

PENSION POINTERS



Pension Case Law Update

By James G. Wargo
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The following are summaries of several significant pension cases that have been issued by the Illinois appellate courts in the last year:

Duty Disability Pensions:

Village of Roselle v. Board of Trustees of the Roselle Firefighters' Pension Fund, 2021 IL App (2d) 200360. The Second District Appellate Court upheld a ruling of the Board of Trustees of the Roselle Firefighters' Pension Fund ("Board") finding that a firefighter was entitled to a line-of-duty disability pension for a back injury he suffered while filling a cooler with bottled water at the station.

On September 18, 2016, firefighter Ryan Case was directed by his shift commander to move cases of bottled water and fill a cooler for an upcoming event. While filling the cooler, Case "felt a pop and pain" and was taken to the emergency room. An MRI showed a lower back disk herniation, and he was unable to return to fully duty and applied for a disability pension.

The Village of Roselle ("Village") intervened in Case's pension disability proceeding and argued that the Board should deny the disability pension request because Case had failed to disclose during his preemployment physical examination a long history of back pain.

The Board awarded Case a duty disability pension. The Board concluded that Case's "untruthfulness" during his preemployment physical examination was not an issue to be adjudicated by the Board.

On administrative review, the circuit court reversed the Board's award of a duty disability pension. The circuit court

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concluded that the injury was not caused by an "act of duty" because Case was not "saving the life or property of another" when his injury occurred. The circuit court further ruled that the Board had the statutory authority to deny Case's application based on his preemployment untruthfulness.

The appellate court reversed the circuit court's ruling and upheld the Board's award of a duty disability pension. The court reasoned that Case's injury had occurred while performing an act required by the fire department's rules and regulations. The court also held that the Board did not have the statutory authority to deny the disability pension on the basis of Case's preemployment untruthfulness.

Kelly v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago, 2022 IL App (1st) 210483 (May 5, 2022). The First District Appellate Court reversed the retirement board's determination that a police officer was not disabled and ordered the retirement board to award him a non-duty disability benefit.

On April 7, 2014, Chicago police officer Patrick Kelly killed a knife-wielding individual who supposedly attacked him while responding to a domestic disturbance. In 2016, Kelly told the police department that he could no longer work full duty and was taken off street duty. On November 1, 2017, Kelly filed an injury on-duty report, claiming that

the 2014 shooting caused him to suffer posttraumatic stress disorder ("PTSD"). On November 21, 2018, Kelly filed an application with the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago ("Board") seeking a duty disability pension, claiming that he was disabled due to PTSD, which was caused by an act of duty associated with the incident on April 7, 2014.

In addition to the 2014 incident, Kelly was involved in several other incidents dating back to 2005. In one of these incidents in 2010, Kelly's weapon was used in a shooting involving his friend, Michael LaPorta. After a lawsuit, a civil jury found that Kelly had shot LaPorta.

On October 31, 2019, the Board found that Kelly was not disabled as a result of the April 7, 2014, incident and denied the pension request. On administrative review, the First District Appellate Court affirmed the Board's denial of a duty-disability pension but concluded that Kelly had established that he was disabled and entitled to a non-duty disability pension.

Pension Forfeiture:

Abbate v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago, 2022 IL App (1st) 201228 (June 6, 2022). In *Abbate*, the First District Appellate Court upheld the decision of the Retirement Board of the

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Policemen's Annuity and Benefit Fund of the City of Chicago ("Board") that a former Chicago police officer, Anthony Abbate, forfeited his right to a pension as a result of a felony conviction associated with an aggravated battery committed while off duty at a local tavern.

While off duty on February 19, 2007, Abbate was drinking at a Chicago bar and got into an altercation with another customer. After the tavern's bartender, Karolina Obryzcka, told Abbate to stop, Abbate went behind the bar and repeatedly kicked her. As a result of this incident, Abbate was convicted of a felony for aggravated battery against Obryzcka.

In 2018, Abbate filed for a pension. The Board denied the pension request based on his felony conviction, which the Board determined was related to his service as a police officer.

On administrative review, the circuit court reversed the Board's decision to deny the pension. On appeal, the appellate court reversed the decision of the circuit court and upheld the Board's denial of the

pension upon finding a sufficient nexus between Abbate's service as a police officer and his felony conviction.

The court reasoned that Abbate had announced he was a police officer at the bar. In addition, the evidence from a related federal civil trial showed that a driving force behind Abbate's conduct was the Chicago Police Department's widespread practice of failing to investigate and discipline its police officers.

Surviving Spouse Benefits:

Thornley v. Board of Trustees of River Forest Police Pension Fund, 2022 IL App (1st) 210835 (March 31, 2022). In a case of first impression, the Illinois Appellate Court held that a surviving spouse of a deferred pensioner was not eligible to receive surviving spouse benefits until her deceased husband would have reached 60 years of age as opposed to immediately after his death.

According to the facts, Michael Thornley, began working for the River Forest Police Department in 1997 and married Carrie Thornley ("Plaintiff"). Thornley resigned from the police department in 2015 after 18 years of

service and would not have been eligible to receive a pension until he reached age 60 in 2032.

Upon her husband's death, Plaintiff applied for a surviving spouse benefit. The Board of Trustees of the River Forest Police Pension Fund ("Board") ruled that Plaintiff was entitled to the requested survivor benefits but was not eligible for the benefits until 2032 when her husband would have reached age 60.

On administrative review, the Illinois Appellate Court affirmed the Board's decision. The court reasoned that the triggering point to receive a pension is not simply "upon the death," but "the death of a police officer entitled to a pension." At the time of his death, Thornley was not eligible for his pension benefits until 2032.

It should be noted that for a deferred firefighter's surviving spouse, the language found in Section 4-114 (applicable to firefighters) under Article 4 of the Pension Code is different from Section 3-112 under Article 3. Under the same facts presented in the *Thornley* case, a surviving spouse of a Tier I former firefighter with 18 years of service would begin receiving surviving spouse benefits upon the death of the deferred firefighter. ■

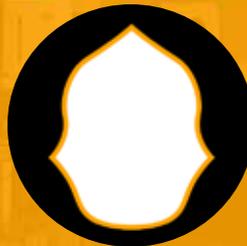


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