

APPELLATE COURT CONFIRMS REQUIREMENT FOR A DUE PROCESS  
HEARING TO TERMINATE DISABILITY BENEFITS.

Peacock v Board of Trustees of the Police Pension Fund, Village of South Chicago Heights. (First District, Second Division. October 20, 2009).

The plaintiff, Craig Peacock, appealed from a judgment of the circuit court confirming a decision by the Board of Trustees of the Police Pension Fund for the Village of South Chicago Heights (the Board), which revoked his duty-related disability benefits because he was no longer disabled.

The plaintiff filed a two-count complaint in the circuit court. Count I sought a judicial review of the Board's administrative decision terminating the plaintiff's disability benefits. In count II, the plaintiff sought damages under 42 U.S.C. § 1983, based on the alleged deprivation of his right to due process, and attorney fees under 42 U.S.C. § 1988. Following a hearing, the circuit court entered a judgment on count I, confirming the Board's decision that the plaintiff was no longer disabled, and entered a written finding that the judgment was final and appealable.

On appeal, the plaintiff contends that the Board's decision is against the manifest weight of the evidence. He also contends that he was deprived of the right to due process in the proceedings before the Board and that the circuit court erred in denying his request for attorney fees.

FACTS:

The plaintiff was appointed as a police officer for the Village of South Chicago Heights in May 1984. During 1988 and 1991, the plaintiff

sustained multiple injuries to his lower back, which ultimately resulted in the need for surgical intervention. The plaintiff underwent a lumbar laminectomy, which was performed by Dr. Alex Michalow in May 1991. Four months after the surgery, Dr. Michalow released the plaintiff for full, unrestricted duty, but the chief of police suggested that the plaintiff obtain a second opinion.

The plaintiff was examined by Dr. Peter Iagmin on September 13, 1991. According to Dr. Iagmin, there were no physical findings suggesting an impaired function in the plaintiff's back. However, because the plaintiff had undergone spinal surgery, Dr. Iagmin recommended that he be restricted to duties involving a lifting capacity of no more than 50 pounds on an infrequent basis. Upon consideration of the reports of Drs. Iagmin and Michalow, the chief of police advised the plaintiff that his return to work as a police officer would place him at risk of serious injury. Following a hearing, the Board awarded the plaintiff disability benefits, which were paid without interruption from 1991 until April 2006. After being placed on disability, the plaintiff re-trained himself to become a journeyman machinist and worked in various shop-floor and supervisory positions before being hired as the plant manager at Progress Rail Services in approximately 1999.

Between November 1992 and April 2005, the plaintiff was evaluated by several orthopedic surgeons who had been retained by the Board to conduct independent medical examinations. Virtually all of these doctors found the plaintiff to be disabled.

In February 2006, the plaintiff received a note from Millie Williamson, the treasurer for the Village of South Chicago Heights, stating that the Board had elected to "hold" his disability payments until it received a report that he had been examined by a doctor. The plaintiff informed

Williamson that he had not been scheduled for an examination. Williamson later told the plaintiff that the note had been written in error. The plaintiff subsequently received his disability check for that month. At that time, the plaintiff was 49 years old, one year prior to being relieved of the statutory requirement that he submit to annual examinations in order to qualify for continued disability. See 40 ILCS 5/3-115 (West 2006).

Thereafter, the plaintiff was scheduled for an independent medical examination by Dr. Martin Lanoff, who was employed by a corporation known as INSPE. According to Dr. Lanoff, the plaintiff should be able to return to full, unrestricted duty as a police officer if he follows a simple lumbar exercise program. Dr. Lanoff certified that the plaintiff was not disabled from performing the duties of a police officer.

After receiving Dr. Lanoff's report and certification, the Board discontinued the payment of the plaintiff's disability benefits, WITHOUT A HEARING in April 2006. A year and a half later in October 2007 the Board finally conducted an administrative hearing. The Plaintiff testified and presented a doctor's report supporting his claim of continued disability. The deposition testimony of Dr. Lanoff was introduced.

Upon consideration of the plaintiff's testimony, the documentary medical evidence presented at the hearing, and the deposition testimony of Dr. Lanoff, the Board issued its written decision on January 17, 2008, finding that Dr. Lanoff's opinion that the plaintiff was no longer disabled was persuasive. The Board concluded that the plaintiff had recovered from his prior disability and was not eligible for disability benefits "dating back to the time he was found no longer disabled by Dr. Martin Lanoff."

## ISSUES:

Whether or not a Board can terminate disability benefits based on one doctor's findings.

Whether or not a Board can terminate disability benefits without a hearing.

Based on the record presented, the Appellate Court found that there was sufficient competent evidence in the record to support the Board's determination that the plaintiff is no longer disabled, and therefore its determination in that regard was not against the manifest weight of the evidence.

The Appellate Court next considered plaintiff's argument that the Board deprived him of his constitutional right to due process. In particular, the plaintiff claims that his right to due process was abrogated because the Board (1) discontinued payment of his disability benefits prior to conducting any hearing, (2) predetermined his claim, and (3) ceded its decision-making authority to Dr. Lanoff.

The receipt of a disability pension is a property right which is protected by due process guarantees, and administrative proceedings terminating disability payments must conform to the requirements of due process. Adequate notice of the proposed governmental action and a meaningful opportunity to be heard are the fundamental prerequisites of due process. In order to comport with due process, the notice must be reasonably calculated "to apprise [the] interested parties of the pendency of the action." Further, some form of hearing is required before an owner is finally deprived of his or her property interest. However, due process is a flexible concept, and the specific procedural requirements vary, depending upon the nature of the rights affected and the context in which the deprivation occurs. Though an

evidentiary hearing is not required in every circumstance, the administrative proceedings employed must provide the party affected with a meaningful procedure to assert his claim prior to the deprivation or impairment of a property right.

The Appellate Court concluded that the portion of the Board's decision finding that the plaintiff was no longer disabled is not against the manifest weight of the evidence and that the Board's hearing and post-hearing decision did not violate the plaintiff's right to due process. However, we find that the pre-hearing discontinuation of the plaintiff's disability benefits did not comport with due process. Accordingly, the circuit court erred in confirming that portion of the Board's decision finding the plaintiff was ineligible for disability benefits "dating back to the time he was found no longer disabled by Dr. Martin Lanoff."

In short the Court found that the Board has the power and authority to terminate disability benefits only upon proper notice and hearing. Termination of benefits back to a date prior to the date of the entry of the Board's administrative decision pursuant to a hearing is not allowed.

#### CONCLUSION:

When reevaluating an officer who is on disability pension for a return to duty, the Board must afford the officer due process by giving notice and holding a hearing at which the officer has a right to be present and to contest the possible termination of his benefit.