

[J-152-2001]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

WILLIAM J. DURANTE,	:	No. 28 MAP 2001
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court dated September
v.	:	15, 2000 at No. 561 C.D. 1999 Reversing
	:	the Adjudication and Order of the
	:	Commissioner of the Pennsylvania State
	:	Police dated January 26, 1999
PENNSYLVANIA STATE POLICE,	:	
	:	
Appellant	:	
	:	ARGUED: November 13, 2001
	:	
	:	
	:	

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MR. JUSTICE CAPPY

Decided: October 25, 2002

We granted allocatur to determine whether William Durante (“Trooper Durante”) was “temporarily incapacitated” from his duties as a state trooper such that he is entitled to benefits pursuant to the Heart and Lung Act (“Act”).¹ For the following reasons, we now affirm.

The facts of this case are not in dispute. On June 13, 1985, Trooper Durante sustained a work-related injury to his right arm when he was carrying two boxes of highway flares. After he returned to work, Trooper Durante suffered several recurrences of the original injury; because of these recurrences, he was assigned to a light duty position

¹ Act of June 28, 1935, as amended, 53 P.S. § 637.

working for Staff Services in 1988. The Staff Services position to which Trooper Durante was assigned has been held only by state troopers. The Staff Services position did not, however, implicate some of the duties expected to be performed by a state trooper assigned to the field, such as forcibly arresting a person, performing rescue functions, and handling and discharging a firearm.

In 1993, Trooper Durante suffered yet another recurrence of the original injury and underwent surgery. During his eight-month post-operative recuperation period, Trooper Durante was incapacitated from performing his duties in Staff Services and thus did not work during that period. Trooper Durante returned to his Staff Services position in August of 1993; he worked in this position until his retirement in 1995.

Because he could not work at his Staff Services position during the 1993 recurrence of his injury, Trooper Durante applied for benefits under the Act. These benefits are payable to a state trooper “who is injured in the performance of his duties . . . and by reason thereof is temporarily incapacitated from performing his duties” 53 P.S. § 637(a). Benefits paid pursuant to the Act are equal to the trooper’s full salary.

The Pennsylvania State Police (“State Police”) denied Trooper Durante benefits. The State Police determined that although Trooper Durante could perform his Staff Services duties, his injuries permanently prevented him from performing the full range of essential duties required of a state trooper. Thus, as he was permanently, and not temporarily, disabled, he was not entitled to benefits under the Act.

Trooper Durante appealed the decision and a hearing was held before an arbitrator. At this hearing, the State Police presented testimony that Trooper Durante’s injuries prevented him from being able to engage in such activities such as forcibly subduing a suspect or physically removing people from harm’s way. Arbitration Hearing, 9/29/1998, at 27-29. Thus, Trooper Durante was incapable of performing five of the nineteen duties that the State Police considered essential for a trooper to be able to perform. Id. It was

unquestioned, however, that Trooper Durante was capable of performing all of his duties of his Staff Services position.

The arbitrator found that after the 1993 recurrence of the injury, Trooper Durante was temporarily, rather than permanently, incapacitated from performing his Staff Services position, a position which is held only by state troopers. The arbitrator therefore awarded benefits.

The Commissioner of the State Police (“Commissioner”) adopted the findings of fact as found by the arbitrator. The Commissioner determined, however, that the arbitrator had erroneously awarded benefits and therefore reversed. The Commissioner based his denial of benefits on the fact that Trooper Durante was physically incapable of performing the full range of essential functions of a state trooper.

Trooper Durante appealed to the Commonwealth Court. The Commonwealth Court, sitting en banc, reversed the Commissioner. The lower court found that the test for determining whether a trooper was “temporarily incapacitated” was whether “the officer could return to a position which was regularly assigned to state policemen.” Commw. Ct. slip op. at 4 (citations omitted). The Commonwealth Court specifically stated that “the ability to perform all of the functions of police training was not the test for determining whether a police officer was temporarily incapacitated” Id. In rendering its decision, the lower court relied in part on this court’s decision in Palmeri v. Pennsylvania State Police, 499 A.2d 278 (Pa. 1985).

President Judge Doyle dissented, stating that he believed that Trooper Durante was ineligible for benefits under the Act. Judge Doyle stated that while the Staff Services position was one historically filled by a state trooper, the position did not implicate the essential duties of a state police officer. Judge Doyle posited that a position could be considered one which is “regularly assigned to state policemen” only if such a position required the execution of all of the duties a trooper could be expected to perform, including

subduing suspects and engaging in rescue operations. Judge Doyle closed his dissenting opinion by briefly stating that he believed that Palmeri had been circumscribed by this court's decision in Cunningham v. Pennsylvania State Police, 507 A.2d 40 (Pa. 1986).

The State Police filed a petition for allowance of appeal, and this court granted allocatur.

The question presented to this court is whether a trooper who will never again be able to perform the full range of duties required of a trooper assigned to a field position is permanently disabled for purposes of the Act. As this is a question of law, we are in no fashion constrained by the determination of a lower court; thus, our standard of review is de novo. Furthermore, our scope of review in this matter is plenary as we may examine the entire contents of the record. See Phillips v. A-BEST Products Co., 665 A.2d 1167, 1170 (Pa. 1995).

The State Police argues to this court that we should reverse the order of the Commonwealth Court. It reasons that since Trooper Durante's injury precluded him from performing all of the functions of a trooper assigned to a field position, then he was permanently disabled and thus could not recover under the Act. Furthermore, the State Police strenuously contends that the Commonwealth Court erred when it concluded that Trooper Durante's return to work in his Staff Services position was tantamount to him returning to work as a state trooper, thus rendering his 1993 incapacity "temporary". Rather, it contends that the relevant inquiry should focus on whether Trooper Durante could perform each of the duties required of a trooper deployed to a position in the field. In support of its position, the State Police relies heavily on this court's decision in Cunningham, supra.

Before we begin an analysis of Cunningham, it is incumbent upon us to first examine Cunningham's progenitor, Palmeri, supra. Trooper Palmeri sustained injuries while on duty and went on disability leave. The State Police subsequently asserted that Trooper

Palmeri's injury was permanent rather than temporary, and that Trooper Palmeri was not entitled to benefits under the Act. Trooper Palmeri appeared at the hearing, and testified that he was able to perform all of the duties of his pre-injury supervisory position. The State Police, however, desired to have him classified permanently disabled as Trooper Palmeri could not perform all of the functions of every position to which a trooper could be assigned. We rejected the State Police's argument. We stated that in order for the disability to be deemed temporary, rather than permanent,

[i]t is not necessary that an injured trooper recover so that he is able to perform every conceivable function that could possibly arise in connection with a policeman's duties generally. It is enough that his recovery enable [sic] him to perform the duties of a position that is regularly assigned to state policemen even though the job be entirely sedentary.

Palmeri, 499 A.2d at 282.

Shortly thereafter, this court issued its decision in Cunningham. That matter considered whether the injuries sustained by Trooper Cunningham were permanent or temporary in nature. Trooper Cunningham was offered a light duty position by the State Police. He rejected the position, however, stating that the position was located too far from his home and that his injury would not permit him to undertake such a long commute. Trooper Cunningham hypothesized that another light duty position located closer to his home might have been acceptable. Yet, there was no indication whether such a position actually existed in close proximity to the trooper's home. Moreover, several medical specialists examined Trooper Cunningham, and all of them opined that Trooper Cunningham was unable to return to work.

After discussing that Trooper Cunningham rejected the light duty position and that all the medical specialists who examined him opined that his injury precluded him from working as a trooper, we concluded that Trooper Cunningham's injury was permanent. We reasoned that a disability is permanent where "the disability is of a nature which prevents

the individual from performing the type of services normally required in his or her occupation." Cunningham, 507 A.2d at 47. We stated that it was of great public importance that a trooper be capable of performing all of the duties of his position. We thus emphasized that "it is not enough to demonstrate that [the injured trooper] may be capable of exercising some of the non-physical responsibilities of the position. To the contrary, [the injured trooper] must demonstrate that he or she can adequately assume those responsibilities expected of a state policeman." Id. at 47 n.14.

The State Police argues that Cunningham stands for the proposition that unless a trooper is able to perform every function required of a trooper working in the field, then he is permanently disabled. It contends that it is of no moment that an injured trooper is able to perform - and has performed - the duties of a position that has exclusively been filled by troopers. Additionally, the State Police's only recognition of the existence of Palmeri is a fleeting reference in a footnote to its brief. The State Police speculates that Palmeri is inconsistent with Cunningham, and thus no longer controls.

We are unable to dismiss Palmeri with such alacrity. Cunningham was issued a mere six months after Palmeri, with no statement that we were overruling Palmeri. It is, of course, possible for one of our decisions to overrule a predecessor case sub silentio. Yet, we find it would be improvident to conclude that Cunningham overruled Palmeri sub silentio unless the two are irreconcilable.

Sober examination of the two cases readily reveals that they can be read so that they harmonize with one another. It is beyond dispute that Cunningham stands for the proposition that a trooper must be able to perform all of the essential duties of his job in order to avoid being deemed permanently disabled. The Cunningham court did not, however, dictate that the duties should be defined in terms of the most hazardous assignment a trooper could possibly receive, without regard to the duties of other positions held by and regularly assigned to troopers. Palmeri, in turn, acknowledged the reality that

there are different trooper positions within the State Police, with divergent requirements of strength and dexterity. Thus, the Palmeri court held that an injured trooper will be deemed temporarily disabled so long as he is capable of "perform[ing] the duties of a position that is regularly assigned to state policemen even though the job be entirely sedentary." Palmeri, 499 A.2d at 282.

A synthesis of Cunningham and Palmeri reveals that a trooper must be able to perform all of the essential duties of his job in order to avoid being classified as permanently disabled; establishing that he can perform only some of the essential duties of that position is insufficient to avoid a finding of permanent disability. Yet, the injured trooper need not be able to perform every duty of the most demanding position a trooper could hold in order to avoid a finding of permanent disability. Rather, it need only be shown that the injured trooper is able to fulfill all of the essential duties of a position that is held by and regularly assigned to troopers. To arrive at a contrary holding approaches absurdity. For, how can we find that a trooper who is fulfilling all of the duties of his job - a job which is held by and regularly assigned to other troopers - is concomitantly permanently disabled from working?

In applying this rule to the matter sub judice, it is clear that Trooper Durante was not permanently disabled. The Staff Services position has historically been held only by state troopers. Furthermore, the State Police has not alleged that Trooper Durante was incapable of performing this position. Thus, as Trooper Durante was capable of and, in fact, did perform work in a state trooper position, he was not permanently disabled and is entitled to benefits under the Act.

For the foregoing reasons, we affirm the order of the Commonwealth Court.

Former Chief Justice Flaherty did not participate in the decision of this matter.

Mr. Chief Justice Zappala files a concurring opinion.

Mr. Justice Saylor files a dissenting opinion in which Mr. Justice Nigro joins.