

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2020-CA-011822-O

RUSSELL EMERSON,
Petitioner,

v.

CITY OF ORLANDO
POLICE PENSION BOARD,
Respondent.

_____ /

Petition for Writ of Certiorari
from a Decision Rendered by
the City of Orlando Police Pension Board.

Erin J. O’Leary, Esquire, for Petitioner.

Robrt D. Klausner, Esq.,
Stuart A. Kaufman, Esq., &
Blanca T. Greenwood, Esq.,
for Respondent.

Before BLECHMAN, RODRIGUEZ, and CRANER, J.J.

Petitioner, Russell Emerson (“Petitioner”), seeks review of the “Final Order Denying Service-Connected Disability Retirement and Granting Nonservice-Connected Disability Retirement” issued by the Board of Trustees of the City of Orlando Police Pension Board (“Respondent”) pursuant to FLORIDA RULES OF APPELLATE PROCEDURE 9.100(f)(2) and 9.190(b)(3).

Factual Summary

Petitioner was employed as an officer with the Orlando Police Department beginning on September 25, 2000. On or about February 26, 2019, Petitioner was involved in a head-on motor vehicle accident while on duty in his patrol vehicle. Petitioner received medical care after the

accident for lower back pain, leg numbness, and other symptoms which ultimately impacted his ability to perform his duties.

On or about December 30, 2019, Petitioner filed an application for disability pension for line-of-duty benefits listing the February accident as the cause for his disability. A hearing was held before Respondent on July 29, 2020. At the hearing, Respondent reviewed numerous medical reports, Petitioner's disability application and other records, as well as deposition transcripts from two doctors who had treated Petitioner. At the conclusion of the hearing, Respondent determined that Petitioner's disability is total and permanent but that it was not the result of a service-connected injury, instead granting nonservice-connected disability effective September 1, 2020.

Standard of Review

The duty of the circuit court on certiorari review of an administrative agency is limited to three components: whether procedural due process was followed; whether there was a departure from the essential requirements of the law; and whether the administrative findings and judgment were supported by competent substantial evidence. *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994); *see also Education Development Center, Inc. v. City of West Palm Beach Zoning Bd. of Appeals*, 541 So. 2d 106, 108 (Fla. 1989); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Analysis

In the instant case, Petitioner makes no claim that he was deprived procedural due process or that Respondent departed from the essential requirements of the law. Instead, Petitioner solely claims that the Board's determination that Petitioner's disability was not service-connected was not supported by competent, substantial evidence.

The term "competent substantial evidence" was explained by the Florida Supreme Court in *DeGroot v. Sheffield*, 95 So. 2d 912 (Fla. 1957) as follows:

Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective “competent” to modify the work “substantial,” we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are aware of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the “substantial” evidence should also be “competent.”

Id. at 916 (internal citations omitted). Further, it is not the place of the circuit court sitting in its appellate capacity to reweigh the evidence or substitute its judgment for that of the factfinder. *Dep’t. of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989).

Petitioner calls attention to an apparent inconsistency between the doctors’ written reports and their deposition testimony. Respondent’s order itself refers to the fact that Dr. Stewart “opined that Officer Emerson is permanently and totally disabled in relation to being able to perform the required duties of a police officer. He also opined that the disability was directly caused by and attributable to the motor vehicle accidents suffered during the performance of his duties as a police officer.” However, this conclusion was contradicted by Dr. Stewart’s later deposition testimony in which he stated that “the studies would not indicate one way or the other that Emerson’s injury was caused by the 2019 accident” and that “he could not determine whether the pressure on the nerves in Emerson’s back was caused by the motor vehicle accident.” Further, Respondent relied upon the deposition testimony of Dr. Broom that “he did not believe that the mild degenerate changes and disc bulging were the result of the 2019 accident.” The deposition evidence provides a clear legal basis for Respondent’s conclusion.

The deposition testimony of Drs. Broom and Stewart amounts to competent, substantial evidence in support of Respondent’s determination. The fact that Respondent’s final order recognizes a level of conflict between the evidence and ultimately decides to rule based on the

deposition testimony illustrates the extent to which this decision was within the factfinding purview of Respondent. This Court cannot reweigh the evidence. *Allen*, 539 So. 2d at 21. Accordingly, Petitioner's Petition for Writ of Certiorari is DENIED.

DONE and ORDERED in Orange County, Florida on the date shown on the electronic signature.



eSigned by Mark Blechman 01/25/2024 13:39:48 j36br3FI

MARK BLECHMAN
Presiding Circuit Judge

RODRIGUEZ and CRANER, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: Erin J. O'Leary, Esq., Garganese, Weiss, D'Agresta, & Salzman, P.A., 111 N. Orange Avenue, Suite 2000, Orlando, FL 32801 at eoyleary@orlandolaw.net, nham@orlandolaw.net; and Robert D. Klausner, Esq., Stuart A. Kaufman, Esq., & Blanca T. Greenwood, Esq., Klausner, Kaufman, Jensen & Levinson, P.A., 7080 N.W. 4th Street, Plantation, FL 33317, or via the e-service portal on this 25th day of January, 2024.

T. Marino
Judicial Assistant