Circuit Court for Baltimore City
Case No. 24-C-17-003335

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2019

September Term, 2017

HARVEY E. MARTINI, III

v.

FIRE AND POLICE EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BALTIMORE

Fader, C.J.,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: June 7, 2019

Harvey E. Martini, III, appellant, applied to the Fire and Police Employees' Retirement System of the City of Baltimore (the "F&P"), appellee, for line-of-duty disability retirement due to a work-related injury. The Circuit Court for Baltimore City, on judicial review, affirmed an administrative hearing examiner's determination that appellant was ineligible for line-of duty disability for failure to complete his application within five years of the injury. He presents three questions[1] on appeal, which we have consolidated into one:

> Was the hearing examiner's denial of appellant's application for line-of-duty disability retirement based on substantial evidence and free from legal error?

We answer "yes" and affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant, a former Baltimore City Police Officer, fell down wet stairs in the Police District building. The date of the incident report is November 14, 2009 and that, presumably, is the date of the accident. According to that report, he sustained injuries to

[1] Appellant's original questions were:

1. Did the Hearing Examiner lack the statutory authority to rule on whether the application for [line-of-duty] disability was "complete" at the time of filing?
2. If the Hearing Examiner had that authority, then was an error of law made by the Hearing Examiner, when she found that F&P's October 7, 2016 letter did not constitute either an implied or actual extension of the time to file the Form 25, or waiver of the statute of limitations, until November 7, 2016?
3. If that determination is not an error of law, then did the Hearing Examiner lack the statutory authority to overrule the extension of time to November 7, 2016 that was granted by the F&P Board of Trustees?

his right knee, right wrist, and low back. In the following years, he underwent several surgical procedures and treatments on his back and right leg. He also suffered from a degenerative condition related to a disc in his back. On November 13, 2014, appellant filed his application for line-of-duty disability retirement benefits.

On May 7, 2015, Dr. Alessandro Speciale signed a document entitled "Attending Physician's Statement of Disability," also referred to as a "Form 25," stating that appellant was physically incapacitated and that his incapacity was likely to be permanent. According to Dr. Speciale, appellant's condition would prevent him from returning to full duty as a police officer.

The F&P wrote to appellant on October 7, 2016 stating that "[i]n order to process your disability application, F&P must have on file an Attending Physician's Statement of Disability (formerly known as a Form 25) . . . Our records indicate that you have failed to provide that form." The requested form was to be filed by November 7, 2016. On November 3, 2016, appellant's counsel emailed the form prepared by Dr. Speciale on May 7, 2015 to F&P's counsel.

On April 27, 2017, appellant's claim was heard before hearing examiner Debra A. Thomas, Esquire. Both appellant and the F&P were represented by counsel. The F&P's counsel argued that "though the actual application form had been submitted within the five years required, on [November 13, 2014], the Form 25 was not submitted until November 3, 2016." Therefore, under the Baltimore City Code, the application, which was submitted without the required medical certification, was not completed before the

five-year statutory deadline had expired. Appellant's counsel responded that the October 7, 2016 letter constituted a waiver of the medical certification requirement and that the application would not have been accepted or a hearing scheduled, if the F&P had considered the application incomplete.

On June 12, 2017, the hearing examiner denied appellant's line-of-duty claim and awarded him non-line-of-duty benefits. As to the merits of his disability claim, she found, among other things, that:

- "[H]aving carefully reviewed all the medical written evidence, . . . [appellant] did prove by a preponderance of the evidence that he is totally and permanently incapacitated for the further performance of the duties of his job classification . . . as a [Baltimore City] Police Officer as a result of an injury arising out of the course of the actual performance of duty."

- "The diagnostic findings do clearly support the [appellant's] complaints of low back and right leg pain as each MRI demonstrated a condition which was connected to the injury from [November of 2009]."[2]

- "His application indicated no prior injuries, illnesses, or diseases to the same area of the body and this application was signed under oath."

- "The [appellant's] testimony was credible at the hearing."

The hearing examiner determined, however, that, because his application was "not complete[d]" until November 3, 2016, he was not eligible for line-of-duty benefits:

> Article 22, § 33(*l*)(4)(ii) is clear that that an application must include a medical certification. "The application must include a medical certification of disability and all supporting medical documentation, on a form prescribed by the Board of Trustees, in which the member must state that she or he has suffered a disability and that the disability prevents her or him from further performance of the duties of her or his job classification."

[2] The hearing examiner incorrectly stated the year of the injury, which we have corrected.

> The medical certification or as it is commonly referred to as Form 25, was not completed until November 3, 2016. It is the opinion of the Hearing Examiner that the application was not complete within the 5 years of the injury and therefore I find the claim for LOD disability benefits is barred by the statute of limitations set forth within the City Code.
>
> Whether the letter from the Retirement System advising to send the certification within 30 days constitutes a waiver of this requirement, the Hearing Examiner finds that this letter does not waive the time requirement set by the City Code. The Claimant is also eligible for Non Line of Duty disability and is not required to have a completed application within five years from the date of injury. While the application for LOD benefits is barred, the City Code provisions governing entitlement to NLOD benefits do not contain a 5 year limitation. As the Claimant has over 5 years of service and it is found that he has a permanent incapacity, he is eligible for NLOD benefits. []
>
> It is therefore the decision of the Hearing Examiner that the Claimant is not eligible for Line of Duty disability retirement, but is eligible for Non-Line of Duty Benefits.

Appellant sought judicial review in the Circuit Court for Baltimore City, which, after a hearing, affirmed the hearing examiner's decision on November 15, 2017. Appellant filed a timely appeal to this Court.

STANDARD OF REVIEW

On judicial review, we "look through" the circuit court's judgment and examine the agency's decision to "determin[e] if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Employees' Ret. Sys. of City of Baltimore v. Dorsey*, 430 Md. 100, 110 (2013) (internal citations omitted). We "defer[] to the agency's factual findings, if supported by the record." *Id.*

And, we "presume[] that the decision made by an administrative body is prima facie correct," and ordinarily accord deference to the "expertise of an administrative agency acting within the sphere of its regulated activities." *Marsheck v. Bd. of Trustees of Fire & Police Employees' Ret. Sys. of City of Baltimore*, 358 Md. 393, 402 (2000); *see also* Baltimore City Code, Article 22, § 33(*l*)(12) (2017) ("The final determination of the hearing examiner is presumptively correct and may not be disturbed on review except when arbitrary, illegal, capricious, or discriminatory.").

"Remedial legislation, such as governs the retirement system here, must be construed liberally in favor of injured employees in order to effectuate the legislation's remedial purpose," but that is not a "license to alter the statute beyond its clear meaning and the legislature's intent." *Marsheck*, 358 Md. at 403 (citations omitted). Moreover, the "general rule of liberally construing remedial statutes is approached with caution when the scrutinized legislative scheme contains **a statute of limitations**." *Id.* (emphasis added).

DISCUSSION

Contentions

Appellant contends that Article 22, § 33(*l*)(11)[3], which exhaustively outlines the duties vested in the hearing examiner, does not provide the hearing examiner with the

[3] "The hearing examiner shall determine the following:

(i) whether the member has suffered an injury or illness of such a nature as to preclude the member from the further performance of the duties of his or her job classification;

legal authority to determine whether his application was incomplete. He argues that any issue or question as to its completion and acceptance was "for the F&P board to decide," and that the F&P had accepted his application as it was filed on November 13, 2014.

Because the "paramount issue is the instituting of a [line-of-duty] claim with the F&P within five years from the date of injury," he further contends that the hearing examiner's focus on the completion of the medical certification was misplaced. He argues that the "lack of a Form 25 . . . does not have any implications" on whether a claim was timely filed or on the legislative purpose of enacting a five-year statute of limitations. Because his application was filed prior to the 5-year deadline, it is his view that the denial of his claim is contrary to the legislative purpose of "granting [line-of-duty] disability to those disabled due to an injury on the job."

He also contends that the October 7, 2016 letter regarding the medical certification constituted either a waiver of the statute of limitations or an extension to file it to November 7, 2016. In either case, he complied by submitting the Form 25 on November 3, 2016.

(…continued)

(ii) if the claim is for line-of-duty disability benefits:

(A) whether the physical incapacity is the result of an injury arising out of and in the course of the actual performance of duty, without willful negligence on the member's part;

(B) whether the disability qualifies under § 34(e) and, for 100% line-of-duty disability benefits, § 34(f-1); and

(C) for a member who joined this system on or after July 1, 1979, whether the disability resulted from an injury that occurred within 5 years before the date of the members' application[.]"

The F&P responds that appellant's contention regarding the hearing examiner's authority was not preserved for appellate review, but that the hearing examiner was clearly authorized to determine that the five-year statutory deadline had not been met. It argues that the City Code expressly requires the application to include a medical certification and that an application is not complete until the certification is received by the F&P. Moreover, the F&P cannot waive or extend the deadline because compliance is required as a condition precedent to the statutory benefit. Therefore, the October 7, 2016 letter was not a waiver or extension of the five-year deadline.

Analysis

Hearing Examiner's Authority

The issue of the hearing examiner's authority to determine that appellant's application was incomplete was not properly preserved for our review because he did not raise it before the administrative agency. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."); *see also Comptroller v. Jalali*, 235 Md. App. 369, 389 (2018) (stating that Md. Rule 8-131(a) applies to appellate review of administrative agency proceedings). But had it been, appellant would fare no better.

City Code, Article 22, § 33(*l*) "delineates the administrative process that an applicant must traverse before becoming eligible for any disability benefits," and

"describ[es] both the requirements for submitting a disability application to the Panel of Hearing Examiners and the role of the hearing examiner." *Marsheck*, 358 Md. at 406, 408. Section 33(*l*)(7) provides that the "hearing examiner shall conduct hearings on all matters involving non-line-of-duty disability claims, line-of-duty disability claims, . . . and **any related matters arising out of these claims**." (Emphasis added).

A line-of-duty disability benefits claim requires the hearing examiner to "determine . . . whether the disability resulted from an injury that occurred within 5 years before the date of the members' application." § 33(*l*)(11). Whether a claim application satisfies the legislative conditions for the requested benefits clearly relates to the claimant's eligibility for benefits. Therefore, it is a matter arising out of that claim, which the hearing examiner, under § 33(*l*), has the legal authority to determine.

Was the Application Complete?

To address the hearing examiner's determination that appellant's application was incomplete, we return to the language of the City Code. If its language is unambiguous and its meaning is plain and definite, our search for legislative intent will ordinarily end. *See Marsheck*, 358 Md. at 402-03.

City Code, Article 22, § 33(*l*)(4) provides, in pertinent part:

> (i) Any non-line-of-duty disability or line-of-duty disability claimant must apply to the Board of Trustees.
>
> (ii) The application **must include a medical certification of disability** and all supporting medical documentation, on a form prescribed by the Board of Trustees, in which the member must state that she or he has suffered a disability and that the disability prevents her or him from further performance of the duties of her or his job classification.

> (iii) If the claim is for a line-of-duty disability benefit, the member must also state that the physical incapacity was the result of an injury arising out of and in the course of the actual performance of her or his duty, without willful negligence on her or his part.
>
> (iv) Any member who has joined this system on or after July 1, 1979, and who applies for a line-of-duty disability benefit **must also state that the disability resulted from an injury that occurred within 5 years of the date of her or his application**.

(Emphasis added).

As the Court of Appeals has explained, the occurrence of the "'injury' begins the point in time when the statute of limitations begins to run, thus starting the five year period within which the injured employee's claim must be filed." *Marsheck*, 358 Md. at 409. In holding that a police officer's application for special disability benefits was untimely because it was not filed within five years of the date of injury, the *Marsheck* Court discussed statutes of limitations and the public policy grounds supporting them:

> In addition to serving important societal benefits, such as judicial economy, they are designed to balance competing interests between potentially adverse parties. On the one hand, statutes of limitations provide plaintiffs or claimants with a window of time to initiate a cause of action or assert a claim. As implied from its title, the time period in a statute of limitations is not infinite. Once the limitation period passed, the statute, which once provided opportunity, closes the window and the claim is barred thereafter. The legislature, in drafting such legislation, implicitly recognizes that as time passes, difficult evidentiary issues arise, such as proof of the cause of injury, faded memories, and the availability of witnesses. Furthermore, without closure on the filing of such claims, potential defendants are often faced with uncertainty that may affect their future financial viability. By closing the window, the statute of limitations grants repose to potential defendants that would be disadvantaged unfairly by stale claims due to unreasonably long delay.
>
> * * *

> We have further noted that there is no magic to the window of time determined by the legislature. *See* [*Doe v.*] *Maskell*, 342 Md. [684,] 689 [1996]. "It simply represents the legislature's judgment about the reasonable time needed to institute suit." *Id.*

Id. at 404-05 (cleaned up).

While statutes of limitations promote judicial economy, predictability, and administrative ease, they also "come at the price of some flexibility in unique or unusual circumstances." *Marsheck*, 358 Md. at 413 (quoting *DeBusk v. Johns Hopkins Hosp.*, 342 Md. 432, 438 (1996)). As a result, some outcomes may be unfair. Nevertheless, "when the Statute of Limitations begins to run, nothing will stop or impede its operation." *Burket v. Aldridge*, 241 Md. 423, 429 (1966).

As to the medical certification, § 33(*l*)(4)(ii) expressly states that the application "**must include** a medical certification of disability." (Emphasis added). It follows that an application that does not include a medical certification is incomplete. In this case, there is substantial evidence in the record to support the hearing examiner's determination that the application was not completed until the medical certification was filed on November 3, 2016. Because the date of the injury, based on the incident report and accepted by the parties and the hearing examiner, was November 14, 2009, the completed application had to be filed within five years of that date.

Because the medical certification requirement and the period of limitations "was enacted by the City Council," we cannot "modify the disability system *ad hoc* to suit our sensibilities and pivot around the legislature's true intentions." *Marsheck*, 358 Md. at 414. In sum, the hearing examiner did not err as a matter of law or fact in concluding

that appellant's application for line-of-duty disability retirement was "not complete within the 5 years of the injury."

F&P's Actions

Appellant argues that F&P either accepted his application as it was filed on November 13, 2014, or waived the five-year statutory deadline in a subsequent letter to him. To support his acceptance argument, he refers us to the top of the first page of his application, in the section with the heading "(Office Use Only)," where the "date application filed" is filled out "11/13/2014," and it is marked "verified by retirement benefits analyst." Arguing that there was "no correspondence from [F&P] indicat[ing] that [appellant's] application was invalid, incomplete, [or] deficient" prior to the October 7, 2016 letter, he seeks to distinguish this case from *Marsheck*, where the F&P returned the application to the claimant as incomplete.

The F&P disagrees with appellant's assertion that it had not indicated to appellant that his application was deficient for failure to file a Form 25 prior to its October 7, 2016 letter. It asserts that it had contacted appellant on multiple occasions requesting a Form 25 prior to October 7, 2016, but, because appellant did not raise this issue before the hearing examiner, evidence of the earlier correspondence was not in the administrative record.

Without considering anything not in the administrative record, we are not persuaded that appellant's application was accepted as complete on November 13, 2014 or that, as a matter of law, it could have been considered complete without the

legislatively required medical certification. Nor are we persuaded by appellant's efforts to distinguish *Marsheck*. In that case, the F&P returned the application to the claimant indicating that it was incomplete due to a lack of notarization of the application itself. *Marsheck*, 358 Md. at 399. This case involves a form from a physician that would accompany the application as a separate document. Moreover, the fact that the F&P returned the application in *Marsheck* would not impose on it a duty to return the application in this case, and its failure to do so would not act to suspend or otherwise impact the application of limitations. Notably, the *Marsheck* Court rejected the doctrine of substantial compliance with regard to the five-year statute of limitations. *Id.* at 416.

Appellant also contends that the October 7, 2016 letter indicated that his application was complete, but that certain other information needed to be provided by November 7, 2016.

The October 7 letter stated, in pertinent part:

> You previously submitted an application for disability retirement with the [F&P]. In order to process your disability application, F&P must have on file an Attending Physician's Statement of Disability (formerly known as a Form 25). This form should be filled out by the treatment provider for the injury for which you are claiming disability. Our records indicate that you have failed to provide that form, a copy of which is included.
>
> * * *
>
> Please sign the enclosed releases and return them, along with the completed Attending Physician's Statement of Disability, to our office within 30 days of this letter. Your failure to provide these documents in a timely manner will result in F&P proceeding to dismiss your case.

> After your completed forms are received, F&P will proceed with processing your disability application.

This letter makes no express reference to the five-year deadline or, in any way, indicates that it has been waived. But, appellant argues that it would be illogical to request a medical certification in October of 2016, if the deadline had expired on November 14, 2014. Appellant, however, overlooks the fact that he was still eligible for non-line-of-duty disability benefits, which also require a medical certification, but are not subject to a five-year deadline. We view the October 7 letter as a request for documents, including a medical certification, in order for F&P to process appellant's application for whatever disability retirement benefits for which he may be eligible. In other words, even if he was not eligible for line-of-duty benefits, his eligibility for non-line-of-duty benefits remained a matter to be determined by the hearing examiner. *See* § 34(c)(2) ("A member shall be retired on a non-line-of-duty disability retirement if a hearing examiner determines that the member is mentally or physically incapacitated for the further performance of the duties of the member's job classification in the employ of Baltimore City; and the incapacity is likely to be permanent.").

Appellant asserts that, in *Ahmad v. Eastpines Terrace Apartments, Inc.*, 200 Md. App. 362 (2011), this Court held that a letter had waived a statute of limitations and extended it by three years. In that case, we determined that "[t]he effect of the [contractual agreement between private parties] thus removed the limitations bar on June 25, 2000, and consequently, appellant's breach of contract claim was barred three years and one day later on June 26, 2003, which was well before appellant filed the instant suit

in November of 2007." *Id.* at 374. We also held that the agreement did not constitute a perpetual waiver of the statute of limitations and that, if it did, it would be void as contrary to public policy. *Id.* at 374-76. But, *Ahmad* does not involve a disability benefits scheme created and governed by the Baltimore City Code, and does not serve to advance appellant's position.

In sum, there was substantial evidence in the record to support the hearing examiner's determination that the October 7 letter "does not waive the time requirement set by the City Code" as to line-of-duty benefits. Moreover, as a matter of law, the F&P *could not*, even if it wanted to, waive the statutory deadline for a public benefits scheme. "Ordinarily, a time limitation is deemed a condition precedent if it is fixed in the statute that creates the cause of action, whereas a statutory time limitation must be pleaded as the affirmative defense of statute of limitations if the cause of action was previously cognizable either at common law or by virtue of another statute." *Griggs v. C & H Mechanical Corp.*, 169 Md. App. 556, 571 (2006) (quoting *Fishman v. Delta Air Lines, Inc.*, 132 F.3d 138, 143 (2d Cir. 1998)). In *Griggs*, we interpreted a provision of the workers' compensation statute providing a two-year limitations period for filing a claim to be a "condition precedent to the right to maintain the action," *id.* at 570, and thus, it cannot be waived by the Workers' Compensation Commission. *Id.* at 571. Similar to the workers' compensation statute in *Griggs*, the five-year limitations period is set in Article 22 of the City Code and is a condition precedent to a claim for line-of-duty benefits that cannot be waived.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.