

No. A06-2263

STATE OF MINNESOTA

IN COURT OF APPEALS

In the Matter of the Claim for Benefits by Scott A. Sletten

RESPONDENT'S BRIEF

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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 (2006)?

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

Apposite Authority:

Minn. Stat. § 299A.465, subd. 1 (2006)

Minn. Stat. § 299A.465, subd. 6 (2006)

- 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 (2006)?

That issue did not come before the Panel.

Apposite Authority:

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

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

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

STATEMENT OF THE CASE

On September 25, 2006, Appellant Scott A. Sletten (hereinafter referred to as “Appellant”) filed a claim with the Minnesota Public Safety Officers Benefit Eligibility Panel (hereinafter referred to as “the Panel”) for continuing health insurance benefits under the provisions of Minn. Stat. § 299A.465, subd. 1 (2006). (A. 35-38)¹ On October 12, 2006, the Panel met to consider the claim of Appellant. While Appellant’s injuries occurred while he was a firefighter for the City of St. Paul, the Panel believed that his occupational duties or professional responsibilities did not put him at risk for the type of injury he sustained, as required by Minn. Stat. § 299A.465, subd. 6 (2006). (A40) The Panel on a 5 to 1 vote denied Appellant’s claim for benefits under Minn. Stat. § 299A.465, subd. 1(c) (2006) because the Panel determined that the evidence was inconclusive that Appellant’s occupational duties or professional responsibilities put him at risk for the injury which he sustained. (A. 40) The Panel was troubled by the fact that the February 18, 2002 injury occurred while Appellant was lifting a chair into the firehouse kitchen, and that the April 27, 2004 reinjury resulted in no immediate loss of work or medical attention. (T. 8, 9, 13)² Appellant filed a Petition for Writ of Certiorari appealing the October 27, 2006 Order of the Panel. (A. 41)

¹ A. refers to the page of the Appendix of Appellant’s Brief.

² T. refers to the Transcript of the review of Appellant’s claim on October 12, 2006.

STATEMENT OF FACTS

Appellant, a St. Paul firefighter, was injured on February 18, 2002 when he hurt his left shoulder and ruptured a disc in his neck while moving a chair into the kitchen at Fire Station 1. (A. 1, 2; T. 3, 4)

On April 27, 2004, Appellant reinjured himself during a cave rescue. (A. 6, 7; T. 4, 6) When Appellant reported the incident to his supervisor on April 29, he noted no loss of work and had not required medical attention. (T. 9) The same was true for reports filed in June of 2004. (T. 9) Evidence before the Panel showed that Appellant took no time off from work or received medical treatment for the April 2004 injury until July 2004, when he was referred to Physicians Neck and Back Clinic for treatment. (A. 18; T. 8, 9)

On August 11, 2006, Appellant was awarded a PERA duty-related disability pension. (A. 30-32) On September 25, 2006, Appellant filed his Eligibility Application Form with the Panel requesting continuing health care benefits under Minn. Stat. § 299A.465 (2006). (A. 35-38)

On October 12, 2006, the Panel met to consider Appellant's claim. (A. 40) The Panel denied Appellant's claim on a 5 to 1 vote. (A. 40). On October 27, the Panel issued an order determining that the evidence was inconclusive that Appellant's occupational duties or professional responsibilities put him at risk for the type of illness or injury actually sustained. (A. 40)

At the October 12, 2006 review by the Panel, a representative of the City of St. Paul stated it was premature to make a decision as to Appellant's ability to come back

to work. (T. 10) Appellant's injury from April 27, 2004, where he was reinjured during the cave rescue, did not require any time off from work or medical treatment until July 2004. (T. 8, 9) The Panel was troubled that the February 18, 2002 injury occurred while Appellant was lifting a chair into the kitchen. (T. 13) That injury did not occur while Appellant was fighting a fire, on his way to a fire, or in an emergency situation.

ARGUMENT

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

Decisions of an administrative 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 (Minn. 1996) (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 an 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 party 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 (2006).

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*:

While 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 (2006).

Six of the Panel members considered Appellant's claim. The 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. Non-organizational member Dennis Flaherty is a former police officer and former executive director of the Minnesota Police and Peace Officers Association.

Each of the 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, subds. 1 and 6 (2006). The Panel on a 5 to 1 vote concluded that Appellant did not establish that he was entitled to continued health care 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 (2006).

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, subds. 1 and 6 (2006).

III. THE PANEL'S DECISION THAT APPELLANT DID NOT ESTABLISH THAT HIS OCCUPATIONAL DUTIES PUT HIM AT RISK FOR THE INJURIES HE SUSTAINED IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS NOT ARBITRARY OR CAPRICIOUS.

Minn. Stat. § 299A.465, subd. 1 (2006) provides, in part:

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

- (1) Results in the . . . firefighter's retirement or separation from service;
- (2) Occurs while the . . . firefighter is acting in the course and scope of duties as a . . . firefighter; and
- (3) The . . . firefighter had been approved to receive the . . . firefighter's duty-related disability pension.

Id.

Minn. Stat. § 299A.465, subd. 1(c) (2006) provides, in part:

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

Id.

To qualify for this benefit, the Minnesota legislature established a two-prong test under Minn. Stat. § 299A.465, subd. 6 (2006). That two-prong test is:

- (1) Whether the firefighter has been approved to receive a duty-related disability pension **AND**
- (2) The panel shall determine whether or not the firefighter's occupational duties or professional responsibilities put the firefighter at risk for the type of illness or injury actually sustained.

Id. (Emphasis added.)

Appellant has satisfied the first prong because he was awarded a duty related disability pension from PERA. However, the Panel in this case determined that Appellant did not meet the second prong of the test because he did not establish that his occupational duties or professional responsibilities put him at risk for the type of injury he sustained.

Appellant is correct that both of his injuries occurred while he was on duty as a firefighter for the City of St. Paul. However, the February 18, 2002 injury occurred lifting a chair in a firehouse. It did not occur fighting a fire or responding to an emergency. While the April 2004 reinjury occurred during a cave rescue, the Panel was troubled by the fact that Appellant took no time off from work or received any medical treatment for that injury until some three months later in July 2004. Moreover, representatives from the City of St. Paul at the October 12, 2006 review of Appellant's claim stated it was premature to make a decision as to Appellant's ability to come back to work.

The Panel believed that Appellant was not entitled to benefits under Minn. Stat. § 299A.465, subd. 1 (2006) because his February 2002 injury from lifting a chair into a firehouse kitchen was simply not an occupational duty or professional responsibility that put him at risk for the type of injury he sustained. While firefighters are required to live at the firehouse while on duty, and Appellant was on duty at the time, any person could suffer an injury lifting a chair. The Panel believed that the injury from lifting a chair was not the intended use of benefits under Minn. Stat. § 299A.465, subd. 6 (2006).

While this Court in the *Matter of the Claim of Benefits by Jeffrey R. Muellers*, 725 N.W.2d 121 (Minn. Ct. App. 2006) determined that Minn. Stat. § 299A.465 does not

provide that a preexisting condition is a factor relevant to whether an injury occurred while an officer was acting within the course and scope of his or her duties as a peace officer, it is still necessary that the injury be the cause of the disability. While the April 2004 cave incident occurred while Appellant was on duty, the fact that Appellant did not miss any work or seek medical treatment for a three month period lead the Panel to the conclusion that the April 2004 injury was not the cause of his disability retirement.

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. The substantial evidence here shows that Appellant injured himself lifting a chair. Substantial evidence shows the 2004 injury did not require medical attention at the time of injury. Those findings are substantial evidence supporting the Panel’s determination that he did not establish that his occupational duties or professional responsibilities put him at risk for the type of injury he sustained in 2002 and that the injury in 2004 was not the cause of his disability retirement.

Not all public employees are granted continuing health benefits because they are on disability retirement. The Panel believes the benefit under Minn. Stat. § 299A.465 (2006) was created to protect law enforcement officers and firefighters who are engaged in extremely hazardous professions. Peace officers can be killed or severely injured implementing their duties of protecting the public. Firefighters can be killed or severely injured in fighting fires and responding to other emergencies.

This continuing health care benefit, which is awarded to no other public employees, was implemented as a benefit for the unique responsibilities of peace officers and firefighters. Minn. Stat. § 299A.465 (2006) was enacted because law enforcement officers and firefighters face greater risks of injury or death than other government employees.

The legislature did not award this benefit automatically to any peace officer or firefighter injured in the line of duty and receiving a duty-related disability pension. Instead, the legislature created a panel of knowledgeable persons, including peace officers, a firefighter, and representatives of cities and counties, to determine whether the firefighter's occupational duties or professional responsibilities put that firefighter at risk for the type of illness or injury actually sustained.

In this case, the majority of the Panel members believed that Appellant's occupational duties or professional responsibilities did not put him at risk for the injury he sustained to his shoulder and disc in his neck. The issue is not whether Appellant received workers' compensation benefits or was insured while on duty, but whether Appellant qualifies for continuing health care benefits under the two prong test.

The legislature left to the Panel of peace officers, firefighter, and local government representatives the decision to determine whether a firefighter's occupational duties or professional responsibilities put the firefighter at risk for the type of illness and injury actually sustained. In this case, the Panel determined that Appellant's occupational duties and professional responsibilities did not put him at risk for the injury he sustained. The decision should be affirmed.

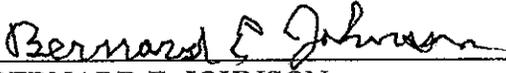
CONCLUSION

For the above reasons, Respondent requests that its decision denying Appellant's claim for benefits be affirmed.

Dated: 2.13.07

Respectfully submitted,

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