

STATE OF MICHIGAN
COURT OF APPEALS

JAMES L. SMITH,

Plaintiff-Appellant,

v

MICHIGAN PUBLIC SCHOOL EMPLOYEES
RETIREMENT SYSTEM,

Defendant-Appellee.

UNPUBLISHED

August 3, 1999

No. 200119

Otsego Circuit Court

LC No. 94-006130 AA

Before: Gribbs, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the circuit court order affirming the denial of duty disability retirement benefits. We affirm.

Plaintiff was a public school teacher who was physically attacked in his classroom on two different occasions in 1978 and 1980. Plaintiff took an unpaid leave of absence because of problems he suffered as a result of the attacks and his employment was officially terminated in June 1986. Plaintiff received short- and long-term disability benefits from defendant's private insurer. Plaintiff filed a claim with the public school system for worker's compensation benefits and ultimately entered into an agreement to accept a lump sum settlement. The settlement was allocated to plaintiff's past, present and future medical expenses.

In May 1987, plaintiff submitted an application for duty disability retirement benefits to defendant. Plaintiff was denied benefits after defendant found that he was not in receipt of weekly worker's disability compensation benefits at the time of his termination as required by the relevant statute.

MCL 38.1387; MSA 15.893(197) provides:

(1) A member whom the retirement board finds to have become totally and permanently disabled from any gainful employment by reason of personal injury or

mental or physical illness while serving as an employee of that reporting unit shall receive a duty disability retirement allowance if all of the following requirements are met:

(a) The member has not met age and service requirements of section 81 (a) or (b).

(b) The member is in receipt of weekly worker's disability compensation on account of employment by a reporting unit.

(c) The member or reporting unit makes written application to the retirement board not more than 12 months after the date the member terminated public school employment.

(d) The member undergoes examination by 1 or more practicing physicians or medical officers designated by the retirement board who certify to the retirement board that the member is totally and permanently disabled from performing the duties for the member's position for which the member is qualified by reason of training, or experience, or both.

(2) The member's duty disability retirement allowance shall be computed pursuant to section 84. The effective date of the duty disability retiree's allowance shall be the first of the month following the month in which the member terminates employment and is in receipt of weekly worker's disability compensation. . .

Judicial review of an agency decision is limited to whether the decision is authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28. A court may set aside an agency decision even if it is supported by substantial evidence if it is based on a substantial and material error of law. MCL 24.306(1)(f); MSA 3.560(206)(1)(f). *Detroit Police Ass'n v Detroit*, 212 Mich App 383, 388; 538 NW2d 37 (1995).

When the language of a statute is clear, then the Legislature must have intended the meaning it plainly expressed, and the statute must be enforced as written. *Hiltz v Phil's Quality Market*, 417 Mich 335, 343; 337 NW2d 237 (1983). Where statutory language is clear and unambiguous, no judicial interpretation is warranted. *Bachman v Dep't of Treasury*, 215 Mich App 174, 181; 544 NW2d 733 (1996).

Here, the statute clearly states that a successful applicant must be "in receipt of weekly worker's disability compensation" and, just as clearly, plaintiff was not. Although plaintiff argues that private insurance payments should qualify as "weekly worker's disability compensation" under the statute, the plain language of the statute clearly and unambiguously refers to benefits provided under the worker's disability compensation act, MCL 418.101 *et seq.*; MSA

17.237(101) *et seq.* We recognize that this may seem to be a harsh and difficult result. Because the statutory language is clear and unambiguous, however, no judicial construction is required or permitted.

Affirmed.

/s/ Roman S. Gibbs

/s/ Michael J. Kelly

/s/ Harold Hood