

NO. A07-1571

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State of Minnesota  
In Court of Appeals

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In the Matter of the Disability Earnings Offset of  
Mylan Masson

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RELATOR'S REPLY BRIEF

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## ARGUMENT

The essence of the dilemma for Relator Mylan Masson in this case is that PERA only includes income from her Police Position in calculating the amount of the “disabilitant reemployment earnings limit” under Minn. Stat. § 353.656 subd. 4, yet at the same time PERA uses income from any source in calculating whether Ms. Masson’s earnings and disability benefits exceed the disabilitant reemployment earnings limit. Simply put, PERA uses only the income from the position from which Ms. Masson was disabled to calculate her disabilitant reemployment earnings limit, but then uses income from all employments, including unrelated preexisting employments, to determine if she has exceed that limit.

If PERA only used the earnings from a position that replaced the Police Position to calculate a potential offset, there would not be the absurd result that comes in the present case. Alternatively, if PERA used salary from both positions held at the time of the work related injury to calculate her reemployment earnings limit, there would be much more balance in the application of the offset. Unfortunately, to the extent that that PERA uses the narrower scope of “salary earned at the date of the disability” to calculate the earnings limit on the one hand, but then on the other hand applies the broad scope of earnings from any employment to determine if there are excess earnings, Ms. Masson has a limitation on her benefit that disadvantages and economically injures her.

### I

#### **PERA HAS NOT ESTABLISHED AN UNAMBIGUOUS MEANING TO MINN. STAT. § 353.656 THAT SUPPORTS ITS DETRMNATION**

PERA has failed to establish that the unambiguous meaning of the language utilized by the Legislature in Section 353.656 supports its calculation of Ms. Masson’s disability benefit

offset. The only argument of substance offered by PERA is that the legislature could have specified a distinction between “newly-acquired full-time jobs and recently-acquired full-time jobs, but it did not do so”. *Respondent’s Brief at page 11*. The focus on newly-acquired versus recently-acquired jobs in Respondent’s brief misses the point here entirely.

The meaning of Minn. Stat. § 353.656 subd. 4 is not ambiguous, and it does not support the interpretation imputed by PERA. As noted in Relator’s brief in chief, statutory language must be considered in its statutory context. *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). In this case, the legislature provided in Minn. Stat. § 353.656 subd. 1 that Police and Fire Plan participants would receive a disability benefit if they became disabled in the line of duty. Minn. Stat. § 353.01 subd. 41 defines "duty disability" as a condition that is:

...expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the public employees police and fire plan, and that is the direct result of an injury incurred during, or a disease arising out of, the performance of normal duties or the actual performance of less frequent duties, either of which are specific to protecting the property and personal safety of others and that present inherent dangers that are specific to the positions covered by the public employees police and fire plan.

These provisions reflect that the legislature intended that police officers receive disability benefits if they are disabled from their police positions.

The benefit provided under PERA is then subject, plainly, to a limit if that disabled police officer *resumes a gainful occupation*. That occupation does not have to be another police position, but it is plain from the language and the context that the member needs to replace the police position for the offset to apply. This plain interpretation is confirmed by the language in Minn. Stat. § 353.656 subd. 4 describing *disabilitant reemployment earnings*. The language of the statute does not expand the scope to “all employment earnings” as construed by PERA.

Instead, “disabilitant” refers to the particular disabled police officer. “Reemployment” plainly refers to obtaining employment that replaces the position the officer is disabled from.

“Earnings” means just what it says, the earnings from the reemployment the disabilitant generated from that reemployment.

Minn. Stat. § 353.656 subd. 4(b) further supports this plain meaning. That provision defines the disabilitant reemployment earnings limit as the *salary earned at the date of disability*, or 125 percent of the base salary currently paid for similar positions by the employing governmental subdivision. The measuring stick for earnings is based exclusively on the police position held by the disabled member at the time of the disability.

PERA suggests that there is significance here to employment that is new versus recent. Contrary to the construction offered by PERA in its brief, the College Position Ms. Masson held prior to her disability was neither new nor recent. She had held that position for more than nine years before the disabling accident. Similarly, PERA’s assertion that Ms. Masson has substantial income from the College Position and that should be a factor in the determination that the language is unambiguous is seemingly nothing more than a ruse to distract the court from the unsupported interpretation of the statute applied by PERA. Ms. Masson’s income from the College Position and her Police Position were roughly equal. Her duty related disability took away from her the ability to perform a hazardous public safety position, and half of her income.

The terms “resume” employment and “reemployment earnings” have a readily understood plain English meaning. The statute is unambiguous, and Relator would have needed to have replaced her Police Position to trigger the offset under the statute.

## II

### THE LEGISLATIVE INTENT FOR THE STATUTE SUPPORTS RESPONDENT'S INTERPRETATION OF THE STATUTORY BENEFIT OFFSET

The legislative intent in this case is framed by Minn. Stat. § 353.63, in which the legislature announced that special consideration should be given to the government employees who devote their time to protecting the safety of others. The legislature recognized that this work is hazardous. The legislature proceeded to provide a disability benefit for police officers disabled in the line of duty. Although Relator does not believe that the language in Minn. Stat. § 353.656 is ambiguous, if there is a determination that it is ambiguous (rather than merely misconstrued), the legislative intent is borne out most clearly by the language that was *not* used in the statute.

None of the arguments asserted by PERA is compelling in settling the intent of the legislature. For example, PERA asserts that the legislature could have said more to limit the application of the offset to disabled police officers. In actuality, the legislature used terms like “disabilitant reemployment earnings” and “resumes” employment. The very argument raised by PERA at page 15 of its brief actually reinforces the Relator’s position, and underscores the significance of these word choices. If the legislature meant that “any employment” should be used when calculating disability offsets, it simply could have said that. The fact that it did not speaks volumes about the legislature’s intent.

Similarly, the practice adopted by PERA of applying income from any employment, regardless of whether it is replacement income for the “disabilitant”, offers no comfort. This argument, set out on page 16 of PERA’s brief, boils down to essentially nothing more than “because we have always done it this way” as the rationale for arriving at an interpretation that is not expressed in the statute.

Ultimately, the argument at page 17 of PERA's brief that "any" earnings is the most appropriate interpretation of the statutory language is only logical if express terms in the statute section like "disabilitant reemployment" and "resume" are ignored. The statutory language reflects a structure from that legislature that the effected individual, as the disabilitant, needs to have some reemployment from that lost position to trigger an offset. No such reemployment occurred in this case, as the Relator held her other employment for over nine years before the disability, and twelve years from when she was released from her police position.

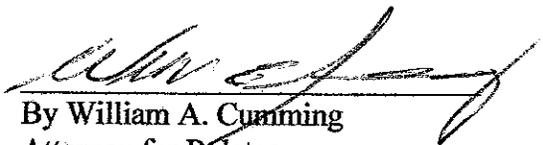
Moreover, a broad interpretation would perhaps be appropriate if the statute was remedial. However, this statute does not correct a wrong or address some identified deficiency. Instead, the statue awards a benefit due to the risk and potential sacrifice of the employees covered by the police and fire plan. The statute should not be given the expansive meaning asserted by PERA, but the more narrow and focused meaning of the clauses as presented.

### **CONCLUSION**

The express language of the statute is unambiguous. The language in the statute dictates that a duty related disability benefit will only be subject to an offset if the disabled member has reemployment replacing that employment from which they became disabled. In addition, the purpose of the statute and the policy expressed by the legislature confirms that an offset should not apply in this case.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read 'William A. Cumming', written over a horizontal line.

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