STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: June 6, 2017)

ROBERT L. LINCOURT	:	
	:	
Petitioner/Appellant	:	
vs.	:	**C.A. No. PC-2015-0602**
	:	
THE EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through SETH MAGAZINER, in his capacity as Chair and through WILLIAM B. FINELLI, in his capacity as Chair of the Disability Subcommittee of the EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND	:	
Respondents/Appellees	:	

DECISION

TAFT-CARTER, J. This matter is before the Court for decision on the appeal of Petitioner Robert L. Lincourt of the January 20, 2015 decision of the Board of the Employees' Retirement System of Rhode Island (ERSRI), which denied the application of Petitioner Lincourt (Petitioner) for a disability pension following his retirement from the Fire Department of the Town of North Providence, Rhode Island. Petitioner contends that he satisfied the requirements for receiving a disability pension, and ERSRI erred in finding that he failed to do so. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

Petitioner was hired by the Fire Department of the Town of North Providence on October 30, 2007. Petitioner was diagnosed with cancer in his right kidney in September 2010. Later that month, he underwent surgery which removed that kidney.

Petitioner thereafter applied for a disability pension on January 14, 2011. Shortly after filing his application, "Lincourt submitted an 'Applicant's Physician's Statement for Disability' form signed by Frank Fraioli, Jr., D.O., and dated January 21, 2011." R. 20 at 326. Dr. Fraioli opined that "it is presumed that his cancer was caused by exposure during his employment as a firefighter." Id. A medical report from Dr. Vincent J. Zizza, dated December 29, 2010, stated that Petitioner's "kidney cancer could have been caused from his job." He added that Petitioner "did well" after the surgery which removed his right kidney. Id. Dr. Stephen G. McCloy prepared a medical report pursuant to a workers' compensation claim. He found that Petitioner "is actually capable of all duties," and his assertion that he should not return to employment as a firefighter "is not supported by objective physical deficits or impairments in his examination." Id. at 327.

On August 31, 2011, Petitioner was examined by Vishram B. Rege, M.D. Dr. Rege found that Petitioner's "disability appears to have occurred in the performance of his duties and is not the result of willful negligence or misconduct, or as a result of age or length of service." Id. Dr. Rege also opined that "[t]here is an 80% chance that the cancer will never recur." Significantly, he found that Petitioner is disabled because "he faces potential problems[,]" and he did not state any duties required of a firefighter that Petitioner is presently unable to perform. Id.

Petitioner was also examined by Alberto Savoretti, M.D. on June 8, 2012. He found that Petitioner "is not disabled, and given the timeline of his illness, the cancer was not work related." Id. He further concluded that "[t]here is no disability . . . the cancer was already there when [Lincourt] started working [for the Town of North Providence Fire Department], this cannot be construed or considered an occupational exposure, therefore . . . the diagnosis of renal cancer is unrelated and was pre-existing to his employment as a North Providence Firefighter." Id. Dr. Savoretti further found the Petitioner to be "physically and mentally capable and competent" and

able to "work all manner of jobs." Id. He concluded that "[t]he threat of trauma from firefighting to his other kidney is not excessive as the kidney is well protected, and the cancer risk . . . would not be more from occupation reasons than say landscaping . . . There is not a reason not to work as a firefighter." Id.

Raymond F. Chaquette, M.D. examined the Petitioner on November 7, 2013. Id. at 328. He also concluded that Petitioner was capable of working as a firefighter. Dr. Chaquette found specifically that the Petitioner is "in good physical condition and clearly could carry out the duties associated with being a firefighter." Id. Noting that the Petitioner "freely admits that he has no physical disabilities that bother him at any time[,]" he concluded "from a physical point of view [Lincourt] is not disabled in any way." Id.

William B. Finelli, Chairman of the (ERSRI) Subcommittee (Subcommittee), wrote the decision of February 6, 2014. After reviewing the evidence presented, the Subcommittee found that "Lincourt is not disabled." Id. at 329. Additionally, it wrote, "the Subcommittee cannot find a causal relationship between Lincourt's cancer and his job." Id. The Subcommittee addressed the physicians who examined Petitioner. It referenced that "Dr. Chaquette noted that Lincourt 'freely admits that he has no physical disabilities that bother him at any time.' Likewise, Dr. Savoretti also found that Lincourt was 'physically and mentally capable and competent' and that '[h]e can work all manner of jobs." Id. The Subcommittee then addressed Dr. Rege and stated that Dr. Rege "indicated that [Petitioner] is disabled 'because he faces potential problems,' not because of any specific inability to perform his job duties . . . [and] '[t]here is an 80% chance that the cancer will never recur."' Id. The Subcommittee declared that it did not accept the assertion of Petitioner "that he is disabled because of potential future problems[.]" Id. at 329-30. It also found that "he is

not presently physically or mentally incapacitated for further service such that he should be retired." Id. at 330.

The Subcommittee accepted the conclusion of Dr. Savoretti that "the cancer was already there when [Lincourt] started working [for the Town of North Providence Fire Department] . . . [and] therefore . . . the diagnosis of renal cancer is unrelated and was pre-existing to his employment as a North Providence Firefighter." Id. The Subcommittee cited the finding of Dr. Chaquette, who similarly determined that he could not link Petitioner's cancer with his employment as a firefighter. Id. The Subcommittee then addressed the conclusions of Dr. Rege. Specifically, it found that Dr. Rege, while concluding that the Petitioner's condition "may" have been caused by exposure to carcinogens in the course of his duties, "appeared to base his opinion on causation on a statutory presumption," stating that "[t]he cancer is considered to be an Occupational cancer as defined by RIGL." The Subcommittee found that "Dr. Fraioli also appeared to base his opinion on a presumption that the cancer was work related." Id. It did "not find that the general laws mandate a finding that Lincourt's disability was caused by his job duties[.]" Id. It concluded that "Lincourt is not disabled, and that there is no causal relationship between his kidney cancer and his job." Id.

On February 12, 2014, the ERSRI accepted the recommendation of the Subcommittee. See R. 20 at 324. Petitioner appealed this denial on June 6, 2014. R. 21 at 332-67. A reconsideration hearing was scheduled by the Subcommittee for September 5, 2014. R. 26 at 378.

On that date, the Subcommittee met and heard argument from the Petitioner. R. 32 at 443-53. Counsel for Petitioner argued that according to the Americans with Disabilities Act and Rhode Island statutes, "a person that has cancer in remission is clearly still disabled because the cancer can come back." Id. at 445. He further argued that the decision of the Subcommittee was

erroneous because "there is a statutory presumption under the law that does cover his cancer." Id. The Petitioner told the Subcommittee that he was disabled from being a firefighter because he cannot incur the exposure to potential carcinogens and thus risk damage to his remaining kidney. Id. at 448. It also heard from Mayor Charles Lombardi, who recommended affirmation of the earlier decision to deny the application of Petitioner. Id. at 452-53. After considering the evidence that the parties presented, the Subcommittee again recommended that Petitioner not be awarded an accidental disability pension. R. 33 at 463-68.

The ERSRI Retirement Board (the Board) met on September 10, 2014. The Board accepted the recommendation of the Subcommittee and denied Petitioner's application for an accidental disability pension. R. 36 at 474; R. 38 at 510. The Board scheduled an appeal hearing for January 14, 2015. R. 38 at 510.

At the hearing, counsel for ERSRI summarized the findings of the Subcommittee and argued that its findings should be upheld. R. 41 at 519. Counsel for Petitioner again argued that "the subcommittee was incorrect because that statute [G.L. 1956 § 45-19-1] finds that cancer is caused by firefighters' exposure to carcinogens." Id. He further argued that even in the event that Dr. Savoretti was correct in his conclusion that Petitioner had developed cancer prior to employment with the Fire Department, the condition was likely to have been aggravated by Petitioner's exposure to carcinogens in the course of said employment. Id. at 519-20.

Counsel for the Town of North Providence also addressed the Board. He advocated that the Board should uphold the finding of the Subcommittee because Petitioner "has no functional impairment, no disability to perform all of the ordinary and necessary functions of a firefighter." Id. at 520. He argued that there were other potential causes for the Petitioner developing cancer, stating that "[b]oth Dr. Savoretti and Dr. Chaquette, and Dr. McCloy, who originally examined

him for the town, indicated that he has a hobby of dirt biking and he has a landscape business, and he has been subject to exposures that could well produce cancer, equally to the extent that his three-year tenure as a firefighter might have." Id. He further argued that the Board should accept the conclusion of Dr. McCloy, who had "examined . . . [the Petitioner] in connection with his injured-on-duty claim." Id. Specifically, he emphasized that Dr. McCloy, "in response to the question is he totally or partially disabled . . . [responded] Mr. Lincourt is not disabled. He does have a permanent scar. He does have a permanent loss of his right kidney. He invokes the cancer-presumption statute, and states that further exposure to professional fire fighting increases his risks of cancer." Id. at 520-21. However, according to counsel for the Town of North Providence, Dr. McCloy concluded that though Petitioner "believes that he should not return to his role as a firefighter[,] . . . [t]his belief is not supported by objective physical deficits or impairments in his examination." Id. at 521. He urged the Board to accept Dr. McCloy's finding that the Petitioner "is actually capable of all duties." Id.

Petitioner then offered additional testimony to the Board with respect to causation of his physical defects and limitations. He explained that "in regards to the dirt bike riding . . . I crashed on it the first time I rode it[,]" and he has not been on a dirt bike since that first time. Id. He further testified that "the landscaping company was a one day a week grass cutting thing that I did . . . when I took the job as a firefighter because I took a pay cut from my existing job, and on my days off I needed to make up that money." Id.

The Board also heard from Mayor Lombardi. He spoke in opposition to the application. He stated that "[w]e [the Town of North Providence and the Fire Department] feel he is perfectly capable to come back to work, even if it were for light duty." Id. at 526.

The Board voted to uphold the recommendation of the Subcommittee by a vote of 9-8. Id. at 526-27. On January 20, 2015, the Board sent Petitioner a written notification of the denial. R. 42 at 538-39.

On February 13, 2015, Petitioner filed the appeal presently before this Court. Petitioner also filed a motion to remand to the Subcommittee on March 20, 2015. This Court denied said motion to remand on July 22, 2016.

II

Standard of Review

Pursuant to § 42-35-15, the Superior Court has jurisdiction to review ERSRI decisions. The statute provides as follows:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error or law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15(g).

It is well settled in Rhode Island that when our Court is reviewing an agency decision pursuant to § 42-35-15, the review of our Court is limited in scope. See Mine Safety Appliances Co. v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). Thus, the Court "is confined to a determination of whether there is any legally competent evidence to support the agency's decision." Envtl. Sci. Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993) (citing Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). This Court must affirm the decision of an

agency if the decision is based on competent evidence in the record. Rocha v. State Pub. Utils. Comm'n, 694 A.2d 722, 727 (R.I. 1997) (citing Barrington Sch. Comm., 608 A.2d at 1138).

A court must give deference to the findings of an agency. "'The law in Rhode Island is well settled that an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency.'" State v. Cluley, 808 A.2d 1098, 1103 (R.I. 2002) (quoting In re Lallo, 768 A.2d 921, 926 (R.I. 2001)). However, this Court "may reverse, modify, or remand the agency's decision if the decision is . . . made upon unlawful procedure, is affected by other errors of law, [or] is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994) (citing § 42-35-15(g) (further citation omitted)).

When reviewing the decision of an administrative agency, this Court "may not, on questions of fact, substitute its judgment for that of the agency whose action is under review." Id. (citing Lemoine v. Dep't M.H.R.H., 113 R.I. 285, 291, 320 A.2d 611, 614-15 (1974)). The Court "cannot substitute its judgment on the evidence even though it might be inclined to view that evidence differently than did the Board." Id. This Court will "reverse factual conclusions of administrative agencies only when they are completely bereft of competent evidentiary support in the record." Sartor v. Coastal Res. Mgmt. Council, 542 A.2d 1077, 1083 (R.I. 1988) (citing Milardo v. Coastal Res. Mgmt. Council of R.I., 434 A.2d 266, 272 (R.I. 1981)).

This Court "must defer to the agency's determinations regarding questions of fact." Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) (citing State Dep't of Envtl. Mgmt. v. State Labor Relations Bd., 799 A.2d 274, 277 (R.I. 2002) (further citation omitted)). However, "'questions of law—including statutory interpretation—are reviewed de

novo"' by this Court when reviewing the decision of an agency. McAninch v. State of R.I. Dep't of Labor and Training, 64 A.3d 84, 86 (R.I. 2013) (quoting Iselin v. Ret. Bd. of the Emps.' Ret. Sys. of R.I., 943 A.2d 1045, 1049 (R.I. 2008)).

III

Analysis

Petitioner contends on appeal that the Board erred in failing to properly apply a statute enacted in 1986 that governs the determination of disability for firefighters. The Court notes that § 45-19.1-1, entitled "Cancer Benefits for Fire Fighters," provides that employment as a firefighter entails exposure to hazards that are not typically encountered in other occupations. The Legislature specifically found:

> "(1) Fire fighters are required to work in the midst of, and are subject to, smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances;
> "(2) Fire fighters are continually exposed to a vast and expanding field of hazardous substances through hazardous waste sites and the transportation of those substances;
> "(3) Fire fighters are constantly entering uncontrolled environments to save lives and reduce property damage and are frequently not aware of potential toxic and carcinogenic substances that they may be exposed to;
> "(4) Fire fighters, unlike other workers, are often exposed simultaneously to multiple carcinogens, and the rise in occupational cancer among fire fighters can be related to the rapid proliferation of thousands of toxic substances in our every day environment; and
> "(5) The onset of cancers in fire fighters can develop very slowly, usually manifesting themselves from five (5) years to forty (40) years after exposure to the cancer-causing agent."

Petitioner contends that this finding of increased exposure to carcinogens by firefighters, in conjunction with the language in § 45-19.1-3—providing that a firefighter is eligible "to receive an occupational cancer disability [pension]" if he or she "is unable to perform his or her duties in the fire department by reason of a disabling occupational cancer which develops or manifests

itself during a period while the fire fighter is in the service of the department"— compels the conclusion that Petitioner is entitled to a disability pension.

Here, the Subcommittee concluded that while the Petitioner was diagnosed with kidney cancer while employed as a firefighter, there was no "causal relationship between Lincourt's cancer and his job" as a firefighter. R. 20 at 329. The Subcommittee noted "that the relevant statute, R.I.G.L. § 45-21.2-9, [entitled Retirement for accidental disability,] requires a causal nexus between the allegedly disabling occupational cancer[] and the claimant's actual job[.]" Id. Furthermore, in order to prevail on his claim, Petitioner must establish "that the cancer aris[es] out of employment as a firefighter. The evidence does not support such a causal relationship." Id. (internal quotation marks omitted).

Petitioner seemingly argues that when a firefighter is diagnosed with a cancer that could have been caused by occupational exposure to carcinogens, there is a presumption that the cancer is "occupational." The Town of North Providence participates in the ERSRI system and therefore is subject to the statute Petitioner is seeking to invoke. Sec. 45-19.1-1 entitled "Cancer Benefits for Fire Fighters." However, when our Legislature has sought to create a presumption, it has done so explicitly. See G.L. 1956 § 9-1-50(a) ("Failure to make payment [of insurance claim] within thirty (30) days shall raise a presumption that failure to do so was a willful and wanton disregard for the rights of the claimant."); G.L. 1956 § 11-9-1.2 ("[When a] physician is of the opinion, based upon a reasonable medical certainty, that any person depicted in it is under the age of eighteen (18) years, then there shall be created a rebuttable presumption of that fact."); G.L. 1956 § 31-51-5(a) ("The registered owner of a motor vehicle shall not operate or allow the motor vehicle to be operated in violation of this chapter. There shall be a rebuttable presumption

that the registered owner of the vehicle that is photographed pursuant to this chapter was operating the vehicle.").

Conversely, the Legislature did not prescribe a presumption that a firefighter diagnosed with cancer shall be presumed to suffer "occupational cancer" for purposes of §§ 45-19.1-1, et seq. In fact, § 45-19.1-2(d) defines "Occupational cancer" as "cancer arising out of his or her employment as a fire fighter, due to injury from exposures to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty in the fire department." Application of the plain meaning of the statute is that "cancer arising out of" employment denotes that the Legislature intended to provide a remedy for firefighters diagnosed with cancer that was in some way caused by occupational hazards. See Unistrut Corp. v. State Dep't of Labor and Training, 922 A.2d 93, 98 (R.I. 2007) (citing Moore v. Ballard, 914 A.2d 487, 490 (R.I. 2007) ("When a statute is clear and unambiguous we are bound to ascribe the plain and ordinary meaning of the words of the statute and our inquiry is at an end.")). '"It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."' City of E. Providence v. Int'l Ass'n of Firefighters Local 850, 982 A.2d 1281, 1288 (R.I. 2009) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996) (further citation omitted)).

Petitioner cites City of E. Providence for the proposition that "there can be no question but that that statute is intended to provide a remedy to firefighters who suffers [sic] from cancer that arises from their employment." See Pl.'s Mem. at 12 (citing City of E. Providence, 982 A.2d at 1288). Clearly, this statute was enacted by the Legislature in order to provide a remedy for any firefighter "who suffers from cancer **that arises from their employment**." (Emphasis added.)

As noted above, our Legislature has chosen, in the course of construction of various statutes, to include language implying a presumption. This Court finds no such language in §§ 45-19.1-1 et seq. meaning that any firefighter diagnosed with cancer is presumed to be suffering from "occupational cancer."

When exercising jurisdiction pursuant to § 42-35-15, this Court has limited review of an agency decision. The Court "must uphold the agency's conclusions when they are supported by any legally competent evidence in the record." Rocha v. State Pub. Utils. Comm'n, 694 A.2d 722, 725 (R.I. 1997) (further citations omitted). In the within matter, the Board reviewed the testimony of several physicians, each of whom examined the Petitioner. While the Board did not hear testimony from the physicians, it reviewed the findings of the Subcommittee and upheld the Subcommittee's judgment that Petitioner did not demonstrate a causal connection between the cancer diagnosis and the occupational hazards of his work as a firefighter.[1]

There is ample evidence in the record to support the findings of the Subcommittee, and therefore, the Board was not erroneous in upholding its findings. See R.I. Pub. Telecomms. Auth., 650 A.2d at 485 (citing § 42-35-15(g) (A court may reverse a final decision of an agency where the decision is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]")). The Subcommittee extensively addressed in its decision at the hearing that took place on February 6, 2014 the opinions offered by physicians who treated Petitioner. It addressed the opinion of Dr. Fraioli, who stated that "it is presumed that his cancer was caused by exposure during his employment as a firefighter." R. 20 at 326. The Subcommittee found that Dr.

[1] The Court notes that the Subcommittee also did not hear testimony from the treating physicians and, like the Board, it had access to their medical reports. Therefore, the Committee was not required to give special deference to the Subcommittee as the original factfinder. Cf. Durfee, 621 A.2d at 208 ("the further away from the mouth of the funnel that an administrative official is when he or she evaluates the adjudicative process, the more deference should be owed to the factfinder").

Fraioli "appeared to base his opinion on a presumption that the cancer was work related." Id. at 330. The Subcommittee also noted the opinion of Dr. Rege, who examined the Petitioner on August 31, 2011. He stated that the Petitioner's "disability appears to have occurred in the performance of his duties[.]" Id. at 327. The Subcommittee found that Dr. Rege "appeared to base his opinion on causation on a statutory presumption," as Dr. Rege stated that Petitioner's "cancer is considered to be an Occupational cancer as defined by R.I.G.L." Id. at 330.

Moreover, the Subcommittee found that the statute did not mandate a presumption that a firefighter diagnosed with cancer was afflicted as a result of occupational hazards. It is '"well settled that an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency."' Cluley, 808 A.2d at 1103 (quoting In re Lallo, 768 A.2d at 926). Therefore, the Subcommittee's weighing of the medical opinions proffered by different physicians is afforded considerable deference.

One week after Petitioner filed his application, Dr. Fraioli, the Petitioner's treating physician, wrote that "it is presumed that his cancer was caused by exposure during his employment as a firefighter." R. 20 at 326. Dr. Savoretti, who examined the Petitioner on June 8, 2012, found that "the cancer was already there when [Lincourt] started working [for the Town of North Providence Fire Department][.]" Id. at 330. He concluded that "this [cancer] cannot be construed or considered an occupational exposure[.]" Id. Dr. Chaquette, who examined the Petitioner on November 7, 2013, told the Subcommittee that "[i]n regards to the issue of his kidney cancer being associated with his employment as a firefighter . . . to exposures of various sorts of the last several years one could not prove or disprove this fact with . . . certainty." Id. While "a treating physician's opinion is entitled to great weight, it does not automatically control or obviate the need to evaluate the record as [a] whole." Hogan v. Apfel, 239 F.3d 958, 961 (8th

Cir. 2001) (citing Prosch v. Apfel, 201 F.3d 1010, 1013 (8th Cir. 2000)). The finder of fact "may discount or disregard such an opinion if other medical assessments are supported by superior medical evidence[.]" Id. Here, the Subcommittee (and later the Board) weighed the competing medical evidence and concluded that the Petitioner did not meet his burden.

Petitioner also contends that under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102(4)(D)—a section explaining "[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active"— as well as under the comparable Rhode Island statute, § 42-87-1(1)(i-iv), he is disabled and thus entitled to receive an accidental disability pension. Petitioner cites Hoffman v. Carefirst of Fort Wayne Inc., 737 F. Supp. 2d 976 (N.D. Ind. 2010) for the proposition that kidney cancer, even if the cancer is in remission, is a disability pursuant to the ADA (and therefore also under the comparable above-mentioned Rhode Island statute).

Petitioner's reliance on Hoffman is misplaced. The Hoffman case merely held that renal cancer, even if in remission, is a disability covered by the ADA as it applies to a plaintiff claiming that he suffered discrimination based on a disability. Whether the Petitioner in the within case is entitled to an accidental disability pension is not governed by the ADA, nor is such a determination governed by the comparable Rhode Island statute, §§ 42-87-1 et seq. The aforementioned statutes prohibit discrimination on the basis of a disability. Courts have held that §§ 42-87-1 et seq. is applicable to a plaintiff alleging "discrimination and retaliation in violation of the Rhode Island Civil Rights of People with Disabilities Act[.]" Caron v. Fedex Freight, Inc., 2016 WL 6537533, at *2 (D.R.I. Oct. 3, 2016). However, when a plaintiff is seeking an accidental disability pension, courts will apply the statute governing that category of workers. For example, a plaintiff employed by the state seeking a pension based on an accidental

disability is most commonly covered by G.L. 1956 § 36-10-14, entitled "Retirement for accidental disability." See Rossi v. Emps.' Ret. Sys. of R.I., 895 A.2d 106 (R.I. 2006). When addressing a former firefighter seeking an accidental disability pension from the City of Providence, our Supreme Court applied section 17–189 of the Providence Code of Ordinances. Pierce v. Providence Ret. Bd., 15 A.3d 957, 962 (R.I. 2011) ("The salient issue before this Court is whether the board correctly interpreted § 17–189(5)[.]").

Here, this Court finds that the ADA (and the comparable Rhode Island statute) are not determinative in evaluating whether Petitioner is "disabled" for purposes of his application for a disability pension. As in the cases above, this Court will examine whether the finder of fact properly applied the statute that governs the class of employees applicable to the Petitioner; in this case, §§ 45-19.1-1, et seq. entitled "Cancer Benefits for Fire Fighters."

When reviewing an agency decision, this Court "must uphold the agency's conclusions when they are supported by legally competent evidence on the record." Interstate Navigation Co. v. Div. of Pub. Utils., 824 A.2d 1282, 1286 (R.I. 2003) (citing Rocha, 694 A.2d at 725). This is true "even in situations in which the court, after examining the certified record, might be inclined to view the evidence differently and draw different inferences from those of the agency below." Barrington Sch. Comm., 608 A.2d at 1138 (citing Cahoone v. Bd. of Review of the Dep't of Emp't Sec., 104 R.I. 503, 506, 246 A.2d 213, 214-15 (1968)). Here the Subcommittee reviewed the medical evidence presented in support of the Petitioner's contention that he was disabled due to occupational cancer, and they considered the evidence presented in opposition. It concluded that the Petitioner did not prove that he was disabled, and it concluded that he did not prove that his diagnosis of kidney cancer was the result of his employment as a firefighter. See Ladd v. Barnhart, 2005 WL 1657106, at

*2 (W.D. Va. 2005) (‘“[In] the not uncommon situation of conflicting medical evidence . . . [t]he trier of fact has the duty to resolve that conflict.”’) (quoting Richardson v. Perales, 402 U.S. 389, 399 (1971)). Its findings, and the subsequent decision of the Board upholding its findings, were supported by the evidence in the record, and were not “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” R.I. Pub. Telecomms. Auth., 650 A.2d at 485 (citing § 42-35-15(g)). This Court “must uphold the agency’s conclusions when they are supported by any legally competent evidence in the record.” Rocha, 694 A.2d at 725 (further citations omitted). Here, the findings of the Subcommittee and the Board are supported by sufficient legally competent evidence such that this Court must uphold their findings.

IV

Conclusion

This Court has reviewed the entire record before it. A thorough review of the decision of the Board reveals substantial evidence to support the Board’s conclusion that Petitioner was not eligible for an accidental disability pension at the time he ended his employment with the North Providence Fire Department. The Board’s decision on said application was thus not in excess of its statutory authority. The Court therefore finds that the decision of the Board to deny the application is supported by the reliable, probative, and substantial evidence on the record, and is not an abuse of discretion, clearly erroneous, or affected by error of law. Substantial rights of the Petitioner have not been prejudiced. Accordingly, the January 20, 2015 decision of the Board is affirmed. Counsel shall prepare appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Robert L. Lincourt v. The Employees' Retirement System of Rhode Island, et al.**
CASE NO:	**PC-2015-0602**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**June 6, 2017**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Edward C. Roy, Jr., Esq.**
For Defendant:	**Michael P. Robinson, Esq.**