STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2198

In the Matter of the Claim for Benefits by Richard L. Klein

Filed November 4, 2008
Reversed and remanded
Larkin, Judge

Minnesota Public Safety Officers Benefit Eligibility Panel

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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Relator challenges the Public Safety Officers Benefits Eligibility Panel's denial of his petition for continued employer-provided, health-insurance benefits. Because the panel failed to articulate the findings of fact and conclusions necessary for appellate review, we reverse and remand.

D E C I S I O N

This appeal arises from the Public Safety Officers Benefit Eligibility Panel's denial of relator Richard Klein's claim for continued health-insurance coverage. Relator applied for and received duty-related disability benefits through Public Employees Retirement Association (PERA) following his separation from the St. Paul Police Department. Relator requested continued health-insurance coverage pursuant to Minn. Stat. § 299A.465 (2006). The panel held a hearing on relator's claim. At the hearing, a motion to approve continued health-insurance coverage for relator produced a tie vote, and the motion failed. The panel issued a determination order denying relator's application based on the tie vote without further explanation of the panel's reasoning. The order did not include findings of fact or conclusions. Relator brought this certiorari appeal, challenging the panel's determination that he is ineligible for continued health-insurance coverage.

The panel is an administrative agency created under Minn. Stat. § 299A.465, subd. 7. Its proceedings are quasi-judicial in nature. *Id.*, subd. 7(c). In a quasi-judicial proceeding, an agency "hears the view of opposing sides presented in the form of written and oral testimony, examines the record and makes findings of fact." *In re Signal Delivery Serv., Inc.*, 288 N.W.2d 707, 710 (Minn. 1980). "When [an agency] engages in a quasi-judicial function, a reviewing court applies the substantial evidence test." *In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987) (quotation omitted). Substantial evidence is defined as: "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence;

(3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Relator's claim for benefits was made pursuant to Minn. Stat. § 299A.465, which provides that the employer of a peace officer who is disabled in the line of duty shall provide continued health-insurance benefits to the peace officer and the officer's dependents until the officer reaches the age of 65 when the officer suffers an injury that:

> (1) results in the officer's . . . retirement or separation from service;
> (2) occurs while the officer . . . is acting in the course and scope of duties as a peace officer . . . ; and
> (3) the officer . . . has been approved to receive the officer's . . . duty-related disability pension.

Minn. Stat. § 299A.465, subd. 1(a)–(c) (2006). The application process is set out in Minn. Stat. § 299A.465, subd. 6(a), which provides:

> Whenever a peace officer . . . has been approved to receive a duty-related disability pension, the officer . . . may apply to the panel established in subdivision 7 for a determination of whether or not the officer . . . meets the requirements in subdivision 1, paragraph (a), clause (2). In making this decision, the panel shall determine whether or not the officer's . . . occupational duties or professional responsibilities put the officer . . . at risk for the type of illness or injury actually sustained.

Subdivisions 1(a) and 6(a) of section 299A.465 create a two-part test for determining whether a former peace officer is entitled to benefits. *In re Claim for Benefits by Sloan*, 729 N.W.2d 626, 629 (Minn. App. 2007). "First, a peace officer must establish that he or she has been approved to receive a duty-related disability pension."

Id. (citing Minn. Stat. § 299A.465, subd. 6 (Supp. 2005)); *see also* Minn. Stat. § 353.656 (2006) (addressing duty-related disability benefits and computation of benefits). "Second, the panel must determine whether the peace officer suffered a disabling injury while acting in the course and scope of his or her duties as a peace officer." *Id.* at 630 (citing Minn. Stat. § 299A.465, subds. 1(a)(2) (2004), 6(a) (Supp. 2005)).[1] The panel's determination of whether or not the peace officer's occupational duties or professional responsibilities put the officer at risk for the type of illness or injury actually sustained builds upon the initial "course and scope of duties" inquiry. *Sloan*, 729 N.W.2d at 629-30.

In this case, the panel's only stated basis for denial of relator's claim for benefits is the panel's tie vote. The panel did not provide findings of fact or conclusions either on the record or in writing. While the panel was not statutorily mandated to make findings of fact, findings are necessary to guard against a court trying a matter de novo and substituting its findings for those of the agency. *Morey v. School Bd. of Indep. School Dist. No. 492*, 268 Minn. 110, 116, 128 N.W.2d 302, 307 (1964) (*Morey I*). *Morey I* involved review of a school board's resolution to terminate a teacher's contract where the school board failed to make findings of fact in support of its decision. *Id.* at 112, 128 N.W.2d at 305. The school board contended that whether or not to include findings of fact was a decision within its sole discretion and that, in the absence of a statute explicitly requiring it, a reviewing court is unable to require findings of fact. *Id.* at 114-15, 128

[1] The relevant statutory language that applied in the *Sloan* case pursuant to Minn. Stat. § 299A.465 subds. 1(a)(2) (2004), 6 (Supp. 2005), also applies to this case because the legislature did not change that language in the 2006 version of the statute.

N.W.2d at 306. The court disagreed explaining "[t]he practical reasons for requiring administrative findings are so powerful that the requirement has been imposed with remarkable uniformity by virtually all federal and state courts, irrespective of a statutory requirement." *Id.* at 115, 128 N.W.2d at 306–07 (quotation omitted). The court further noted:

> In a case such as the present one, where the school board, acting in a quasi-judicial capacity, might have based its resolution on any or all of several grounds, findings of fact are vital to prevent substitution of the reviewing court's judgment for that of the school board's. Without findings of fact, the trial court had no way of knowing upon which of the four charges the school board based its decision. If the trial court were to review the merits of the case without findings of fact, there would be no safeguard against judicial encroachment on the school board's function since the trial court might affirm on a charge rejected by the school board.

Id. at 116, 128 N.W.2d at 307.

After the matter was remanded pursuant to the court's holding in *Morey I*, the school board again made inadequate findings, prompting the court to state:

> It is unnecessary for this court to again discuss issues relating to the necessity for findings and the scope of review of administrative orders. It was fully established by our decisions in *Morey v. School Board of Indep. School Dist. No. 492*, 268 Minn. 110, 128 N.W.2d 302, and in *Sellin v. City of Duluth*, 248 Minn. 333, 80 N.W.2d 67, that making findings of fact is the obligation of the administrative body and is not a function to be performed by the court in the first instance. We must first know what the decision means before we undertake the task of attempting to winnow the wheat from the chaff to find out if the conclusions of the administrative body are without support in the evidence and examine whether its action is right or wrong.

Morey v. Sch. Bd. of Indep. Sch. Dist. No. 492, 271 Minn. 445, 450, 136 N.W.2d 105, 108 (1965) (*Morey II*).

In this case, appellate review of the panel's decision under the substantial evidence test is impossible because the panel did not make findings of fact and did not state its conclusions. As a result, the parties and this court are left to speculate regarding the basis for the panel's decision.[2] If we were to review the panel's decision without findings of fact or conclusions, our review would inevitably be de novo, which is not the proper standard of review. "Upon review, our court must exercise judicial restraint, lest we substitute our judgment for that of the agency." *In re Denial of Eller Media Co.'s Applications for Outdoor Adver. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003). This court cannot substitute its judgment for that of the panel's, and we risk doing so where the panel has not articulated its findings of fact or conclusions. Therefore, remand is necessary.

Remand proceedings are complicated by recent changes to the law. Under the revised law, the panel that originally made the decision to deny relator's application for continued health-insurance benefits no longer exists. 2008 Minn. Laws ch. 243, § 1. The

[2] For example, in his appellate brief, relator challenges the panel's decision to deny benefits based on what members of the panel *might have* considered when they voted. Specifically, relator argues that the panel erred as a matter of law *if* it denied him benefits on the basis that the injury occurred in the absence of "active confrontation." Relator also argues that the panel's decision is reversible because voting members *might have* improperly considered a voiced concern that too many applicants would qualify for the benefit and that a decision based on such a concern is also reversible. Neither the parties nor the court should be required to speculate regarding an agency's conclusions, or the factual determinations that support those conclusions, after a quasi-judicial hearing.

subdivisions that created and defined that panel expired on July 1, 2008. Minn. Stat. § 299A.465, subds. 6(b), 7(d). The current law requires PERA to consider applications for continued health-insurance benefits. 2008 Minn. Laws ch. 243, § 1. But because relator applied for continued health-insurance benefits in April 2007, the 2006 version of Minn. Stat. § 299A.465 continues to serve as the applicable standard for determining benefits entitlement. Accordingly, we remand the matter to PERA for findings regarding whether relator suffered a disabling injury while acting in the course and scope of his duties as a peace officer, and whether relator's occupational duties or professional responsibilities put him at risk for the type of injury sustained. PERA should state the basis for its decision by including relevant findings of fact and conclusions.

Reversed and remanded.

Dated: _____ _____

The Honorable Michelle A. Larkin