

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

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|----------------------------------|---|-------------------------|
| <b>MICHAEL J. JORDAN</b>         | ) |                         |
|                                  | ) |                         |
| <b>Appellant,</b>                | ) |                         |
|                                  | ) |                         |
|                                  | ) |                         |
| v.                               | ) | C.A. No. 03A-10-004 RRC |
|                                  | ) |                         |
|                                  | ) |                         |
| <b>BOARD OF PENSION TRUSTEES</b> | ) |                         |
| <b>OF THE STATE OF DELAWARE</b>  | ) |                         |
|                                  | ) |                         |
| <b>Appellee.</b>                 | ) |                         |

Submitted: June 30, 2004  
Decided: September 21, 2004

Upon Appellant's Appeal from a Decision of  
the Board of Pension Trustees of  
the State of Delaware.

**DENIED.**

**ORDER**

Upon this 21<sup>st</sup> day of September, 2004 it appears to the Court that:

1. Appellant Michael J. Jordan ("Jordan") has filed an appeal from a decision of the Board of Pension Trustees of the State of Delaware ("Board").

Jordan was a Delaware State Trooper until he suffered an injury in the line of duty. Jordan had sought a determination of “total disability” from the State Pension Office, which was denied. Jordan appealed that determination to the Board of Pension Trustees. The Board affirmed the Pension Office’s determination and denied Jordan “total disability” status. Jordan has appealed that decision of the Board to this Court.

2. The facts of this case are not in dispute. Jordan served as a state trooper with the Delaware State Police for 16 years before he suffered a knee injury in December 1998 that resulted in a 20% permanent disability. Jordan was initially awarded a partial non duty connected disability pension in May 2000, which was changed to a duty related partial disability pension later in the month. Since September 2000 Jordan has been employed as a State judicial case manager in the Kent County Prothonotary. Sometime after September 2000, Jordan had attempted to return to full duty employment with the State Police but was unable to pass the physical standards test or the agility test. Effective December 18, 2002, Jordan was released by his physician to return to “light duty” with the State Police with restrictions on movement and lifting. However, because the State Police did not have full time “light duty” positions, no employment was available to him. Jordan then sought total disability pension benefits from the State Pension Office

on the basis that his injury will prevent him from ever resuming his career as a police officer. His request was denied and he appealed the denial to the Board of Pensions Trustees.

The Board found that pursuant to 11 *Del. C.* § 8351 (State Police, Subchapter III, *Service, Disability and Survivor's Pensions*), which defines “total” and “partial” disability, Jordan was eligible only for partial disability. Section 8351 states in part:

(12) "Partial disability" shall mean a medically determined physical or mental impairment which renders the member unable to function as a State Police officer and which is reasonably expected to last at least 12 months . . .

. . .

(15) "Total disability" shall mean a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for which the member is reasonably suited by training or experience, which is reasonably expected to last at least 12 months.

Because Jordan was employed as a case manager in the Prothonotary, the Board found that he was not eligible for total disability.<sup>1</sup> The Board held that it was “required to interpret the statute as it is written.”<sup>2</sup> The Board held that “the critical language to be interpreted in this case is ‘any occupation for which the member is

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<sup>1</sup> Appellee’s Answering Brief at Ex. 2, *Report of the Hearing Officers of the Board of Trustees for the State of Delaware* at 2-3 (hereinafter “Report at \_.”).

<sup>2</sup> Report at 3.

reasonably suited by training or experience’.”<sup>3</sup> The Board concluded that this language “mean[t] ‘any occupation’ regardless of where the training derived.”<sup>4</sup> The Board held that “[t]his occupation [Jordan’s employment as a judicial case manager], while different from the police service he originally set out to perform, is nonetheless one for which he is ‘reasonably suited by training or experience.’”<sup>5</sup>

3. Jordan argues on appeal that he should be eligible for total disability pension benefits because he is unable to return to work as a state trooper. Jordan argues that the statute should be interpreted to mean that “the ‘any occupation’ [term in 11 *Del. C.* § 8351(15)] be ‘reasonably’ related to ‘training or experience’ in law enforcement” and not just the ability to work at any job.<sup>6</sup> Jordan asserts that “the Board has incorrectly interpreted ‘any occupation for which the member is reasonably suited by training and experience’ to mean the Board has unbridled discretion to make [an] arbitrary determination of what ‘occupation’ and what

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<sup>3</sup> Report at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Appellant’s Reply Brief at ¶ 1 (hereinafter “Appellant’s Reply at \_.”).

‘training or experience’ is applicable in any given case.”<sup>7</sup> Jordan asserts in effect that the Board committed an error of law by misconstruing 11 *Del. C.* § 8351(15).

4. In response, the State Board of Pension Trustees (“State”) argues that because Jordan is employed as a judicial case manager, he is not eligible for total disability pension benefits under § 8351(15). The State represents that the current version of the State Police pension plan, 11 *Del. C.* §§ 8322-8396, was revised in part by the General Assembly in 1980 to correct an apparent “inequity” in the previous State Police pension plan in that a State Police Officer who was collecting total disability pension benefits could also be employed in another occupation.<sup>8</sup> The State argues that, unlike the old plan, the new plan makes a distinction between partial disability and totality disability and awards total disability when the petitioner is unable to work. The State contends that Jordan’s interpretation of the statute would “effectively insert the words ‘as a police officer’ after the words ‘working in any occupation for which the member is reasonably suited by training or experience.’”<sup>9</sup> The State argues that Jordan is incorrect when he urges an

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<sup>7</sup> Appellant’s Opening Brief at 6 (hereinafter “Appellant’s Op. Br. at \_.”).

<sup>8</sup> Appellee’s Answering Brief at 5 (hereinafter “Appellee’s Ans. at \_.”).

<sup>9</sup> Appellee’s Ans. Br. at 6.

interpretation of the statute that would make him eligible for total disability benefits because his present job is unrelated to his training as a police officer.”<sup>10</sup>

5. “On appeal from a decision of an administrative agency the reviewing court must determine whether the agency ruling is supported by substantial evidence and free from legal error.”<sup>11</sup> “Absent an abuse of discretion, the decision of the agency must be affirmed. [Citation omitted]. However, where, as here, the issue is one of construction of statutory law and the application of the law to undisputed facts, the court's review is plenary.”<sup>12</sup> “A reviewing court may accord due weight, but not defer, to an agency interpretation of a statute administered by it. [Citation omitted]. A reviewing court will not defer to such an interpretation as correct merely because it is rational or not clearly erroneous.”<sup>13</sup>

When a court is required to determine if a board or agency has interpreted correctly a regulation that the agency regularly administers, the court should first look to the “plain meaning” rule. The “plain meaning” rule as explained by the United States Supreme Court in *Caminetti v. United States* stands for the

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<sup>10</sup> Appellee’s Ans. Br. at 6.

<sup>11</sup> *Stoltz Management Co., Inc., v. Consumer Affairs Board*, 616 A.2d 1205, 1208 (Del. 1992).

<sup>12</sup> *Stoltz*, 616 A.2d at 1208.

<sup>13</sup> *Public Water Supply Co. v. DiPasquale*, 735 A.2d 378, 383 (Del. 1998).

proposition that “the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if it is plain, . . . the sole function of the courts is to enforce it according to its terms.”<sup>14</sup> “Ultimately, however, the courts are responsible for ‘the true interpretation or construction of a particular statute or regulation.’”<sup>15</sup> “The usual rules of statutory construction apply to statutes providing pensions to public officers. [Citation omitted]. If the language of the statute is clear and unambiguous, no construction takes place.”<sup>16</sup> Thus, “the question of the appropriate interpretation and application of [the pension statute] is a legal issue, which is subject to *de novo* review by this Court.”<sup>17</sup>

6. The question before this Court is whether the Board’s interpretation of 11 *Del. C.* § 8351 was “free from legal error” when the Board determined that the “any occupation for which the member is reasonably suited by training or experience” was not limited to only Jordan’s law enforcement training and

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<sup>14</sup> Norman J. Singer, *Sutherland Statutory Construction*, 6<sup>th</sup> ed. §46:01 (2003) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (U.S. 1917) (holding that “if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms”).

<sup>15</sup> *Twilley v. Board of Pension Trustees*, 1996 Del. Super. LEXIS 90, \*8 (Del. Super.).

<sup>16</sup> Norman J. Singer, *Sutherland Statutory Construction*, 6<sup>th</sup> ed. §75:4 (2003).

<sup>17</sup> *Department of Servs. for Children, Youth and Their Families v. Cedars Academy*, 1991 Del. Ch. LEXIS 200, \*13 (Del Ch.).

experience.<sup>18</sup> This Court now holds that the Board’s interpretation of 11 *Del. C.* § 8351 was free from legal error, and that the statute refers to any occupation, whether police related or otherwise, for which a petitioner is “reasonably suited by [any] training or experience.” Therefore, the Board’s decision denying Jordan’s petition for total disability pension benefits is affirmed.

In previous cases this Court has examined the differences between the old State Police Plan and the new State Police Plan. In *King v. Board of Pension Trustees*, this Court quoted the Hearing Officers’ report in *King* for an explanation of the difference between the old State Police Plan and the new State Police Plan. The report stated that ““whereas the Old Plan permitted a police officer to work in an occupation despite his or her State Police disability status within certain earnings limitation, the New State Plan may render ongoing employment inconsistent with total disability status.””<sup>19</sup> The *King* court decided the case on other grounds without addressing the question of whether ongoing employment did or did not affect a determination of total disability. However, this Court in *Bramble v. State Board of Pension Trustees* held that “[i]f that amendment had

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<sup>18</sup> *Stoltz*, 616 A.2d at 1208 (holding that “[o]n appeal from a decision of an administrative agency the reviewing court must determine whether the agency ruling is supported by substantial evidence and free from legal error”).

<sup>19</sup> *King*, 1997 Del. Super. LEXIS 478 \*6-7 (holding that the distinction between the new Police Plan and the Old Police relates to the definitions for total and partial disability).

been intended to liberalize benefits to police, logically, it would have been applied to all existing police (as has been the legislative treatment of many increases in police benefits) and not just to newly employed police.”<sup>20</sup>

Even though the *King* court reversed the Board’s decision to reduce the petitioner’s pension from total disability to partial disability because neither the State nor the pension office had filed an timely appeal of the Board’s decision in 1988, *King* is still illustrative.<sup>21</sup> In 1988, the Board in *King* had initially awarded King total disability benefits even though she was employed part time in a non-law-enforcement job. Six years later, a new Pension Administrator reviewed her case and informed King that she had been wrongfully awarded total disability benefits because under the new Police Plan she was eligible only for partial disability due to her ability to work.<sup>22</sup> The *King* court found that “the original determination of benefits in 1988 was the product of an informed decision by the Board [in that the Board was aware of the new statutory requirements of § 8351].

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<sup>20</sup> *Bramble v. State Board of Pension Trustees*, 579 Del. Super. LEXIS 307 \*10 (Del. Super.).

<sup>21</sup> At first glance, there appears to be some tension between *King* and this Court’s decision. However, the *King* court denied the Board’s attempt to retroactively enforce the new Police Plan when it realized that the Board had not done so in the first instance. The *King* court did not decide if the Board’s interpretation of § 8351 would have been correct, or not, had the Board originally denied King’s petition for total disability.

<sup>22</sup> King had been hired after 1980 and was subject to the new State Police Plan.

(Citation omitted). If the State or Pension Office was dissatisfied with the decision to award total disability, the proper time to appeal was after the initial determination.”<sup>23</sup> The Court noted the “deference traditionally given to an administrative board’s interpretation of its own statutes, [however] such boards cannot be allowed to ignore the statutory framework established but the General Assembly.”<sup>24</sup> The *King* court held that “the Board [had failed] to follow its own statutory guidelines . . . [and that] it does not have the authority to modify an existing pension that was lawfully awarded.”<sup>25</sup>

The teaching of *King* and *Bramble* is that the current Police Pension Plan (the new Plan) was enacted by the legislature to discourage the awarding of total disability pension benefits to State Police Officers who are able to work in some capacity, whether or not that capacity is law enforcement related. The Board’s authority to award total disability is dictated by 11 *Del. C.* § 8351 and that authority should be used in a “conscious, educated and informed” manner so that its decisions are free from legal error.<sup>26</sup> However, “the authority granted to an

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<sup>23</sup> *King*, 1997 Del. Super. LEXIS 478 \*20.

<sup>24</sup> *King*, 1997 Del. Super. LEXIS 478 \*26.

<sup>25</sup> *Id.*

<sup>26</sup> *King*, 1997 Del. Super. LEXIS 478 \*21 (holding that “the Board made a conscious, educated

administrative agency should be construed so as to permit the fullest accomplishment of legislative intent or policy.”<sup>27</sup>

This Court finds that the legal determination by the Board was free from legal error. The decision fulfilled the legislative intent to distinguish between State Police officers who have been rendered totally unable to work in any occupation for which they are capable of working and those who are disabled such that law enforcement work is prohibited but other employment is practicable.<sup>28</sup> It would be a contravention of the legislative policy for this Court to read into the statute the words “in law enforcement” after the words “working in any occupation for which the member is reasonably suited by training or experience,” as Jordan argues.<sup>29</sup>

7. For the foregoing reasons, this Court **DENIES** Appellant Jordan’s appeal and **AFFIRMS** the decision of the State Board of Pension Trustees.<sup>30</sup>

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and informed decision when it [initially] approved Ms. King’s total disability pension in 1988”).

<sup>27</sup> *Id.* at \*23.

<sup>28</sup> 11 *Del. C.* § 8351 does not give the Board “unbridled discretion to make arbitrary determination of what ‘occupation’ and what training or experience’ is applicable in any given case,” as Jordan additionally argues. The statute prevents the Board from arbitrarily denying total disability benefits to a petitioner because the Board found there were jobs that a petitioner could do physically but which the petitioner could not reasonably perform, e.g. a job requiring an extensive science background, which the specific petitioner did not possess.

<sup>29</sup> It is the General Assembly’s prerogative to amend § 8351(15) if it believes a retired State Trooper should receive total disability benefits in a situation such as the case at bar.

<sup>30</sup> Appellant also complains that the hearing was conducted in an overly informal manner. He

**IT IS SO ORDERED.**

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Richard R. Cooch, J.

oc: Prothonotary

cc: Thomas D. Donovan, Esquire, Attorney for Appellant  
Marsha Kramarck, Esquire, Attorney for Appellee  
State Board of Pension Trustees

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objects to the Board taking the evidence in the “reverse order” and allowing the Pension Administrator’s attorney to go first. Appellant’s Opening Brief at 2. Jordan also complains that the Board heard only from Jordan and decided the case “based on what happened [at the hearing] and, moreover, there existed a file, but “[the Hearing officers had] never seen it”. Appellant’s Opening Brief at 2. This Court agrees that the hearing was apparently conducted in an overly informal manner and the Board is cautioned to be careful in future cases to conduct hearings (informal to a degree, of course, by their very nature) in a manner that promotes confidence in the administrative process. However, the facts in the instant case were not in dispute and any undue informality did not affect its legal analysis.