FILED
APR 28 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-547 / 91-508

1020

PAUL L. VON HAGEL,

Plaintiff-Appellant,

vs.

BOARD OF TRUSTEES OF THE POLICE RETIREMENT SYSTEM OF THE CITY OF SIOUX CITY, IOWA,

Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge.

The plaintiff appeals from the district court's order denying his petition for writ of certiorari. **AFFIRMED.**

MacDonald Smith and Patricia K. Wengert of Smith & Smith, Sioux City, for appellant.

James L. Abshier, City Attorney, and Timothy A. Scherle, Assistant City Attorney, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

Plaintiff-appellant Paul L. Von Hagel, a former Sioux City police officer, made an application for an accidental disability pension under Iowa Code section 411.6. The question in this appeal is whether there is substantial evidence to support the decision of defendant-appellee Board of Trustees of the Police Retirement System of the City of Sioux City denying his application. The trial court found there was substantial evidence to support the defendant board's decision. We agree and affirm.

Plaintiff was formerly employed as a Sioux City police officer. In January of 1989, plaintiff was hospitalized for a heart condition. On March 26, 1989, plaintiff applied for the accidental disability pension.

The focal issue is whether plaintiff's heart condition was so disabling that he could not perform police work. Physicians at the University of Iowa Cardiology Clinic determined his condition was not disabling. A Sioux City cardiologist, Dr. John T. Baller, determined plaintiff's condition was disabling.

The plaintiff contends the University doctors' decision is not substantial evidence because it was based on evidence that was not competent. Plaintiff also contends the board's decision was not reasonable because the defendant board failed to adequately investigate his claim.

After plaintiff made his application to the City for a temporary disability pension, the City had him examined by physicians at the University of Iowa Cardiology Clinic in May of 1989. As a result of the examination, the Iowa City physicians concluded there was no objective evidence for limitation of the plaintiff's activity while he is in sinus rhythm. They specified further cardiac evaluation which could be considered but doubted that significant coronary artery disease was present given the results of catheterization in 1986.

Plaintiff remained under the care of local doctors for his heart condition. In June of 1989, he was examined by Sioux City cardiologist John T. Baller, who reported he disagreed with Iowa City. He said the Iowa City doctors established the plaintiff has a heart problem. Baller said cardiac cath in the past established reduced LV function and more recent echocardiograms have confirmed this. Baller recommended plaintiff be immediately put on medical disability. Dr. Baller's report was sent to the City.

The City met with the plaintiff to discuss the conflict in opinions between Baller and Iowa City. Plaintiff asked he be sent to Iowa City for a reexamination. This request was denied at the board's July 7, 1989, meeting. The City did resubmit some of plaintiff's medical records from Baller to the Iowa City physicians. The Iowa City physicians concluded that Baller appears to base his

recommendation of disability on reduced left ventricular function which Baller states has been documented by cardiac catheterization and echocardiography. But Iowa City found this diagnosis was not supported by the report of cardiac catheterization data on a procedure performed by Baller; specifically that the left ventricular end-diastolic pressure was 14 mmHg, left ventricular ejection fraction on contrast ventriculogram was 80 percent.

Plaintiff resubmitted his application and in anticipation of a hearing on plaintiff's application, Baller reviewed the second report of the Iowa City doctors. Baller said he thought the plaintiff's condition had declined since the 1986 heart catheterization. Baller also said the ejection fraction, which is a parameter of assessing the heart's pumping strength, on the cath report of 1986 was calculated by formulas and overstates the plaintiff's heart performance. Baller said plaintiff's heart contracting function is not as good as the ejection fraction on the cath report would suggest. Baller further said that the fact the report overstates plaintiff's performance was his fault for not making that correction.

Baller's deposition was taken in January of 1991. Baller testified a cardiac catheterization comprises an accepted standard procedure for evaluating a heart's pumping capacity. Baller testified the heart's pumping capacity is measured by a number called an "ejection fraction."

Plaintiff's 1986 cardiac catheterization report reviewed by the Iowa City physicians shows an ejection fraction of .8 or 80 percent. Baller said plaintiff's ejection fraction should have been 50 to 55 percent. Baller said he erred in not correcting the ejection fraction of 80 percent shown in the cardiac catheterization report of 1986. Baller said that when he examined the films of plaintiff's heart pumping strength, it was not normal and he should have corrected the ejection fraction of 80 percent but he did not.

The pension board did not have Baller's deposition when it made its decision.

The first question is whether the alleged error in Baller's report resulted in a lack of substantial evidence to support the decisions.

This is a certiorari action. Certiorari is appropriate where an inferior board, exercising a judicial function, acted illegally. Asmann v. Board of Trustees of Police Retirement Sys. of Sioux City, 345 N.W.2d 135, 138 (Iowa 1984). An illegality is established if a board has not acted in accordance with a statute; if its decision was not supported by substantial evidence; or if its actions were unreasonable, arbitrary, or capricious. Id. at 138. Our scope of review on appeal from a trial court judgment in a certiorari proceeding is governed by the rules applicable to appeals in ordinary actions. Helmke v. Board of

Adjustment of Ruthven, 418 N.W.2d 346, 348 (Iowa 1988). We are limited to correction of errors at law and are bound by the findings of the trial court if supported by substantial evidence in the record. Id. at 348.

The question is whether there was evidence before the board to warrant the decision it did make, not whether there was evidence to warrant the decision it did not make. Staads v. Board of Trustees of Fireman's Retirement Pension Fund of Sioux City, 159 N.W.2d 485, 490 (Iowa 1968).

The board had before it the medical reports and records of two Sioux City doctors and the Medical Board in Iowa City. These were made available to the board prior to its hearing on November 1, 1989.

Sioux City doctor Burgfechtel reported in March 1989 that plaintiff recently had congestive heart failure secondary to cardiomyopathy and atrial fibrillation regarding anticoagulation. Plaintiff did revert to sinus rhythm medically and his anticoagulation was stopped. Plaintiff was gradually improving and his prognosis was fair. Burgfechtel said it was not certain at that time if plaintiff was totally and permanently incapacitated for duty, and he possibly was not disabled if his condition continued to improve.

Baller first examined plaintiff and did a cardiac catheterization in April of 1986. The discharge summary

from the Marion Health Center dictated by Baller on April 23, 1986, said:

> 1. Essentially normal heart catheterization this admission, mild reduction of LV systolic function, and mild elevation of LV diastolic pressure at rest.
>
> 2. Atrial fibrillation, etiology unclear . . . .

Baller's cardiac catheterization report of April 22 is as follows:

> 1. Essentially normal heart catheterization, mild elevation of the LVEDP, mild hypokinesis of the ventricle but no coronary artery disease or spasm.

Baller followed this up with a letter of April 23, 1986, to Burgfechtel. The letter says, in part:

> . . . Surprisingly his heart cath shows normal coronaries. There are no significant lesions anywhere and no provokable spasm. His LV function is down just a little bit and his LV resting pressure up a little bit. My interpretation is that this may be early alcoholic cardiomyopathy. I don't have a ready explanation for his chest pain but I don't think it is classic angina in view of the cath findings . . . .

Plaintiff consulted Baller next at the Marion Health Center on February 1, 1989. It was after the consultation the plaintiff applied for the accidental disability pension. Plaintiff was instructed to return to work and sent back to see Baller on June 14, 1989. Baller sent a letter to Burgfechtel the same day indicating he disagreed with Iowa City's conclusions. Baller made reference to the cardiac catheterization results of April 22, 1986, which showed at that time in his opinion the result was essentially normal, not entirely normal.

Baller's letter of October 30, 1989, states the "ejection fraction" was calculated by formulas and overstates his performance. Baller stated in his deposition the formulas were calculated by nurses on his staff, but in his dictation in the report, he showed the "ejection fraction" was not normal. The "ejection fraction" equation prepared by the nurses showed .8 or 80 percent. Baller said normal is 60 to 65 percent. Baller's report of April 22, 1986, stated:

> 1. Adequate LV function, mild hypokinesis noticeable along the anterior wall, but over ejection fraction 50-55% plus.
>
> 2. Normal coronary arteries with no provokable spasm.

The information was given to the Iowa City physicians and the board. The only error was in the equation itself showing .8 or 80 percent. Baller's own conclusions stated the LV function was adequate.

Baller, in his deposition, also said:

> . . . And in this particular case according to my dictation in the report the heart's contracting function was not normal. The calculated ejection fraction in the cath report would suggest that it was normal or better than normal . . . .
>
> . . . But in Paul's case it's clear from my dictation that when I examined the films his heart's pumping strength was not normal and I should have corrected that ejection fraction of 80 percent. I just didn't . . . .
>
> . . . Yes, on Page 3 under angiograms, number 1, left ventriculogram in the RAO position shows a normal sized and shaped left ventricular chamber within general adequate function. However, the anterior wall is somewhat hypokinetic--meaning its pumping strength is decreased--but overall

> ejection fraction is quite adequate it says . . . .
>
> . . . And then also on the--on Page 4, halfway down under interpretations of the angiograms, Number 1, adequate LV function, mild hypokinesis--Hypokinesis means decreased contraction strength--Mild hypokinesis noticeable along the anterior wall. Overall ejection fraction 50 to 55 percent . . . .

Iowa Code section 411.6(5) provides, in applicable part:

> Upon application to the system, of a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city by which the member is regularly employed, shall be retired by the system, if the medical board certifies that the member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent, and that the member should be retired.

The Iowa City physicians examined plaintiff and reviewed records of both the Sioux City doctors. It was the Iowa City physicians' opinion plaintiff was not disabled for his position as a police officer. The physicians in Iowa City did not rely only on the medical report and record of the Sioux City physicians. The plaintiff was physically examined in Iowa City. The Iowa City doctors reviewed a number of outside records. After there was a question about the medical records sent to Iowa City, the assistant city attorney wrote to Rossen in Iowa

City and sent certain records and reports. While Rossen made reference to the 80 percent ejection fraction Baller claims was in error, Rossen and the Iowa City physicians also looked to Baller's own interpretation of the cardiac catheterization.

Rossen wrote an August 28, 1989, letter that said:

> Dr. Baller's own interpretation of the cardiac catheterization data indicates minimal cardiac disease based solely on mild elevation of the left ventricular and diastolic pressure and visual interpretation of the contrast left ventriculogram, which suggests mild anterior wall hypokinesis in the setting of normal global left ventricular systolic performance.

Rossen concluded that a significant disability did not exist and there were not adequate grounds for disability due to cardiac status. While the doctors in Iowa City recognized plaintiff has a heart problem, they do not find it severe enough to disable him as a police officer. There was substantial evidence to support the board's decision. We affirm.

AFFIRMED.