

DISTRICT OF COLUMBIA COURT OF APPEALS

Shaw v. District of Columbia Police & Firefighters' Retirement & Relief Board

936 A.2d 800 (D.C. 2007) · No. No. 02-AA-287 · Decided September 13, 2007

SUMMARY

The District of Columbia Court of Appeals reviewed the Retirement Board’s calculation of Kenneth Shaw’s disability retirement annuity. The court held that substantial evidence did not support finding Shaw capable of performing probation clerk and social service representative positions, although the evidence supported several other positions. It reversed and remanded for recalculation of the annuity.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Glickman, Associate Judge; Kramer, Associate Judge; Belson, Senior Judge
JURISDICTION	District of Columbia
DECIDED	September 13, 2007
DOCKET	No. 02-AA-287
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of the Retirement Board's decision calculating Shaw's disability-retirement annuity after a remand for additional findings concerning his earning capacity.
STANDARD OF REVIEW	The court reviews whether the Board made findings on each material contested factual issue, based those findings on substantial evidence, and drew legal conclusions that followed rationally from the findings. A decision unsupported by substantial evidence must be set aside.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Kenneth L. Shaw v. District of Columbia Police and Firefighters' Retirement and Relief Board

TOPICS

judicial review of agency action

administrative law

standard of review

reasonable accommodation

appellate procedure

PRACTICE AREAS

administrative law

disability retirement

judicial review of agency action

appellate procedure

QUESTIONS PRESENTED

1. Whether substantial evidence supported the Board's finding that Shaw had the capacity to occupy the probation clerk and social service representative positions.
2. Whether the Board properly used 1998 Job Bank listings and salaries rather than more current listings from the time of the remand hearing.
3. Whether the Board's evidentiary errors in identifying jobs Shaw could perform were harmless in calculating his annuity.

HOLDINGS

1. The Board did not err by using Job Bank listings and salaries from the time Shaw was initially retired rather than listings current at the remand hearing.
2. The Retirement Board lacked a substantial evidentiary basis to find that Shaw had the capacity to occupy the probation clerk or social service representative positions.
3. Substantial evidence supported the Board's findings that Shaw could perform the claim administrator, receptionist/administrative assistant, and rental sales agent positions.
4. The Board's unsupported findings were not harmless because excluding the two unsupported positions could cause the annuity calculation to exceed the statutory minimum.

KEY QUOTATIONS

"We agree with Shaw that the Retirement Board's calculation rests on a determination of his earning capacity that is not supported by substantial evidence of available jobs that Shaw has the capacity to perform." (801)

"Substantial evidence is more than a mere scintilla. It is relevant evidence such as a reasonable mind might accept as adequate to support a conclusion." (805)

"Accordingly, we hold that the Retirement Board did not have a substantial evidentiary basis on which to find that Shaw could work as a probation clerk or a social service representative." (807)

"These errors were not harmless. If, for example, the Board had relied solely on the other specified positions to determine the average salary of the jobs Shaw was capable of performing, the Board would have calculated his annuity to exceed the statutory minimum." (809)

FACTUAL BACKGROUND

Shaw, an MPD officer, suffered a work-related back injury in 1996 and was medically determined to be permanently disabled with a functional impairment. The Retirement Board found him disabled for useful and

efficient service and calculated his annuity based on the average salaries of jobs it believed he had the capacity to occupy. On remand, the Board relied on positions including probation clerk, social service representative, claim administrator, receptionist/administrative assistant, and rental sales agent, although Shaw lacked training or experience in social-work duties and had only limited report-writing experience.

PROCEDURAL HISTORY

The Retirement Board initially determined that Shaw was disabled for useful and efficient service with the Metropolitan Police Department and awarded him an annuity based on the average salaries of jobs it found he could perform. While Shaw's appeal was pending, the court's decision in *Jewell* led to a remand for additional findings. On remand, the Board reaffirmed its annuity calculation using 1998 Job Bank listings, and Shaw again petitioned for review. The Court of Appeals rejected his challenge to the use of 1998 listings but held that the Board lacked substantial evidence to find that he could perform probation clerk and social service representative positions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Retirement Board must redetermine Shaw's retirement annuity in a manner not inconsistent with the opinion, including without relying on unsupported findings that Shaw could perform the probation clerk and social service representative positions.

CASES CITED

- *Jewell v. District of Columbia Police and Firefighters' Retirement and Relief Board*, 738 A.2d 1228 (D.C. 1999)
- *Bausch v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 926 A.2d 125 (D.C. 2007)
- *Beckman v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 810 A.2d 377, 384 (D.C. 2002)
- *Bausch v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 855 A.2d 1121, 1124 (D.C. 2004)
- *Epstein, Becker & Green v. District of Columbia Department of Employment Services*, 812 A.2d 901, 902-03 (D.C. 2002)
- *Breen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 731 A.2d 843, 845 (D.C. 1999)
- *Pierce v. District of Columbia Police and Firefighters' Retirement and Relief Bd.*, 882 A.2d 199, 210 (D.C. 2005)