

PENSION POINTERS



Appellate Court Upholds Forfeiture of Drew Peterson's Pension

By Carolyn Welch Clifford
Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.

The Illinois Appellate Court recently upheld the decision of the police pension fund board to terminate the retirement pension benefits of Drew Peterson in *Peterson v. Board of Trustees of the Bolingbrook Police Pension Fund*, 2022 IL App (3d) 210100-U. In *Peterson*, the Board of Trustees of the Bolingbrook Police Pension Fund concluded that Peterson's murder of his ex-wife was "related to, arose out of, or was in connection with his service as a police officer," and the court agreed the board's determination was supported by the manifest weight of the evidence. As described below, the lessons of *Peterson* illuminate how a firefighters' pension fund should handle a pension forfeiture matter.

Peterson was a Bolingbrook police officer from 1977 to November 9, 2007. Peterson retired benefit on November 30, 2007 and began drawing benefits from the Bolingbrook Police Pension Fund. But in May of 2009, Peterson was charged of first-degree murder of his former wife, Kathleen Savio, who was found dead in her bathtub on May 1, 2004. Peterson was tried and convicted of the crime in 2012, which was later affirmed on appeal in 2015.

Subsequently, the pension board held a hearing on whether Peterson's felony conviction would cause him to forfeit his retirement pension benefits under Section 3-147 of the Illinois Pension Code (40 ILCS 5/3-147).

In its order, the board found Peterson had used his specialized police training, skills, and abilities to plan and commit his ex-wife's murder. The board specifically determined that Peterson's felony conviction for the murder of his ex-wife was "related to, arose out of, or was in

About the Author: *Carolyn Welch Clifford* is a partner with Ottosen DiNolfo Hasenbalg & Castaldo, Ltd. in Naperville, Illinois. Ms. Clifford concentrates her practice in the representation of Illinois firefighter and police pension funds, as well as fire and police commissions and fire protection districts. She currently serves as the Chair of the Public Safety Affinity Group for the National Association of Public Pension Attorneys (NAPPA). She is a frequent speaker at fire service and public pension conferences in Illinois and nationally and contributes regularly to several publications. Ms. Clifford earned her B.S. and J.D. degrees from the University of Illinois in Urbana-Champaign. You can contact her at cclifford@ottosenlaw.com.

connection with Peterson's service as a Bolingbrook police officer, and there was a nexus between his conviction and his employment." Peterson appealed, but the circuit court affirmed the board's decision in February of 2021. Peterson appealed again to the appellate court, but the result was the same.

The court's decision provides a primer on the pension forfeiture statutes in Illinois. Illinois' forfeiture statutes are some of the oldest in the nation, dating back to July of 1955. In total, there are *nineteen* separate forfeiture provisions for each separate Illinois retirement system. The statutory language is essentially identical, with a few additional grounds for forfeiture in some articles of the Illinois Pension Code:

None of the benefits provided under this Article shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with service as a member [as a police officer, as a firefighter, as an employee, etc.].

This Section shall not impair any contract or vested right acquired prior to July 11, 1955 under any law continued in this Article, nor preclude the right to a refund.

All persons entering service subsequent to July 11, 1955, are

deemed to have consented to the provisions of this Section as a condition of coverage. 40 ILCS 5/3-147.

Over the forfeiture statutes' nearly 60-year history, there have been more than thirty reported cases interpreting this law. The *Peterson* case, however, is by far the most high-profile.

Illinois' forfeiture statute requires a "nexus" between the felony committed and the public employment. Specifically, the statute provides for forfeiture for "any felony relating to or arising out of or in connection with service." The courts have used various "tests" for analyzing that connection:

- **The "but for" test** – the resulting event would not have occurred "but for" the employment. *See, e.g., Devoney v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 199 Ill. 2d 414 (2002).
- **The "substantive factor" test** – the link between police duties and a felony is established if the questioned cause "was a material element and a substantial factor" in bringing about the subsequent occurrence. *See, e.g.,*

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Bloom v. Municipal Employees' Annuity and Benefit Fund, 339 Ill. App. 3d 807 (1st Dist. 2003).

- **The “proximate causation test”**
– The felony arises out of and is connected to employment if its origin is in *some way* connected with the employment so that there is a causal connection (“proximate causation”).

In reviewing the board’s findings, the court in *Peterson* noted the board’s conclusion that Peterson’s scheme to murder Savio, the act of the murder, and Peterson’s attempts to conceal the murder were “driven by his specialized knowledge from being a police officer and arose out of his duties as a police officer.” The court further noted:

Peterson exploited his position as a police officer to secure access to the crime scene and his use of

professional courtesy was central to avoiding detection and prosecution. The Board found that there was a sufficient nexus between the crime and Peterson’s service as a police officer for forfeiture of his pension under any of the three alternative tests that the court found applicable. *Peterson*, 2022 IL App (3d) 210100-U, ¶ 12.

Therefore, the *Peterson* court upheld the pension board’s decision to terminate Peterson’s retirement pension.

Notably, terminating a pensioner’s benefits requires the due process of law. *Moore v. Board of Trustees*, 157 Ill. App. 3d 158, 165 (1st Dist. 1987). At minimum, the pension board must provide a pensioner with sufficient notice and conduct “a predetermination evidentiary hearing with full administrative review,” as occurred in the *Peterson* case. *Id.* at 165–66.

Finally, under Section 4-138 of the Code (and nearly all of the other forfeiture

statutes), pensioners convicted of felonies who forfeit their benefits still have the right to a refund of their contributions. 40 ILCS 5/4-138. In fact, courts have construed the phrase “refund” to mean a *full* refund of all contributions. See *Shields v. Judges’ Retirement System of Illinois*, 204 Ill.2d 488 (2003). Unfortunately, even in situations where a pensioner has drawn benefits that exceed employee contributions, the pension board is obligated to return *all* contributions the firefighter or police officer has made into the fund with no offset. So, even though Drew Peterson may no longer be entitled to a retirement pension, he will still draw some money from the Bolingbrook Police Pension Fund.

The *Peterson* case, while non-precedential, shows how any pension board should handle a felony forfeiture matter. If your pension board encounters such a situation, we recommend you partner with your attorney. ■

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