

ILLINOIS PUBLIC PENSION ADVISOR



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Legislative Hurdles for Firefighters

Cary J. Collins, Attorney at Law

Contracts, Policies, Benefits and Pension.

The Benefits to Firefighters in the State of Illinois are subject to a variety of agreements, statutes, ordinances and policies.

These agreements, statutes, ordinances and policies interact with each other to affect how benefits and to determine which benefits Firefighters will receive.

Labor contracts

Labor contracts are negotiated between the governmental unit and the firefighters collective bargaining unit. The parties are generally at odds over the terms of the agreement as the governmental unit would like to give a low salary, take away benefits and control the employees. The Firefighters want a higher reasonable wage, increased benefits, Kelly days, paid insurance, fair promotional exams and other reasonable terms. The problem becomes that both parties do not understand conflicts between the items negotiated and existing laws and policies.

Longevity and Pensions

Long time issues which exist are problems regarding health insurance. Governmental costs with existing tax caps cannot cover increasing medical insurance costs that requires an individual to retire in a stated time period.

Disability Benefits

A firefighter who becomes disabled and unable to perform unrestricted

duties of a firefighter may run into problems with employer disability benefits, Worker's Compensation and Public Employee Disability Benefits (PEDA).

A firefighter is entitled to one year's full salary if he is injured on the job 5 ILCS 345/1. The firefighter is not required to work light duty and is entitled to full pay.

Workers' Compensation often would like the employee to return to duty in a restricted capacity receiving full pay based upon physicians' recommendations. If a firefighter returns to light duty and cannot perform unrestricted firefighter duties after a period of time he will need to retire or apply for a duty related disability. 40 ILCS 5/4-110 or occupational disease disability pension 40 ILCS 5/4-110.1.

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Trustee Responsibilities

Nick Anastos, Orland Fire Protection District Fire Pension Board

Recently, many local and state wide pension issues have captured our attention. Some of the issues have dramatically changed our understanding of how our pension system works and who is entitled to benefits. Although, I consider myself well versed on state issues, and continue to monitor most proposed legislation, my intense concentration has been with local matters.

As you may know, a firefighter has been accused of fraudulently posing as being in the active military. Even though,

it appeared that the firefighter deceived his employer and ultimately resigned. His past pension contributions were refunded. Many questions relating to restitution for those firefighters who had worked shift in order to fill the military vacancy were also raised. Additionally, the firefighters union had previously bargained that in the event of a firefighter being activated in the military, the firefighter's portion of his pension contribution would be picked up by the employer. Neither of these issues was

satisfactorily resolved and all parties involved were victims.

Fiduciary responsibility rests with all of us. As a pension trustee you have very specific legal guidelines in which you are required to understand and follow. However, education and due diligence are elements needed in order to survive unexpected happenings, and the level of limiting that damage depends on both.

OFF DUTY ADDISON POLICE OFFICER WHO SUSTAINED SERIOUS INJURIES WHILE ATTEMPTING TO APPREHEND SUSPECT IN BLOOMINGDALE AWARDED

LINE-OF-DUTY DISABILITY PENSION

Daniel Jakala, Attorney at Law

In *Harroun v. Addison Police Pension Board*, 372 Ill.App.3d 260, 865 N.E.2d 273 (2nd Dist. 2007), on December 2001, plaintiff was employed by the Village of Addison as a police officer. On December 9, 2001, at about 9 a.m., plaintiff was off duty and was at his home, which was located in Bloomingdale. At that time, plaintiff observed an individual apparently trying to break into plaintiff's neighbor's home. Plaintiff contacted the Bloomingdale police and attempted to apprehend this individual. In doing so, plaintiff suffered serious injuries and, as a result, he became disabled from performing his duties as a police officer. The Board concluded that plaintiff was

entitled to a disability pension based on his injuries. However, the Board concluded that because plaintiff sustained his injuries while he was not on duty and was outside of Addison's corporate limits, he was not entitled to a line-of-duty pension.

Section 3-114.1(a) of the Illinois Pension Code provides, in pertinent part: "(a) If a police officer as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty, is found to be physically or mentally disabled for service in the police department, so as to render necessary his or her suspension or retirement from the police service, the police officer shall be

entitled to a disability retirement pension equal to 65% of the salary attached to the rank on the police force held by the officer at the date of suspension of duty or retirement. A police officer shall be considered 'on duty' while on any assignment approved by the chief of the police department of the municipality he or she serves, whether the assignment is within or outside the municipality."

Section 3-114.1(a) does not define the term "act of duty." For purposes of this provision, it is well established that the definition of "act of duty" set forth in section 40 ILCS 5/5-113 of the Pension Code applies. Section 5-113 defines "act of duty" as "any act of police duty inherently involving special risk,

LINE-OF-DUTY DISABILITY PENSION

continued

not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of this State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman.”

The Board argued that under section 3-114.1(a) a police officer must be “on duty” to receive a line-of-duty disability pension. According to the Board, when plaintiff was injured, he was not acting pursuant to an assignment approved by the chief of police and consequently was not on duty. Plaintiff responded that the second paragraph of section 3-114.1(a) was not a limitation on the scope of an “act of duty.” According to plaintiff, that paragraph served to clarify that assignments approved by the chief of police are within the scope of section 3-114.1(a), regardless of the location of the assignment.

Even though plaintiff was off duty when he confronted the suspect, the Appellate Court in *Harroun v. Addison Police Pension Board*, concluded that plaintiff was performing an “act of duty” in accordance with the definition in section 5-113 of the Code. In attempting to subdue a suspected criminal, plaintiff was clearly engaged in an act inherently involving special risk not encountered by ordinary citizens. In addition, he was performing a duty specifically

imposed by statute. Although the parties did not cite section 725 ILCS 5/107-16 of the Code of Criminal Procedure of 1963, the Appellate Court noted that under that provision “it is the duty of every policeman, when a criminal offense or breach of the peace is committed or attempted in his or her presence, forthwith to apprehend the offender and bring him or her before a judge, to be dealt with according to law.” It makes no difference that plaintiff was not on duty. A police officer “ ‘is always obligated to attempt to prevent the commission of crime in his presence,’ ” and “ ‘any action taken by him toward that end, even in his official off-duty hours, falls within the performance of his duties as a police officer.’ ” *Garner v. City of Chicago*, 319 Ill.App.3d 255, 262, 253 Ill.Dec. 134, 744 N.E.2d 867 (2001), quoting *Banks v. City of Chicago*, 11 Ill.App.3d 543, 550, 297 N.E.2d 343 (1973).

The Appellate Court in *Harroun v. Addison Police Pension Board*, also disagreed with the Board’s contention that plaintiff had no authority to act as a police officer in Bloomingdale. A police officer has authority to act not only within the corporate limits of his or her municipality but throughout his or her police district, 65 ILCS 5/7-4-8, which consists of “the territory which is embraced within the corporate limits of adjoining municipalities within any county in this State.” 65 ILCS 5/7-4-7. Moreover, this court has indicated that an officer may

make an arrest outside of his jurisdiction, as long as the arrest is made in a municipality within the same county as the officer’s jurisdiction. *People v. Kirvelaitis*, 315 Ill.App.3d 667, 669-70, 248 Ill.Dec. 596, 734 N.E.2d 524 (2000). Bloomingdale is a municipality within Du Page County and, at oral argument, plaintiff and the Board agreed that Bloomingdale and Addison are adjoining municipalities. Pursuant to *Kirvelaitis*, plaintiff had the authority to make an arrest in Bloomingdale. In addition, police officers may make citizen’s arrests outside their jurisdictions, and “the use of powers and equipment limited to peace officers is acceptable in a citizen’s arrest provided that such powers and equipment are not used out of jurisdiction to gather the evidence that justified the arrest.” *People v. Kleutgen*, 359 Ill.App.3d 275, 279, 295 Ill.Dec. 583, 833 N.E.2d 416 (2005).

As a consequence, the Appellate Court in *Harroun v. Addison Police Pension Board*, concluded that the act of apprehending the suspect was, as a matter of law, an act of duty. Because there was no dispute that that act resulted in plaintiff’s disability, the Board erred in denying plaintiff’s application for a line-of-duty disability pension, and the trial court correctly reversed the Board’s decision.

Calculating and Dividing Marital Property in a Police Pension Plan

Joseph Crimmins, Hoffman Estates Police Pension

Pension benefits earned during the marriage are considered marital property and, upon dissolution, are subject to division like any other property. *In Re marriage of Abma*, 1st Appellate District, 1999.

Courts can make an equitable division of the pension in at least two ways. One approach is the "immediate offset" approach. This is also called "total offset" approach. An actuary is needed to assign an actuarial value to the pension interest at the date of dissolution. It is not sufficient to simply take the present value of the pension. An actuary must take the present value and discount it to reflect the possibility that the pension may not vest due to death or termination of employment. The court then determines the marital portion by taking the actuarial value and multiplying it by a fraction. The numerator reflects the number of years or months of marriage in which the benefits have been accruing. The denominator is the total number of years or months benefits have been accruing. The marital portion is now established, and

the non-pensioners spouse then receives other marital property, equal to their share of the marital portion of the pension.

Courts can also use the "reserved jurisdiction" approach. The benefits are not divided until they are actually paid to the pensioner. This may not occur for many years after the dissolution of marriage is final. The dissolution judgment may dictate how the pension benefits will be allocated, or it may reserve a decision until the benefits are actually paid. Using this approach, the non-pensioner spouse will not collect their martial share until the pension is actually paid to the pensioner. This approach is appropriate when payment of the pension is uncertain, or when there are insufficient assets for an offsetting award. In other words, the pension benefit is all there is, so both parties must wait until the pension payments begin.

"Pension benefits earned during the marriage are considered marital property and, upon dissolution, are subject to division like any other property."

A Qualified Illinois Domestic Relations Order (QILDRO) authorizes a pension fund to make payments to non-pensioner spouse. Article XIII, Section 5, of the Illinois

Constitution prohibits the impairment or diminishment of benefits granted under the Pension Code. Prior to the QILDRO statue, 40 ILCS 5/1-119, a domestic relations court could not order

the payment of a governmental pension benefit to a person other than the regular payee. Although a spouse was awarded a portion of the pensioner spouse's pension benefits, the payments had to go from the retirement fund to the retiree to the spouse. Now, a QILDRO may be used to make payments directly to the non-pensioner spouse, but only with the consent of the pensioner spouse.

SAVE THE DATE

IPPAC 2007 Fall informational Seminar

November 30, 2007



9:00 am — 4:30 pm

Holiday Celebration

4:30 — 6:00 pm

Hilton Garden Inn

Hoffman Estates, Illinois

IPPAC 14th Annual Spring Seminar

May 14 — 16, 2008

Peoria, Illinois

Spring Seminar dates are tentative



Legislative Hurdles for Firefighters

continued

In such an event, the firefighter may not be advised as to his PEDA rights under *Albee vs. City of Bloomington*, 365 Ill.App.3d 526, 849 N.E.2d 1094, (4th Dist. 2006). If the disability benefit is awarded, can a firefighter still receive his PEDA benefit?

A firefighter may be discharged for "cause." The courts have determined "cause" for termination of a firefighter is a substantial short coming, recognized by law and public opinion as a good reason for termination, *Dauen vs. Board of Fire and Police Commissioners of Sterling*, 275 Ill.App.3d 487, 656 N.E.2d 427 (3rd Dist. 1995).

The common basis for cause is disobedience to rules, violation of state law, insubordination or misbehavior as well as other causes. In a Kentucky case, *Blair vs. City of Winchester*, 743 S.W.2d 28 (1987), the City of Winchester (Ky.) fired Blair for being physically unable to perform the work of a fireman. Blair was originally injured on the job while fighting a fire in January 1984. (He subsequently challenged the Fire Chief in a City Counsel meeting while still IOD). He returned to work by order of the Fire Chief the next day. Blair re-injured his back stepping off a fire truck eight days later. Blair attempted to work light duty but was denied. Two months later the City filed charges against Blair as he had been off duty a year and it was not anticipated he would return

for at least another year. The City contended that Blair was guilty of inefficiency.

The case was appealed; the trial court upheld the City. It was then appealed to the Appellate Court. Kentucky Law provides that firefighters can be dismissed for inefficiency, misconduct, insubordination or violation of law. Blair argued that he could not be fired unless an act was intentional and that his injury was unintentional. The court defined inefficiency as "the quality of being incapable of doing or indisposed to do, the thing required of an officer." The Court believed it was arbitrary and unjust to the firefighter to put his life on the line for the people of the City, but felt it was reasonable that the City would desire firefighters who are physically able to function in that capacity. The court affirmed the City's right to fire Blair.

In Illinois we have two, cases *Dauen vs. Board of Fire and Police Commissioners of Sterling* which found a firefighter could be fired for a drug dependency due to his having possession of drugs and *Dowrick vs. Downer's Grove* where the court upheld the firing of a firefighter who was physically unable to perform the duties of a firefighter.

It appears that governmental

bodies and the courts are beginning to permit the termination of police and firefighters disabled due to work related issues due to the inefficiency which is created when they are disabled for extended periods of time.

In *Dauen* it was argued that Sterling had a duty under the ADA to accommodate persons suffering disabilities, is this a possible answer to this issue?

Salary Increases Disability Benefits Sick Time and Policy

Believe it or not some governmental bodies have an internal policy where employees may be terminated if they are unable to return to their full unrestricted duties after a fixed time (6 months). In such cases if a firefighter has not returned to duty within the six month period, they can be terminated, and may not even be allowed to use sick time. Obviously a grievance would be filed and this would be challenged, but some contracts do no address this problem as it seems so unreasonable.

The problem should be addressed in the contract to avoid any "misunderstanding."

It appears the recent legislation may at least keep municipalities fair in dealing with firefighters injured on duties but these and other issues should be considered.

"If the disability benefit is awarded, can a firefighter still receive his PEDA benefit?"

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IPPAC's mission is to provide a forum to educate its members on a continuing basis about legal issues, investment strategies and governmental regulation.

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