

No. 1-14-1688

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--|---|------------------------------|
| LAWRENCE JACKSON, |) | Appeal from the |
| |) | Circuit Court of Cook County |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 13 CH 22688 |
| |) | |
| COUNTY EMPLOYEES' & OFFICERS' ANNUITY AND |) | |
| BENEFIT FUND OF COOK COUNTY; FOREST |) | Honorable Rudolfo Garcia, |
| PRESERVE DISTRICT EMPLOYEES' ANNUITY AND |) | Judge Presiding. |
| BENEFIT FUND OF COOK COUNTY; PRESIDENT OF |) | |
| THE BOARD OF COUNTY EMPLOYEES' AND |) | |
| OFFICERS' ANNUITY AND BENEFIT FUND OF |) | |
| COOK COUNTY (John Fitzgerald in his professional |) | |
| Capacity); RETIREMENT BOARD, PRESIDENT OF |) | |
| THE BOARD OF FOREST PRESERVE DISTRICT |) | |
| EMPLOYEES' ANNUITY AND BENEFIT FUND OF |) | |
| COOK COUNTY (John Fitzgerald in his professional |) | |
| capacity); RETIREMENT BOARD, DIRECTOR OF THE |) | |
| COUNTY EMPLOYEES' AND OFFICERS' ANNUITY |) | |
| AND BENEFIT FUND OF COOK COUNTY (Nichol |) | |
| Hackett in his professional capacity); DIRECTOR OF THE |) | |
| FOREST PRESERVE DISTRICT EMPLOYEES' |) | |
| ANNUITY AND BENEFIT FUND OF COOK COUNTY |) | |
| (Nichol Hackett in his professional capacity); SHERIFF'S |) | |
| OFFICE OF COOK COUNTY OFFICE OF |) | |

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PROFESSIONAL REVIEW; and SHERIFF OF COOK)
COUNTY (Thomas Dart in his professional capacity),)
)
Defendants-Appellants.)

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's judgment reversing County Employees' & Officers Annuity and Benefit Fund of Cook County Board decision finding plaintiff ineligible for disability benefits because he was a paid elected trustee for the Village of Riverdale affirmed where plaintiff was no longer receiving salary as a county employee and argument whether plaintiff's position as an elected official is considered employment under the Pension Code was forfeited.

¶ 2 Plaintiff Lawrence Jackson, a correctional officer for the Cook County sheriff's office for over ten years, filed an application for benefits from the County Employees' & Officers' Annuity and Benefit Fund of Cook County (Fund) because a non-work related disability prevented him from performing his duties. The County Employees' Annuity and Benefit Fund of Cook County Board (Board) denied plaintiff's application for benefits citing plaintiff's admission that he was employed by the Village of Riverdale as an elected official.

¶ 3 Plaintiff sought an administrative hearing, which resulted in the Board's affirming its decision rejecting plaintiff's application for disability benefits. Plaintiff then filed a complaint in the Circuit Court of Cook County for administrative review pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). Following briefing and a hearing, the circuit court reversed the Board's decision and remanded the matter for further proceedings. On appeal, defendants argue that the circuit court improperly interpreted section 9-159 of the Illinois Pension Code (40 ILCS 5/9-159(b) (West 2012)) in finding that plaintiff was not an employee

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for purposes of the Pension Code and that his disability benefit should be paid. For the following reasons, we affirm the judgment of the circuit court reversing the final administrative decision of the Board denying plaintiff benefits and remand the matter to the Fund for further proceedings consistent with this order.

¶ 4

I. BACKGROUND

¶ 5 In December 2011, plaintiff was diagnosed with a non-work related disability that prevented him from continuing his position as a correctional rehabilitation worker for Cook County. On March 4, 2012, plaintiff applied for ordinary disability benefits based on his non-work related disability. Plaintiff indicated that his physician first examined him for this disability on January 4, 2010, that his disability began on December 19, 2011, and that he had not worked since that date. Plaintiff indicated that he was currently employed by the Village of Riverdale as an elected official.

¶ 6 On June 7, 2012, the Board denied plaintiff's petition for benefits. The Board reasoned that, pursuant to section 9-159(b) of the Pension Code (40 ILCS 5/9-159 (West 2012)), plaintiff could not receive disability benefits because plaintiff indicated that he was employed by the Village of Riverdale. Plaintiff requested an administrative hearing of the Board's decision. Following briefing and a hearing on the matter, the hearing officer recommended that the Board's decision be sustained and plaintiff's application be denied. Specifically, the hearing officer included the following findings of fact to support his recommendation:

"1. The Petitioner while an employee of Cook County sustained a disabling injury.

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2. The first day that the Petitioner was unable to perform his duties as a county employee was December 19, 2011.
3. That on March 22, 2012, the Petitioner applied to the Benefit Fund for ordinary disability benefits.
4. That at all times relevant hereto the Petitioner was an elected official of the Village of Riverdale, Illinois.
5. That the Village of Riverdale, Illinois paid the Petitioner a salary in his capacity as an elected village official.
6. That the Village of Riverdale, Illinois is a public body supported in whole or in part by taxation."

On September 5, 2013, the Board adopted the hearing officer's findings of fact, conclusions of law, and recommended decision.

¶ 7 On October 4, 2013, plaintiff filed a complaint for administrative review of the Board's decision in the Circuit Court of Cook County. On March 7, 2014, the circuit court reversed the decision of the Board and remanded the matter for further proceedings. The court concluded that the Board "misreads" section 9-159(b) because it rendered the clause "employed by" meaningless and the court could not disregard the language in the statute. Following the denial of defendants' motion to reconsider, defendants appealed the judgment of the circuit court.

¶ 8 II. ANALYSIS

¶ 9 In an action under the Administrative Review Law, we review the decision of the agency, not the circuit court. 735 ILCS 5/3-110 (West 2008); *Amigo's Inn, Inc. v. License Appeal Comm'n*, 354 Ill. App. 3d 959, 964 (2004). Factual determinations by an administrative agency

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are held to be *prima facie* true and correct and will stand unless contrary to the manifest weight of the evidence, which requires a finding that all reasonable people would find that the opposite conclusion is clearly apparent. *North Avenue Properties, L.L.C. v. Zoning Board of Appeals*, 312 Ill. App. 3d 182, 184 (2000). A plaintiff in an administrative proceeding bears the burden of proof, and if he fails to meet that burden, relief will be denied. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). However, questions of law are subject to *de novo* review. *Enesco Corp. v. Doherty*, 314 Ill. App. 3d 123, 131 (2000).

¶ 10 This case involves the interpretation of section 9-159(b) of the Pension Code, a question of law to be reviewed *de novo*. In considering this section, the court's primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *Prazen v. Shoop*, 2013 IL 115035, ¶ 21. The first step in determining legislative intent is to examine the language of the statute, and when the language is clear and unambiguous, the statute must be given its plain meaning without resort to further aids of statutory construction. *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008). In addition, a court should interpret a statute as a whole "if possible, so that no term is rendered superfluous or meaningless." *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253, ¶ 16. Courts are bound "to interpret and apply statutes in the manner in which they are written and cannot rewrite them to make them consistent with [the] idea of orderliness and public policy." *Schultz v. Illinois Farmers Insurance Company*, 237 Ill. 2d 391, 406 (2010). While the Pension Code is to be liberally construed in favor of the rights of the pensioner, this rule still applies and the court may not depart from the plain meaning of the statute. *Thompson v. Retirement Board of Policemen's Annuity and Benefit Fund of City of Chicago*, 379 Ill. App. 3d 498, 504 (2008).

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¶ 11 Article 9 of the Pension Code covers the County Employees' and Officers' Annuity and Benefit Fund for counties over 3,000,000 inhabitants. Section 9-159(b) of the Pension Code, entitled "When disability benefit not payable," is at issue in this case and provides, in full:

"(b) Disability benefit shall not be paid for any time for which the employee receives any part of his salary, or while employed by any public body supported in whole or in part by taxation." 40 ILCS 5/9-159(b) (West 2012).

¶ 12 Defendants argue that the plain language of this section requires that this court reverse the trial court and affirm the Board's decision denying plaintiff disability benefits. Defendants note that there is no dispute that plaintiff is an elected trustee of the Village of Riverdale, Illinois, a public body supported in whole or in part by taxation, for which he receives compensation. Because section 159(b) is written in the disjunctive, defendants maintain that plaintiff may be denied benefits if he is employed by a public body or if he receives compensation from a public body. They argue that if the circuit court's reading of section 9-159(b) is followed, the term "employed by" is rendered superfluous and such a liberal construction is not permitted.

¶ 13 Defendants also point to Article 7 of the Pension Code, which covers the Illinois Municipal Retirement Fund (IMRF) (40 ILCS 5/7-101 *et seq.* (West 2012)) to support the contention that plaintiff was an employee of a public body. Under section 7-109(a)(c), an employee is defined as anyone who holds an elective office in a municipality. 40 ILCS 5/7-109(a)(c) (West 2012). Accordingly, because the record indicates that plaintiff is an elected trustee of a municipality and contributes to the IMRF, he is employed by a public entity and must be denied benefits under section 9-159(b).

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¶ 14 Plaintiff responds that defendants waived the argument that the denial of plaintiff's benefits on the basis that he was an employee because they failed to raise this argument before the hearing officer on administrative review. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). Under *Provena* "[i]f an argument, issue, or defense was not presented in the administrative proceedings, it is deemed to have been procedurally defaulted and may not be raised for the first time before the circuit court." *Id.* Defendants instead rested on the argument that plaintiff received compensation from a public entity supported in whole or in part by taxation. In fact, plaintiff argues, defendants specifically conceded that plaintiff was not an employee before the hearing officer and the circuit court. Likewise, plaintiff argues, defendants waived the argument that the second prong of section 9-159(b), the "employed by" prong, also cannot be applied due to defendants' waiver. While defendants assert that this issue was raised before the circuit court, it is the decision of the administrative agency that this court reviews and the issues raised in that proceeding in determining waiver. More importantly, defendants fail to respond to plaintiff's argument that this argument was forfeited.

¶ 15 Accordingly, under *Provena* defendants' argument that the "employed by" clause of section 9-159(b) is forfeited. As addressed by the circuit court, construing Article 9 in its entirety, and liberally in favor of plaintiff pensioner, section 9-159(b) bars a petitioner employee from receiving benefits when he receives any part of his salary as a defined employee. This is the first clause before the comma and disjunctive "or" in the section. The second clause is distinctively removed from the first and a separate consideration in determining if benefits shall be paid. This interpretation logically follows from Article 9's coverage of the Fund and definition of county employees. Therefore, the first clause bars a petitioner from receiving benefits while

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being paid any part of his applicable county salary by a county entity under Article 9. Because plaintiff was no longer receiving any of his salary from the county as a county employee under Article 9 and defendants have forfeited their second argument, we do not consider the question of whether plaintiff is employed by a public entity for purposes of this section and affirm the circuit court's judgment reversing the final administrative decision of the Board.

¶ 16

III. CONCLUSION

¶ 17 For the reasons stated, we affirm the judgment of the circuit court reversing the Board's final administrative decision.

¶ 18 Affirmed.