

PENSION POINTERS



Two Appellate Courts Approve Interim Disability Pensions

By John E. Motylinski
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Not infrequently, pension boards are presented with a dilemma in processing line-of-duty disability pensions. The applicant is obviously disabled and will not return to work. However, there remains a question about whether the disability was duty related. But processing the application will take months, and the applicant has no income. What's a board to do?

Enter the interim non-duty disability pension. These devices allow a pension board to grant the applicant a lower benefit to which they are entitled while they wait for the board to adjudicate their claim for a higher one.

Lately, however, pension boards have seen their power to award interim benefits challenged by intervening municipalities. A common argument has been that granting interim benefits is a final decision and divests the pension board of jurisdiction to hear the remaining parts of the claim.

In late 2022, two Illinois Appellate Courts blew that theory out of the water and upheld interim non-duty benefits.

In the first case, *Village of Northbrook v. Northbrook Firefighters' Pension Fund*, a firefighter with a history of heart issues suffered disabling cardiac decline after attending a physically intensive, department-sanctioned drill. 2022 IL App (1st) 220277-U. There was no dispute that the firefighter was disabled and could not return to work. However, the firefighter

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had also applied for line-of-duty benefits, and the cause of his disability was unclear. The village intervened and argued against the firefighter being awarded an interim non-duty disability pension, but the board awarded one anyway. Ultimately, the board granted the firefighter line-of-duty benefits, and the village appealed.

One of the village's arguments to the Appellate Court was that the board's interim non-duty disability pension divested it of jurisdiction to hear the remaining case. In making that argument, the village relied heavily on the Administrative Review Law, which disallows pension boards from reopening their final "administrative decisions" after thirty-five days.

However, the Appellate Court did not agree with the village's reading. Contrary to the village's assertions, the pension board's decision to award interim benefits was not an "administrative decision" because it was not a final order (i.e., it did not terminate all proceedings before the board). In fact, the opposite was true—after awarding an interim pension, the board hosted multiple hearings on the merits of the case over a span of months, and only later issued its written

findings and decision on the merits of the line-of-duty pension. The Court also noted that the board's decision to award interim benefits was not unreasonable, as an "award of interim benefits" ensures that the applicant receives at least some income while his or her case is pending, which can take several months, as it did in this case. Accordingly, the Appellate Court held that the pension board's decision to award interim benefits did not prevent it from considering the firefighter's line-of-duty application.

A different panel of the Appellate Court issued an almost identical decision thirteen days later. In *Masterton v. Village of Glenview Police Pension Board*, a police officer died while attending roll call. 2022 IL App (1st) 220307. His ex-wife applied for a 100% line-of-duty survivor benefit for their minor son. There was no dispute that the son was entitled, at a minimum, to a 50% annuity. So, the pension board granted the child an interim non-duty surviving child benefit without prejudice to the line-of-duty death application. The intervening village appealed and also argued the pension board lacked

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the power to make interim pension awards. The Appellate Court rejected that contention. Just as in *Martin*, the *Masterson* Court found the board's interim decision was not a final "administrative decision." Consequently, the interim award did not divest the board of jurisdiction to adjudicate the line-of-duty application, in which the pension board concluded that the minor child was not entitled to the line-of-duty death survivor benefit.

The Appellate Court's twin decisions in *Martin* and *Masterson* are the first to tackle the issues presented with interim pensions. Both cases stand for the unified proposition that pension boards may award interim benefits without fear that they cannot proceed with the remainder of their work. Therefore, it is likely interim non-duty disability pensions will become even more of a mainstay in disability matters before pension boards. Yet, the award of any interim pension is still a significant event. Therefore, if your board encounters a situation calling for an interim benefit, we recommend you consult the board's attorneys. ■

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