

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

CASE NO.: 2021-CA-005804-O

JONATHAN MILLS,
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 LEACH, WHITEHEAD, and CRANER, J.J.

Petitioner, Jonathan Mills (“Petitioner”), seeks review of the “Final Order Denying Service-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 January 9, 2012. On or about February 3, 2018, Petitioner experienced symptoms consistent with a possible heart attack. Over the course of several days and at multiple area hospitals, Petitioner was treated by Dr. Laddu who ordered an array of tests and ultimately concluded that Petitioner

had suffered a heart attack, possibly caused by a congenital heart condition. Petitioner returned to full duty after two weeks of rest.¹

On or about May 16, 2019, Petitioner was involved in an on-duty incident in which he suffered a broken hand and other injuries while attempting to arrest an individual. Around this time Petitioner also began to experience heart palpitations and irregular heartbeats. At a follow-up appointment with Dr. Laddu on August 7, 2019, Petitioner described his cardiac symptoms to Dr. Laddu. Dr. Laddu performed an ECG which revealed cardiac abnormalities and prescribed a cardiac monitor for five days. The monitor revealed that Petitioner was experiencing cardiac abnormalities such as atrial fibrillation or supraventricular tachycardia and non-sustained ventricular tachycardia. Dr. Laddu referred Petitioner to see Dr. Speziani, a specialized electrocardiologist.

On or about November 14, 2019, Petitioner saw Dr. Speziani who reviewed Petitioner's records, conducted an examination, and conducted an EKG. Dr. Speziani believed that Petitioner was suffering from non-sustained ventricular tachycardia and ultimately implanted a loop recorder to continually monitor Petitioner's heart function. The recorder revealed the presence of tachycardia events over several follow-up appointments in early 2020.

On April 14, 2020, Dr. Speziani advised Petitioner of his opinion that he should no longer work as a police officer and on April 23, 2020, Dr. Speziani placed Officer Mills on a no work status. Dr. Speziani continued to monitor the data from Petitioner's loop recorder which reported several additional tachycardia events, including one which caused Dr. Speziani to order Petitioner to go to the hospital.

¹ Petitioner also attended follow-up appointments with Dr. Laddu in which he described incidents of sharp chest pain which seemed to worsen with stress.

On April 15, 2020, Petitioner filed an Application for Line-of-Duty Disability Pension (“Application”) based upon the following medical conditions: “Myocardial infarction, thinning of heart walls, coronary artery disease, high blood pressure, hypertension, ventricular tachycardia.”

Petitioner was then referred for an Independent Medical Evaluation (IME) with Dr. Michael A. Nocero, M.D. Dr. Nocero performed his own review of Petitioner’s records, as well as a physical examination, and an EKG. Dr. Nocero doubted the initial diagnosis of a heart attack at the time of Petitioner’s hospital admission in February of 2018. However, Dr. Nocero found that “all of the tests that were conducted on the applicant’s heart did show that he was permanently and totally disabled due to cardiac pathology, namely, cardiomyopathy (a congenital defect) as exemplified by an apical diverticulum as well as ventricular tachycardia.” Dr. Nocero further opined that “since the apical diverticulum is congenital, it may have been present at the time of applicant’s employment.” At his deposition, Dr. Nocero confirmed his opinion that Petitioner is permanently and totally disabled due to the condition of his heart. Dr. Nocero further deferred to the diagnosis made by Dr. Speziani regarding the existence of tachycardia.

On February 11 and March 1, 2021, Respondent conducted a virtual hearing on Petitioner’s Application during which “all medical reports, the application, deposition transcripts, functional capacity evaluation, independent medical evaluations . . . were accepted into evidence.” During their deliberations Respondent discussed whether Petitioner was “totally and permanent disabled due to his cardiac conditions.” Further, Respondent expressed frustration “with the lack of clarity of the cause of the Applicant’s initial cardiac event in February 2018 and subsequent hospitalization.” Ultimately, Respondent concluded by a 3-2 vote that “although Mills may have suffered a cardiac event that caused a temporary disability, the condition did not give rise to a permanent disability.”

In its final order denying the Application, Respondent referred to the medical reports and deposition testimony of both Dr. Nocero and Dr. Speziani. The order notes that both doctors were of the opinion that Petitioner was permanently and totally disabled at the time in 2020 based on either on “cardiomyopathy exemplified by apical diverticulum” or based upon “ventricular tachycardia.” Nonetheless, Respondent concluded that Petitioner’s condition was not total and permanent based primarily upon Dr. Nocero’s conclusion that the initial cardiac event of 2018 was not “an acute myocardial infarction.”

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 claims that Respondent’s determination that Petitioner’s disability was not total and permanent is 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:

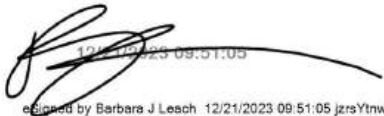
Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective “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).

In support of its conclusion, Respondent cites to the medical reports and testimony of both Dr. Speziani, to whom Petitioner was referred as an electrophysiologist specialist after his initial cardiac event, as well as Dr. Nocero, who conducted an independent medical evaluation following Petitioner’s application for benefits. Although Respondent suggests that its decision was based on a weighing of the credibility of doctors with differing opinions, as described in Respondent’s final written opinion, both of these doctors rendered an opinion that Petitioner was permanently and totally disabled. According to its order, Respondent instead focused on the fact that Dr. Nocero was of the opinion that the original cardiac event in 2018 was not a heart attack. However, this disputed fact alone is not competent, substantial evidence that supports a conclusion that Petitioner was not suffering from a heart condition in 2020 which rendered him totally and permanently disabled. Instead, there is not any competent, substantial medical evidence to support the Board’s conclusion that Petitioner was not totally and permanently disabled due to his heart condition in 2020. Accordingly, Petitioner’s Petition for Writ of Certiorari is GRANTED. Respondent’s Final Order Denying Service-Connected Disability Retirement is QUASHED.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 21st day of December, 2023.



12/21/2023 09:51:05
eSigned by Barbara J Leach 12/21/2023 09:51:05 jzrsYtnw

BARBARA J. LEACH
Presiding Circuit Judge

WHITEHEAD 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 oleary@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 21st day of December, 2023.

W. Wrolson

Judicial Assistant