

NO. A04-2407

State of Minnesota
In Court of Appeals

Stephen Brittain,

Relator,

v.

Public Employees Retirement Association
of Minnesota,

Respondent.

RELATOR STEPHEN BRITTAIN'S REPLY BRIEF

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INTRODUCTION

In its opposition brief, Respondent Public Employees Retirement Association of Minnesota (“Respondent” or “PERA”) makes two basic arguments. First, PERA alleges that Relator Stephen Brittain (“Relator” or “Brittain”) failed to prove that his injuries were causally related to workplace incidents. Second, PERA alleges that the Minnesota legislature intended to limit line-of-duty benefits to injuries arising from work activities “inherently unique to public safety duties.” Respondent’s Brief (“Res.B.”) at 19. Both arguments are untenable, lacking any support in the facts, the law or any findings contained in the ruling from which this appeal is brought.

In its succinct ruling—which merits no deference because it merely recites conclusions without any supporting analysis or reasoning—the PERA Board clearly, unambiguously, and erroneously ruled that (1) injuries that are based upon an officer’s “perceptions” are excluded from line-of-duty benefits; and (2) that line-of-duty benefits are reserved for hazardous situations. Without support anywhere in the actual ruling, Respondent extrapolates from the first point to assert that what the PERA board **really** meant to say was that Brittain failed to show causation. Res.B at 11 (“The Board, **in effect**, determined that more substantial evidence was necessary to prove a claim of ‘line-of-duty’ causation.”) (emphasis added). As to the second point, Respondent relies upon cases from other jurisdictions that are distinguishable (*e.g.* applying statutes that unlike Minnesota’s, statutorily **define** line-of-duty to mean hazardous situations), misapplies prior Minnesota precedents, and ignores the plain meaning of the statute’s words.

ARGUMENT

I. THE STANDARD OF REVIEW OF ALL ISSUES ON THIS APPEAL IS *DE NOVO*, AND THE PERA BOARD'S DECISION MERITS NO DEFERENCE BECAUSE IT MERELY STATES A CONCLUSION.

Respondent correctly recognizes that reversal is appropriate if this Court determines that the PERA Board's decision denying Brittain line-of-duty benefits was (1) unreasonable; (2) made under an erroneous theory of law; or (3) without supporting evidence. Res.B. at 7. Respondent goes on, however, to argue that the Court should "defer to the PERA Board's judgment" to resolve any doubt about the basis for the ruling under consideration in this appeal. Res.B. at 8. This is wrong, because all issues on this appeal are reviewable under a *de novo* standard of review.

The primary issues under consideration on this appeal are ones of statutory interpretation: whether line-of-duty benefits are limited to injuries arising from hazardous situations and whether line-of-duty benefits exclude injuries arising from an employee's "perceptions." It is well settled that questions of statutory interpretation are reviewed *de novo*. *Tischer v. Housing and Redevelopment Authority of Cambridge*, 693 N.W.2d 426, 428-29 (Minn. 2005). *See also Star Tribune Co. v. University of Minnesota Bd. of Regents*, 683 N.W.2d 274, 294 (Minn. 2004) ("where legal conclusions are at issue 'the reviewing court is not bound by the decision of the agency and need not defer to agency expertise'") (quoting *No Power Line, Inc. v. Minn. Env'tl. Quality Council*, 262 N.W.2d 312, 320 (Minn.1977)).

This applies to issues arising under PERA statutes. Thus, in *In the Matter of Disability Benefits Application of Craig Wallin*, No. C8-99-129, 1999 WL 507601, at *2

(unpublished, Minn. Ct. App. July 20, 1999) (Rel. App. 017), this Court stated the general rule that agencies charged with applying regulatory statutes “are accorded deference in the construction of the statutes they apply” does not apply where “the question raised in [the] appeal is essentially textual statutory construction.” *Id.*

Even under a lesser standard of review, precedents of this Court require that the PERA Board’s opinion be afforded no deference, because the ruling merely states a series of conclusions, without offering any supporting reasoning or analysis. The Board rejected ALJ Klein’s Findings of Facts, but failed to give specific reasons for its rejection. It is long established that a state agency cannot so summarily reject an ALJ’s findings. Thus in *Beaty v. Minnesota Bd. of Teaching*, 354 N.W.2d 466 (Minn. Ct. App. 1984), this Court held:

When an agency rejects or significantly deviates from the hearing examiner’s¹ findings, it should explain, on the record, its reasons for doing so. Failure to do so evidences the agency’s desire to exercise its will and not its judgment.

Id. at 472.

No matter how one reads the PERA Board’s decision, it must be reviewed *de novo*. If the PERA Board intended to reject the finding that Brittain was, in fact, disabled due to depression arising from incidents at work (ALJ Report, Finding # 16, Rel. App. at 008)—a conclusion Respondent now infers into the order, but which exists nowhere in the four corners of the actual decision (see discussion *infra*)—this rejection was not explained or justified by the Board. As such, it cannot be given any weight under *Beaty*.

¹ Hearing examiners have been replaced by ALJs.

If, under the more likely scenario, one understands the PERA Board's decision to be a conclusion of law interpreting Minn. Stat. § 353.63 *et seq*, based upon adopted findings of facts, such a conclusion of law would be by definition reviewed *de novo*. See *Tischer, supra*. In short, the Board has not demonstrated that its decision is entitled to any deference.

II. BRITAIN'S DISABILITY WAS INCURRED IN THE LINE OF DUTY.

A. Mental Disabilities Necessarily Based on a Psychological Perception Are Included As Line Of Duty Disabilities Under the Statute.

In an exercise of circular reasoning, Respondent claims not to be making any distinction between mental and physical disabilities, only to claim that disabilities involving the officer's "perception" cannot, somehow, arise out of his or her line of duty. Since mental or psychological disorders, including depression, are by definition a product of the disabled person's perception, Respondent attempts to introduce this distinction—found nowhere in the statute or in any case construing it—while disguising it as a causation argument.

1. Respondent's "Causation" Argument Seeks to Re-Write History By Inserting Into the PERA Board's Ruling Findings Found Nowhere In the Opinion.

Respondent argues that the true basis for the PERA Board's ruling was a finding, implicit in its ruling, that Britain failed to meet his burden of proving causation, that is, that his supervisor's harassing acts were the actual causes of the disability for which he sought line-of-duty-benefits. Res.B. at 9-14. In fact, the Order from which this appeal indicates the exact opposite:

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. §§ 353.656 and 353.656, subd. 1 (2004).

Order dated October 21, 2004; Rel. App. at 013.

Respondent's attempt to recast the Board's decision as a causation issue has no support in the Board's proceedings, even as selectively cited by Respondent. A careful reading of the Order shows that the basis for Brittain's denial was something completely different, and (in fact) causation was **presumed** by the PERA Board. The Order, which for purposes of this appeal must be taken at face value, was very specific in its reasons for denial, holding that Brittain's disability "resulted from his perception," and as a consequence "did not result from an Act of Duty." Board's Order of Oct. 21, 2004, Rel. App. at 013. After summarizing ALJ Klein's ruling, the Board concluded, "And, I guess we cannot give benefits **on a perception of something.**" Record, Exh. 49, p. 18. (emphasis added). Further emphasizing this point, Trustee Gray stated that "the perception doesn't even meet a test of something being real and factual." Record, Exh. 49, pp. 19-22.² This ruling quite clearly disqualifies Brittain's claim based upon the nature of the claim, not the quality of his proof. Significantly, nowhere in its Order does

² This observation also illustrates the Board's misunderstanding or misapplication of the correct statutory criteria. The test is not whether the claimant's injuries were based upon his or her perception of "real or factual" events, but whether they arose "in the line of duty." The Board's distinction is not only unworkable in practice, its application would eviscerate the line-of-duty benefit, at least for mental health-related claims. For instance, a fire fighter who observed from a distance the immolation of a life-sized doll or a mannequin, and mistakenly believed that a real human had been burned alive, would be disqualified from receiving benefits if resulting psychological injuries prevented a return to work. The perceptions in that situation would not be of "real or factual" events.

the PERA Board rule that Brittain failed to “meet his evidentiary burden,” provide sufficient “proof of causation,” or words to that effect. There is no causation language in the Order, and nothing to suggest that the issue of causation was even considered in the Board’s deliberations. The Board simply held that it “cannot give benefits on” a disability rooted in perception. Record, Exh. 49, pp. 17-18.

The PERA Board’s order makes quite clear that the existence of the injuries was presumed, and the Board’s rejection of the ALJ’s ruling is based upon strictly legal (not fact-based) conclusions. The only fact germane to PERA’s legal analysis is one that is not subject to dispute, *viz.* that Brittain suffered from depression and that his injury, like all mental health injuries, is the product of the brain’s response to external stimuli. Further problematizing PERA’s analysis is the fact that Brittain’s mental health claim is also predicated upon hearing loss, which it is undisputed resulted from his duties as a firearms instructor (and had nothing to do with his “perceptions”). In short, the PERA Board’s causation argument must be seen as an after-the-fact justification for the ruling, irrelevant to the issues on this appeal.

2. Any Distinction Between Mental and Physical Disabilities Must Be Rejected Under the Statute’s Plain Language.

That Respondent would now camouflage the Board’s distinction between (and differential treatment of) mental and physical disabilities as a “causation” issue is at once understandable and untenable. It is understandable because the statute expressly includes mental impairments arising out of the line of duty, covering any “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 [his] duties.” Minn. Stat. § 353.656 (2004). It is untenable because the PERA Board couches its causation issue in terms of Brittain’s “perceptions,” the source of many (if not most) mental health injuries.

The fact is the Board did distinguish between mental and physical disabilities.

Trustee Marshall criticized this distinction:

. . . I agree with the doctors’ decisions and the administrative law judge. I think it is arising out of an act of duty, it is pretty clear. And I think mental disability vs. physical disability, in our statute, they’re one in the same. So I have to disagree.

Record, Exh. 49, p. 10. The Board’s faulty application of the statute must be rejected.

3. A Disability Based on Perception Is By Definition A Mental Disability.

In the absence of any discussion by the PERA Board of Brittain’s alleged failure to meet his burden of proof, Respondent attempts to imply one by reading selected words in the decision out of context. The PERA Board’s statement that “the primary **cause** of [Brittain’s] depression . . . as he perceived it, **resulting** from his poor relationship with his supervisor” merely explains (in the Board’s words) the source of Brittain’s injuries. Res.B. at 13. The Board nowhere disputes that Brittain’s injuries were real, and accepts—or at least does not dispute—that they were caused by his supervisor’s actions, as processed by Brittain’s neural sensors (as he “perceived” them).

Respondent argues, in essence, that the Order’s “result from” language and the statute’s “incurred in” or “arising out of” language create a burden of proof on persons claiming mental health injury, to show that their duties, divorced from the employee’s perceptions, were a direct “cause” of his disability. Again, this assumption is

unsupported. The one case cited by Respondent is not on point. In *Burgess v. Bergstrom*, No. A03-213, 2004 WL 77766 (Minn. Ct. App. Jan 20, 2004), *review denied*, plaintiff has failed to even prove that she was subject to a hostile environment or that it was related to her disability. *Id.* at *2. Those elements are undisputed in the case as bar, as illustrated by the uncontested award to Brittain of non-line-of-duty benefits.³

In fact, case law indicates that the phrase “arising out of” creates no such burden. “Arising out of” only requires that the event or circumstances out of which the condition arises be a contributing factor. *Meinstma v. Loram Maintenance of Way, Inc.*, 672 N.W.2d 224, 228 (Minn. Ct. App. 2003), *aff’d in part, reversed in part* (citation omitted). It does not require a proximate cause relation between the two. *Id.* That Brittain’s work and duties are a contributing factor to his disability is undisputed. All that is required is that the injuries arose “in the line of duty,” meaning that they be related in place and time to the performance of his work.

Respondent’s argument that he failed to show that his specific disability **arises out of an act of duty** must fail as a matter of law.

B. Brittain’s Perception Was Not the Only Proof Presented.

Respondent argues that Brittain did not prove that his disability was caused by an act of duty and that his “perception was essentially the only proof presented regarding the cause of his disability.” Res.B at 11. Aside from the fact that the Board’s decision was

³ Respondent goes on to cite “causal” language relative to fire and police pensions from *Renz v. Hibbing Firemen’s Relief Ass’n*, 186 Minn. 370, 243 N.W. 713 (1932), a case decided twenty-seven years before the statute in front of the Court today was first enacted. Minn. Stat. §§ 353.63-663 codify Laws 1959, c. 650, §§ 31 *et seq.*

not based on causation and Respondent is after the fact reaching to support its conclusion, it is not the case that the only proof presented was Brittain's "perception."

Respondent's argument is not supported by the Record. Brittain presented extensive evidence corroborating the hostile environment to which he was subjected. He presented five declarations from other deputies substantiating his claim. *See* Relator's Brief at 4-5. The testimony of these deputies provide ample evidence supporting Brittain's claim that the hostile work environment affected his ability to work, and that the hostile work environment permeated throughout his work activities including assignments he was given, overtime, and interactions with the supervisor which were obviously necessary in order to perform his job. Additionally, there was evidence from both Dr. Kenneth Hodges and Psychologist Schumacher opining that Brittain's condition was a direct result of an illness which occurred during, or arose out, an act of duty. Record, Exh. 8.

Respondent claims that the medical evidence in the Record did not include any discussion of Brittain's medical and personal history. Again, this is not the case. Psychologist Schumacher's notes do reflect that a personal history was taken. Record, Exh. 35. Surely, Respondent is not contending that his physicians diagnosed him with Major Depressive Disorder and prescribed medications without the appropriate support. Respondent cannot point to any evidence in the Record which negates the sound opinions of his two treating physicians.

Furthermore, there is nothing in the Record or the Board's conclusions that demonstrate its decision was based on a lack of proof by Brittain. Brittain's counsel

specifically asked PERA what additional information was needed to perfect his claim and to provide reasons supporting its denial of line of duty benefits. Record, Exh. 26. PERA's response indicates only that additional information showing his hearing loss was duty-related would be helpful, but it otherwise demonstrates that causation was not behind its denial:

It is PERA's position that conflicts between co-workers are not part of that hazardous duty and do not provide foundation for a duty-related disability. The medical reports provided by you seem to suggest that your hearing loss has contributed to your anxiety and depression; however, there is also no evidence that the hearing loss is duty-related.

Record, Exh. 28. At the fact finding conference, Brittain presented documented evidence that his hearing loss was duty-related. Notwithstanding the substantial evidence presented at the fact-finding conference, the Board did not obtain and review the hearing transcript before it rejected the ALJ's finding. The Board was not interested in the facts presented. Rather, it had a preconceived notion that such mental disabilities could not be considered as line of duty disabilities.

The Board's argument also neglects the evidence concerning Brittain's hearing loss, which obviously was not due to his perception. The record contains evidence from Psychologist Schumacher opining that Brittain's hearing impairment affected his ability to work:

Duties of present job require responding within highly rigid and demanding guidelines and reporting to multiple supervisors; these are high-stress factors for this man. These stressors are worsened by impaired hearing; he must communicate with colleagues and prisoners-patients who may be violent, yelling, behaviorally out of control or violent in

[crowded situations] around loud background noise such as institutional settings, bands.

Record, Exh. 35 (Psychologist Statement dated 7/22/03).

Respondent's argument that Brittain's perception was the only proof presented did not serve as a basis for the Board's denial and cannot be argued for the first time here. Even if it was a factor in the Board's decision, it simply is not supported by any evidence, let alone substantial evidence.

III. THE LEGISLATURE INTENDED LINE-OF-DUTY BENEFITS TO ENCOMPASS ALL WORK-RELATED INJURIES, AS DISTINGUISHED FROM INJURIES INCURRED OFF THE JOB.

Respondent argues that the Minnesota legislature intended to limit the line-of-duty benefit to hazardous situations, based upon the "particular damages' inherent in public safety work." Res.B. at 18. Steering clear of the statute's unambiguous language to the contrary, Respondent bases its interpretation upon a phrase in the statute's preamble, and cases from other jurisdictions applying other statutes.

A. The Preamble of the Statute Is Not Directed At The "Line-of-Duty" Benefit.

In order to reach its (con)strained interpretation of the line-of-duty benefit provision, Respondent focuses on a portion of the PERA statute's preamble, which states the legislative purpose of recognizing and rewarding fire department employees and peace officers as follows: "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," as specified in the statute at sections 353.63 to 353.68. Minn. Stat. § 353.63 (2004).

This argument is flawed. The blanket statement cited by Respondent does nothing more than explain the purpose behind **all** of the provisions that follow, only one of which is the line-of-duty benefit: to attract and retain employees to positions covered by these sections. Thus, for instance, the base benefit set forth at Minn. Stat. § 353.656, subd. 3 (2004), which provides disability benefits for persons unable to work “by reason of sickness or injury” regardless of whether the source of injury was work related, is enhanced over the base benefit for all other government employees. Specifically, it provides benefits where the employee in question is incapable of returning to **his or her prior job**. By contrast, other government employees continue to receive benefits only if they are incapable of returning to “**any substantial gainful activity.**” *Compare* Minn. Stat. § 353.656 Subd. 3 *to* Minn. Stat. §§ 353.01 Subd. 19; 353.33 Subd. 1 (2004). It becomes immediately evident that the preamble explains why the statute governing the overall benefits for which police officers and firefighters are eligible is more generous than for other government employees: the inherent dangers involved in those **careers**. The preamble does not in any way qualify or limit the line-of-duty provision of the statute.

In addition, “general introductory or explanatory provisions” may be considered only if the statutory provision in question is ambiguous, and “must give way to the specific [statutory] language.” *Application of Atkinson*, 291 N.W.2d 396, 400 (Minn. 1980). As argued in Relator’s opening memorandum, the language in question is unambiguous, and the words must be given their plain and ordinary meaning. In addition, preambles are not part of the actual statute, and may not be considered as such.

Twin City Candy & Tobacco Co. v. A. Weisman Co., 149 N.W.2d 698, 702, 276 Minn. 225 (Minn. 1967) (citing *Berg v. Berg*, 201 Minn. 179, 189, 275 N.W. 836, 842). In fact, the Minnesota Supreme Court has cautioned that courts may not abandon their duty of statutory interpretation by blindly adopting the legislature's characterization of a statute in its introduction. *Ubel v. State*, 547 N.W.2d 366, 370 (Minn. 1996).⁴

Thus, even if the preamble narrowly applied to the issues at bar, which it does not, it could not govern the interpretation of the statute in face of plain statutory language. Here, the preamble does nothing more than explain why the class of employees receives greater benefits **across the board**, including (but by no means limited to) the line-of-duty benefit. The result **might** be different if the preamble applied only to the line-of-duty benefit,⁵ but it does not.

B. The Workers' Compensation Statute Is Irrelevant to Any Issue in this Case.

Respondent goes on to contrast the line-of-duty benefit standard with the workers' compensation statute's standard, "arising out of and in the course of employment," to argue that the legislature could have (but did not) apply the latter formulation. Res.B. at 19. According to Respondent, this suggests that the legislature meant something different. *Id.* Respondent's argument rests on the faulty premise that different language

⁴ This is consistent with the United States Supreme Court's long standing rules of statutory interpretation, where the "express provisions in the body of an act cannot be controlled or restrained by the [...] preamble." *Coosaw Mining Co. v. State of South Carolina*, 144 U.S. 550, 563 (1892).

⁵ As explained, it still could not overrule the plain statutory language.

in different statutes (as opposed to different language within the same statute) must mean different things.

There is no basis for this assertion. Rather, the Court may take judicial notice of the fact that the legislature enacts statutes over the course of years that use different terms and phrases to articulate identical or substantially similar concepts. Respondent's arguments may apply in such circumstances as where the legislature substitutes a term for another when amending **the same statute**. *Range v. Van Buskirk Construction Co.*, 281 Minn. 312, 316, 161 N.W.2d 645, 648 (1968). It has no application when comparing two distinct acts. Just like the same term "may be used to mean different things in different statutes," different terms may have the same meaning in two different statutes, or generally between two provisions of law, enacted at two different points in time. *State v. Stevenson*, 656 N.W.2d 235, 239 (Minn. 2003). *See also State v. Crace*, 289 N.W.2d 54, 57 (Minn. 1979) (holding that statutory term "carelessness," undefined in statute, is synonymous with the common law definition of "negligence").

C. The Line-of-Duty Benefit Is Not Limited to Hazardous Jobs.

Respondent asserts that the basis for its ruling was that the PERA Board "found that 'line of duty' benefits follow from the legislative policy to provide substantially greater benefits based upon the 'particular dangers' inherent in public safety work." Res.B. at 18. There is plainly nothing in the statute, however, to limit the statute's application to "particularly dangerous" situations.

Respondent has cited several cases from Illinois. Though they do not apply (*see* section IV.D., *infra*), they are useful to illustrate the most respondent-friendly definition

applicable. In those cases, an act of duty is understood to be any act that would have no equivalent in a civilian occupation. *Olson v. City of Wheaton Police Pension Bd.*, 153 Ill.App.3d 595, 599, 505 N.E.2d 1387, 1390 (Ill. Ct. App. 2d Dist. 1987). Even under that extreme definition, so long as the duty performed is unique to police work, it is an act of duty and it “**need[s] not involve inherently dangerous tasks.**” *Id.*

Brittain was a deputy sheriff. His job entailed maintaining order in detention facilities and courthouses, patrolling, collecting evidence, providing of the safety and security of inmates in court and during transport. Ramsey County Deputy Sheriff Job Description, Record, Exh. 10. Brittain served as a firearm instructor and routinely transported inmates between the county’s detention facility and the courthouse. Discharging firearms and handling potentially dangerous criminals has no equivalent in civilian life. Much as Respondent would like to portray Brittain’s duties as just showing up for work, the facts do not bear this characterization. Even under the Illinois definition, Brittain’s duties are so inherent to the function of law enforcement that a disability arising out of his job qualifies him for line-of-duty benefits. There is no dispute that Brittain was engaged in his work duties at all times that he endured supervisor abuse, and the supervisor’s conduct was directed to Brittain *qua* employee; the abuse did not occur, for instance, before or after normal working hours.

It is axiomatic that the words in a statute, if not defined therein, are to be given their plain and ordinary meaning. *Opay v. Experian Information Solutions, Inc.*, 681 N.W.2d 394, 396 (Minn. Ct. App. 2004). The plain meaning of “duty” is similar if not identical to work, and certainly does not imply hazardous tasks. For example, a leave of

absence is understood to be a “temporary absence from employment or duty,” implying that being on the job for one’s employer is the functional equivalent to being on duty. Black’s Law Dictionary at 901 (7th Ed.). Officers were said to be on-duty when they heard the sound of a collision even though they were not involved in any hazardous task at the time. *State v. Pieschke*, 295 N.W.2d 580, 582 (Minn. 1980). This construction holds in a variety of public safety situations. For example, State lifeguards were on duty (so as to qualify them for immunity) when they were present on the job, without any requirement that they be carrying out dangerous functions. *Johnson v. Washington County*, 518 N.W.2d 594, 600 (Minn. 1994).

Furthermore, under Respondent’s interpretation, numerous otherwise **qualifying** employees would be excluded from ever recovering line-of-duty benefits. Take the example of a “desk officer,” who rarely if ever goes out on patrol or even rides in a squad car. That individual’s duties, and numerous other individuals covered by the statute, are largely administrative in nature. When Brittain chose a law enforcement career, he did so in reliance on the enhanced benefits afforded under all provisions of Minn. Stat. §§ 353.33-363. To disqualify him from enhanced benefits now, based on the whim of the PERA Board’s in classifying his duties as non-dangerous, would be unfair and undermine (rather than promote) the goal of attracting and retaining qualified employees to work in the field of law enforcement.⁶

⁶ If the legislature, if asked, would prefer to limit enhanced benefits to persons engaged in hazardous duties, it remains free to revise the statute to include limiting language such as is contained in the Illinois statute. Unless and until such changes are made, however, the

In short, Respondent's formulation would exclude from coverage entire classes of covered employees who could rightfully rely on such benefits being available to them. This cannot have been what the legislature had in mind when it enacted the line-of-duty benefit.⁷

D. Respondent's Cases from Other Jurisdictions Are Distinguishable, and the *Wallin* Decision Does, In Fact, Support an Award of Benefits to Relator.

Respondent in essence begs this Court to apply Illinois' definition of an act of duty. This is preposterous insofar as the Illinois statute **defines an act of duty**, which the Minnesota Act does not. That state's legislature defined an act of duty as "any act of police inherently involving special risk." 40 Ill. Comp. Stat. § 5/5-113 (West 2005). It is no surprise then that Illinois courts, which Respondent heavily cites to, have endorsed Respondent's definition of an act of duty: that definition is mandated by Illinois law.

Even under that definition, Illinois courts have expanded the meaning of risky duty to any duty that is inherent to police work, without a functional equivalent in civilian

Court is obligated to apply the statute as it is written. *Walter v. Independent School Dist. No. 457, Trimont*, 323 N.W.2d 37, 43 (Minn. 1982).

⁷ In a footnote, Respondent responds to Brittain's hypotheticals that it would be "equally absurd" to award line-of-duty benefits to public safety personnel "where the hazard is not restricted to only public safety work," posing a counter hypothetical of a furnace malfunction that injures police officers and non-police civil servants alike. Res.B. at 20, n. 15. That situation is distinguishable from Brittain's in obvious ways. For one thing, the abuse he sustained was a criticism or response by a supervisor to his work, not an "act of God" as posed in Respondent's hypothetical. Without deciding whether line-of-duty benefits would apply in Respondent's hypothetical, it bears noting that police officers would, in fact, receive higher disability benefits (of the non-line-of-duty sort) than their non-police counterparts, in that the latter would be disqualified from disability benefits if they could return to **any** public service job, as opposed to their present job. This is not "equally absurd," but a legislative judgment, to paraphrase Orwell, that some public sector employees are "more equal" than others.

life. See, e.g., *Olson*, 505 N.E.2d at 1390; *Trettenero v. Police Pension Fund of Aurora*, 643 N.E.2d 1338, 1342 (Ill. Ct. App. 2d Dist. 1994). Brittain's duties, involving the discharge of weapons, the transports of potentially dangerous prisoners or looking after the safety of participants in courtrooms, qualify as such "acts of duty" that make him eligible for line-of-duty benefits.

Minnesota's legislature, by contrast, has not placed any similar limitations on the term "line of duty." The seminal case in Minnesota is *In re Disability Benefits Application of Wallin*, 1999 WL 507601. Respondent's own interpretation of *Wallin* supports Brittain's position. Respondent quotes *Wallin* with emphasis to say that the disability must be linked to "performance of their work." *Id.* at *2; Resp.B. at 22. As Respondent must and does eventually concede, "*Wallin* does not distinguish between 'act-of-duty' disability and [...] 'work related'" disability. Resp.B. at 22. There is no reason today to invent such a distinction where our state's courts have found none and where the statute does not justify finding any.

Courts and other adjudicative and legislative bodies that have interpreted and statutes that fail to define "on duty" (as distinguished from decision by Illinois courts, who are bound at their state's statutory definition), have reached similar results. Thus, for example, Missouri courts simply equate duty with performing tasks in one's "regular line of work". *Reed v. Railway Exp. Agency*, 235 S.W.2d 401, 403 (Mo. Ct. App. 1950). Before federal law defined "killed in the line of duty," federal agencies had generally construed accidental deaths on the job as deaths in the line of duty. See *Finley v. Special Agents Mut. Ben. Ass'n, Inc.*, 957 F.2d 617, 620 (8th Cir. 1992). When Congress added

the definition of duty to the Hours of Service Act (part of the country's railroad legislation), it included "any [...] service for the railroad." *Brotherhood of Locomotive Engineers v. Atchison, Topeka & Santa Fe R. Co.*, 516 U.S. 152, 156-57 (1996) (citing 49 U.S.C. § 21103(b)) (emphasis added).

Absent a statutory definition, under the plain and accepted meaning of duty, Brittain's disability was incurred in the line of duty and he is due disability benefits accordingly.

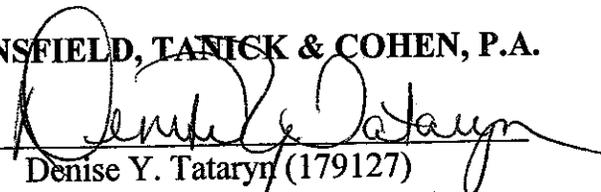
CONCLUSION

The original Administrative Law Judge opinion granting line-of-duty benefits to Stephen Brittain correctly acknowledged that workplace injuries of a mental nature are encompassed in the statute's broad language. PERA's Order denying Brittain these benefits applied undisputed facts to on an erroneous legal interpretation that would limit benefits to injuries connected to "hazardous" situations. It is up to the legislature, not the PERA Board, to place any such limitations on benefits, and PERA's order denying benefits to Brittain must be reversed.

Dated: April 25, 2005

Respectfully Submitted,

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