

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

JOHN MOSELEY,
Petitioner,
v.

Ref. No.: 15-000073-AP-88B
UCN: 522015AP000073XXXXCI

BOARD OF TRUSTEES OF THE
SUPPLEMENTAL POLICE OFFICERS'
RETIREMENT SYSTEM OF THE CITY
OF ST. PETERSBURG,
Respondent.

ORDER AND OPINION

Petitioner challenges a final order of the Board of Trustees of the 1984 Supplemental Police Officers' Retirement System of the City of St. Petersburg ("Board") that denied his application for service-connected disability retirement benefits as untimely, making him ineligible to apply for benefits under Section 22-280(g), City of St. Petersburg Code of Ordinances. Petitioner contends the Board's finding of untimeliness failed to observe the essential requirements of law and deprived him of his procedural due process rights in that the language of Section 22-280(g) was ambiguous, and should have been interpreted in his favor. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

Petitioner was a City of St. Petersburg ("City") police officer from 1992 through 2011. He voluntarily resigned on December 6, 2011, and his resignation became effective December 20, 2011. In March 2012, three months after his resignation, Petitioner initiated the process to apply for service-connected disability retirement benefits. He submitted his benefits application to the Board on October 9, 2012.

The Board, after a non-evidentiary hearing, denied Petitioner's application as untimely under the 1984 Supplemental Police Officers' Retirement System ("Plan"), which requires an officer to submit a written benefits application while he is a "member in service." The Board found that since Petitioner was no longer "in service" after he resigned, his application was untimely. The Board then conducted a full evidentiary hearing in which Petitioner argued that

the Plan's "member in service" language was ambiguous and that his cognitive impairment¹ excused his untimely filing. The Board rejected these arguments and held that he was ineligible to apply for disability benefits. Petitioner then filed the instant Petition for Writ of Certiorari.

Standard of Review

"Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Discussion

Chapter 185, Florida Statutes, provides for a uniform retirement system for police officers and establishes minimum retirement benefits and standards for municipal pension plans. § 185.01, Fla. Stat. Section 185.18 sets forth mandatory minimum eligibility requirements for disability benefits. Specifically, "[n]o police officer shall be permitted to retire . . . until examined by a duly qualified physician. . . selected by the board of trustees for that purpose, and is found to be disabled. . ." § 185.18(4), Fla. Stat. The City incorporated these minimum requirements in Chapter 22, Division 6, City of St. Petersburg Code of Ordinances, as follows: "Upon the written application of a *member in service*, . . . any member who has been totally and permanently incapacitated for duty . . . may be retired by the board on a service-connected disability retirement income" after certification by a board-appointed or designated physician. § 22-280(g), Code of Ordinances (emphasis added).

Petitioner contends that the Board's interpretation of "member in service" to mean a police officer who is currently employed is improper because Section 22-280(g) alternates between the terms "member in service" and "member," rendering the section ambiguous. In support of this contention, Petitioner cites to the proposition that "pension statutes are to be liberally construed in favor of the intended recipients." *Bd. of Trustees of Town of Lake Park Firefighters' Pension Plan v. Town of Lake Park*, 966 So. 2d 448, 451 (Fla. 4th DCA 2007). However, the Court does not need to interpret the language of Section 22-280(g) because we find that it is clear and unambiguous.

As discussed above, the Code allows for a "member in service" to submit a written application for service-connected disability benefits. § 22-280(g), Code of Ordinances. The

¹ Petitioner began experiencing psychological ailments before his resignation from the City and was later diagnosed with post-traumatic stress disorder, which he claims stemmed from his experiences as an officer. However, he does not raise the cognitive impairment issue in the instant Petition, so it is not presented for this Court's consideration.

Code defines a “member” as “any person included in the membership of the retirement system” and “service” as “service as an employee and paid for by the City.” *Id.* at § 22-275. “Statutory interpretation in any case begins with the actual language used in the statute When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *Williams v. State*, 186 So. 3d 989, 991 (Fla. 2016) (internal citations omitted); *see Kephart v. Hadi*, 932 So. 2d 1086, 1091 (Fla. 2006).

Section 22-280(g) clearly contemplates that only a police officer whom the City currently employs and pays may submit a written application for disability benefits. Although the section also uses the term “member” throughout, use of this term does not deprive the narrower term, “member in service,” of its meaning. *See Johnson v. Feder*, 485 So. 2d 409, 411 (Fla. 1986) (noting that “[c]ourts are not to presume that a given statute employs ‘useless language’”) (internal citations omitted). Thus, despite the Court’s sympathy for the Petitioner and respect for his years of police service, we agree that under the terms of the Code, an officer must submit his application for service-connected disability retirement benefits during his service as an employee paid by the City.

Conclusion

Because the Board’s order finding Petitioner ineligible for disability benefits based on his untimely application did not depart from the essential requirements of law or deprive Petitioner of procedural due process rights, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this
5 day of June, 2016.

Original Order entered on June 5, 2016, by Circuit Judges Jack Day,
Amy Williams, and Thomas Ramsberger.

COPIES FURNISHED TO:

MARCUS A. CASTILLO, ESQ.
19321-C US 19 N, SUITE 401
CLEARWATER, FL 33764

MICHAEL A. GILLMAN, ESQ.
100 MIRACLE MILE, SUITE 300
CORAL GABLES, FL 33134