Circuit Court for Baltimore City
Case No. 24-C-17-001428

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2173

September Term, 2017

EDILBERTO ILDEFONSO

v.

FIRE & POLICE EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BALTIMORE

Fader, C.J.,
Wright,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: January 17, 2019

A member of the Fire and Police Employees' Retirement System of the City of Baltimore ("FPRS") may apply to the FPRS Board of Trustees (the "Board") for line-of-duty ("LOD") disability benefits under certain circumstances within five years of suffering an injury. The Baltimore City Code (the "Code") requires that an application "must include a medical certification of disability and all supporting medical documents, on a form prescribed by the Board of Trustees." Balt. City Code, Article 22, [hereinafter "Art. 22"], § 33(*l*)(4)(ii). The medical-certification form prescribed for LOD disability benefits is known as a Form 25.

In 2012, Edilberto Ildefonso filed an application (including a Form 25) for LOD disability benefits with the Board. His application was denied by a hearing examiner for the Board, and Ildefonso did not appeal that determination. Then, in October 2015, two days before the passage of the five-year limitations period, Ildefonso filed a second application but did not include a Form 25 medical certification. The hearing examiner found that Ildefonso's claim for LOD benefits was not perfected within the five-year limitations period because his application did not include a medical certification of disability. Ildefonso filed a petition for review in the Circuit Court for Baltimore City.

After the circuit court affirmed the hearing examiner's decision, Ildefonso filed a timely appeal and asks us to resolve the following questions:

> "1. Does a hearing examiner err in ruling, as a matter of law, that a new medical certification must be submitted with each application in order to perfect a line-of-duty disability retirement claim?"
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> "2. Does *res judicata* apply to the prior medical certification submitted by Officer Ildefonso when he had a right to refile an application for the same injury?"

We hold that the plain and unambiguous statutory language that governs a claimant's application for LOD disability benefits requires that a claimant must file, within five years of suffering an injury, an application that includes a medical certification of disability on a form prescribed by the Board of Trustees—a Form 25. Without the Form 25 medical certification, Ildefonso's application was incomplete at the time the statute of limitations expired. Furthermore, we need not determine whether Ildefonso was precluded from relying on his 2012 medical certification when he re-applied for LOD disability in 2015 because Ildefonso did not attach his 2012 Form 25 to his application in 2015.[1] We observe, however, as the hearing examiner did, that the old Form 25 could not establish that Ildefonso's condition had changed since he was denied LOD disability benefits in 2012. The hearing examiner was correct to reject his application.

BACKGROUND

Ildefonso became an officer with the Baltimore City Police Department and a member in the FPRS in August 2007. During a training exercise on October 28, 2010, he suffered a tear in the anterior cruciate ligament ("ACL") in his left knee. The injury required Ildefonso to undergo surgery on February 18, 2011, to repair his ACL tear.

A. The First Application

On March 6, 2012, Ildefonso filed an application for LOD disability retirement ("First Application") with the Board for the ACL tear he suffered on October 28, 2010. He

[1] Subsumed within our resolution of Ildefonso's first issue we address whether a new medical certification was required in this case to avoid the preclusive effect of *res judicata* because the hearing examiner rendered a final decision on the 2012 application (and 2012 Form 25), which Ildefonso never appealed.

stated in his application that he could no longer perform the full duties of a police officer and was limited instead to sedentary duties. The application included both a Form 27EE, which stated the grounds for the application and other identifying information, as well as a Form 25 signed by Dr. James Levy on February 20, 2012, in which he certified that Ildefonso was medically disabled.

A hearing examiner heard Ildefonso's case on May 23, 2012. Ildefonso testified that he experienced constant pain in his knee that worsened whenever he walked further than two blocks. He said that he could not run or walk too quickly.

The records at the hearing included independent medical evaluations completed by four doctors: Dr. Stephen Matz and Dr. Louis Halikman found that Ildefonso could return to work,[2] and Dr. Levy and Dr. Sheldon Miller found that Ildefonso was unable to complete the duties of a police officer. The treating physician under the Workers Compensation claim, orthopedic surgeon Dr. Leigh Ann Curl, also concluded that Ildefonso could return to full-duty.

The hearing examiner denied Ildefonso's First Application in a decision dated May 30, 2012. She noted that she was more persuaded by the determinations of Drs. Curl, Matz, and Halikman, all of whom found that Ildefonso could return to full-duty work as a police

[2] Dr. Matz performed an independent medical evaluation ("IME") of Ildefonso on October 11, 2011, in connection with Ildefonso's disability claim for the same injury. Dr. Matz found that Ildefonso's "left knee was at maximum medical improvement and [he] was capable of returning to his job with no restrictions." Similarly, Dr. Halikman found that Ildefonso's "knee [wa]s stable with very good to excellent strength" and that "Ildefonso [wa]s capable of returning to his previous job as a police officer relative to the accident of October 28, 2010."

officer. In reaching her decision that Ildefonso did not satisfy his burden of demonstrating that he was permanently and totally incapacitated from further performance as a Baltimore City police officer due to the incident of October 28, 2010, the hearing examiner relied on the inconsistency between the physical findings on Ildefonso's knee and his subjective complaints. She also relied on a pattern revealed in medical records of Ildefonso "repeatedly demonstrating less than the maximum effort in terms of pursuing treatment so he can return to work." Particularly, Dr. Halikman's functional capacity evaluation documented that Ildefonso's behavior was "self-limiting" and "did not necessarily represent [his] current maximum capabilities." The hearing examiner found Ildefonso's testimony "to be self-serving," and concluded that "deficiencies in [his] performance since his surgery are more likely due to motivational factors than to physical factors."

On June 7, 2012, a FPRS medical claims processor sent a letter to Ildefonso, informing him that his claim was denied and informing him that he had 30 days from the date of the letter to appeal the decision to the Circuit Court for Baltimore City. Ildefonso did not appeal the hearing examiner's decision.

B. The Second Application

On October 26, 2015, four years and 363 days from the date of his October 28, 2010, injury, Ildefonso filed a Form 27EE to apply for LOD disability retirement with the Board ("Second Application") based on the same injury to his left knee. The Second Application did not include a Form 25. Dr. Levy signed a Form 25 for Ildefonso on November 10, 2015, and Ildefonso submitted it to the Board on January 11, 2016.

A hearing on Ildefonso's Second Application proceeded on January 25, 2017. During opening arguments, FPRS asserted that *res judicata* precluded Ildefonso from challenging any findings from the hearing examiner's 2012 decision, which became final and binding after Ildefonso failed to appeal that decision. The hearing examiner responded

> Officer Ildefonso has the right to come back if he's claiming a worsening of his condition or a change in the circumstances or further treatment or can offer to me sufficient proof that something has changed. If I'm not convinced that there has been a significant change in his condition, I will likely issue the same decision I rendered [in 2012], but it will be based on the facts.

Ildefonso testified as the only witness. Following his testimony, his counsel began his closing argument by noting that this was his second application for LOD disability, stating:

> On both occasions now Dr. Levy has completed a Form 25 indicating that [Ildefonso] is totally and permanently disabled from performing the essential job functions. . . . In both indications, it's a result of his left knee ACL reconstruction and repair. Dr. Levy has indicated on the most recent one[,] swelling of the left knee, ACL repair, unable to perform the essential duties. On his first one in 2012, he again articulated it but differently, indicating he's unable to run, jump or kneel[.]

He then focused on the merits, insisting that the atrophy that Ildefonso has experienced since the 2012 decision was an objective measurement of his disability.

Counsel for FPRS asserted during closing argument that Ildefonso was not eligible for LOD disability "because under the law he did not file a complete application within five years of the date of injury." Because Ildefonso's Form 25 was not submitted or even signed within the five-year statute of limitations, FPRS insisted that his application was incomplete, "preventing any eligibility under the plain letter of the law for a Line-of-Duty

Disability Pension." FPRS also maintained the entire matter was *res judicata* because the Second Application presented the same operative facts as the first.

When the hearing examiner offered Ildefonso an opportunity to respond to the points FPRS raised, he stated, regarding the timeliness of his application, only that "he filed within five years." The hearing examiner noted that the statute-of-limitations issue was "interesting," and concluded the hearing.

About a month later, on February 23, 2017, the hearing examiner issued a decision denying Ildefonso's application for LOD disability benefits but awarding him non-line-of-duty disability benefits. She found that Ildefonso's application was barred by the five-year statute of limitations because, although he filed his application before the statute of limitations expired on October 28, 2015, his application was deficient at that time because it did not include a Form 25. She concluded that the Form 25 that Ildefonso attached to his First Application was insufficient to support his Second Application,[3] not because of *res judicata*, but because he failed to timely file his application:

> It is entirely possible for the Claimant's condition to have worsened in the intervening years between the two applications, and therefore the statute allows for a new application to be filed (within the 5-year period) based on the change in the Claimant's condition, however in that case the certification of disability should be supportive of the new application. The old Form 25 is not.[4]

[3] The hearing examiner denied his claim for LOD disability benefits—

[4] Ultimately, Ildefonso's application proceeded for non-LOD disability retirement benefits under Art. 22, § 34(d), which is not subject to the five-year statute of limitations. Ildefonso's updated medical records and testimony at the hearing caused the hearing examiner to find that his condition had worsened based on increased atrophy in his thigh and, therefore, award Ildefonso non-LOD disability benefits. The provisions governing non-LOD disability benefits allow for the same annuity as LOD disability benefits, but

A FPRS medical-claims processor sent a letter to Ildefonso on February 27, 2017, notifying him of the hearing examiner's decision and that he had 30 days from the date of the letter to appeal to the Circuit Court for Baltimore City. On March 21, 2017, Ildefonso appealed to the circuit court which affirmed the hearing examiner's decision in a memorandum opinion issued December 6, 2017. The Honorable Michael DiPietro ruled that Ildefonso's Second Application was untimely, explaining:

> Petitioner's First Claim was fully adjudicated by F&P on May 23, 2012. No pending claim was ripe for adjudication until Petitioner filed his Second Claim. Petitioner's only avenue of redress after the denial of the First Claim, other than appeal, would be to file [] another claim asserting a worsening of his condition since the denial of the First Claim, which is exactly what he asserted in his Second Claim. Otherwise, *res judicata* principles would doom a second claim supported solely and exclusively by the same evidence presented in the first claim.
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> . . . [B]ecause Petitioner's First Claim and accompanying Form 25 was finally adjudicated on May 23, 2012, and the statute of limitations period had run prior to the filing of Petitioner's second Form 25, the Hearing Examiner correctly concluded that Petitioner's Second Claim was not perfected within the limitations period set forth in the City Code.

Ildefonso noted his timely appeal to this Court on January 4, 2018.

entitle a claimant to a significantly smaller pension. *Compare* Art. 22, § 34(d)(1)(B) (providing for a pension roughly equal to 2.5% of the claimant's average compensation) *with* § 34(e-2)(1)(ii) (providing for a pension equal to 66.667% of the claimant's average compensation).

DISCUSSION

I.

Statute of Limitations

Ildefonso assigns error to the hearing examiner's decision that his Second Application was untimely. According to Ildefonso, his Second Application combined with the Form 25 in the record from his First Application met the statutory requirements to complete his application within the statute of limitations. Because the Code requires only that Form 25 state that the applying member ". . . has suffered a disability and that the disability prevents her or him from further performance of the duties of her or his job classification," Ildefonso says that the Form 25 already in his file from his First Application "supports" his Second Application as required by the Code: "As long as a doctor states there is a disability that prevents the member from performing the duties of their job classification on a Form 25, and both the Form 25 and the application are filed at some point within the five year time limit, the procedural requirements of Section 33 are met, and the application can be considered." Ildefonso contends that the Board also believed his Second Application was timely filed, as indicated by a Board employee writing, on his application, that October 26, 2015, was the date Ildefonso filed the form, and because the medical brief that the Board prepared in conjunction with his Second Application included the Form 25 from 2012.

FPRS responds that the plain language of the Code "unambiguously instructs that the Form 25 is a mandatory element of the application for disability retirement, as the hearing examiner correctly determined in this case." It contends that Form 25's "inclusion

is necessary in order for the application to be deemed filed." Although Ildefonso makes much of the fact that his file included a completed Form 25 from 2012, FPRS emphasizes that Ildefonso did not re-submit a copy of the 2012 Form 25 along with his Second Application, but instead submitted a new Form 25 after the statute of limitations had expired. According to FPRS, once Ildefonso failed to appeal the denial of his First Application, the hearing examiner's decision became final and binding, and "there no longer existed any open, pending application attached to the 2012 Form 25." Finally, FPRS rejects as "hollow and meritless" Ildefonso's argument that the Board treated his Second Application as complete, noting that its personnel routinely prepare an application for a hearing by compiling all available records, which they did here by including "all of the medical records from the 2012 hearing, as well as the first application, in addition to the 2012 Form 25."

Applications for LOD Disability Benefits

Article 22 of the Code provides that a member of FPRS "shall be retired on a line-of-duty disability retirement if:"

> (i) a hearing examiner determines that the member is totally and permanently incapacitated for the further performance of the duties of his or her job classification in the employ of Baltimore City, as the result of an injury arising out of and in the course of the actual performance of duty, without willful negligence on his or her part; and
> (ii) for any employee who became a member on or after July 1, 1979, *the application for line-of-duty disability benefits is filed within 5 years of the date of the member's injury.*

Art. 22, § 34(e-1)(1) (emphasis added). The claimant must "apply to the Board of Trustees, on a form approved by the Board," submitted "no later than 1 year following the member's last day of City employment." Art. 22, § 34(e-1)(2).

Article 22, §33(*l*) governs a claimant's application. The "claimant must apply to the Board of Trustees." Art. 22, § 33(*l*)(4)(i). The Code requires that

> [t]he application must include a medical certification of disability and all supporting medical documents, on a form prescribed by the Board of Trustees, in which the member must state that she or he has suffered a disability and that the disability prevents her or him from further performance of the duties of her or his job classification.

Art. 22, § 33(*l*)(4)(ii). The Board has prescribed Form 25 as the medical certification form for claims. The claimant must also state that the injury causing incapacity arose out of and in the course of her or his duty, state that the injury occurred within five years of the date of the application, and execute a consent form authorizing the Board of Trustees to obtain relevant medical records. Art. 22, § 33(*l*)(4)(iii)-(v). After the Board receives the claimant's application and supporting documents, it selects a physician to medically examine the claimant and, on receipt of that report, the panel of hearing examiners schedules a hearing. Art. 22, § 33(*l*)(5)-(6). One hearing examiner then conducts an informal, adversarial hearing at which the claimant has a right to counsel and the burden of proving his or her claim by a preponderance of the evidence. Art. 22, § 33(*l*)(8)-(10).

Following the hearing, the hearing examiner "shall issue written findings of fact that set forth the reasons for the hearing examiner's determination." Art. 22, § 33(*l*)(12). Among the things the hearing examiner must determine in an application for LOD disability benefits is "whether the disability resulted from an injury that occurred within 5

years before the date of the members' application[.]" Art. 22, § 33(*l*)(11)(ii)(C). "If neither party seeks judicial review within 30 days following the mailing of the hearing examiner's written findings of fact, the hearing examiner's determination is final and binding, subject to the panel of hearing examiners' right to reexamination as provided for in § 34(g)." Art. 22, § 33(*l*)(14).

Review of the Hearing Examiner

Section 33(*l*) also governs the process for review of the hearing examiner's decision. A party aggrieved by the hearing examiner's decision "may seek judicial review of the determination by the Circuit Court for Baltimore City," where the review is held "on the record only, on a right-of-way basis[,]" and "[t]the final determination of the hearing examiner is presumptively correct and may not be disturbed . . . except when arbitrary, illegal, capricious, or discriminatory." Art. 22, § 33(*l*)(12). A party may then appeal the circuit court's decision to this court "in accordance with the Maryland Rules of Procedure." *Id.*

On an appeal from the circuit court, this Court reviews the hearing examiner's decision, *Bd. of Trustees for the Fire & Police Emps.' Ret. Sys. v. Mitchell*, 145 Md. App. 1, 8 (2002), which we presume to be correct. *Marsheck v. Bd. of Trustees of Fire & Police Emps.' Ret. Sys.*, 358 Md. 393, 402 (2000). We review questions of law and statutory interpretation *de novo*. *Schwartz v. Md. Dep't of Nat. Res.*, 385 Md. 534, 554 (2005). As the Court of Appeals has explained, we "give weight to an agency's experience in interpretation of a statute that it administers, but it is always within our prerogative to determine whether an agency's conclusions of law are correct, and to remedy them if

wrong." *Id.* (citations omitted). In interpreting statutes of limitation, we construe the statutory language strictly. *Marsheck*, 358 Md. at 403-05. The general rule of statutory interpretation, however, remains "to determine and effectuate the enactment's purpose." *Briggs v. State*, 298 Md. 23, 31 (1980). "[I]f the language of the statute is unambiguous and its meaning is plain and definite, our inquiry as to the legislature's intent will end and we will not venture outside the words of the statute." *Marsheck*, 358 Md. at 402-03 (citations omitted). When "the legislature has not expressly provided for an exception in a statute of limitations, the court will not allow any implied or equitable exception to be engrafted upon it." *Booth Glass Co., Inc. v. Huntingfield Corp.*, 304 Md. 615, 624 (1985) (citations omitted). Therefore, "[o]nce the limitation period passe[s], the statute, which once provided opportunity, closes the window and the claim is barred thereafter." *Marsheck*, 358 Md. at 404.

The Five-Year Filing Deadline

As we set out above, § 34(e-1)(1) required Ildefonso to file his application for LOD disability benefits "within 5 years of the date of [his] injury." Section 33(*l*)(4)(ii) specifies what a claimant *must* include in his or her application: "[t]he application *must* include a medical certification of disability and all supporting medical documentation, on a form prescribed by the Board of Trustees[.]" Synthesizing these provisions, the statutory language is unambiguous, plain, and definite that, within five years of suffering an injury, a member of FPRS claiming LOD disability benefits *must* file an application including a medical certification of disability, a Form 25. We do not, therefore, need "to venture outside the words of the statute." *Marsheck*, 358 Md. at 402-03.

The following facts relevant to the application of the statute of limitations are not in dispute. The statute of limitations began to run on October 28, 2010, the date Ildefonso's injury occurred. He filed his First Application, including a Form 25 on March 6, 2012. The hearing examiner denied that application in a decision that became final and binding on or around July 7, 2012, after Ildefonso failed to seek judicial review of the hearing examiner's decision. Art. 22, § 33(*l*)(14). Ildefonso filed his Second Application on October 26, 2015, a few days before the five-year statutory period expired. This Second Application included a Form 27EE, stating the grounds for his application and accompanying identifying information, but did not include a Form 25. Dr. Levy did not sign Ildefonso's application until November 10, 2015, and Ildefonso did not submit that form to the Board until January 11, 2016—well beyond the five-year statutory period. *See Marscheck*, 358 Md. at 416 (holding that the claimant "was required to *file* . . . her claim of disability within five years of her date of injury").

To avoid the expiration of the statute of limitations, Ildefonso says that his application was complete without a Form 25 because, somewhere within the Board's records, a Form 25 existed from his First Application. This argument is a direct affront to the clear and direct language of § 33(*l*)(4)(ii), which required Ildefonso's Second Application to include "a medical certification of disability and all supporting medical documentation, on a form prescribed by the Board of Trustees," a Form 25. This Court may not engraft on the statute of limitation, where the legislature has not expressly allowed, "an implied or equitable" exception for claimants who have filed previously an application

for LOD disability benefits.[5] *See Booth Glass*, 304 Md. at 624. Furthermore, to avoid the preclusive effect of *res judicata*, Ildefonso's Second Application had to demonstrate a "change in the Claimant's condition," and we agree with the hearing examiner that "the old Form 25 [could] not."[6]

Without a Form 25, Ildefonso's application was incomplete at the time the statute of limitations expired. Accordingly, we hold the hearing examiner did not err in rejecting Appellant's application for LOD disability benefits.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; APPELLANT TO PAY COSTS.

[5] We need not consider whether Ildefonso's application substantially complied with the statutory requirements because he expressly waived that argument, and did so with good reason because the Court of Appeals rejected a similar argument in *Marsheck*, 358 Md. at 415-16 (holding that the doctrine of substantial compliance is inapplicable to the statute of limitations for LOD disability claims with the System).

[6] Ildefonso insists that principles of *res judicata* did not apply to his 2012 Form 25. We note that the hearing examiner's findings did not apply—or even mention—principles of *res judicata*. Instead, the hearing examiner found that the 2012 Form 25 did not support Ildefonso's Second Application because it did not constitute a medical certification that Ildefonso had become disabled since 2012 when the hearing examiner had determined he was not disabled and ineligible for LOD disability benefits. What Ildefonso has been told all along is that *res judicata* principles would doom his application unless it reflected a change or worsening of his condition. In fact, the hearing examiner found that his condition *had* worsened based on increased atrophy in his thigh, and awarded Ildefonso non-LOD disability benefits. He was denied LOD disability benefits, not because of *res judicata*, but because he failed to perfect this claim as required by statute before the five-year statute of limitations ran.