

STATE OF INDIANA) SS:

BEFORE THE STATE BOARD OF THE
PUBLIC EMPLOYEES' RETIREMENT
FUND FOR THE 1977 POLICE AND
FIREFIGHTERS' PENSION AND
DISABILITY FUND

IN THE MATTER OF KENNETH R. JACKSON, CAUSE NO. [REDACTED]

ADMINISTRATIVE ADJUDICATION

The above referenced matter came on to be heard in accordance with I.C. 4-22-1-1 by the substitute hearing officer, William Goodwin, on the 24th day of August 1982 in the offices of the Public Employees' Retirement Fund, Room 110, Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204. Respondent, the Public Employees' Retirement Fund, was represented by Frank Baldwin and the petitioner, Kenneth R. Jackson, was represented by Steven P. Kennedy.

Witnesses were sworn and testimony and exhibits were heard and received into evidence.

William Goodwin now recommends transfer of the hearing findings of fact and decision to the State Board for its final decision and disposition of said matter.


FINDINGS OF FACT AND DECISION AND CONCLUSIONS
OF LAW ARE FOUND IN THE ATTACHED REPORT
OF THE HEARING DATED AUGUST 24, 1982

ADMINISTRATIVE ORDER

Based on the foregoing, the State Board of the Public Employees' Retirement Fund does hereby deny disability benefits to Kenneth R. Jackson under I.C. 36-8-8-12 and I.C. 36-8-8-13, and does hereby uphold the decision of the local board (Gary Police Pension Fund).

All of which is ordered this 27th day of October 1982.

Myrl W. Deitch, Jr., Chairman
J. Dwight Peterson, Vice Chairman
Herschell J. Umbaugh, Trustee
Richard T. Doermer, Trustee
Marie T. Lauck, Trustee


Board of Trustees
Public Employees' Retirement Fund

STATE OF INDIANA

PUBLIC EMPLOYEES' RETIREMENT FUND
143 West Market Street, Suite 800
Indianapolis, Indiana 46204

In the matter of receiving additional evidence for the review of the findings of fact and the initial determination of the Public Employees' Retirement Fund on the application for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund under I.C. 36-8-8-12 and I.C. 36-8-8-13 by Kenneth R. Jackson.

Reason for Action: PERF initial determination denying the application for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund.

Hearing Date: August 24, 1982

Place: Public Employees' Retirement Fund
Suite 110, Harrison Building
143 West Market Street
Indianapolis, Indiana 46204

FINDING OF FACT AND DETERMINATION

The above matter coming to be heard before William Goodwin, substitute hearing officer, appointed to conduct administrative hearings as provided by the Administrative Adjudication Act, Indiana Code 4-22-1.

The Public Employees' Retirement Fund (respondent) was represented by Frank Baldwin. Kenneth R. Jackson (petitioner) was represented by Steven P. Kennedy.

The evidence submitted consisted of:

Petitioner's Exhibits

Copy of:

1. March 24, 1982 minutes of the meeting of the Board of Trustees Police Pension Fund, City of Gary (11 parts).
2. State Form 23558R, Accident Report to Indiana State Police, dated November 20, 1981 (2 pages).
3. Gary Police Department Semi-Annual Performance Evaluation: Period evaluated February 1, 1981 to July 31, 1981.
4. Gary Police Department Semi-Annual Performance Evaluation: Period evaluated August 1, 1981 to January 31, 1982.

Respondent's Exhibits

1. Letter dated April 26, 1982 to James J. Chen, M.D., from Thomas P. Derloshon, Jr.
2. Letter dated May 3, 1982 to Mr. Derloshon, Jr. from James J. Chen, M.D.
3. Statement from Chen Medical Corporation for professional services (RE: Kenneth Jackson) dated May 3, 1982.

Evidence also included oral testimony of Kenneth R. Jackson and Thomas P. Derloshon, Jr.


FACTS:

In 1975, while in the employ of Inland Steel Company and on sick leave, Mr. Kenneth R. Jackson was injured [REDACTED]



[REDACTED]

Some time after his examination he was called to the police department by the Internal Affairs Department and told he needed to sign a form. The form was part of his City of Gary Police Pension Fund Application and Pension Fund Record. The form was entitled "Medical History." He signed it as instructed. None of the questions were answered on the form. Mr. Jackson said he was not asked the questions, but that he was just told to sign the form. It was not dated or signed by the Secretary of the Gary Police Pension Fund. Among the questions on this form were those asking whether the individual had or had ever had certain diseases or conditions. These were all unanswered, [REDACTED]

Mr. Jackson was sworn in as a Gary Police Officer on October 30, 1980. He was then instructed to attend a police training academy in Plainfield, Indiana. There he was engaged in running, calisthenics, physical games like dodge-ball and swimming. The activities were strenuous according to Mr. Jackson but his back did not give him any problems. Other training gave



Mr. Jackson worked as a police officer until November 20, 1981 when, while on duty, he was involved in an automobile accident. His patrol car was stopped on a bridge on Interstate 65 near 15th Avenue in Gary when it was struck from behind by a car. Mr. Jackson, standing with one foot on the pavement and one foot in the car talking on the police radio, was injured.



When Mr. Jackson returned to work with the Gary Police Department he was told that there was a procedure for injured officers returning to work. They had

to work on the "inside," or in other words work in the office, for thirty days before getting back out on the street. He asked to do office work, but on several occasions was told that there was no office work available at the time. He offered to answer phones for thirty days but the department told him they had no work available in the office. Mr. Jackson applied for disability benefits on March 22, 1982. The Gary Police Pension Fund doctor examined him, but only asked questions according to Mr. Jackson. He said he got no physical examination. The Gary Police Pension Fund also reviewed Mr. Jackson's doctors' records. On March 24, 1982 the Board of Trustees of the Police Pension Fund of the City of Gary, Indiana adopted a resolution denying disability benefits to Mr. Jackson because he had failed to disclose [REDACTED] and had claimed disability began within two years after his entry into active service on the Gary Police Department.

Application for disability benefits to the State Board of the Public Employees' Retirement Fund, Police and Firefighters' Pension Fund was submitted along with evidence by Mr. Thomas P. Derloshon, Jr., Administrator of the Fund to Dr. Arthur P. Kebel, who reviews disability applications for the State Board. Dr. Kebel found it lacking in relevant information and directed Mr. Derloshon to request information from Dr. Chen. Dr. Chen sent

[REDACTED]

FINDINGS:

Indiana Code 36-8-8-12(a) reads in part:

Disability Benefits: If an active fund member is permanently or temporarily unable to perform all suitable and available work with the police or fire department for which he is or may be capable of becoming qualified as determined under Section 13 (36-8-8-13) of this chapter, he is entitled to receive during the disability a benefit equal to the benefit he would have received if he had retired. . . . Benefits may not be provided under this section for a disability: . . .

- (3) that begins within two (2) years after a fund member's entry or reentry into active service with the department and that was caused or contributed to by a mental or physical condition that manifested itself before the fund member entered or reentered active service.

Indiana Code 36-8-8-13 reads in part:

Determination of Disability-Review-Termination of Benefits-Appeals:

- (a) The local board shall determine, using the procedures prescribed for the 1925, 1937, or 1953 fund, whether a fund member is disabled as defined in Section 12 (36-8-8-12) of this chapter.
- (b) The local board shall submit its findings of fact and its determination to the PERF board. The PERF board or its hearing officer shall review the findings of fact and the local board's determination. If the PERF board approves the local board's determination, then the PERF board shall comply with the determination. If the PERF board does not approve the local board's determination, the PERF board or its hearing officer may receive additional evidence on the matter before making its determination. The PERF board or its hearing officer may request that the fund member be examined by a doctor selected by the PERF board. The results of the examination shall be submitted to the PERF board or its hearing officer. If a fund member refuses to submit to an examination, the PERF board shall find that a disability does not exist.

It has been established, pursuant to I.C. 36-8-8-12 that:

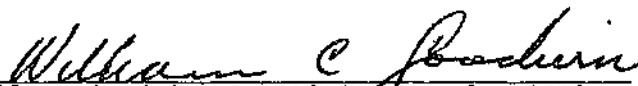
1. Mr. Kenneth R. Jackson has a disc herniation and nerve root compression of L5-S1 on the left side.
2. Mr. Jackson did not bring his prior back injury to the attention of the Gary Police Pension Fund on the application filed with that Fund.
3. Mr. Jackson has a pre-existing condition of the back that caused him problems within two (2) years after his entry into active service with the Gary Police Department and that was contributed to by a physical condition that manifested itself before he entered active service.
4. Mr. Jackson's condition persisted and he has refused surgery for it.

It has further been established, pursuant to I.C. 36-8-8-13 that:

1. The local board (Gary Police Pension Board) submitted its findings of fact and determination to the PERF Board on Mr. Kenneth R. Jackson's disability application.
2. The PERF Board gathered additional evidence from Mr. Jackson's doctor, Dr. Chen.
3. The PERF Board agreed with the local board's determination.

DECISION AND CONCLUSIONS OF LAW:

Based on the testimony of Kenneth R. Jackson and the evidence from Dr. James Chen, and in view of the above facts and findings, I, William Goodwin, substitute hearing officer for the State Board of the Public Employees' Retirement Fund, would recommend denial of disability benefits to Kenneth R. Jackson, pursuant to I.C. 36-8-8-12 and I.C. 36-8-8-13. I would recommend that the decision of the local board be upheld.


William Goodwin, Substitute Hearing Officer
Public Employees' Retirement Fund

September 24, 1982