

Disability PENSIONS AND DROP OUTCOME

By Joe Clure, Treasurer

You may recall my February RECAP article, "Disability Pensions and DROP", in which I described how PLEA Member Dale Eisentraut was initially denied an accidental disability pension by the local Phoenix Police Pension Board. The concern of the board was the fact that Dale was nearing the culmination of his five year DROP when he applied for the accidental disability pension. This caused some board members to question the motivation of his application in regard to the "timeliness" question of whether it was the disability or the end of the DROP period that was motivating his application? Fortunately, Dale contacted PLEA for assistance and the Board, recognizing the potential adverse impact on all members, directed PLEA Attorney Mike Napier to assist Dale with this issue.

Mike Napier immediately reviewed the file and conferred with PLEA Member Dale Eisentraut. Mr. Napier's opinion was that the denial of an accidental disability pension for Dale was not justified under the law and appeared to be a reversal of prior Pension Board decisions thereby making the denial inequitable.

Mike Napier is very familiar with our pension laws. His firm had a very similar case in 2004, (which was argued by then PLEA Attorney Dale Norris, now Executive Director of the Arizona Police Association) involving the Guadalupe Fire Chief, Greg Parkinson. Parkinson had been the Fire Chief from 1995 until February 17, 2004, when he resigned from the department. He was scheduled for a "pre-termination hearing" on February 18, 2004. Parkinson had submitted his accidental disability application on February 6, 2004. In July 2004, he was approved by the local pension board for an accidental pension. However, in August 2004, the local Board reconvened to review Chief Parkinson's accidental disability pension to determine the question as to whether his employment was terminated by the disability or his concerns over the investigation and possible pending termination.

The Board reversed itself and vacated Chief Parkinson's accidental disability pension. Chief Parkinson retained Mike Napier and appealed the denial to Superior Court (Greg Parkinson v. Guadalupe Public Safety Retirement Local Board 1 CA-CV 06-0238) on the grounds that he met the statutory requirements for the accidental disability pension and that the Board had abused its discretion in denying the benefit. The Superior Court ruled in favor of Chief Parkinson. The local Board appealed to The Arizona Court of Appeals. The Appeals Court upheld the Superior Court's opinion stating:

"No statute provides that a member's accidental disability must be the sole reason for his resignation or that the Board must find as a fact that the member's disability is the sole cause of the end of his employment. Accordingly, even if Parkinson decided to resign because he feared that the results of the Town's investigation would be embarrassing to him or lead to his dismissal, nothing in the law bars him from receiving a disability pension if his resignation was supported with competent medical evidence that his disability totally and permanently prevented him from performing his duties and if the Board found him to be totally and permanently so prevented."

The Court went on to say: "We do not find in the statutory scheme any requirement that a pension applicant have a single reason, an objectively credible reason or even a reason for

seeking a pension. We find no indication that the Arizona Legislature intended the result that, if a non-disability reason or factual circumstance might motivate a member to retire, the member is disqualified from receiving a disability pension."

You talk about great timing: the Appeal Court's decision was published January 30, 2007! As you can see the case was right on point with Dale Eisentraut's denial and came just days after he met with Napier.

Armed with this new Arizona Appeals Court decision, PLEA Attorney Jan Feltz, with the Law Firm of Michael Napier, represented Eisentraut at the February 16, 2007 Local Phoenix Police Pension Board. Ms. Feltz alerted the Board's attorney to the recent Appeals Court decision. As a result, the Pension Board went into Executive session to discuss the matter with their attorney. I am very pleased to report that the Board immediately moved to approve PLEA Member Dale Eisentraut's accidental disability pension.

I want to thank Mike Napier, Dale Norris and Jan Feltz for their efforts in protecting our members' pension rights and benefits. One can only speculate what might have been if Dale Eisentraut had not contacted PLEA for assistance and he not had the expert legal representation afforded him as a benefit of PLEA membership.

On the issue of medical/mental conditions that are attributed to job performance limitations, there are two definitions that come into play. For a line-of-duty injury (Accidental disability) the standard is a condition that totally and permanently prohibits the employee from performing a "reasonable range of duties within the employee's job classification" versus a non-line-of-duty injury (Ordinary disability) that totally and permanently prohibited an employee from performing a "reasonable range of duties within the employee's department" Line-of-duty injuries are pretty straight-forward: if you cannot run, jump, chase bad guys, and all the other physical things cops do, then you should qualify for an accidental disability pension.

The non-line-of-duty injury or "ordinary disability" is a little more difficult to get because it allows for a broader range of duties "within the employee's department." What that appears to mean is that if you can perform at least some meaningful duties within your department (light duty assignments) and those duties were available to you, then you would not likely receive an "ordinary disability" pension. Fortunately, the Phoenix Police Department is large enough that there are numerous light duty assignments that are available to us should we be injured off-duty. Many of these light duty assignments would need to be filed with a full duty officer/detective if not for the light duty personnel. Also, with an "ordinary disability" pension there is a distinction as it relates to a "mental condition." If you are alleging a mental condition as the cause of your disability, the condition must "prevent an employee totally and permanently from engaging in any substantial gainful activity."

If you are considering application for a disability pension, it is important to know the difference between the two types of disabilities (Accidental disability = line-of-duty; Ordinary disability = Non-line-of-duty) as the standards are significantly different.