

# PENSION POINTERS



## Federal Court Weighs in on Whether Delayed Disability Hearing Process Violates an Applicant's Due Process

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Applicants for disability pension benefits often lament that the process to obtain these benefits is slow, particularly where the applicant is no longer receiving salary or has been terminated from employment while awaiting a hearing on their pending application. Recently, a Chicago police officer seeking disability benefits from the Policemen's Annuity and Benefit Fund of the City of Chicago filed a federal lawsuit against the Retirement Board of the Fund, claiming he had been deprived procedural due process for delays in processing his application in violation of the Fourteenth Amendment of the U.S. Constitution. The court, however, disagreed.

In *Taylor v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, No. 22-cv-6104, 2023 WL 6213797 (N.D. Ill. Sept. 25, 2023), Chicago police officer David Taylor had been involved in an on-duty shooting in July of 2018 and subsequently diagnosed with posttraumatic stress disorder ("PTSD"). After physicians recommended that he not return to work, Taylor took a one-year medical leave of absence. He subsequently applied for disability benefits in April of 2022 when the City of Chicago moved him to "no-pay status," which left him without a salary.

As part of its process, the Fund had the officer evaluated by an independent medical examiner in July of 2022. The IME physician concluded Taylor was disabled as the result of PTSD and unable to return to work as the result of the duty-related incident in July of 2018. According to

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Taylor, the Retirement Board routinely grants applicants temporary disability benefits without prejudice, pending a full hearing on the disability application. However, in his case, the Retirement Board instead held an initial hearing at the end of July 2022 and voted to defer a decision on temporary benefits for the officer, pending a full hearing on his disability application. Taylor's attorney sent multiple requests to the Retirement Board, asking for the application to be set for a full hearing at the Retirement Board's August, September, October, and November 2022 meetings, and each request was denied. An employee of the Fund advised Taylor's attorney that the Retirement Board was "not ready to hear" the application and it was "gathering more evidence."

As a result of the delayed process, Taylor filed a complaint against the Retirement Board in the U.S. District Court for the Northern District of Illinois. He alleged that the Retirement Board had deprived him of due process by failing to give him an appropriate hearing on his disability application and failing to award him benefits.

Under the Fourteenth Amendment, individuals may not be deprived of

property without due process. Due process, the court explained, involves both substantive and procedural components. Taylor specifically stated in his complaint that he was deprived of procedural due process. This required that he prove that (1) he was deprived of a protected property interest, and (2) there had been insufficient procedural protections surrounding that deprivation. Taylor alleged that he has a protected property interest in a duty disability benefit, stating that the City of Chicago and the Fund's IME physician agreed that he is disabled and that his PTSD was caused by the on-duty shooting incident in 2018.

However, the court noted that Section 5-156 of the Illinois Pension Code (40 ILCS 5/5-156) provides that there are conditions on an applicant's entitlement to a disability pension benefit. Besides being evaluated by at least one IME physician appointed by the Retirement Board, the Board is expressly authorized to require other such evidence of disability; to make such determination, the Retirement Board must make factual findings on the cause of disability and whether it is duty related. Until the Retirement Board makes such

*Continued on page 23*

## Pension Pointers

Continued from page 22

determination, Taylor did not have a claim of present entitlement to the disability benefit under Section 5-154 of the Illinois Pension Code (40 ILCS 5/5-154).

Further, the court noted that there was no statute, regulation or rule requiring the Retirement Board to accept the City's or the physicians' opinions when making disability determination. To the contrary, the Illinois Pension Code "vests the board with 'exclusive jurisdiction' to decide applications for duty-related disability benefits" and "authorizes the board to request additional evidence in its discretion before deciding a duty disability benefit claim."

Similarly, the court determined that the officer had not shown he had a property interest in a temporary disability benefit pending a full hearing before the Retirement Board. As in the case of making a final determination on Taylor's entitlement to disability benefits, the court noted there was no statute, regulation or rule that limiting the Retirement Board's discretion to grant or deny a temporary benefit pending a full hearing. As a result, the court found the officer had not made a plausible claim that he had a protected property interest in a temporary benefit.

Next, the court observed that due process challenges are "premature" where a plaintiff has not exhausted possible state remedies. In this case, Taylor did not argue that Illinois' procedures for hearing, determination, and judicial review of applications for disability benefits are inadequate. The court determined, accordingly, that Taylor's due process claim based on a deprivation of benefits was premature, as his remedy would be through the state's administrative review law, rather than a federal lawsuit.

As for the delay in holding a hearing, the court observed due process usually only has "a limited role to play in protecting against oppressive delay." However, the court did acknowledge that due process "requires provision of a hearing at a meaningful time." At some point, a delay in holding a hearing becomes a constitutional violation.

The court reviewed previous case law involving delays in hearing processes,

including the Illinois Supreme Court's decision in the case of *Marconi v. Chicago Heights Police Pension Board*, 225 Ill.2d 497 (2006). In *Marconi*, nearly five years had elapsed in a pension fund's process to adjudicate a police officer's application for disability benefits. Despite the extraordinary delay, the Illinois Supreme Court held a due process violation had not occurred, reasoning that a bright-line rule on when such hearings must occur "could lead to undue pressure to make a decision in a complex case." Thus, the Illinois Supreme Court found that a case-by-case assessment must be made to determine whether—under the specific facts and circumstances of any particular matter—an applicant has been deprived of due process.

The *Taylor* court agreed that it had "no way of assessing the legal and factual complexity of Taylor's duty disability benefit application based on his federal complaint." The Retirement Board had not provided any insight into what additional evidence it was seeking, and Taylor's attorney "essentially hit a brick wall asking what additional information the board needs." However, the court further explained that because disability claims do not depend on the applicant's financial need, the allegation by Taylor that the delay in holding the hearing was depriving

him of the financial means to support himself was not the same as a situation where a person is "on the very margin of subsistence" when assessing due process.

The court concluded that Taylor had not pleaded a plausible claim that the delay in this case had risen to the "level of egregiousness required to state a due process claim."

The takeaway from *Taylor* is that, while there may not be a "bright line" test as to how expediently a pension board is expected to conduct a disability hearing process, the facts and circumstances of each application will determine whether proper procedural due process is being provided to an applicant. While pension boards should engage in thoughtful and thorough processes to carry out their fiduciary duty to provide benefits only to those applicants who qualify, this duty includes being cognizant of the need to be timely in processing those applications in a manner that is fundamentally fair and reasonable, without unnecessarily creating hardships for its members. Applicants, as well, need to be encouraged to submit applications in a timely manner – before paid time off has been exhausted – so that they are not placed in a financial crisis due to their own delay in application. ■



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