

Circuit Court for Baltimore City
Case No. 24-C-17-004254

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 02493

September Term, 2017

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

v.

CARLOS COURET-RIOS

Meredith,
Arthur,
Leahy,

JJ.

Opinion by Arthur, J.
Concurring Opinion by Meredith, J.
Dissenting Opinion by Leahy, J.

Filed: April 30, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Under the Baltimore City Code, a police officer may be entitled to retire with generous line-of-duty disability benefits if he or she has a “physical incapacity” that arose out of and in the course of the performance of the duties of the job. By contrast, an officer may be entitled to retire with less generous, non-line-of-duty disability benefits if he or she “is mentally . . . incapacitated for the further performance of the duties” of the job.

In this case, a police officer suffered a traumatic brain injury in an automobile accident while performing his duties as an officer. As a result of the injury, the officer suffers from memory loss and attention deficits. This case concerns whether the officer is physically incapacitated, and thus entitled to line-of-duty disability benefits, or whether he is at most mentally incapacitated, and thus entitled only to non-line-of-duty disability benefits.

A hearing examiner concluded that the officer is physically incapacitated. The Circuit Court for Baltimore City affirmed that decision. For the reasons set forth below, we reverse.

BACKGROUND

While he was on duty on August 12, 2014, Officer Carlos Couret-Rios was in a car that was rear-ended. His head snapped forward and back, and he briefly lost consciousness. When he regained consciousness and got out of the car, he experienced severe vertigo. He was taken to an emergency room, but it appears that no x-rays were taken and that no tests were done. The emergency room records relate that he

complained of neck pain, blurry vision, and nausea, as well as dizziness. He was discharged with a diagnosis of a concussion and cervical strain.

Over the next several months, from November 2014 until January 2015, Officer Couret-Rios received treatment for neck and upper back pain, headaches, and nausea. He continued to complain of dizziness during that time, and he was told that he suffered from “benign positional vertigo,”¹ which resulted from the accident, but would resolve itself with time. He also complained of a tremor in the left hand, as well as an unsteady gait, a reduction in the rate of cognition, and irritability. A physician diagnosed him with post-concussion syndrome and prescribed vestibular therapy² to improve his balance and reduce the problems related to dizziness. Meanwhile, the officer’s back problems appear to have gone away.

While Officer Couret-Rios was undergoing vestibular therapy, he began to complain of short-term memory loss. At about that same time, he was suspended because

¹ “Benign positional vertigo,” which is also known as “benign paroxysmal positional vertigo,” is a condition marked by short recurrent episodes of vertigo and nystagmus brought about by a change in head position.” <https://www.merriam-webster.com/medical/benign%20positional%20vertigo> (last visited April 15, 2019). “Vertigo” is “a sensation of motion which is associated with various disorders (as of the inner ear) and in which the individual or the individual’s surroundings seem to whirl dizzily.” <https://www.merriam-webster.com/dictionary/vertigo#medicalDictionary> (last visited April 15, 2019). “Nystagmus” is the “involuntary [and] usually rapid movement of the eyeballs (as from side to side) occurring normally with dizziness during and after bodily rotation or abnormally following head injury or as a symptom of disease.” <https://www.merriam-webster.com/dictionary/nystagmus#medicalDictionary> (last visited April 15, 2019).

² Vestibular therapy is an exercise-based program to improve balance and reduce problems related to dizziness. <https://my.clevelandclinic.org/health/treatments/15298-vestibular-rehabilitation> (last visited April 15, 2019).

he misplaced his service weapon – an error that he attributed to the problems with his memory. He was, however, no longer experiencing vertigo.

On February 5, 2015, Officer Couret-Rios underwent a neuropsychological evaluation. The evaluator reported that the officer had no complaints of physical pain from the accident and that he had returned to his normal physical activities, but that he had developed cognitive symptoms, such as forgetfulness. The evaluator also reported that during the neuropsychological testing the officer struggled with attention and impulsivity, that he was easily distracted and required redirection, and that he had difficulty with tasks that required working memory. According to the evaluator, the results of the testing were consistent with the DSM-5³ diagnosis of a mild neurocognitive disorder secondary to a mild traumatic brain injury as a result of the automobile accident on August 12, 2014.

Over the next several months, Officer Couret-Rios continued to complain of an array of symptoms, including memory loss, disequilibrium, and headaches, as well as numbness in his left thigh. By June 4, 2015, a police department physician had concluded that the officer was highly unlikely to return to full duty. On August 28, 2015, the police department determined that he was permanently unable to perform regular, full-duty work.

³ The DSM-5 is the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders, a text created by the American Psychiatric Association. <https://www.psychiatry.org/psychiatrists/practice/dsm> (last visited April 15, 2019).

Officer Couret-Rios submitted an application for disability benefits on February 2, 2016. In connection with the application, the officer submitted the statement of an attending physician, who gave a diagnosis of traumatic brain injury with loss of consciousness; headaches; dizziness, nausea, and ataxia;⁴ “absence spells”; memory loss; and dysphasia.⁵ The physician’s statement included the officer’s report of subjective symptoms, including headaches, neck pain, loss of balance, insomnia, and depression. Another physician, an orthopedist, later opined that the officer had suffered permanent physical impairment of his left hip and his thoracic and lumbar spine as a result of the accident.

The Fire and Police Employees’ Retirement System (the “F&P”) disputed Officer Couret-Rios’s claims concerning permanent orthopedic injury. Nonetheless, one of its experts agreed that the officer had a mild neurocognitive disorder as the result of a traumatic brain injury and that his cognitive difficulties were disabling.

After a hearing on June 28, 2017, a hearing examiner was unpersuaded that Officer Couret-Rios had suffered a disabling orthopedic injury in the automobile accident on August 12, 2014. The hearing examiner, however, went on to find that the officer was disabled because of “problems relating to attention and memory.” Placing particular

⁴ “Ataxia” is “an inability to coordinate voluntary muscular movements that is symptomatic of some central nervous system disorders and injuries and not due to muscle weakness.” <https://www.merriam-webster.com/dictionary/ataxia> (last visited April 19, 2019).

⁵ “Dysphasia” is a “loss of or deficiency in the power to use or understand language as a result of injury to or disease of the brain.” <https://www.merriam-webster.com/dictionary/dysphasia> (last visited April 19, 2019).

emphasis on the neuropsychological evaluation of February 5, 2015, the hearing examiner specifically found that the officer was “permanently incapacitated from his regular job duties as the result of an injury to his brain” that occurred “while he was in the performance of his duties.” On the basis of that finding, the hearing examiner concluded that Officer Couret-Rios had met the criteria for line-of-duty disability benefits— i.e., that he was physically incapacitated.⁶

On judicial review, the Circuit Court for Baltimore City affirmed the hearing examiner’s decision. This timely appeal followed.

QUESTION PRESENTED

The F&P presents one question, which we have reformulated for concision: “Did the hearing examiner commit an error of law when she awarded line-of-duty disability benefits based solely on attention and memory deficits?”⁷

Because attention and memory deficits are a form of mental rather than physical incapacitation, we conclude that the hearing examiner erred.

STANDARD OF REVIEW

This Court reviews the hearing examiner’s decision, not the decision of the circuit court. *See Hubbel v. Board of Trustees of Fire & Police Empls.’ Ret. Sys.*, 192 Md. App.

⁶ The hearing examiner made no mention of the other physical symptoms mentioned in Officer Couret-Rios’s medical records, such as tremors or ataxia. We infer that he was no longer experiencing those symptoms at the time of the hearing.

⁷ The F&P formulated its question as follows: “Did the hearing examiner commit an error of law when she awarded Appellee line-of-duty disability benefits solely based on memory and attention issues, which are a mental incapacity, and for which F & P law only allows non-line-of-duty disability benefits?” (Emphasis in original.)

742, 749 (2010). “The final determination of the hearing examiner is presumptively correct and may not be disturbed on review except when arbitrary, illegal, capricious, or discriminatory.” Baltimore City Code, art. 22, § 33(l)(12) (2017). We owe no deference to the hearing examiner’s conclusions of law: we may reverse those conclusions if they are based on an erroneous interpretation or application of the applicable legislation. *See Hubbel v. Board of Trustees of Fire & Police Empls.’ Ret. Sys.*, 192 Md. App. at 749.

“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.” *Marsheck v. Board of Trustees of Fire & Police Empls.’ Ret. Sys.*, 358 Md. 393, 403 (2000). “Such a principle, however, does not grant us license to alter the statute beyond its clear meaning and the legislature’s intent.” *Id.*

DISCUSSION

Article 22, § 33(l)(4), of the Baltimore City Code concerns applications for disability benefits from the F&P. Article 22, § 33(l)(4)(iii), states that “[i]f 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.” (Emphasis added.) Similarly, § 33(l)(11)(ii)(A) states that, in a claim for line-of-duty disability benefits, a hearing examiner must determine “whether the *physical incapacity* is the result of an injury arising out of and in the course of the actual performance of duty[.]” From these provisions, it is apparent that a claim for line-of-duty disability benefits requires proof of physical incapacity. *Accord Board of Trustees of Fire & Police Empls.*

Ret. Sys. v. Kielczewski, 77 Md. App. 581, 592-93 (1989) (holding that “the disability retirement benefit scheme contemplates the allegation and proof of a physical incapacitation as a prerequisite to the award of special disability retirement benefits,” the former name for line-of-duty disability benefits).

By contrast, Article 22, § 34(c), specifically concerns non-line-of-duty disability benefits. By definition, a claim for non-line-of-duty disability benefits need not arise out of or in the course of the employee’s duties. *See Marsheck v. Board of Trustees of Fire & Police Empls.’ Ret. Sys.*, 358 Md. at 410; *Mayor & City Council of Baltimore v. Hackley*, 300 Md. 277, 289 (1984). Furthermore, non-line-of-duty disability benefits are not limited to cases of physical incapacitation, because they may be awarded if the employee “is mentally . . . incapacitated for the further performance of the duties of his or her job classification” Baltimore City Code, art. 22, § 34(c)(2). Still, even when a disabling condition stems from an on-the-job injury, an employee is entitled, at most, to non-line-of-duty disability benefits if his or her incapacitation is mental. *See, e.g., Board of Trustees of Fire & Police Empls. Ret. Sys. v. Kielczewski*, 77 Md. App. at 592-93 (holding that, where an employee claimed to have been incapacitated because his emotional and mental state deteriorated after he suffered an on-the-job injury, he was not entitled to the equivalent of line-of-duty disability benefits).

In concluding that Officer Couret-Rios’s attention and memory deficits entitled him to line-of-duty disability benefits, the hearing examiner implicitly concluded that the officer was physically rather than mentally incapacitated. Her conclusion turns on the meaning of the terms “physical incapacity” and “mentally or physically incapacitated” in

Article 22 of the Baltimore City Code. The meaning of those terms is a “matter[] of statutory construction.” *Bell v. Chance*, 460 Md. 28, 53 (2018).

“When we construe a statute, we search for legislative intent.” *Id.* “Consideration of the statutory text in context is our primary guide.” *Id.* “Text is the plain language of the relevant provision, typically given its ordinary meaning, viewed in context, considered in light of the whole statute, and generally evaluated for ambiguity.” *Blue v. Prince George’s County*, 434 Md. 681, 689 (2013) (quoting *Town of Oxford v. Koste*, 204 Md. App. 578, 585-86 (2012), *aff’d*, 431 Md. 14 (2013)) (further citations omitted). Where the words of the statute are clear and unambiguous, there usually is no need to go further in construing it. *See, e.g., Harris v. State*, 331 Md. 137, 145-46 (1993).

In the statutory scheme at issue in this case, a key term is “incapacity.” The statutes do not define that term (*see Marsheck v. Board of Trustees of Fire & Police Empls.’ Ret. Sys.*, 358 Md. at 781), but under an ordinary dictionary definition “incapacity” means “the quality or state of being incapable.” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 587 (10th ed. 1993).⁸ It follows that “physical incapacity” is the quality or state of being incapable of doing something physical, while “mental incapacity” is the quality or state of being incapable of doing something mental.

⁸ “Although dictionary definitions do not provide dispositive resolutions of the meaning of statutory terms, . . . ‘dictionaries . . . do provide a useful starting point for determining what statutory terms mean, at least in the abstract, by suggesting what the legislature could have meant by using particular terms.’” *Marriott Empls. Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 447 (1997) (quoting 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47.28 (1996 Cum. Supp.)).

Because the statutory scheme draws a distinction between mental and physical incapacitation and the consequences of each, it is reasonable to infer that the City Council conceived of them as separate, mutually exclusive categories. Under an ordinary, plain-language understanding of the dichotomy between “physical” and “mental,” “mental incapacitation” would denote the quality or state of being incapable of doing something with the mind, while “physical incapacitation” would denote the quality or state of being incapable of doing something with the body.

The hearing examiner was unpersuaded that Officer Couret-Rios was physically incapacitated, because she declined to find that he was disabled as a result of a back condition. She based her finding of disability solely on her conclusion concerning the officer’s attention and memory deficits. In support of that decision, the hearing examiner expressly relied on the neuropsychological examination of February 5, 2015, in which Officer Couret-Rios had been diagnosed with a mild neurocognitive disorder secondary to a mild traumatic brain injury. In the same vein, she concluded her analysis by asserting that the officer was “permanently incapacitated from his regular job duties as the result of an injury to his brain[.]”

In our judgment, the hearing examiner erred in focusing on the nature of Officer Couret-Rios’s injury and not on the nature of his incapacitation, because the Court of Appeals has held that “injury” and “incapacitation” are not synonymous. *Marsheck v. Board of Trustees of Fire & Police Empls.’ Ret. Sys.*, 358 Md. at 409.

In *Marsheck* a police officer suffered an on-the-job injury in February 1992, continued to work and receive treatment for more than four years thereafter, and did not

become disabled or incapacitated as a result of the injury until September 1996. *Id.* at 398-99. The applicable statute required her to file a claim for special disability benefits (the former name for line-of-duty disability benefits) within five years of the date of her injury, but she missed the deadline by about two weeks. *Id.* at 399. In an effort to salvage her claim, she asked the Court to equate the term “injury” with “incapacitation,” so that the deadline would have begun to run only a few months before she filed her claim. *Id.* at 400. The Court of Appeals declined to equate the terms, because its review of the statutory structure established that the City Council had “made a distinction in meaning between the terms ‘injury’ and ‘disability’ or ‘incapacity.’” *Id.* at 408.

Although *Marsheck* does not concern the precise issue in this case, its reasoning is dispositive. Under *Marsheck*, “injury” does not mean “incapacitation.” Hence, a physical injury, such as an injury to the brain, does not necessarily result in physical incapacitation. An employee’s entitlement to line-of-duty benefits depends on whether the incapacitation is physical or mental in nature, not on whether he or she suffered a physical injury. The hearing examiner erred in concluding otherwise.

In this case, Officer Couret-Rios’s incapacitation is mental, rather than physical, as those terms are commonly understood. The hearing examiner was unpersuaded that the officer is physically incapable of performing any of his duties. She found that his incapacity resulted from attention and memory deficits, which are cognitive and thus mental in nature. MERRIAM WEBSTER’S COLLEGIATE DICTIONARY, *supra*, 726 (defining “mental” to mean “of or relating to the mind”). Indeed, the relevant diagnosis, from the

neuropsychological examination of February 5, 2015, was based on the DSM-5, a manual for diagnosing mental disorders.

As a matter of law, therefore, Officer Couret-Rios was, at most, mentally incapacitated. Accordingly, the hearing examiner erred in concluding that he was entitled to line-of-duty disability benefits.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED;
CASE REMANDED TO THAT COURT
WITH DIRECTIONS TO REMAND THE
CASE TO THE FIRE AND POLICE
EMPLOYEES' RETIREMENT SYSTEM
FOR THE CITY OF BALTIMORE FOR
PROCEEDINGS CONSISTENT WITH
THIS OPINION; COSTS TO BE PAID BY
APPELLEE.**

Circuit Court for Baltimore City
Case No. 24-C-17-004254

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 02493

September Term, 2017

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

v.

CARLOS COURET-RIOS

Meredith,
Arthur,
Leahy,

JJ.

Concurring Opinion by Meredith, J.

Filed: April 30, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

If we were writing on a blank slate, I would agree with the dissenting opinion and affirm the judgment of the circuit court which affirmed the ruling of the hearing examiner. To me, the distinction between physical incapacity and mental incapacity seems arbitrary in the context of a traumatic line-of-duty injury to a police officer's brain. The application of that distinction leads to the anomalous result that a police officer who is shot in the head but regains full use of all of the officer's body parts is denied line-of-duty disability benefits regardless of the severity of mental incapacity, whereas an officer who is shot in the head and does not regain full use of the officer's body parts is entitled to line-of-duty benefits even if that officer makes a full recovery of mental faculties.

But we are bound by previous rulings that have interpreted these provisions of the Baltimore City Code, and I agree with the majority opinion's analysis of those cases.

Circuit Court for Baltimore City
Case No. 24-C-17-004254

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 02493

September Term, 2017

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

v.

CARLOS COURET-RIOS

Meredith,
Arthur,
Leahy,

JJ.

Dissenting Opinion by Leahy, J.

Filed: April 30, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The majority’s well-reasoned opinion holds that Officer Couret-Rios is not entitled to line-of-duty disability benefits because the language of Article 22, § 33 of the Baltimore City Code requires “a distinction between mental and physical incapacitation and the consequences of each.” I cannot agree, however, that the statute was intended to deny line-of-duty benefits to an officer who is incapacitated by a traumatic brain injury suffered while performing his job. I also cannot say that the majority opinion does not faithfully apply existing law. Perhaps the statute requires clarifying amendments, but my purpose in writing separately is to express a different interpretation.

The brain, like any other organ, can be physically injured, and because the brain controls all peripheral organs, a brain injury can be more physically debilitating. The majority concludes, based on the language of the statute and the cases interpreting it, that “[a]n employee’s entitlement to line-of-duty benefits depends on whether the incapacitation is physical or mental in nature, not whether he or she suffered a physical injury.” But a traumatic brain injury impairs the mind, just as injury to the eye impairs vision, and injury to the ear drum impairs hearing. Each of these capacities do not have observable physical qualities, yet impairments to one’s sight, hearing, and cognition can be physically incapacitating. (Of course, not every brain injury results in a mental incapacity, just as injury to another organ or limb may not result in an incapacity.)

Take for example Officer Couret-Rios’s incapacity. The hearing examiner found, based in part on “multiple medical experts who affirm the diagnosis” of post-concussion syndrome, that Officer Couret-Rios’s “symptoms are severe enough to prevent [him] from being able to perform the duties of his position as a Baltimore City Police Officer.” The

hearing examiner noted that he “has memory issues which have caused him serious problems. He lost his gun once, and overdosed on insulin. He has forgotten his own address and forgot his daughter.” She also noted that he “must turn his head (left to right) very slowly or he still experiences vertigo.” In my view, the hearing examiner’s opinion relates how Officer Couret-Rios’s brain injury and resulting mental impairment have manifested in a disabling “physical incapacity” that warrants coverage under Art. 22, § 33(l)(11)(ii).

Apart from broad principles of statutory construction, Maryland decisional law offers little guidance on this issue. The majority acknowledges that a key term—“incapacity”—is not defined by the statute or any cases interpreting the statute. And although the Court of Appeals instructed in *Marsheck* that the terms “injury” and “incapacitation” are not synonymous, that case dealt with a very different question: whether the petitioner was ineligible for special disability benefits under Article 22, § 34(e) for a work-related injury after she failed to file timely her application for disability benefits. *Marsheck v. Bd. of Trustees of the Fire & Police Emps.’ Ret. Sys. of City of Baltimore*, 358 Md. 393, 397 (1999). Petitioner asked the Court to interpret the term “injury” as it is used in § 34(e), to refer to the date on which she became permanently disabled and incapacitated. *Id.* at 400. In petitioner’s case, it was well after her injury that her health deteriorated to the point that she became permanently unable to perform her job duties. *Id.* I agree with the majority here that the *Marsheck* Court distinguished the terms “injury” and “incapacitation” for the purpose of applying the statute’s time limitation. I do not, however, think the holding in *Marsheck* forbids consideration of the nexus between an

injury and a consequent incapacitation. Indeed, the Court pointed out that in submitting a disability application, an applicant must “state that ‘the *disability resulted from an injury* that occurred within five (5) years’” of the date of his or her application. *Id.* at 408 (emphasis in original).

In the instant case, there is a direct nexus between the physical injury to the brain and the *disabling* mental impairment suffered by Officer Couret-Rios. A physical injury to part of the body other than the brain, as in *Board of Trustees of Fire & Police Employees’ Retirement System of City of Baltimore v. Kielczwski*, 77 Md. App. 581, 583 (1989) (fire department employee received an injury to his right eye while on duty fighting a car fire, and claimed, in addition to loss of vision, his emotional and mental state deteriorated), would not carry the same nexus to any resulting mental incapacity. To parse “mental incapacitation” from a physical brain injury, as the majority asserts the statute requires, would absolve employers of liability for brain injuries caused by traumatic impact by cabining such injuries as “of the mind” rather than “of the body.” I am not convinced this was the intent of the drafters of the statute before us. I would affirm the decision of the hearing examiner in this case in favor of awarding line-of-duty benefits, especially because the statute is remedial and “therefore to be interpreted liberally in favor of the injured party to achieve the remedial purposes of the act.” *Bd. of Trustees for Fire & Police Emps.’ Ret. Sys. of City of Baltimore v. Mitchell*, 145 Md. App. 1, 11 (2002) (citing *Marsheck*, 358 Md. at 403).