OAH 22-3600-37954

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

In the Matter of the City of [redacted]

Petitioner,

v.

[redacted] and the Public Employees Retirement Association,

Respondents.

**ORDER DENYING MOTIONS FOR SUMMARY DISPOSITION, COSTS, AND SANCTIONS**

This matter comes before Administrative Law Judge Christa L. Moseng upon the September 29, 2023, Motion for Summary Disposition (Motion) of the City of [redacted] (Petitioner or City). [redacted] (Respondent) filed a response opposing the Motion on October 13, 2023.

Also on October 13, 2023, Respondent filed a Motion for Costs and Sanctions. On October 27, 2023, the City filed its response.

Christina C. Petsoulis, Attorney at Law, appeared on behalf of the City. Mary Beth Boyce, Schmidt & Salita Law Team, appeared on behalf of Respondent. Lance L. LaFrombois, Deputy General Counsel, represents the Public Employees Retirement Association of Minnesota (PERA).

Based upon the record, the submissions of counsel, and for the reasons explained in the accompanying Memorandum,

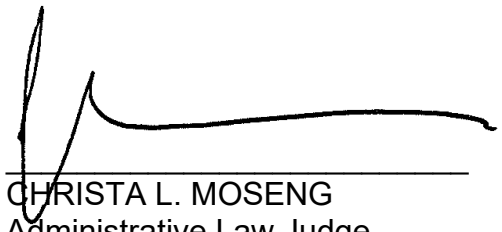
**IT IS HEREBY ORDERED:**

1. The City's Motion for Summary Disposition is **DENIED**.

2. Respondent's Motion for Costs and Sanctions is **DENIED**.

3. This matter will proceed to hearing as scheduled in the May 26, 2023, Third Prehearing Order.

Dated: November 20, 2023



CHRISTA L. MOSENG
Administrative Law Judge

## MEMORANDUM

## I. Introduction

This case concerns whether Respondent is entitled to continuing health care coverage under Minn. Stat. § 299A.465 (2020), which provides that a peace officer who becomes disabled in the line of duty[1] is entitled to receive continuing health care coverage benefits from his or her employer until the officer reaches the age of 65.[2] The employer must also provide continuing coverage for an officer's dependents if the officer was receiving dependent coverage at the time of the injury under the employer's health plan.[3] The employer's obligation to provide such coverage is triggered upon determination by the Public Employees Retirement Association of Minnesota (PERA)[4] that the officer is eligible to receive a "duty disability" benefit.[5]

PERA determined Respondent was eligible for a duty disability benefit and on [redacted], notified Petitioner that it was required to provide ongoing health care coverage to Respondent.[6] An employer that receives such a notice from PERA may seek review of PERA's determination in a contested case proceeding before the Office of Administrative Hearings.[7] Petitioner demanded a contested case and PERA commenced this matter by filing a Notice and Order for Pre-Hearing Conference on November 30, 2021.[8]

[1] Minn. Stat. § 353.01, subd. 41 (2022), provides that a "duty disability" may be physical or psychological and that the term means "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 retirement plan, and that is the direct result of an injury incurred during, or a disease arising out of, the performance of inherently dangerous duties that are specific to the positions covered by the public employees police and fire retirement plan."
[2] Minn. Stat. § 299A.465, subd. 1(a), (c).
[3] *Id.*, subd. 1(c)(2).
[4] Although PERA is nominally a party in this case, its role is limited to issuing the initial notice and order for hearing and providing its file to the other parties after a protective order is entered. PERA typically does not otherwise participate in cases under Minn. Stat. § 299A.465. PERA did not appear in connection with the motion under consideration.
[5] Minn. Stat. § 299A.465, subd. 1(a)(1).
[6] Ex. 7; Minn. Stat. § 299A.465, subd. 1(b) (providing that PERA must provide notice of its determination to the officer and employer).
[7] Minn. Stat. 299A.465, subd. 1(b)(2).
[8] Notice and Order for Prehearing Conference.

Petitioner has moved for summary disposition, which Respondent opposes.

## II. The Arguments

The City concedes that Respondent has a disabling condition that is likely to last more than 12 months,[9] but contends that the record lacks evidence sufficient to support finding that the cause of Respondent's condition meets the statutory duty disability requirement.[10] To support its motion, Petitioner offers reports and opinions by Dr. [redacted], M.D.;[11] Dr. [redacted] M.D.;[12] and [redacted] M.D.,[13] that Respondent's condition was not the direct result of an injury incurred during, or a disease arising out of, the performance of inherently dangerous duties specific to Respondent's position as a police officer. The City argues that no genuine issues of material fact exist to preclude a determination that Respondent's condition is not a duty disability under Minn. Stat. § 353.01, subd. 41.

Respondent argues that the cause of his condition is a genuine issue in dispute. He offers the medical opinions of doctors [redacted], M.D., F.A.H.A.;[14] Dr. [redacted], M.D., M.P.H.[15]; and Dr. [redacted], D.O.,[16] to demonstrate that causation is a genuine issue for trial. Respondent asserts that because a material factual dispute remains, summary disposition is unwarranted and the Motion should be denied.

## III. Summary Disposition Standard

Summary disposition is the administrative law equivalent to summary judgment.[17] Summary disposition is appropriate where there is no genuine issue of material fact and where the application of law to undisputed fact will resolve the controversy.[18] The Office of Administrative Hearings has generally followed the summary judgment standards developed in the district courts in considering motions for summary disposition of contested case matters.[19]

The Administrative Law Judge's function on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact,

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[9] Petitioner City of [redacted] Memorandum of Law in Support of Motion for Summary Disposition (Sept. 29, 2023) (Pet'r's Mem.) n.44.
[10] Pet'r's Mem. at 13–15.
[11] Affidavit of Christina C. Petsoulis in Support of motion for Summary Disposition (September 29, 2023) (Petsoulis Aff.) ¶ 13, Ex. 10 at 502–04.
[12] Petsoulis Aff. ¶ 11, Ex. 8.
[13] Petsoulis Aff. ¶ 12, Ex. 9.
[14] Declaration of Mary E. Boyce (Boyce Decl.) (October 13, 2023), Ex. B.
[15] Boyce Decl., Ex. C.
[16] Boyce Decl., Ex. E.
[17] *Pietsch v. Minnesota Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2023).
[18] *Sauter v. Sauter,* 70 N.W.2d 351, 353 (Minn. 1955)*; Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985)*; Gaspord v. Washington County Planning Commission,* 252 N.W.2d 590, 590-591 (Minn. 1977)*; See* Minn. R. 1400.5500 K (2023); Minn. R. Civ. P. 56.03.
[19] Minn. R. 1400.6600 (2023).

but solely to determine whether genuine factual disputes exist with regard to material issues.[20] The judge does not weigh the evidence on a motion for summary disposition.[21]

In deciding a motion for summary disposition, the judge must view the evidence in the light most favorable to the non-moving party.[22] All doubts and factual inferences must be resolved against the moving party.[23] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[24]

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact.[25] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts that are in dispute that can affect the outcome of the case.[26]

It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.[27] A genuine issue is one that is not sham or frivolous.[28] A material fact is a fact whose resolution will affect the result or outcome of the case.[29]

While the purpose and useful function of summary disposition is to secure a just, speedy, and inexpensive determination of an action, summary disposition cannot be used as a substitute for a hearing where any genuine issue of material fact exists.[30] Summary disposition is only proper where there is no fact issue to be decided.[31]

## IV. Analysis

### A. Motion for Summary Disposition

Evidence in the motion record, construed in the light most favorable to Respondent, establishes a genuine, material dispute concerning the cause of Respondent's disabling condition.

Causation is generally a fact question for the factfinder, unless "reasonable minds can arrive at only one conclusion."[32] Expert opinion concerning causation, if the opinion

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[20] *See, e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[21] *Id.*
[22] *Ostendorf v. Kenyon*, 247 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[23] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[24] *DLH*, 566 N.W.2d at 69.
[25] *Thiele*, 425 N.W.2d at 582.
[26] *Highland Chateau, Inc. v. Minnesota Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *rev. denied* (Minn. Feb. 6, 1985).
[27] Minn. R. Civ. P. 56.05.
[28] *Highland Chateau,* 356 N.W.2d at 808.
[29] *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976); *see also O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).
[30] *Sauter*, 70 N.W.2d at 353.
[31] *Id.*
[32] *Lubbers v. Anderson*, 539 N.W.2d. 398, 402 (Minn. 1995)

has a reasonable basis in fact, can sustain a causation finding.[33] Respondent has offered exhibits documenting that doctors have concluded that his condition was caused by "an injury or illness at work," and that the conclusion may have a reasonable basis in fact.

First, as the City acknowledges,[34] Dr. [redacted] opined that Respondent's duties caused his condition. Dr. [redacted] wrote, based upon a review of Respondent's medical claim file, that it:

> [S]upports the conclusion that the claimant's cardiac condition arose out of the physical exertion and the stress the claimant was faced with on the job while employed with the City of [redacted] Police Department there is found to be a causative factor between the claimant's disabling condition and the performance of his duties as a [redacted].[35]

The weight to give this evidence is not a matter for summary disposition.

Dr. [redacted] opinion is premised at least in part on the opinions of Drs. [redacted] and [redacted].[36] Both [redacted] and [redacted] noted—also based upon a review of Respondent's medical records—that he experienced a heart attack, which made him unable to perform essential functions of his job, as a result of an injury or illness at work.[37] Dr. [redacted] also relied on a July 2019 article concerning heart disease and law enforcement to support his conclusion.[38]

Taken together, the motion record evidence is sufficient to demonstrate that the cause of Respondent's condition is a fact that is subject to a genuine dispute. The City argues that the cause of Respondent's condition is unknown. The City relies on a statement by Dr. [redacted] that "some event that led to an MI . . . may not ever be known,"[39] with which Dr. [redacted] concurred,[40] and Dr. [redacted] affirmative statement that Respondent's work activities did not cause or substantially contribute to his condition.[41]

Viewing the evidence in the light most favorable to Respondent, the motion record evidence sufficiently demonstrates that the cause of Respondent's condition is a genuine issue for trial. Because the cause of Respondent's condition remains a material fact in dispute, this matter is not subject to summary disposition.

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[33] *Sandhofer v. Abbott-Nw. Hosp.*, 283 N.W.2d 362, 367 (Minn. 1979).
[34] Pet'r's Mem. at 16.
[35] Boyce Decl., Ex. E at 3.
[36] Boyce Decl., Ex. E at 3.
[37] Boyce Decl., Ex. B at 2; Ex. C at 1–2; Whether Respondent, in fact, experienced a heart attack is itself disputed. Petsoulis Aff., Ex. 9 at 92.
[38] Boyce Decl., Ex. E at 3–4.
[39] Petsoulis Aff., Ex. 10 at 504.
[40] Petsoulis Aff., Ex. 8 at 78.
[41] Petsoulis Aff., Ex. 9 at 92.

### B. Motion for Costs and Sanctions

Respondent has moved for sanctions against the City for its summary disposition motion, under Minn. Stat. § 549.211 (2022); Minn. R. Civ. P. 11; and the court's inherent authority. Respondent argues that the City's motion had no objectively reasonable basis, was unsupported by existing law, and misrepresented material facts. The City opposes the motion.

Although the City did not prevail in its summary disposition motion, the motion was neither frivolous nor unfounded. The summary disposition standard contemplates a shifting burden: first on the moving party to show the absence of a genuine issue of material fact, and then (if the first burden is satisfied) upon the responding party to overcome the moving party's showing by affirmatively demonstrating the need for an evidentiary hearing. As discussed above, the motion record evidence is not so clear cut as to give rise to only one reasonable conclusion. The City showed facts sufficient to justify putting Respondent to the shifted burden under the summary disposition standard.

The alleged misrepresentations quoted by Respondent can be understood as reasonably differing interpretations of undisputed facts, their relative significance, and the application of the law to those facts. The Judge declines to read the purportedly misleading statements in isolation, but instead reads them in their context—a motion concerning facts material to the application of Minn. Stat. § 353.01, subd. 41, which requires that a condition be "the direct result of an injury incurred during, or a disease arising out of, the performance of inherently dangerous duties that are specific to the positions covered by the public employees police and fire retirement plan." The zealous advocacy of Petitioner's counsel in support of its summary disposition motion, if somewhat imprecisely worded, does not amount to sanctionable conduct or give rise to a concern that judicial resources are being ill-used.

## V. Conclusion

The cause of Respondent's condition remains a material factual dispute for trial. The City's Motion for Summary Disposition must therefore be **DENIED**. The City's motion nevertheless had a reasonable basis in fact and law. Respondent's Motion for Costs and Sanctions is therefore also **DENIED**.

**C. L. M.**