

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 EMILIO MARTINO, CAUSE NO. [REDACTED]

ADMINISTRATIVE ADJUDICATION

The above referenced matter came on to be heard in accordance with IC 4-22-1-1 by the duly appointed hearing officer, Burton L. Garten, on the 14th day of November, 1984 in the offices of the Public Employees' Retirement Fund, Room 504 Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204. Respondent, the Public Employees' Retirement Fund, was represented by Richard E. Hendrickson and the petitioner, Emilio Martino, was represented by W. Russell Sanford.

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

Burton L. Garten 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 NOVEMBER 14, 1984

ADMINISTRATIVE ORDER

Based on the foregoing, the State Board of the Public Employees' Retirement Fund does hereby grant disability benefits to Emilio Martino under IC 36-8-8-12 and IC 36-8-8-13, and does hereby uphold the decision of the local board (South Bend Police Pension Fund).

All of which is ordered this 22nd day of March, 1985.

Richard T. Doermer, Chairman
J. Dwight Peterson, Vice Chairman
Myrl W. Deitch, Jr., Trustee
Al H. Harding, Jr., Trustee
Marie T. Lauck, Trustee

Richard T. Doermer, Chairman
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 IC 36-8-8-12, IC 36-8-8-13 by Emilio Martino.

Reason for Action: PERF initial determination letters of February 6, 1984 and August 13, 1984 denying the application for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund.

Hearing Date: November 14, 1984 Place: Public Employees' Retirement Fund
Suite 504 Harrison Building
143 West Market Street
Indianapolis, Indiana 46204

FINDING OF FACT AND DETERMINATION

The above matter coming to be heard before Burton L. Garten, duly 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 Richard E. Hendrickson. Emilio Martino (petitioner) was represented by W. Russell Sanford.

Plaintiff's Exhibits

Copy of:

1. Letter dated October 26, 1983 from Thomas J. Deka, Secretary of South Bend Police Pension Fund, to Thomas P. Derloshon, Jr.
2. Letter dated October 26, 1983 from Dan D. Thompson, Chief of Police, to the State Pension Board.
3. Letter dated October 20, 1983 from Harvey J. Brechtel, M.D., to the South Bend Police Pension Board.
4. Report dated August 25, 1983 from David L. Bankoff, M.D., to the South Bend Police Pension Board.
5. Letter dated October 6, 1983 from Charles J. Arens, Ph. D., to the South Bend Police Pension Board.

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6. ~~Letter dated August 18, 1983 from Michael N. Kennedy, M.D.,~~
to the South Bend Police Pension Board.
 7. Report dated August 22, 1983 from Robert L. Parsons, M.D.,
to the South Bend Police Pension Board.
 8. Report dated December 13, 1983 from Frank W. Countryman, M.D.,
to the Police and Firefighters' Pension Fund.
 9. Disability application of Emilio Martino, dated
October 24, 1983, and State Form 10564, dated August 8, 1983.
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10. Affidavit of Dan D. Thompson, Chief of Police, dated February 22, 1984.
11. Letter dated November 21, 1983 from T. P. Derloshon, Jr. to Emilio Martino.
12. Letter dated December 2, 1983 from T. P. Derloshon, Jr. to Emilio Martino.
13. Initial Determination Letter dated February 6, 1984 from T. P. Derloshon, Jr. to Thomas J. Deka.
14. Duplicate of 13.
15. Letter dated February 13, 1984 from W. Russell Sanford to L. H. Earle II.
16. Letter dated February 17, 1984 from Thomas J. Deka to L. H. Earle II.
17. Letter dated February 20, 1984 from L. H. Earle II to Emilio Martino.
18. Letter dated February 21, 1984 from L. H. Earle II to the South Bend Police Pension Fund.
19. Letter dated February 29, 1984 from Burton L. Garten to W. Russell Sanford.
20. Letter dated March 8, 1984 from Burton L. Garten to W. Russell Sanford.
21. Letter dated March 23, 1984 from Richard E. Hendrickson to Burton L. Garten.
22. Letter dated April 5, 1984 from Burton L. Garten to W. Russell Sanford.
23. Letter dated April 9, 1984 from W. Russell Sanford to Burton L. Garten.
24. Letter dated April 19, 1984 from Richard E. Hendrickson to Burton L. Garten.
25. Letter dated April 19, 1984 from Burton L. Garten to W. Russell Sanford.
26. Letter dated April 23, 1984 from T. P. Derloshon, Jr. to Emilio Martino.
27. Letter dated May 3, 1984 from Burton L. Garten to W. Russell Sanford.
28. Letter dated May 8, 1984 from W. Russell Sanford to Burton L. Garten.
29. Letter dated May 21, 1984 from Richard E. Hendrickson to Burton L. Garten.

30. Letter dated May 31, 1984 from Burton L. Garten to W.
~~Russell Sanford~~

31. Letter dated June 6, 1984 from W. Russell Sanford to Burton
L. Garten.

32. Initial Determination Letter dated August 13, 1984 from
L. H. Earle II to the South Bend Police Pension Fund.

33. Letter dated August 17, 1984 from Edward A. Zych to L. H. Earle II.
34. Letter dated October 16, 1984 from L. H. Earle II to Edward A. Zych.
35. Letter dated October 22, 1984 from Burton L. Garten to W. Russell Sanford.
36. Letter dated October 26, 1984 from W. Russell Sanford to Burton L. Garten.
37. Letter dated November 2, 1984 from Burton L. Garten to W. Russell Sanford.
38. Letter dated November 7, 1984 from W. Russell Sanford to Burton L. Garten.

FACTS

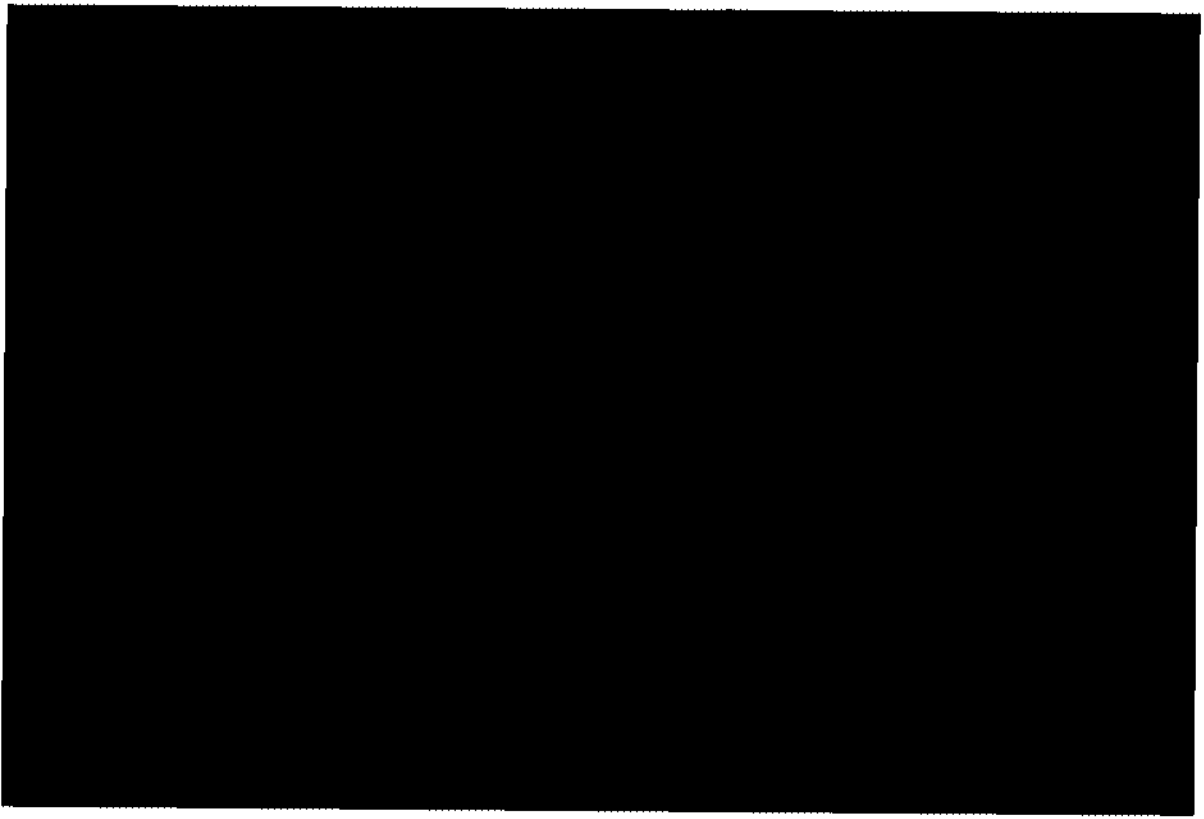
On August 4, 1979, while on duty, Officer Emilio Martino was involved in a traffic accident with a semi-trailer truck. The truck ran a red traffic light and the patrol car in which Officer Martino was riding went under the semi-trailer. Officer Martino

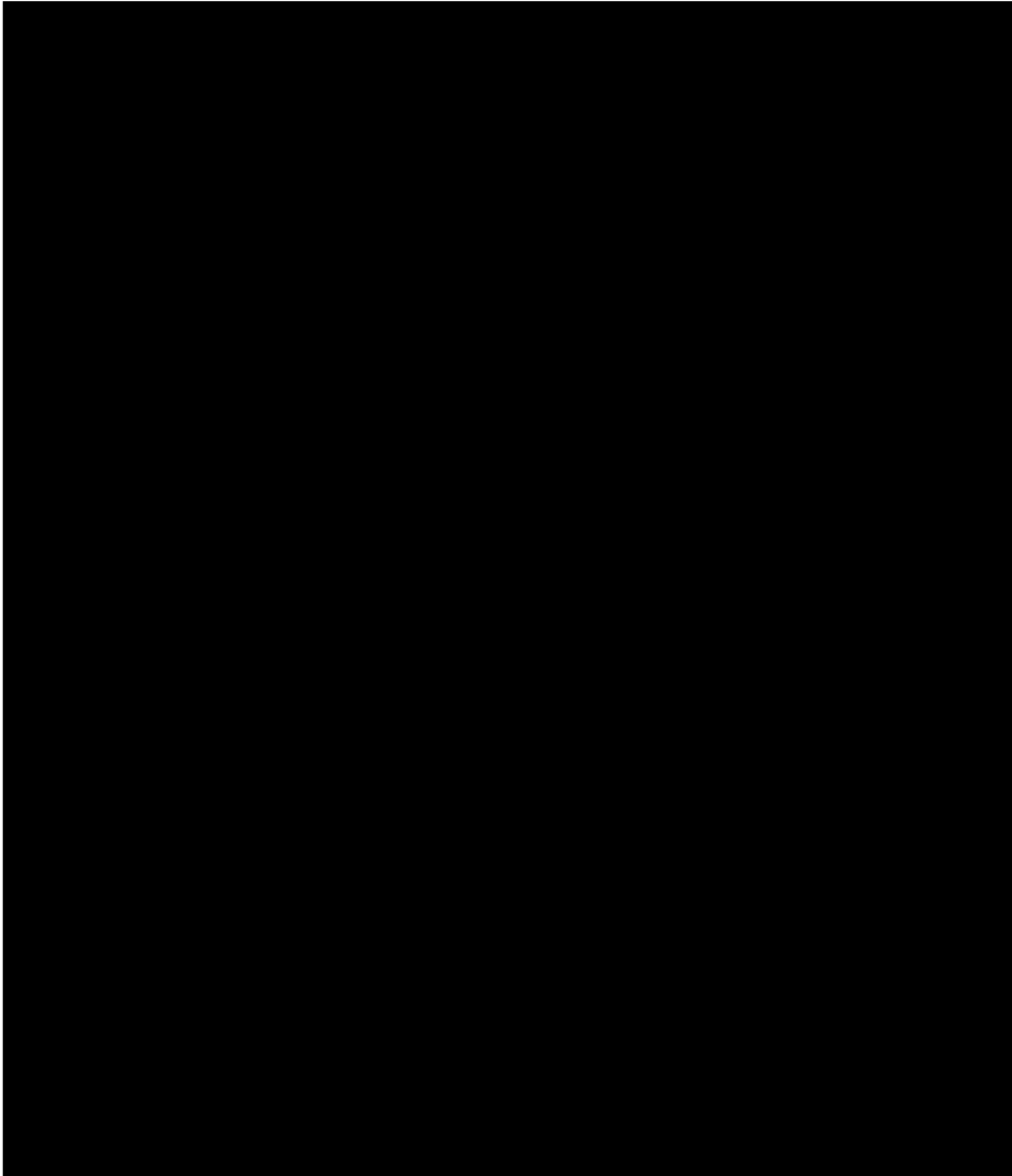
[REDACTED] at a desk job for about four hours per day with his doctor's permission. In May, 1981 he was permitted to work for six hours per day. He worked six hours per day until November, 1981 when his doctor advised that he should be off work until January 20, 1982. On January 21, 1982 he once again was permitted to work four hours per day by his doctor. He began working a full shift in July, 1982.

Mr. Martino applied for a disability pension on October 24, 1983.

Mr. Martino has been examined by several doctors. Dr. Harvey

[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.

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 IC 36-8-8-12, that:

1. Mr. Emilio Martino was seriously injured in an accident, while on duty, on August 4, 1979.
2. Mr. Emilio Martino is unable to perform his duties as a police officer with the South Bend Police Department.
3. There is no suitable or available work on the South Bend Police Department which Mr. Martino can perform in his condition.

It has further been established, pursuant to Indiana Code 36-8-8-13, that:

1. The local board (South Bend Police Pension Board) submitted its findings of fact and determination to the PERF Board on Mr. Emilio Martino's disability application.
2. The PERF Board did not approve the local board's determination.
3. Mr. Martino was examined by a doctor selected by the PERF Board, Frank W. Countryman, M.D.
4. Mr. Martino's disability claims were set forth in his disability application dated October 24, 1983.
5. No new claim of disability was asserted by Mr. Martino to warrant another medical examination by the PERF Board after a hearing date had been scheduled.

DECISION AND CONCLUSION OF LAW

Based on the testimony of Emilio Martino and Dr. Frank W. Countryman, and in view of the above facts and findings, I, Burton L. Garten, duly appointed hearing officer for the State Board of the Public Employees' Retirement Fund,

would recommend granting of disability benefits to Emilio Martino, pursuant to IC 36-8-8-12 and IC 36-8-8-13. I would recommend that the decision of the local board be affirmed.

Burton L. Garten

Burton L. Garten, Hearing Officer
Public Employees' Retirement Fund

January 3, 1985