2014 IL App (1st) 133682-U

FIRST DIVISION
June 30, 2014

No. 1-13-3682

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GORDON ALLEN, BOBBY BANKS, DARRICK DIXON, CONWAY GARLINGTON, JERRY IVORY, ANARGYROS KEREACKES, MIGUEL RENTERIA, JOSEPH WHITE, and DEMITRIOS XENTARAS,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 13 CH 4206
THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO,	)	
Defendant-Appellee.	)	Honorable Sophia Hall, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 ***Held***: The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago's decision to deny the plaintiffs pension credit for their work as police officers for the Chicago Housing Authority's Police Department was not clearly erroneous, as the plaintiffs were not temporary police officers and were not on a leave of absence from the Chicago Police Department.

¶ 2 In *Taiym v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, 2014 IL App (1st) 123769, this division held that an employee could not receive pension credit for time worked as a watchman for the City of Chicago Department of Streets and Sanitation. In this case, we review a very similar question regarding service time of Chicago Housing Authority (CHA) police officers.

¶ 3 This appeal arises from an order entered by the circuit court of Cook County which affirmed the decision of defendant-appellee the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (Retirement Board) to deny the petitions of plaintiffs-appellants Gordon Allen, Bobby Banks, Darrick Dixon, Conway Garlington III, Jerry Ivory, Anargyros Kereakes, Miguel Rentaria, Joseph White, and Demetrios Xentaras (collectively "plaintiffs") to receive pension credit for their previous employment as CHA police officers. On appeal, the plaintiffs argue that: (1) the Retirement Board erred when it found that the plaintiffs were not temporary police officers as defined by section 5-214(b) of the Illinois Pension Code (Pension Code) (40 ILCS 5/5-214(b) (West 2010)); (2) the Retirement Board erred when it determined that the plaintiffs did not meet the definition of policeman as defined by section 5-109 of the Pension Code (40 ILCS 5/5-109) (West 2010)) when the Retirement Board, in a 1988 decision, granted hundreds of Chicago police officers service credit time for their time as police cadets; and (3) the Retirement Board erred when it misinterpreted a 2012 amendment to section 5-214(b) requiring that an applicant for service credit be on a leave of absence from the police department at the time the service was rendered (40 ILCS 5/5-214.2 (West 2012)). For the reasons set forth below, we affirm the judgment of the circuit court of Cook County.

¶ 4 BACKGROUND

¶ 5 The facts in the underlying administrative matter are not in dispute. The plaintiffs are police officers who have worked for the Chicago Police Department (CPD) for more than three years. They previously worked as police officers with the Chicago Housing Authority Police Department (CHAPD). During April and May 2010, each filed an application pursuant to 40 ILCS 5/5-214(b) to obtain pension credit for services rendered as CHAPD officers prior to their appointment to the CPD.[1] Each plaintiff filed with the Retirement Board a verification of employment with the CHAPD and verification that they did not have any credit in any other pension fund for the same period of time. It is undisputed that the plaintiffs' only relevant prior employment was with the CHAPD and that employment took place prior to any of the plaintiffs becoming CPD officers.

¶ 6 On August 6, 2012, a single hearing was held by the Retirement Board on all the employees' claims. The plaintiffs argued that they were entitled to pension credit because they had been temporary police officers with the City of Chicago while serving as CHA police officers. They claimed their temporary status as police officers met the statutory definition found in the Pension Code (40 ILCS 5/5-214(b)) and, as a result, were entitled to pension credit for their service with the CHA. The plaintiffs also argued that their claims were supported by a 1988 decision issued by the Retirement Board involving CPD police cadets. Those cadets were employees of the CPD, but at the time they were cadets they were not police officers. In that decision, the Retirement Board determined that the cadets met the statutory definition of "policeman" pursuant to the Pension Code (40 ILCS 5/5-109), and were eligible to receive pension credit for their service as cadets.

[1] The plaintiffs' applications for police pension credit for their CHA police work service cite to section 5-214(c) (40 ILCS 5/5-214(c) (West 2010), but the Retirement Board determined that they were actually brought under section 5-214(b) (40 ILCS 5/5-214(b) (West 2010)).

¶ 7 Plaintiff Kereakes testified at the hearing regarding the duties of a CHA police officer. He explained that he was a sergeant with the CPD and was appointed to work at the CHAPD from December 24, 1990 to May 25, 1994. Kereakes described a typical day as beginning with roll call. The CHA police officers were responsible for patrolling all of the public housing sites. They also used the same arrest and reporting forms as the CPD. The CHA police officers worked on joint operations with the CPD and used the CPD's facilities to process their arrests and had the authority to make arrests. They wore uniforms identical to those of the CPD except for a shoulder patch which identified them as CHA police officers. They were trained at the CPD academy. The CHA officers were sworn and certified by the State of Illinois as police officers.

¶ 8 On January 31, 2013, the Retirement Board denied the plaintiffs' claims, finding that: (1) the plaintiffs "were employees of the CHA, and were not policem[e]n," as defined by section 5-109; (2) the plaintiffs' reliance on the Retirement Board's prior 1988 decision regarding CPD police cadets was misplaced and that decision was not binding on the Retirement Board as precedent because the plaintiffs were not members of the CPD, were not paid by the CPD, were not on the CPD payroll, and were not assigned CPD duties; (3) the General Assembly enacted section 5-214.2 to provide credit in the Chicago police pension fund for work performed prior to joining the CPD (specifically providing the CHA officers ability to obtain police pension service credit for their prior service as CHA police officer required a timely application and employer and employee contributions) but the plaintiffs missed the one-year deadline to make a claim under that section; and (4) the legislature amended section 5-214(b) on January 5, 2012, which by its terms were retroactive, to require an officer who is seeking pension credit for work

performed prior to joining the CPD to have been on a "leave of absence" at the time the service was performed.

¶ 9 The plaintiffs then filed a timely petition for administrative review. On November 6, 2013, the circuit court of Cook County affirmed the Retirement Board's decision. This appeal followed.

¶ 10 ANALYSIS

¶ 11 On appeal, the plaintiffs present three arguments. First, they contend that the Retirement Board's decision was based on an improper interpretation of the 2012 statutory amendments to section 5-214(b) of the Pension Code. Here, the plaintiffs explain that, prior to January 5, 2012, section 5-214(b) of the Pension Code did not contain the requirement that an applicant for pension service credit must be on a "leave of absence" from the police department at the time the service was rendered. Next, the plaintiffs assert that they are entitled to pension credit for the time they worked for the CHAPD because they were temporary police officers as defined by section 5-214(b). Furthermore, the plaintiffs allege that because of the Retirement Board's decision in 1988 to allow service credit to police cadets, they are entitled to similar credit.

¶ 12 When this court reviews a final decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2010)), it reviews the decision of the administrative agency and not the circuit court's determination. *Rosario v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 381 Ill. App. 3d 776, 779-80 (2008). The standard of review that this court applies depends on whether the issue presented is a question of law, fact, or a mixed question of law and fact. *Id*. at 780. "A mixed question of law and fact asks the legal effect of a given set of facts." *Id*. This court reviews an agency's decision on a mixed question of law and fact under the clear error standard of review. *Id*. Clear error review is significantly deferential to an agency's

familiarity with construing and applying the statutes that it administers. *Id.* An agency's decision on a mixed question of law and fact is considered clearly erroneous only where the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id.* In the instant case, we are presented with a mixed question of law and fact. Therefore, we apply the clear error standard to the Retirement Board's decision that the plaintiffs did not qualify for pension credit under section 5-214(b) of the Pension Code.

¶ 13 In interpreting a statute, this court must ascertain and give effect to the true intent of the legislature. *Paris v. Feder*, 179 Ill. 2d 173, 177 (1997). "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Id.* If a word or phrase within a statute is undefined, it is appropriate to employ a dictionary to ascertain the meaning of the undefined word or phrase. *Collins v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 407 Ill. App. 3d 979, 984-85 (2011). "When the language of a statute is plan and unambiguous, courts may not read in exceptions, limitations, or other conditions." *In re D.D.*, 196 Ill. 2d 405, 419 (2001). Thus, "[t]he language of pension statutes must * * * be liberally construed in favor of the rights of the pensioner." *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 494 (2003).

¶ 14 Three sections of the Pension Code are applicable in this case. First, section 5-109 provides:

> "§ 5-109. Policeman. "Policeman": (a) An employee in the regularly constituted police department of a city appointed and sworn or designated by law as a peace officer with the title of policeman, policewoman, chief surgeon, police surgeon, police dog catcher, police kennelman, police matron, and members of the police force of the police department.

> (b) An employee as defined in sub-paragraph (a) immediately above who is serving in the regularly constituted police department of a city in a rank or position which is exempt from civil service and who, immediately prior to the time he began such service, was a participant in the Policemen's Annuity and Benefit Fund Act; and
>
> (c) Any policeman of a park district transferred to the employment of a city under the 'Exchange of Functions Act of 1957.'" 40 ILCS 5/5-109 (West 2010).

Next, section 5-214(b) provides in relevant part as follows. The underlined language was added by Public Act 97-651, effective January 5, 2012:

> "§ 5-214. Credit for other service. Any participant in this fund (other than a member of the fire department of the city) who has rendered service as a member of the police department of the city for a period of 3 years or more is entitled to credit for the various purposes of this Article for service rendered prior to becoming a member or subsequent thereto for the following periods:
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> * * * *
>
> (b) As a temporary police officer in the city or while serving in the office of the mayor or in the office of the corporation counsel, as a member of the city council of the city, as an employee of the Policemen's Annuity and Benefit Fund created by this Article, as the head of an organization whose membership consists of members of the police department, the Public Vehicle License Commission and the board of election commissioners of the city, <u>provided that, in each of these cases and for all periods specified in this item (b), including those beginning before the effective date of this amendatory Act of the 97th General Assembly,</u>

the police officer is on leave and continues to remain in sworn status, subject to the professional standards of the public employer or those terms established in statute.

(c) While performing safety or investigative work for the county in which such city is principally located or for the State of Illinois or for the federal government, on leave of absence from the department of police, or while performing investigative work for the department as a civilian employee of the department."

40 ILCS 5/5-214 (West 2010).

Lastly, section 5-214.2 provides in relevant part:

"§ 5-214.2. Credit for certain law enforcement service. An active policeman who is a member of this Fund on or before the effective date of this Section may establish up to 10 years of additional service credit in 6-month increments for service in a law enforcement capacity under Articles 3, 7, 8, 9, 10, 13, 14, and 15 and Division 1 of Article 22, as a law enforcement officer with the Chicago Housing Authority, or as a law enforcement officer with any agency of the United States government, provided that: (1) service credit is not available for that employment under any other provision of this Article; (2) any service credit for that employment received under any other provision of this Code or under the retirement plan of the Chicago Housing Authority or Federal Employee Retirement System has been terminated; and (3) the policeman applies for this credit in writing within one year after the effective date of this Section and pays to the Fund within 5 years after the date of application an amount to be determined by the Fund in accordance with this Section." 40 ILCS 5/5-214.2 (West 2010).

¶ 15 A review of these provisions reveals that the plaintiffs' arguments are without merit. First, under the plain language of section 5-214(b), the plaintiffs neither worked as temporary police officers nor were on a leave of absence from the CPD. Instead, the plaintiffs worked as career police officers for the CHA when their careers were cut short because the CHA ceased having its own police force under the exclusive control of the CHA rather than under the direct control of the CPD. In other words, there was nothing inherently "temporary" about their CHA jobs.

¶ 16 The plaintiffs next argue that the eligibility limitations enacted in January 2012 to section 5-214 are not applicable here. We recognize that public pension benefits are constitutionally guaranteed in Illinois, and that legislative amendments which diminish eligibility and benefits may not apply to employees already participating in the system. *See Schroeder v. Morton Grove Police Pension Bd*., 219 Ill. App. 3d 697, 702 (1991). Therefore, the purported retroactivity of the 2012 limiting amendments should not be the focus of our analysis. Looking at the earlier statute, however, CHA work clearly falls outside the parameters of section 5-214(b). It was not work for the office of the mayor, corporation counsel, or any other agency listed therein.

¶ 17 Also, section 5-214(b) cannot be interpreted as guaranteeing pension service credit for work as CHA police officers because the legislature expressly carved out a specific exception for former CHA officers. Section 5-214.2 expressly addresses the rights of former CHA police officers to seek and obtain credit for other service. When read in conjunction with section 5-214, it is clear that the more specific provision of section 5-214.2 should prevail. *Tosado v. Miller*, 293 Ill.App.3d 544, 550 (1998) ("The more specific statute will prevail over the general statute.") Accordingly, if the plaintiffs had any right to claim a credit for other services, that right was established by section 5-214.2. However, the plaintiffs did not seek timely relief under

section 5-214.2 and they cannot now claim it. 40 ILCS 5/5-214.2 (West 2012) ("the policeman applies for this credit in writing within one year after the effective date of this Section and pays to the Fund within 5 years after the date of application an amount to be determined by the Fund in accordance with this Section").

¶ 18 Finally, the plaintiffs' reliance on the Retirement Board's 1988 decision approving the service time of CDP police cadets is also misplaced. That decision is inapposite because the claimants in that case were civilian employees of the CPD who were working on CPD assignments assisting CPD sworn police officers and were being paid by the CPD. In contrast, the plaintiffs were CHA officers who were on the CHA payroll, controlled by the CHA and not working for or assisting a CPD officer. Thus, the CPD police cadets' right to pension service credit fell within the scope of section 5-109. These plaintiffs' right to other service credit was established by section 5-214.2 but, having failed to act in a timely manner, they pursued relief under section 214 instead, a section under which they do not qualify for benefits.

¶ 19 In light of the undisputed facts and unambiguous statutory language, we find that the Retirement Board's decision was not clearly erroneous, as we are not left "with the definite and firm conviction" that it committed a mistake.

¶ 20 CONCLUSION

¶ 21 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.