

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

JIMMY CHARLES,
Petitioner,

Circuit Ct. Case no.: 22-CA-10538
Division: J

v.

THE BOARD OF TRUSTEES OF
THE CITY PENSION FUND FOR
FIREFIGHTERS AND POLICE OFFICERS
IN THE CITY OF TAMPA,
Respondent.

_____ /

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Jimmy Charles filed a petition to quash a November 21, 2022 order discontinuing his application for service-connected duty disability retirement.

Charles argues that the Board departed from the essential requirements of law by discontinuing his application for reasons not supported by the pension contract and applicable law. The Court agrees. The Board declined to consider whether Charles was permanently incapacitated, restricting its inquiry to whether his resignation ahead of potential disciplinary proceedings disqualified him from disability benefits. But nothing in the Compendium Contract, the Board's policies, or controlling law allows the Board to discontinue an application on that basis. The Board therefore departed from the essential requirements of law. The petition for a writ of certiorari is granted, and the Board's November 21, 2022 Order Discontinuing a Service-Connected Duty Disability Retirement Application is quashed.

JURISDICTION AND STANDARD OF REVIEW

Circuit courts have jurisdiction to review decisions of administrative agencies not subject to the Administrative Procedure Act. This Court has jurisdiction to review the Board's November 21, 2022 order. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). Review is restricted to whether Charles received procedural due process, whether the Board observed the essential requirements of law, and whether competent substantial evidence supports the Board's

findings and order. *Id.* (citing *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982)). This Court is not permitted to reweigh evidence or to substitute its judgment for the Board's. *Educ. Dev. Ctr., Inc. v. City of W. Palm Beach Zoning Bd. of Appeals*, 541 So. 2d 106, 108 (Fla. 1989). On certiorari, the circuit court cannot direct the agency or board to take any action; relief is limited to approving or quashing the order under review. *ABG Real Estate Dev. Co. of Fla., Inc. v. St. Johns County*, 608 So. 2d 59, 64 (Fla. 5th DCA 1992).

FACTS

Charles was a City of Tampa firefighter. The parties seem to agree that Charles was a "member" of the City Pension Fund ("the Fund"). On January 23, 2021, Charles suffered an injury to his knee while on duty. As a result of the injury, Charles' workers' compensation physician indicated that Charles could not return to the duties of a firefighter.

After being placed at medical maximum improvement, Charles submitted a line-of-duty disability pension application, dated January 28, 2022, based on the injury to his knee. On February 17, 2022, the City notified Charles that it was setting a pre-disciplinary hearing for March 1, 2022, based on allegations that he forged workers' compensation documents. Instead of appearing, Charles voluntarily resigned his position with the City of Tampa on March 1, 2022.

On October 10, 2022, the Board held a hearing to consider Charles' disability application. The Board focused on whether Charles resigned from the City of Tampa's employment due to his injury or to avoid the legal and financial consequences of a disciplinary termination. The Board noted that Charles resigned while under investigation, rather than serving out the 18 months of paid disability leave allowed under the City's policy, and that Charles had signed a document that stated: "This employee retired/resigned during an investigation related to their conduct and/or performance on the job." When questioned about his decision to resign despite the opportunity to serve out the 18 months of paid disability leave, Charles testified that his doctor wrote a qualifying note that he would not be able to perform the duties of a firefighter anymore, and that his inability to perform his job was depressing. The Board did not find Charles to be a credible witness.

On November 21, 2022, the Board entered the order discontinuing Charles' service-connected duty disability retirement application. In the order, the Board states that "[i]n order to receive a service-connected disability retirement, a member must be terminated because of his or her disability." Based on that assertion, the Board held that "Charles failed to prove that his resignation was not an independent intervening act that made his choice to resign the cause of his inability to perform the duties of a firefighter, rather than his claimed injuries."

LEGAL ANALYSIS

Charles does not raise a due process challenge, nor does he contend that the Board's decision was not supported by competent substantial evidence. The sole question is whether the Board departed from the essential requirements of law by discontinuing Charles' disability pension application based on the nature of his resignation. A ruling constitutes a departure from the essential requirements of law when it violates a clearly established principle of law resulting in a miscarriage of justice. *Clay County v. Kendale Land Development, Inc.*, 969 So. 2d 1177 (Fla. 1st DCA 2007) (citing *Combs v. State*, 436 So.2d 93, 96 (Fla. 1983)).

The parties agree that the Compendium Contract provides the standards for benefits and pensions to members. The Board focuses on Section 22 of the Compendium Contract, which states as follows:

Whenever any member in the service of either the Fire or Police Department shall sever his connection with such department, either voluntarily or by lawful discharge, all rights under this Act shall thereupon cease automatically *unless at the time of such discharge or voluntary retirement such member has qualified under the terms of this Act for a pension as herein provided for.* (emphasis added).

The Board argues that under Section 22, voluntary resignation causes all rights under the Compendium Contract to cease automatically unless the member is immediately eligible for a service retirement as provided in Section 7(A) of the Compendium Contract. Section 7(A) provides the standards for qualifying for a service pension based on years of service. Because Charles did not have the requisite number of years in service to qualify for a service pension, the Board found

that Charles lost the right to have his disability application processed when he voluntarily resigned and, therefore, the Board discontinued Charles' application.

Charles responds that Section 22 does not specify that a member must qualify for a service pension under Section 7(A), but rather only requires that a member qualify for *a* (that is, *any*) pension. The Court agrees with Charles' interpretation of Section 22. Charles argues that he qualified for a disability pension under Section 7(B) of the Compendium Contract. Section 7(B) of the Compendium Contract creates an entitlement to disability retirement for a permanently injured member regardless of years of service, stating as follows:

Any member who in the service has received or shall receive within or without the city any injuries, disease or disability, which injury, disease or disability now permanently incapacitates him physically or mentally from regular and continuous duty as a firefighter or police officer, then he *shall receive* [a pension]. (emphasis added)

Section 7(E) of the Compendium Contract makes it clear that the benefit described in Section 7(B) is a pension. And it is undisputed that Charles received an injury while in the service.

Further support for Charles' argument is found in the Board's rules governing the disability application process. Section 7(I) of the Compendium Contract grants the Board authority to adopt rules necessary for the effective administration of Section 7 of the Compendium Contract. In accordance with that authority, the Board adopted Policy Number 402 ("Policy 402"), which governs the disability application process. There are several versions of Policy 402. The parties agree, however, that the January 27, 2022, version of the policy applies to Charles' application. The January 27, 2022 version of Policy 402 states that "[a] member must submit a complete application, including a complete qualifying letter, prior to voluntary separation and commencement of benefit payments...." By requiring a member to submit a complete application prior to voluntary separation, Policy 402 seems to contemplate a scenario in which a member may submit a complete application and subsequently resign while the application is being processed. Policy 402 does not state that the application must be processed and approved prior to voluntary separation, only that a complete application must be submitted. This conflicts with the Board's interpretation of Section 22 of the Compendium Contract, which is that all rights (including the

right to have a disability application reviewed) cease immediately upon voluntary separation. This conflict was resolved in the June 22, 2022, version of Policy 402, which revised the policy's language as follows: "A *vested* member who separates from the City of Tampa and begins receiving monthly pension benefits shall not be disqualified from applying for a disability pension provided he/she submits a complete application, including complete qualifying letter, prior to separation or termination with the City of Tampa." (emphasis added). This revision clarifies that only vested members will not be disqualified from applying for a disability pension so long as they submit a complete application prior to termination.¹ Notably, this clarity is absent from the January 27, 2022, iteration of the policy. And here, the record shows that Charles submitted both a complete application and a complete qualifying letter prior to his voluntary resignation from the City of Tampa.

The applicable version of Policy 402 also specifically identifies scenarios in which a member would not be entitled to a disability retirement, stating as follows:

Pursuant to Florida Statutes 175.191(3) and 185.18(3), no firefighter or police officer shall be entitled to a disability retirement if: 1) the disability is a result of excessive and habitual use of drugs, intoxicants, or narcotics; 2) the injury or disease was sustained while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime; 3) the injury or disease was sustained while serving in any armed forces; 4) the injury or disease was sustained after employment has terminated; or 5) the injury or disease was sustained while working for anyone other than the City arising out of such employment.

Charles' injury does not fall under any of the identified scenarios. Thus, the Compendium Contract, Policy 402, and Florida Statute are all silent as to the effect of a voluntary resignation to avoid disciplinary action on a member's eligibility for a disability pension. Although the Board repeatedly states that in order to receive a service-connected disability retirement a member must be terminated because of his or her disability, it does not cite to any authority to back this assertion. The Board quotes *Mauldin v. State, Dep't of Admin, Div. of Retirement*, 468 So. 2d 332, 334 (Fla. 1st DCA 1985), which states that the disability applicant "has the burden of proof that he is totally

¹ Although Policy 402 does not define the term "vested member," it presumably describes members which qualify for a time service retirement under Section 7(A) of the Compendium Contract. To qualify for a service retirement under Section 7(A), a member must have an aggregate of 10 years of service and have reached the age of 46 years. A member could not be vested in a disability retirement while applying for disability retirement.

and permanently disabled.” However, because the Board did not consider any evidence regarding the nature and extent of Charles’ disability, focusing instead on the nature of his resignation, Charles did not have an opportunity to satisfy that burden of proof.

Here, the record shows that Charles submitted a complete application before he resigned. Under the applicable version of Policy 402, that was all that was required of him to have his application processed. According to the procedures outlined in Policy 402, Charles’ application should have been presented to the Chairman, and Charles should have been referred to a Disability Medical Board for evaluation, then scheduled for a hearing before the Pension Board. The Board did not follow these procedures. Instead, the Board held a hearing where it determined that Charles’ disability application should be discontinued due to his resignation. The Board therefore departed from the essential requirements of law by discontinuing Charles’ application for a service-connected disability pension for reasons not supported by the Compendium Contract and authorizing law.

CONCLUSION

It is not for this Court to determine whether ultimately the Petitioner’s application should be granted or denied. However, because the Board departed from the essential requirements of law in denying the Petitioner’s application, as described above, the Petition for Writ of Certiorari must be granted and the Commission’s action quashed.

Therefore, it is **ORDERED** and **ADJUDGED** that:

1. Petitioner’s Amended Petition for Writ of Certiorari is hereby **GRANTED**; and
2. Petitioner’s Motion for Oral Argument is **DENIED**; and
3. Petitioner’s Motion to Strike Notice of Supplemental Appeal is **DENIED**. The Court has considered the authority included in Respondent’s Notice of Supplemental Authority, filed October 24, 2023, and it does not change the Court’s conclusions of law.

4. It is further **ORDERED** and **ADJUDGED** that Respondent's Order Discontinuing Charles' Service-Connected Disability Retirement Application is hereby quashed and this matter is remanded for a determination consistent with this Order; and
5. Petitioner's Motion for Attorney's Fees pursuant to § 175.061(5), Florida Statutes, is **GRANTED** contingent on Petitioner prevailing on remand.

DONE AND ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

22-CA-010538 1/17/2024 10:44:16 AM
Alissa M. Ellison
22-CA-010538 1/17/2024 10:44:16 AM

ALISSA ELLISON
Circuit Court Judge

Electronic copies provided through JAWS

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JIMMY CHARLES,
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THE BOARD OF TRUSTEES OF
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IN THE CITY OF TAMPA,
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ORDER GRANTING REHEARING ON ENTITLEMENT TO ATTORNEY'S FEES

THIS MATTER came before the Court on Petitioner's Motion for Rehearing or Clarification, filed on January 30, 2024. Petitioner requests that the Court revisit the portion of its January 17, 2024, Order Granting Petition for Writ of Certiorari in which the Court granted Petitioner's Motion for Attorney's Fees contingent upon Petitioner prevailing on remand. Petitioner argues that the plain language of § 175.061(5), Fla. Stat., entitles him to an award of attorney's fees for prevailing in this judicial proceeding, without the need for a judgment in his favor on remand. In support, Petitioner directs this Court's attention to the Court's Order Granting Rehearing on Entitlement to Attorney's Fees in *Chadrick G. Whitter, Sr. v. City of Tampa Pension Fund for Police Officers and Firefighters*, 22-CA-010495 (Fla. 13th Jud. Cir. Feb. 9, 2024), which addresses identical legal issues. This Court agrees with the *Whitter* Court's findings that the plain language of § 175.061(5), Fla. Stat., entitles Petitioner to an award of fees without qualification or limitation. It is therefore,

ORDERED that Petitioner's Motion for Rehearing or Clarification is GRANTED. The Court reserves jurisdiction to conduct an evidentiary hearing and to determine the amount of attorney fees and costs to be awarded under § 175.061(5), Fla. Stat.

DONE AND ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

22-CA-010538 2/19/2024 12:00:52 PM
22-CA-010538 2/19/2024 12:00:52 PM

Alissa Ellison, Circuit Court Judge

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