No. 131305

In the

Supreme Court of Illinois

TAMICA RAINEY,

Plaintiff-Appellee,

v.

THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO,

Defendant-Appellant.

On Appeal from the Illinois Appellate Court,
First Judicial District, No. 1-23-1993.
There Heard On Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, 2022 CH 11069.
The Honorable Joel Chupack, Judge Presiding.

REPLY BRIEF OF DEFENDANT-APPELLANT

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ORAL ARGUMENT REQUESTED

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I. THE PENSION CODE DISTINGUISHES BETWEEN GRANTING AND DISCONTINUING DISABILITY BENEFITS.

Plaintiff contends proceedings initiated under Section 5-154 are equivalent to those conducted pursuant to Section 5-156, thereby justifying the award of attorney's fees in this instance. In making this argument, however, Plaintiff ignores the plain language of those Sections, along with the practical and legal differences between those two proceedings. First, the plain language of these sections shows the differences between the two processes - (1) the award disability of benefits pursuant to Section 5-154 and (2) the "discontinuation" those benefits pursuant to Section 5-156 at a later date.

In this regard, Plaintiff ignores the term "discontinue" contained in Section 5-156. This term necessarily requires that the Pension Board previously granted those benefits pursuant to Section 5-154. Accordingly, based on the very language of the statute, the discontinuation of benefits does not encompass a denial of those benefits, originally. Plaintiff's argument is premised on ignoring the plain language of Section 5-156 in order to justify her desired outcome. Yet, Plaintiff cites no authority permitting the Court to disregard the plain language of the statute in favor of her desired interpretation.

Assuming *arguendo* this Court can ignore the plain meaning of the words "denial" and "discontinue," Plaintiff argues all actions taken by the Pension Board in not awarding benefits to an officer must constitute "denials," regardless of the timing of those actions and the different proofs required by law. In this instance, a review of case law interpreting Articles 3 and 4 of the Illinois Pension Code is instructive, as the language of those Articles is similar.

Under Article 3, pension boards verify a disabled officer's continued eligibility pursuant to Section 5/3-116, which requires yearly examinations to determine continued eligibility. Illinois Courts have uniformly held a police officer's entitlement to continuing benefits is contingent on his continued disability, and the Board may only revoke those benefits if he has recovered from the disability. *See Peacock v. Bd. of Trustees of Police Pension Fund*, 395 Ill. App. 3d 644, 652 (1st Dist. 2009), *citing Rhoads v. Board of Trustees of the City of Calumet Policemen's Pension Fund*, 348 Ill. App. 3d 835, 842 (1st Dist. 2004). In this regard, disability benefits may be revoked based on a single medical examination finding that the officer is no longer disabled. *Trettenero v. Police Pension Fund of City of Aurora*, 333 Ill.App.3d 792, 800 (2nd Dist. 2002).

The *Peacock* Court affirmed the Pension Board's decision to terminate the officer's benefits, finding "there is sufficient competent evidence in the record to support the Board's determination that the plaintiff is no longer disabled, and therefore its determination in this regard is not against the manifest weight of the evidence." *Peacock*, 395 Ill. App. 3d at 653. Similarly, the *Rhoads* Court held "after reviewing the transcript of the hearings before the Board, watching the videotape and examining the exhibits, we find that there was sufficient evidence to support the Board's factual findings and decision to terminate Rhoads' disability pension." *Rhoads*, 348 Ill. App. 3d at 842. In both cases, the pension board considered new evidence demonstrating recovery, including new treatment records, updated medical examinations, and video showing an officer engage in physical activity. Accordingly, these cases establish the distinct process for discontinuing the disability benefits.

Similarly, Section 4-112 of the Code contains analogous language, wherein it states "[m]edical 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" and "[u]pon satisfactory proof to the board that a firefighter on the disability pension has recovered from disability, the board shall terminate the disability pension." 40 ILCS 5/4-112 (West 2024). In *Hoffman v. Orland Firefighter's Pension Bd.*, the court found this Section "expressly provides a process to determine whether a firefighter is fit to be restored to service." *See 2012 IL App (1st) 112120*, ¶ 26. Further, the board may not terminate benefits "except in compliance with the statutory requirements," and "[t]he Code requires proof of recovery be shown." *Id.*, at ¶¶22 & 31, *quoting O'Brien v. Board of Trustees of the Firemen's Fund*, 64 Ill. App. 3d 592, 595 (5th Dist. 1978).

In this regard, the pension board's decision to discontinue benefits must be based on new evidence of recovery since it may not "conclude that a pensioner has *recovered* from the disability injury based solely on medical evidence that the firefighter was never actually disabled." *Hoffman*, 2012 IL App (1st) 112120, ¶30. In fact, "[n]o provision of the Code permits a pension board to revisit and reverse its original decision, made years earlier but never appealed, that a firefighter was rendered disabled by a line-of-duty injury." *Hoffman*, 2012 IL App (1st) 112120, ¶29.

As such, the Code has been consistently interpreted to provide a distinct statutory process for discontinuing Plaintiff's benefits, including the requirement of new evidence establishing she recovered from her disabling injury. Plaintiff's argument defies or disregards decades of legal precedent concerning the process for discontinuation of disability benefits previously awarded. In this same regard, one court determined a

pension board seeking to discontinue disability benefits is the moving party bearing the burden of proving the pensioner recovered from the disabling injury. *See Wilfert v. Retirement Bd. of Firemen's Annuity & Benefit Fund of Chicago*, 318 Ill. App. 3d 507, 518 (1st Dist. 2000) (error by shifting the burden of proof to the firefighter).

As demonstrated above, Illinois courts have established evidentiary differences between awarding disability benefits in the first instance and discontinuing those benefits at a later date. Consequently, the Pension Board's interpretation of Section 5-156 would be consistent with all cases interpreting other similar sections of the Pension Code.

Nonetheless, Plaintiff asserts Section 5-156, which requires medical examinations for initial applications for disability benefits and for the discontinuation of those benefits on annual review, demonstrates an intent to lump the discontinuation of benefits with the original grant of disability benefits under Section 5-154. See Appellee's Brief, page 2. However, the plain language of Section 5-156 distinguishes between these two process wherein it states "when the disability ceases, the board shall discontinue payment of the benefit . . ." 40 ILCS 5/5-156. While these sections must be read in conjunction for the nature of the evidence necessary to award and/or discontinue disability benefits, there is nothing to establish the authority to discontinue benefits originates in Section 5-154.

Importantly, Section 5-154 does not address the process for discontinuing disability benefits once the officer recovers from the disabling injury. Accordingly, given the plain language of Section 5-228(b), there is no reasonable basis for concluding the specific reference to Section 5-154 encompasses the Pension Board's decision to discontinue Plaintiff's disability benefits. Plaintiff's effort to combine the grant and discontinuation of disability benefits for purposes of awarding attorney's fees is not

supported by the plain language of the Code nor the processes adopted by Illinois courts specifically related to the discontinuation of disability benefits.

II. PLAINTIFF'S EFFORTS AT STATUTORY CONSTRUCTION DEFY ILLINOIS LAW.

Plaintiff argues the strict construction of Section 5-228(b) somehow establishes the legislature intended an expansive interpretation due to its failure to limit the award of attorney's fees "to new applications and/or first hearings." Appellee's Brief, page 4. Notably, Plaintiff ignores the express limitations imposed by the legislature when limiting the recovery of attorney's fees to the "denial" of disability benefits under Sections 5-154 and 5-154.1.

Nevertheless, the doctrine of strict construction applies generally to all attorney's fees provisions, including Section 5-228(b), and would prohibit the interpretation proposed by Plaintiff, particularly since the legislature expressly limited the award of attorney's fees to the "denial" of benefits. 40 ILCS 5/5-228(b) (West 2024). In support of this argument, the Pension Board cites to *Kelly v. Ret. Bd. of Policemen's Annuity & Benefit Fund of the City of Chicago* for the holding that Section 5-228 awards attorney's fees for the "denial of the officer's application for duty disability benefits." 2022 IL App (1st) 210483, ¶ 67. Plaintiff's reliance on the *Kelly* Court's ruling once again ignores the plain meaning of the word "denial" as opposed to the word "discontinue."

Plaintiff fails to explain how the strict construction of the words "denial of disability benefits" would/could be expanded to include "the discontinuation of disability benefits" after they were awarded (not denied) under the doctrine of strict construction. Instead, Plaintiff contends her application for benefits was still pending during the annual

examination process and years after those benefits were paid to her, claiming any other contention is "preposterous." See Appellee's Brief, page 3-4. What is preposterous is claiming Plaintiff's application for disability benefits somehow remains pending after she is awarded those benefits and received them for many years. Under Plaintiff's logic, the Pension Board's decision to award benefits would never be final, and thereby subject to administrative review, if the application remained pending into perpetuity, for example.

In this same regard, Plaintiff contends she was somehow applying for disability benefits at the time of the hearing to discontinue those same benefits. See Appellee's Brief, pages 5-6. In support of Plaintiff's confusing argument, she cites an alleged compromise offered by the Pension Board to award her ordinary benefits after the medical evidence proved that she recovered from the disabling injury (cervical and shoulder injuries), but she may have been disabled as a result of other conditions (PTSD). However, implicit in any alleged compromise to award her ordinary benefits would be the discontinuation of the duty disability benefits awarded years ago. So, Plaintiff's argument once again ignores the plain language of the statute, as discontinuation of duty disability benefits would necessarily have to occur in order to award ordinary benefits.

Finally, Plaintiff cites the Pension Board's appellate brief from the appellate court, arguing the Pension Board contended she had the burden of proof at the 2022 hearing to discontinue her benefits. See Appellee's Brief, page 8-9. This argument constitutes a gross misstatement of the underlying facts. At the 2022 hearing, Plaintiff argued she suffered from other disabling conditions (PTSD) unrelated to the original disabling injury (cervical and shoulder injuries) for which she was awarded benefits. The

quoted section of the appellate brief was addressing the lack of evidence linking those ***other*** injuries to her duties as a police officer.

Of course, it would be Plaintiff's burden to prove those other injuries were causally linked to an act of police duty to receive duty disability benefits based thereon. Notwithstanding, since the Pension Board did not seek review of the *Rainey* Court's decision to reverse the Pension Board's discontinuation of duty disability benefits, Plaintiff's citation to this argument from the Pension Board's appellate brief is not only irrelevant but is also purposefully misleading.

III. LEGISLATIVE HISTORY AND PROPOSED LEGISLATION DO NOT SUPPORT PLAINTIFF'S INTERPRETATION.

Plaintiff argues two amendments to Section 5-228 proposed in 2025 somehow evidence the legislature's intent to include the discontinuation of disability benefits in the award of attorney's fees under the current version of that statute. See Appellee's Brief, page 13. Notably, Plaintiff does not describe nor discuss the contents of the proposed amendments so it is difficult to understand and respond to her argument. Nevertheless, if the 2025 proposed amendments expressly include the discontinuation of disability benefits as a decision of the Pension Board subject to fee shifting, then they would only further the Pension Board's argument that the current version of Section 5-228 does not cover those decisions, presently.

In fact, the legislature's (1) failure to pass these proposed amendments in 2024 (see Appellant's Opening Brief, §III, page 18-19) and (2) proposal of amendments in 2025 would demonstrate the legislature's acceptance of the rulings refusing to award attorney's fees prior to the *Rainey* Court's decision. *See Ready v. United/Goedecke*

Services Inc., 232 Ill. 2d 369, 380 (2008), citing *Yoder v. Ferguson*, 381 Ill. App. 3d 353, 377-78 (1st Dist. 2008). Essentially, Plaintiff's argument is the legislature's awareness of the *Rainey* Court's non-final decision and subsequent proposal of amendments to codify that decision somehow establishes the *Rainey* Court's interpretation was what the legislature originally intended. See Appellee's Brief, page 13.

Not only is the argument illogical and unsupported by citation to any authority, it expressly defies Illinois law. Initially, the decision issued by the *Rainey* Court is not final and is currently pending before this Court as to the propriety of awarding attorney's fees. Plaintiff fails to explain, or cite to any authority explaining, how the legislature can be presumed to know about a non-final ruling presently on appeal and how this fact would assist the interpretation of Section 5-228(b). Logically, the legislature's 2024 and 2025 proposals to amend Section 5-228(b) to include the discontinuation of disability benefits would lend evidence to the conclusion the current version of the statute does not do so.

Further, the legislature's apparent failure to pass these amendments would actually provide evidence it accepted the interpretations of Section 5-228(b) outlined in *Warner v. Ret. Bd. of Policemen's Annuity & Benefit Fund of City of Chicago*, 2022 IL App (1st) 200833-U, and *Koniarski v. Retirement Bd. of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 2021 IL App (1st) 200501-U, as those are the only final decisions on the subject. Since *Warner* and *Koniarski* were decided before the 2024 and 2025 amendments and those amendments were not passed by the legislature, the Court may infer the legislature accepted the existing judicial interpretation of Section 5-228(b) until it amends the statute. *See Ready*, 232 Ill. 2d at 380.

Accordingly, the legislative history of Section 5-228(b) (see Appellant's Opening Brief, §II, pages 15-16), along with the legislature's conduct after the final rulings were issued in *Warner* and *Koniarski*, confirm the legislature's intent to limit the pension fund's financial exposure by ***not*** awarding attorney's fees to officers who are successful in reversing decisions to discontinue their disability benefits. Plaintiff's arguments to the contrary are misleading, confused, and not supported by Illinois law.

CONCLUSION

WHEREFORE, for the foregoing reasons Appellant, The Retirement Board of the Policeman's Annuity and Benefit Fund of the City of Chicago, respectfully requests this Honorable Court reverse the decisions awarding Plaintiff her reasonable attorney's fees and costs associated with the Pension Board's decision to discontinue her duty disability benefits, and award any relief this Court deems just.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b) and Rule 315(h). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 9 pages.

/s/ Vincent C. Mancini
Vincent C. Mancini

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

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	)	
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	)	
Defendant-Appellant.	)	

The undersigned, being first duly sworn, deposes and states that on July 21, 2025, there was electronically filed and served upon the Clerk of the above court the Reply Brief of Defendant-Appellant. On July 21, 2025 service of the Reply Brief will be accomplished electronically through the filing manager, Odyssey EfileIL to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Reply Brief bearing the court's file-stamp will be sent to the above court.

/s/ Vincent C. Mancini
Vincent C. Mancini

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Vincent C. Mancini
Vincent C. Mancini