

STATE OF INDIANA
COUNTY OF MONROE

) IN THE MONROE CIRCUIT COURT
JSS:
) CAUSE NO. 53C02 0203 PL 00399

TERRY E. BEASLEY,
Plaintiff,

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vs.

PUBLIC EMPLOYEES RETIREMENT FUND

CITY OF BLOOMINGTON POLICE
DEPARTMENT PENSION BOARD,
CITY OF BLOOMINGTON, PUBLIC
EMPLOYEES RETIREMENT FUND,
STATE OF INDIANA 1977 POLICE
OFFICERS AND FIRE FIGHTERS'
PENSION FUND, and STATE OF
INDIANA,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This cause having come before the Court on Plaintiff Terry Beasley's Motion for Summary Judgment, and the Court, having reviewed said Motion and being duly advised in the premises, now GRANTS the Motion for Summary Judgment in favor of the Plaintiff.

I. FACTS

The facts most favorable to the nonmoving party are as follows. Terry Beasley, plaintiff, is a former member of the Bloomington Police Department. Plaintiff made contributions to the 1977 Police Officer' and Firefighter' Pension and Disability Fund during his employment. On March 6, 2000, Plaintiff requested a hearing with the Bloomington Police Department Pension Board ("Local Board") to pursue his application for disability. The Local Board administers disability proceedings for the members of the Bloomington Police Department under I.C. 36-8-8-12.7. The Local Board is not affiliated with Defendant Public Employees Retirement Fund ("PERF") and is not administered nor governed by PERF.

The Local Board met on March 27, 2000 to consider Plaintiff's application for disability. The hearing was continued until April 28, 2000 in order for the Plaintiff to undergo a physical examination by the Public Safety Medical Services physician, Dr. Steven M. Moffatt. On April 10, 2000, the Plaintiff was examined by Dr. Moffatt to obtain additional evidence regarding the Plaintiff's medical condition.

On April 28, 2000, the Local Board met again to consider the disability application in

light of the evidence gathered from the Plaintiff's medical examination. In the presence of the Plaintiff, the Local Board voted unanimously to deny the Plaintiff's application for disability. At the conclusion of this hearing, the Local Board Secretary told the Plaintiff that his application had been denied and informed him that an appeals process was available. The Secretary also told the Plaintiff that he would provide him information on the appeals process if the Plaintiff wanted such information.

On May 25, 2000, the Plaintiff wrote a letter to Captain William Parker of the Bloomington Police Department to inform the Captain that he wanted to appeal the decision of the Local Board. In this letter, the Plaintiff also requested that the Chief's office write a letter to the Local Board and to the Indiana PERF director regarding the availability of suitable work for the Plaintiff. On July 19, 2000 the Bloomington Police Department Chief, Michael Hostetler, sent a letter to R. Thomas Parker, the Director of the 1977 Police Officers' and Firefighters' Pension and Disability Fund. The letter stated that suitable work for the Plaintiff was available within the Bloomington Police Department.

On June 5, 2000, the Plaintiff requested a one-year leave of absence from the Bloomington Police Department to attend flight school. Chief Hostetler denied the Plaintiff's request for a leave of absence on June 12, 2000. Following this decision, the Plaintiff submitted his resignation from the Bloomington Police Department on June 26, 2000, to be effective July 18, 2000.

R. Thomas Parker sent a letter to the Plaintiff on September 28, 2001 to inform him that he had not sufficiently met the requirements of I.C. 36-8-8-12.7 (o) to perfect an appeal with the state PERF board. More specifically, the letter informed the Plaintiff that he had failed to file a written appeal with the PERF board and he had not submitted a letter from the Chief of Police stating that there was no suitable and available work for him. Plaintiff filed a complaint for Declaratory Judgment on March 6, 2002.

II. SUMMARY JUDGMENT STANDARD

Summary judgment terminates litigation that presents no material factual dispute and that a court may decide as a matter of law. *United Farm Bureau Mut. Ins. Co. v. Schult*, 602 N.E.2d 173, 174 (Ind. Ct. App. 1992); Indiana Trial Rule 56(C). If the pleadings, depositions, answers to interrogatories, admissions, affidavits, and any testimony, do not together reveal a genuine issue of material fact, then the moving party is entitled to judgment as a matter of law. *Cloverleaf Apts. v. Town of Eaton*, 641 N.E.2d 665, 667 (Ind. Ct. App. 1994). A fact is "material" for summary judgment purposes if it helps either to prove or to disprove an essential element of a plaintiff's cause of action. *Rogers v. Lewton*, 570 N.E.2d 133, 134 (Ind. Ct. App. 1991). The court must liberally construe all designated evidentiary matter in favor of the nonmoving party and resolve any doubt as to fact or inference against the moving party. *State Bd. of Tax Comm'rs v. New Energy Co.*, 585 N.E.2d 38, 39 (Ind. Ct. App. 1992); T.R. 56(C).

Even if it appears that the nonmoving party will not succeed at trial, summary judgment is appropriate only where material facts do not conflict or where undisputed facts do not lead to conflicting inferences. *Id.*

III. DISCUSSION

The issues in this case are governed by Indiana Code 36-8-8-1 *et seq.* Local board hearings concerning the determinations of a 1977 Police Officers' and Firefighters' Pension and Disability Fund member's disability are covered under I.C. 36-8-8-12.7. According to I.C. 36-8-8-12.7 (h),

"After the hearing, the local board shall make its determinations, including findings of fact, in writing and shall provide copies of its determinations to the fund member and the safety board not more than thirty (30) days after the hearing."

If the local board does not hold a hearing within 90 days of a fund member's request or the local board fails to issue its determination within 30 days following the hearing, the fund member shall be considered to be totally impaired and considered to have a Class 1 impairment. I.C. 36-8-8-12.7.

Plaintiff seeks summary judgment alleging, *inter alia*, Defendants PERF and City of Bloomington failed to provide notice of the Local Board's determination, issued verbally on April 28, 2000, within 30 days of the March 27, 2000 hearing, in violation of the requirement set forth in I.C. 36-8-8-12.7 (h). Considering that I.C. 36-8-8-12.7 does not address the continuation of hearings, and the initial hearing was continued to and concluded on April 28, 2000, this Court will refrain from considering this issue when Plaintiff's second argument is dispositive.

Plaintiff further argues in support of his Motion for Summary Judgment that Defendants PERF and City of Bloomington failed to provide written notice of the Local Board's determination, in violation of I.C. 36-8-8-12.7 (h). Defendant City of Bloomington admits the Local Board did not reduce its determination to writing.


Defendant, City of Bloomington, argues that I.C. 36-8-8-12.7 (i) does not specify the requirement of a written determination, rather it focuses solely upon the timeliness of the determination's issuance. The Court does not agree. I.C. 36-8-8-12.7 (h) stipulates that the Local Board's determination must be in writing. This requirement is directly linked to I.C. 36-8-8-12.7 (i) in that the determination is not timely if the issuance is not done according to the requirements set forth in subsection (h). Defendant's admission that the determination was never reduced to writing clearly violates I.C. 36-8-8-12.7 (h) and the remedy for such violation is found within I.C. 36-8-8-12.7 (i).

CONCLUSION

After liberally construing all designated evidentiary matter in favor of the Defendants and resolving any doubt as to fact or inference against the Plaintiff, the Court concludes that no genuine factual issue remains and this case may be decided as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that Plaintiff's Motion for Summary Judgment is **GRANTED**. The Plaintiff shall be considered to be totally impaired for purposes of I.C. 36-8-8-13.5 and shall be considered to have a Class 1 impairment.

SO ORDERED this 31st day of July 2003.



Marc R. Kellams, Judge
Monroe Circuit Court II

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Defendants
Plaintiff