeals impliedly rejected the PERA Board’s approach in *Disability Benefits of Craig Wallin*, 1999 WL 507601, a case involving an almost identically worded public employee benefit statute. In *Wallin*, there was no dispute that the corrections employee had become disabled as a result of off-the-job depression and alcoholism. *Id.* In affirming the Minnesota State Retirement System Board’s determination that Wallin was ineligible for “job-originated disability benefits,”³

² Trustee Marshall, who opposed the motion to deny benefits, argued that the statute required mental disabilities to be given equal weight to physical disabilities, and that it was “pretty clear” that Brittain’s disability arose out of an act of duty. Record, Exh. 49, p. 10.

³ The applicable statute in *Wallin* defines a job-related disability under the Minnesota State Retirement System as “an injury, sickness, or other disability incurred in or arising out of any act of duty that makes the employee physically or mentally unable to perform” his or her duties. See *Wallin* at *1 (quoting Minn. Stat. § 352.95, subs. 1, 2 (1996)).

the Court observed that Wallin's work only *exacerbated* his depression. *Id.* It did not *cause* his depression in the first instance or "originate" from the workplace. *Id.* In the case at bar, by contrast, there is no dispute that events at work caused Stephen Brittain's mental health disability, and that the injuries were sustained and originated from his workplace. Applying the distinction set forth by the Court in *Wallin*, Brittain is unquestionably entitled to line-of-duty benefits.

II. PERA's Interpretation of "Act of Duty" as Limited to Hazardous Situations Constitutes an Error of Law Under the Statute's Plain Language and Structure.

In its Memorandum accompanying its Order, the PERA Board opined that the legislature intended to limit the in line-of-duty disability benefits to disabilities arising only out of hazardous situations. App. 014. PERA's interpretation not only finds no support in the statute's legislative history or the case law, it violates the statute's plain language, ignores the statute's context, and defies logic and good sense. Accordingly, the PERA Board's denial of Brittain's line-of-duty benefits must be reversed.

A. The Plain Language of the Statute Permits Recovery of Enhanced Disability Benefits in Hazardous and Non-Hazardous Situations Alike.

The statute authorizing PERA line-of-duty benefits, Minn. Stat. § 353.656, subd. 1, applies to persons who sustain a disability "arising out of *any* act of duty" (*emphasis added*). This language, on its face, contains no limitations based upon the nature of the work activities that precipitate the injury.

Neither Minn. Stat. § 353.656, subd. 1, nor any other part of Chapter 353, expressly defines “any act of duty.”⁴ Therefore, it is necessary to interpret the term according to Minn. Stat. § 645.16, which sets forth the rules governing statutory construction. The statute sets forth a nonexclusive list of factors to be considered by a reviewing court, but only in the event that the statute is first determined to be ambiguous. If the words of the statute “in their application to an existing situation are clear and free from all ambiguity,” the inquiry stops there. *Id.*; *Olson v. Am. Family Mut. Ins. Co.*, 636 N.W.2d 598, 601 (Minn. Ct. App. 2001) “The legislature ... has made it clear that legislative intent and the spirit of the law, if any such intent or spirit can be ascertained, cannot override the plain language of a statute.” *Olson*, 636 N.W.2d at 604.

A narrow, seldom applied exception exists to permit a court to look behind the legislature’s intent in situations in which application of the statute’s plain language to the case at bar would lead to an absurd result that was clearly not intended by the legislature. *Hyatt v. Anoka Police Dept.*, 680 N.W.2d 115, 119 (Minn. Ct. App. 2004). In *Hyatt*, the Minnesota Court of Appeals ruled that Minnesota’s statute making dog owners strictly liable to dog bite victims (Minn. Stat. § 347.22) does not apply to police dogs, despite an absence of specific statutory language carving out such an exception. *Id.* In reaching this conclusion, the court reasoned that application of the statute in this manner would lead to the absurd result, not contemplated by the legislature, of liability on the part of a city even where use of a police dog was objectively reasonable. *Id.* Secondly, the Court

⁴ The “line-of-duty” provision in Minn. Stat. § 353.656, subd. 1, refers to the definition found in § 353.64, subd. 10, but this section only provides definitions of “police officer,” “firefighter,” or “paramedic,” not “act of duty.”

feared that application of the statute in this manner would deter the legitimate use of dogs in police work, for fear of liability. *Id.* The court noted that other statutory provisions and case authorities bolstered its interpretation, including Minn. Stat. § 609.06, which expressly allows for the use of “reasonable force” in performance of their duties. *Id.*

In the case at bar, it is the PERA Board’s interpretation (not Brittain’s) that would lead to absurd results that were not contemplated by the legislature. In addition, the PERA Board’s interpretation is completely unworkable in practice. One might posit the scenario of a firefighter called upon to put out a blaze. If in the course of fighting the fire, a piece of building debris falls on him, causing injury, the injury clearly would have been sustained in a “hazardous situation.” But what of the situation in which a firefighter is injured because the fire truck gets into an accident speeding to the fire scene? What if the accident occurs when the fire truck is departing the fire scene after the fire has been extinguished, traveling at the posted speed limit and without its sirens on? What if the firefighter is injured sliding down the fire pole? Would it matter whether he is sliding down the pole in response to a fire call, versus practicing his sliding technique? What if the firefighter is injured while putting on his boots before sliding down the fire pole? What if the injury occurs when the firefighter returns to the station and is in the process of completing a report of the fire? What if the injury results from verbal abuse from a supervisor? Would the verbal abuse have to have taken place only in the course fighting fires, or could it take place between fires on the station premises?

There is no need to answer the questions posed above, because the statute is clear and unambiguous as it is written. Brittain urges that the Court of Appeals apply the

statute just as it is written, and reject the PERA Board's erroneous and unreasonable effort to import requirements found nowhere in the statute's four corners.

B. Read in its Proper Context, the Line-of-duty Requirement Cannot Be Limited to "Hazardous Situations."

The statutory context in which the line-of-duty benefit arises further highlights the illogicity of the PERA Board's proposed limitation to "hazardous situations." For purposes of statutory construction, it is often helpful to read the questioned provision in context of related provisions. *See, e.g., Van Asperen v. Darling Olds, Inc.*, 93 N.W.2d 690, 697-699 (Minn. 1958) (various provisions of same statute must be interpreted in light of each other, and legislature must be presumed to have understood effect of its words). In addition, Minn. Stat. § 353.03, subd. 3(b) specifically requires that the PERA Board's decisions to administer the payment of benefits be "consistent with the laws of the state." *A fortiori*, the statute must be consistent internally, from one subdivision to the next.

Applied to the instant matter, the PERA statute notably distinguishes between disability incurred in the line-of-duty ("any act of duty") and disability incurred "while not on duty." This "nonduty disability benefit" is set forth at Minn. Stat. § 353.656, subd. 3, and states in relevant part:

Any member of the police and fire plan who becomes disabled after not less than one year of allowable service because of sickness or injury occurring *while not on duty* as a police officer, firefighter, or paramedic as defined under section 353.64, subdivision 10, and by reason of that sickness or injury the member has been or is expected to be unable to perform the duties as a police officer, firefighter, or paramedic as defined under section 353.64, subdivision 10, for a period of at least one year, is entitled to receive a disability benefit (*emphasis added*).

Under the common dictionary definition, a police officer or fire fighter is “off duty” when he or she is “not engaged in or responsible for assigned work.” See Dictionary Entry, available at <http://dictionary.reference.com/search?q=off%20duty> (last visited Mar. 9, 2005). In other words, a person is “off duty” in the hours before or after one’s customary working day. By distinguishing between “any act of duty” (subdivision 1) and “while not on duty” (subdivision 3), the legislature expressly set up a dichotomy in Minn. Stat. § 353.656 that is useful for understanding and applying the unambiguous language of the line-of-duty benefit.

The legislature did what it intended to do in enacting an open-ended line-of-duty benefit, applicable to *all* work situations encountered by peace officers and fire fighters in the course of their nine-to-five duties. If the legislature had intended to limit line-of-duty benefits to “hazardous situations,” as asserted by the PERA board, it could have easily done so. See *In re Northern States Power Co.*, 676 N.W.2d 326, 332 (Minn. Ct. App. 2004) (rejecting argument based on unambiguous statutory language, and fact that legislature “could have” provided relief sought by party, by providing for it in statute, if legislature had wanted to); *Montella v. City of Ottertail*, 633 N.W.2d 86, 90 (Minn. Ct. App. 2001) (same). Its failure to do so, and the plain language of the statute, indicate a contrary intent. The PERA Board’s untenable interpretation, which amounts to an attempt to rewrite the statute outside of the legislative process, must be rebuffed. It is beyond the legitimate authority of the Board to amend the statute by reading the word “hazardous” into the words “act of duty.”

The Board ignored its fiduciary obligation to act in good faith and interpret the statute in a neutral and fair manner. Rather, the Board chose to narrowly interpret the statute and add requirements which are nonexistent. Statutes which are regarded by courts as humanitarian or which are grounded upon humane public policy are typically construed liberally. *In re Rosenberger*, 495 N.W. 2d 234, 236 (Minn. Ct. App. 1993) (liberally construing family maintenance statutes that serve a humanitarian public purpose); *Lecy v. Sage Company*, 460 N.W.2d 102, 104 (Minn. Ct. App. 1990), *pet. for rev. denied* (Minn. Oct. 25, 1990) (liberally construing Minnesota's dismissal for age statute, Minn. Stat. § 181.81); *Nording v. Ford Motor Co.*, 42 N.W.2d 576, 581-82 (Minn. 1950) (liberally construing the unemployment statute). Such is the case here. Clearly, the policy statement contained in § 353.63 - - "that special consideration should be given to employees . . . who devote their time and skills to protecting the property and personal safety of others" - - is grounded upon humane public policy and should be liberally construed.

C. The Limitation Sought by PERA Runs Counter to the Public Policy Considerations Which Underlie the Line-of-duty Benefit.

The Board indicated that it believed the legislature had envisioned in the line-of-duty benefits as those arising from the kind of "hazardous situations envisioned by Minn. Stat. § 353.63." App. 014. This provision, however, does not in any way limit the definition of duty. Minn. Stat. § 353.63 states in relevant part:

It is the recognized policy of the state that special consideration should be given to employees of governmental subdivisions who devote their time and skills to protecting the property and personal safety of others. Since this work is hazardous, special provisions are hereby made for retirement

pensions, disability benefits and survivors benefits based on the particular dangers inherent in these occupations.

It cannot override the clear and unambiguous language specific statutory provision of Minn. Stat. § 353.656, Subd.1.⁵

While it is true that Minn. Stat. § 353.63 expresses a legislative intent to award more generous benefits to public employees engaged in certain occupations, the Board erred by confusing the legislature's recognition of the hazardous nature "inherent these occupations" with the specific eligibility requirements for enhanced benefits. Just because an occupation may be "inherently" dangerous does not mean that it must be life-threatening at every moment; notably, there is no duty-by-duty analysis anywhere within the statute. Indeed, the Board's interpretation would arguably undermine the legislative purpose of attracting and retaining qualified public safety personnel through enhanced benefits.

Stephen Brittain's occupation as Ramsey County Sheriff's Deputy was an occupation that, as the legislature indicated, carried inherent dangers. That his disability arose from supervisory harassment did not lessen the dangers inherent in his work as a firearms trainer. His disability was one that he incurred while engaged in "any act of duty" and not while off-duty. For the Board to write a requirement into the statute that

⁵ In addition, it is worth noting that specific statutory provisions control general provisions when the two are in conflict. See *JAS Apartments, Inc. v. City of Minneapolis*, 668 N.W.2d 912, 915 (Minn. Ct. App. 2003); Minn. Stat. § 645.26, subd. 1. Although Brittain strenuously disagrees that the statement of policy set forth in Minn. Stat. § 353.63 is in any way inconsistent with the plain language of Minn. Stat. § 353.656, Subd.1, even if it were, the more specific language of the latter would govern.

the legislature did not intend amounts to an unreasonable and erroneous interpretation of the existing statute, is unworkable in practice and would lead to absurd results.

In short, there is no case authority, legislative history or reason in logic to support PERA's effort to re-write the clear and unambiguous statutory language of Minn. Stat. § 353.656, Subd.1 to contain a "hazardous situations" qualification. Accordingly, the PERA Board's denial of line-of-duty benefits to Relator Stephen Brittain should be reversed.

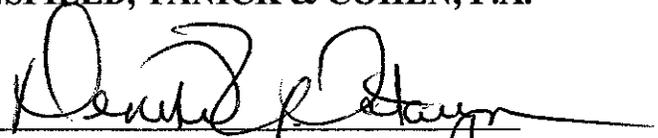
CONCLUSION

PERA is obligated to administer the law reasonably and consistently with the laws of the state. Its interpretation of Minn. Stat. § 353.656, subd. 1, is entitled to no deference, because it is unreasonable and violates the clear and unambiguous statutory language governing the allocation of line-of-duty benefits. Accordingly, its denial of benefits to Relator Stephen Brittain must be reversed.

Dated: March 10, 2005

Respectfully Submitted,

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STATE OF MINNESOTA
IN COURT OF APPEALS

Stephen Brittain,

Relator,

APPELLANT'S CERTIFICATION OF
WORD COUNT PURSUANT TO RULE
132.01, SUBD. 3 (b)(1)

v.

COURT OF APPEALS NO. A04-2407

Public Employees Retirement Association
of Minnesota,

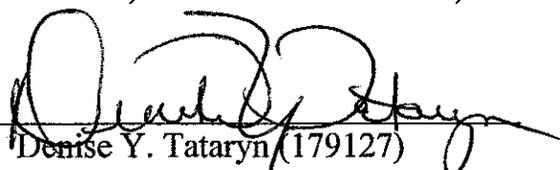
Respondent.

Date of Decision: October 21, 2004

I, Denise Y. Tataryn, hereby certify pursuant to Minn. R. Civ. P. 132.01, subd. 3(b)(1) that the Realtor's Brief filed in the above matter contains less than 7,000 words. The word processing software used to prepare this Realtor's Brief was Word 2000, Version XP. It was prepared with a 13 point font in compliance with Minn. R. Civ. P. 132.01, subd. 1. The word processing system indicates that the Petition for Writ of Certiorari contains 4,985 words.

MANSFIELD, TANICK & COHEN, P.A.

Dated: 3-10-05

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