

IN THE MATTER OF
RODERICK DAY
2111 LUKEWOOD DRIVE
BALTIMORE, MARYLAND 21207

RE: DENIAL OF APPLICATION FOR
MEMBERSHIP IN EMPLOYEE
RETIREMENT SYSTEM

* BEFORE THE
* COUNTY BOARD
* OF APPEALS OF
* BALTIMORE COUNTY
* Case No.: CBA-12-003

* * * * *

OPINION

This matter comes before the Board of Appeals as an appeal from the June 15, 2011 decision of the Baltimore County Board of Trustees. The Board of Trustees determined that the appellant had falsified the information provided to the Baltimore County Retirement System (ERS) as part of his “pre-employment” evaluation conducted on August 10, 2010. The Appellant, Roderick Day contends in his appeal to Board of Appeals that the information complained of by the ERS was the result of his failure to remember a compensable Workers’ Compensation injury he sustained while in the employ of the Baltimore City Police Department. The Appellant represented himself before the Board. The County ERS was represented by the County Office of Law.

BACKGROUND

Mr. Roderick Day is an employee of the Community College of Baltimore County and has served as a Public Safety Officer since August 23, 2010. The instant appeal centers only upon Mr. Day’s request to join the Employee Retirement System in his capacity as an employee of the County community college system by his application dated August 27, 2010. Prior to becoming employed by the Community College of Baltimore County Mr. Day served for 14 years as a uniformed officer on the Baltimore City Police Department.

ISSUE

Is the appellant disqualified from membership in the Baltimore County Retirement System by reason of an incorrect or false statement contained in his pre-employment physical examination package filed with Baltimore County?

DISCUSSION

As stated above the Appellant serves as a Public Safety Officer for the Community College of Baltimore County (CCBC). Shortly after accepting his position with CCBC the Appellant attended a pre-employment physical with Concentra Medical Centers (Concentra) on August 18, 2010. As a part of the examination process the Appellant was requested to complete a pre-employment questionnaire which consisted of thirteen pages (13) of which certain portions were completed by the Appellant and other portions by Concentra. On page 12 of the questionnaire was the following question: “Have you ever been injured on any job? List years, type of injury, and any therapy.” The Appellant responded to this question with a written entry of “N/A”. (See ERS Exhibit No. 1)

The ERS submitted into evidence a document purporting to show that the Appellant had filed a Workers Compensation case on or about April 16, 2004 while in the employ of the Baltimore City Police Department. (See ERS Exhibit No. 3) Appellant testified that he had filed this claim. He went on to state that he had forgotten about the claim because he lost no time from his employment and that the claim was filed as a routine practice when there is a potential injury involving a police training activity.

The ERS Exhibit No. 3 also contained an Agreement of Final Compromise and Settlement between the Appellant and the Mayor and City Counsel of Baltimore by which the

Appellant was awarded the sum of Six –Thousand Dollars (\$6,000.00) to settle his workers’ compensation claim. The Appellant did not dispute or challenge this agreement.

The Board is presented with a situation in which it is undisputed that the applicant for membership in the ERS system did not correctly complete his pre-employment questionnaire. The ERS characterized this situation as a “falsification” of information provided to Baltimore County.

The Board received testimony from both the County Administrator and the Director of the Office of Budget and Finance on the issue of the alleged falsification and other matters attendant to the present case. From the testimony presented it appears that there is no specific rule in the county law defining “falsification” as a specific charge against the Appellant. However, the actions presented in this matter clearly consisted of an omission of relevant information no matter how characterized.

The Board questioned the Director of the Office of Budget and Finance as to the potential for an applicant to the ERS being alleged to have falsified one’s application where the omission on the relevant application consisted of any incorrect statement of a application. The Director advised that that the ERS Board, upon which he and the County Administrator are members, review each matter presented to them on a “case by case” basis. In the Appellants case the ERS Board, according to the Director, viewed the failure of Mr. Day to mention his workers’ compensation case as a material misrepresentation of his past medical history.

The Board examined the provisions of the provisions of the legislation concerning membership in the Baltimore County Retirement System. The legislation as codified in Section 5-1-203 of the Baltimore County Code and Titled **MEMBERSHIP –COMPOSITION**. reads in pertinent part:

(1) ... Any person who shall become an employee after June 30, 1971, may become a member of the Retirement System at any time within the first two (2) years of the person's employment, but if the employee has not previously joined must become a member at the end of that period as a condition of employment; provided such person shall pass a physical examination satisfactory to the Board of Trustees.

The foregoing, absent any definitional restraints, not presented to the Board appears to establish the test in this case as amounting whether the physical examination taken by the Appellant was satisfactory to the Board of Trustees.

DECISION

The Appellant in this case objects to the decision of the ERS Board of Trustees on the ground that the undisputed erroneous information contained in his pre-employment physical examination questionnaire resulted from a simple failure in his recollection of his past medical/legal history. The Board has not been presented with any legal argument tending to establish that Appellant is entitled to membership in the Employee Retirement System based upon his alleged error. Moreover it appears to the Board that the appropriate legal test in this matter is whether the pre-employment physical examination is satisfactory to the Board of Trustees of the Employee Retirement System.

ORDER

IT IS THEREFORE THIS 7th day of December, 2011, by the Board of Appeals of Baltimore County

ORDERED that the decision of the Board of Trustees of the Employees' Retirement System dated June 15, 2011, be and the same is hereby **AFFIRMED**; and it is further

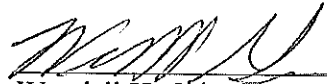
ORDERED that the ability to vest in the Employees' Retirement System of Baltimore County's (ERS) is denied due to the determination that the appellant had falsified the

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information provided to the Baltimore County Retirement System (ERS) as part of his “pre-employment” evaluation conducted on August 10, 2010.

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*.

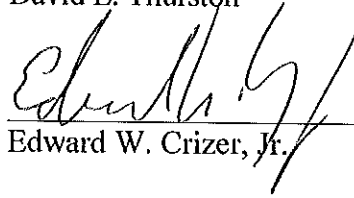
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendell H. Grier, Panel Chair



David L. Thurston



Edward W. Crizer, Jr.