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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1354**

In the Matter of the
Application for Disability Benefits
of Michael Palermo

**Filed June 24, 2008
Reversed
Klaphake, Judge**

Public Employees Retirement Association
of Minnesota

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Wright, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator challenges the Public Employees Retirement Association (PERA) board's denial of his application for duty-related disability benefits, arguing that the board's decision was arbitrary, unreasonable, and based on an error of law. Because the board's interpretation of the statute fails to reconcile the provisions of Minn. Stat. § 353.656

(2006) and because the board's basis for denial is not found in the statute, it is unreasonable and based on an error of law, and we therefore reverse.

FACTS

Relator Michael Palermo was a police sergeant for the City of Roseville when he was injured in May 2004 while arresting a mentally ill suspect who escaped from the rear of an ambulance and jumped on him. Relator fell out of the ambulance and severely injured his back.

Relator was off work for four months and returned on a part-time basis to a light-duty job, which later increased from two to four hours per day. He was treated for nerve damage, muscle spasms, and foot drop, and was prescribed physical therapy, epidural injections, pain relief patches, a TENS unit, a stabilizing belt and an ankle-foot orthotic device. Relator's light-duty assignment did not include his former duties as a police sergeant, but was covered by police and firefighter benefits.

After being told that he could not return to his former job until he was released from all medical restrictions, relator settled his workers' compensation claim with the city. As part of this settlement, he agreed to submit to a voluntary resignation from employment. Relator formally resigned from employment on December 1, 2005.

Relator filed an application for disability benefits on November 10, 2005, approximately 18 months after his injury. After PERA staff denied benefits, an evidentiary hearing on the application was held before an administrative law judge (ALJ). Relator's primary physicians testified that relator was disabled by a permanent and substantial injury; the ALJ accepted these opinions and expressly rejected the opinion of

the independent medical examiner to the contrary. But the ALJ determined that PERA properly denied relator benefits because he had voluntarily resigned from his light-duty assignment. The PERA board adopted the ALJ's findings and recommendation and denied relator's application for disability benefits. Before this court, PERA also argued that relator was not disabled within the meaning of the relevant statute in effect on the date of injury. This appeal followed.

DECISION

Standard of Review

The reviewing court may reverse the quasi-judicial decision of an agency without statewide jurisdiction, such as the PERA board, if the decision 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) (quotation omitted). We review the construction of a statute de novo. *In re Application of Brittain for Disability Benefits*, 724 N.W.2d 512, 516 (Minn. 2006). The party challenging a decision of the board has the burden of proving that the board's decision should be reversed. *In re Application of Allers for Ret. Benefits*, 533 N.W.2d 646, 652 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995).

Statutory Interpretation

A police officer is eligible for duty-related disability benefits if

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 [police officer] physically or

mentally unable to perform the duties as a police officer . . .
for a period of at least one year[.]

Minn. Stat. § 353.656, subd. 1(a) (2006). The statute does not define “disabled” or “disability.” “Police officer” can include both full-time and part-time employment positions. *See* Minn. Stat. § 353.64, subs. 1, 2 (2006) (making coverage under PERA mandatory for full-time police officers and permissive for part-time police officers).

The statute lays out two methods for applying for duty-related disability benefits, depending on whether application is made less than or more than two years after injury. Minn. Stat. § 353.656, subd. 8(b), (c) (2006). In this case, relator applied within two years after his injury. According to the relevant subsection, “the application must be supported by evidence that the applicant is unable to perform the duties of the position held by the applicant on the date of the injury or the onset of the illness causing the disability.” *Id.* at subd. 8(b).

Courts must “read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.” *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). Minn. Stat. § 353.656, subd. 1 (2006), states that a police officer who is injured in the line of duty and who is unable to perform a police officer’s duties for at least a year, is entitled to receive disability benefits. This statute does not speak to whether the officer must be totally disabled or merely precluded from performing the job he or she held on the date of injury. Minn. Stat. § 353.656, subd. 8(b) requires that a police officer applying for duty-related disability benefits must show that he or she is unable to perform the duties of the

position held on the date of injury. When we read these two subdivisions together, we conclude that an injured police officer must show that he or she (1) was injured in the line of duty; (2) was unable to perform the duties of the position held on the date of injury; and (3) has been unable to perform those duties for more than one year.

The board argues that because subdivision 8(b) was added to the statute on July 1, 2004, after the date of relator's injury, this language is not applicable to relator. Although relator was injured on May 1, 2004, he filed his first application for disability benefits in November 2005. Under both versions of the statute, a police officer is considered disabled if the injury "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[.]" Minn. Stat. § 353.656., subd. 1 (2002, 2004). According to this language, a police officer is not disabled until he or she is unable to perform the duties as a police officer for at least one year or until it is clear he or she is expected to be unable to perform these duties for one year.

Thus, relator could not be considered disabled and was not eligible for disability benefits until May 1, 2005, or until it became clear that he would be disabled at least until May 1, 2005. Because his claim for disability benefits did not exist on May 1, 2004, we conclude the statute in effect on the date of the claim, not the injury, governs relator's application for benefits. Under the statute in effect on May 1, 2005, the applicant is required to submit proof of his or her inability to perform the duties of the position held on the date of injury. Minn. Stat. § 353.656, subd. 8(b) (2004). This position is supported by PERA's November 9, 2005 letter to relator, which included instructions on

the application process. In this letter, PERA directed relator to “provide evidence that you cannot perform the duties of the position you held at the date of disability.”

We must therefore examine whether relator was unable to perform the duties of the position he held on the date of injury. The statute does not enumerate the duties of a police officer, but a “police officer” is defined, for purposes of coverage under the PERA police and firefighter fund, as a person who is employed full time and is

licensed by the Minnesota peace officer standards and training board . . . who is charged with the prevention and detection of crime, who has the full power of arrest, who is assigned to a designated police or sheriff’s department, and whose primary job is the enforcement of the general criminal laws of the state[.]

Minn. Stat. § 353.64, subd. 1(1). A part-time officer may also be covered by the fund, if the employing governmental division adopts a resolution to that effect and that person performs the same duties as a full-time police officer. *Id.* at subd. 2.

Relator provided a description of job duties expected of a Roseville police sergeant, the position he occupied on the date of injury, which outlines the duties expected from a police officer. These duties include handling arrest situations and procedures, emergency services, traffic law enforcement, and legal and judicial activities. The normal working conditions are 8.5 hours for six consecutive days, both indoors and outdoors. An officer must have the ability to lift 60 pounds, walk, sit, climb, bend, stoop, push and pull, crawl, kneel, squat, twist, and turn. In Roseville, the position of sergeant includes supervisory and administrative duties, but a police sergeant is expected to spend 50% of his time in the office and 50% of his time on patrol.

Using these parameters, relator was not performing the duties of the job he held on the date of injury when he returned part time to a light-duty job; he was performing a strictly clerical, sedentary task. *See* Minn. Stat. § 353.656, subd. 8(b). Relator was not performing the duties generally expected of a police officer and had not been doing so for more than one year. Minn. Stat. § 353.656, subd. 1, defines disability as the inability to perform the duties of a police officer for a period of at least one year. Relator thus meets the statutory definition of disability under either subdivision.

Voluntary Resignation

We look next at the PERA board's original basis for denial of duty-related disability benefits. The board adopted the findings and recommendation of the ALJ who found that relator was disabled and had been for more than one year. The ALJ, and thus the board, concluded that relator was ineligible for benefits because he quit his light-duty assignment. We have reviewed the statutes; this is not a statutory basis for denial of duty-related disability benefits.

This court reviews an agency's quasi-judicial decision to determine if it is reasonable "in light of the proper meaning of the statute." *In re Application of Hildebrandt for Disability Benefits*, 701 N.W.2d 293, 298 (Minn. App. 2005). The board's interpretation of Minn. Stat. § 353.656 (2006), which does not reconcile the provisions of subdivisions 1(a) and 8(b), and its denial of benefits with no statutory basis is unreasonable and an error of law.

Reversed.