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Before an Administrative Law Judge in Administrative Hearing for the Board of the
Public Employees' Retirement Fund and 1977 Police Officers' and Firefighters' Pension
and Disability Fund

IN THE MATTER OF:)
 Muncie Police Pension Board,)
 vs.)
 Public Employees' Retirement Fund and 1977)
 Police Officers' and Firefighters' Pension and)
 Disability Fund.)

ADMINISTRATIVE LAW JUDGE'S FINDING OF FACT, CONCLUSION OF LAW,
AND ORDER

COMES now T. A. Shula, the Administrative Law Judge designated by the Board
of Trustee of the Public Employees' Retirement Fund and 1977 Police Officers' and
Firefighters' Pension and Disability Fund in this proceeding, and hearing having been
held at approximately 2:10 PM on December 4, 2000, in the boardroom of the Public
Employees' Retirement Fund, Indianapolis, Indiana, now issues and files this Order.

Finding of Fact

1. Brian A. Fox filed his application for disability benefits with the Muncie
Police Pension Board on June 22, 1999. (See Muncie Police Pension Board, Exhibit "B".)
2. Brian A. Fox was an employee of the Muncie Police Department on June
22, 1999, in that his employment with the Muncie Police Department did not end until
November 4, 1999. (See testimony of Sgt. Roc Barrett, page 28 and 29 of the transcript
of the Administrative Hearing held on December 4, 2000. See also Muncie Police
Pension Board, Exhibit "J" and "K".)

3. Brian A. Fox requested a hearing on his disability on July 7, 1999. (See Muncie Police Pension Board, Exhibit "C".)

4. Brian A. Fox had been charge with Theft, Resisting Law Enforcement, False Informing, Obstruction of Justice, Conspiracy to Commit Obstruction of Justice, and Conspiring to Commit Perjury. In addition, two (2) disciplinary charges were filed against Mr. Fox. (See testimony of Sgt. Roc Barrett, pages 10 and 11 of the transcript of the Administrative Hearing held on December 4, 2000.) (The Post Hearing Brief of the Muncie Police Pension Board alleges that convictions resulted from some of these charges, but no documentary evidence is offered in support. Also the Reply Brief of the Fund offers no contradicting evidence of the convictions.)

5. Informal discovery procedures by the Muncie Police Pension Board began on June 23, 1999. (See Muncie Police Pension Board, Exhibit "B".)

6. Brian A. Fox informed the Muncie Police Pension Board that he had provided all requested documentation prior to July 7, 1999. (See Muncie Police Pension Board, Exhibit "C".) That in addition he executed a release of medical information on August 17, 1999. (See also medical reports provided in the 1977 Police Officers' and Firefighters' Pension and Disability Fund's file.)

7. A more formal discovery procedure began sixty-five (65) days later by the Muncie Police Pension Board through its attorney. (See Muncie Police Pension Board, Exhibit "G".)

8. Through the normal operation of discovery, documents would not have been produced for another thirty (30) to forty-five (45) days. (See Muncie Police Pension Board, Exhibit "G".)

Conclusion of Law

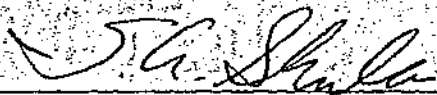
1. Brian A. Fox was an active fund member within the meaning proscribed by the 1977 Police Officers' and Firefighters' Pension and Disability Fund on June 22, 1999.
2. I.C. 36-8-8-12.7 was amended to require local boards to hold disability hearings not more than ninety (90) days after the fund member requests a hearing.
3. Said amendment was effective on July 1, 1999.
4. The Muncie Board was required to hold a hearing on Brian A. Fox's request within ninety (90) days.
5. There was substantial compliance with the informal discovery requests made by the Muncie Police Pension Board, and that this compliance made a hearing possible within the ninety (90) day requirement.
6. The more formal discovery procedure was began too late to allow for timely response within the ninety (90) day hearing requirement. (By normal deadlines the discovery would not have been completed until 95 to 110 days after the hearing had been requested.)
7. The charges pending on the convictions, that may have resulted, do not serve as a bar to Brian A. Fox's receiving disability benefits.

Order

It is hereby Ordered that the decision of the 1977 Police Officers' and Firefighters' Pension and Disability Fund be upheld and that Brian A. Fox shall be granted disability benefits and that said benefits shall have begun on November 6, 1999.

ALL OF WHICH IS ORDERED AND ISSUED THIS 2nd DAY OF

October 2001.



T. A. Shula, Administrative Law Judge

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Brian A. Fox
