

CASE NO.: A06-531

STATE OF MINNESOTA

In the Court of Appeals

In the Matter of the Claim for Benefits of Alexander Sloan

BRIEF OF APPELLANT
ALEXANDER SLOAN
AND APPENDIX

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STATEMENT OF THE ISSUE

1. Does Minn. Stat. § 299A.465, Subdivision 1 (2003) require the University to continue to pay the employer's contribution for health insurance coverage for appellant until appellant reaches age 65?

The public safety officer benefits eligibility panel determination: Denial of Officer Sloan's claim for benefits under Minn. Stat. § 299A.465, Subdivision 1(c) because the panel determined that Claimant 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, subdivision 6.

Apposite Statutory Provision:

Minn. Stat. § 299A.465, Subdivision 1 (2002)

Minn. Stat. § 353.63 (2002)

Minn. Stat. § 353.656

Apposite Cases:

Conaway v. St. Louis County, 702 N.W.2d 779 (Minn. Ct. App. 2005)

Schmidt v. City of Columbia Heights, 696 N.W.2d 413 (Minn. Ct. App. 2005)

Apposite cases on statutory construction generally are:

Burkstrand v. Burkstrand, 6632 N.W.2d 206, Minn. 2001

Vlahos v. R&I Construction of Bloomington, 676 N.W.2d 672 (Minn. 2004)

Tuma v. Commissioner of Economic SCC, 386 N.W.2d 702 (Minn. 1996)

STATEMENT OF THE CASE

The question presented in this case is whether the University of Minnesota is obligated under Minn. Stat. § 2199A.465 to continue payment of the employer's contribution of Appellant's health insurance coverage until Appellant reaches age 65. Appellant was a police officer for the University of Minnesota from May 1, 1981, through his work injury occurring on October 8, 2001. Appellant was injured in the line of duty as a police officer on October 8, 2001, and only returned to work briefly as a dispatcher in 2002 before leaving the University of Minnesota entirely on June 30, 2002.

Pursuant to Minn. Stat. § 299A.465, subd. 1(c) (2003) Appellant submitted an Eligibility Application Form in 2005 for the continuation of health insurance coverage for himself. On February 9, 2006, the Public Safety Officer Benefits Eligibility Panel convened to review Alexander Sloan's claim for benefits pursuant to Minn. Stat. § 299A.465, subd. 1(c). The Public Safety Officer Benefits Eligibility Panel (PSOBEP) denied Alexander Sloan's claim for benefits. See, Determination Order. A Writ of Ceriorari was filed with the Clerk of Appellate Courts on March 16, 2006. Alexander Sloan now appeals from that Determination Order because the PSOBEP erred in concluding that Alexander Sloan did not establish that his occupational duties or professional responsibilities put him at risk for the type of injury which he sustained, as required by Minn. Stat. § 299A.465, subd. 6.

The language of Minn. Stat. § 299A.465 is clear and unambiguous, and thus requires the University to continue payment of the employer's contribution for health insurance coverage for Alexander Sloan. Officer Sloan was disabled from working as a police officer as the result of a back injury sustained in the line of duty. Officer Sloan was awarded in the line of duty disability benefits

through PERA under Minn. Stat. § 353.656. Therefore, Alexander Sloan requests this Court reverse the Public Safety Officer Benefits Eligibility Panel's determination and award the benefits under Minn. Stat. § 299A.465 as a matter of law.

STATEMENT OF THE FACTS

1. On May 1, 1981, Alexander Sloan began employment with the University of Minnesota, where he was continuously employed full time as a police officer until October 8, 2001.
2. During the course of his employment as a police officer with the University of Minnesota, Alexander Sloan suffered a disabling injury to his low back on October 8, 2001.
3. As a result of that injury, Alexander Sloan made application in 2005 to the Public Employee's Retirement Association of Minnesota (PERA) for disability benefits pursuant to Minn. Stat. § 353.656, subd. 1.
4. In 2005, Alexander Sloan was notified that his application for in the line of duty disability benefits had been approved by PERA.
5. As a result of the disabling low back injury sustained on October 8, 2001, Alexander Sloan separated from the University of Minnesota on June 30, 2002.
6. Alexander Sloan contests the Public Safety Officer Benefits Eligibility Panel's Determination Order denying the continuation of health insurance coverage in accordance with Minn. Stat. § 299A.465 and brings this appeal seeking a reversal of the Determination Order and award of benefits under Minn. Stat. § 299A.465 as a matter of law.

STANDARD OF REVIEW

The quasi-judicial decision of an administrative agency will not be reversed unless it is fraudulent arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law. Axelson v. Minneapolis Teachers' Ret. Fund Ass'n., 544 N.W.2d 297, 299 (Minn. 1996). The reviewing court is not bound by the agency's decision and need not defer to agency expertise, although a certain amount of deference is paid to the agency's interpretation of its' own regulations if they are unclear or ambiguous. St. Otto's Home v. Dept. of Human Servs., 437 N.W.2d 35, 39-40 (Minn. 1989). Statutory construction, however, is a question of law reviewed de novo. Brookfield Trade Ctr. #579 v. County of Ramsey, 584 N.W.2d 390, 393 (Minn. 1998).

ARGUMENT

1.THE CLEAR AND UNAMBIGUOUS LANGUAGE OF MINN. STAT. § 299A.465 ENTITLES APPELLANT TO THE CONTINUED PAYMENT OF THE EMPLOYER'S CONTRIBUTION FOR COVERAGE OF OFFICER SLOAN AND UNTIL OFFICER SLOAN REACHES AGE 65.

A. OFFICER SLOAN SUSTAINED A DISABLING INJURY UNDER MINN. STAT. § 299A.465.

When the language of a statute is plain and unambiguous, the plain language must be followed. Burkstrand v. Burkstrand, 632 N.W.2d 206, 210 (Minn. 2001). "Under the basic canons of statutory Construction, the courts construe words and phrases according to the rules of grammar and accord their most natural and obvious usage unless it would be inconsistent with the manifest intention of the legislature. "Vlahos v. R&I Construction of Bloomington, 676 N.W. 2d 672, 679 (Minn. 2004); See, also, Minn, Stat § 645.08 (1) (2003); Amaral v. Saint Cloud Hosp., 598 N.W. 2d 379, 384 (Minn. 1999).

The first step in statutory interpretation is to simply read the statute. Gomon v. Northland Family Physicians, Ltd., 646 N.W. 2d 413, 416 (Minn. 2002) (“When interpreting a statute, a court must first determine whether the statute’s language, on its face, is clear or ambiguous.”). If the words of a statute are “clear and free from all ambiguity,” further construction is neither necessary nor permitted. Minn. Stat. § 645.16 (2003); See, also, Ed Herman and Sons v. Russell, 535 N.W. 2d 803, 806 (Minn. 1995). The reviewing court is not permitted to read ambiguity into an otherwise clear statute under the guise of statutory interpretation. Tuma v. Commissioner of Economic SEC., 386 N.W. 2d 702, 706 (Minn. 1986).

In the instant case, the statutory language at issue is clear and unambiguous. Minn. Stat. § 299A.465 provides in pertinent part:

Subdivision 1. **Officer or firefighter disabled in the line of duty.** (A) This subdivision applies when a peace officer or firefighter 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 . . . has been approved to receive the officer’s duty-related disability pension.

Minn. Stat. § 299A.465, Subd. 1.

The first element of Minn. Stat. § 299A. 465, Subd. 1, requires that a disabling injury result in the officer’s retirement or separation from service. Officer Sloan sustained an injury to his low back in the nature of a disc herniation at L4-5 of the lumbar spine. Although liability for the full nature and extent of this injury was disputed by the University of Minnesota, The Honorable Jennifer Patterson of the Office of Administrative Hearings ruled in Officer Sloan’s favor, finding that the disc herniation at L4-5 was causally related to the work injury of October 8, 2001. After the injury,

Officer Sloan was determined to be physically unfit to continue as a police officer.

PERA approved Officer Sloan's application for *In The Line of Duty Disability Benefits* in 2005. When PERA approves an officer to receive a duty-related disability pension, PERA must conclude that the officer is suffering a disabling injury that resulted in long-term disability and that the injury occurred while the officer was acting in the course and scope of his or her duties. See, Minn. Stat. § 353.656, Subd. 1 (stating that an officer is entitled to duty-related pension benefits if he or she is disabled "as a direct result of any injury, sickness, or other disability . . . which has or is expected to render the member physically or mentally unable to perform the duties as police officer," and the injury has "incurred in or [arose] out of any act of duty"). In Conaway v. St. Louis County, 702 N.W.2d 799 (Minn, Appeal 2005), the Court noted that "the legislative comments on Minn. Stat. § 299A.465 show that the legislature believed PERA would be an effective screen in determining an officer's eligibility for benefits." See, Hearing on S.F. No. 233 Before The Senate on Comm. On State Gov't Operations Veteran Affairs (Apr. 8, 1997); House Floor Debate on H.F. No. 333 (Mar. 3, 1997) (Statement of Rep. Farrell). "PERA has the ability to access all of an appellant's medical records and related information from any source to determine whether an officer is disabled." Minn. Stat. § 353.656, Subd. 5. Additionally, PERA has its own physicians review evidence of an applicants disability. Minn. Stat. § 353.33, subd. 4,6 (a)(2004). Conaway at 784. Therefore, it is clear that Officer Sloan sustained a disabling injury as used in Minn. Stat. § 299A.465.

B. OFFICER SLOAN WAS SEPARATED FROM SERVICE AS A POLICE OFFICER AS A DIRECT RESULT OF THE DISABLING INJURY SUSTAINED ON OCTOBER 8, 2001

Minn. Stat. § 299A.465 deals exclusively with peace officers and firefighters. The use of the

words “separation from service” must be read in context of the overall statute. The Minnesota Legislature, through the Public Employee’s Retirement Association (PERA) statute, has provided special statutory provisions to protect public safety officers such as Officer Sloan:

It is 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 public safety of others. Since this work is hazardous, special provisions are hereby made for retirement pensions, disability benefits and survivor benefits based on the particular dangers inherent in these occupations.

Minn Stat. § 353.63 (2002).

In Conaway, the court observed that the legislature linked Minn. Stat. § 299A.465 to Minn. Stat. § 353.656 (2004).

“Minn. Stat. § 299A.465 subd. 1(a)(3), provides that an officer must be approved to receive a “duty related disability pension” under Minn. Stat § 353.656 in order to receive continued health insurance coverage. That latter section provides benefits to an officer:

who becomes disabled and physically unfit to perform duties as a police officer . . . 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 . . . for a period of at least one year, shall receive disability benefits.

Minn. Stat. §353.656, subd. 1. We see a remarkable similarity between the two statutes. The phrase “suffers a disabling injury that . . . results in the officer’s or firefighter’s retirement or separation from service” in Minn. Stat. §299A.465 subd. 1(a)(1) is the functional equivalent of the phrase “becomes disabled and physically unable to perform the duties as a police officer . . . which has or is expected to render the member physically or mentally unable to perform the duties as police officer” in Minn. Stat. §353.656.

Conaway v. St. Louis County, 702 N.W.2d 779,783 (Minn. Appeal 2005).

As a direct result of the disabling injuries sustained by Officer Sloan on October 8, 2001 he was deemed to be physically unable to perform the duties of a police officer by PERA and his treating physicians. He last worked for the University of Minnesota on June 30, 2002. Therefore,

it is clear that he has been “separated from service” as a police officer as a result of the injury of October 8, 2001.

C. OFFICER SLOAN’S DISABLING INJURY OCCURRED WHILE HE WAS ACTING IN THE COURSE AND SCOPE OF DUTIES AS A POLICE OFFICER.

The second provision of Minn. Stat. § 299A.465 requires that the disabling injury occur while the officer is acting in the course and scope of the duties as a peace officer. In making this decision, 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. Minn. Stat. § 299A.465, Subd. 6.

The PSOBEP erred in denying Officer Sloan’s claim for benefits on the basis that Appellant was injured lifting a heavy object, and that such an action was not an occupational duty unique to the job. The Panel denied benefits in a split decision, with two of the members in favor of awarding benefits due to the fact that the incident that led to the back injury took place in the first few weeks after September 11, 2001. At the hearing for benefits, Officer Sloan testified that the University police had received a large volume of concerned calls about the abandoned television set, and immediate action needed to be taken. (T. 3-5) Leaving the set there for maintenance to remove later would have only allowed the public concern to grow.

The determination by the Minnesota Public Employees Retirement Association (PERA) pursuant to Minn. Stat. § 353.656, subd. 1 (2004), that a peace officer is disabled is binding on a county as an employer for purposes of determining whether the officer qualifies for continued health-insurance coverage under Minn. Stat. § 299A.465. “If an officer satisfies the third criterion of Minn.

Stat. § 299A.465. “If an officer satisfies the third criterion of Minn. Stat. § 299A.465, subd. 1 (a), by qualifying for a duty related pension, the officer necessarily has satisfied the other two criteria as well. Conaway v. St. Louis County, 702 N.W. 2d 779, 785. (Minn. App. 2005).

The PSOBEP’s determination that Officer Sloan did not establish that his occupational duties or professional responsibilities put him at risk for the type of illness or injury sustained is arbitrary, unreasonable, unsupported by substantial evidence and is based on an error of law. Officer Sloan was working as a University of Minnesota Police Officer when he sustained the disabling injuries. No testimony was offered to dispute the circumstances under which his injury occurred. Officer Sloan received workers’ compensation benefits and was awarded *In The Line of Duty Disability Benefits* by PERA.

The PSOBEP incorrectly suggests that it has a different standard than workers’ compensation and PERA, and that the disabling injury sustained by an officer must arise out of an activity uniquely associated with the duties of their occupation. (T. 6, 8) No such higher standard exists under Minn. Stat. § 299A.465. The statute is clear and unambiguous and does not include any limitation on the type of duty or offer a definition of “occupational duties or job responsibilities.”

Because the determination made by PERA that Officer Sloan is disabled is binding on the county and given the clear and unambiguous language of the statute, the court must conclude that Officer Sloan sustained a disabling injury while acting in the course and scope of duties as a peace officer.

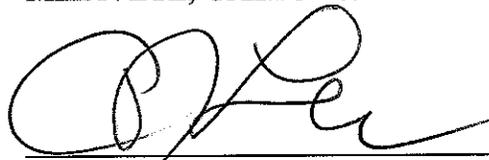
CONCLUSION

Appellant respectfully requests that this Court reverse the Public Safety Officer Eligibility Benefits Panel’s Determination Order because the clear and unambiguous language of the statute

requires the University of Minnesota to pay the employer's contribution for health insurance coverage for Appellant until Appellant reaches age 65. The Public Safety Officer Benefits Panel erred in denying Alexander B. Sloan benefits in determining that Officer Sloan's occupational duties and professional responsibilities did not put him at risk for the type of illness or injury which he sustained.

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Dated: 5/17/06



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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).