

Annual Disability Examinations and Restoration Issues

**Presentation by Jeff Goodloe
Puchalski Goodloe Marzullo, LLP
2100 Sanders Road, Suite 110
Northbrook, IL 60062
847-666-5680
jgoodloe@pgm-law.com**





Annual Examination Statutes - Police

- 40 ILCS 5/3-115
- “* * * Medical examination of a police officer retired for disability shall be made at least once each year prior to attainment of age 50, as verification of the continuance of disability for service as a police officer. No examination shall be required after age 50.”

Annual Examination Statutes - Police

- 40 ILCS 5/3-116
- “A police officer whose duty is suspended because of disability may be summoned to appear before the board, and submit to an examination to determine fitness for duty. The officer shall abide by the board’s decision. If a police officer retired for disability...is found upon medical examination to have recovered from disability, the board shall certify to the Chief of Police that the member is no longer disabled and is able to resume the duties of his or her position. * * *”

Annual Examination Statutes - Fire

- 40 ILCS 5/4-112
- “* * * Medical examination of a firefighter receiving a disability pension shall be made at least once each year prior to attainment of age 50 in order to verify continuance of disability. No examination shall be required after age 50. * * * Upon satisfactory proof to the board that a firefighter on disability has recovered from disability, the board shall terminate the disability pension.”
- The firefighter shall then report to the chief

In The Beginning: Make a List

- 1. How many disabled pensioners under age 50.
- 2. What is each disabled pensioner's disabling injury?
- 3. When did the pension board vote to award the disabled pensioner his or her pension?
- 4. Provide the information to your attorney
- 5. Include as an item on your regular meeting agendas: (*ie.* Discussion and action regarding section 3-115 annual examination for Bob Hurt)

THREE APPROACHES TO ANNUAL EXAMINATIONS

NUMBER 1

“We don’t do those”

“We have never done
those”

“Who is Officer Hurt?”

“They cost too much”

Attorney’s Reaction is one
of disapproval



**LIABILITY
& BREACH OF
FIDUCIARY DUTY**

NUMBER 2

“Just have Officer Hurt bring in a note from his doctor”

Attorney’s Reaction is Deferential but Dubious



Issues with this Approach

- 1. Is it objective?
- 2. Does the pension fund pay?
- 3. Is the doctor answering the pension board's questions?
- 4. Saving money?
- 5. Setting a precedent?
- 6. Rules and Regulations?

NUMBER 3

“Please set up Officer Hurt’s Annual Examination with an independent medical examiner”

Attorney’s Reaction is one of Approval



RULES AND REGULATIONS

PROCESS

- Affidavit to the Pensioner
- Time limit for response
 - What if the person does not return the affidavit?
- Authorization to Disclose Protected Health Information

PROCESS

- Upon return of the affidavit and the authorization to disclose protected health information, the pension board obtains any supplemental medical treatment records.
- Follow-up with workers' compensation to determine if there are any supplemental records.
- Issue Subpoenas if necessary
- Assemble records for selection of IME provider
 - Original disability records, decision, and transcript
 - Supplemental records and affidavit
 - Instruction letter for IME provider

**WHO PERFORMS
THE IME?**

What do your rules and regulations say?

Original IME provider?

New IME provider?

Alternate?

Functional Capacity Evaluations?

SURVEILLANCE



IME REPORT

- **Remains Disabled** – Vote to accept the report and to continue Officer Hurt on disability subject to future annual examinations.
- **Recovered from Disability** – Vote to set the matter for a hearing.
- *Peacock v. South Chicago Heights Police Pension Board*

RESTORATION HEARING

- **Exhibits**
- **Quorum**
- **Court Reporter**
- **Notice**
 - 10 days for Firefighters
 - 48 hours for Police
- **Burden of Proof**
 - Pension Board

Issues

- If you are going to hold a restoration hearing, consider having your IME provider testify.
- Live Testimony
- Evidence Deposition
- When should your IME provider testify?

Issues

- Standard of Review
- Manifest Weight of the Evidence
- Whether evidence supports the Pension Board's decision that the pensioner has recovered from his or her disability
- *Rhoads v. Calumet City Police Pension Board*
- *Antonelli v. Hillside Police Pension Board*
- *Trettenero v. Aurora Police Pension Board*

Rhoads



Hoffman v. Orland *Firefighters' Pension Board*

- Does the Pension Board have authority to have the pensioner examined after age 50?
- Must be evidence that the pensioner “recovered from disability”
 - Implications for Police Pension Boards
 - Implications for Firefighter Pension Boards

Martino v. Des Plaines *Police Pension Board*

- Officer on disability in Des Plaines and took job as a police officer in Lake Villa.
- Board held a hearing and terminated the pension
- Board did not have medical evidence that the police officer had recovered from his disability.
- No violation of public policy – Lake Villa was a smaller department and Lake Villa was aware of the police officer's limitations and accommodated those limitations.

O'Brien v. Board of Trustees of the East St. Louis Firefighters' Pension Fund

- Board awarded a disability pension based on “ulnar neuropathy”
- City subsequently has a light duty position as inspector that disabled firefighter could perform
- Board terminated disability pension despite no change in ulnar neuropathy
- Trial court affirmed Board decision
- Appellate court reversed

Orrico v. Oak Lawn Firefighters' Pension Board

- Disabled fire lieutenant is over 50
- Takes job as assistant fire chief in Texas
- Pension Board finds “satisfactory proof” of recovery
- Trial court reverses pension board’s decision
- Appellate court affirms trial court

Terminating Disability Pension

- Vote in Open Session
- Written Decision and Order
- Administrative Review

- Do I get my job back?
 - Firefighters
 - Police Officers
- Do we have to take this person back?

QUESTIONS

