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SECOND DIVISION
MARCH 31, 2011

1-09-3373

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JEFFREY E. BOYLE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	No. 09 CH 00461
THE RETIREMENT BOARD OF THE FIREMEN'S)	
ANNUITY AND BENEFIT FUND OF CHICAGO,)	Honorable
)	Leroy K. Martin, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

Held: Firefighter's convictions for arson were connected with and related to his employment as a firefighter with the Chicago Fire Department so as to trigger forfeiture of his pension benefits under section 6-221 of the Illinois Pension Code.

This appeal arises from the circuit court of Cook County's reversal of the denial of an application for pension benefits by the plaintiff-appellee, Jeffrey Boyle (Boyle). The Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago (Board), defendant-appellant, appeals the circuit court's ruling pursuant to section 6-221 of the Illinois Pension Code (Code). 40 ILCS 5/6-

221 (West 2008). The circuit court, on administrative review, reversed the Board's decision. On appeal, the Board argues that it properly denied pension benefits to Boyle, because a nexus was established between the crimes committed by Boyle and his service as a fireman to trigger the pension forfeiture statute under section 6-221 of the Code. For the following reasons, we reverse the judgment of the circuit court of Cook County.

BACKGROUND

From 1980 until his termination in 2005, Boyle served as a fireman with the Chicago Fire Department (CFD). In 1998, 1999, 2000, 2001, and 2005, Boyle committed arson at various locations in Chicago and Park Ridge, Illinois. The acts of arson were committed by Boyle in the following manner: igniting materials inside a garage; lighting garbage cans on fire and placing them next to building structures; lighting garbage cans on fire and placing them next to the grease trap of a restaurant's building exterior; setting fire to materials in street alleys; igniting wood placed against the structure of a building; igniting a curtain inside a commercial property; and igniting materials found on construction sites. None of the incidents of arson resulted in bodily injury, but involved only property damage. On February 9, 2005, Boyle was arrested and he confessed to committing the acts of arson. Subsequently, Boyle was charged in eight felony cases of arson—a total of four arson incidents in the city of Park Ridge and four arson incidents in the city of Chicago.

On April 22, 2005, Boyle was terminated from his employment with the CFD. In March 2006, Boyle pled guilty to the eight arson cases against him and was sentenced to six years of imprisonment. On December 11, 2007, Boyle was released from prison.

On May 10, 2008, Boyle filed an application for pension benefits before the Board. On

October 15, 2008, a hearing was held before the Board to determine Boyle's eligibility for pension benefits. At the hearing, Boyle testified that none of the acts of arson, to which he had pled guilty, occurred while he was on duty with the CFD nor involved the use of any type of CFD equipment or property. Boyle stated that at the time of his termination, he had achieved the rank of "lieutenant" for approximately three years. Boyle admitted to the Board that he had pled guilty to each of the eight felony arson cases because he had in fact "committed arson under the facts and circumstances of those cases." Boyle then testified that when he first joined the CFD in 1980, he underwent basic training. However, he could not recall whether the basic training included classes on fire science, or whether he learned about "the investigation or the source *** of the cause and origin of fires." Boyle gave the following testimony:

“Q. Did you learn anything at all about ignition temperatures for different materials through your employment with the [CFD]?”

A. Yes.

Q. When did you learn that?

A. Over the years.

Q. What did you understand ignition temperatures to mean in relation to different materials?

A. The hotter it got the more it would burn.

Q. Sorry?

A. The hotter it got the more it would burn.

Q. Did you learn what certain materials are susceptible to

burning at lower temperatures [than] other materials?

A. Yes.

Q. Did you learn anything at all during your employment with the [CFD] about how fires communicate from an ignition source to other materials?

A. Yes.

Q. What did you learn in that regard?

A. Once you start one thing, it goes onto another. It may communicate [with or to] the buildings or just communicate.

Q. By communicate, what did you understand that to mean?

A. To burn other things [than] just what was burning.

Q. Did you take any classes at all while you were in the [CFD] about the ignition of fires by humans?

A. Any classes? No.

Q. Did you learn anything through your experience working for the [CFD] about how fires are started by arsonists?

A. Yes.

Q. What did you learn in that regard?

A. That there are arsonists out there and they do start fires.

Q. Did you learn anything about the methods and the ways that arsonists start fires?

A. Just different ways, you know, it can start any way.

Q. In particular, do you recall any particular methods that are used by arsonists to start fires?

A. No.

Q. Did you take any courses or get any education while you were with the [CFD] about how to investigate or detect whether or not a fire has been started by an arsonist?

A. No.

Q. During your 25 years of duty with the [CFD], did you ever see or learn of a fire scene where a dumpster had been used to set a fire?

A. Yes.

Q. How many times did you see that?

A. Many.

Q. What in particular did you see about the use of a dumpster in starting or igniting a fire?

A. It communicates to other things.

Q. What kind of things would it communicate to, did you see it communicate to?

A. Garages, houses. Depends where it was at.

Q. During your 25 years of experience on the force, while you

were on duty, did you ever see or learn of a fire scene where a garbage dumpster had been set on fire and then pushed up against a structure?

A. No.

Q. You have seen fire scenes where the garbage can was next to a building and had been set on fire?

A. Yes.

Q. During your 25 years of experience with the [CFD], while you were on duty, did you ever see or learn of a fire scene where a pile of garbage next to a building had been set on fire and then communicated to the building?

A. Yes.

Q. During your 25 years of experience with the [CFD], while you were on active duty, did you ever see a fire scene where curtains had been set on fire inside of a building that then communicated to the building?

A. No.”

Boyle further testified that although he was off-duty at the time he committed arson, he was subject

to the Code of Professional Conduct of the CFD. At the hearing, police reports from the eight arson cases, which included Boyle's statement to the police that his actions were caused by his alcoholism and anger, were admitted into evidence.

On November 19, 2008, the Board, in a written decision, denied Boyle's application for pension benefits, pursuant to section 6-221 of the Code, and found, *inter alia*, that the evidence in the record established that a "substantial factor in [Boyle]'s ability to commit arson was the training and experience he received as a firefighter with the CFD." The Board further found that Boyle violated duties imposed upon him by the CFD Code of Professional Conduct, and that he "engaged in conduct unbecoming [of] a member of the CFD." The Board then held that the record established a "nexus" between Boyle's felonious acts of arson and the performance of his official duties with the CFD.

On January 6, 2009, Boyle filed a petition for administrative review before the circuit court, requesting that the circuit court reverse the Board's decision. See 735 ILCS 5/3-101 *et seq.* (West 2008). On November 6, 2009, the circuit court issued a written order reversing the Board's November 19, 2008 decision, finding that "the record of the proceedings below is devoid of facts that would establish a 'clear and specific connection' between the felony committed and [Boyle's] employment." The circuit court's order further noted that "the record below fails to establish a connection between Boyle's experience as a firefighter and the crimes he committed." Further, the circuit court's order stated that Boyle's violation of the public trust did not serve as a "sufficient nexus" between the crime and his service as a fireman.

On December 4, 2009, the Board filed a notice of appeal before this court.

ANALYSIS

We determine whether the Board erred in denying Boyle’s application for pension benefits pursuant to section 6-221 of the Code.

As a threshold matter, we note that the parties disagree on the applicable standard of review. The Board argues that this case is a mixed question of law and fact, and thus, this court should employ a clearly erroneous standard of review, which would provide some deference to the Board’s decision to deny Boyle’s application for pension benefits. Specifically, the Board contends that a deferential standard of review is appropriate because this court must determine whether the legal effect of a set of undisputed facts satisfies a statutory standard.

Boyle, on the other hand, argues that this court should apply a *de novo* standard in resolving the issue in this case because the facts are not in dispute and the resolution of the issue only involves a question of law—the interpretation of a statute.

“The applicable standard of review depends upon whether the issue presented is one of fact, one of law, or a mixed question of law and fact.” *Jones v. The Board of Trustees of the Police Pension Fund of the City of Bloomington*, 384 Ill. App. 3d 1064, 1067, 894 N.E.2d 962, 965 (2008). A ruling on a question of fact will only be reversed if it is against the manifest weight of the evidence, while a ruling on questions of law are reviewed *de novo*. *Id.*, 894 N.E.2d at 965. However, mixed questions of law and fact are reviewed under a clearly erroneous standard. *Id.*, 894 N.E.2d at 965.

The facts before this court are undisputed, and the resolution of this case depends on the interpretation of section 6-221 of the Code, which governs the forfeiture of a fireman’s pension

benefits upon his conviction of a felony “relating to or arising out of or in connection with his service as a fireman.” 40 ILCS 5/6-221 (West 2008). However, we find that the case at bar involves an examination of the legal effect of a given set of facts, which is a mixed question of law and fact. Thus, we must employ a clearly erroneous standard of review. See *id.*, 894 N.E.2d at 966, *Rokosik v. The Retirement Board of the Firemen’s Annuity and Benefit Fund of Chicago*, 374 Ill. App. 3d 158, 166, 869 N.E.2d 998, 1004 (2007). A clearly erroneous standard of review “falls between a manifest weight of the evidence standard and *de novo* review, so as to give some deference to the agency’s experience and expertise.” *Swoope v. The Retirement Board of the Policemen’s Annuity and Benefit Fund of the City of Chicago*, 323 Ill. App. 3d 526, 529, 752 N.E.2d 505, 508 (2001). Under the clearly erroneous standard, the reviewing court will reverse the administrative agency only where the court is “ ‘left with the definite and firm conviction that a mistake has been committed.’ ” *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395, 763 N.E.2d 272, 282 (2001), quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542 (1948).

Turning to the merits of the appeal, we determine whether the Board erred in denying Boyle’s application for pension benefits pursuant to section 6-221 of the Code. See 40 ILCS 5/6-221 (West 2008). We note that Illinois courts have previously construed retirement benefit forfeiture statutes that were nearly identical to section 6-221 and that included the phrases “relating to,” “arising out of,” and “in connection with.” See, e.g., *Devoney v. The Retirement Board of the Policemen’s Annuity and Benefit Fund for the City of Chicago*, 199 Ill. 2d 414, 769 N.E.2d 932 (2002) (interpreting section 5-277 of the Code relating to pension forfeiture of policemen); *Taddeo v. The*

Board of Trustees of the Illinois Municipal Retirement Fund, 216 Ill. 2d 590, 837 N.E.2d 876, (2005) (interpreting section 7-219 of the Code relating to pension forfeiture for public employees). However, we note that no reported Illinois decision has yet interpreted section 6-221 in determining whether a fireman's felony conviction warranted forfeiture of his pension benefits; thus, the question of statutory interpretation presented in this appeal is one of first impression.

The Board argues that the undisputed evidence presented before the Board at the October 15, 2008 hearing established a nexus between Boyle's *modus operandi* in committing arson and his employment as a firefighter at CFD. Specifically, the Board contends that the majority of the acts of arson committed by Boyle involved "the use of transference from an ignition source to a building structure," which Boyle had learned through his training and experience as a firefighter at CFD. Moreover, the Board contends that the evidence showed that Boyle's acts of arson had "some connection" to his firefighter experience, that Boyle would not have used the *modus operandi* that he did in committing arson "but for" his employment as a fireman with the CFD, and that Boyle's training and experience as a fireman was a "substantial factor" in bringing about the acts of arson by Boyle.

Boyle counters that the Board erred in denying his application for pension benefits and that the circuit court correctly reversed the Board's decision. He maintains that the facts in the record do not show a "clear and specific connection" between his felony conviction and his employment as a firefighter with CFD, and thus, the pension forfeiture provision under section 6-221 of the Code was not triggered. Boyle specifically argues that the acts of arson for which Boyle was convicted "could have been committed by literally anyone," and thus, it could not be said that these crimes

would not have occurred “but for” Boyle’s tenure as a fireman. Moreover, Boyle argues that had the legislature intended for a felony conviction of a public employee to result, *per se*, in pension forfeiture, such a provision would have been included in the statute.

Under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2008)), we review the decision of the Board rather than the circuit court’s decision. See *Bauer v. The State Employees’ Retirement System of Illinois*, 366 Ill. App. 3d 1007, 1013, 852 N.E.2d 497, 501 (2006) (interpreting section 14-149 of the Code). In construing a statute, courts must “ascertain and give effect to the intent of the legislature.” *Shields v. The Judges’ Retirement System of Illinois*, 204 Ill. 2d 488, 493-94, 791 N.E.2d 516, 519 (2003) (interpreting section 18-163 of the Code relating to pension forfeiture for judges); see also *Bauer* 366 Ill. App. 3d at 1013, 852 N.E.2d at 502. “Where statutory language is clear, it must be applied as written; however, if the language is susceptible [to] more than one interpretation, the court may look beyond the language to consider the legislative purpose.” *Shields*, 204 Ill. 2d at 494, 791 N.E.2d at 519. The legislative intent must be “ascertained from a consideration of the entire act, its nature, its object, and the consequences resulting from different constructions.” *Id.*, 791 N.E.2d at 519. Further, pension statutes must be liberally construed in favor of the pensioner’s rights. *Taddeo*, 216 Ill. 2d at 596, 837 N.E.2d at 879. “As a general rule, courts will afford deference to the interpretation of a statute by the agency charged with its administration. An agency’s interpretation is not binding, however, and will be rejected when it is erroneous.” *Shields*, 204 Ill. 2d at 492, 791 N.E.2d at 518; see also *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 97-98, 606 N.E.2d 1111, 1121 (1992) (an agency’s interpretation of an ambiguous statute “expresses an informed source for ascertaining the legislative

intent”).

Section 6-221 of the Code states in pertinent part the following:

“None of the benefits provided in this Article [Firemen’s Annuity and Benefit Fund] shall be paid to any person who is convicted of any felony *relating to or arising out of or in connection with his service as a fireman.*” (Emphasis added.) 40 ILCS 5/6-221 (West 2008).

The applicability of section 6-221 warranting forfeiture of Boyle’s pension benefits depends on whether his convictions for felony arson were related to, arose out of, or were in connection with his service as a fireman with CFD. In determining whether section 6-221 of the Code applies to disqualify Boyle from pension benefits, “the pivotal inquiry is whether a nexus exists between [Boyle’s] criminal wrongdoing and the performance of his official duties.” See *Devoney*, 199 Ill. 2d at 419, 769 N.E.2d at 935.

In *Goff v. Teachers’ Retirement System of the State of Illinois*, 305 Ill. App. 3d 190, 713 N.E.2d 578 (1999), the plaintiff, a retired principal of a school, pled guilty to six counts of aggravated criminal sexual abuse of two children during his tenure at the school. The sexual abuse of the children took place off school property, and the manner by which the plaintiff came to meet and gain the trust of the children and their parents was through the plaintiff’s service as a scoutmaster and church camp counselor. *Id.* at 193, 713 N.E.2d at 581. The plaintiff used his title as “principal” of a school in applying for the scoutmaster and church camp counselor positions, introduced himself to the children and their parents as the principal of a school, and understood that

these children would later become students at the school of which he was the principal. *Id.* at 193-94, 713 N.E.2d at 581-82. Following his conviction of aggravated criminal sexual assault, the Teachers' Retirement System (Retirement System) revoked his pension benefits under section 16-199 of the Code, finding that his felonies were "connected with, related to, and arose out of" the plaintiff's service as principal of the school. *Id.* at 191, 713 N.E.2d at 580. Subsequently, the plaintiff filed a lawsuit in the circuit court challenging the revocation of his pension benefits; however, the circuit court granted summary judgment in favor of the Retirement System. *Id.* at 192, 713 N.E.2d at 580. On appeal, the reviewing court held that the plaintiff's criminal actions were "related to, arose out of, and was connected with [the plaintiff's] service as a principal" so as to justify pension forfeiture. *Id.* at 195, 713 N.E.2d at 582. The reviewing court found that the wrongdoings were "in some way connected" with his employment as a principal so that there was a "causal connection" between them because he used his status as principal to obtain the scoutmaster and counselor positions, and to exert influence over the children and their parents. *Id.* at 195-96, 713 N.E.2d at 582-83.

Likewise, in *Siwek v. Retirement Board of the Policemen's Annuity and Benefit Fund*, 324 Ill. App. 3d 820, 756 N.E.2d 374 (2001), the plaintiff, a police officer, was convicted of two felony charges of narcotics, as a result of which his pension benefits were revoked. *Id.* at 822-23, 756 N.E.2d at 375-76. On appeal, this court found that the plaintiff used "specialized knowledge" gained in his service as a police officer to commit the felony. *Id.* at 829, 756 N.E.2d at 381. This court also reasoned that the plaintiff used a police informant, who had a number of connections with narcotics dealers, to set up a drug purchase for him. *Id.*, 756 N.E.2d at 381. Based on this evidence, this

court held that the plaintiff's pension forfeiture was justified under section 5-277 of the Code because his convictions were "connected to, or, at the very least, [were] related to his service as an officer." *Id.*, 756 N.E.2d at 381.

Applying the principles of *Goff* and *Siwek*, we find that the evidence presented in this case supported the conclusion by the Board that a nexus existed between Boyle's felony convictions for arson and his employment as a fireman with CFD. The transcripts of the March 2006 criminal proceedings¹ before the circuit court, during which Boyle pled guilty, reveal that on February 7, 2005, at the Immaculate Conception School located at 7263 West Talcott Avenue in Chicago, he intentionally set fire to "materials" at the school which caused "extensive damage to a school computer room." The transcripts of the March 2006 criminal proceedings also reveal that on that same day, February 7, 2005, at approximately 2:50 a.m., Boyle broke a window at the Norwood Park Field House located at 5801 North Natoma Avenue in Chicago, and intentionally set fire to the furnace inside the building structure. The transcripts further show that, also on February 7, 2005, at approximately 1:38a.m., Boyle intentionally ignited "volatile materials" at Granger's² Restaurant located 6262 North Harlem Avenue in Chicago, which caused minor damage to the building structure. The transcripts also show that on February 6, 2005, at approximately 5:07 a.m., Boyle ignited "available material[s]" at a garage located at 7229 West Palatine Avenue in Chicago, which

¹ The record contains only transcripts from the criminal proceedings relating to the four acts of arson committed by Boyle in Chicago. However, the record is devoid of transcripts from the criminal proceedings relating to the four acts of arson committed by Boyle in Park Ridge.

²The police report for this act of arson states that the establishment was called "Brandy's Restaurant."

caused “intensive damage” to the building structure.

The record also shows that police reports, fire investigation reports, and Boyle’s handwritten inculpatory statements to the police regarding each act of arson for which he was convicted were admitted into evidence at the October 15, 2008 Board hearing. The police reports and Boyle’s handwritten statements show that the methods used by Boyle to commit arson included igniting materials inside a garage; lighting garbage cans on fire and placing them next to building structures; lighting garbage cans on fire and placing them next to the grease trap of a restaurant’s building exterior; setting fires to materials in street alleys; igniting wood placed against the structure of a building; igniting a curtain inside a commercial property; and igniting materials found on construction sites. In each of these acts of arson, Boyle used a cigarette lighter, but no accelerant, in setting the fires. However, Boyle’s testimony at the pension hearing established a level of knowledge above that of ordinary citizens who have no training or experience with fires. He used and understood certain technical terms regarding how fires spread.

In the Board’s November 19, 2008 written findings, the Board made factual findings that Boyle “learned on many occasions while working with the CFD that a dumpster had been used to communicate fire to another building or structure,” and that “[s]everal of the arson [fires] that [Boyle] started involved the use of garbage cans, dumpsters and trash as an ignition source to communicate fire to a structure or building. The Board then concluded that the totality of the evidence presented at the October 15, 2008 hearing established that Boyle’s convictions for arson were “connected with his employment as a firefighter with the CFD.” We cannot say that the Board’s finding was clearly erroneous.

Our review of the record shows that at the October 15, 2008 hearing before the Board, Boyle testified that over the years, he learned about ignition temperatures for different materials through his employment with the CFD. Boyle further testified that during his employment with the CFD, he learned about how fires “communicate” from an ignition source to other materials. Boyle also stated that during his 25 years of service at the CFD, he observed how many fires, arson or otherwise, were started. We find that, like *Siwek*, Boyle used “specialized knowledge” gained from his training and experience as a firefighter at the CFD to commit the various acts and manner of arson. At the October 15, 2008 hearing, police reports from the eight arson incidents were also admitted into evidence. In one particular police report detailing an arson incident that occurred on February 7, 2005, behind Brandy’s Restaurant at 6262 N. Harlem Avenue in Chicago, two garbage dumpsters at the rear of the restaurant were set on fire and “the restaurant grease trap was open.” The report opined the open grease trap “was unusual.” Based on this evidence, it was sufficient for the Board to find that Boyle’s acts of arson, like the felonious acts in *Goff*, were in some way connected with his employment as a firefighter at the CFD so that the causal connection was established. We cannot say that the Board’s finding in this regard is clearly erroneous. Like *Siwek*, there is sufficient evidence to establish that Boyle’s arson convictions were “connected to, or, at the very least, [were] related to” his service as a firefighter under section 6-221 of the Code. See *Siwek*, 324 Ill. App. 3d at 829, 756 N.E.2d at 381. In order to overturn the Board’s ruling, we must find that there is a definite and firm conviction that a mistake has been committed by the Board in rendering its decision. Based on this record, we cannot make such a finding and thus, we uphold the Board’s decision that pension forfeiture is triggered under section 6-221 of the Code. Accordingly, we

reverse the judgment of the circuit court overturning the Board's decision. In light of our holding, we need not address the Board's remaining alternative arguments in support of its position.

We note that our ruling today is strictly applicable to the facts of the instant case. In rendering our decision, we do not mean to imply that any firefighter convicted of arson must forfeit his pension *per se* simply by virtue of that conviction. This is not what the legislature intended. Breach of Boyle's duty to protect the public by committing these acts of arson does not automatically trigger disqualification for a pension. See generally *Devoney*, 199 Ill. 2d at 419, 769 N.E.2d at 936. Rather, what triggers the forfeiture of pension benefits under the Code is the existence of a nexus between the crime and the individual's work as a firefighter. The facts of each case will determine whether such a nexus exists. The facts in this case established a nexus between the felony convictions and Boyle's service as a fireman. See *id.*, 769 N.E.2d at 936; see also *Cullen v. The Retirement Board of the Policeman's Annuity and Benefit Fund of the City of Chicago*, 271 Ill. App. 3d 1105, 1109, 649 N.E.2d 454, 456-57 (1995) (legislature did not intend the policemen pension forfeiture statute to cover felonies committed unrelated to law enforcement duties) and *Siwek*, 324 Ill. App. 3d at 820, 756 N.E.2d at 374 (rejecting the notion that violation of the police officer's oath or statutory duty provides the requisite nexus between his conviction and his service as a police officer under the Code).

For the foregoing reasons, we reverse the judgment of the circuit court of Cook County.

Reversed.