

IN THE MATTER OF
STANLEY SIEDLECKI -APPELLANT
4309 SPRINGWOOD ROAD
APPEALS
BALTIMORE MD 21206

* BEFORE THE
* COUNTY BOARD OF
* OF
* BALTIMORE COUNTY
*
* Case No. CBA-11-012

RE: DECISION OF BOARD OF TRUSTEES /
REINSTATEMENT OF ACCIDENTAL
DISABILITY BENEFITS PURSUANT
TO MD COURT SPECIAL APPEALS
DECISION 7/30/2010

* * * * *

OPINION

This case comes before the Board as a result of the Board of Trustees of the Employee Retirement System's ("ERS") decision to reinstate Appellant, Stanley Siedlecki's accidental disability benefits under *Baltimore County Code* ("BCC") §5-1-223 in the amount of \$3,390.98 and to return the retirement contributions made by the Appellant while working in the position of Employment Investigator. The appeal was timely filed.

The hearing before this Board was held on August 23, 2011. At the conclusion of the hearing, Counsel agreed to submit Post-Hearing Memorandums in lieu of closing arguments. Appellant was represented by Michael Marshall, Esquire and Baltimore County was represented by Suzanne Berger, Assistant County Attorney for Baltimore County.

ISSUE BEFORE THE BOARD

- 1) Is the Appellant entitled to receive a 20 year service retirement allowance under BCC § 5-1-216(c)(1) for working as a police officer for 15 years and working as a civilian for 5 years?

Facts and Prior Case History

Mr. Siedlecki began working for the Baltimore County police department in 1973. In 1975, he became a Police Officer and remained in that position until 1983 when he was involved in an automobile collision while on duty. On March 16, 1990 he was granted accidental disability retirement benefits. His position in 1990 was police sergeant. On December 10, 2002, the County rescinded his retirement benefits based on video surveillance of Mr. Siedlecki doing jobs requiring strenuous back activity as well as on medical reports which concluded that he was capable of returning to the job of a police officer.

Mr. Siedlecki appealed the ERS rescission of his benefits to this Board which held hearings on June 26, 2003, September 11, 2003, November 20, 2003, January 22, 2004 and April 8, 2004. In that case, this Board issued its opinion on August 24, 2004 and agreed with the County that Mr. Siedlecki was capable of resuming his duties as a police officer. Mr. Siedlecki appealed the Board's decision to the Circuit Court which affirmed. The Circuit Court's decision was appealed to the Court of Special Appeals. The issue on appeal was narrowed by the appellate court as to whether the County was permitted to re-evaluate him after he retired on accidental disability benefits before reaching age 55 and before completing 20 years of credible service. The Court of Special Appeals held that the County had the authority to re-evaluate him under BCC §23-58(a).

While Mr. Siedlecki was pursuing his legal remedies through the Circuit Court and the Court of Special Appeals (aka "Siedlecki I"), he continued to collect accidental

disability benefits until he was notified by the Office of Human Resources that his benefits would be discontinued as of February 28, 2005.

On March 1, 2005, Mr. Siedlecki returned to work as an Employer Investigator for the police department. He did so while waiting for medical reports that would re-certify him to go through the police academy. The police academy certification was required by the County because he had not worked as an officer for 15 years. The position of Employer Investigator was a civilian position which he ultimately held from March 1, 2005 to December of 2010. Mr. Siedlecki maintains that this position was temporarily accepted by him while he waited his re-certification. He never accepted the civilian position as permanent employment.

In anticipation of entering the academy, in July of 2005 Mr. Siedlecki went to his doctors to request stronger anti-pain medication for his back. Rather than allow him to enter the police academy, the County requested that Mr. Siedlecki be examined by Stephen Matz, MD. Dr. Matz opined that Mr. Siedlecki did not need to use narcotic pain medication but rather could use over the counter pain medication. Ultimately, the County did not send him through the academy.

On February 24, 2006, Mr. Siedlecki applied for disability retirement from his position as police sergeant because he could not obtain the re-certification that he needed to be a police officer. On that re-application, the ERS took the position that Mr. Siedlecki could only apply for retirement benefits from his position as Employment Investigator because that was the last position that he held. The ERS denied the application finding that Mr. Siedlecki was not disabled from the job of Employment Investigator.

From that decision, Mr. Siedlecki appealed to this Board. We found in favor of Mr. Siedlecki and concluded that Mr. Siedlecki should be given disability retirement benefits from his police officer position and not from the civilian position of Employment Investigator.

Dissatisfied with the Board's decision, the ERS appealed to the Circuit Court. The Circuit Court vacated this Board's decision and finding that Mr. Siedlecki could only apply for retirement benefits from his position as an Employment Investigator. Mr. Siedlecki appealed the Circuit Court decision to the Court of Special Appeals.

In its decision dated July 30, 2010, the Court of Special Appeals reversed the Circuit Court, and affirmed this Board. As a result of the Court of Special Appeals decision, on December 16, 2010, the ERS reinstated Mr. Siedlecki's accidental disability retirement benefits (with adjustments for COLAs) which were effective March 16, 1990. In addition, the County returned all of the contributions plus interest that Mr. Siedlecki made into the retirement system while he worked for 5 years in the Employment Investigator position.

Opinion

It is from the December 18, 2010 ERS decision that Mr. Siedlecki now appeals. At the hearing before this Board, counsel for the Parties presented their positions by oral argument as well as by written evidence.

The ERS' position is that, pursuant to the Court of Special Appeals' decision, the County is required to pay Mr. Siedlecki the accidental disability benefits that he was

receiving as of March 16, 1990, including updates for COLAs or \$3,390.98. The ERS calculation does not include the 5 years that he worked as an Employment Investigator.

On the other hand, Mr. Siedlecki contends that under BCC, §5-1-216(c)(1) he is entitled to be paid \$4,570.12 based on his service of 21 years, 5 months and 5 days which includes his 15 year service as a police officer plus his 5 years as an Employment Investigator. The 5 year period claimed by Mr. Siedlecki spans from March 1, 2005 (when he began as the Employer Investigator) to December 22, 2010.

In this Board's decision dated September 27, 2007, we held that because Mr. Siedlecki could not be retrained as a police officer, he was disabled from his position as police officer and therefore he should be given his disability retirement from his police officer position, not from the position of employment investigator. The Court of Special Appeals agreed with this Board in saying:

In sum, appellant had been receiving accidental disability benefits because ERS previously determined that appellant was physically incapacitated from the further performance of his duties as a police sergeant. Twelve years later, ERS reevaluated appellant and determined that he was physically fit for the position of police officer, but ERS never reinstated appellant as a police officer because its own doctors would not sign the Physicians Waiver form for appellant to attend the police academy. Moreover, the Medical Board actually found that appellant could not work as a police officer. Because the position of Employment Investigator was temporary until appellant was recertified as a police officer, and appellant never accepted the same as a permanent position, *appellant was disabled from the last position that he held as a "member in service," namely, a police sergeant.* Therefore, the Board did not err in granting appellant accidental disability benefits *from that position.*

Mr. Siedlecki's argument fails for several reasons. First, to come within the scope of §5-1-216 (c)(1), Mr. Siedlecki must be a "member who retires on or after July 1, 1995." A "member" under §5-1-216(a) is defined as "a Group 4 member who is one of the sworn personnel of the police department." Mr. Siedlecki was not a "member" because he was never resworn, reinstated or recertified as a police officer. He was a civilian who was paid at the rate for a police officer but he did not have any of the risks inherent in the profession. The Court of Special Appeals stated that he was disabled from the last position he held as a "member in service." Accordingly, the last year that he was a "member in service" was 1990. Therefore, pursuant to the Court of Special Appeals decision, this Board finds that he is entitled to the same accidental disability benefits that he was awarded in 1990 (updated to account for COLAs), but not the extra money awarded to sworn officers who reach their 20 year anniversary. In essence, the status quo is returned as if the County had never rescinded his benefits.

It is worth noting that sworn officers should be entitled to the additional money associated with 20 years of service because they are risking their lives in the line of duty. Section 5-1-216 of the BCC mandates that an officer reach 20 years, not 15 years before they receive benefits. Mr. Siedlecki did not put his life at risk during his 5 years he worked as a civilian. To find otherwise would be contrary to the Court of Special Appeals decision of July 30, 2010, the language of §5-1-216 and the purpose behind treating sworn officers and firefighters differently than other County workers.

Second, if Mr. Siedlecki were awarded the benefits for 20 years of service as a sworn officer, he would be able to capitalize on the 5 year period that the case went through the various appeals. The legal process consumed those 5 years and more. It was to his advantage to continue to work in the civilian job while the appeals were pending where he was not only collecting an Sergeant's paycheck, nearly double normal pay, but also accumulating years of service in order that he could make this argument.

Indeed, Mr. Siedlecki continued to work in the civilian position after being notified *as early as July of 2005* when he was informed that he would not be going through the police academy, or *at the latest, on February 24, 2006* when he again applied for disability benefits. Using the February 24th date, he would not have met the 5 years of service because, at that point, he had only worked approximately 16 years. On his 2006 disability application, he admitted that he did not obtain the recertification needed to become a sworn officer again.

Third, this Board's decision is consistent with Mr. Siedlecki's own argument before by the Court of Special Appeals. The appellate court repeated his argument in its decision of July 30th:

...he is seeking to retire from the position he was mandated to return to after [ERS] initially revoked.....his disability status... Appellant concludes that he is "entitled to retire from [the] position in which he was reinstated *when* the [ERS] decided to rescind his disability benefits,

Mr. Siedlecki is entitled to retire from the position that he held as a police officer in 1990 and he is entitled to receive the accidental disability benefits that he was awarded in 1990, updated for COLA.

ORDER

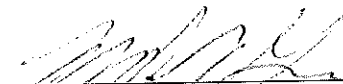
IT IS THEREFORE this 30th day of November, 2011 by the Board of Appeals of Baltimore County in Case No.: CBA-11-012:

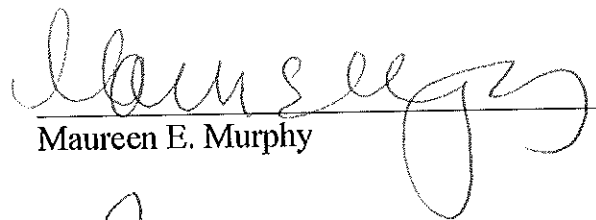
ORDERED that the decision of the Board of Trustees of the Employees' Retirement System of Baltimore County dated December 16, 2010 is hereby **AFFIRMED**; and it is further

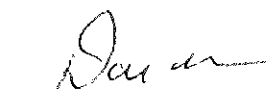
ORDERED, that the Appellant is entitled to receive the accidental disability benefits that he was awarded in 1990, updated and including adjustments for COLA, effective December 16, 2010; and

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Wendell H. Grier, Panel Chairman


Maureen E. Murphy


David L. Thurston