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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1916**

In the Matter of the Application for
PERA Police and Fire Plan Line of
Duty Disability Benefits of Becky Johnson.

**Filed August 11, 2009
Affirmed
Johnson, Judge**

Public Employees Retirement Association of Minnesota
File No. 60-3600-17188-5

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Considered and decided by Connolly, Presiding Judge; Johnson, Judge; and
Willis, Judge.*

UNPUBLISHED OPINION

JOHNSON, Judge

Becky Johnson worked as a paramedic for approximately 25 years before she was
forced to resign because of pain in her hip joints. Johnson applied for disability benefits
from the Public Employees Retirement Association (PERA), which granted her request

*Retired judge of the Minnesota Court of Appeals, serving by appointment
pursuant to Minn. Const. art. VI, § 10.

for basic disability benefits. But PERA denied Johnson's request for enhanced duty-related disability benefits on the ground that her disability was not caused by an injury that was sustained in the performance of her duties as a paramedic. On appeal, Johnson argues that she should receive enhanced duty-related disability benefits because her paramedic duties substantially contributed to her hip condition. We conclude that substantial evidence supports PERA's decision and, therefore, affirm.

FACTS

Johnson was employed as a paramedic by the Hennepin County Medical Center from 1980 to June 2005. Her job required her regularly to stoop, kneel, crouch, squat, twist, and lift.

On three occasions between 1997 and 2005, Johnson reported to her employer that she was experiencing pain in her hips while working. Between April 2005 and October 2006, Johnson was treated by David Palmer, M.D., an orthopedic surgeon. At her initial examination, Johnson informed Dr. Palmer that she had been experiencing pain in both hips for the preceding seven years. Based on her complaints and the results of an MRI scan, Dr. Palmer suspected that Johnson had early degenerative joint disease and tearing of the acetabular labra, which are the rings of cartilage that surround the sockets of the hip joints. In May 2005, Dr. Palmer conducted arthroscopic surgery, which revealed a torn labrum in her right hip. A similar surgery the following month revealed a torn labrum in her left hip. Johnson was given light-duty assignments consisting of paperwork but continued to experience persistent pain. On June 14, 2005, she resigned from her position.

In September 2005, Dr. Palmer submitted information to PERA in connection with Johnson's application for disability benefits. He stated that Johnson was disabled and unable to perform her work duties. He also stated that her disability was caused by "labral hip tears" and "early osteoarthritis," which he believed would result in progressive pain. He concluded that her disability was not "related to a previous illness/injury."

The following month, Dr. Palmer amended his earlier report, stating that Johnson's "work has contributed to her hip arthritis from constant lifting and squatting." In a December 2005 note to his file, he wrote, "The physical demands of [Johnson's] job are such that I think her work is a substantial contributing factor in the degeneration of the labral tears in both of her hip joints. As such, I think she has a work-related injury to her hips." In a December 2006 letter to Johnson's counsel, which was made part of the agency record, Dr. Palmer stated:

I do feel her current physical disabilities in both hips are substantially contributed to by her activities and employment as a Hennepin County paramedic to a reasonable degree of medical certainty. This is based on the nature of her job that involves lifting, repetitive kneeling and squatting. Her lifting involves primarily patients but also equipment.

In January 2006, Paul Cederberg, M.D., an orthopedic surgeon, examined Johnson at PERA's request. In reviewing her medical history, Dr. Cederberg noted that Johnson had been treated in 2003 for bursitis and mild osteoarthritis in her hip joints. He also noted that MRI scans of both hips in 2005 showed "mild to moderate degenerative arthritis of the right hip joint with degenerative tearing" of the labrum as well as "mild

degenerative arthritis of the left hip.” Dr. Cederberg performed a physical examination of Johnson and tested the range of motion of both of her hip joints. Dr. Cederberg agreed with Dr. Palmer’s conclusion that Johnson was disabled and unable to perform her duties as a paramedic. But Dr. Cederberg concluded that Johnson’s hip condition was not caused by her work duties:

In my opinion, [Johnson] has bilateral hip arthritis related to age. There is no fascial inflammation nor am I aware of any studies documenting that work as a paramedic in any way contributes to degenerative arthritis of the hip.

. . . .

In my opinion the disability is related to the degenerative condition of both of [Johnson’s] hips and unrelated to her work activities.

The disability is not related to a specific event occurring in the line of duty.

In February 2006, PERA approved Johnson’s application for basic disability benefits but denied her request for enhanced duty-related disability benefits on the ground that her condition was not caused by her paramedic duties. Johnson appealed the denial of enhanced duty-related disability benefits to an administrative law judge (ALJ), who conducted a hearing in December 2006. In December 2007, the ALJ issued a written decision in which he concluded that Johnson had “failed to establish by a preponderance of the evidence that her disability was a direct result of an injury incurred in and arising out of an act of duty as a paramedic” and, therefore, recommended that the PERA board deny Johnson’s application for enhanced duty-related disability benefits.

The parties appeared for a hearing before the PERA board in September 2008. At the conclusion of that hearing, based on the findings of fact and conclusions of law of the ALJ, the PERA board decided to deny enhanced duty-related disability benefits. Johnson appeals the PERA board's decision by way of a writ of certiorari.

DECISION

Johnson argues that the PERA board and the ALJ erred by finding that she did not satisfy the statutory criteria for enhanced duty-related disability benefits. We will affirm an agency's findings of fact unless they are "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 14.69(e) (2008). "Substantial evidence consists of: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than 'some evidence'; (4) more than 'any evidence'; and (5) evidence considered in its entirety." *Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006) (quotation omitted). The substantial-evidence standard requires a lesser degree of proof than the preponderance-of-the-evidence standard. *City of Lake Elmo v. Metropolitan Council*, 685 N.W.2d 1, 4 (Minn. 2004). We review an agency's interpretation of a statute on a *de novo* basis. *Greene v. Commissioner of Dep't of Human Servs.*, 755 N.W.2d 713, 721 (Minn. 2008).

PERA administers several disability-benefit plans for public employees. See Minn. Stat. § 353.03, subd. 3 (2008). One of those plans is the police and fire fund. Minn. Stat. § 353.65, subd. 1 (2008). Paramedics employed by Hennepin County are members of the police and fire fund. Minn. Stat. § 353.64, subd. 10 (2008). The police

and fire fund provides two types of disability benefits, depending on the nature of the disability. First, a member who becomes disabled and unable to perform her duties because of an “injury occurring while *not* on duty” is entitled to basic benefits equal to a percentage of the member’s average salary. Minn. Stat. § 353.656, subd. 3 (2006) (emphasis added); *see also* Minn. Stat. § 353.01, subd. 17a (2006). Second, a member who is disabled due to an injury sustained while on duty is entitled to enhanced benefits:

A member . . . who becomes disabled and physically unfit to perform duties as a . . . paramedic . . . *as a direct result of an injury, sickness, or other disability incurred in or arising out of any act of duty*, which has or is expected to render the member physically or mentally unable to perform the duties as a . . . paramedic . . . shall receive disability benefits during the period of such disability . . . in an amount equal to [a greater percentage of the member’s average salary].

Minn. Stat. § 353.656, subd. 1(a)(2), (b) (2006) (emphasis added).

In light of the plain language of this statute, an applicant must establish three facts to be eligible for enhanced duty-related disability benefits: (1) the existence of “an injury, sickness, or other disability,” (2) that the “injury, sickness, or other disability” was “incur[red] in or [arose] out of any act of duty,” and (3) that the applicant became “physically unfit to perform [his or her] duties . . . as a direct result” of the applicant’s “injury, sickness, or other disability,” *i.e.*, that the applicant’s “injury, sickness, or other disability” directly caused the applicant’s unfitness for his or her job duties. *See In re PERA Police & Fire Plan Line of Duty Disability Benefits of Brittain*, 724 N.W.2d 512, 519-20 (Minn. 2006).

In this case, only the second of the three requirements is at issue. The first requirement is not at issue because there is no dispute that Johnson has a condition that is “an injury, sickness, or other disability.” Minn. Stat. § 353.656, subd. 1. Dr. Palmer and Dr. Cederberg agree that Johnson is disabled and that her disability resulted from the labral tears and degenerated condition of her hip joints. The third requirement is not at issue because there is no dispute that Johnson’s hip condition caused her to become physically unfit to perform her paramedic duties. The only requirement in dispute is whether Johnson’s hip condition was “incur[red] in or [arose] out of any act of duty” she performed as a paramedic. *Id.* To satisfy the second requirement, Johnson must establish a causal connection between her disability and “a task or function that was performed by” her. *In re Brittain*, 724 N.W.2d at 520.

The agency record contains conflicting evidence as to whether Johnson’s hip condition was “incur[red] in or [arose] out of any act of duty” she performed as a paramedic for Hennepin County. Johnson relies on the opinion of Dr. Palmer, who initially concluded that Johnson’s hip condition was not “related to a previous illness/injury” but later asserted that her condition was partially attributable to her paramedic duties. But Dr. Palmer did not retract his earlier conclusion that Johnson’s hip condition was also partially attributable to “early osteoarthritis” and “degenerative joint disease,” which would “progress” over time.

PERA, in contrast, relies on the opinion of Dr. Cederberg, who consistently maintained that Johnson’s condition was not caused by her duties as a paramedic. In a written response to Dr. Palmer’s report, Dr. Cederberg stated:

I am not aware of any epidemiological literature in the musculoskeletal field that notes that EMTs are more prone to hip arthritis or labral tears than the general population. Dr. Palmer's opinions that her problems are work-related are pure speculation. The vast majority of hip problems are due to aging process and/or genetic components.

Dr. Cederberg concluded that Johnson's condition was due solely to the degenerative condition of her hip joints and was "unrelated to her work activities."

The ALJ recited the conflicting opinions of Dr. Palmer and Dr. Cederberg in his written decision. The ALJ concluded that Johnson's "evidence and medical opinion do not prove by a preponderance of the evidence that [her] condition was a direct result of her work as a paramedic." The PERA board adopted the ALJ's decision "in its entirety" and concluded that Johnson had "not sustain[ed] her burden of proof that her condition is the direct result of an injury sustained in the line of duty as a Hennepin County paramedic." The ALJ's findings are supported by the evidence provided by Dr. Cederberg. Thus, Johnson has not demonstrated that the PERA board's decision is "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 14.69(e).

Johnson contends that she has satisfied the second requirement of the statute because her work activity "substantially contributed" to her hip condition. As authority for this argument, Johnson relies on *George v. Estate of Baker*, 724 N.W.2d 1 (Minn. 2006), in which the supreme court held that, for purposes of tort liability, "Minnesota applies the substantial factor test for causation." *Id.* at 10. Johnson also relies on *Gillette v. Harold, Inc.*, 257 Minn. 313, 101 N.W.2d 200 (1960), in which the supreme court held

that, for the purposes of the workers' compensation act, an injury need not arise from "an accident or to any single occurrence," *id.* at 319, 101 N.W.2d at 205, but, rather, may be a "gradual process" resulting in "weakness and pain, the accumulated effect of which is the disability from which she suffers." *Id.* at 323, 101 N.W.2d at 207.

Neither the supreme court nor this court has applied these tort and workers' compensation standards of causation when interpreting section 353.656, subdivision 1. Furthermore, both causation standards cited by Johnson are incongruous with the language of section 353.656, subdivision 1, which requires not only that an applicant's physical condition arise from the applicant's duties but also that the applicant's unfitness be the "direct result" of the condition that arose out of the applicant's job duties. Minn. Stat. § 353.656, subd. 1. The statute essentially requires that an applicant's unfitness be the "direct result" of an "act of duty." *See id.* Thus, even if we accept Dr. Palmer's opinion that Johnson's paramedic duties were a substantial contributing factor to her unfitness, that evidence would be insufficient as a matter of law to establish her entitlement to enhanced duty-related disability benefits.

Johnson also contends that the PERA board's decision should be reversed because the ALJ did not issue his decision in a timely manner. Johnson relies on a statute that requires district court judges to issue decisions within 90 days after the submission of a motion or other matter. *See* Minn. Stat. § 546.27, subd. 1 (2008). But that statute does not apply to ALJs. Thus, there is no legal basis for Johnson's argument for reversing the PERA board's decision due to the ALJ's untimeliness.

In sum, the PERA board's decision to deny Johnson enhanced duty-related disability benefits under section 353.656, subdivision 1, is supported by substantial evidence, which consists of Dr. Cederberg's opinion that Johnson's hip condition is not an injury, sickness, or disability that was caused by any act of duty in Johnson's position as a Hennepin County paramedic.

Affirmed.