

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas L. Ford, :
Appellant :
v. :
Borough of Sewickley Heights : No. 1086 C.D. 2010
Argued: November 9, 2010

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE MCGINLEY

FILED: December 22, 2010

Thomas L. Ford (Ford) challenges the order of the Court of Common Pleas of Allegheny County (trial court) which denied Ford post trial relief from the trial court's denial of Ford's request for declaratory judgment.

Ford worked for the Borough of Sewickley Heights (Borough) as a police dispatcher from October 1, 1981, until January 1, 1983. On January 1, 1983, Ford was hired as a police officer. On June 8, 2006, Ford informed the Borough by letter that he believed he was totally disabled from doing police work and would apply for disability benefits. On July 1, 2006, the Borough determined that Ford was eligible to receive Service Related Disability Benefits pursuant to Section 7.1 of the Borough's Police Pension Ordinance (Ordinance).¹ Section 2.17

¹ Section 7.1 of the Ordinance provides:

Each participant who shall suffer a Service Related Disability shall be entitled to receive a disability benefit payable in equal monthly installments during his lifetime, in an amount equal to fifty percent

(Footnote continued on next page...)

of the Ordinance defines a “Service Related Disability” as “a disability resulting from, incurred during, or arising out of a Participant’s performance of his duties for the Borough, rendering such Participant permanently and totally incapable of performing police work for the Borough as determined in good faith by Council.” Section 2.17 of the Ordinance at 6; R.R. at 140a. Ford received \$2,269.65 per month in Service Related Disability Benefits.

On September 28, 2006, the Borough sent a letter to its pension funds manager regarding Ford’s Service Related Disability Benefits. The letter informed the pension funds manager that the disability benefits were effective October 1, 2006, and would expire with the December 1, 2007, payment. Ford received a copy of the letter. In response on October 22, 2007, Ford sent a letter to the Borough regarding his normal retirement benefits which stated, “[a]s you know, my disability pension will end December 31, 2007. If there is any paperwork that needs to be filled out for my borough pension, will you please send it to me along

(continued...)

(50%) of the Participant’s Salary, determined at the time the Service Related Disability was incurred, provided that any Participant who receives benefits for the same injuries under the Social Security Act (49 Stat. 620, 42 U.S.C. §301 et seq.) shall have his Service Related Disability Benefits offset or reduced by the amount of such benefits. Service Related Disability benefits shall commence as of the first day of the month coincident with or immediately following the date the Participant is deemed disabled per Section 2.17 above and continuing to the earliest of the Participant’s death, cessation of Service Related Disability, or attainment of Normal Retirement Date. (A Participant attaining Normal Retirement Date shall thereafter receive Normal Retirement Benefits per Section 4.2 above.) (Emphasis added).

Section 7.1 of the Ordinance at 12-13; Reproduced Record (R.R.) at 145a-146a.

with your calculations of what my monthly payment will be?” Letter from Thomas L. Ford, October 22, 2007, at 1; R.R. at 164a. On December 11, 2007, the Borough informed Ford that his Service Related Disability Benefit would end and that his Normal Retirement Benefit would begin on January 1, 2008.

On January 1, 2008, Ford reached the age of fifty-five and completed twenty-five years of credited service. The Borough placed Ford on Normal Retirement Benefits pursuant to Sections 2.9, 4.2, and 7.1 of the Ordinance.² Ford’s Normal Retirement Benefit was \$1,914.65 per month.

On October 17, 2008, Ford filed an action for declaratory judgment in the trial court and alleged that the Borough violated Section 5(e)(1) of the Act, commonly known as the Police Pension Fund Act or Act 600 (Act 600)³, when it reduced his pension rate below fifty percent of his salary at a time when he was disabled. Section 5(e)(1) of Act 600, 53 P.S. §771(e)(1), provides:

In the case of the payment of pensions for permanent injuries incurred in service, the amount and commencement of the payments shall be fixed by regulations of the governing body of the borough, town, township or regional police department and shall be

² Section 2.9 of the Ordinance defines “Final Monthly Compensation” as “the average monthly compensation or salary earned by a participant and paid him by the Borough during the last thirty-six (36) months of his employment immediately preceding retirement or service related disability, including overtime pay but excluding bonuses. Section 2.9 of the Ordinance at 4; R.R. at 138a. Section 4.2 of the Ordinance provides that “Each retired Participant shall be entitled to receive a retirement benefit payable in equal monthly installments during his lifetime in an amount equal to one-half (1/2) of his Final Monthly Compensation.” Section 4.2 of the Ordinance at 9; R.R. at 143a.

³ Act of May 29, 1956, P.L. (1955) 1804, *as amended*, 53 P.S. §771(e)(1).

calculated at a rate no less than fifty percentum of the member's salary at the time the disability was incurred.

The parties prepared a stipulation of facts. By order dated March 4, 2010, the trial court denied the request for declaratory judgment and entered judgment in favor of the Borough:

Plaintiff [Ford] claims that his disability pension should be reinstated retroactively to January 1, 2008 in the amount of \$2,269.65 per month and that he is entitled to continue to receive this monthly payment so long as he remains permanently disabled from performing his police duties. He cites 53 P.S. Section 771(e)(1) and argues that his disability pension payments can be calculated at no less than fifty percent of his salary at the time he became disabled.

The Borough claims that this situation is not governed by Section 771(e)(1) because Plaintiff [Ford] has attained the service and age requirements for normal retirement. The Borough argues that according to Section 771(b), once a police officer reaches the service and age qualifications, his retirement benefit is governed by Sections 771(c)(d) and (i) of the Statute. . . .

The Borough claims that January 1, 2008 was the Plaintiff's [Ford] 'Normal Retirement Date' and therefore his disability benefits ended. 'Normal Retirement Date' is defined as '[t]he earliest date on which the Participant involved is eligible to retire from active duty by reason of age and length of service.' On July 1, 2006, the Borough placed the Plaintiff [Ford] on 'Service Related Disability' It would follow that the Board believed the Plaintiff [Ford] was permanently disabled. However, giving effect to all parts of the Ordinance and reading all provisions in conjunction, this Court finds that a shift to Normal Retirement Benefits is required. *Pennsylvania State Lodge v. Hafer*, 579 A.2d 1295, 1300 (Pa. Super. 1990).

Trial Court Opinion, March 4, 2010, at 2-3.

Ford sought post trial relief and alleged that he was entitled to Judgment NOV because the trial court failed to recognize that Act 600 created two classes of retirement: 1) those who retire due to a permanent disability, and 2) those who retire on the basis of age and years of service. He argued that his Service Disability Pension should not be less than 50% of his salary at the time of disability. The trial court denied the motion for post trial relief.

Before this Court, Ford contends that the trial court erred when it concluded that the Borough complied with Act 600, 53 P.S. §771(e)(1), when it reduced Ford's disability pension to an amount less than fifty percent of Ford's salary at the time he became disabled and that the trial court erred when it concluded that the reduction was required in order to implement all sections of Act 600.⁴

Initially, Ford contends that the trial court erred when it determined that the Borough did not violate Section 5(e)(1) of Act 600 when it reduced his pension to an amount less than fifty percent of his salary at the time he was disabled. Ford argues that the Borough ignored the plain language of Act 600 in violation of the Statutory Construction Act, 1 Pa.C.S. §1921(b).

However, Ford ignores the fact that Section 5(b) of Act 600, 53 P.S. §771(b), provides, "The basis for determining any pension payable under this act,

⁴ This Court's review is limited to whether the trial court's findings of fact are supported by substantial evidence, whether the trial court committed an error of law, or whether the trial court abused its discretion. Klein v. Straban Township, 705 A.2d 947 (Pa. Cmwlth. 1998).

following retirement of any member of the force meeting the service and age qualifications of the ordinance or resolution establishing a police pension fund, shall be provided in subsections (c), (d) and (i).” Section 5(c) of Act 600, 53 P.S. §771(c), provides in pertinent part, “Monthly pension or retirement benefits other than length of service increments shall be computed at one-half the monthly average salary of such member during not more than the last sixty nor less than the last thirty-six months of employment.” Because one-half the monthly average anywhere between the last thirty-six and the last sixty months of employment would most likely be lower than one-half the annual salary at the time of disability, a participant receiving a service related disability benefit would likely receive a higher monthly benefit than someone receiving Normal Retirement benefits. This was the case with Ford.

Section 5(b) of Act 600 sets forth the determination of a pension benefit for an officer who has reached the required age and service time to retire. Section 5(b) did not state that it did not apply to participants receiving service related disability benefits under Section 5(e)(1). Further, under Section 7.1 of the Ordinance, once a participant who has earned a service related disability pension attains his normal retirement date he shall thereafter receive Normal Retirement Benefits. It is undisputed that Ford attained his normal retirement date.⁵ A

⁵ “Normal Retirement Date” is defined in Section 2.14 of the Ordinance as “the earliest date on which the Participant involved is eligible to retire from active duty by reason of age and length of service. Every Participant may retire from active duty and be entitled to a normal retirement benefit as hereinafter defined, commencing on the first day of the month next following such Normal Retirement Date, provided he meets the age and length of service requirements of Section 4.1 of the Ordinance. Section 2.14 of the Ordinance at 5; R.R. at 139a.

participant receiving Normal Retirement Benefits is eligible to receive a retirement benefit equal to one-half of his final monthly compensation.⁶

Essentially, Ford asserts that he was entitled to a Service Related Disability pension for the rest of his life. However, Section 5(b) of Act 600 states the basis for determining the pension payable for any member of the force who meets the service and age qualifications of a municipality's pension ordinance.

The Borough complied with the terms of the Ordinance when it converted Ford's Service Related Disability Benefits to Normal Retirement Benefits. The Borough's action also complied with Section 5(b) of Act 600. Ford has failed to direct the Court to any section of Act 600 or the Ordinance which prohibited the Borough's conversion of his disability pension to a normal retirement pension once he reached the required limits regarding service and age.

Ford next contends that the trial court erred when it concluded that the reduction of his pension benefits was required in order to implement all sections of Act 600. Ford maintains that Act 600 created two classes of retirees and a participant cannot move from one class to another. The trial court correctly sought to give effect to all parts of Act 600 and determined that Section 5(b) of Act 600, 77 P.S. §771(b), outlined how to determine any pension payable once retirement

⁶ "Final Monthly Compensation" is defined in Section 2.9 of the Ordinance as "the average monthly compensation or salary earned by a participant and paid him by the Borough during the last thirty-six (36) months of his employment immediately preceding retirement or service related disability, including overtime pay but excluding bonuses." Section 2.9 of the Ordinance at 4; R.R. at 138a.

age and service requirements are met. Again, Ford has failed to direct this Court to any section of Act 600 or any relevant case law to support his position that once he received a Service Disability Benefits pension he was entitled to receive that pension into the future. This Court finds no error in the trial court's determination.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

