Pension Pointers

Pension Trustees' Recorded Comments Denied Disabled Member a Fair Hearing

By Chandler Cathey & John Motylinski

An Illinois appellate court recently reversed a police pension board's decision to terminate a line-of-duty disability pension, holding that the board's decision was against the manifest weight of the evidence and that the officer was denied due process when two trustees who had made disparaging remarks about him at a recorded board meeting were allowed to sit on his hearing panel. *Mahan v. Marion Police Pension Board*, 2026 IL App (5th) 260066.

Joshua Mahan suffered a line-of-duty injury, for which he was awarded a line-of-duty disability pension in 2012. His benefits were continued after reviews in 2016 and 2017, but the Marion Police Pension Board terminated them in 2018. Mahan sued, and the Williamson County circuit court reversed. Persisting, the Board terminated Mahan's benefits again in 2021. The Fifth District Appellate Court reversed in 2023, finding that the termination was against the manifest weight of the evidence. Along the way, the appellate court also expressed disapproval of the Board's attorney serving as both the Board's counsel and the hearing officer.

In March 2023, the Board met to approve the retroactive benefits it owed Mahan following the reversal. The meeting was recorded. On the recording, pension trustees and the Board's attorney were captured joking about Mahan. When the Board learned that Mahan would need to come in to complete paperwork, one trustee remarked, "I bet he'll come in jogging," which drew laughter. Later in the discussion, the same trustee suggested that Mahan "must have a bill to pay," and when the Board's attorney speculated that Mahan was "probably working at his other job," the trustee interjected, "[t]eaching Zumba someplace." A second trustee, responding to a comment about how to win the next time, said "let's go for broke," and later voted to approve the retroactive payment "under protest."

In November 2024, Mahan's attorney moved to exclude the two trustees from the hearing. The Board responded that the comments were made in jest and taken out of context. The hearing officer—who this time was not the Board's attorney—played the recording and asked each trustee whether they could be fair and impartial and decide the case solely on the evidence. Both said they could, and the hearing officer denied the motion. The two challenged trustees then moved and seconded a motion to terminate Mahan's benefits, which passed by a 3-2 vote. The Board's written decision characterized the remarks as merely "thoughtless and indiscreet."

The Fifth District reversed *again*. The court explained that pension applicants are entitled to due process in the Board's administrative proceedings. Due process requires an impartial tribunal. Although board members are presumed to be objective, a claimant can establish bias by showing that a disinterested observer might conclude that the board had in some measure adjudged the facts and the law of the case before hearing the evidence. Significantly, if even one decision maker is not disinterested, the entire decision fails.

Applying that standard, the court could not find that the two trustees had not prejudged Mahan's claim. The jogging and Zumba comments reflected a fixed view of Mahan's physical capabilities, which was the very question the Board would decide at the next hearing. The court also noted that the trustee who made the Zumba remark knew from the prior hearing that Mahan actually worked selling modular homes. Whether Mahan had bills to pay, the court observed, was irrelevant to the Board's obligation to pay retroactive benefits once a reviewing court overturned its decision, and the "under protest" vote reflected a lack of

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***About the Author**: **John Motylinski,** a partner with the firm, has proven to be a valuable asset to the firm's pension practice. He represents many of the firm's pension funds and has handled administrative hearings, as well as successfully defended board decisions on administrative review. Most recently, he has counseled the Chicago Teachers' Pension Fund on Americans with Disabilities Act regulations governing web content accessibility. He is well versed on the Illinois Pension Code and laws affecting local governments, and he will be relied upon to handle research and preparation of draft documents for the SURS engagement.*

***Chandler Cathey** joined Ottosen DiNolfo Hasenbalg & Castaldo as a law clerk in 2025 while working on his Juris Doctor from Loyola University Chicago School of Law. Having recently passed the Illinois Bar Examination, he is beginning his legal career with a focus on real estate law, estate planning, litigation, and municipal law.*

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decorum and professionalism. The court reserved its sharpest criticism for the "go for broke" remark, which was made before any evidence for the next hearing had been developed. That statement, the court wrote, revealed "a blatant disrespect for the required impartiality of the Board" and undermined the fiduciary duty that trustees owe to pension beneficiaries.

As for the trustees' assurances to the hearing officer, the court stated that accepting that the trustees had set aside their bias for purposes of the hearing "borders on the incredulous." The court held that Mahan was denied due process and suggested that the two trustees be removed from any future hearings involving him.

The court separately held that the termination was against the manifest weight of the evidence. The Board had relied on an independent medical examiner who concluded that Mahan had suffered only a temporary soft-tissue strain. By contrast, functional capacity evaluations showed that Mahan could perform only medium-demand work, below the heavy physical demands of police work. The court added that it was unaware of any reason why the fitness standards that apply to new officers should not also apply to an officer returning to duty after a line-of-duty injury.

Although *Mahan* involved a police pension fund, its lessons apply equally to firefighters' pension boards under Article 4 of the Illinois Pension Code. A pension board's role is not to "win" a disability case, but to provide a fair hearing and decide each claim impartially on the evidence. Trustees should assume that anything said about a claimant during board business, even in jest and even months before a hearing, may later be played back as evidence of prejudgment. When a recusal motion raises a genuine question about a trustee's impartiality, the trustee's own assurance of fairness may not be enough to cure it, and the board should carefully consider whether stepping aside is the more prudent course. Boards should also ensure that the medical opinions they rely on address the actual physical requirements of the position, and that their written findings explain why one opinion was credited over conflicting evidence. Finally, the court's earlier criticism of board counsel doubling as hearing officer is a reminder to keep advisory and adjudicative roles separate.

As *Mahan* illustrates, procedural missteps can undo a board's decision regardless of the merits. Pension boards are thus encouraged to work with counsel to ensure their administrative hearings are conducted fairly and their decisions will withstand judicial review. ■

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