FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

374

LEE SUMNER,	
Plaintiff-Appellant,	Filed December 29, 1982
vs.	
BOARD OF TRUSTEES OF THE RETIREMENT SYSTEM OF THE CITY OF DES MOINES, IOWA, AND LEE WILLIAMS, AS CHAIRPERSON OF THE BOARD OF TRUSTEES OF THE FIRE RETIREMENT SYSTEM OF THE CITY DES MOINES, IOWA,	2-399 2-68204
Defendants-Appellees.	

Appeal from Polk District Court - Anthony M. Critelli, Judge.

Plaintiff appeals from the district court decision on certiorari review upholding defendants' decision denying him accidental disability retirement benefits, asserting that substantial record evidence fails to support the conclusion that he was not totally and permanently incapacitated for his duties as a fireman. AFFIRMED.

Charles E. Gribble and Gerald L. Hammond of Dreher, Wilson, Adams, Jensen, Sayre & Gribble, Des Moines, Iowa, for plaintiff-appellant.

Nelda Barrow Mickle, City Solicitor, for defendants-appellees.

Heard en banc.

JOHNSON, J.

Plaintiff, Lee Sumner, appeals from the district court decision on certiorari review upholding defendants', Board of Trustees of the Retirement System of the City of Des Moines, decision denying him accidental disability retirement benefits. He asserts that substantial record evidence fails to support the conclusion that he was not totally and permanently incapacitated for his duties as a fireman. He asks this court to reverse the district court's dismissal of his petition for writ of certiorari or, in the alternative, to remand this case to the board for an evidentiary hearing. We affirm the district court.

Plaintiff underwent aortic valve replacement surgery as a result of heart problems presumably resulting from his employment as a fireman. Three doctors were of the opinion that return to active duty as a fireman would be detrimental to plaintiff's health. Three other doctors stated that there was no reason for him to retire or receive accidental disability benefits. Upon this evidence the board denied plaintiff's application for benefits.

I. Scope of Review. "A writ of certiorari shall only be granted when specifically authorized by statute, or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded its, or his jurisdiction or otherwise acted illegally." Iowa R. Civ. P. 306. A pension board such as defendant's is recognized by the court as possessing quasi-judicial powers. Actions of such boards thus are "properly attacked by certiorari." See Reisner v. Board of Trustees of Fire Retirement System, 203 N.W.2d 812, 814 (Iowa 1973). See also Benson v. Fort Dodge Police Pension Board of Trustees, 312 N.W.2d 548, 549-50 (Iowa 1981).

The general principles guiding our review on appeal of a lower court's denial of a writ of certiorari under Iowa Rule of Civil Procedure 318 were detailed by the court in Reisner.

> Certiorari is an ordinary proceeding triable as a law action. On appeal questions of fact decided by the board are not usually reviewable. We consider only whether the decision is supported by any substantial competent evidence, and the burden of showing illegality rests upon him who asserts it. The fact that others may have reached a different conclusion or that an opposite result would have been fully justified by the evidence is of no importance. [citations omitted].

Id. See also Staads v. Board of Trustees of Fireman's Retirement Pension Fund, 159 N.W.2d 485, 489 (Iowa 1968). With these principles in mind, we review the district court's annulment of the writ.

II. Illegality of the Board's Action. Plaintiff argues that defendant acted illegally when it denied him accidental disability benefits on the basis that he was not totally and permanently incapacitated for his duties as a firefighter. Defendant argues: 1) that plaintiff was not entitled to the benefits as a matter of law; 2) that there is substantial evidence supporting the district court's findings; 3) that the district court did not act illegally; and 4) that a remand for an evidentiary hearing is inappropriate in a certiorari action.

There is no dispute that plaintiff is entitled to service retirement benefits. Under service retirement benefits plaintiff is entitled to one-half of his average final compensation. Iowa Code § 411.6(2) (1981). It is plaintiff's claim for accidental disability benefits which would entitle him to two-thirds of his average final compensation that is involved in the present appeal. See Iowa Code §§ 411.6(5)(6) (1981).

Section 411.6(5) provides:

> 5. Accidental disability benefit. Upon application of a member in service or of the chief of the police or fire departments, respecitvely, 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 he 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.
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> Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases.

To be entitled to benefits under 411.6(5), plaintiff must prove the following:

> First, he must show injury or disease "incurred in or aggravated by the actual performance of duty at some definite time and place." Second, it must be shown he was totally and permanently incapacitated for duty as the natural and proximate result of such injury or disease. See Reisner v. Board of Trustees of Fire Retirement System, 203 N.W.2d at 814.

Carstensen v. Board of Trustees of Police Retirement System253 N.W.2d 560, 564 (Iowa 1977). Similar to the plaintiff in Carstensen, plaintiff in the present controversy is entitled to the presumption that "heart disease . . . shall be presumed to have been contracted while on active duty . . . ." See Carstensen, 253 N.W.2d at 564. This presumption is rebuttable. Id.

In this case, however, we review the district court's ruling and the substantiality of the evidence with regard to the second prong of the test for recovery under section 411.6(5): that is, whether plaintiff is totally and permanently incapacitated for duty as the natural and proximate result of the disease.

The evidence presented to the board included: 1) written remarks of the president of the Des Moines Fire Fighters; 2) the job description of "Fire Captain;" 3) an article entitled "Detection of Coronary Artery Disease in Fire Fighters

Without Symptoms;" 4) a letter from Dr. Steven Phillips; 5) a letter from Dr. Kwatra; and 6) a letter from the Fire Retirement Medical Board in Iowa City. All the evidence, with the exception of the letter from the Medical Board, endorsed the plaintiff's application for additional benefits. The primary conflict in the evidence was between the letters of Dr. Phillips and Dr. Kwatra, the physicians who performed the surgery, finding petitioner to be disabled, and the letter of the Medical Board stating that plaintiff was able to return to work.

Dr. Phillips and Dr. Kwatra recommended that plaintiff retire from active duty as a fireman because plaintiff's enlarged heart and the fact that plaintiff had an aortic prosthesis made plaintiff more susceptible to the stresses accompanying the occupation of fireman. The Medical Board, composed of Drs. Marcus, Cooper and Mirro, found that plaintiff had fully recovered from heart surgery and on the basis of plaintiff's physical condition stated: "He can return to full time duty as a fireman. There is no reason for him to retire or receive disability."

Plaintiff claimed that the Medical Board did not evaluate his condition in relation to his duties as a fireman and that the Medical Board's failure to do so rendered the decision of the Board of Trustees defective. In order to more fully understand the evidence, the district court permitted additional evidence for the purpose of explaining the matters contained in the return of the writ under Iowa Rule of Civil Procedure 315. Plaintiff and Dr. Marcus testified at the hearing before the district court.

Dr. Marcus testified that each of the three physicians examined plaintiff, that each came to his own decision, and that the report was a summary of same. He said that the Board members had an understanding of plaintiff's responsibilities and duties and understood that he did fight fires but "primarily he had supervisory duties." He also testified that the Board of Medical Examiners considered the severe stress and the vigorous physical activity that goes with being a fireman. He testified that the health risks to plaintiff are no more and possibly less than

the average fifty-six year old fire fighter because of the fact that plaintiff has relatively clean arteries. The district court concluded on the record before it that plaintiff was not entitled to the benefits as a matter of law and that there was substantial competent evidence in support of the Board's decision. For those reasons the district court concluded that the Board had not acted illegally in denying plaintiff additional benefits and annulled the writ.

In the case of Butler v. Pension Board of the Police Department, 259 Iowa 1028, 147 N.W.2d 27 (1966), the court sustained the writ on the basis of the uncontroverted facts presented. In Justice McCormick's dissent to Reisner, he, too, found the facts to be uncontroverted in his argument to sustain the writ. In this case, we are presented with a record replete with conflicting evidence. The question before us is "not whether there was evidence before the board to warrant a decision it did not make but whether there was evidence to warrant the decision it did make." Staads, 159 N.W.2d at 490. We may not substitute our decision for the defendant's, which is statutorily charged with making such decisions as long as the defendant's decision is supported by substantial competent evidence.

Our review indicates that the defendant had jurisdiction to deny plaintiff the benefits sought and that there was substantial competent evidence in support of its decision. Accordingly, we find defendant did not act illegally and that the district court correctly annulled the writ.

AFFIRMED.