

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 23 1989

CLERK SUPREME COURT

MICHAEL L. LAWSON, SR.,)

Plaintiff-Appellant,)

vs.)

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OTTUMWA POLICE PENSION)

BOARD OF TRUSTEES,)

Defendant-Appellee.)

9-34
88-1051

Appeal from the Iowa District Court for Wapello County
(CL 82-1287), Robert J. Vogel, Judge.

Plaintiff appeals from the decision of the district
court which dismissed his petition for writ of certiorari.

AFFIRMED.

William D. Scherle, Des Moines, for
plaintiff-appellant.

Thomas F. Kintigh, Ottumwa, for defendant-appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ., but
decided by Oxberger, C.J., and Hayden and Sackett, JJ. Schlegel,
J., takes no part.

HAYDEN, J.

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Plaintiff appeals from the decision of the district court which dismissed his petition for writ of certiorari. Plaintiff's petition alleged the Ottumwa Police Pension Board of Trustees had illegally denied him full disability retirement benefits. We affirm.

Plaintiff Michael L. Lawson, Sr., was employed by the Ottumwa Police Department for twenty years. In late 1986 he began to experience emotional and physical problems, which included stabbing chest pain, shaking spells, depression, and anxiety. Lawson left the police department on sick leave in March of 1987. He sought medical treatment for a possible cardiac ailment, however, doctors determined he did not have cardiac disease. Still seeking a cause for his problems, Lawson was treated by a psychiatrist, who determined he was suffering from posttraumatic stress disorder related to his police work. Further, doctors at the University of Iowa Hospitals found he had major depression aggravated by job-related stress. Lawson continues to have symptoms and his doctor has recommended he not return to work.

After seventeen days of sick leave, Lawson was placed on temporary disability for three months. In July of 1987 he was returned to sick leave. In October of 1987, the Ottumwa Police Pension Board of Trustees (Board), a body established and authorized under Iowa Code section 411.5 to

administer the Ottumwa Police Retirement System, voted to deny Lawson disability benefits. In November the Board's October decision was reconsidered, at which time the Board awarded "ordinary" retirement disability benefits under Iowa Code section 411.6(4). These benefits were made retroactive to January 11, 1987.

Lawson presented this matter to the district court by writ of certiorari brought pursuant to Iowa Rule of Civil Procedure 317, arguing the Board acted illegally, arbitrarily, and further, the Board's decision was not supported by substantial evidence. The Board denied him accidental retirement benefits pursuant to Iowa Code sections 411.6(5) and (6). Accidental retirement would have entitled Lawson to benefits of 66-2/3% of his pay. The tape recorded transcript of the hearing held by the Ottumwa Police Pension Board of Trustees had been destroyed, lost, or was otherwise unavailable, and therefore, a new and complete record was made at the district court hearing. The district court found the Board's decision was supported by substantial evidence and was not unreasonable, arbitrary, or capricious. The court dismissed the petition for writ of certiorari.

The issue before this court is whether or not the district court was correct in finding the Board acted in accordance with all relevant statutes and that its decision was supported by substantial evidence, and further, the

Board's actions were not unreasonable, arbitrary, or capricious.

To prevail in this matter, Lawson must show the Board's actions were illegal. Illegality is established if the Board fails to act in accordance with the statute, if its decision is not supported by substantial evidence or if its action was arbitrary, unreasonable, or capricious. Norland v. Worth County Compensation Board, 323 N.W.2d 251, 253 (Iowa 1982).

Certiorari is an action at law and our review of the district court decision is governed by rules applicable to appeals in ordinary actions. Cloud v. Fort Dodge Police Pension Board, 373 N.W.2d 313, 314 (Iowa App. 1985). The matter on appeal must be supported by competent and substantial evidence. Butler v. Pension Board of Police Department, 259 Iowa 1028, 1035, 147 N.W.2d 27, 30 (1966). The critical factor for our review is clearly the determination of whether the underlying evidence is substantial enough to support the outcome arrived at in the district court. We determine it is.

Substantial evidence has been defined numerous times as that which a reasonable mind would accept as adequate to reach a conclusion. Iowa State Fairgrounds Security v. Iowa Civil Rights Commissions, 322 N.W.2d 293, 294 (Iowa 1982). The Board and the district court found Lawson was not totally and permanently incapacitated. Also, his

problems were not caused or aggravated by the performance of duty at a definite time and place. Lawson argues his condition is likely permanent, and at best he could expect only temporary relief. He contends his symptoms began with several specific incidents in late 1986 or early 1987 which included being attacked on the job by a man with a knife, a woman with a pool cue, and internal changes at the police department. The internal changes in the department included Lawson losing both rank and his command responsibilities.

Accidental disability benefits for policemen and firemen are allowed by Iowa Code section 411.6(5) which provides in relevant part:

Accidental disability benefit. Upon application 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 respective board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

Should a member in service or the chief of the police or fire departments become incapacitated for duty as a natural or proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time or place or while acting, pursuant to order, outside the city by which the member is regularly employed, the member shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled

to receive the member's full pay and allowances from the city's general fund until reexamined by the board and found to be fully recovered or permanently disabled.

To receive accidental disability benefits, all the requirements of section 411.6(5) must be met.

Here, we determine the district court was correct in finding the Board had substantial evidence to find Lawson was not totally and permanently incapacitated for duty. The Board had before it the statement of Dr. James D. McDaniel, psychiatric physician, who stated that appellant's depression should clear up in six months' time.

All the medical expert testimony in sum, created at best a murky picture. Clearly, some expert testimony found Lawson's problems were work-related, permanent, and rendered him unable to return to duty with the police department. However, other testimony indicated Lawson's problems may stem from obesity, causing him self-image problems. The burden here is upon Lawson to show the Board acted illegally in awarding him "ordinary" (50%) disability benefits instead of accidental disability benefits. We find he has not carried this burden.

We hold the Board properly exercised its discretion in accepting the statement of Dr. McDaniel and his statement represented substantial evidence to support the Board's decision.

AFFIRMED.